Chaos, Law, and God: The Religious Meanings of Homosexuality

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Abstract

What is the meaning of homosexuality in contemporary religious-political discourse? Though some explain homosexuality's disproportionate prominence in terms of homophobia, "church and state," or traditional values versus progressive ones, this article suggests that the legal regulation of sexuality has a far deeper, and more specific, religious meaning: sexuality is a primary site in which religious law is engendered, where the lawfulness of religion meets the chaos beyond it. Arguments about gay rights, same-sex marriage, and related issues are not merely arguments informed by religious values; they are arguments about the nature of religion itself.

The article begins by providing a taxonomy of the New Christian Right (NCR)'s longtime claims about homosexuality and comparing those claims with Biblical text. While most contemporary anti-gay arguments cluster around notions of family, pathology, and the decline of civilization, the Biblical texts of the Old Testament are chiefly about purity and impurity, order and disorder on the physical plane, while those of the New Testament are about creating "natural" order by subsuming the physical to the spiritual. In short, while the Bible does not regard homosexuality as the NCR does, they do share the basic underlying concern of order and chaos, and the siting of that concern in the domain of sexuality. The deeper meaning of homosexuality is chaos.

In fact, the article suggests, NCR leaders are perhaps more right than they know, because liberated sexuality is indeed a threat to the mythic nomos of religion as they understand it. When viewed according to developmental models (this article utilizes those of Ken Wilber, Jean Piaget, Lawrence Kohlberg, Susann Cook-Greuter, and others), liberated sexuality represents a change in the meaning of religion itself -- moving from a "mythic" understanding of religion to a "post-mythic" one. And from the perspective of mythic religion, the post-mythic is anarchy. Indeed, two very different sets of GLBT thinkers -- queer theorists and the gay spirituality movement -- celebrate this very possibility.

Biblical concerns about law and chaos are still with us today. Now as then, sexuality is the site at which legal-religious order is contested. Now as then (though for different reasons), liberated sexuality threatens the mythic nomos and its notions of order and disorder -- especially when applied to mythic structures such as marriage. And now as then, neither conventional liberal theory nor the pathologization of homophobia is adequate to the practical task of religious state change. The article thus concludes, drawing on the work of Robert Cover and Kenji Yoshino, with an account of how experiential encounters, peak experiences, and world-shattering moments of growth are the most effective means in moving from one stage of religious development to another. While questions of order and chaos have been with us for millennia, the answers to them are not immutable. The normative structures of religion appeal to the timeless, but, fortunately for many of us, they evolve in time.
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I. Introduction

Why is homosexuality so politically significant? According to our most reliable statistics, only 4% of Americans identify as gay or lesbian.² Why, then, does homosexuality, and particularly same-sex marriage, provoke as much heated debate as was once inspired by abortion, civil rights, and equal rights for women? How has such a small group -- 8.8 million Americans, at most -- come to be regarded as a threat to our nation's social fabric?

² The Center for Disease Control reports that 5% of men and 11% of women aged 15-44 have engaged in same-sex sexual activity. William D. Mosher, Anjani Chandra and Jo Jones “Sexual Behavior and Selected Health Measures: Men and Women 15-44 Years of Age, United States 2002” in Advance Data from Vital and Health Statistics, Number 362 (Center for Disease Control, September 15, 2005). However, the percentage of Americans who self-identify as homosexual or bisexual is lower, at approximately 4%. Gary J. Gates and Jason Ost, The Gay and Lesbian Atlas, (Urban Institute, 2004). There is a wide range of estimates. See Edward O. Laumann et al., The Social Organization of Sexuality: Sexual Practices in the United States 294-96 (1994) (reporting that 9% of men and 4% of women have engaged in same-sex sexual activity); Samuel S. Janus & Cynthia L. Janus, The Janus Report on Sexual Behavior 69 (1993) (reporting that 22% of men at 17% of women have engaged in same-sex sexual activity). See Richard Posner, Sex and Reason 294-95 (1992)(surveying data and concluding "most estimates of the number of male homosexuals are in fact between 2 and 5 percent").
This article argues that the religious meaning of homosexuality cannot be explained merely in terms of homophobia, "church and state," or traditional values versus progressive ones. Rather, the regulation of sexuality has a particular religious meaning: sexuality is a primary site in which religious law is engendered, where the lawfulness of religion meets the chaos beyond it. Whether in Biblical times or today, changing the way sexuality is regulated is a threat to the notion of order itself, as construed by Jewish and Christian religion. Arguments about gay rights, same-sex marriage, and related issues are not merely arguments informed by religious values; they are arguments about the nature of religion itself, still important to a vast majority of Americans.

I begin in Part II by providing a typology of the New Christian Right (NCR)'s longtime claims about homosexuality, and comparing those claims with Biblical text. While most contemporary anti-gay arguments cluster around notions of family, pathology, and the decline of civilization, the Biblical texts of the Old Testament are chiefly about purity and impurity, order and disorder on the physical plane, while those of the New Testament are about creating "natural" order by subsuming the physical to the spiritual. In short, while the Bible does not regard homosexuality as the NCR does, they do share the basic underlying concern of order and chaos, and the siting of that concern in the domain of sexuality. The deeper meaning of homosexuality is chaos.

In fact, NCR leaders are perhaps more right than they know, because liberated sexuality (especially, and symbolically, homosexuality) is indeed a threat to the mythic nomos of religion as they understand it. Part III rejects the claim that debates about homosexuality are merely about homophobia or the simplistic dichotomy of "church and state." Rather, when viewed with a more rigorous analytical framework (Part III utilizes the developmental models of theorist Ken Wilber, drawing on the work of Robert Kegan, Lawrence Kohlberg, Susann Cook-Greuter, and others), liberated homosexuality represents a change in the meaning of religion itself -- moving from what Wilber and others call a "mythic" understanding of religion to a "post-mythic" one. And from the perspective of mythic religion, the post-mythic is anarchy. Indeed, as Part III shows, two very different sets of GLBT thinkers -- queer theorists and the gay spirituality movement -- celebrate this very disordering potential of liberated (homo)sexuality. Like the NCR, both of these groups see homosexuality, read as a form of liminality, as a potential site for uprooting gender binarism, heteronormativity, and other structures of order. In other words, Biblical concerns about law and chaos are still with us today. Now as then,

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3 According to the 2005 Harris Poll, 82% of Americans believe in God (though only 69% of Americans with postgraduate degrees), 73% believe in miracles, 70% believe in heaven, 70% believe that Jesus is the Son of God or is God, and 61% believe in the devil. The Harris Poll #90, December 14, 2005: The Religious and Other Beliefs of Americans 2005, http://www.harrisinteractive.com/harris_poll/index.asp?PID=618 (accessed Feb. 18, 2008). According to the Barna Group, 69% of Americans believe in God as an all-powerful, all-knowing perfect creator of the Universe who rules our world today. 61% of American believe that the Bible is totally accurate in all of its teachings. The Barna Group, “The Barna Update” www.barna.org/FlexPage.aspx?Page=BarnaUpdate&BarnaUpdateID=120.

sexuality is the site at which legal-religious order is contested. Now as then (though for different reasons), liberated sexuality threatens the mythic nomos and its notions (public and private) of order and disorder. Two men standing under a marriage canopy may seem like a simple, even banal, image, but it is neither.

In the concluding Part, I argue that there are ways out of this dilemma, but not easy ones. First, drawing on the work of Robert Cover, I caution against conflating the primary religious-nomian aspiration for order with simple homophobia, and against the reduction of complex religious developmental questions to the inadequate binarism of "church and state." A more subtle analytical lens reveals political debates about homosexuality to be a kulturkampf between two different stages of religious development. Second, I argue, based on empirical evidence, that those reforms which target mythic structures will be least likely to succeed, while those which evade them will be much more likely to succeed. Third and finally, drawing again on the work of Wilber and Cover, as well as that of Kenji Yoshino, I conclude on a note of cautious optimism, noting that experiential encounters, peak experiences, and world-shattering moments of growth -- my primary example here is Huck Finn's decision to "go to hell" rather than turn in the fugitive slave Jim -- are the most effective means in moving from one stage of religious development to another.

Unfortunately, such encounters are religious, not legal, in nature. Fortunately, however, they may be as simple as simply knowing someone gay, and are strikingly congruent with our cultural moment's emphasis on the personal and confessional as modes of political discourse. Debates about the legal regulation of sexuality are not merely about the separation of church and state, or the role of traditional values in society, but about what religion itself is supposed to be, and the kinds of legal order it is to maintain. While these questions have been with us for millennia, the answers to them are not immutable. The normative structures of religion appeal to the timeless, but, fortunately for many of us, they evolve in time.

II. The Idea of Order vs. Key West, or,
What the Bible Really Says about Homosexuality

A. The Myths of Family Values

According to much of today's political rhetoric, proponents of gay rights are flouting a central Biblical norm, while their opponents are mired in irrational

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homophobia. Both sides are incorrect. In this part, I review the NCR's anti-gay rhetoric, and contrast it with what the Bible actually says about homosexuality, to show that while they are quite different on the surface, they do share fundamental concerns. That homosexuality is a "sin" for the NCR is, perhaps, obvious; my interest here is in why it is a sin, what exactly is wrong about it. In the next part, I address the pro-gay assertion that anti-gay political actors are motivated by fear and homophobia, showing that, in fact, the disordering power of homosexuality is still quite potent today, as it represents a shift in the meaning of religion.

As we survey these ideas, it is worth bearing in mind that, whatever opponents of gay rights say, questions such as same-sex marriage are as much a litmus test as a policy debate. Like abortion before it, gay rights is a stand-in for a wide range of social issues, ranging from the death penalty to environmentalism, feminism to censorship. And much of its significance is obvious: since homosexuality is still something unknown, threatening, and forbidden to many people, the sight of two women marrying one another can be a galvanizing political image. Nor do I suggest that gay rights is somehow unique; the NCR has been, over time, equally concerned with abortion, feminism, and prayer in schools. Yet what is striking about homosexuality is why it, rather than these quantitatively more important issues, has figured so prominently in NCR fundraising letters. Indeed, as Didi Herman has shown, this was the case even before the last decade’s legal changes; while the image of the homosexual has evolved from pathetic outsider to pernicious predator, the notion of homosexuality as fundamentally threatening the American political-religious order has been with us since at least the 1950s. Thus even as we may discount the actual import of homosexuality as a policy matter, we cannot ignore its prominence in NCR political rhetoric.

Finally, I do not mean to suggest that all anti-gay activists are religiously motivated, or that all religious people are anti-gay. Indeed, my argument in Part III attacks this very oversimplification, and engages as much with pro-gay progressive religious arguments as with anti-gay ones, even as it remains the case that religiosity and conservative ideology are the best predictors of opposition to homosexuality. Nevertheless, it is important to set forth the basic anti-gay political-legal argument, to find points of commonality and difference with Biblical text.

Mutability. First, and as a threshold matter, the anti-gay legal rhetoric of the New Christian Right depends upon the position that homosexuality is either a choice or a

6 Didi Herman: The Antigay Agenda: Orthodox Vision and the Christian Right 25-59 (Univ. of Chicago 1997) (tracing how homosexuality has been presented in the magazine Christianity Today from 1956-1997).
pathology.⁹ This trope is best evidenced by the large number of “ex-gay” ministries connected to and supported by the NCR.¹⁰ Exodus International, the largest ex-gay ministry, seeks to “mobilize the body of Christ to minister grace and truth to a world impacted by homosexuality.”¹¹ Similarly, James Dobson’s Focus on the Family has created a separate ministry called Love Won Out to help gays and lesbians “overcome” same-sex attractions.¹² Focus on the Family and Love Won Out acknowledge that a variety of environmental, cognitive and biological factors go into creating homosexual attraction.¹³ Nonetheless, they maintain that “[G]ender confusion can be reversed. Biological predisposition can be treated. Patterns of attraction and addiction can be understood and reformed.”¹⁴ Obviously, since being gay or lesbian is a choice, and therefore is an appropriate target for efforts to deter or prevent homosexual conduct, orientation and civil rights, and to deny recognizing lesbians and gays as a protected (and protectable) class.¹⁵ Polls also show a correlation between those who believe that same-sex relations are “always wrong” and those who believe it is “the way some people prefer to live.”¹⁶ For example, during debates over Colorado’s anti-gay Amendment 2,

⁹ See Herman, supra, at 69-76; Timothy Dailey and Peter Sprigg, Getting it Straight: What the Research Shows About Homosexuality (Family Research Council 2001); Love Won Out, “Frequently Asked Questions” (http://www.lovewonout.com/questions/)(accessed January 18, 2008); Paul D. Cameron, “What Causes Homosexual Desire and Can it be Changed?” The Family Research Institute, http://www.familyresearchinst.org/FRI_EduPamphlet1.html (“No one has found a single heredible [sic] genetic, hormonal or physical difference between heterosexuals and homosexuals - at least none that is replicable. While the absence of such a discovery doesn't prove at inherited sexual tendencies aren't possible, it suggests that none has been found because none exists.”); Nancy J. Knauer, "Homosexuality as Contagion: From the Well of Loneliness to the Boy Scouts," 29 Hofstra L. Rev. 401, 458-63 (2000). Herman notes that the majority of NCR statements about the mutability of homosexuality depend on two studies which questioned the methodology of biological determinism. Herman, supra, at 70.


¹¹ See Exodus International, “Mission and Doctrine,”( http://exodus.to/content/view/33/117/) (“Mobilizing the body of Christ to minister grace and truth to a world impacted by homosexuality”). For other examples of ex-gay ministries, see New Hope Ministries, homepage, (http://www.newhope123.org/guess.htm) (accessed January 18, 2008); Stephen Bennett Ministries Worldwide, homepage, (http://www.igroops.com/igroops/sbm)( Founder and executive director Stephen Bennett, a former homosexual man now happily married to his wife Irene for almost 15 years and the father of the couple’s two children, has traveled the world sharing his story of love, hope, life and true change );


Colorado for Family Values, which proposed the Amendment, asserted during the campaign that “homosexuality isn’t something you are, it’s something you do.” As we will see, in this regard, contemporary anti-gay voices are aligned with Biblical ones.

Unnaturalness. The view that homosexuality is unnatural is a recurrent trope in NCR and wider conservative anti-gay literature. It perhaps reached its Zenith President George W. Bush nominated for Surgeon General Dr. James Holsinger, Jr., who had prepared a study for the Methodist Church called the “Pathophysiology of Male Homosexuality” arguing that “the structure of the male and female reproductive system are fully complementary” whereas the reproductive and alimentary systems are meant to be absolutely separate. More prosaically, says the Family Research Council's Robert Knight, "Just look at the human body…You can’t fool nature. The rectum was not made for sexual activity... It is an exit ramp, not an entry ramp." Or perhaps even more prosaically, God created Adam and Eve, not Adam and Steve. As we shall see, such views have some precedent in Paul's epistle to the Romans, though they misread Paul's

http://lsr.nellco/upenn/wps/papers/95. Polls summarized by Persily, et al., show that “in 2004, 57% of the public told the General Social Survey that same-sex relations are ‘always wrong.’ However, this figure has declined in a relatively steady fashion since the late 1980s, when it peaked at 78%.” Over the same period, the percentage of people who believed homosexuality is "something that people are born with" rose from 16% to 32%. Further, said Persily et al., "The decline in morally traditionalistic views regarding homosexuality has not been accompanied by increasing permissiveness on other matters of private behavior related to sexuality.

17 Knauer, supra n. 11, citing WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, SEXUALITY, GENDER, AND THE LAW 143 (1997 & SUPP. 2001) (quoting letter). For one example of how the ascription of mutability to sexuality plays out in a legal context, see Gaylord v. Tacoma Sch. Dist. No. 10, 559 P.2d 1340, 1345-46 (Wash. 1977) (affirming a school board’s termination of a teacher because “[h]omosexuality is widely condemned as immoral and was so condemned during biblical times;” the teacher had indicated no intent to change; and because he had “made a voluntary choice for which he must be held morally responsible”).

18 Sodomy (heterosexual and homosexual) was sometimes statutorily defined as "unnatural" or a "crime against nature." For example, until 1968, Georgia defined sodomy as “the carnal knowledge and connection against the order of nature, by man with man, or in the same unnatural manner with woman.” Ga.Crim.Code § 26-5901 (1933), quoted in Bowers v. Hardwick, 478 U.S. 186, 201 (1986). See also 1 W. Hawkins, Pleas of the Crown 9 (6th ed. 1787) (“All unnatural carnal copulations, whether with man or beast, seem to come under the notion of sodomy, which was felony by the antient common law, and punished, according to some authors, with burning; according to others, ... with burying alive”), quoted in id. at 215. See Nancy D. Polikoff, "This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families," 78 Geo. L. J. 459, 554-57 (1990) (summarizing and critiquing position).


20 Id.

21 Quoted in Robert Dreyfuss, "The Holy War on Gays," Rolling Stone, March 18, 1999. Such arguments do not, of course, address the high concentration of nerve endings in the anus and the sexual pleasure generated by stimulation of the prostate gland, biological traits which would suggest a different biological "purpose," if one were inclined to impute one.
understanding of the "natural" as being precisely that which transcends natural, base instincts and places the body in the service of the spirit. 

_Disease._ Homosexuality is often troped as unhealthy and pathological, a disgusting disease in and of itself that leads to further disease. Pat Robertson stated that “one of the great misnomers in our society is the term 'gay.' That somebody who is involved in something that is leading to suicide, where the V.D. rate is 11 times that of others, which are almost driven and ashamed and fearful and confused and psychotic and all the others that we read about plaguing this part of our society. The term gay is the most serious misuse of the English language. They’re not gay, they’re very, very depressed and miserable.” A few years later, Robertson maintained that “this conduct [homosexuality] is anti-social, and it is a pathology. It is a sickness, and it needs to be treated.” Many NCR sources analogize the pathology of homosexuality to that of pedophilia. Some anti-gay sources conflate Biblical punishments for homosexuality with the disease and death that inevitably accompanies it. Of course, this rhetoric of disease and misery once drew primarily on the AIDS epidemic, widely seen in the NCR as God’s punishment against homosexuals. For example, Robertson said in 1988 that

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22 They also, of course, flatly contradict the evidence of homosexuality in over 300 animal species. See Joan Roughgarden, Evolution’s Rainbow: Diversity, Gender, and Sexuality in Nature and People (U.C. Press, 2004). But see Roger Lancaster, The Trouble with Nature: Sex in Science and Popular Culture (U.C. Press, 2003) (documenting religious and political uses of “nature” and arguing against simplifications such as a “gay gene”).


26 See, e.g. Paul Cameron, Child Molestation and Homosexuality, The Family Research Institute. Available at http://www.familyresearchinst.org/FRI_EduPamphlet2.html#info (accessed February 18, 2008). Cameron concludes that “not only is the gay rights movement upfront in its desire to legitimize sex with children, but whether indexed by population reports of molestation, pedophile convictions, or teacher-pupil assaults, there is a strong, disproportionate association between child molestation and homosexuality.” For another example, see The Traditional Values Coalition, “The Homosexual Movement and Pedophilia,” http://www.traditionalvalues.org/homosexual_movement_and_pedophilia/ (accessed February 18, 2008). “There is an ever-increasing effort among homosexual organizations to target public school children, to abolish age of consent laws, and to publish ’studies’ that purportedly show that adult/child sex is not harmful.”

