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Speaking Its Name: Sexual Orientation and the Pursuit of Academic Diversity

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SPEAKING ITS NAME: SEXUAL ORIENTATION AND THE PURSUIT OF ACADEMIC DIVERSITY*

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I should like everyone to be like me, but everybody has his own particular gifts from God, one with a gift for one thing and another with a gift for the opposite.

1 Corinthians 7:7

We used to talk about "affirmative action;" now we talk about "diversity." Why the change? Is this just another instance of the lure of fashionable words, as we rush to be the first on our block to call swamps "wetlands"? Not at all. Something quite real underlies this change in terminology: a profound change in the assumption on which we base our commitment to include hitherto excluded groups. The claims of affirmative action are essentially rights-based claims founded on principles of corrective or distributive justice; the claims of diversity are utilitarian claims based on a communitarian notion of "the good." Defending the preferential hiring of members of a particular group solely on affirmative action grounds implies that members of that group are the only beneficiaries of the practice; defending it on diversity grounds suggests that the practice benefits nonmembers as well.

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† Norman and Edna Freehling Scholar, Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology. A.B., 1968, J.D., 1972, Harvard. Some of the ideas advanced here first emerged in addresses I delivered at University of Chicago Law School and Chicago-Kent College of Law, and I have endeavored to preserve in this Essay the brashness and informality of those speeches in order to convey some sense of the occasion of their delivery. To the reader who expects more guarded qualification and substantiation than this Essay provides, I can only echo the late Lord Clark's admission that "generalisations . . ., in order not to be boring, must be slightly risky." KENNETH CLARK, CIVILISATION xv (1969). My views have been refined and expanded through correspondence with Kenneth Karst and Lawrence Solum and discussions with Anita Bernstein, Jerry Dworkin, Mary Louise Fellows, Steven Heyman, Linda Hirshman, and Dale Nance. I must also acknowledge my debt to Nan Hunter for her extraordinarily compelling expression, "gender orthodoxy." To all these people I am immensely grateful, but I hereby absolve them of all responsibility for any blunders or solecisms this Essay may contain.
The experience of oppression and exclusion generates a distinctive outlook and sensibility. Just as a marriage counselor can detect problems invisible to the two spouses, so an outsider to a majority-driven legal culture can illuminate the unexamined corners overlooked by those who instinctively adopt the majority's presumptions. The search for diversity is an acknowledgment that these distinctive outsider voices must be heard in the academy if rational discourse is to be productive or even possible. In this Essay, I shall argue that the gay and lesbian experience produces just such a distinctive voice and that academic diversity requires the inclusion of lesbians and gay men.

I must begin with the potentially tedious matter of terminology, for my decision to use the words “gay” and “lesbian” on the one hand and “heterosexual” on the other may seem inconsistent. The term “gay” has met with considerable resistance in scholarly circles: resistance that may stem from a suspicion that “gay” is simply a hip or campy neologism while “homosexual” is a solemn, detached term with the weight of centuries behind it. In fact, “gay” is a much older usage than “homosexual.” The word “gay”—as a term relating to a style of erotic expression—can be traced through Indo-European languages at least as far back as thirteenth century Provençal, although in that language it related to the conventions of what is now called “courtly love.”

The word “homosexual,” on the other hand, was coined in the late nineteenth century by German psychologists. Formed by appending the Greek prefix “homo” to the Latin-derived word “sexual,” this spurious compound is silly and even tautological

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1. To some extent, the word “gay” can be applied to both men and women, but most lesbians prefer their own term. Although lesbians and gay men share powerful shaping experiences as dissenters from gender orthodoxy, lesbians differ from gay men in important ways, see infra note 23 and the habitual use of “gay” to refer to both genders depreciates those differences.

2. Even people willing to apply the word “gay” to their contemporaries shrink from applying it historically, so that while Rock Hudson may have been gay, Michelangelo remains resolutely homosexual. But see John Boswell, Christianity, Social Tolerance, and Homosexuality 217 (1980) (applying the word “gay” in the context of medieval European sexuality).

3. See Boswell, supra note 2, at 43-44.

4. The term “courtly love” is “a medieval [largely literary] concept of love in which the relationship between lover and lady approximated closely to that between vassal and lord.” 3 Encyclopaedia Britannica Micropaedia 197 (1974). An obvious connection exists between this literary conceit and homosexuality.

