

*The Use of Bad Arguments in the Defense of Homosexuality**

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THERE CAN BE BAD ARGUMENTS for a morally defensible position. In this regard, one of the things that I find striking in the defense of homosexuality is the preponderance of quite bad arguments that are put forth—arguments that are often advanced by gays themselves. Now, a defective argument is not thereby a bad argument. A defective argument can be extremely subtle and sophisticated—indeed, downright ingenuous. So when I speak of bad arguments in defense of homosexuality, I do not have in mind subtle and sophisticated arguments that upon careful scrutiny and examination turn out to be unsound or simply invalid. Rather, I mean arguments that strike me as quite an embarrassment to the cause. In this essay, I shall examine two such arguments. One pertains to the naturalness of homosexuality. The other concerns the issue of homosexual marriage. I shall examine these arguments in turn. I shall present in §3 what I take to be the simplest and most decisive argument for gay marriage.

I am quite mindful of the reality that there are quite ludicrous arguments on all sides. But we can unwittingly legitimate a framework by supposing that we must meet a challenge that has been raised within that framework, when the truth of the matter is that the framework itself is morally and intellectually suspect. It seems to me that some of the bad arguments in defense of homosexuality do just that.

At the outset, a caveat is perhaps in order. For the liberal with regard to homosexuality, much of what I shall say may very well seem uninteresting. My aim, however, is to make the case for homosexuality that will give the conservative pause on pain of being inconsistent, as with the observations about the biblical text to which I draw attention in §4.

I. The Argument from Nature

One way to defend a trait is to point out that it is naturally occurring in nature among biologically healthy species, where the term ‘biologically healthy’ ranges over both bodily health and psychological health. It turns out that even a hostile trait like anger can be defended in this way; for it is perfectly natural for a psychologically healthy person to experience anger under certain circumstances. If Schmucl willingly sets out to cut off Opidopo’s arm and failed only because an unexpected thunderous noise caused Schmucl’s aim to be off, we would certainly expect Opidopo to be quite angry with Schmucl. A failure on Opidopo’s part to be angry would portend something quite

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negative about him. At the very least, there would be the thought that he fails to take himself as seriously as he ought to take himself.

Can homosexuality be defended as a naturally occurring trait? I think so but not, alas, in the way that it is often done. There are two arguments that are invoked here. One is that homosexuality is significantly, if not entirely, determined by an individual's genetic make-up. The other is that homosexuality is found in other species. I shall examine these arguments in turn.

Of course, the virtue of the first argument is that it undercuts blame, given the assumption that biologically healthy homosexuals have the H-biological traits, as I shall refer to the idea that genes determine homosexuality. If we take out the assumption of biologically healthy homosexuals, then, the occurrence of H-biological traits can readily be countenanced as something that we should aim to eliminate rather than to embrace. Cancer cells are naturally occurring, too, but they are evidence of the absence of physical health; hence, we seek to eliminate them. It is also said that there can be a genetic disposition for things like alcoholism and violence, from which it most certainly does not follow that we should let these things run their course. Quite the contrary, we expect people to take the proper measures in order to insure that the genetic disposition does not exert an undue influence. So a lot turns on the assumption that the H-biological traits are naturally occurring among healthy individuals. In §3, I shall indicate why it seems obvious to me that homosexuality can be naturally occurring among healthy individuals.

Interestingly, there is a very real sense in which the assumption of the occurrence H-biological traits among psychological healthy individuals is somewhat of a Pyrrhic victory. This is because in some sense homosexuality has been removed from the realm of choice; and one of the ways in which we truly valorize a lifestyle is by choosing it of our own free will as fully informed individuals.¹ Insofar as the married life is valorized nowadays, this is surely owing to the fact that it is seen as the fullest expression of choice on the part of two individuals. We would think very differently about marriage if we saw this as something that more or less happened to us almost in spite of ourselves.

Sometimes, it seems that the gay movement wants to present homosexuality as a lifestyle that any reasonable person might choose. Alas, that line of thought is undermined if, to begin with, it turns out that one would choose that lifestyle only if one has the H-biological traits that all but determine that, even against one's will, one chooses the gay lifestyle. Surely, something has gone terribly wrong when the rush to make homosexuality acceptable seems to come at the expense of free will itself.

¹ See here Harry G. Frankfurt's essay, "Freedom of the Will and the Concept of a Person," *Journal of Philosophy* 68 (1970).

In his very instructive book, *L'homophobie*,² Daniel Borrillo writes: “[L]a croyance en une base génétique de l’homosexualité facilite l’émergence d’un sentiment de tolérance accru. En revanche, lorsque l’on considère l’homosexualité comme un choix, on se permet plus facilement de la condamner” (97). Alas, if we should ever be able to modify sexual orientation through genetic manipulation, then there will be a very real sense in which being homosexual will turn out to be none other than a choice after all. Besides, Borrillo’s language is that people are more tolerant of homosexuality. This is a very long ways from claiming that when homosexuality is viewed as having a genetic basis, then people regard homosexuality as an alternative that is on the same plane, morally and psychologically (for instance), as heterosexuality. Why? Because merely attributing a genetic basis alone to homosexuality only entails that a person’s having the corresponding preferences is excusable rather than that it is a good thing that he has those preferences. Indeed, acknowledging a genetic basis for homosexuality is perfectly compatible with having pity upon those with that genetic make-up. Most significantly, attributing a biological basis does not in any way entail that this is what anyone would (want to) choose to have if given the freedom to choose otherwise.