27 See, e.g., Eskridge, Body Politics, supra, at 1021-22 (describing rhetoric of Anita Bryant).

homosexuality is an abomination. The practices of those people is appalling. It is a pathology. It is a sickness, and instead of thinking of giving these people a preferred status and privacy, we should treat AIDS exactly the same way as any other communicable disease.”29 As AIDS has declined in the gay community, however, and increased in Africa -- where evangelicals have been active in combating the spread of AIDS -- the association of homosexuality with disease has shifted from AIDS specifically to venereal disease and other health woes.

Threat to the (Institution of the) Family. A common critique of legitimizing homosexuality is that doing so will destroy marriage, and by extension, the family. Many believe that biological, heterosexual, “nuclear” families are the ideal model for our society,30 and that acceptance of homosexuality is an “active threat to the stability of existing and future marriages.”31 The reasons why homosexuality poses such a threat vary. Some point to research that children do best when their parents are married, of opposite sex, and both parents are biologically related to the child.32 Some suggest that the allure of homosexuality might undermine the ideal of heterosexual marriage, a view which assumes straight people might be "tempted" into gay life.33 Others say that the problem is that if gay couples get married and have fewer children than straight couples,
child-bearing might become less central to all marriages. And others still argue that if married gay couples place less emphasis on fidelity than straight couples, straight couples may re-examine their own sexual practices, which in turn, hurts the institution of the family and children. Finally, some conflate the threat to the institution of the family to the threat predatory homosexuals pose to actual families and children. It is beyond the scope of this article to address the merits of these claims. What I am interested in, however, is the perception of homosexuality as a threat to an important societal institution.

**Threat to Society: Gender and Sexual "Boundary Maintenance"** In a similar vein, many critics claim that homosexuality forfeits or betrays the masculine gender role, which sociologist Dana Briton calls a form of "boundary maintenance." The Family Research Council's Robert Knight's predicted that the acceptance of homosexuality will reduce the value of masculinity, which then leads to further decay: "as man is reduced in stature, all hell will break loose. We’ll see a breakdown in social organizations, with more drug use, more disease, more unwanted pregnancies. You’re mainstreaming dysfunction." (Posner in *Sex and Reason* surveys a range of pejorative opinions about "effeminate" men.) On the other hand, citing anti-gay videos highlighting sadomasochism and naked bodies, Herman has suggested that in NCR rhetoric, "gay sexuality is represented as masculinity out of control, as aggressive, powerful, and unrestrained," and as "an extraordinary combination of power, degradation, excitement, pleasure, savagery, and bacchanalian hedonism." As we will see, both of these contradictory themes are also present in the New Testament; there, homosexual behavior is both "soft" and animalistic. The contradiction is explained somewhat by the overriding concern with order generally: once men are loosed from the bonds of religious morality (and, as Herman shows, the NCR is almost entirely concerned with male homosexuality), disorder reigns. This, more than the particulars of masculinity and femininity, is the real concern -- and it is echoed by the slippery slope arguments that acceptance of same-sex relationships will lead to the erosion of taboos against polygamy, bestiality and incest. What one observer has called a "politics of disgust" is of obvious political import, but my claim is that it is not purely politics; it is indeed how the NCR sees unregulated sexuality. Former Pennsylvania Senator Rick Santorum, for example, argued that “if the Supreme Court says that you have the right to consensual [gay] sex in your home, then you have the right to bigamy, you have the right to polygamy, you have

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34 Wax, Traditionalism, Pluralism and Same-Sex Marriage, supra note 22 at 402.
35 Id.
36 See Knauer, Homosexuality as Contagion, supra, at 467-69. This was anti-gay activist Anita Bryant's notorious and successful claim: that homosexuals were actively "recruiting." See Eskridge,
38 Quoted in Dreyfuss, "The Holy War on Gays," supra.
39 Posner, Sex and Reason, supra, at 300-04.
40 Herman, supra, at 80.
41 Id. at 81.
42 Id. at 92-110.
the right to adultery.”

Similarly, Stanley Kurtz, a critic for The National Review, claims that the erosion of the taboo against homosexuality might lead to the erosion of the incest taboo. Similarly, some believe that legitimizing any sex outside of marriage creates “moral confusion,” which in turn leads to societal views on sexuality going “awry,” as evidenced by the abuses at Abu Ghraib prison, the international sex tourism industry, and addiction to internet pornography. These bizarre claims are sometimes seen as evidence of homophobia, ignorance, or simple insult. As we will see, however, they may be more usefully understood as legitimate expressions of the fear of chaos, inscribed on the sexual site of law's engenderment.

**Threat to Society: Religion and Moral Order.** Continuing this theme, Steven A. Schwalm of the Family Research Council says that “militant homosexuality is fundamentally opposed to religion, family, and anything that presupposes a natural moral order, a transcendent God, or something else higher than ourselves. The activist homosexual agenda and worldview are fundamentally incompatible with Christianity or any form of true religion, because homosexuality is ultimately narcissism.” As we will see, this critique, extreme as it sounds, resonates more with Paul's argument for "natural" theocentricity above animalistic androcentricity than with the claims we have explored thus far. In a modified form, it has lately been amplified by legal scholars’ claims that the societal protection of gays and lesbians is a threat to “religious freedom,” because “legal and social equality cannot be squared with respect for the traditional religions that disapprove of homosexuality…In effect, government must declare traditional religion to be false and evil.”

Robert Knight, Lindsey Douthit and Concerned Women for America, for example, warn that “hate crime laws are a key part of a long-term strategy by homosexual activists to use ‘sexual-orientation’ based policies and laws to suppress dissent, radically redefine marriage and, ultimately, to criminalize Biblical morality.” Such arguments reached a fever pitch in the wake of the legalization of same-sex marriage in Massachusetts, which was said to elevate the power of the state over the

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44 Id. at 1544, quoting Interview by the Associated Press with Sen. Rick Santorum (Apr. 7, 2003).
45 Id. at 1557.
47 Id. At 138.
50 Dent, supra, at 556. The threat flows from several sources of law, including the decriminalization of sodomy after *Lawrence v. Texas*; employment anti-discrimination laws that protect sexual orientation; fair housing laws; hate-crime laws; and civil tort laws.
52 See Severino, supra note 51, at 941-942; Maggie Gallagher, *Banned in Boston: The coming conflict between same-sex marriage and religious liberty*, The Weekly Standard, 05/15/06 (Vol 11, Issue
power of the church and individual families. The ancient battle between libertine sexuality and the authority of the Church has been transposed into a modern legal context.

**Threat to Society: The End of Civilization.** Perhaps the grandest claim of the New Christian Right is that homosexuality is destructive to the institutions of society, and to civilization itself. As early as 1978, Tim LaHaye (later the author of the bestselling *Left Behind* series) wrote that "the tidal wave of homosexuality... will drown our children in a polluted sea of sexual perversion -- and will eventually destroy America as it did Rome, Greece, Pompeii, and Sodom." In 1989, a member of the U.S. House of Representatives asked "how are we, as supporters of the Judeo-Christian ethic, supposed to respond to this well-planned and well-financed attack on our civilization? . . . We must either defeat militant homosexuality or it will defeat us."

At a similarly far extreme of this critique, Pat Robertson has suggested that the relaxation of the regulation of homosexuality will be a kind of moral anarchy that leads to fascism and Satanism: "When lawlessness is abroad in the land, the same thing will happen here that happened in Nazi Germany. Many of those people involved in Adolf Hitler were Satanists. Many of them were homosexuals. The two things seem to go together."

Elsewhere, Robertson stated that "the acceptance of homosexuality is the last step in the decline of Gentile civilization." More recently, Republican presidential hopeful Gov. Mike Huckabee echoed this perspective: “[S]in means missing the mark... The mark is that we have marriage -- men and women, they marry, they create children, and they train their replacements and you have a future generation then that creates their replacements and trains them...If we didn't have that as the ideal, we wouldn't have a civilization that was able to perpetuate.” In other words, the values in question are progeny, and the survival of civilization; homosexuality means fewer children, which ultimately means the

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33)(quoting Anthony Picarello, president and general counsel of the Becket Fund for Religious Liberty, a “religious liberty” law firm in Washington, D.C.); See also Peter Steinfels, Will Same-Sex Marriage Collide with Religious Liberty?, The New York Times, June 10, 2006. Available at http://www.nytimes.com/2006/06/10/us/10beliefs.html?_r=2&oref=slogin&oref=slogin. Steinfels points out that several mainstream legal and religious scholars also share the view that the legalization of same-sex marriage will likely create conflicts with religious institutions.

53 Paprocki, supra at 259.

54 Tim LaHaye, Unhappy Gays 10 (1978), quoted in Herman, supra, at 62.


57 Time magazine, Oct 26, 1998, quoted in http://www.hatecrime.org/subpages/hatespeech/robertson.html (accessed February 12, 2008). This was the same Time magazine article in which Robertson warned that hurricanes were likely to hit Orlando, Florida, due to gay-related events being held there.

destruction of humanity.\textsuperscript{59} As we will see below, such seemingly hyperbolic critiques are, while quite different in superficial detail from Biblical criticisms, remarkably similar both to the underlying Biblical themes of order and chaos, and to the actual disruption of mythic religious order by the eruption of post-mythic religious thinking about liberated sexuality.\textsuperscript{60}

B. The Truths of Biblical Homosexuality

I now turn to the Biblical text, to show first that the NCR's specific critiques are not the same as those found in Biblical text, but second that they do share a fundamental concern: order and chaos.\textsuperscript{61}

By way of prologue, there are three arguments that I will not make. The first regards the actual nature and origin of homosexuality. As has been mentioned already, all of the foregoing religious arguments rest on the premise that homosexual behavior is chosen, despite the fact that sexual orientation is known, by those with first-hand experience of it as well as by scientists who study it, to be either genetically determined or so deeply developmentally ingrained as to be fundamentally unchangeable\textsuperscript{62} -- not to

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\textsuperscript{59} Ironically, of course, most environmentalists believe the destruction of humanity, if it happens, will result not from too few children but too many. As a result, some religious thinkers have suggested that higher prevalence of homosexuality is ecologically and thus religiously preferable. See Walter Wink, "Homosexuality and the Bible" in Homosexuality and Christian Faith: Questions of Conscience for the Churches 41 (Minneapolis: Fortress, 1999). But see Webb, supra, at 217-18 (disputing relevance of overpopulation in assessing importance of procreation).

\textsuperscript{60} Of course, more moderate approaches are also found in the literature. For example, Randy Beck suggests that we simply do not know the social consequences that will result from changing the definition of marriage. Randy Beck, The City of God and the Cities of Men: A Response to Jason Carter, 41 GA. L. REV. 113, 148 (Fall 2006) (arguing that it will have "profound social consequences").

\textsuperscript{61} I am aware of very few contemporary religious thinkers who both acknowledge the Bible's "order and chaos" concern and maintain it today as a reason to oppose homosexuality. One of these is Donald Wold, Out of Order: Homosexuality in the Bible and the Ancient Near East (Grand Rapids, MI: Baker Books, 1998). Wold presents a reading of Leviticus similar to my own, id. at 91-136, including a cross-cultural analysis, id. at 30-61, but marshals this extensive historical and linguistic evidence (which Biblical critics usually use to undermine fundamentalist readings of text) to support an order-based ban on homosexuality today, notwithstanding changed circumstances and the apparent foreignness of the Levitical agenda, which we will shortly explore. Of course, as Wold is committed to Biblical inerrancy, the historical roots of Biblical text do not undermine its normative status, but serve only to better explain its scope.

mention the shocking rates of suicide among gay and lesbian youth (it's odd to kill
yourself for a choice, is it not?), and the total failure of "reparative therapy" to "repair"
gay men and lesbians. However, my question here is the extent to which they are borne
out by Biblical text, not by scientific fact.

Second, I will not provide here a reading for how male homosexuality could be
permitted according to Scripture. In both Jewish and Christian communities, these
debates continue, with some denominations maintaining the traditional ban on most, or
all, homosexual behavior, others permitting it, and still others divided on the issue.

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63 Gay and lesbian youth are estimated to comprise 30 percent of completed youth suicides annually, and are
two to three times more likely to attempt suicide than other young people. U. S. Department of Health and
study was suppressed by the Bush (I) administration on the grounds that it "undermined the institution of the
have confirmed the 30% figure. See Gary Remafedi, J. Farrow, and R. Deisher "Risk Factors for
Attempted Suicide in Gay and Bisexual Youth," Pediatrics, 87(6) (1991), pp. 869-76. See generally
Warren J. Blumenfeld & Laurie Lindop, " Gay, Lesbian, Bisexual, Transgender Youth Suicide,"

64 For a thorough compendium of studies debunking this form of brainwashing, and a refutation of every
study supporting it, see Wayne Besen, Anything But Straight: Unmasking the Scandals and Lies Behind the
Ex-Gay Myth (Haworth Press, 2003). For a humorous account of reparative therapy in the Jewish context,
see Phil S. Stein, "How I Ended Up at the Jerusalem Same-Sex Attraction Group," Zeek, Nov. 2005
(www.zEEK.net/spirit_0511.shtml). See also testimonials and stories collected at exgaywatch.com.

65 According to the Catholic Church, "[i]t is only in the marital relationship that the use of the sexual
faculty can be morally good. A person engaging in homosexual behaviour therefore acts immorally."
LETTER TO THE BISHOPS OF THE CATHOLIC CHURCH ON THE PASTORAL CARE OF HOMOSEXUAL PERSONS (1
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66 For a summary of Orthodox Jewish interpretations of homosexuality, and a proposed "liberal Orthodox"
reading, see Steven Greenberg, Wrestling with God and Men: Homosexuality in the Jewish Tradition 223-61 (Univ. of Wisconsin Press, 2004).
Naturally, all find Biblical and/or historical support for their positions. However, just as my purpose in this Part is to provide a historically and linguistically informed reading of the Biblical prohibitions rather than a survey of the scientific data, so too I focus here on the Biblical text rather than on homiletical or religious-legal efforts to use that text to promote a particular policy within religious communities. Some of my arguments here do intersect with some of the points made (on both sides of the issue) in those communities, but my intention is not to provide a religious argument per se as much as a claim about religion and the Biblical sources.

Finally, I do not claim that the handful of Biblical texts below constitute the only religiously or legally relevant material for Christians or Jews. Both traditions have extensive legal and narrative traditions outside the Biblical text, and ample capacity to allow social and historical factors to both strengthen and weaken the force of religious injunction. Indeed, these non-Biblical materials, particularly for Catholics and Orthodox Jews, may be more important than the Biblical ones, while various social and historical factors partly explain the disparity between the NCR's claims about homosexuality and Biblical ones. However, to the extent the Bible remains the site of debate, it remains the most important site for investigation.

1. Hebrew Bible

66 Reform Judaism, the largest Jewish denomination in the United States, ordains gay rabbis and encourages rabbis to perform same-sex commitment ceremonies. Similarly, the United Church of Christ has been an early supporter of gay rights, passing a resolution in 1977 that "deplored the use of scripture to generate hatred, and the violation of civil rights of gay and bisexual persons and called upon individual members, local churches ... to continue to work for the enactment of civil rights legislation at the federal, state, and local levels of government." RESOLUTION DEPLORING THE VIOLATION OF THE CIVIL RIGHTS OF GAY AND BISEXUAL PERSONS (JULY 1-5 1977) Available at http://www.ucc.org/assets/pdfs/1977-RESOLUTION-DEPLORING-THE-VIOLATION-OF-CIVIL-RIGHTS-OF-GAY-AND-BISEXUAL-PERSONS.pdf. The UCC ordains gay and lesbian ministers, and was the first Christian denomination in the United States to support same-sex marriage. See http://www.religioustolerance.org/hom_ucca5.htm


68 On the development of Jewish law regarding homosexuality, see Rosenthal, supra, at 524-28; Greenberg, supra, at 124-34 (noting that "in none of these responsa do we find the kind of horror and contempt that appears in the contemporary period"). On the development of Christian prohibitions of same-sex activity, see generally Derrick Sherwin Bailey, Homosexuality in the Western Christian Tradition (London: Longmans, Green 1955).
I confine my reading to the two verses that, in Jewish and Christian readings of the Hebrew Bible, are understood to prohibit some forms of homosexual behavior: Leviticus 18:22, and Leviticus 20:13. In passing, I note that two other relevant texts will not be discussed here. The first is Genesis 19, which tells the story of Sodom and Gomorrah. Notwithstanding its familiar association with homosexuality, the "sin of Sodom" is not on its face, and was almost never understood by other Biblical texts or Biblical commentators to be such. On the contrary, in Ezekiel 16, sexual immorality is at most one of many sins, but arguably absent entirely: "As I live, saith the Lord God... Behold, this was the iniquity of thy sister Sodom: pride, fulness of bread, and abundance of idleness was in her and in her daughters, neither did she strengthen the hand of the poor and needy. And they were haughty, and did toevah before me: therefore I took them away as I saw fit." Scholars have generally understood the sin of Sodom as selfishness and inhospitality, naturally a critical value in Ancient Near Eastern culture, as in many others. This is of a piece with the general understanding of the Sodomites as being selfish, uncaring, and wicked, and with Lot's otherwise nonsensical offer of his own daughters as substitutes for the men lodging with him.

Second, and with a different legal message, the relationships of Saul and David, and of David and Jonathan, are likely modeled on homoerotic conventions of warrior love prevalent in the Biblical period, with physical as well as emotional components. The jealous King Saul contemptuously characterizes Jonathan and David's relationship as a "marriage" and says to Jonathan that it is "to the shame of your mother's nakedness."