5. See Boswell, supra note 2, at 42.
when used to describe a person. The Greek "homo" means "same" as in homogeneous, homonym, homogenized, and so forth. Thus, to describe a person as homosexual is to say that he or she is of one sex: a description that applies to all persons except true anatomical hermaphrodites. A relationship or a physical act may be appropriately described as homosexual, but not a person. Furthermore, gay people prefer to be called gay and refer to themselves as gay,6 and within certain limits, every distinctive group is entitled to be called what it chooses.

I use the word "heterosexual" to identify persons who are not gay or lesbian, not because it is etymologically any less objectionable than homosexual—it is not—but rather because there is no good substitute. The term "straight," unlike "gay," is a very recent coinage and, so far as I can tell, was not coined by heterosexuals to apply to themselves; it was likely coined by gays and lesbians. Because the term "heterosexual" was coined by heterosexuals to apply to themselves,7 my use of the term is consistent with my belief that people should be called by the terms they have chosen. Moreover, the word "straight," as a personal characterization, has traditionally conveyed notions unrelated to sexual orientation: notions not always complimentary. A probable shortening of the phrase "straight arrow," "straight" can also mean rigidly conventional, as in "Should we invite Joe along with us to the Dead Milkmen concert?" "Nah, he's much too straight." And the word can also mean someone who does not use recreational drugs or is not under their influence at the time the adjective is applied. Accordingly, I use "heterosexual" but welcome suggestions for an alternative term.

The diversity argument for including more gays and lesbians on a law school faculty holds that they can be expected to: (1)

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6. The act of "naming" is an act of subordination. To the extent the majority controls what a distinctive minority is to be called, the majority controls the minority. Recently, many lesbian and gay activists have taken to calling themselves "queer." This seeming revival of an old pejorative term is, in fact, an effort by the lesbian and gay movement to seize from its adversaries the naming initiative (and thereby the power that the act of naming represents), so that a weapon once used against lesbians and gays now becomes a lesbian and gay weapon and an instrument of their self-realization. One can find an African-American analog in the name of the rap group N.W.A. ("Niggers With Attitude").

7. The word "homosexual" was coined for the purpose of labeling a group considered pathological by the coiners. "Heterosexual" was coined not to label the majority but to distinguish it from the stigmatized group.
provide gay and lesbian students with needed role models; (2) provide heterosexual students and faculty members with an image of gay and lesbian competence and value; and (3) expand the school’s intellectual boundaries, as gays and lesbians present points of view that are both different from those presented by heterosexuals and necessary to a full understanding of important issues.

The first of these rationales requires little elaboration. Diversity by itself is a neutral quality: neither desirable nor undesirable for its own sake. Travel to Switzerland would increase the diversity of my life experiences; so would a broken leg or, heaven forbid, a performance of Wozzeck. Diversity has value only insofar as it furthers the achievement of something else: something that is desirable for its own sake. One aim of a political society is the maximization of human fulfillment. Each person should be permitted, even encouraged, to realize most fully his or her human potential and lead what Aristotle regarded as the virtuous life. Thus, a society—whether an academy or a polity—characterized by the widest possible range of nonvicious, nondestructive orientations furthers this goal of maximum realization and participation. The presence of lesbian and gay faculty members encourages lesbian and gay students by assuring them that they are not alone and teaches heterosexual students and faculty who might otherwise be inclined to shun gays and lesbians that homosexuality is nothing to be feared.

This last point is, in essence, the second rationale for including more lesbians and gay men on a law school faculty: a role-model argument that targets heterosexuals and the need to expose them to examples of gay and lesbian competence and power. It has been suggested that homophobia—the fear of homosexuality and aversion to people perceived to be gay or lesbian—would disappear in an instant if one morning every gay man and lesbian awoke with a distinctive tattoo on the forehead. While this assessment may be overly optimistic, it does correctly posit that the invisibility of most gays and lesbians contributes to their oppression. The ground beetle’s camouflage may protect the creature from isolated predators, but it increases the likelihood of his being stepped on.