The importance of this point comes out beautifully from the standpoint of how we conceive of human freedom and responsibility, especially in the context of legal theory. Jean-Marc Fédida quite masterfully puts the point as follows:

If a citizen buys a knife, the law cannot go after him for having committed a crime—even if he buys the knife with the intention of killing someone. The mere fact that he thought about killing someone or that he wished with all his might the death of someone is not punishable as a crime. This is because this individual has not translated his thoughts into observable facts such actions, and because it is impossible both materially and ethically to put into place the repression of a person’s thoughts.³

It is a defining feature of being a human that a human may *choose* not to act upon her or his thoughts, no matter how intense those thoughts may be. For many, this is one of the characteristic features of free will. So, in and of itself, a genetic basis for homosexual desire settles next to nothing with regard to what persons so constituted genetically morally ought to do or what we ought to regard as morally acceptable behavior on their part. This, of course, is precisely the stance of the Catholic Church. Significantly, then, the Church is right about the logic of the point even if it is mistaken in its moral assessment of homosexual behavior itself. Certainly, the logical point is right. If it were determined tomorrow that there is a genetic basis for pedophilia, surely no one in her or his right mind would conclude that pedophilia is thereby acceptable. This no one would

² (Presses Universitaires de France, 2000), p. 97.

³ *L’Horreur sécuritaire: Les Trente Honteuses* (Éditions Privé, 2006), p. 127 (my translation). Borrillo is a French legal theorist and Fédida is writing about French law. Hence, the propriety of citing Fédida, although the point could be made regarding the law as it obtains in most Western countries.

conclude even if we came to be somewhat understanding of how it is that anyone might be sexually attracted to children. In any case, we would surely expect individuals so cursed to take the appropriate steps to insure that they did not act upon their desire, which we would consider to be unhealthy notwithstanding its biological basis. So it is not enough to establish a genetic basis for homosexuality. What needs to be true also is that this genetic configuration occurs among healthy individuals.

A quite different consideration with regard to the issue of a genetic basis for homosexuality is that it is highly implausible that the manifestations of a trait which is as complex as sexual preference would be settled entirely by the genes, just as the manifestations of intelligence and speech are obviously not settled entirely by the genes. There could certainly be strong genetic influences regarding sexual preference, but these would be mediated through a wealth of circumstances. Indeed, the most that studies have shown is that there is a genetic link. So what actually comes to pass has a lot to do with how things unfold in a person's life. As a political argument, it seems to me that the defense of homosexuality would do well to take this route rather than to look for a set of H-biological traits that more or less decisively yield the result of homosexual determinism. At any rate, with the H-biological traits in tow, surely there are a host of possibilities in terms of how these traits may express themselves: a man could be feminine but nonetheless simply find sex with women more satisfying. Or, he could be ever so masculine and interested in women sexually, but find an occasional twist with a man a real charge. Or, perhaps he enjoys feelings of male-male affection, but male-male sex does little for him. Or, following their heterosexual brethren who love the fantasy of sex with two women while at the same time eschewing the reality: there may be men with the H-biological traits who analogously like the fantasy of male-male sex but who find the reality unattractive. Fantasy is often the outlet for things for which we do not have the temperament. And I assume that having the H-biological traits does not entail that one has the temperament for living a gay life, just as it is abundantly evident that unequivocally having a heterosexual preference does not carry in its wake the temperament for living a heterosexual life.⁴

⁴ Every man knows that when a woman says "You don't have to do any thing for me for Valentine's Day" taking that literally can often be fatal. Then there is the famous "Honey, am I gaining weight?" To date, I have never said to any women whom I know well that she is gaining weight, whereas I have said precisely this to men whom I know well: "Man, you have put on a few pounds". Being a heterosexual male hardly entails having the temperament for this kind of double-speak. There is no logical connection whatsoever between having a sexual preference and having the temperament that makes it possible for one to satisfy that preference with grace and ease. This is especially so since the temperament that is necessary may change (and has changed) with social circumstances. Being heavy, for instance, was once in vogue for women. And in the era of Louis XIV, e.g., it was common for some men to do more primping than women.

Then there is the poignant truth that what we are willing to do sexually is not independent of the circumstances in which we find ourselves. As the philosopher Thomas Nagel observed, in "Sexual

Moreover, it is true in general that things can be sexually arousing under some descriptions but not others. Here is an incontrovertible example of this point. For a heterosexual man, seeing an attractive woman's vagina is typically arousing—but surely *not* when the woman is in the throes of giving birth. And for just about everyone, it is one thing for it to be true that X is extraordinarily attractive and quite another entirely for it to be that X is extraordinarily attractive *and* X is one's child. Then there is the truth that not all heterosexual men are attracted to the same kind of women or like the same sexual activities. Some men like women with extraordinarily large breasts, whereas others like women who have a certain boyish-like appearance to them. Some men exclusively prefer vaginal sex, whereas others enjoy anal sex. Then, finally, some men crave sex all the time whereas others do not. Sexual orientation is one thing; the strength of desire to have sex and the configuration of that desire are quite another. In a word, there is nothing monolithic about sex among heterosexuals. Accordingly, it is just plain silly to think that sex among homosexuals or, in any case, those with the H-biological