69 Steven Greenberg, Wrestling with God and Men: Homosexuality in the Jewish Tradition 64-69 (Univ. of Wisconsin Press, 2004).
70 Ezekiel 16:48-50. It is unclear whether toevah here indicates a separate sin in addition to those listed, or whether it describes the listed sins. The latter reading is borne out by other Biblical texts. See Deuteronomy 32:32-38 ("For their vine is of the vine of Sodom, and of the fields of Gomorrah: their grapes are grapes of gall, their clusters are bitter..." And he shall say, Where are their gods, their rock in whom they trusted, Which did eat the fat of their sacrifices, and drank the wine of their drink offerings? let them rise up and help you, and be your protection"); Jeremiah 23:14 ("I have seen also in the prophets of Jerusalem an horrible thing: they commit adultery, and walk in lies: they strengthen also the hands of evildoers, that none doth return from his wickedness: they are all of them unto me as Sodom, and the inhabitants thereof as Gomorrah."); Amos 4:1-11 ("Hear this word, ye kine of Bashan, that are in the mountain of Samaria, which oppress the poor, which crush the needy, which say to their masters, Bring, and let us drink. I have overthrown some of you, as God overthrew Sodom and Gomorrah.").
71 See Ed Noort and Eibert Tigchelaar, eds., Sodom's Sin: Genesis 18-19 and its Interpretations (2004); Michael Carden, Sodomy: A History of a Christian Biblical Myth (Equinox, 2005); J. Harold Ellens, Sex in the Bible: A New Consideration (2006). Other Biblical passages on hospitality norms include Genesis 18:1-8 (Abraham and Sarah greeting strangers who turn out to be angels); Exodus 22:21 and 23:9 (injunction not to oppress strangers); Luke 7:44-46 (Jesus rebuking Simon that "I entered your house, you gave me no water for my feet... You gave me no kiss... My head with oil you did not anoint."); Hebrews 13:2 ("Be not forgetful to entertain strangers: for thereby some have entertained angels unawares."); Romans 12:13 (Christians should be "given to hospitality"). But see Wold, supra, at 77-89 (maintaining that the sin of Sodom was homosexual intercourse, not wishing to [homosexually] rape Lot's guests).
73 I Sam. 18:27-28.
74 I Sam. 20:30-31.
David famously regards the love of Jonathan as "surpassing the love of women,"\textsuperscript{75} and Jonathan "took great delight" in David.\textsuperscript{76} Biblical scholar Theodore Jennings has suggested that David's role as Jonathan's beloved/armor-bearer prepares him for the role as God's beloved/armor-bearer which he is to assume as king.\textsuperscript{77} Yet however intriguing these interpretations may be, the story of David and Jonathan is a narrative, not legal, passage in the Hebrew Bible, and has not been given legal weight in any traditional sources of which I am aware.\textsuperscript{78}

Turning, then, to the legal material, I shall first address limitations on the "what" of the prohibition, and then turn to scholarly interpretations of the "why." On the substance of the text, the first thing one notices about Leviticus 18:22 and 20:13 is that it is far more limited than usually understood. The former verse reads: \textit{V'et zachar lo tishkav mishkevei ishah, toevah hi}, reads the Hebrew: "and 'to' a man you shall not lie the lyings of woman; it is a toevah." And the latter reads: \textit{v'ish asher yishkav et zachar mishkevei ishah, toeva asu shneihem, mot yumatu demehem bam}: "and a man who lies 'to' a man the lyings of woman, the two of them have done a toevah, they shall be put to death and their blood upon them." I note here five important parameters of the prohibitions.

First, the verses do not prohibit "homosexuality," a concept invented in the 19th century;\textsuperscript{79} rather, they prohibit certain acts. Scholars and the NCR here agree that for both Hebrew Bible and New Testament sources, sexual behavior was conceived in terms of act, not identity.\textsuperscript{80} Moreover, even those acts may be construed differently from how they are today. In some cultures, the penetrative role (\textit{erastes}) is considered appropriate for all men, while the receptive role (\textit{eromenos}) may be appropriate only for slaves, men of a lower social rank than the penetrator, or youth -- though Leviticus 20:13 explicitly condemns the behavior of both participants. In general, however, there is no prohibition on "homosexuality" as an identity, orientation, or mode of desire; there is, instead, a prohibition on some homosexual acts. Indeed, Biblical "homosexuality" is an anachronistic oxymoron.

Second, the prohibition, like much of the NCR's rhetoric, applies only to men. The later, rabbincic prohibition on lesbian sexual activity actually derives from different sources: the injunction not to follow in the ways of the Egyptians (which exegesis interprets as, \textit{inter alia}, same-sex marriage), and a general prohibition on lewd or

\textsuperscript{75} 2 Sam. 1:26; see Jennings, Jacob's Wound, 30-31.
\textsuperscript{76} 1 Sam. 19:1.
\textsuperscript{77} Jennings, Jacobs Wound, 37-66.
\textsuperscript{78} But see Jennings, Jacob's Wound, 199-202 (questioning distinction between legal and narrative passages).
lascivious behavior. Indeed, the Talmudic text which contains the prohibition on "women who rub one another" places the offense in the same category of wearing immodest dress, such as today's bathing suits. And, as we will see in a moment, the New Testament's possible reference to female homosexuality is more likely a condemnation of non-vaginal sex. In short, whatever the Biblical text says about male behavior, it is silent on the behavior of women, and later rabbinic law equates lesbianism with wearing a bikini.

Third, the prohibition may be limited to certain acts. Does the "lyings of woman" (mishkevei ishah) mean all sexual activity, or only some sexual acts? The 11th Century Jewish commentator Rashi suggests that there are two "lyings of woman," i.e. vaginal and anal sex, and that the Levitical prohibition is thus a prohibition on anal sex only. This view is borne out by rabbinic understandings of sex as essentially consisting of penetration; with only limited exceptions, if there is no genital penetration, there is no sex. (Within the context of marriage, the Talmud expressly rejects the claim that oral sex is impermissible, and states that a man "may do whatever he pleases" with his wife.) Of course, the rabbinic exhortation to "build a fence around the Torah" would extend the halachic prohibition to subsidiary sexual acts as well. But the wording of the Biblical prohibition itself, as understood by commentators, is more narrow.

Fourth, the prohibition may be limited to certain kinds of homosexual anal sex. Curiously, Leviticus 18:22 states v'et zachar, and "at" or "to" a man, rather than v'im zachar, and "with" a man. Et is a Hebrew word which serves to signal a direct object; there is no translation for it in English. Here, it indicates that the eromenos is the "object" of the erastes, perhaps suggesting the hierarchy typical of the Greek erastes/eromenos relationship, or even sexual violence. Of course, these interpretations

81 The Biblical prohibition is contained in Leviticus 18:3 ("After the doings of the land of Egypt, in which you dwelt, you shall not do... neither shall you walk in their laws"). The extension of the prohibition to Lesbianism is contained in Sifra Acharei Mot 8:8 (listing "doings of the land of Egypt" as referring only to specific Egyptian laws, in particular that "a man would marry a man, a woman would marry a woman"). The Talmudic classification of lesbianism as lewdness (prizuta b'alma) is in BT Yevamot 76a. See also BT Shabbat 65a-b (affirming that lesbianism is not sexual intercourse). The two sources, one regarding marriage and the other regarding lesbian sexual activity, are conflated in Maimonides' Mishna Torah, Kidushah, Issuray Be'ah 21:8. See also Joseph Caro, Shulhan Arukh, Even Ha'Ezer 20:2 (same). See generally Greenberg, supra, at 86-95.
83 See Rashi on Leviticus 20:13 ("lyings of woman" includes vaginal and anal sex, but not oral sex); Greenberg, Wrestling with God and Men, supra, at 80-81.
84 See BT Yevamot 54a-55a; Sanhedrin 55a; Niddah 13b (distinguishing between penetrative and non-penetrative sexual acts).
85 BT Nedarim 20a, Pesachim 112b. The medieval sage Maimonides had a more stringent view; while not forbidding oral sex, he said that "the pious way is not to act lightly in this matter... and not deviate from the common practice [of intercourse] for this thing is really only for procreation." Mishneh Torah, Issurei Biah, 21:9.
86 Mishnah Avot 1:1. See also BT Yevamot 21a (citing Leviticus 18:30).
are speculative in nature. Yet the verse invites such speculation by deliberately using *et* instead of *im*.

Fifth and perhaps most importantly, the entire prohibition, whomever and whatever it covers, is of a particular type: *toevah*. In the King James Bible, as in popular understanding, this word is translated as "abomination," but it might be better rendered as "taboo." A *toevah* is something forbidden to one group, but permitted for another; for Israelites, the ultimate *toevah* is idolatry, and most other *toevot* flow from it. Indeed, Israelites are not the only ones with *toevot*. For example, in Exodus 8:22, Moses describes Israelite sacrifices as being *toevat mitzrayim* — *toevah* of Egypt — although obviously Israelite ritual is not an objective "abomination." Other things which are taboo for Israelites, but implicitly acceptable for others, include the eating of shellfish and remarriage. Thus, as one activist has playfully maintained, to the extent that "God Hates Fags" may be derived from the Levitical prohibition, it is only insofar as "God Hates Shrimp.*91

This reading of Leviticus 18 and 20 is borne out by the overall context of the verses, which relate not to ethics, family, morality, sexuality, or "nature,” but to the importance of drawing lines between pure and impure, Israelite and heathen, holy, and unholy. Indeed, the chapters preceding Leviticus 18 contain some of the most obscure, and seemingly alien, laws of the Torah, regarding the laws of leprosy (actually *tzaraat*, a skin disease similar to leprosy but different in various ways) seminal emissions, and menstruation; here we are told the detailed method of the sacrificial sin-offerings and wave-offerings and the methods of purity and contamination. The extended topical section begins with the narrative of Aaron’s sons Nadav and Avihu bringing "strange...
fire" (eish zarah, which can also be translated as "foreign fire") into the tabernacle, and were destroyed. The Hebrew text, in the first verses of Leviticus 10, is actually a bit ambiguous as to exactly what happens; it's not clear whether God sends out a fire to destroy the young priests, or whether they are consumed by their own creation. But the response is clear: a "team meeting" between Moses, Aaron, and Aaron's remaining sons, in which new rules are set forth for regulating priestly behavior and maintaining the purity of the Israelite nation.

The "minutes" of this meeting are quite lengthy. Their essence, both textually and in the context of what archeologists tell us regarding the cultic practices of ancient Canaan, which were varied, syncretic, and often ecstatic in nature, is contained in Leviticus 10:9-11:

Do not drink wine or strong drink, you and your sons, when you come into the tabernacle, so you don't die. This will be an eternal law for your generations, so you can discern between holy and secular, and between impure and pure, and so you can teach the children of Israel the laws that God speaks to them through Moses.

The injunction -- to discern and distinguish, separate and sanctify -- is the essence of Biblical Judaism. Indeed, it is a double distinction, both internal (this is a worship of discernment) and external (it separates Israelites from Canaanites); Israel is distinguished by its distinguishing. Nadav and Avihu invented their own ritual, and imported "foreign" cultic practice -- a double sin. Israelite worship is not to be an ecstatic bacchanal in which distinctions are erased and the god(s) known in wild abandon. It is to be precise, mindful of distinctions, and separated from anything "unclean" or foreign.

This general rule is explicated, in great and often gory detail, in the eight chapters that follow. Chapter 10 discusses clean and unclean, pure and impure, permitted and forbidden. Chapter 11 spends 47 verses on which animals may be eaten and which are "abominations" (here the Hebrew word is sheketz, whose exact meaning, like that of Leviticus 18's toevah, is unknown), before repeating the injunction "to discern between impure and pure." Chapter 12 describes the laws of separation of the "impure" mother following childbirth; Chapter 13, the specific diagnosis for tzaraat (59 verses) and Chapter 14 its spiritual-physical remedy, which involves quarantine (i.e., separation to contain the contaminating agent) and special offerings and whose 57 verses are closed again by the injunction "to teach when something is impure, and when it is pure."

Finally, 57 more verses, this time of Chapter 15, describing how seminal and menstrual emissions render a person tameh ("impure"), and how tahara ("purity") is to be regained after them. The parasha concludes, "thus shall you separate the children of Israel from their impurity, and they shall not die from it by defiling my tabernacle which is among them."

All of this distinguishing and separating acts as a prelude to the Levitical material known as the “Holiness Code,” which begins in Chapter 17, so named because of its repeated injunctions to the Israelites to be kadosh, holy. While all of this material is
assumed by Biblical scholars to be of the same priestly origin ("P" in the nomenclature of Biblical criticism), it is the Holiness Code and the material surrounding it that is perhaps at the heart of the Levitical purity agenda.

The general theme of this material is quite clear. This part of the Bible is not about what is "natural," nor what is moral, nor what is ethical. It is about what is pure and what contaminates, what is proper for Israelites, and what is to be left to other nations. Indeed, Leviticus 18 itself is quite clear on this point. After reciting the prohibitions on incest, male homosexual behavior, bestiality, and sex with a menstruating woman -- all of which seem to be equivalent in gravity -- an explicit rationale is provided: "Do not impurify yourself with all these things, because with all these things the goyim, who I am sending away before you, impurified themselves, and impurified the land." ("Impurified" is a bit clumsy, but it literally translates titamu, from the same word as tameh; words like "defiled" fail to make the connection.)

It is also worth observing how much more weight is given today to one verse in Leviticus 18 than the 47 verses of chapter 11, 59 of chapter 12, and 57 of chapter 15. Both religious bigots and anti-religious activists sometimes act as if the Bible is all about homosexuality, but a lot more of it is about leprosy -- about 220 verses more, to be precise. And why? Because both contaminate the cultic purity of the Israelite nation, and blur the distinctions between Israel and other.

Yet as anthropologist Mary Douglas describes, and as we will explore in detail below, these concerns are not limited to this portion of the priestly code; they undergird the way the Bible describes the creation of the world (order from disorder), how it orders the social realm, and how, in general, the ordered cultic worship of YHVH defined itself in opposition to contemporaneous spiritual practices. This text is about ancient cultic purity, and the prohibition of foreign actions and mixtures which contaminated it. It is not about "homosexuality," a concept invented in the 19th century, nor is it about the family, nature, or morality. After all, what do menstruation, vultures, leprosy, and male/male anal sex have in common? Ethics? Hardly.

At first, these Biblical obsessions with cleanliness and separation seem quite distant from our own moment. However, Part III will show, their fundamental concern -- order and chaos -- is very much with us today. That is, while the NCR is wrong that the Bible is worried about family and ethics, it is actually motivated by the same concerns as is the Bible: order and disorder. These will be the themes of the next Part.

2. New Testament

93 Arguably, "gender confusion" between men and women is yet another form of improper mixing of categories. I find this reading, like Greenberg's that the verse is essentially commanding "Don't make a woman out of a man," Greenberg, supra, at 192-209, both appealing and compatible with my own. See also Daniel Boyarin, "Are there any Jews in 'The History of Sexuality'?" J. of the History of Sexuality 5, 3 (1995), at 333-35 (analogizing prohibition on same-sex activity to prohibition on cross-dressing and other forms of boundary-crossing). For the present purposes, however, my intention is to stay closer to the literal language and context of the Biblical text with only a minimum of interpretation.
As religious advocates for gay rights have noted, homosexuality is hardly mentioned in the New Testament, and never by Jesus. Nor does the New Testament make any use of Leviticus; as we will see, Levitical law is emblematic of the legalism which the New Testament sought to supplant. Characteristic of its emphasis on the spiritual rather than the corporeal, and the spiritual rather than the literal, the New Testament is has no interest in the varieties of bodily impurity we have just explored. Yet in its three passages apparently addressing the question of homosexuality -- as in the previous section, I focus on moral/legal pronouncements rather than narrative -- its underlying anxieties are quite similar.

The first and most sweeping of these passages is in Romans 1:26-27:

For this cause God gave them up unto vile affections: for even their women did change natural (physin) relations for unnatural (paraphysin). Likewise the men, leaving the natural relations with woman, were consumed in passion for one another; men committing unseemly acts with men (arsen), and receiving in themselves the due penalty for their acts.

As with Leviticus, the scope of condemnation in Romans is not entirely clear. First, if Romans 1:26 can indeed be read as a condemnation of female homosexuality, it would be the only one in an otherwise silent Bible. Mark Smith believes this to be the case; because the two passages are connected by the word “homoios” (translated here as "likewise;" in the New International Version as “in the same way”), Smith says the parallelism between verses 26 and 27 implies that "unnatural" means "with each other" rather than with members of the opposite sex. In such a reading, Romans 1:26-27 is a blanket condemnation of homosexual behavior, whether among women or men, on the grounds that such behavior is "unnatural."

Robin Scroggs has a somewhat more limited view. Scroggs concedes that if taken independently, verse 26 would probably not be seen as an attack on female homosexuality, but “since the two verses are so closely linked in the Greek, it is virtually certain that Paul and the tradition on which he is dependent had lesbianism in mind.” Yet Scroggs believes that Paul was condemning not homosexual activity in general, but pederasty in particular. Given that pederasty was the only form of homosexual behavior that Paul would likely have known, Paul’s condemnation of homosexual activity was really a condemnation of the widespread and socially acceptable practice of pederasty. “While the phrase ‘males with males’ relates to the laws of Leviticus,” Scroggs writes,

94 Theodore W. Jennings, Jr., has provocatively suggested that the narrative in John 13-19 may be read as describing a homoerotic relationship between Jesus and “the man Jesus loved.” Theodore W. Jennings, Jr., The Man Jesus Loved: Homoerotic Narratives from the New Testament 13-54 (Pilgrim Press, 2003). This and other narrative texts are beyond the scope of the present study.

97 Id. at 226-27. See also, Scroggs, op. cit. at n. 7, see especially Appendix A.
98 See Scroggs, op. cit. at n. 7, generally chapter 3.
“the likelihood is that Paul is thinking only about pederasty.” 99 (Notwithstanding the phrase "for one another," which seems to suggest an exchangeability of erastes and eronemos in stark contrast with the pederastic ideal, this reading is supported by the fact that Paul uses the term arsen, a general term for male that is used in Philo and elsewhere to refer to a young male, rather than aner, meaning an adult male.) In sum, Scroggs maintains that “no other form of male homosexuality in the Greco-Roman world...could come to mind.” 100 So, while lesbianism is condemned in Romans 1:26, all that is really condemned in Romans 1:27 is pederasty. 101

According to James Miller, Romans 1:26-27 is not actually about homosexuality at all. First, Romans 1:26 cannot be read this way, as it does not specify that the unnatural sexual partner of the woman to be another woman. 102 Since parity between male and female homosexuality is a modern social construction, and given the historic Jewish tradition of silence on the topic of female homosexuality, it is unlikely, Miller argues, that Paul would have condemned the unusual practice of female homosexuality and the more widespread practice of male homosexuality on par. 103 Rather, Miller states, Paul probably referred to certain forms of non-procreative intercourse, i.e. oral or anal sex, whether engaged in by women (with men) or by men (with other men). 104 Miller argues that Scroggs and other writers are “working from the assumption that Paul and his audience had a single category of ‘homosexual’ which was divided into male and female forms,” and this assumption is anachronistic. 105 So, for Miller, homosexual behavior is condemned, but not because it is homosexual; rather, because it is "unnatural," i.e., non-procreative. Homosexual and heterosexual sodomy are, in this view, equally proscribed.