The presumption of heterosexuality is so powerful that many people who are otherwise quite sophisticated firmly believe that

8. The virtues Aristotle had in mind were courage, temperance, liberality, munificence, pride, good temper, friendship, truthfulness, ready wit, and justice.
they do not know any gay men or lesbians and that anti-gay or -lesbian sentiments or actions, therefore, will not hurt anyone they care about. Six years ago, late one night, a young man emerged from a gay bar in Florida and was standing on the street in front of it when a pick-up truck drove by. Well, it didn't quite drive by. The driver deliberately swerved the truck onto the sidewalk, struck the man standing there, and then drove off with what was now a corpse pinned onto the hood of the truck, from which it fell off several blocks later as the truck sped away. The man was killed because the driver supposed he was gay. I can't help thinking that if the driver knew that the man who replaced his carburetor was gay or that the woman who installed his telephone was a lesbian, maybe—just maybe—he would not have seen this young man as an object of loathing. Historically, African-Americans made their political and economic gains primarily through court decisions; on racial issues courts were ahead of grass-roots America. But that has not been true for gays and lesbians. Their gains have come primarily through the political process, so they must rely on greater visibility and the resulting acceptance to improve their position in American society.

The last of the three justifications—that the presence of gays and lesbians on a law faculty will enrich the intellectual climate—is perhaps the most controversial, so I should like to devote the most attention to it. The scholarly study of law is the peculiar competence of the law school. Legal discourse that excludes the views of a distinctive, significant minority group provides those who participate in the discourse with a distorted vision of reality, leaving them ill-equipped to confront and make sense of society's present circumstances. As outsiders, gays and lesbians are able to bring a fresh perspective to legal issues, affording the entire legal academic community the pleasure of sharpening their legal instincts and the opportunity of enlarging their knowledge of the human condition, so that the ideas shaped in the law school may generate a legal regime that enables all citizens to reach their potential.

9. See Laurence Zuckerman Open Season on Gays; AIDS Sparks an Epidemic of Violence Against Homosexuals, TIME 24 (March 7, 1988).


I do not deny that the shared history that helps define us makes black people different from white people. My quarrel with the diversity forces is that it is far from evident to me how any of this translates into a single, genuine, preferred black perspective, a voice that is specially to be valued.

But see infra note 15.
Exactly what will gay and lesbian law faculty add to the debate and why is their contribution likely to be associated with their sexual orientation? First, there is the purgative value of the so-called gay sensibility. Though considerable controversy exists as to whether a person's sexual orientation influences her perceptive or analytic faculties, I am persuaded that there is a gay sensibility, possibly derived from gays' and lesbians' instinctive awareness of the absurdity and arbitrariness of gender-based expectations\textsuperscript{11} and of the damage such expectations can inflict. Oscar Wilde provides an instructive illustration. In 1887, Wilde was invited by Thomas Wemyss Reid to assume the editorship of \textit{The Lady's World: A Magazine of Fashion and Society}. After reviewing the back issues that Wemyss Reid had sent him for his opinion, Wilde wrote to him:

I have read very carefully the numbers of The Lady's World you kindly sent me, and would be very happy to join with you in the work of editing and to some extent reconstituting it. It seems to me that at present it is too feminine, and not sufficiently womanly. No one appreciates more fully than I do the value and importance of Dress, in its relation to good taste and good health: indeed the subject is one that I have constantly lectured on before Institutes and Societies of various kinds, but it seems to me that the field of . . . mere millinery and trimmings is to some extent already occupied by such papers as the Queen and the Lady's Pictorial, and that we should take a wider range, as well as a high standpoint, and deal not merely with what women wear, but with what they think, and what they feel.\textsuperscript{12}

What an extraordinary letter to have been written by a gentleman in Victorian England! True, we may smile now at the presumption of a man's undertaking to tell women what they think and feel, but I maintain that few heterosexual Englishmen of Wilde's time were capable of writing such a letter. I have in mind not simply

\textsuperscript{11} “But how should a man act?” asks Gore Vidal's Myra Breckinridge, when an acquaintance remarks that a man should act like a man. “He should ball chicks,” comes the confident reply of Rusty, the novel's paradigmatic heterosexual stud. \textit{Gore Vidal, Myra Breckinridge} 152 (1970). (The Tailhook boys would seem to agree. \textit{See infra} note 14.

\textsuperscript{12} \textit{Quoted in Richard Ellmann}, \textit{Oscar Wilde} 291 (1987).
his regard for women's intellect, but also his juxtaposition of "feminine" and "womanly." That shows a sensitivity that is almost shocking in its modernity. (He also prevailed upon Wemyss Reid to change the magazine's name from The Lady's World to The Woman's World.)