Perversion," *Journal of Philosophy* 66 (1969), sex has to be pretty bad before we prefer no sex at all; and the reality of prison sex confirms this truth. But notice that what we have here is the case where a person with a heterosexual orientation acquires a temperament for certain forms of homosexual sex. Significantly, it would never occur to many of the men who do the raping to conceive of themselves as gay. This accords with the observation of the final paragraph of fn. 4, namely that homosexuality admits of a social role. I am indebted here to Christopher Hensley and Richard Tewksbury, "Wardens' Perception of Prison Sex," *The Prison Journal* 85 (2005) and the 161 page Human Rights Watch Report, April 2001, entitled "No Escape: Male Rape in U.S. Prisons". This report is available at www.findlaw.com. Now suppose that some of those who engage in male-male prison sex acquire a penchant for male-male sex upon occasion. What do we say of them? Is that that they had the H-biological traits all along and it took prison to bring this out? By the way, it is very interesting to note what prisoners say about those who submit to being penetrated or offering oral sex. On page 69 of the report on prison sex by the Human Rights Watch, we find these words by a Texas inmate (I quote verbatim the passage as appears in the report):

[D]udes that are turned out were like that in the first place and just wanted an excuse to come out of the closet . . . [P]unks were born like that and it doesn't matter because if it did they'd fight and/or resist.

According to this inmate, there can never be a good reason in the world of prison, not even the hope of staying alive, for a heterosexual man to submit voluntarily to being penetrated or performing oral sex upon another man. Notice the irony here. There can a good reason for a heterosexual man—the lack of a female alternative presumably—to choose voluntarily to penetrate another man anally or receive oral sex from that man. If we assume that prison sex is sex without emotional ties, can there be contexts other than prison where a man might prefer male sex of a like kind without emotional ties to no sex at all? On this view, the preference structure is such that the preference for male-male sex is always lower than the preference for male-female sex. Now, what is the right way to characterize a male with this preference structure? Certainly, there is a significant difference between a male with this preference structure and the male who wants nothing at all to do with a woman sexually, because only men speak to his sexual desire.

Many gay people embrace the view that any form of voluntary sex with a member of the same sex (especially when repeated) makes one gay or reveals an inclination in that direction. But this may be too quick. Recall Aristotle's discussion of voluntary and involuntary actions (*Nicomachean Ethics*, Bk III). Any rational person would voluntarily throw cargo overboard in order to keep the ship afloat, though no rational person consider doing so a good thing in and of itself. Well circumscribed voluntary behavior may simply reveal a hostile environment rather than a conception of the good that we embrace and aspire to realize.

traits, will be monolithic.

The point of the preceding paragraph can be put another way. Let us concede for the sake of argument that every self-avowed homosexual has the H-biological traits. What surely does not follow from this, at least not in the absence of quite a formidable argument, is that everyone who has the H-biological traits thereby lives a homosexual life or would do so if only the individual were honest with himself. In general, how sexual desire expresses itself is a function of a wealth of factors, where the principle of agglomeration, as with tastes generally, does not hold. A person may like one kind of food (chopped liver) and another kind of food (cream of wheat), but would find mixing these two foods together disgusting. Once more, it is disingenuous to suppose that enormous complexity holds for heterosexual desire and not homosexual desire.⁵

⁵ Interestingly, support for this line of thought comes from a rather unexpected quarter, namely the phenomenon of social diversity itself. What would strike many in North America as homoerotic is for many in Europe nothing more than a greeting between two friends. In France, one is said to *faire la bise*: the kiss on each cheek. Although admittedly this gesture is more commonplace between females than it is between males, it regularly takes place in plain public view between any two people regardless of the female-male configuration between them and between married men where there are no extended-family ties between them. What is more, even in the male-male cases, one can deeply offend by failing to *faire la bise*. The main point, however, is that even among liberal North American heterosexual males who pride themselves in having gay friends, these men are loathed to *faire la bise* with a male simply because doing so strikes them as way too homoerotic.

If one thinks that our conception of ourselves can, to some extent, be mediated through the language we speak, then an interesting aside here is that the French language does not mark the female-male divide among human beings as sharply as the English language does. Thus, the word for “beautiful” and “handsome” is the same word in French although it takes different forms (“belle/beau”); and while the French word “individu” is masculine, the word “personne” is feminine. Thus, I can say “Je m’address à la personne devant vous,” (I am speaking to the person in front of you), although it is clear to everyone that *that* person is a male.

Without entering into the debate, there is considerable evidence that what counts as homosexual behavior is not independent of our conception of things. Obviously, various forms of same-sex behavior among human beings have been around for an extremely long time. But how this behavior has been characterized has differed over time. On this see, among others, David M. Halpern, *One Hundred Years of Homosexuality* (Routledge, 1990) and John D’Emilio, *Intimate Matters: A History of Sexuality* (Harper & Row, 1988). The rush to legitimize homosexual behavior in contemporary times does not entitle us to read our conception of homosexual behavior into the past. For instance, Borrillo (see fn. 2 above), draws attention to the existence of homosexuality throughout the ages. However, he fails to point out that in some cultures the passive versus active divide was given great significance; and that there were important social respects in which male heterosexuality could survive an active role with a man but not a passive one. We find such a discussion in, e.g., Paul Veyne, “L’homosexualité à Rome,” in Georges Duby, *Amour et sexualité en Occident* (Société d’Éditions Scientifiques, 1991): “L’impudicité (c’est-à-dire la passivité) est une infamie chez un home libre,” whereas “chez un esclave, c’est son devoir le plus absolu envers son maître” (p. 74). For a free man, the passive role is said to be out of the question, whereas as for a slave that role is said to be his duty. In the same Duby volume, Maurice Satre notes in his essay entitled “L’homosexualité dans la Grèce antique” that it did not occur to people to think of their male heroes, who were typically married and with children, as homosexual merely on account of their male heroes seeking a male-to-male adventure from time to time (p. 56). In modern times we write as if there is but one conception of heterosexuality and homosexuality, namely the one that we put forward, that applies *sub*