Whatever the appropriate category of the prohibition is, however, the purpose of it centers on the word physin/physikos usually translated as "natural." To our eyes, the word may suggest an affirmation of the "natural" desires of the body, in contrast to other

99 Scroggs, op. cit. at n. 7, 116.
100 Id.
101 Smith takes issue Scroggs' reading, focusing on the fact that Paul does not specifically refer to pederasty, but to “unnatural” relations in general. “His general language must have a general meaning—referring to homosexual activity in general—unless it can be shown that Paul and his audience could only be thinking about one particular type of homosexual activity.” Smith, op. cit. at n. 5, at 870. Smith also adduces a wealth of evidence that other forms of homosexuality besides pederasty existed in the ancient Greco-Roman world, particularly consensual relationships between adult males. Smith, op. cit. at n. 11, at 246. But see Miller, Response: Pederasty and Romans 1:27: A Response to Mark Smith, 65(4) J. Amer. Acad. Rel. 861, 863 (1997) (arguing that homosexual behavior among adult males was universally condemned and would not have been Paul's object).
103 Id at 2.
104 Id at 3.
105 Miller, op. cit. at n. 2, p. 2. John Boswell has offered a suggestive, if characteristically controversial, reading of Romans 1:26-27 that would deny its applicability to gay people at all. According to Boswell, Paul was condemning not homosexuals per se, but primarily heterosexuals engaged in homosexual acts—i.e., something that would indeed be “unnatural” for them. John Boswell, Christianity, Social Tolerance, and Homosexuality 109, University of Chicago Press: Chicago (1980). Few scholars, however, accept this view. See Mark Smith, Ancient Bisexuality and the Interpretation of Romans 1:26-27, 64(2) J. Amer. Acad. Rel. 225 (1996).
"unnatural" ones, or perhaps "natural" in the sense of procreative, fulfilling the "order of nature," or perhaps even "natural" in the sense that the NCR uses it, in terms of the alignment of male and female anatomy and the presence of two genders in the first place. Yet these readings are incorrect. *Physis* is not "nature" in the sense of biology, but "nature" in the sense of natural law. For Aristotle as well as for Paul, *physis* refers to those principles which natural, known, and universal, in contrast to the *nomos*, which is conventional and culturally dependent; this is the source of the doctrine of Natural Law itself. As we will see, and as I have discussed at length elsewhere, Paul seeks to displace the externally mandated *nomos* with an internally-known "spiritual" *physis*. This is part of Paul's wider project, which generally regards the body as but a vessel of the non-corporeal spirit, and repeatedly makes claims such as "If you live according to the flesh, you will die; but if by the Spirit you put to death the deeds of the body, you will live" and "Flesh and blood cannot inherit the kingdom of God, nor does the perishable inherit the imperishable." Indeed, for the author of the epistle to the Colossians (the text is not believed by scholars to be written by Paul, but is traditionally ascribed to him), the "earthly" is exactly that which is sinful: "Put to death, therefore, whatever in you is earthly: fornication, impurity, evil desire, and greed."

*Physikos*, then, does not simply mean "natural" bodily desires. Indeed, it means the opposite: the proper hierarchical relationship of body to spirit, letter to spirit, in which the former is subsumed to the latter. Recall, for Paul as for contemporary conservative family theorists, the natural-biological inclination of men is to be carnal and sexually omnivorous. *Physikos* is thus precisely the state of affairs in which such "natural" desires are subjugated to God's will, and channeled into appropriate containers. *Physis* does not refer to the body's desires; it refers to the body properly regulated. It is a "naturalness" of law and order principally; *physis* is really "orderliness."

In other words, those in the NCR who claim that homosexuality is "unnatural" in the sense of contrary to biology or science or some other notion of "nature" in the contemporary meaning (and those pro-gay voices which point out that homosexuality is present throughout the animal kingdom) have the valence of *physis* exactly backwards. Indeed, were Paul to learn of the prevalence of homosexuality among animals, he would likely regard it as proof of his position that it is "animalistic" rather than spiritual. As one religious writer has said, "the context of Romans 1 indicates that Paul's view of the word *nature* cannot be classified with modern scientific descriptions of it. Of key importance

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106 See sources cited supra, section II.A. But see Roughgarden, supra (noting that all "large charismatic mammals have homosexuality").

107 See, e.g., Paul's discussion of circumcision in Romans 2:29 ("real circumcision is a matter of the heart--it is spiritual and not literal"). For academic discussions of Pauline anti-corporealism, see Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* 233 (1995); idem., *A Radical Jew: Paul and the Politics of Identity* (1997); Jay Michaelson, "Anti-Legalism and Anti-Judaism," forthcoming.

108 Romans 8:13.

109 I Corinthians 15:50.

110 Colossians 3:5

111 See, e.g., 2 Corinthians 3:6 ("The letter kills, but the spirit gives life").

to Paul's indictment of humanity in this chapter is his view that the word *nature* is defined by revelation.\(^{113}\) When desires are *physikos*, they reflect the priority of spirit over flesh. They are governed, ordered, tamed, contained. In contrast, "passion" and "vile affections," whatever forms of sexual relations they occasion, inverts the proper hierarchy of body and spirit. They are antinomian, wild, untamed, unyoked. Paul is not anti-gay; he is anti-sex.

While Romans is sometimes read as being concerned about the social structure of the family being disrupted by homosexuality, the passage itself seems to suggest that the harms are more individual than societal. Paul does not describe deleterious effects on society of men "leaving the natural relations with woman." Rather, he describes unregulated lust as "vile affections," being "consumed in passion" and "unseemly act," all of which are individually, not collectively, harmful. Most importantly, he describes the sinners as receiving in themselves the due penalty for their acts." If in Romans 6:23, "the wages of sin is death," then here lustfulness itself is the "due penalty" for their acts; sexual immorality, insofar as it necessitates an alienation from the Holy Spirit, is its own punishment. This punishment is meted out individually, though, not collectively. Whereas Levitical impurity had societal consequences, Pauline lustfulness -- contrary to the rhetoric explored in the previous section -- does not, at least not in this passage.

The role of homosexuality as signifying carnality rather than spirituality is further explored in the New Testament’s other two possible condemnations of it, contained in 1 Cor. 6:9 and 1 Tim. 1:10. Unlike in Romans, homosexuality is mentioned only in passing in these verses. The passages, as rendered in the New International Version, are:

Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers (pornos) nor male prostitutes (malakoi) nor homosexual offenders (arsenokoitai) nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God. And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God. 1 Cor 6:9-11

We know that the law is good if one uses it properly. We also know that the law is made not for the righteous but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreverent; for those who kill their fathers or mothers, for murderers, for adulterers and perverts (arsenokoitai), for slave traders and liars and perjurers—and for whatever else is contrary to the sound doctrine that conforms to the glorious gospel of the blessed God, which he entrusted to me. Tim. 1:8-10

As before, the meaning and scope of these prohibitions is unclear. Both verses include the term arsenokoitai (ἀρσενοχοϊται) translated variously as “homosexuals,” “sodomites,” and “sexual perverts.” In addition, 1 Cor. 6:9 includes “malakoi” (μαλαχοί) translated

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\(^{113}\) Wold, supra, at 178.
variously as “boy prostitutes,” “effeminate,” “perverts,” and “self-indulgent.” As is clear from the variety of translations, however, neither term is entirely clear. *Arsenokoitai*, though rare, is more precise, and is made up of the two words “male” and “bed.” *Malakoi* is much more common, but its meaning is less clear. Some suggest that *malakoi* are sacred prostitutes who take the receptive role in a pederastic relationship, and that *arsenokoitai* are those men who take the insertive role in the same form of relationship. This supports Scroggs' contention that "the words point to a very specific form of pederasty," and his somewhat creative translation of the passage as “male prostitutes, males who lie with them, and slave-drivers who procure them.”

Over the centuries, however, both terms have been given different meanings. *Malakos* literally means “soft,” and metaphorically has been taken to mean “effeminate.” According to Boswell, who cited a number of Catholic sources, “the unanimous tradition of the church through the Reformation, and of Catholicism until well into the twentieth century, has been that this word applied to masturbation.” For Boswell, *malakoi* and *arsenokoitai* have no more in common than to thieves and drunkards; they are merely in a list of lustful, disfavored behaviors. The former term, Boswell says, refers to masturbation, and the latter to “male sexual agents, i.e., active male prostitutes, who were common throughout the Hellenistic world in the time of

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114 The passage varies by translation, and, as Boswell writes, “disparity invites skepticism” (Boswell, op. cit. n. 9, 339). For 1 Cor. 6:9, the following are representative of the multifold translations: “Do not be deceived: Neither the sexually immoral nor idolators nor male prostitutes nor homosexual offenders…will inherit the kingdom of God” (New International Version). Here, “male prostitutes” is the translation of malakoi, and “homosexual offenders” is the translation of arsenokoites. “Be not deceived: neither fornicators, nor idolators, nor adulterers, nor effeminate, nor abusers of themselves with mankind…shall inherit the kingdom of God” (King James Version). “Be not deceived. For neither fornicators, neither worshippers of images, neither whoremongers, neither weaklings, neither abusers of themselves with mankind…shall inherit the kingdom of God” (Tyndale Bible). “Do not err: neither fornicators, nor idolators, nor adulterers, nor the effeminate, nor liers with mankind…shall possess the kingdom of God” (Douay-Reihms Bible). “Do not be deceived; neither fornicators nor idolators nor adulterers nor boy prostitutes nor sodomites…will inherit the kingdom of God” (New American Bible). For 1 Tim. 1:10, the following list is representative: “[Law] is not meant for a righteous person but for the lawless and unruely, the godless and sinful, the unholy and profane…the unchaste, practicing homosexuals, kidnappers, liars, perjurers, and whatever else is opposed to sound teaching…” (New American Bible). “Knowing this, that the law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners…for whoremongers and for those who defile themselves with mankind, for menstealers, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine” (King James Version). “[For] a righteous man law is not set, but for lawless and insubordinate persons, ungodly and sinners, impious and profane…whoremongers, sodomites, men-stealers, liars, perjured persons, and if there be any other thing that to sound doctrine is adverse” (Young’s Literal Translation). “[The] law is not given to unto a righteous man, but unto the unrighteous and disobedient, to the ungodly and to sinners, to unholy and unclean…and whoremongers: to them that defile themselves with mankind: to menstealers: to liars and perjured, and so forth if there be any other thing that is contrary to wholesome doctrine…” (Tyndale New Testament).

115 Id. at 106-7.
116 Id. at 109.
117 Id. But see Wold, supra, at 188-98 (disputing such readings).
118 Scroggs, supra, at 106.
119 Boswell, supra, at 107.
Paul." To Boswell, prostitution was manifestly of greater concern to the author of the epistles than any sort of homosexual behavior, including pederasty.

Clearly, whatever their exact meaning, the words refer to acts, like thievery or murder, not an identity such as "homosexual" or "heterosexual," concepts as unknown to the New Testament as to the Hebrew Bible. Yes, malakoi and arsenokoitai are nouns. They may even be professions. But they are not identities in the rich sense of the word.

Thus far, the three epistles are not so distant from Leviticus, inasmuch as both seek to contain the wild, disruptive power of sexuality in the name of the proper ordering of the community and cosmos. But there is a crucial difference between the Pauline view of chaos and the Levitical one, and that is the nature of law. In both cases, what is feared is that which inverts hierarchies, transgresses boundaries, and undermines social/magical order. Yet if the Levitical solution is a system of law, for Paul, that system has been supplanted by faith. Indeed, what is striking is that the passages in Corinthians and Timothy share an explicitly legal context. Paul's list of those who will not inherit the kingdom of God in Corinthians is stated within the context of a harangue against litigiousness -- and more specifically, recourse to the "lawyers" (Pharisees) to arbitrate disputes. Consider how the meaning of the passage changes when situated into its context:

If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints? Do you not know that the saints will judge the world? And if you are to judge the world, are you not competent to judge trivial cases? Do you not know that we will judge angels? How much more the things of this life! Therefore, if you have disputes about such matters, appoint as judges even men of little account in the church! I say this to shame you. Is it possible that there is nobody among you wise enough to judge a dispute between believers? But instead, one brother goes to law against another—and this in front of unbelievers! The very fact that you have lawsuits among you means you have been completely defeated already. Why not rather be wronged? Why not rather be cheated? Instead, you yourselves cheat and do wrong, and you do this to your brothers. Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God. And that

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120 Boswell, supra at 345. Boswell calls Scroggs' theory "fanciful and unsubstantiated by lexicographical evidence." Id. at 341. But see David Wright, Homosexuals or Prostitutes? The meaning of ἀρσενοκοίται (1 Cor. 6:9, 1 Tim. 1:10), 38(2) Vigiliae Christianae, 125, 144 (1984) (challenging Boswell).

121 There is some uncertainty among scholars as to which of the Pauline epistles were actually written by Paul. There is virtual consensus that Romans and Galatians are authentically Pauline in origin. Corinthians is widely, though not unanimously, believed by critics to be of Paul's hand as well. Timothy is not.

122 Id.

123 See William Petersen, Can ΑΡΣΕΝΟΚΟΙΤΑΙ be translated by “homosexuals”? (1 Cor. 6:9; 1 Tim. 1:10), 40(2) Vigiliae Christianae 187, 189 (1986) (“Homosexual “fails as a translation for it violates historical and linguistic fact by attempting to read a modern concept back into antiquity, where no equivalent concepts existed.”)
is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God.  

Likewise in Timothy, in which the context is a rebuke to those who study points of law,

As I urged you when I went into Macedonia, stay there in Ephesus so that you may command certain men not to teach false doctrines any longer nor to devote themselves to myths and endless genealogies. These promote controversies rather than God’s work—which is by faith. The goal of this command is love, which comes from a pure heart and a good conscience and a sincere faith. Some have wandered away from these and turned to meaningless talk. They want to be teachers of the law, but they do not know what they are talking about or what they so confidently affirm. We know that the law is good if one uses it properly. We also know that the law is made not for the righteous but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious; for those who kill their fathers or mothers, for murderers, for adulterers and perverts, for slave traders and liars and perjurers—and for whatever else is contrary to the sound doctrine that conforms to the glorious gospel of the blessed God, which he entrusted to me.

In both cases, law is that which governs sinful people who are not able to govern themselves. The epistles’ purpose here is an obviously sectarian one: to separate Christian Jews from non-Christian Jews, and to separate the new faith of Christianity from the religion of Judaism. This mission recurs time and again. In Galatians, for example, Paul excoriates the gentile Galatians who, having accepted Christ, now wish to undergo circumcision and become Jews. In Corinthians, Paul is at pains to minimize the value of the literal "law" in favor of the liberating "spirit." The law, because it governs the body, involves itself in the body, which is mortal and liable to sin. For Paul, it is nonsensical to draw Levitical boundary lines between pure and impure bodies. The only true solution is to leave the body behind altogether, to take refuge in the spirit.

As I have suggested elsewhere, this Pauline move is a form of antinomianism, rejecting any notion that law can save us. Yet antinomianism is not anarchy, because the external law is replaced by the internal one. This view is explained in the same chapter 6 of 1 Corinthians. After "shaming" those who seek justice at the law, and after suggesting that no sinful people will inherit the kingdom of God unless they are "justified in the name of the Lord Jesus Christ and by the Spirit of our God," Paul continues, using sexual immorality as his case in point:

"Everything is permissible for me"—but not everything is beneficial. "Everything is permissible for me"— but I will not be mastered by anything. "Food for the stomach and the stomach for food"—but God will destroy them both. The body is not meant for sexual immorality, but for the Lord, and the Lord for the body. By his power God raised the Lord from the dead, and he will raise us also. Do you not know that your bodies are members of Christ himself? Shall I then take the

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members of Christ and unite them with a prostitute? Never! Do you not know that he who unites himself with a prostitute is one with her in body? For it is said, "The two will become one flesh." But he who unites himself with the Lord is one with him in spirit. Flee from sexual immorality. All other sins a man commits are outside his body, but he who sins sexually sins against his own body. Do you not know that your body is a temple of the Holy Spirit, who is in you, which you have received from God? You are not your own; you were bought at a price. Therefore honor God with your body.

In this passage, sexual morality is regulated not by external law (with the law negated, everything is permissible) but by internal discipline (i.e., knowing what is beneficial) and a uniting with God in spirit (as opposed to uniting with other people in flesh). Sexual immorality -- as Boswell's theory would suggest, this clearly means prostitution, regardless of the sex of the prostitute -- is to union with God what physical circumcision is to spiritual circumcision: a lower, corporealized, and ultimately superceded form. It is a defilement of the "temple of the Holy Spirit." In a sense, to the extent it is "natural," i.e., bodily, it is "unnatural," i.e., against the Divine purpose. That Divine purpose is realized when everything functions in an orderly, "natural" way, when the set rules of right and wrong are not simply obeyed, but made redundant by the purification of the heart.

In sum, the epistles' passages regarding homosexuality (if indeed that is their subject) reinterpret the same anxiety in a new religious-legal structure. In Romans, homosexuality uproots the "natural" law by which the body is subjugated to the spirit. In Timothy and Corinthians, it is an example of the sort of venality for which law is necessary, and beyond which Christians are meant to have passed. Spiritual Christians have grace. Carnal non-Christians have the law.

Before moving on, it is worth noting that the Pauline fear of heterosexuals suddenly abandoning heterosexuality for homosexuality has been given voice in recent years as well. Dr. Paul Cameron, a controversial former psychologist and founder of the Family Research Council, said that homosexuality is threatening precisely because it is so appealing:

Untrammeled homosexuality can take over and destroy a social system. If you isolate sexuality as something solely for one’s own personal amusement, and all you want is the most satisfying orgasm you can get -- and that is what homosexuality seems to be -- then homosexuality seems too powerful to resist. The evidence is that men do a better job on men and women on women, if all you are looking for is orgasm... It’s pure sexuality. It’s almost like pure heroin. It’s

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126 Many of Cameron’s "findings" have been debunked, and he has been thrown out of the American Psychological Association and repudiated by the American Sociological Association for posing as a sociologist. Herman, supra, at 77-78. Nevertheless, he is a primary "scientific" source for the NCR and a frequent speaker at NCR gatherings. Id.
such a rush.... Marital sex tends toward the boring end. Generally, it doesn’t deliver the kind of sheer sexual pleasure that homosexual sex does.  

On its face, this argument is quite bizarre, at least in light of how heterosexuals normally describe their revulsion against (rather than attraction to) homosexuality. Yet it is in fact an exact replica of the Pauline argument that homosexuality is pure pleasure ("the most satisfying orgasm you can get"), uncontrollable, self-directed -- and thus unnatural. Here, however, what is at best implicit in the passage from Romans is made explicit: because homosexuality is so powerful, it will "take over and destroy a social system." Whereas in Paul the unnaturalness of the individual was bad enough, here chaos is written on the body politic as well. Ecstatic, powerful eros must be channeled, contained into procreative heterosexual marriage, or our very society may be destroyed. The price of pleasure is responsibility, and if it is given away, no one will do the hard, dreary work of civilization.

The Hebrew Bible construes homosexuality in terms of cultic terms of purity and impurity, the New Testament in terms of "unnatural" bodily pleasure, but the concern is the same: order and chaos. In the Hebrew Bible, homosexuality is a form of improper blending. In the New Testament, it is an inversion of the "order of nature," which is to say, the order of law regulating nature. It is to these deep concerns that we now turn.

C. Chaos and the Engenderment of Law

By way of concluding this treatment of Biblical text, let us situate the issues adumbrated in the previous section within a foundational concern of Western religion, the triumph of order over chaos. This is the founding myth in the Bibles of Judaism and Christianity, and the underlying assumption of their moralities. It is central to the Genesis myth of God dividing light from darkness, and bringing order out of chaos and to the very concept of trans-historical values, of sin and forgiveness, and to the drama of Christ. In short, it is the essence of "right and wrong" -- surely the central value of ethical monotheism.