Another example can be drawn from the work of W.S. Gilbert and Arthur Sullivan. Heterosexual Gilbert's original title for the work we know as H.M.S. Pinafore was H.M.S. Semaphore (to rhyme with "Give three cheers and one cheer more"). It was gay Sullivan\(^\text{13}\) who suggested the name "Pinafore." A pinafore is a kind of apron worn by young girls as an overdress; John Tenniel's drawings for Alice's Adventures in Wonderland portray Alice wearing a pinafore. What a deliciously subversive touch, naming a naval vessel after such an object. What a wonderful way of mocking military chest-thumping. Yes, mockery of the braggart soldier is at least as old as Plautus, but gays and lesbians seem particularly acute at recognizing the misogyny underlying the muscle-flexing.\(^\text{14}\) To apply the name "pinafore" to a warship is perhaps the perfect comic response.

\(^{13}\) The evidence of Arthur Sullivan's sexuality is less conclusive than that of W.S. Gilbert's or Oscar Wilde's. Indeed, the author of a recent book on Gilbert and Sullivan asserts with surprising confidence that Sullivan was, for many years, the devoted lover of Mary Frances Carter Ronalds. DIANA BELL, THE COMPLETE GILBERT AND SULLIVAN 29-30 (1989). Other biographers, however, discount this possibility. See CARYL BRAHMS, GILBERT AND SULLIVAN: LOST CHORDS AND DISCORDS 69 (1975); PERCY M. YOUNG, SIR ARTHUR SULLIVAN 131 (1971). Sullivan's contemporaries undoubtedly believed him to be gay. BRAHMS, supra at 46. Indeed, on at least two occasions, the magazine Punch caricatured Sullivan by portraying him in women's clothes, see LESLIE BAILY, THE GILBERT & SULLIVAN BOOK 183, 249 (1961), and one of these caricatures depicted the begowned Sullivan standing atop an open violin case belonging to Alfred, Duke of Edinburgh, rumored to be his lover. See BRAHMS, supra at 57.

\(^{14}\) An infamous demonstration of military misogyny occurred at the recent convention in Las Vegas of the Tailhook Association, an informal association of active and retired navy fliers.

The most notorious scenes occurred in a third-floor hallway dubbed the "gantlet [sic]," where it was a Tailhook tradition to yell and pound on the wall and jeer at any women walking down the hall.

Investigators said 26 women, more than half of them naval officers, complained that they had been fondled as they stumbled, or were forced, through the two lines of beer-drinking aviators. All 26 were "sexually molested to varying degrees," the report said.

David Evans, Navy's "Animal House" Party Investigated, CHICAGO TRIBUNE, May 1, 1992, § 1, at 2. Reports of such goings-on have caused more than one woman to wonder, "If you hate us so much, why do you have sex with us?" Catharine MacKinnon has provided one possible answer. See infra note 18 and accompanying text.
I have asserted that a gay or lesbian scholar is likely to present a different and important point of view with respect to issues of concern to lawyers and legal scholars generally.\textsuperscript{15} To illustrate, I offer two examples: pornography and abortion. Most lawyers and scholars who defend pornography against censors do so with their noses held. They take pains to disclaim any fondness for it, confining their defense to invocations of First Amendment values and the need to preserve freedom of thought. But when pornography is attacked as fostering the brutalization and exploitation of women, and defended only with the chilly abstraction of the First Amendment, pornography may come out the loser: a form of shouting fire in a crowded theatre. So I should like to argue that pornography\textsuperscript{16} is good. I maintain that this argument must be heard if the pornography debate is to produce a sound policy result and that this argument is more likely to come from gay men than from other segments of the population.

Central to the feminist anti-pornography argument\textsuperscript{17} is the notion that sexuality serves as an instrument of male domination:

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\item[15.] Cf. Jerome McCristal Culp, Jr., \textit{Toward a Black Legal Scholarship: Race and Original Understandings}, 1991 DUKE L.J. 39. [A]re we black scholars or are we scholars who happen to be black. The answer I provide is clear, if controversial. We cannot separate our blackness from the rest of ourselves. We are both black and scholars, and our blackness influences who we are, what we teach, and how we view the world. We can and do perform within some forms of traditional legal scholarship, but there are some assumptions that we cannot make about the world or how the world functions. We bring that notion of who we are to the discussion, and it does not simply color the discussion; it infuses the discussion with our being. \textit{Id.} at 44.
\item[16.] Some people distinguish between \textquote{\textsc{pornography}} and \textquote{\textsc{erotic}}, reserving the former term for materials of a particularly violent, debasing, or \textsc{outré} nature. \textit{See}, e.g., Gloria Steinem, \textit{Erotica and Pornography: A Clear and Present Difference}, Ms., Nov. 1978, at 53. I do not make such a distinction in this Essay. By \textquote{\textsc{pornography}}, I mean any written, aural, or visual materials which, for the purpose of producing or enhancing sexual arousal, present (1) one or more individuals performing sexual acts, or (2) one or more individuals, with their breasts, buttocks, or genitals exposed, in circumstances or attitudes associated with sexual desirability.
\item[17.] I do not mean to suggest by my phrase \textquote{feminist anti-pornography argument} that all feminists are opposed to pornography. Indeed, there is strong feminist opposition to the anti-pornography forces. \textit{See generally} \textit{Women Against Censorship} (Varda Burstyn ed. 1985).
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[S]exuality is the dynamic of control by which male dominance—in forms that range from intimate to institutional, from a look to a rape—eroticizes and thus defines man and woman, gender identity and sexual pleasure. It is also that which maintains and defines male supremacy as a political system. Male sexual desire is thereby simultaneously created and serviced, never satisfied once and for all, while male force is romanticized, even sacrilized, potentiated and naturalized, by being submerged into sex itself. 18

One can argue that this reasoning does not apply to gay and lesbian sexuality. Many heterosexuals assume that gay and lesbian sexual relations necessarily ape stereotyped heterosexual relations, with one partner as submissive19 in sex as in nonsexual relations: submissive either by nature or in response to society’s expectations of submissiveness. In fact, things are considerably more complex. First of all, the very act of sexual role-playing, when engaged in by persons of the same gender, redefines the sexual roles; and that very act of redefinition provides much of the erotic charge. Furthermore, and perhaps more important, a partner who is sexually submissive may be extremely assertive and even aggressive in his or her nonerotic life. The adoption of a submissive role in sex may serve as a welcome respite from the burdens of being in control; it can be a relief to let someone else set the agenda. Finally, “submissive” should not be taken as a synonym for acquiescent. In a sadomasochistic relationship, for instance, it is typically the “masochist” who is in control, because the masochist effectively sets the limits.

As to pornography’s potential for engendering an exploitative sexual climate among gays and lesbians, one must keep in mind an important distinction:

While it is true that the viewer, sexually aroused, lusts after the object, it is equally true that he may also want to be that object. This element of identification with as well as


19. The term “submissive,” when applied to a sexual partner, is understood in gay male circles to refer to the partner who is penetrated during anal sex. The term can also be expanded to include the “bottom” or “masochist” in a sadomasochistic relationship.
desire for the sexual object distinguishes gay and straight porn.20

But I have not set out to refute the feminist anti-pornography argument, so much as to offer a counterweight to it: that pornography is a positive good in this society. I start with the assumption, which I hope we all share, that sex is good. (I am talking about sex, not brutalization or exploitation). That anything which assists in sexual expression and pleasure is good. That anything which enables people to develop as sane, nurturing sexual beings is good. Gays and lesbians are unique among despised minorities in that they are the only such group that does not share their minority status with their parents.21 While most children of color have parents of color, most gay and lesbian children have heterosexual parents. A child of color who is subjected to racially-motivated verbal abuse and physical violence on the streets or in school has at least a good chance of receiving a dose of racial pride at home.

I remember feeling an emotional dissonance between ending the pledge of allegiance at school "with liberty and justice for all," and going home to see TV news footage of blacks fire-hosed for demanding to eat and walk where ever they chose. In the integrated and white middle-class neighborhoods of Los Angeles, racial epithets had been hurled at me. Yet the racial violence seemed distant and


21. A colleague has pointed out that the minority status of the disabled and the obese is, likewise, seldom shared with their parents. With regard to the former, I am inclined to respond that the disabled are not a "despised" minority. The able-bodied may pity them, fear them, and patronize them, but I do not think they despise the disabled as they despise gays and lesbians. (I except former Secretary of the Interior James Watt, famous for his "a black, a woman, two Jews, and a cripple" comment). The case of the obese is perhaps more difficult to distinguish. Parents often signal the most demoralizing kind of disapproval toward their obese children, and the fusillade of published and televised images celebrating thinness as the ideal may batter the obese into self-disgust. (Anti-obesity prejudice may be a branch of misogyny; fat jokes in television and films—DEATH BECOMES HER (MCA/Universal Pictures 1992), for instance—seem almost always to involve women.) On the other hand, there is no American jurisdiction that makes overeating a crime. There is no debate about whether obese people may marry or adopt children. I am tempted to assert that even if the difference between homophobia and anti-obesity prejudice is "only a matter of degree," the quantitative difference is so great as to amount to a qualitative difference.
surrealistic, and I never went home crying as a result of a racist remark.