Now, the other argument regarding homosexuality being natural is best understood as a corollary argument. This argument draws attention to the fact that we find homosexual behavior generally among animals. As the title of one on-line newspaper put it: “Birds do it; bees do it . . .”.⁶ The question, of course, is this: What exactly is it that birds and bees, and other creatures in the animal kingdom, do? The claim, to be sure, is that they engage in same-sex behavior. But that very claim is ambiguous. Animals obtain sexual release in a variety of ways. Dogs, for example, have been known to “hump” the legs of a human, from which no one seems to infer that dogs are into interspecies sex. No one thinks for a moment that such a dog is thinking to itself “Better a little action with a human leg than no action at all!” Having the drive to obtain sexual release must not at all be confused with having a sexual identity; and it is having a sexual identity that adds a most significant dimension to sex among human beings whether it is with members of the same or the opposite sex.

Without a conception of sexual identity, it cannot be said with regard to animals having sex that they are acting or not acting in accordance with how they think that they should act. It cannot be said of the dog or the monkey, for instance, that it is thinking to itself “Look, I need or want a change from time to time. Sex with females is good; however, there is nothing like a male occasionally”. If we could we attribute this line of thought to animals, that would be very significant. We cannot, though. Accordingly, their having sex with members of the same sex is rather like their defecating in public: Feces happen! With the latter, animals are not thinking to themselves, that they are going to defecate in public no matter what others are thinking and no matter who is looking on. They are not taking a stance.

The moral of the story is that we do not have gay animals in the very important sense in which we talk about human beings being gay. Because animals lack a sense of sexual identity, it is conceptually impossible for them to be gay in the way that this trait is ascribed to human beings. For the very same reasons, we do not have straight animals, either. Animals are merely creatures who have sex. Thus, conservatives have also erred mightily in invoking heterosexuality among animals as evidence that human beings should heterosexual. There is the issue of what is in nature and there is the issue of what is constitutive of human nature. Nature in its entirety serves up a very diverse set of behaviors across the animal kingdom many of which have nothing at all to do with

species alternitatis, when the reality might be that, notwithstanding overlap, there are various conceptions of both. For an excellent discussion of this very point, see Michel Bozon and Henri Leridon, “Les Constructions sociales de la sexualité,” *Population (French Edition)* 48 (1993): 1173-1195. They, too, draw attention to the active-passive divide that prevailed in antiquity. See p. 1178, where they write: “[I]l était impensable que l’esclave [Grèce] soit le partenaire “active” (It was unthinkable that a Greek slave would assume the active role). The parallel here to prison attitudes, noted in the second paragraph of the preceding footnote, is striking.

⁶ http://www.timesonline.co.uk/article/0,,7-2527347_1,00.html

human nature.⁷

I shall not here offer an account of sexual identity except to say that sexual identity is an aspect of self-identity. A fundamental aspect of self-identity is that we make assessments of ourselves owing to what we witness on the part of others. It is a poignant fact about human beings that “size matters”. We can be proud of or ashamed of or content with the fact that we have a given breast or penis size. Animals spend no time at all being concerned about these matters. Nor, in their instances of same-sex behavior, do they see themselves as going against the grain, risking widespread moral disapprobation among their fellow members. Nor, again, do other animals which see such a thing make an assessment in this regard. Thus, the famous penguins, Roy and Silo of the Central Park Zoo, who are said to be gay do not have a view of themselves as bucking the trend among penguins.⁸ Accordingly, they do not have an assessment of themselves as gay penguins. The same holds for the other penguins who see Roy and Silo together, including the female penguins whom Roy and Silo are said to have spurned. Surely, ne’er a female penguin thought to herself “I shall change Roy or Silo’s mind by offering him some of *this!*” The cavalier characterization of these two penguins as gay is deplorable.

Good science makes it clear that anthropomorphizing is bad science. In the absence of sexual identity, the sexual behavior of animals becomes so radically different from human sexual behavior that we have all but two incommensurable sets of behaviors. Consider, for instance, the significance that human beings attach to their first sexual experience. There is simply no counterpart in the animal kingdom. In other words, same-sex behavior in the animal kingdom is not even remotely on a par with same sex behavior among human beings. Accordingly, however natural the first is (same-sex behavior shorn of sexual-identity), this says nothing about how natural the second is (same-sex behavior inextricably tied to sexual identity).

Indeed, there are lots of behaviors that we regard as perfectly natural among animals without thinking for a moment that it is natural for human beings so to behave—certainly without thinking that it is morally all right for human beings so to behave. So naturalness of behavior ϕ among animals does not, ipso facto, give us naturalness of behavior ϕ among human beings. That is, from the fact that we should be accepting of a given kind of behavior among animals, what most surely does not follow is that we should be accepting of the analogous form of behavior among human beings.

⁷ Evolutionary theorists have contributed to the confusion by expressions like genes are self, with Richard Dawkins, *The Selfish Gene* (Oxford University Press, 1989), being a prime example of this. Genes simply do not have the psychological capacity to be selfish. I have discussed this at length in *The Family and the Political Self* (Cambridge University Press, 2006), ch. 2.

⁸ <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/02/07/MNG3N4RAV41.DTL>

Here is a case in point. In the animal kingdom, many males will impregnate the female and then abandon her. For the members of these species, this is perfectly natural. Needless to say, we do not draw upon these species as an example of how the human male should behave. Whether or not the human male can get away with abandoning the child that he helped to create, we regard such behavior as morally irresponsible. It is actually irrelevant that only some males in the animal kingdom so behave, as nothing would change in our assessment of human males if all males in the animal kingdom behaved that way. Moral responsibility applies to humans and not to animals.