Of course, there are multiple strategies for negotiating the relationship of boundary and the boundless. On the one hand, there are those which regard journeys into the boundless as sacred – shamanic traditions, perhaps, and chiliastic ritual which joins the Dionysian to the Divine. On the other hand, there are those which seek to demarcate

127 Quoted in Dreyfuss, "The Holy War on Gays," supra.
128 I am grateful to Linda McClain for this formulation.
129 Timothy Kandler Beal artfully captures the underlying tension between order and chaos in Western religious tradition. “[B]iblical tradition is fraught with tensions that go to the very core of its conceptions of the world and its ruler God. On the one hand, it is confident in the stable, reasonable order of the cosmos, confident in our ability to articulate that order and confident in God as founder and guarantor of that order; on the other hand, it is haunted by monstrous forms of profound disjunction and disorder, shadowy revelations on the edge between creation and uncreation, cosmos and chaos, and haunted by the lurking anxiety that God, like the world God created, is fraught with the same tensions.” Timothy Kandler Beal, Religion and its Monsters 89-90 (Rutledge, 2003)
zones of domesticity around the chaotic, or even to bury the forces of chaos, like the Furies entombed beneath Athens at the conclusion of Aeschylus’ Oresteia. The former movement sacralizes death and the one who walks into its unbounded realms; the latter one seeks to place it in a zone of confinement. The former rejoices in the power of the orgiastic, when boundaries are effaced; the latter carefully circumscribes that power within a taboo which is never transgressed.130

If it is possible to speak broadly, surely the dominant traditions within the Jewish and Christian religions tend toward the latter approach; these are religions of civilization. These traditions did not invent the idea – Marduk’s defeat and division of Tiamat in the Enuma Elish, as well as other Babylonian and Sumerian texts, is a founding moment of civilization, and, like the battles depicted in the metopes of the Parthenon, represents the victory of order over chaos (and, often with a phallic symbolic structure, patriarchy over femininity).131 Nor is the rejection of the Dionysian absolute; David dancing before the Ark (2 Sam. 6:1-23), folk festivals of orgiastic love, and, arguably, the blood rituals of the priestly cult, are but three examples of its persistence. But in general, Pauline Christianity regards orgiastic love and “lustful passions” as precisely the carnal, base instincts which the spirit is meant to rise above. And Biblical Judaism sanctifies not the ecstatic but the formal, not the chaotic but the ordered. Jewish Biblical narrative favours the tablets of the law, not the golden calf; Moses’ descent to the people, not his ascent to the ineffable; the precise rules and regulations of Leviticus, not the “strange fire” of Nadav and Avihu discussed above. Even amid the majestic theophany of the godhead at Sinai, the Biblical text spends less time on the power and glory of revelation than on what God tells Moses about tort law and damages.

In a sense, this is how it must be, for in a religion of civilization, the notion of boundary is essential. One does not organize clans, tribes, and nations without a healthy respect for hierarchy, law, and propriety – and within the Jewish tradition, the respect reaches its apotheosis. The Jewish God mandates civil and ritual law, and, notwithstanding the tendency of Biblical narrative to complicate the simplifying tendency of Biblical legislation, the overwhelming emphasis is on the need for order and boundary. Binaries of pure and impure, male and female, dark and night, Israelite and foreigner, and sacred and profane, are the essence of the Levitical writings, both in the body of Leviticus and in the “Holiness Code.” Indeed, the injunction “to discern between impure and pure” is repeated over and over again: in Leviticus 10: 10-11 (“discern between holy and secular, and between impure and pure”); 11:47 (“to discern between impure and pure”) and Leviticus 15:31 (“thus shall you separate the children of Israel from their impurity”).

Taking a cue from the Mary Douglas of *Purity and Danger*, we can see these concerns as reflecting the idealized plan of Genesis itself. Dietary laws divide water creatures from air creatures, air creatures from earth’s, and abhor transgression of the boundary.\(^{132}\) God saw that it was good – because now it was ordered, where before it was not. Or, taking a cue from the Mary Douglas of *Leviticus as Literature*, we can see the precision of the sacrificial offerings as mirroring the precision of the design of the tabernacle, and even the structure of the Biblical text itself.\(^{133}\) Indeed the prohibitions, and the symbolism, extend even to garments: *shatnez*, the Biblically-proscribed blending of wool and linen was prohibited both because it was sacred to the Egyptians (perhaps like Leviticus’s forbidden sexual unions), and because it is an improper blending. Separateness was necessary for holiness. As Durkheim says, "the negative cult is in one sense a means in view of an end: it is a condition of access to the positive cult."\(^{134}\)

The borders drawn around sexual behaviour are of the same type, although perhaps in a more privileged, and contested, setting. We know that Paul lived in a societal context in which male prostitution was common. As for the Priestly writer, it is not known whether the Levitical prohibitions, like the ban on *kedeshim*, referred to actual chiliastic ritual present in the Ancient Near East, or whether, particularly in light of the essential identity of Israelites and Canaanites, and the fact that, in Ken Stone’s words, “the binary opposition between ‘Israelite’ and ‘Canaanite’ turns out, in large part, to be an effect of particular biblical discourses”,\(^{135}\) the sexual distinctions were invented by Biblical authors seeking to demarcate pseudo-ethnic, rather than ethical-sexual, boundaries.\(^{136}\) Whatever the historical facts regarding these practices, however, Israelite “border anxiety” (Stone’s term again) clearly leads to a rigid creation and enforcement of sexual boundaries. Indeed, the very Hebrew word for holiness, *kadosh* (etymologically related to *kedeshah*), carries the meaning of “separate.”\(^{137}\) Jews are to be separate from non-Jews. The deathly (*tameh*) is to be separate from the pure (*tahor*). In the Hebrew Biblical system, binaries are necessary; they are needed; they are holy. And in the New Testament, even the association with binaries is, itself, on the wrong side of a more fundamental binarism, that of letter/body and spirit. Thus while the Torah’s binarism is rejected, it is supplanted by a new and even more severe one.


\(^{134}\) Emile Durkheim, The Elementary Forms of Religious Life 348 (1915).


\(^{136}\) For an overview of the connection between separation and holiness in Judaism, see Louis Jacobs, ed. *The Jewish Religion, A Companion* 245-246 (Oxford University Press, 1995). “The Hebrew word for ‘holiness’, *kedushah*, conveys the twin ideas of separation from and dedication to something.”
Sexuality is not unique as a marker of order and chaos, but it is perhaps uniquely powerful as the site where religious law is engendered. In the domain of sexuality lie the deepest taboos of civilization itself, and the way power is organized within patriarchal families, tribes, and nations. Indeed, the primal revulsion many feel toward proscribed sexual acts such as incest and bestiality is indeed of the same type as the disgust some feel toward homosexuality. As William Eskridge has discussed, quoting psychologist Paul Rozin:

[O]ur most primordial disgust responses arise out of emotional efforts to humanize our animal bodies and distance ourselves from physical functions that are “reminders of our animal vulnerability.” Like prejudices, feelings of disgust are nonrational responses to physical phenomena, yet they may be underlying motivations for our rational discourses. Sexuality is an obvious site for disgust. Almost anything related to sex is disgusting to some people; some sexual practices are disgusting to almost all people; and almost all people feel their disgust intensely. Although most people engage in oral sex, and many in anal sex, a lot of Americans find these activities disgusting.... And their disgust-driven view that homosexual sex is immoral has persisted (even if at reduced levels) as the majority view during the twentieth century.

Thus it is not surprising that homosexuality has long been seen as subverting fundamental notions of order. Consider Rabbi Steve Greenberg's reading of the Levitical prohibitions on male homosexuality in light of misogyny, maleness, and penetrative sexuality, a reading which essentially translates Leviticus 18:22 as meaning "Don't make a woman out of a man." Consider the prohibitions on male homosexuality in light of Biblical, and later Talmudic and Kabbalistic, ideas of wasting seed, subverting progeny, and, as a consequence, undermining the social order itself. These and countless other examples suggest that what is at issue, in proscriptions on homosexuality, is not simply a sexual act between two men but rather a deeper conception of social order, natural order, and (especially in the case of Paul) Divine order.

What is "natural" is here not what nature intends, but how God seeks to order nature. In the Hebrew Bible, order is inscribed within the material world, according to a set of dichotomies, including:

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140 Greenberg, supra, at 192-209.
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<td>Creation/order</td>
<td>Pre-creation/chaos</td>
</tr>
</tbody>
</table>

In the New Testament, order is inscribed in the proper relationship between material/carnal/earthly and spiritual/heavenly. Indeed, this new law is a kind of anti-law, as it displaces the *nomos* with the *physis*. But notice how similar the dichotomies really are in form, if not in content:

<table>
<thead>
<tr>
<th>Spirit</th>
<th>Letter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spirit</td>
<td>Body</td>
</tr>
<tr>
<td>Spirit</td>
<td>Law</td>
</tr>
<tr>
<td>Physis (in heart)</td>
<td>Nomos (in text)</td>
</tr>
<tr>
<td>Order</td>
<td>Chaos</td>
</tr>
<tr>
<td>Circumcision of Heart</td>
<td>Circumcisions Of Flesh</td>
</tr>
<tr>
<td>Live according to spirit</td>
<td>Live and die according to flesh, desire, carnality</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>New Testament</td>
<td>Old Testament</td>
</tr>
</tbody>
</table>

The specifics are different, but the principle of order is the same -- and in both cases, sexuality is a primary (if not the primary) site where this order is engendered. Sexuality is where chaos ends and law begins.

So, while the NCR is wrong that the Bible is worried about its notions of family and ethics, it actually motivated by the same concerns as is the Bible: order and disorder. As before, so the structures of religion as the NCR understands it are inscribed in the site of sexuality, and as before, they are contested and threatened by homosexuality. That these ancient anxieties remain with us today, and that they are still tethered to the regulation of sexuality, is the subject of the next Part.

III. The Imperfect is Our Paradise, or, The Right is More Right Than it Knows

Are these ancient concerns about order and chaos, purity and impurity, at all relevant today? I argue that they are. In this Part, I suggest that the seemingly archaic concerns described in the previous Part are still quite alive today. Next, I note that these "concerns" are validated, at times gleefully, by proponents of queer theory and gay spirituality, two very different manifestations of GLBT thinking about religion; i.e., they agree with the Bible that non-normative sexuality undermines Biblical norms. Finally, I conclude that while homosexuality may not threaten "society," it does seriously threaten a certain religious view of what society ought to be.

Normally, such rhetoric is simply mocked within progressive circles. How could more marriage and commitment "threaten the institution of marriage"? How could a few men kissing unravel "the fabric of our society?" Indeed, progressives usually ascribe such sentiments to homophobia, thus implying that they are hysterical outbursts so outrageous, and so nonsensical, that they prove that gay-hatred is nothing but fear.\footnote{See, e.g., Richard Kim “Haggard Values”. The Nation (November 26, 2007)(describing homophobia as the “cement” that held together the values voter bloc). See also Barry Adam, \textit{The Defense of Marriage Act and American Exceptionalism: The "Gay Marriage" Panic in the United States}, Journal of the History of Sexuality, Vol. 12, No. 2, Special Issue: Sexuality and Politics since 1945. (Apr., 2003), pp. 259-276. (arguing that the Defense of Marriage Act (DOMA) and state level “mini-DOMAs” were the result of a moral panic about homosexuality.)}
This assessment of anti-gay rhetoric is deeply misguided, and dangerously oversimplified. Of course, homophobia is a real phenomenon; as a gay-identified man, I experience it often, and fear is a ubiquitous, and potent, force in contemporary political discourse. But within a certain conception of religion -- one held not merely by the 30% of Americans who identify with the NCR, but with a much larger majority who identify simply as religious -- anti-gay rhetoric is far more coherent, and grounded within fundamental (and not fundamentalist) religious ideas, than the progressive dismissal of it would tend to suggest. It is, indeed, precisely the same agon as before: sexuality is the site at which religious law is engendered... and contested.

A. Secular vs. Religious: Can There be Private Order and Public Chaos?

The most obvious way in which the displacement of Biblical values matters to religionists is that it is seen to represent a triumph of "secularism" or liberalism over a religious/religious-fundamentalist vision of a just society. Because this is a quite familiar theme of America's *kulturkampf*, or "culture wars," I shall discuss it only briefly here; my view is that the redefinition of religion itself is more significant than the usual debates about the place of "religion" in society. Nevertheless, it is worth reinscribing those debates within the categories we have just discussed.

For secularists and liberals, the ancient taboos regarding order and chaos are exactly that: ancient. They reflect a time before the advent of modern science, in which life and death were far more precarious than they are today. They also reflect an ancient sense of tribalism, one based upon distinctions between "us" and "them" that are tied to ritual purity, religious piety, and worship of the tribal god. We would do well to discard both of these notions today.

As pluralists, of course, few liberals would argue for the wholesale replacement of religion. (Some have, of course -- the "neo-atheists" such as Sam Harris are notable examples.) Yet ever since John Locke, philosophers have argued that, to the extent religious belief is not susceptible to public reason, it should be circumscribed within a "private" zone at once beyond the reach of the state, and intentionally limited from having a serious impact on state policy due to its reliance on unavailable, non-public

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142 In this regard, I find myself in agreement with Justice Scalia's dissent in Romer v. Evans, which castigated the court's characterization of anti-gay sentiment as mere "animus." Romer, 517 U.S. at 636 (Scalia, J., dissenting). Scalia argued that because anti-gay opinions may be based on moral judgments rather than irrational hatred, the people of Colorado are "entitled to be hostile toward homosexual conduct." Id. at 644 (Scalia, J. dissenting). See Michaelson, "On Listening to the Kulturkampf," supra, at 1572-73.

143 Sam Harris explicitly rejects the pluralist/accommodationist approach to religion. "Either the Bible is just an ordinary book, written by mortals, or it isn’t. Either Christ was divine or he was not...So let’s be honest with ourselves: in the fullness of time, one side is really going to win this argument and the other side is really going to lose.” Sam Harris, Letters to a Christian Nation, (Alfred A Knopf, 2007), 5. Harris continues by arguing that “one of the most pernicious effects of religion is that it tends to divorce morality from the reality of human...suffering.”(Id. at 25). In The End of Faith: Religion, Terror and the Future of Reason (W.W. Norton, 2004), Harris goes even farther, arguing that “our technological advances in the art of war have finally rendered our religions differences – and hence our religious beliefs –antithetical to our survival (13-14).
reasons. As John Garvey put it, "the liberal tradition... divid[es] the world into private and public spheres... the private sphere includes the interior life (my thoughts emotions beliefs). It also includes my relations with people who share my thoughts, emotions and beliefs: my family, my church, and so on. The public sphere is the larger society outside my private life -- the world of government and the market. In the liberal tradition religion is a private matter." But both of these foundations -- that religion ought to be replaced, or at least sequestered into the "private" realm -- are not shared by religionists, even non-fundamentalist religionists. First, while "humanity" may have progressed, a large number of Christian Americans believe that Biblical text retains its authority and truth. Second, for many religionists, these concerns are expressed not in the private realm but precisely in the public one, even if virtues and sins are private, the public polity is in large part defined by its stance in relation to them. This leads to the traditional fundamentalist denial of the liberal public/private demarcation, but also resonates with the Biblical vision of society as the map wherein order and disorder are drawn. As in Deuteronomy, which warns that toevot can "cause the land to sin," the conventional liberal boundary line between public and private line is not operative for many religionists. And as in Paul, public legal positions and institutions create moral facts. Indeed, this is true even of non-religious concerns regarding homosexuality and the stability of family structures, with all the attendant social benefits such structures are said to have; if heterosexual families have public functions, then to suggest that homosexuality is purely a private affair is incoherent. In all cases, it is precisely in the public order that order/disorder is embodied. Thus, the public/private distinction, even if

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147 See John Neuhaus, The Naked Public Square: Religion and Democracy in America 89-90 (1984); John H. Garvey, "Fundamentalism in American Law" in Martin E. Marty and R. Scott Appleby, eds., Fundamentalisms and the State: Remarking Polities, Economies, and Militance 28-49 (Chicago: University of Chicago Press, 1993) (describing American fundamentalism as a "markedly individualist form of religiosity" but as seeing the point of secular law as being "the reform of other people's behavior").
149 Deut. 24:4.
150 This is the converse of my argument in "On Listening to the Kulturkampf" than changes in societal understandings (there, regarding "family") change constitutional law. Michaelson, "On Listening to the Kulturkampf," supra at 1589-1604.
it were to be adopted in some cases, cannot be sustained for religionists when applied to concerns of order and chaos.

Now, we may still sit comfortably back, here in our twenty-first century perch, and ascribe such concerns to simple fear and ignorance. Yet I suggest this is deeply mistaken, for at least two reasons. First, on a purely pragmatic level, the usual conception of liberal secularism is, most likely, a minority opinion within American popular discourse. When, in the 1990s, Michael Lerner and others proposed that progressives could succeed only by speaking to deep religious needs, it was easy to dismiss the notion as airy, even New Age. But after the evangelical vote re-elected an evangelical president in 2004, religious discourse became hard politics. Despite forecasts that internal scandal and political disillusionment have mitigated the evangelical movement’s power, the 2008 election has only ingrained religious discourse more deeply in American politics. In a world of progressive liberals, religion still sits on the other side of the garden wall from politics. But in the political wilderness, there are no such contrivances.

Second, even for non-fundamentalist religionists, saying "religion doesn't matter" undermines the hope that religion does have something useful to say about politics -- for example, that lightening the yoke of the oppressed is a Divine mandate. Should liberal religious communities be satisfied with "Render[ing] unto Caesar the things that are Caesar's, and to God the things that are God's"? Not to many Jews, who believe that tort law is a matter of heavenly concern and in which social justice is a central religious mandate. Not to many Christians, who believe that the City of God is to be built on Earth. And not to many Muslims, who see political and religious as inextricably intertwined. To utterly divorce deep-seated religious concerns about order and chaos from the very ground in which such questions are to be played out reduces religion, as Stephen Carter argues, to a "hobby."

Third, and perhaps most importantly, the conventional secular/religious split is insufficient here because religion, almost by definition, reflects and addresses deep, fundamental concerns. Equating religion and phobia (homo- or otherwise) is a condescending, pseudo-secular rationalism which reduces to psychoanalytic pathologies.

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153 This chapter on the ongoing drama of American religious/political development was still being written as this article went to press. Already, the election has seen a former evangelical preacher win multiple primaries, a former bater of the Christian Right proclaim that America is a "Christian nation," a Mormon declaring that his general faith matters enormously but the specific articles of it matter not at all, and a leading candidate for the Democratic nomination be demonized as a Muslim. See BeliefNet interview with John McCain, http://www.beliefnet.com/story/220/story_22001_1.html; Jodi Kantor and David D. Kirkpatrick, "Pulpit was the Springboard for Huckabee's Rise," N.Y. Times, Dec. 6, 2007; Michael Luo, "Romney, Eye on Evangelicals, Defends His Faith," N.Y. Times, Dec. 6, 2007; Patrick Healy and Michael Luo, "Edwards, Clinton and Obama Describe Journeys of Faith," N.Y, Times, June 5, 1007; Bill Carter, "Rivals CNN and Fox News Spar Over Obama Report," N.Y. Times, Jan. 24, 2008.
the ancient tribal magics of a dozen civilizations, and our own enduring psychological truths. At the very least, this really is the culture war of which the Radical Right complains: a campaign to stamp out religion itself. It is one thing to argue against the distortions of religion on the part of fundamentalists or others, or to insist that ancient codes and dogmas be updated to accord with our evolving sense of ethics and morality. However, it is quite another to attempt to reduce some of the deepest impulses of Western religious itself to mere dysfunction. These totems and taboos are powerful, and have been strengthened, not lessened, by the increasing speed and mechanization of civil society.