Rather, the reality of my home was the most powerful one I had. The adults in my life told me I could do anything if I was determined and resourceful.

... [A] parent's encouragement, regardless of his or her economic or social circumstance, is more powerful than any cathode-ray-tube hero.\textsuperscript{22}

In contrast, a lesbian or gay child or teenager cannot find an encouraging role model in his or her parents. Indeed, parents are frequently as homophobic as their children's tormentors, creating a climate of hatred and isolation that poisons their children with self-loathing and not infrequently leads to their suicide. This isolation is the heart of the matter; the gay or lesbian teenager's numbing fear that he or she is the only one. Where can she look for reassurance? How can he learn not only that there are other similar people out there, but also that there is a whole culture ready to nurture and satisfy him?

For such a person, especially a male, the awareness of gay pornography comes as an inexpressible relief.\textsuperscript{23} He learns not only that others have the same yearnings, but that there are enough of them out there to make gay pornography profitable. He learns that the most powerful feelings he has—feelings he has been taught to suppress and despise—can be gratified not by anonymous, furtive encounters but in the affirming, exuberant interactions that can be portrayed in pornography. Heterosexual teenagers need no such reassurance. Every day, they see their peers openly engaging

\textsuperscript{22} Eric V. Copage, \textit{Prime-Time Heroes}, \textsc{N.Y. Times Mag.}, Feb. 2, 1992, at 12, 37.

\textsuperscript{23} Lesbians are, for two reasons, less likely than gay men to find in pornography a path to sexual and emotional expressiveness. First, awareness of accessible pornographic representations of women does not come as a major revelation. Representations of women as sexually available have been far more common in our society than similar representations of men. Indeed, "mainstream" erotic magazines like \textit{Penthouse} routinely present photospreads of women simulating homosexual acts, because heterosexual men are often aroused by such presentations. (This is not to suggest, however, that lesbians are likely to fancy such photo displays; in fact, pornography aimed at lesbians is quite different from the "lesbian" pornography aimed at heterosexual males). Second, many women have found the key to their sexual orientation in feminist writings and lesbian fiction, which, though frequently sexual in content, cannot properly be characterized as pornographic.
in heterosexual flirting and snuggling: what Oscar Wilde called "washing one's clean linen in public." Every day, they find reinforcement in the graphic or idealized depictions of heterosexual coupling that punctuate movies, television, and advertising. For lesbian and gay teenagers, however, this kind of mainstream reinforcement does not exist.

Constitutional scholars often characterize pornography as "low value" speech in the hierarchy of forms of expression protected by the First Amendment. In support of pornography's claim as "high value" speech, I should mention that pornography can serve as a manual of sexual instruction. This notion is so often employed ironically that any attempt to voice it in earnest usually meets with jeers, but I can offer a local example of pornography with a patently cognitive appeal. During the past decade, as it became apparent that AIDS was transmitted sexually, many people—gay men in particular—despaired of ever being able to enjoy sex again; they doubted that sex without an exchange of body fluids could ever be intimate or exciting. Others, owing perhaps to these doubts or to a misguided fatalism, continued their unsafe sexual activities. One organization in Chicago responded by producing and promoting what it called "The Safe Sex Calendar." In form, this was simply another beefcake calendar, though it used everyday Chicago men rather than professional models. But, each photograph showed two men engaged in (or simulating) a safe sexual act, so that the calendar sent two important cognitive messages: one to the brain's left hemisphere ("here is a particular kind of safe sexual activity you may never have considered before") and one to the right ("safe sex can still be good sex").

Pornography's educational effects can be felt by adults as well as by teenagers. Not every person becomes aware of his or her sexual orientation prior to adulthood. Society's homophobic bias

24. This phrase comes from Act I of The Importance of Being Earnest (Oscar Wilde 1952), in which it is applied to public flirtation between spouses. It suggests that such public displays are a form of boasting: not only boasting that one is loved but also boasting that one's love is of the "normal," sanctioned variety. A gay or lesbian teenager, forced to conceal his or her sexual orientation and consequently experience the demoralizing pain of exclusion, may similarly regard public displays of heterosexual affection by classmates as a form of showing off.