Notice, for example, that in general animals do not engage in life-long pairings between female and male adult members of the species. They do not have the concept of fidelity; nor in general do they mimic it. It would be just foolish to think that human beings are mistaken in the significance that they attach to it because, alas, fidelity is relatively rare among animals.

I should like to conclude this section with the following observation. Obviously, the point of drawing attention to same-sex behavior in the animal kingdom is to embarrass opponents of gay rights, especially those who invoke religion. Unfortunately, there is pretty much no way that this tidbit of a fact about animals can do that. Conservatives gain nothing by pointing out that by and large sex among animals is between members of the opposite sex. Because animals lacks both a sense of sexual identity and the capacity for moral responsibility, their sexual escapades (whatever the configuration might be), do not admit of a moral evaluation.

Consider the widely regarded anti-homosexual passage in the *New Testament* written by the Apostle Paul:

And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet. And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient (Romans 1:27-28).

Notice that it makes no sense at all to talk about God giving animals over to a reprobate mind. Only if that were possible could the fact of same-sex behavior among animals be an embarrassment to those who oppose gay rights on religious grounds. The charge is that same-sex behavior among human beings is immoral. Not surprisingly, one does not diffuse that charge by pointing out that animals do it, too. What animals do, in their same-sex acts, does not constitute homosexual behavior as we understand it, since animals do not in the first place have a conception of sexual identity.

That said, it is often the case that we are rightly fascinated by things that occur among animals; and it would surely be a quite interesting fact if only same-sex behavior in the animal kingdom resulted in life-long partnerships, which brings me to the topic of

gay marriage.

II. Gay Marriage and the Consenting Adults Argument

To many the argument for gay marriage seems nearly irrefutable. Marriage is between two consenting adults; accordingly, it is irrelevant that anyone likes or dislikes what they do, because consenting adults should be able to do whatever they please (given the proviso that no immediate irreparable harm is done). And here it does seem relevant to invoke a decision made by the United States Supreme Court, namely *Loving vs Virginia* 388 (1967), pertaining to the matter of race.⁹ The Court struck down Virginia's laws against interracial marriage, rightly noting that marriage stands as a fundamental right and that allowing people to marry in accordance with their preferences across racial lines is absolutely essential to affirming the dignity of all.

While supporters of gay marriage sometimes appeal to *Loving vs Virginia*, what many argue is that gay marriage is justified on the grounds that consenting adults should have the right to do anything they please. The appeal here, of course, is to what is known as John Stuart Mill's harm principle put forth in his classic essay *On Liberty*.¹⁰ This argument has an entirely different moral orbit, if you will, than the one given in the Supreme Court's ruling on interracial marriage. This is because insofar as dignity is relevant to Mill's harm argument it is so only by accident. Moreover, there is the issue of whether this line of argument carries in its wake a commitment to yet other things that one finds morally unacceptable, as that would seem to be a natural concern with respect to the argument.

I shall not say address the question of how far we should go with respect to what consenting adults should be allowed to do. However, to see that a genuine concern arises here, consider the 2003 case in Germany of Armin Meiwes who killed Bernd-Jürgen Brandes.¹¹ What did Brandes do? He answered Meiwes's internet announcement for someone who wanted to have sex and to be consumed like food. And that is what happened. The behavior between these two was as consensual as it gets between two

⁹ For an excellent analysis of the this judgment as applicable to gay marriage, see Edward Errante, "Le Marriage Homosexuel aux Etats-Unis: les arrêts tribunaux de Hawaï et leurs implications au niveau international" in Daniel Borrillo, *Homosexualités et Droit* (Press Universitaires de France, 1998).

¹⁰ We can find a defense of the argument by John Corvino in "Homosexuality, Harm, and Moral Principles," in *Debates in Social Philosophy*, ed. Laurence Thomas (Blackwell, 2007) and "Homosexuality and the PIB Argument," *Ethics* 115 (2005): 501-534. "PIB" stands for polygamy, incest, and bestiality. Corvino relies very heavily upon Mill's harm principle.

¹¹ <http://news.bbc.co.uk/2/hi/europe/3286721.stm>. We have yet another case with Susan Smith (pseudonym) who believed that her two healthy legs were an impediment to her being her true self—her bodily integrity. And so her concern has been to amputate them. Thus, she has succeeded in amputating one of her legs. She eagerly looks forward to amputate thing second:

<http://society.guardian.co.uk/health/story/0,,2000991,00.html>

people. Meiwes was tried for murder, since Germany has no law against cannibalism. As this very real case shows, agreeing to accept (as simply legally permissible) whatever consenting adults do is not without its problems.

Parenthetically, it strikes me as rather inappropriate to appeal to Mill's harm principle as if he meant for the principle to cover cases like the Miewes-Brandes scenario. The man who thought it better to be a dissatisfied Socrates than a satisfied pig was animated by a conception of human nature that gave pride of place to human flourishing; and his famous dictum makes clear, he could not have thought that anything that a human being does counts as flourishing. It would seem that he thought that some preferences on the part of a person were quite at odds with how a person should be. What is more, he embraced a conception of responsible dialogue; and he held that approbation and disapprobation played an important role in society. This makes for a social backdrop that is quite different from what is characteristic of modern society. Even if Mill's no harm principle holds in just that the way that many take it nowadays take it to hold, what most certainly cannot be attributed to Mill is the view that what people do could not be subject to vigorous discussion, even if it harms no one.