So, for practical as well as theoretical reasons, the simple recourse to public/private separationism, while perhaps an important stance in the ongoing American kulturkampf, does not do adequate justice to the concerns in play relative to liberated sexuality, which are public, deep-seated, and perhaps psychologically grounded. However, as I have already said, the question of liberated sexuality, as a subset of the question of order and chaos, presents an even more fundamental challenge to traditional religion: not just its domain, but its very nature. It is to that subject that I now turn.

B. Religious vs. Religious: The Progressive (R)evolution

If then, the struggle regarding homosexuality cannot be reduced to the familiar culture war between secular and religious, what is it? My claim here is that it is actually a struggle between two different stages in the development of religious consciousness, as expressed both individually and communally, with secularism caught in the middle. These two religious communities speak the same language, but with utterly different meanings. And because to move from one stage to another involves the destruction of the earlier stage, liberated homosexuality is exactly the kind of antinomian, disordering force that it was feared to be in the Bible.

Within conservative religious structures, liberated homosexuality is a real challenge to Western religion because it elevates the truth of subjective experience over the way sacred text has interpreted for the last two thousand years. It seeks to liberate the self from the nomos, to regard the stirrings of the soul as at least co-equal with the demands of Scripture. And, in de-linking sexual pleasure, sexual expression, and sexual being from the inherited norms of culture and civilization, gay liberation (which by its own internal logic demands women's liberation -- no doubt obvious to its opponents) threatens the containment of eros which is the cornerstone of Western religious civilization itself.

As we will see, these "challenges" have been understood by some theorists of religion as necessary steps in the evolution of religious consciousness itself. However, regarding such change as an "evolution" is, to say the least, not uncontroversial, and

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For a British approach, see Theo Hobson, “A Pink Reformation” The Guardian, February 5, 2007 (http://commentisfree.guardian.co.uk/theo_hobson/2007/02/a_pink_reformation.html). Hobson argues that homosexuality is a threat to the Anglican Church’s moral authority on par with the Reformation of the 16th Century.
tends to be seen more as a revolution than a progression. In other words, in overturning ancient codes of order and chaos, progressive-religious arguments about sexuality actually replay those exact concerns of order and chaos. That is to say, the NCR it right, in a sense, that liberated sexuality threatens "religion," in that it does threaten religion of a certain stage, and from that stage, the next ones look like pure chaos.

My analysis here is informed by the developmental models proposed by several different theorists, particularly as synthesized by Ken Wilber. In his work, Wilber suggestively aligns a number of cognitive and religious developmental models -- one of the primary contributions of Wilber is to observe congruities between individual and societal development -- including those of Jean Piaget; Robert Kegan, who proposes five stages or "orders" in cognitive development; Suzann Cook-Greuter, who traces the development of ego; James Fowler, who identifies "stages of faith" in the religious life; and Lawrence Kohlberg, as well as the systems of "Spiral Dynamics" and others. Based on these models and associated cross-cultural research, Wilber identifies eight stages in the development of world religions, which occur across cultural contexts (with variations, of course) and which parallel stages in cognitive and social development. Although the details of the different systems vary somewhat, and Wilber himself frequently revises his understanding of them, a recent iteration of the first seven stages (oversimplified, and without the many variations and qualifiers) is as follows:

1. **Archaic/instinctual.** Basic survival clans, undifferentiated approach to reality, core concerns are survival and sensorimotor operations. Essentially pre-cognitive, basic, animalistic; food, water, clothing, sex. Analogous to sensorimotor (Piaget), pre-

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163 Beck and Cowan, supra.

conventional/obedience (Kohlberg). (For convenience, Wilber assigns colors on the spectrum to each of these stages; stage one is "Infrared."\textsuperscript{165})

2. Magic/animistic. Animistic, symbolic logic, magical powers, magical universe filled with spirits; concerns are safety and security. Typical of many folk religions, animistic. Analogous to pre-operational (Piaget), pre-conventional/self-interest (Kohlberg). Also associated with extended family kinship groups and ethnic tribes. ("Magenta")

3. Egocentric/polytheistic. Impulsive, egocentric, individual emerges from group. Polytheistic conceptions of multiple, powerful deities (Spiral Dynamics: "PowerGods"), may or may not have ethical component. Analogous to conventional/conformity (Kohlberg).\textsuperscript{166} Associated with tribal structures and feudal empires, impulsive and egocentric sense of the self; power and action. ("Red")

4. Mythic/absolutist. Monotheistic, single "power god" replaces many gods, conceptual logic, self-protective, conformist, conventional. One literal truth defeating others, myth as absolutely true. Purposeful, absolutistic, interested in stability. Analogous to formal-operational (Piaget), moral judgment (Kohlberg) Also patriotism, nationalism, "conventional faith" (Fowler), pre-modern Western religion. ("Amber")

5. Rational/conventional/multiplistic. Rationalistic, ethical, scientific; rationality supplants literal/authority-mediated truth and myth, conscientiousness replaces conformity, individuality replaces group. Typical of Enlightenment scientism, Reform religious movements, Western liberalism; "achievist" in aim, multiplistic, success-oriented, autonomous. Analogous to post-formal/systemic (post-Piaget), post-conventional/social contract orientation (Kohlberg). Also associated with post-nationalist capitalism (cf. "The Lexus and the Olive Tree"), corporatism, economics as contrasted with patriotism (cf. neo-conservatives and liberals vs. Christian conservatives), rational critique of Stage 4 norms, stage one feminism, industrial age, modernity. ("Orange")

6. Pluralistic/relativistic. Pluralistic, relativistic, anti-hierarchical, multicultural, conjunctive. Typical of New Age spirituality, critiques of Eurocentrism and rationality. Analogous to post-formal/paradigmatic (post-Piaget), post-conventional/universal (Kohlberg). Also associated with anti-globalization, the "New Left," renewed regionalism, radical egalitarianism, holistic environmentalism, communitarianism, values

\textsuperscript{165} Unfortunately, the system of spiral dynamics has its own color assignments, in which stages one through five are beige, purple, red, blue, orange, and green. Wilber fudges his own spectrum to align with these colors, which have been in use for a decade, omitting the color yellow and using "infrared" as a color. I follow Wilber's color coding here, since both are, obviously, arbitrary.

\textsuperscript{166} Here Wilber's and Kohlberg's models diverge somewhat. Kohlberg proposes two conventional stages, the first valuing conformity and the second valuing "law and order." These stages are essentially both elements of Wilber's stage 4. Conversely, Wilber distinguishes between two fundamentally egocentric stages, the magic/animistic stage 2 and the ecocentric/polytheistic stage 3; both of those two roughly map onto Kohlberg's pre-conventional self-interest stage. This difference is not of import to the present project, however.
of harmony, equality and consensus; different-voice/stage two feminism, information age, "naive" relativistic postmodernism. ("Green")

7. **Integral/systemic.** Integral -- i.e., aware of development and recognizes value of different stages, return of concept of hierarchy but without traditional structures of stages 1-5, universal but not necessarily egalitarian (i.e. qualitative distinctions maintained). Analogous to post-formal/cross-paradigmatic (post-Piaget), seventh-stage/transcendental morality (Kohlberg).\(^\text{167}\) Unlike stage 6 green meme, stage 7 understands values of stages 5 and 6 to be positive, non-"natural" values, integral postmodernism. ("Teal," turquoise, etc.\(^\text{168}\))

Essentially, a Wilberian analysis would suggest, the debate regarding homosexuality and religion is not one taking place within a particular stage, and thus resolvable according to agreed-upon methods of argument and agreed-upon vocabularies. Rather, the debate is one between stages: specifically, between the "mythic" stage 4 (traditional, revelation-based monotheism, but here with remnants of stage 3 or even stage 2 taboos) and a combination of the rational stage 5 (conventional secularism) and pluralistic stage 6 (a post-religious, post-secular pluralism found throughout progressive religious and "spiritual" communities). Such a debate is necessarily and fundamentally about meta-issues, specifically what "religion" is, since it looks different from each stage. To stage 4, religion is fixed, divine in origin, communally determined, and based on authority. To stage 5 and 6, it is to some degree evolving, human, individual, and based on conscience, reflection, or spirituality. This is what happens all the time when stages of religion collide; they really are arguing about the proper stage of religion, as reflected in a particular substantive issue. Consider, by way of comparison, the bitter struggles in the Hebrew Bible between stages 3 and 4: the episode of the Golden Calf, Elijah and the prophets of Baal, the first three of the Ten Commandments; obviously, these are not debates merely about rites or images, but about the nature of God and religion themselves.

Importantly, and notwithstanding the tendency of one stage to see a previous one as corrupt and superceded (e.g. rationality has superceded religion, monotheism has superceded paganism, spirituality has superceded cold rationalism), all cognitive and religious structures have elements of previous stages embedded within them. Obviously, one does not move on to operational logic by forgetting sensorimotor operations like using one's hands; rather, the "higher" is built on the "lower," transcends and includes it, and depends on it, in a way the "lower" does not depend on the "higher." Likewise in religious development; while stages in the development may pretend to leave behind earlier ones -- for example, the "rational religion" of stage 5 leaving behind the "superstitions" of stage 3 or stage 4 -- they rarely do so in actuality; while, for example,


\(^{168}\) Wilber and other theorists actually propose several "integral" stages but these are not germane to our analysis here. The most relevant aspect of stage 7 and beyond is that development does not stop at stage 6's nondiscriminating pluralism.
the literal meanings of ancient myths may be discarded, their symbolic and psychological meaning is eventually rediscovered because it never really went away in the first place. This point is relevant here because the basic needs underlying ancient taboos about order and chaos (stage 3, or, speculating here, perhaps even the basic taboos of sexuality from stage 2), and the ancient rules regarding permitted and forbidden (stage 4), are not simply dismissed by stage 5 rationality or stage 6 pluralism. They may be transcended in their literal meaning, but the issues they address remain. Moreover, as we will revisit to in the conclusion of this article, it is possible to have knowledge of "later" stages without actually entering them; this is the difference between describing them in third-person terms and experiencing them as first-person realities.

Finally, stages are procedural, rather than substantive. A particular stage does not determine what one believes, but rather how one believes it. This is true both within stages and between them. Obviously, a Hindu may refrain from eating beef and a Jew from eating pork, but both share what is essentially a stage 3 or stage 4 prohibition. Less obviously, however, the same belief may be held at different stages. Someone at stage 4 may not steal because God commanded it. Someone at stage 5 may not steal because it is ultimately inefficient, unethical, or destructive of civil society. And someone at stage 6 may not steal because it is spiritually detrimental to do so. (For that matter, someone at stage 3 may not steal because of honor codes, and someone at stage 2 because of a magical fear of punishment.) Stages do not determine content; only process. They are less the vocabulary of ethical or religious life than the grammar of it.

With the taxonomy set forth here, it is now possible to contextualize both the taboos against homosexuality set forth in the previous part, and the difference between the conventional religious/secular argument in the previous section, and the religious/religious one which I am about to discuss.

First, the taboos against homosexuality are not all of the same stage themselves (recall that stages are content-neutral). Concerns about monotheism and society (as conventionally understood) are indeed stage 4 issues. But core concerns about family integrity are even deeper: stage 2 or stage 3, related to structures of family, and essentially magical conceptions of purity and impurity. Hebrew Bible concerns about purity and impurity, derived from Priestly sources, are more like stage 3 battles against the forces of contamination than the Deuteronomist's stage 4 battles of monotheism against polytheism, yet they are situated within that stage 4 dichotomy. Likewise, New Testament concerns about natural and unnatural are, in a sense, stage 4 religious issues, but really they go back to much older legal proscriptions and societal formations. Indeed, law itself, though conceived in foundational myths such as the Oresteia as being an institution of mythic structure (stage 4) against earlier notions of revenge (stage 3), is

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169 See, e.g., Kohlberg's "druuggist's dilemma," which set forth an ethical dilemma evaluated according to all six stages. Lawrence Kohlberg, Essays on Moral Development vol. 1: The Philosophy of Moral Development (Harper & Row 1981). Each stage yields both positive and negative answers to the dilemma, but arrives at those answers in a distinctive, stage-specific way (e.g. fear of punishment at stage 1, human rights at stage 5, etc.).
present in all of these stages, including, of course, codes of revenge themselves. Law is not a creation of one stage or another; it exists in all of them.

Second, the clash between mythic religion and secularism is the classic battle between stage 4 and stage 5, between revealed authority and rationality, dogma and scientific inquiry. This is the supposed distinction between "church" and "state" as reductively depicted, though it is hopefully now clear how incomplete the standard binarism is. It is, however, only part of the story. Those who argue for gay rights and other liberal positions on the basis of religion are also involved in a struggle between stages -- namely between stage 4 and stage 6. The nature of this dispute reveals itself upon a close reading of seemingly banal arguments for gay rights, routinely made by religious advocates for sexual minorities. These stage-6 arguments are sometimes thought of as less threatening or more accommodating than standard rationalistic, secular, or otherwise liberal 5th stage claims, but as we can see, they are actually more destructive of mythic notions of order. Consider some of these popular ones:

- God made me according to God's will, sexuality included.
- God loves all of us.
- Plenty of other Biblical sexual proscriptions are ignored as our thinking has evolved (e.g., intercourse during menstruation, intermarriage) and some approved activities have fallen into disrepute (e.g., sex with slaves, polygamy, levirate marriage).
- The Bible doesn't really prohibit homosexuality; only male anal sex under certain conditions (coercion, cultic practice, etc.).

All quite simple in form -- but notice that all of these are all really saying that religion itself is to be taken on a post-mythic, rather than conventionally mythic, basis -- i.e., that it should be the religion of stage 6 rather than the religion of stage 4 (or the ethical "religion" of stage 5). That is:

- God made me according to God's will, sexuality included despite what the Bible seems to say about sexuality being a wrong choice, because of my experience of sexuality
- God loves all of us and that should trump what the Bible seems to say about sexual choice, because of my experience of sexuality
- Plenty of other Biblical sexual proscriptions are ignored as our thinking has evolved, and some approved activities have fallen into disrepute, and that should include what the Bible seems to say about sexual choice, because of my experience of sexuality
- The Bible doesn't really prohibit homosexuality; only male anal sex under certain conditions, and the way tradition has interpreted it must be wrong, because of my experience of sexuality.

In other words, the individual experience of sexual repression and sexual liberation -- or the experience of a close friend or relative -- forms the essential underpinning of these readings of the Bible. Biblical dogma is susceptible to evolution.
and reinterpretation. We may not even necessarily all agree on what the "right" reading of law is, and thus must respect multiple meanings. All of these are tenets of Stage 6, sometimes called the "green meme" of religious-moral development. They are controversial. Indeed, because they deliberately overturn the foundations of Stage 4, they are seen from that stage as being destructive of order itself.

Indeed, as threatening as the rationalists or secularists of Stage 5 may be to the mythic-religionists of Stage 4, the progressives of Stage 6 may seem even worse. Religious progressives and traditionalists are talking past each other, using a common religious vocabulary to refer to two entirely different systems of thought. The moral voice of the Religious Right is mythic: the Torah is true, Jesus died for your sins, miracles happen, and God is watching. But the voice of religious progressives is post-mythic: the Torah is important, the myth of Jesus is about forgiveness, miracles happen every day, and God is everything. Traditionalists, when they speak of religion, are referring to a mythic-stage world of absolute truth, which lies beyond the reach of experience; which, indeed, must shape and judge experience. To them, non-coercive, non-mythic spirituality (grounded as it often is in personal, experiential, and mystical practices) is deeply threatening to normative, mythic, rule-oriented religion, because it threatens to detach the experience of religion from the fixed rules and myths that enable religion to be a form of social ordering and control. Without taboo, without "values," and without guilt, what is left of religion?

Well, everything, according to post-mythic religious progressives: the pursuit of justice, spiritual experience, community, kinship. Religious progressives may use the same words as traditionalists, but they rarely have much truck with the mythic level of religion, because that sort of religion is tied to ethnocentrism, particularism, sexism, homophobia, and a dozen other beliefs which progressives, as a rule, tend to disfavor.

Now let's return to the questions of order and chaos that we discussed in the previous part. Religious progressives, though they may share a vocabulary with religious conservatives, do not actually share the belief that the authoritative texts of mythic religion are the sole source of enduring values, or the sole path to salvation. Unlike rationalists of the 5th stage, they may recognize the deep psychic power of taboos about order and disorder, but unlike mythic-religionists of the 4th stage, they don't believe that overturning some of mythic religion, or bracketing it, or re-interpreting it, will really end the world. And indeed, preserving it is likely less important than the dignity of human beings alive today. In fact, religious progressives likely believe that real religion, the kind God really wants, requires us to reinterpret, reread, and revolutionize.

For a classic stage 6, spiritual-conscience based religious approval of homosexuality, see, e.g., Rosenthal, supra, at 534-35 (citing Mark Solomon, "A Strange Conjunction," in Jewish Explorations of Sexuality (Jonathan Magonet ed., 1995)) ("Whether the prohibition of homosexual intercourse [in Jewish texts] is motivated by a loathing of pagan cultic practices, disapprobation of the rape of defeated enemy warriors, or simply revulsion at the idea of a man being ‘womanised’ in a society where women were regarded as necessarily passive and submissive, it certainly has no claim whatever on the conscience of any gay person today"). For a classic stage 5 rationalist-consequentialist religious approval of homosexuality, see Rebecca Alpert, Religious Liberty, Same-Sex Marriage, and Judaism, in G-D FORBID: RELIGION AND SEX IN AMERICAN PUBLIC LIFE 124, 127 (Kathleen Sands ed., 2000) ("same-sex marriage is
But to traditional, mythic religionists, all this is nothing less than the destruction of the religious-mythic worldview itself -- which looks like the end of religion. Indeed, this is true from any stage: the next stage always looks like pure anarchy -- and often like a previous stage. For example, from stage 4, the secularism of stage 5 looks like a loss of moral center and a return to lawless, unmoored anarchy (stage 3). Likewise from stage 4, the spirituality of stage 6 looks like paganism (stage 3). Of course, stage 5 is no different; from most in stage 5, the relativism and anti-rationalism of stage 6 looks like a collapse back into superstition (stage 4 or 3) and, of course, a loss of order and meaning. For that matter, Stage 6 often confuses the qualified hierarchies of stage 7 with the authoritarian hierarchies of stage 4. Even stage 3 may regard stage 4’s iconoclasm and destruction of sacred space as a denuding of sanctity. This is how it is: from any stage, a subsequent stage looks like a previous one.

Consider, by way of analogy, the current debate over "Intelligent Design." To stage 4 religion, what is at stake is the mythic worldview itself: take away the literal creation story, and you destroy the foundation of religious life. Of course, to a stage 5 ethical-religionist or to a stage 6 spiritual-religionist, this is nonsense. Of course the valuable teachings of ethics and spirituality remain in place; they do not depend on the mythic creation story. But from the perspective of stage 4, to deny the mythic basis of the law is tantamount to denying the law itself.