25. My assignment of messages to different hemispheres assumes that the person in question is right-handed. For an introduction to the different cognitive roles played by each of the brain's two hemispheres, see Kenneth L. Karst, Boundaries and Reasons: Freedom of Expression and the Subordination of Groups, 1990 U. ILL. L. REV. 95, 102.
all but extinguishes the sexual and romantic impulses of many gays and lesbians, who respond to popular pressure by falling into marriages before they are aware of their true inclinations. Those marriages cause incalculable pain to all concerned when nature finally bursts the shackles of enforced acquiescence. Through encounters with gay pornography, a man unaware of his gay orientation\textsuperscript{26} may make that realization in time to avoid a good deal of suffering.

The claim I am making is a modest one. I do not ask the reader to embrace my analysis of pornography. I seek only an acknowledgment that this view is an important one and must be considered in order to insure a comprehensive and productive debate on pornography. Dissenters from gender orthodoxy, gay men are far more likely than others to present this view.

The second issue with respect to which lesbians or gay men can offer a unique perspective is abortion. Many pro-choice commentators write as if the motivation behind the anti-abortion crusade was simple misogyny: another way of keeping women barefoot and pregnant and thus subservient to men. This view is engagingly captured in a wonderful piece of hyperbole: "If men got pregnant, abortion would be a sacrament."\textsuperscript{27} Much as I appreciate this bit of rhetoric, however, I cannot wholly subscribe to it. I believe abortion would be opposed even if male bodies bore pregnancy's burden, for the anti-choice movement is driven by an anti-sex impulse as well as a misogynistic one.

Here is a typical complaint from the anti-choice faction:

In recent years, the Constitution can usually be counted on to come down on the side of homosexuality, promiscuity and abortion on demand, opposing the Judeo-Christian values upon which this country was founded.\textsuperscript{28}

Anti-abortion advocates argue that abortion is wrong because it constitutes murder. Yet whenever they rattle off a list of America's problems and their list includes abortion, they do not link abortion

\textsuperscript{26} For the reasons discussed in supra note 23, this point applies more to gay men than to lesbians.

\textsuperscript{27} Gloria Steinem, \textit{The Verbal Karate of Florynce R. Kennedy, Esq.}, Ms., March, 1973.

with murder and brutality but rather with promiscuity, as if women wanted access to abortion so they could enjoy “free love.”

Many anti-choice politicians express a willingness to allow abortions in cases of pregnancies resulting from rape or incest. But why? These politicians assert that the abortion of a fetus is no less wrongful than the unjustified slaying of an adult, and they would hardly condone the wholesale killing of adults conceived in incest or rape. Why, then, do they condone the killing of fetuses so conceived? The answer is that blame is central to the anti-choice argument.

Let’s try a test, and it begins with a true story. A year ago, a widow and her fourteen-year-old daughter arrived at Cook County Hospital in Chicago for a previously-scheduled abortion, only to be turned away because of a recent ban on abortions at the hospital. The teenager, talking to a reporter, asked tearfully, “How am I going to raise a child? I’m trying to go to school, and my momma is still taking care of me. I can’t add to her burden with a grandchild.” Upon reading the teenager’s complaint, did you want to respond: “Well, you should have thought of that before you had sex; you’ll have to suffer the consequences.”? If so, you failed my test. Implicit in your analysis is the following syllogism:

Premise 1: Nonprocreational sex is bad and deserving of punishment.
Premise 2: The proper punishment for nonprocreational sex is for society to commandeer the offending woman’s

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29. “Catholic priest-sociologist Paul Marx, president and founder of . . . the largest worldwide pro-life organization, [says that] he has traveled to eighty-four countries all over the world, battling abortion and promiscuity.” Washington School Condom Program Threatened with Suits by Pro-Life Group, PR Newswire, May 18, 1992 available in LEXIS, Nexis library, Omni file.

The norm of chastity, which channels sexual energy into family life, has been effectively overthrown. It is none too clear what the benign consequences of this were supposed to be, but they are not apparent. What is apparent, however, is that the nation now faces sharply increased incidences of disease, abortion, illegitimacy, and divorce.


See also the litany “abortion, homosexual parents, sex education in elementary schools, and the handing out of condoms in . . . high schools” in Godfrey Sperling, What the VP Hath Wrought, CHRISTIAN SCI. MONITOR, June 23, 1992, at 18.

body and force her to carry any resulting fetus to term.

Conclusion: Abortion should be prohibited.

Because this “proper punishment” is visited only upon women, it is only natural that feminist critics of the anti-choice position should have focused their attacks on Premise 2. But Premise 1 is also worthy of examination—and condemnation.