In any event, those somewhat shaken by the Meiwes-Brandes example, need only add (as noted above) the proviso that no form of immediate irreparable harm is done to ether party. Is this enough? I shall argue in what follows that it is not.

Consider the following example. Susan had a son when she was 16 years old whom she raised. At the age of 18, the son went into military service for three years. He returns home after a three year absence. He is 21 yeas of age and his mother is 39 year old. He, as it turns out, is absolutely gorgeous. It is also the case that his mother is stunningly beautiful. Only a dead man could behold her and not be moved.

At any rate, upon seeing one another again for the first time in three years, they find themselves unbelievably attracted to one another sexually. They cannot keep their hands off one another. In the words of one of those love-songs: "How can it be wrong when it feels so right?" So they go at it all night long.

We certainly have consenting adults here: a 39-year old mother and her 21-year old who has served in the military. That notwithstanding, what I have described unequivocally constitutes incest. If anything between consenting adults goes, assuming that the adults are not deranged, then incest between consenting adults is just fine. But do those who defend gay marriage mean to be defending incest as well?

Needless to say, if one draws the line at incest, for example, then one rejects the argument for gay marriages that turns solely upon the premise that anything between consenting adults is permissible.

An obvious question arises, namely the following: Why should the case of incest

give us pause? Why isn't that, too, just a carry over from some antiquated religious view? Adults are adults. So, why on earth should it matter that two people are biologically related? Besides, no one thinks that being biologically related, plain and simple, should exclude sexual interaction between two people. Rather, the thought is that only a certain degree of biological relatedness. Most people accept sexual liaisons between folks after the 3rd cousin. So, if sex between 4th cousins is just fine, then why not sex between mother and son, where they are both adults? Sex is sex; adults are adults. Who can argue with that?

What exactly is wrong with sex between a mother and her son or a father and his daughter or a mother and her daughter or a father and his son given that everyone involved is unquestionably a consenting adult?

This brings us to the issue of foresight in a most dramatic way. Even if one holds that in and of itself there is nothing wrong with consensual sex between a parent and an adult child, surely it is wrong in a most egregious way for children as children to be the object of the sexual desires of their parents. It is not possible for a parent to raise a child in a wholesome way and, *at the very same time*, treat that child as an object of sexual desire. This point holds true whether we are talking about parents who are biologically related to their children or parents who have adopted their children. For it is the role as parent, and not the genes, that is relevant here.

Regardless of the sexual orientation of the consenting adults, a culture that accepts sexual relations between parents and children sets itself upon a most fulsome trajectory. 13-year old teenagers need to know unequivocally that the hug from their mother or father is not sexual. More precisely, no child should ever have to wonder whether mom's or dad's hug *today* is taking place with a sexual longing with regard to *tomorrow*. Certainty in this regard will be considerably less secure than it could be if it is commonplace for there to be sexual relations between parents and their adult children. For how a child initially thinks about this behavior on the part of her or his parents is profoundly influenced by the moral backdrop against which the behavior takes place. If that backdrop is one of unquestionably strong disapproval of sex between parent and child, then some ways of thinking about parental gestures of affection seem out of the question from the very start unless the behavior of the parents is itself abnormal. On the other hand, if the backdrop is one of widespread social acceptance of sex between parent and child (if only in the sense that it is accepted by all that this is permissible), then that backdrop itself makes it plausible for the child to wonder what the motives of her or his parents really in their expressions of affection towards her or him. There is no way to guarantee that such a thing will never happen. There is no way to preclude the possibility of a child having such a worry. Still, a societal moral climate that rejects incest on the strongest grounds is vastly more conducive to a child being protected in this regard, and not having to wonder in the first place, than a society that allows incest.

If what we want, then, is a world in which no child has to wonder, on account of prevailing social practices, whether a parental hug today portends a sexual longing that the parent will seek to fulfill tomorrow, then the argument for gay marriage is untenable if it rests solely upon the premise that whatever takes place between consenting adults should be permitted, since that would allow for incest which is unacceptable regardless of sexual orientation.

By definition, it is only over time that we have moral stability. And sometimes we have to consider not merely whether doing something would make us happy *now*, but what would be the long term effects if the thing we now want to do were a widespread practice, and so a practice that at the very least did not meet with social disapproval.

There are lots of instances in life where a single occurrence of something does not impact upon us negatively or positively, but where the occurrence of that thing over time does, indeed, have either a positive or negative impact upon. Parental praise and criticism are both cases in point. No child will ever flourish on the strength of a single "I love you". But those three words uttered, with sincerity and depth over time, constitute a tidal wave of parental wave of affirmation that has no equal in a child's life. From the other direction, a constantly berated child will suffer mightily.

It is generally held that we can judge the moral quality of a society by the way in which its members treat the helpless among them. Any theory of marriage that licenses incest would be most damaging to children for the reasons that I have given. From this, it follows that gay marriage cannot be justified simply by the argument that it takes place between consenting adults.

Before moving on, let me summarize my argument. It is certainly true that for any two adult people getting married, *they* are not harmed simply in virtue of the fact that their relationship is an incestuous one; nor, on that account, do they harm other adults. What is more, it is also true that an incestuous marriage does not, in and of itself, cause children to be harmed, given the assumption that no biological conception of children takes place. Notwithstanding these truths, however, the practice of incestuous marriages in society would have a most deleterious impact upon children, because it would make it naturally plausible for children to be suspicious of the motives of their parents. Thus, the practice of incest in society would cast an enormous pall upon the psychological well-being of children.

Just so that there is no misunderstanding, let me repeat that the practice of incest is wrong across the board, regardless of whether the sexual orientation of the consenting adults be homosexual or heterosexual or whatever.