Now, it is possible to maintain some kind of stage 4 worldview while adopting a more progressive stance toward gay rights. For example, one might maintain the overall tenets of a stage 4 religious worldview but adopt a stage 5 political worldview; that is, maintaining a fidelity to authoritative, absolutist scripture in a "religious realm" but simultaneously maintaining some notion of liberal democracy in a separate "political realm." Not all fundamentalisms require the total conflation of public and private. Alternatively, one might adopt readings of Scripture which maintain Biblical inerrancy but interpret Biblical text in a more liberal way, such as John Boswell's claims that Romans is really about pederasty and Steve Greenberg's claims that Leviticus is about dehumanization and sexual violence.

Of course, in both cases it could be argued that this is not "really" stage 4 religion, since values from outside the authoritative source (be they from reason, personal

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understood as a religious value because it provides economic justice, creates stable, committed relationships, and fosters support for childrearing.”)


172 It is also possible for a stage 5 or later consciousness to advocate a kind of intellectual duplicity: keeping "the masses" at stage 4 for their own good. In this light, though the ethical teachings do not actually depend on the truth of religious myth, such myth is required for most people to believe in them. Leo Strauss's work has often been interpreted in this way. See Leo Strauss, Natural Right and History 6 (Chicago 1953)("Utility and truth are entirely different things"); Anne Norton, Leo Strauss and the Politics of American Empire (2004).
experience, conscience, liberal political theory, or somewhere else) are influencing the way that source is understood. My own view is that such strategies are more accurately described as stage 5 or stage 6 religious consciousness maintaining the forms and rhetorics of stage 4. But, as we will see in the conclusion, such a posture may be of both strategic and personal religious value. Strategically, it minimizes the extremity of the change and allows stage 4 religionists to continue with their fundamental life projects. And personally, it may well reflect the sincere beliefs of those who are committed to a stage 4 view of Scripture but who are vexed by the apparent immutability of homosexuality. For those who believe in (1) the Divine origin of the Bible, (2) a genetic or similarly immutable origin of homosexuality, and (3) a loving God who does not seek the repression of a fundamental aspect of human identity, Leviticus simply cannot mean what it has been interpreted as meaning. Thus, interpretations which may seem forced or stretched are actually less forced than their opposite, since they leave intact these fundamental beliefs. Indeed, one might suppose that evangelical Christianity is uniquely well-suited to such a re-examination, since it places such value on individual introspection and conscience.

There is precedent for such intra-stage reevaluation. The interpretation of inerrant Scripture, rather than its overthrow, was the strategy of most "fundamentalist" Christians in the decades following the Civil War. While prior to the war, Christians were divided as to whether the Bible condoned or forbade slavery, today almost none would say that the Bible approves of slavery in the American context. Perhaps, some have argued, the same evolution will eventually take place in the case of homosexuality.

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175 Of course, there are many who maintain that the Bible approves of, or indeed requires, practices some would consider discriminatory or racist; Bob Jones University's ban on interracial couples is one well-known example.

176 See William J. Webb, Slaves, Women & Homosexuals: Exploring the Hermeneutics of Cultural Analysis (2001) (proposing hermeneutical methodologies for when Biblical verses are applied and when they are not). Webb does not advocate such a change; indeed, applying his methodology, he concludes that the Biblical prohibition should remain in place. Id. at 250-52. However, the methodology he proposes (and the analysis of slavery) could, in theory, lead to the opposite result within an overall position of Biblical inerrancy. I am grateful to Kevin Outterson for bringing Webb's book, and the analogy to slavery, to my attention. Similar changes have begun in the area of environmentalism. While the dominant political motif is that Christianity aligns with free enterprise, many evangelicals have begun asking "What
Notwithstanding the availability of such hermeneutical strategies, however, relatively few people appear to be making use of them. On the Left, the loudest voices seem to argue either for a stage 5 liberal position, or for a stage 6 progressive-religious one. And on the NCR, most insist on a stage 4 religious view together with the traditional understanding of Biblical text. And unfortunately, the bedrock certainty of mythic religion is far easier to communicate than the multivalences, negotiations, and tensions of post-mythic religion; fundamentalism fills the pews in a way that reform religion and stage 6 spirituality still do not. For this reason, much of our culture's "debate" about homosexuality more closely resembles a shouting match among different worldviews separated by a common language.

C. The Liminal as Holy Terror: A Queer Agreement

Not only is liberated homosexuality deeply threatening to mythic structures of gender, law, and society -- but many queer theorists know it. Of the many iterations of queer identity proposed in recent years, some of the most interesting connect homosexuality with liminality, and an upsetting of categories of sexual binarism and dimorphism. Curiously, in both contemporary queer theory and contemporary gay spirituality -- two discourses which almost never interact with one another, and which in many ways are diametrically opposed -- binaries are the problem and queerness is the remedy. In queer theory, gender and sexual dimorphisms are social constructions which invariably efface difference, administer power to the powerful, and subject the weak/disfavoured to the rule of the strong/favoured. Dyads such as them/us, black/white, and female/male both oversimplify actual experience and invariably subordinate one side to the other; both Levinas and Derrida have argued that even the basic dualisms of self/other and presence/absence contain within them the seed of oppression, marginalization, and subjugation; as soon as we divide, we begin to

\[^1\text{On liminality generally, see Victor Turner, "Betwixt and Between: The Liminal Period in Rites de Passage", in The Forest of Symbols (Ithaca, NY: Cornell University Press, 1967).}\n
\[^1\text{See David Halperin, One Hundred Years of Homosexuality (New York: Routledge, 1990), 43-48; Katz, The Invention of Heterosexuality; Eve Kosofky Sedgwick, Epistemology of the Closet (Berkeley: University of California Press, 1990); Gilbert Herdt, Third Sex, Third Gender: Beyond Sexual Dimorphism in Culture and History (New York: Zone, 1996)}\]
conquer. Queer sexuality, by eluding the heteronormative expectations of gender and sexual role, can serve as “a potentially privileged site for the criticism and analysis of cultural discourses.”

Likewise, though in a very different intellectual key, for the leading writers of the half-anthropological, half-fantastical literature of “gay spirituality,” who seek to reclaim for queer people (primarily gay men) the ancient roles of “those who walk between,” gender-variant people who often served as shamans, healers, and other intercessors with the infinite. These writers draw on diverse traditions, from the gender-variant Galli of the classical world to the one hundred and fifty-seven Native American traditions which held that people we would now label as gay or lesbian possessed two spirits, one masculine and one feminine, and accorded them special significance in society (medicine men/women, shamans, warriors, etc.). Of course, our understanding of these “third-gendered” and “two-spirited” people remains greatly attenuated, but the evidence is considerable, ranging from the gender-variant berdaches or winktes of the Plains Indians (including Omaha, Sioux, Iban, and Hidatsa people), to shamans of Siberia (including the Chukchi, Yakut, and Koryak tribes), the basir of Borneo, and the male isangoma of the Zulu. In such cultures, gays and lesbians exist to be sacred priests of the liminal.

Yet the liminal is sacred precisely because it is terrifying. In the moment of in-between, that point of inflection between what was and what is becoming, there is a taste of extinction. And precisely for that reason, because such moments occasion brief transverses of the ineffable, the liminal is sacralized by ritual, symbol, and myth. Some cultures sacralize these chaotic, anarchic, and death-linked moments, but others -- surely including Biblical Israel and Pauline Christianity-- seek to circumscribe it. As we saw in the previous Part, Biblical Judaism sanctifies not the ecstatic but the formal, not the chaotic but the ordered. Jewish Biblical narrative favors the tablets of the law, not the golden calf; Moses’ descent to the people, not his ascent to the ineffable; the precise rules and regulations of Leviticus, not the “strange fire” of Nadav and Avihu. Even amid the

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majestic theophany of the godhead at Sinai, the Biblical text spends less time on the power and glory of revelation than on what God tells Moses about tort law and damages. Likewise Pauline Christianity, which disposes with external law only to replace it with an even more rigorous internal one, and with its quasi-ontological priority of the spiritual, lawful, and orderly over the fleshly and chaotic. Indeed, in later Christianity, most of the liminality-venerating religious practices just listed were regarded as heathenism, paganism, witchcraft, devil-worship, or worse.

Quite clearly, there is a flat contradiction between civilizing boundaries on the one hand, and queered or otherwise effaced binarisms on the other (though obviously, this structure is itself a binarism that is susceptible to critique). Nor is the tension restricted to the margins of sexual differentiation: not only men who have sex with other men, but inter-religious couples, single parents, and anyone following (or creating) alternative models of Jewish sexual-social life find themselves astride the boundaries of the halachic mainstream. So does anyone who sees himself as both/and rather than either/or. The Levitical understanding of liminality is squarely opposed, perhaps even deliberately, to the sacralization of boundary-crossing found in certain shamanic cultures, hypothesized in the Ancient Near East, and celebrated by latter-day spiritual thinkers, many of whom are themselves constructing their views in deliberate opposition to “Judeo-Christian” religious thought. Obviously, these structures are symbolic, not literal; poetic, not political. Yet to the extent they inform not merely the superficial details of religious praxis but its very form and structure, the binary-disrupting queer finds himself in, ironically, a binary opposition to the Biblical ideal. The idealized vision of a sacred society constituted by law and boundary is in irreducible tension with a (non-) identity of liminality and blending.

Of course, for queer theorists, this may be a productive opposition, usefully problematizing some of religion’s more troubling boundaries. (It is also, of course, an optional one; liminality is a function of self-actualization, not essential biology.) First, it invites us to reconsider Biblical “Judaism,” and by extension the Jewish-Christian tradition, as being less the normative product of the priestly elite, and more of a descriptive term, including precisely those practices of the Israelites which some sought to efface; whose Judaism is it, anyway? Second, scholars tell us that sexual boundaries were largely drawn to differentiate Jew from “Canaanite” -- essentially a social construction used to Other-ize aspects of Israelite practice which the priestly elite sought to name as foreign. Sexual pluralism thus leads to a much-needed corrective to parochialism and ethnocentrism, because in problematizing the rhetoric of social construction in the area of sexuality, it questions the same lines drawn, often with the same brushstrokes, between us/them, gay/straight, Canaanite/Israelite, even female/male. And finally, embracing sexual variance reminds us of Biblical multivocality; as Theodore

184 It is important not to overstate the gender dimorphism of the halachic system, however, which includes multiple gender and sex categories, including tumtum, androgynos (which appears over 300 times in the Talmud), and, by some counts, avlonit, saris adam, and saris chama. See Alfred Cohen, “Tumtum and Androgynous”, Journal of Halacha & Contemporary Society XXXVIII (Fall 1999); Elliot Rose Kukla and Reuben Zellman, “Created by the Hand of Heaven: A Jewish Approach to Intersexuality”, Torah Queeries (April 21, 2007).
Jennings has recently developed at some length, Biblical text has far more to say about homosexuality than two troubling verses in Leviticus; homoeroticism is often utilized as a resource for exploring the dynamic between YHWH and Israel itself. In this way, embracing the deeper significance of sexual liminality leads to a useful questioning of how the notion of boundary does exactly what postmodernists worry it does: prioritize, oppress, and dominate.

But the opposition is there, not merely as a fantasy of the NCR but as a site for celebration for queer theorists. For this reason, many would argue that assimilationist language ought to remain predominant politically, both for reasons of political expediency and because privilege, however constructed or artificial it may be, should still be allotted to all who’d like to seek it, rather than restricted only to some. (I.e., maybe marriage is dyadic, limiting, and intrinsically heteronormative – but let me have it too if I want it.) Yet even if the assimilationist vocabulary is adopted in political discourse, the Levitical and Pauline interests in order are squarely opposed, perhaps even deliberately, to the sacralization of boundary-crossing celebrated by latter-day queer theorists and gay spirituality thinkers. Liberating homosexuality as inviting chaos is not merely the NCR’s delusion.

We err if we suppose that legal and political debates regarding homosexuality are essentially legal and political. They are not. Nor are they predominantly between some monolithic "religion" and "secularism," or between a liberal conception of public and private and a fundamentalism which does not respect such boundaries. No; these are religious debates, between two different forms of religion, each contesting a shared vocabulary and pointing in nearly opposite directions. What we are arguing about, when we argue about the legal regulation of homosexuality, is the nature of religion itself.

IV. Not Ideas About the Thing, But the Thing Itself: Conclusions

If it is true that religious arguments against homosexuality beg fundamental questions about the nature of religion in society -- not just the role of religion in civil society, but the very nature of religion itself -- then what is the proper approach for those who would advocate for greater liberties for gay and lesbian people in American society?

I make three proposals in this concluding Part. First, I address the ineluctably religious nature of the issue, even when it appears in secular contexts, and propose how an integral approach to religious development is of more practical use than reductive claims about homophobia or fundamentalism. Second, and largely by way of example, I suggest, with the backing of some empirical data, that policies which impact the "mythic" religious positions at stake -- most notably, of course, same-sex marriage -- will be far less likely to be accepted than those which do not, and that, while an incremental approach is not necessarily advisable in all cases, at the very least there should be an understanding of the magnitude of deconstructing the mythic. Third and finally, I return

Jennings, Jacob’s Wound, 25-66.
to the evolutionary understanding of religious development, and propose that only by entering into an authentic stage 4 encounter, with its categories and assumptions, is it possible to then shatter those assumptions with the force of personal experience. Such encounters, not policy debates, will ultimately bear the most fruit for advocates.

A. An Integral Reassessment of "Homophobia" and "Religion"

To the extent that religion remains a primary source of value for the majority of Americans, it is unlikely that efforts to address the question purely as a legal matter will be sufficient. Indeed, even for those who are not personally religious, the categories of religion have thoroughly influenced secular law, particularly in the area of sexuality. Of course, the basic liberal separation of public and private, discussed in the previous part, remains operative; in theory (that is, liberal theory), one might thoroughly oppose homosexuality in some "private" sphere, but recognize for basic civil libertarian reasons that the apparatus of state power should not be used to enforce those views in "public." Yet refusing to hold such a belief is not necessarily the sign of a failure of reason or patriotism, but rather a particular stage of religious development, in an ordered world that makes sense in that stage, even if it seems ludicrous from others -- indeed, its preposterousness is precisely due to its foundational premises and internal consistency. As Stanley Fish remarked, “The American mind, like any other, will always be closed, and the only question is whether we find the form of closure it currently assumes answerable to our present urgencies.”

Homophobia, useful as it is in describing the discomforts and irrational biases that gays, lesbians, and a fortiori, transgendered people face every day of our lives, is not an accurate description of the amber stage of religious/cognitive development. Indeed, the label is as imprecise as labeling traditional conceptions of gender to be merely sexist or tribal claims about religion to be merely ethnocentric. Of course, viewed from a liberal or post-liberal perspective, that is exactly what they are. Yet viewed from within a mythic universe, they are no more visible as bias than, say, our culture's pervasive anthropocentrism. On the contrary, viewed from within the mythic-religious system, they are as invisible as the air -- and seemingly as fundamental.

The issue here is not homophobia, per se, but the mythic form of religion, which thoroughly embeds its anti-gay positions within an overall structure that gives meaning and purpose to millions of Americans. Viewed from within the mythic religious structure, one may no more extract the offending strand of dogma than remove just one stone block from a bridge: the entire edifice collapses. This is how "Focus on the Family's" James Dobson can compare gay marriage to Pearl Harbor. And it is why the

186 See Eskridge, Body Politic, supra at 1029-1039 (describing judicial adoption of right-wing rhetoric of disgust and boundary maintenance); Backer, supra, at 568-86 (discussing judicial use of "sodomy narratives" from popular culture).
187 Stanley Fish, Being Interdisciplinary Is So Very Hard to Do, in There's No Such Thing as Free Speech and Its a Good Thing, Too 231, 242 (1994).
Family Research Council maintains mythic-stage beliefs about prayer (a recent publication of the FRC credited its prayer teams with the success of the troop surge in Iraq\(^{189}\)); they are all part of a single mythic-religious worldview. This is larger than homosexuality, or indeed sexuality as a whole; as I have suggested, sexuality is merely the site of a much larger debate, which is the ambit of religion itself.

Of course, contrary to the reductions of neo-atheists such as Sam Harris, it's not *religion* that collapses; there are millions of religious gays and lesbians in every religious community in America. But stage 4 mythic religion does indeed collapse when autonomy trumps authority, and that is why liberated sexuality looks like chaos and disorder, whether it is couched in the secular liberalism of stage 5 or the progressive spirituality of stage 6. Likewise, notwithstanding Harris's circular reductiveness, mythic religion is not "real" religion, any more than progressive religion is -- or, for that matter, ancient tribal blood religions or post-progressive integral spiritualities. If one asks the popular Christian question "What Would Jesus Do" in a given situation, the answer will vary according to which Jesus one believes in. A 4th-stage Jesus would likely condemn homosexuals as violative of the natural order, on the basis of authoritative scripture. A 5th-stage Jesus might ask what policy makes the most sense for serving the social good. A 6th-stage Jesus would likely love all human beings, and interpret holy writ to suit religious conscience. A 7th-stage Jesus would provide these multiple answers. (For that matter, a 3rd-stage Jesus would invoke ancient taboos, and a 2nd stage one black magic and superstition.)

Moreover, in Wilber's model, all are "right" insofar as all reflect an authentic religious consciousness at different stages. Mythic Jesus is how (the Christian) God looks at stage 4; loving, multicultural Jesus is how God looks at stage 6. Likewise claims of law, social order, land, tribe, ritual, ethics, and other religious topics. Nor does what Wilber calls an "integral approach" take a paternalistic attitude toward more "primitive" religious stages. On the contrary, these stages are the foundation for later ones, and while a house can stand without its upper levels, it cannot endure without foundation. Implicit in any descriptive hierarchy is a normative preference, and, indeed, each stage does see itself as superior to the previous ones. But one of the hallmarks of an integral vision (i.e., stages 7 and above) is that this rigid sense of superiority disappears. Unlike in Kohlberg's structure of moral development, and unlike most developmental models which conveniently place their originators at the top of the evolutionary latter, stage 5 is not necessarily better than stage 4; it is only different. It is more advanced, and understands stage 4 in a way stage 4 could not understand stage 5. And generally speaking, each stage represents a step forward in moral progress. But it is not necessarily better in every situation. For example, Stage 6 has blindspots which Stage 5 does not (e.g. it is unable to recognize the value in any hierarchy at all), and those blindspots could, in some circumstances, be more harmful than the shortcomings of the earlier stage (e.g., when a group is trying to "get things done" and needs a leader rather than consensus). Or, as mentioned earlier, some have proposed that stage 4 mentality is more

conducive to an orderly society than a stage 5 or stage 6 one. Whether they are correct must be decided on the merits, not by the numbers.

Obviously, in our constitutional jurisprudence, there is little space for differentiating among these various stages of religious development. Nor should there be. But in the characterization of religiously significant legal issues such as gay rights (but also aid to parochial schools, prayer in public schools, public displays of religious symbols, etc.) as simply being questions of "church and state," we radically oversimplify what those two terms mean. We know this as applied to "state," which is commonly debated in constitutional scholarship. Yet differing visions of "church" receive comparatively little attention, not only among different religions but among different visions of the meaning of religion itself. This tends to reduce religious thinking to its lowest common denominator, and mischaracterize the nature of contentious disputes such as the instant one.