Where does this anti-sex agenda come from? Who dictates that sex is only for procreation? Some point to the Bible, but the Bible condemns many acts that today’s laws and norms ignore altogether. A prude who cites Leviticus but eats shellfish or a misogynist who cites Saint Paul’s warnings to women but ignores his warnings to the wealthy is guilty of selective fundamentalism, which we must condemn as the rankest hypocrisy. Some assert that sex-for-pleasure is “unnatural,” by which they mean “unknown in the animal world.” Well, vaccination and literacy are likewise unknown among animals. Are we therefore to be deprived of both? Do the toad and the jackal prescribe the limits of human moral and scientific understanding?

Statutory prohibitions of abortion, like prohibitions of anal or oral sex, are a form of sexual and political subordination, for “[c]onformist cultures cannot tolerate challenges to social norms without risking challenges to existing patterns of political and economic power.” The social norm at issue here is that sex can be justified only as a means of procreation, not as an instrument of pleasure. Once that argument is accepted, can anti-abortion legislation come as a surprise?

31. See Leviticus 18:22.
32. See Leviticus 11:10.
34. See 1 Timothy 6:17-19; see also Matthew 6:19, 6:24; 19:16-24.
35. Selective fundamentalism is also a favorite weapon of the religious right in their war against lesbians and gay men. Saint John the Evangelist had perhaps the best response to this form of hypocrisy: “Anyone who claims to be in the light / but hates his brother / is still in the dark.” 1 John 2:9.
36. There is a tendency to use “recreational sex” as a catch-all term for any form of sexual behavior engaged in for purposes other than procreation. But such a term ignores the variety of motivations that may prompt such behavior. True, people may have sex simply because it feels good. But they may also have sex as a way of expressing love or as a way of giving or seeking reassurance. I would not dismiss these other motives as trivial or undeserving of our support.
38. As if to emphasize the link between homophobia and anti-choice sentiment, Randall Terry, founder of the anti-abortion group “Operation Res-
When gays and lesbians have sex, there is no possibility of procreation. Right from the first, they are aware of the arbitrariness and inhumanity of imposing on the act of love-making some sort of reproductive agenda. They are, for this reason, more likely than heterosexuals to focus their attention on the fallacies inherent in Premise 1. And because heterosexual males can be persuaded that Premise 1 restricts their pleasures as well, a pro-choice argument that focuses on Premise 1 is more likely to enlist their support.

One last point: A gay or lesbian law professor is more likely than his or her heterosexual colleagues to write about issues of primary concern to the gay and lesbian community. Such important issues include the rights of gays and lesbians to serve in the armed forces or as elementary school teachers, and the legitimacy of the ‘homosexual panic’ defense in homicide trials. Heterosexual scholars, it is true, may choose to write about these issues, but in doing so, they may subvert the power of their argument by nervously signaling their heterosexuality. Consider, for example, the following statement—a seemingly sympathetic account by an important theatre critic concerning the effect of AIDS on the New York theatre community—and observe how that sympathy is undermined by the critic’s gratuitous display of his heterosexual credentials:

No one is untouched. On the one hand—the human hand—you have the loss of people who were in mid career and already established. You also have the loss of a whole generation that should have come up to replace them, and you have a whole lot of people who are not sick themselves, at least not yet, but whose minds are much distracted by the illness of colleagues or friends, either knowing or fearing they will be sick eventually. My wife and I stopped counting after the deaths of a hundred friends and acquaintances.39

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The critic's gratuitous reference to his wife may be jarring, but it is not altogether inexplicable.

At the present time, lesbians and gays are outsiders. But are they outsiders because they are lesbian and gay, or because a heterosexist society excludes them? If we lived in a sexual utopia in which gays and lesbians experienced as much reinforcement and inclusion as heterosexuals, would there continue to be a uniquely gay and lesbian voice? I have suggested earlier that the gay and lesbian sensibility may be the product of their acute awareness of the tyranny of gender orthodoxy. But if no such tyranny existed, what then? If there were no implicit demand that real men "ball chicks" and that real women submit to real men, would a gay man's or lesbian's sensibility still differ from a heterosexual's? Would the experience of being a man who finds his primary intimate connections with other men or a woman who finds hers with other women continue to create a unique voice even in the absence of heterosexist repression? Is the gay and lesbian voice necessarily an outsider voice? Will it survive sexual utopia?

I hope we have a chance to find out.

40. See *Vidal*, supra note 11, at 152.