III. A Defense of Gay Marriage

As is well-known, many supporters of gay rights have invoked the Civil Rights metaphor “the back of the bus”. I am not here interested in the issue of whether or not the struggles on the part of gays for equality is analogous enough to the struggle on the part of blacks for equality to warrant gays invoking the slogan. Whether the comparison is apt or not, it does seem to me that the most powerful argument to be found for gay marriage is to be found in the U.S. Supreme Court’s decision in *Loving vs Virginia*. The argument was that we cannot respect the dignity of persons if we place restraints along racial categories upon whom individuals may express their love to in the sacred act of matrimony. The argument does not require that anyone’s marriage be a moral model. Any two people, however unfit they might be for one another, can choose to give marriage a try. Indeed, people can even get married on a whim. In accordance with everyone’s predictions, from parents to clergy members, the marriage may fail. But that is utterly irrelevant. Part of what it is involved in respecting the dignity of people is letting them forge ahead in this regard, warning signs of whatever sort to the contrary notwithstanding. The moral only requirement (as opposed to requirements of health, for instance), in addition to the absence of a certain degree of blood propinquity, is that the two individuals be consenting adults or, in some cases, that consent is given by the parent(s). Just about everyone can point to a marriage that was an absolute disaster. Yet, there are very, very few who would want to limit the way in which people are presently free to get marriage.

Out of respect for the dignity of persons, any two consenting adults who do not violate the restraint of blood propinquity should be allowed to get married. This thesis does not entail that anything that any two consenting adults do is all right (with the proviso of no immediate irreparable harm). The first thesis is much, much weaker than the second one. To be sure, it is possible that people say the second but mean only the first. Unfortunately, this is a carelessness that has done more harm than good.

Strategically, it would seem to be of the utmost importance to separate the issue of marriage from a host of other activities that the gay community or, for that matter, the straight community might find appealing. We valorize marriage as a life-long commitment that two people make to one another out of love. This commitment has, and should be treated as having, its own moral orbit. What is more, the majestic exercise of a life-long commitment through thick and thin can command respect even from those who take themselves to be officially opposed to the particular configuration of the relationship. After all, if one has seen that John stood by his cancer ridden mate Jesse for 15 years until Jesse passed quietly away one night, one has to be callous beyond words not to see the moral excellence of the faithfulness exhibited by John towards Jesse and not to think that anyone would be incredibly fortunate to have a partner like John. In a

word, the argument from dignity gives gay marriage a moral gravitas and leverage that simply does not flow from the thesis that consenting adults should be allowed to do whatever they please—even if this latter thesis is true. Specifically, it is one thing to defend gay marriage, it is quite another to defend the gay lifestyle (about which I shall say a word in §4 when I talk about the model of gayness). With perfect consistency, a person could embrace the former but reject the latter.

The example of John and Jesse is revealing. For if I am right, one reads it without thinking for a moment that gays cannot have this kind of commitment to one another; and it should come as no surprise that such a thought does not occur to us. After all, we know that same-sex friends can be deeply committed to one another in this way. Obviously, it is just plain ludicrous to think that two same-sex friends can be deeply committed to one another provided that they are heterosexual but that they cannot if they are homosexual. From soldiers on the battlefield to sportsmanship on the field to amazing entertainment acts, same sex friendships have brought to the world enormous richness on many fronts, moral and non-moral. It would be ludicrous to think that the explanation for this is tied to the absence of homosexual sentiments on the part of these individuals towards one another.

Now, as John Corvino has rightly noted, straight people hardly have a lock on moral wholesomeness, be it sexual or otherwise.¹² Accordingly, it is in fact irrelevant if the percentage of gay people doing “disgusting” things sexually is greater than the percentage straight people or the other way around. Arguably, gay people are entitled to be as disgusting as straight people are. So, if straight people can have “swinging” and S & M, then there really is no good argument for why gay people cannot, for example, have “fisting” or “rimming”. Notice, though, how irrelevant the issue of dignity is here. Only as a joke, and perhaps only a bad one at that, could a person claim that her or his dignity is tied to being whipped by or whipping another or to being penetrated anally by another’s fist or using one’s fist to do so. Thus, to put marriage on the same moral plane as these activities or activities of their genre is to depreciate the idea of marriage, and so to undermine the forcefulness with which it can be defended, precisely because the argument from dignity has to be set aside. Even in a world that privileges diversity, we should not want to lose sight of the truth that some forms of diversity manifestly bespeak the excellences of which human beings are capable; whereas in the other direction there are forms of diversity that manifestly do not bespeak the excellences of which human beings are capable. It would, for instance, take a very long and unobvious argument to show that the practice of hooking-up for sex, by people of whatever sexual orientation, calls forth a human excellence.

As we ideally conceive of marriage, it bespeaks a form of human excellence. The

¹² See fn. 10 above

proof par excellence of this is that we have come to think of marriage as friendship at its best. Quite simply, a friendship is a relationship that is majestically enriched by the commitment of two individuals to share their lives with one another by way of enormous (if not complete) mutual self-disclosure and through engaging in a wide range of significant activities together, both of which in turn enrich the relationship. I remarked in §I that homosexuality could be a naturally occurring trait among healthy individuals. Well, what we know beyond a shadow of a doubt is that same-sex friendships (shorn of sex) can be extraordinarily rich and admirable in just about every conceivable way, exhibiting a mutual love that others find inspiring and ennobling. Same-sex friendships shorn of sex can and often exhibit the very epitome of psychological health. So if we add sex to this mix surely there is no reason whatsoever to suppose that, with the mere addition of sex, an extraordinarily marvelous same-sex friendship becomes altogether warped and contrary to nature. The issue is not whether the nature of the relationship changes. It often does. The issue, rather, is whether becoming psychologically unhealthy is what occurs as a result of the consensual sex. Those who are opposed to gay marriages in-principle are essentially claiming that the addition of sex undoes what had heretofore been a majestic good. But this requires an argument; and ne'er a good one has ever been given. The case for gay marriage is in fact remarkably simple to make. Alas, that turns out to be true only if one detaches it from the gay lifestyle, and so from the argument that anything that consenting adults do is just fine, and focus upon the enduring richness that same-sex friendships have presented throughout history.