In short, both the claims that anti-gay religious sentiment is "homophobia" and the claim that it is "religion" are incorrect. Certainly, homophobia is present in religious communities of every type and denomination. And certainly, were someone to write Leviticus 18 today, it would be fair to accuse him or her of homophobia. Yet homophobia is not the reason why gay rights ordinances, same-sex marriage, and antidiscrimination provisions are religiously significant. If legal activists seek to address these issues effectively, they must first understand what they are.

As a practical matter, it has been and will continue to be ineffective to treat a religious stage dispute as simply being about church and state, or rationality and homophobia. Nor will it work to condescend to the barely-literate Christians, patronizing them into seeing the light of stage 5 or 6. It is, as I will suggest below, possible to make authentic stage 4 claims about homosexuality -- not just scriptural arguments of the type cited earlier, but the kind of personal testimonies that make such interpretive moves necessary in the first place. But it is only possible to do so once the nature of the debate has been recognized and the advocate has agreed to place herself, in her particularity and with her history, into the stage 4 context of spirit, soul, and redemption. Otherwise, we are, with increasing anger and frustration, simply failing to communicate.

B. How Not to Move from Mythic to Post-Mythic

If it is true that homosexuality is religiously significant because it destabilizes the ordered world of mythic religion, then we should expect that those initiatives which most destabilize the mythic world will meet with the most opposition. This is exactly what has transpired in the case of same-sex marriage. Studies have shown that same-sex marriage is supported by under 40% of Americans, compared with over 80% who support equal job opportunities for gays and lesbians.190 Most interestingly, as the study by Persily et al

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has shown, public opposition to homosexuality rose markedly in close correlation to media coverage of gay marriage, and particularly in the wake of the media coverage of *Lawrence*, which overwhelmingly -- and despite the actual holding in the case -- discussed same sex marriage. 191 (Interestingly, opinion shifted comparatively little in response to *Goodridge*, which Persily et al. shows the public is influenced more by "broad signals" and media coverage than actual holdings. Obviously, that the *Goodridge* case was a Massachusetts Supreme Court case, rather than a U.S. Supreme Court case, doubtless contributed to its lesser impact. 192)

Of course, there have been numerous analyses of the same-sex marriage debate, focusing both on the *Goodridge* decision 193 and the larger legal and structural issues in question, 194 some of which echo the themes of order and chaos I have discussed here, 195


193 For the background of the decision by an attorney involved in the *Goodridge* litigation, see Mary Bonuato, Goodridge in Context, 40 Harv. C.R.-C.L. L. Rev. 1 (2005) (describing the political and legal ramifications of the Goodridge decision in Massachusetts and nationwide). Following the Massachusetts decision, other courts nationwide handed down decisions on gay marriage. Some of these cases include, Lockyer v. City of San Francisco, 95 P.3d 459 (Cal. 2004) (invalidating the Mayor of San Francisco’s decision to issue marriage licenses to same-sex couples without a judicial determination that the statute defining marriage was unconstitutional); Anderson v. King County, 158 Wash.2d 1 (2006) (reversing lower court decision finding Washington’s ban on same-sex marriage unconstitutional); Lewis v. Harris, 188 N.J. 415 (2006) (upholding ban on same-sex marriage but finding that same-sex couples entitled to benefits of marriage); Hernandez v. Robles, 7 N.Y.3d 338 (2006) (finding ban on same-sex marriage constitutional).

and I do not wish at this time to add to the substantive debates on the merits. Yet whatever the policy perspective, discussions of "traditional marriage" (and whatever its opposite is said to be) are impoverished without a theoretical matrix for understanding the dynamics of tradition and change in religious communities. One often hears the "left" ridicule the "right" for its hyperbolic statements that same-sex marriage threatens traditional marriage, as if men married to one another were a legion of doom plotting against heterosexual couples. But insofar as "traditional marriage" is a particular socio-religious construct of stage 3 mythic religion, then same-sex marriage, which is a socio-religious construct of stage 5 pluralistic religion, does "threaten" the earlier form; it threatens to supplant it with a later understanding not only of marriage, but of religion itself.

None of this is to suggest that such a transformation is not important. Stage 3 mythic religion, after all, is pre-democratic (stage 4) and pre-pluralistic (stage 5). It is not susceptible to rational inquiry (stage 4), and is precisely what Locke sought to separate from orderly democratic government. There are good reasons why a pluralistic democracy would seek to circumscribe its influence, particularly when its non-rational and impermeable norms are yoked to the power of the state. However, it is to insist that same-sex marriage and similar redefinitions of traditional norms are, indeed, a transformation: specifically, a transformation from stage 3 mythic religion to stage 4 or 5 post-mythic religion.

All gay rights issues are not created equal, and my theoretical claim is that those which represent significant transformations in religion itself are more equal than others, a claim borne out by the disparities in policy positions cited by Persily et al. Politically, such transformations may be expected to be quite costly, as we have seen in the case of same-sex marriage, because what is being changed is not purely a matter of politics or constitutional law, but of religion itself. For this reason, even if same-sex marriage is pursued as a political goal, it is unwise to pursue it in purely political terms. In addition to the many non-religious effects it may indeed have on societal structures, same-sex marriage is a transformation of a religiously significant institution in a way that transforms the meaning of religion itself. As such, the tools best suited to the job of advocacy will be those appropriate to the subject matter: religious reasoning, to an extent, but more importantly, as I describe in the last section, transformative religious experience.

This tendency to regard religious-legal questions as purely legal in nature stems from the way church/state questions are usually framed, which is how law conceives religion, rather than as how religion conceives law. As Robert Cover magisterially
demonstrated, we live in worlds (plural) ordered and given value by law. Public law does not merely arbitrate between different nomian universes; it is jurispathic as well as jurisgenerative; it can imperialize one upon another; it can destroy as well as preserve. In a Coverian sense, law is itself a religious force, even laws which, from a conventional perspective (stage 4) are entirely secular in nature. This is especially true because, for Cover, law is "a system of tension or a bridge linking a concept of a reality to an imagined alternative-that is." In other words, law does not merely regulate; it aspires, it connects the "is" to the "ought." Thus to simply maintain that same-sex marriage is a species of pluralistic value of "live and let live" is to ignore the fact that that value is, itself, a religious value (stage 5) that, when applied to religious questions such as marriage, is a theological argument. "Live and let live" denies the aspirational intent of religious law, or at least, replaces one nomian aspiration with another.

We do not move from mythic to post-mythic by pretending the change isn't there, or by agitating for it in terms inappropriate to the task. I have suggested that the reason same-sex marriage is so different from same-sex civil unions and same-sex antidiscrimination protection is that marriage represents a change in the meaning of religion itself. If this is correct, then different tools will be necessary than those of purely political or legal advocacy. But what are they?

C. Going to Hell for the Sake of Heaven

As a religious queer Jew, I experience the Divine in love, and eclipsed in the closet; whatever my theology, my experience is that mythic picture of reality is simply not true. And experience has a tendency to shatter theology. Indeed, the "closet" is entirely too cozy a metaphor for the net of deception, self-hatred, repression, and denial that constitutes the life of a hidden homosexual: try for a day to lie to everyone you know about something that is of the utmost importance to you; to scold yourself, bitterly, every time you feel an urge to eat, sleep, or use the restroom; to repress those urges until you are starved, exhausted, and wracked with pain. And then, if you like, repeat it every day until something breaks.

198 Robert Cover, "Nomos and Narrative," 97 Harv. L. Rev. 4, 4 (1983) ("We inhabit a nomos-a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.")
199 Id. at 40-43.
200 Id. at 9.
201 This is, of course, why experiential religious forms such as mysticism are feared and circumscribed by traditional religious normative structures. At the same time, the anomian experiential element is an irreducible component of the sorts of truth such mysticism seeks to reveal, for experience is the only way to "prove" its assertions. See Ken Wilber, Eye to Eye: The Quest for the New Paradigm 33 (1983)("When someone asks 'Where is your empirical proof for transcendence?' we need not panic. We explain the instrumental methods of our knowledge and invite him or her to check it out personally. Should that person accept and complete the injunctive strand, then that person is capable of becoming part of the community of those whose eye is adequate to the transcendent realm. Prior to that time, that person is inadequate to form an opinion about transcendental concerns. We are then no more obliged to account to that person than is a physicist to one who refuses to learn mathematics.")
For me, as for many gays and lesbians who wrestled with their identities prior to "coming out," the something that breaks is nothing other than the bulwark of mythic religion: the subservience of the self to God mediated by authority. At the time of that breakage, I feared that the whole edifice of traditional Jewish observance and belief would fall with it. This is what a stage transformation looks like before it occurs. Instead, what emerged, for me, was a new openness, a more honest religiosity, a rich, experiential, pluralistic religious consciousness. I left behind the mythic world that had become a prison, and, to my surprise, a new world appeared, in which the mythic structures of the past are not so much refuted as surpassed. They still remain, with all their majestic force and power, but as forms, as narratives -- not as science or dogma.

This was not a result of a mere peak experience. Other mystics, of course, reach the opposite conclusions. They may have the same experiences (states), but they interpret them according to different categories of myth, nation, and Scripture (stage), and thus reach different, even terrifying, results. God loves us, therefore God really wants gay people to repent and become straight. Allah loves us, therefore Allah really wants the evil empire to be destroyed. The land is holy, therefore the land must be ours. Remember, George W. Bush is a mystic too, with a personal, mystical relationship with God. The naive cliche that spiritual practice will naturally lead to "compassionate" liberal political values is simply not true.

The truth is that transitory religious experiences are relatively cheap. Chant a mantra for four hours, or dance ecstatically, or pray or meditate for several days, or take psychedelic drugs, and powerful and potentially transformative state changes will result. But the type of transformation they effect depends not on the state alone, but also on the stage of one's religious development. Stages are expensive; the price is often deep personal pain. There's a moment in Huckleberry Finn where Huck realizes he has a choice. He's been told all his life that if he hides runaway slaves, he will go to hell. But he's gotten to know Jim, a runaway slave, as a human being. What does he do: conform with his mythic religion, or listen to his heart? Huck's decision -- "All right, then, I'll go to hell" -- is the epitome of moving from one stage to the next. The old mythic structure is discarded, and the real work of conscience begins. This is, after all, what happened to Paul himself, on the road to Damascus: an old religious structure crumbles in the face of shattering and unmistakable experience.

But how can such experiences take place on a large scale, if they are more than mere experiences and require such investment of the self? And what is the proper role for such radical subjectivity in a consensual system of law and communication?

First, while only with a sustained personal encounter like Huck's with Jim's is a human reality strong enough to force ideas until they break, such encounters are increasingly a part of our ordinary civic life. Media-mediated images of children in

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203 On the relationship between religious value and transformative peak experience, see A.H. Maslow, Religions, Values and Peak-Experiences 24-29 (1970). Maslow's text itself is a manifesto of stage 6 individualistic mysticism as against both stage 5 scientism and stage 4 dogma.
Alabama being sprayed by fire hoses, the gay teenager who kills himself, Rosa Parks, Matthew Shepard, *Huck Finn, Brokeback Mountain* -- these are not theories and theoreticians, but people with narratives strong enough to dislodge ideas, and they are increasingly accessible. More prosaically, simply knowing someone gay may be powerful enough for some: over the last twenty years, in which condemnation of homosexuality has fallen from 78% to 57%, and the number of people who said sexuality was a trait rather than a choice rose from 16% to 32%, the number of people who said they knew no gays or lesbians dropped from 54% to 27.

In other words, what is required is a shift in what we consider relevant to our legal and religious-legal conversations. If what seems to be a political/legal conversation is in reality one about the meaning of religion, then what is needed is not waving the flag of civil liberties, or demanding that people fence their religion into "private" places. Nor is it the cloistering of our spiritual selves, even as we "out" our sexual ones. But only by engaging the Religious Right in their abandonment of polite conversation; by carrying on the same kinds of religious conversations the Right does, with our full selves on view; by taking up the religious imperative to testify, to tell stories, and, on a personal level, share the heartbreaking honesty of the real. Not, that is, third person argumentation but first-person testimony. In a sense, these are religious imperatives, but they are also how law constitutes itself as well. As Cover put it:

> The codes that relate our normative system to our social constructions of reality and to our visions of what the world might be are narrative.... To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. It requires that one integrate not only the 'is' and the 'ought,' but the 'is,' the 'ought,' and the ‘what might be.’ Narrative so integrates these domains. Narratives are models through which we study and experience transformations that result when a given simplified state of affairs is made to pass through the force field of a similarly simplified set of norms.

Normative law itself is a narrative, and as such has its own plot and symbolic meaning. But as narrative, it is susceptible to narrative, to interruptions in the plot and shifts in symbolic referent. A change in the meaning of religion is a change in the *nomos* that religion creates -- and vice versa. And yet such changes need not involve revelations

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204 See Becker, supra, at 208-09, 211-12 (citing Suzanna Danuta Walters, *All the Rage: The Story of Gay Visibility in America* 3 (2001) and listing television shows with GLBT people).
206 Cover, "Nomos and Narrative," supra, at 10.
from the sky; as in Huck Finn's narrative, they are occasioned merely by the presence of the Other, the jurisgenetic potential of alterity.\textsuperscript{207}

Truly to confront the Other, however, requires that the Other be present, i.e., not to "cover," to echo Kenji Yoshino's recent work on the way gays and lesbians (and others) are forced to "cover" their identity, or to "pass" as the majority, even if they are no longer required to convert to it.\textsuperscript{208} Obviously, some degree of covering is required for cooperative endeavors to exist; we cannot be our full selves all the time. Yet ironically, what is often "covered" in public discourse of so-called "moral issues" are often the very factors that are necessary to move the conversation forward: personal narrative, personal experience, and personal transformation.\textsuperscript{209}

Luckily, the time is right: the anarchic rhetorical structures of contemporary American religious and political discourse are precisely about personal narrative, personal experience, and personal transformation. So are the religious values and narratives of evangelical Christians, which as we have already once mentioned are uniquely disposed to value individual testimony, introspection, and review of cherished beliefs. Of course, my personal relationship with God is hardly the province of typical liberal discourse; it is, indeed, the antithesis of it. But it is the only way to carry forward the conversation. Will civil discourse suffer as a result? I'm not sure -- but whatever its suffering is, it doesn't need the company of stifled, closeted gays and lesbians.

The move from stage to stage takes place when the force of experience compels it. (Likewise the effort to make an intra-stage reevaluation, as in the case of slavery discussed earlier; no amount of hermeneutical skill will succeed if there is not the urgent motivation to accept it.) Ironically, this process of religious development is one in which religious gays and lesbians have ourselves modeled. To be a self-accepting gay or lesbian person, one generally must go through a certain process of negation and affirmation. First, in homophobic societies, one is told that how one loves is wrong -- and often one believes it, sometimes, as I did, for many years of repression, self-loathing, and desperately trying to make things other than as they are. Then, at some point, to live a full life, one must learn for oneself that these statements are wrong, and that love is right. This inversion teaches, in an experiential way, the primacy of love, and is itself a font of poetry, art, and fullness of heart. As with Huck Finn, it also may entail a rejection of


\textsuperscript{208} Kenji Yoshino, Covering: The Hidden Assault on our Civil Rights 76-107 (2007). See also Backer, supra, at 586-590 (discussing negative stereotypes of "flouting" sexual nonconformity); Knauer, Homosexuality as Contagion, supra, at 482-83.

\textsuperscript{209} In this regard, I am in partial agreement and partial disagreement with Susan Becker's claim that "transformational learning" is a gradual process of "critical self-reflection of assumptions." Becker, supra, at 200-07. While I agree with Becker that the greater visibility of GLBT people is causing a shift in attitude, and that a larger-scale shift in "meaning perspectives" is required, I am less of the opinion that critical reasoning and discourse plays a central role. Given the religious nature of the ideologies in question, I see religious events such as peak experiences and personal encounters are more determinative, and more of a crisis, for believers.
one's stage 4 mythic religious upbringing. But sometimes, it is followed by a third stage: a development of a unique mystical conscience, in which one has learned directly and immediately what it is to love, and then applies that love to God, "with your whole heart and might."\textsuperscript{210} This process, in its different forms, engenders the queer mysticism we read in Rumi, Hafiz, and Judah Halevy; the poems of Whitman, Wilde, Sappho, and Shakespeare; the art of Michelangelo and Da Vinci.

In other words, at first, the religious lesbian or gay man loves religion and, thus, hates herself. Then, she affirms the self, and may hate religion. But sometimes, the two are reconciled. Yet even if this third option is chosen, gay religious consciousness is necessarily distrustful, because it has seen -- and, more importantly, felt -- how rules, codes, and even the operation of conscience itself can actually be tools of oppression and self-repression. It has known the reality of love and its repression. It will never go back. Of course, straight people may come to these realization also. But religious gay people must.

Thus, when I turn to legal text, I do so with all of these understandings: with my distinctive approach to the text, with my embrace of love as religiously essential, and with my appreciation of love as ultimately valid. It is not difficult for clever scholars to find ways to prohibit and permit; indeed, to permit something explicitly prohibited in the Torah is said to be a prerequisite to be admitted to the Sanhedrin.\textsuperscript{211} With proof-texts, everything is possible: bring in Leviticus’s prohibition against anal intercourse, and I'll bring in the love between David and Jonathan. Tell me about sexual governance, and I'll remind you that "it is not good for man to be alone."\textsuperscript{212} Cite from Joshua, and I'll quote Isaiah. Rather, the question is how we are to read, how we interpret even our deepest spiritual experiences. In light of the plasticity of rational reasoning, the emotive/cognitive conditions in which we first approach the text become paramount, and the legal-hermeneutical process is itself conditioned by them.

This reconfigures the legal question, which now becomes less about the particulars of interpretation than the nature foundations of the interpretive act itself. What forms of evidence are useful in this legal debate? Ought I remain in the third-person analytical frame of the majority of this article, or ultimately, is it essential to enter a different, more narrative mode of exposition in order to conclude it? Are we convinced of the truth of love, or do we continue to doubt it? And if we are, are we commanded, as the Talmudic sages felt themselves to be with regard to the "rebellious son" and other troubling Biblical laws, to read radically in order to guard the Bible conservatively?

The transformation progressives are asking from our traditionalist counterparts is a deep one: it is to move from literal to figurative, from certain to uncertain, from simplicity to complexity. And yes, even from order to chaos -- or at least, to a place in which the neat dichotomization of reality no longer holds sway over the emotional life. But there is no choice. Mythic religion will never accept sexual pluralism, because

\begin{footnotesize}
\textsuperscript{210} Deuteronomy 6:5.
\textsuperscript{211} BT Sanhedrin 17a; see also JT Sanhedrin 4:22a.
\textsuperscript{212} Genesis 2:18.
\end{footnotesize}
sexual pluralism undermines the idea of order, and subverts authority. Such chaos looks like the end of religion. And yet, the tragic and beautiful truth is that it's really the doorway to a new beginning, practically begging to be unlocked. Or broken down, by the force of joy or tears.