Now, some people opposed gay marriage for reasons that, at first glance, appear to be entirely unrelated to the considerations that I have advanced. Their view is simply that gay marriage opens the door to gays adopting children and they stand in opposition to that practice rather than gay marriage itself. This assumes, obviously, that there is something about being gay that has a deleterious impact upon children, which makes sense only if one assumes that excellence in character cannot be attained to its fullest in the person of a gay individual. I have already said enough to make it clear that I take this to be so much nonsense. I could, to be sure, point out that when it comes to raising children a great many heterosexual individuals have truly made a mockery of their parental responsibilities. Certainly, they have failed miserably as parental role models. But this is a most unsatisfactory move. For surely the argument cannot be that if it is all right for heterosexuals to be irresponsible parents then it is all right for homosexuals to be irresponsible parents, too. Equality of irresponsibility is not a virtue, but a vice. We do not want irresponsible parents, whatever their sexual orientation might be. Fortunately, moral and intellectual excellence tracks neither ethnicity nor sexual orientation.

IV. Conclusion: The Model of Gayness

For any social relationship, there can be good or bad models. For any struggle for social equality, there can be good or bad models. The early struggle for racial equality in the United States was very mindful of this. Invariably, court cases involved the best models of behavior in the black community. Rosa Parks, for example, was a model citizen. Likewise for Oliver Brown in the landmark United States Supreme Court decision *Brown vs Board of Education* (1954). In those days, it would not have occurred to anyone to think that anything that a black did could be justified in the name of the African roots of black people. In particular, there was not the thought that all activities occurring in the black community were on a par with one another in terms of excellence, be it moral or intellectual.

Insofar as gays are adamant about invoking the “back of the bus” metaphor, they might take a page in black history. The argument for racial equality would not have succeeded had that argument been that blacks have a right to be as dumb and as ignorant and as slothful as any white person might be. The approach would never have succeeded, though surely an argument to that effect would have been right. We know in fact that the struggle against racism was not the struggle on the part of blacks to be seen by whites as equally capable of being ignorant and slothful.

Racism was the insistence that, exceptions to the contrary notwithstanding, blacks in general were utterly incapable of fully taking part in the moral and intellectual excellences that have been understood to advance humanity. The struggle for racial equality on the part of blacks consisted in showing that this ideology was entirely bankrupt. So the backdrop against which the struggle for racial equality took place might be called the ennobling conception of equality. This is a truth that gays should not overlook. This is a truth that no one should overlook. We miss the moral power of the Civil Rights Movement if we do.

Of course, as I have already observed, it must be allowed that strictly speaking gays have a right to be as perverted and as despicable as any heterosexual might be. But I suggest that strategically invoking what I have called the ennobling conception of equality is the rubric under which the struggle for homosexual equality should proceed. Thus, we have one issue with gay marriage and quite another with many aspects of the gay lifestyle,¹³ which is no more or less true with homosexuality. By employing this

¹³ Talking about the gay lifestyle may very well be like walking across a field where one landmine after another has been secretly and quite randomly planted. Patrick Moore, in *Beyond Shame: Reclaiming the Abandoned History of Gay Sexuality* (Beacon Press, 2004), offers an account of gay sexuality that occurs to many people when they think about gays, especially gay men: anonymous sex and multiple partners, on the one hand, and social milieus (e.g., bathhouses) that are conducive to such exchanges, on the other. Moore valorizes these things as a part of gay culture. The logic of this section is none other than that it is a fundamental mistake to tie gay marriage to gay culture thus understood. However, proud gays may be of

distinction and focusing upon gay marriage without allowing it to be confused with the gay life style, one can draw upon the rich and majestic history of male-male friendships as a mighty anchor for the idea of viewing gay marriage as ennobling. It does not matter that these friendships were perhaps not homosexual, precisely because it most certainly cannot be plausibly demonstrated, as noted in §3, that the mere addition of sex between them suffices to undo all the excellence that heretofore was in place. And the surprise is that support for this line of thought comes from the very bible to which so many appeal in order to lambaste homosexuality.

You will recall the biblical story of Jonathan and David. Here are David's words to Jonathan:

I am distressed for you, my brother Jonathan, very pleasant have thou been unto me. Thy love to me was wonderful, passing the love of women (1 Samuel 1:26)

It is noteworthy that the Apostle Paul, who was surely aware of the story of Jonathan and David, did not address this most provocative passage, despite his own quite harsh condemnation of homosexuality cited at the end of §1. Jesus, alas, never said a word about homosexuality. Christianity must be mindful of this. As for Judaism, there is the striking fact that homosexuality is not mentioned as one of the 7 things that God hates (Proverbs 6:16-19); and it is jealousy, rather than homosexuality, that is said to be as cruel as the grave (Song of Solomon 8:6). Furthermore, although the word "abomination" occurs in the entire bible about 76 times, a host of things, from eating certain foods to worshipping idols, are said to be an abomination—not just homosexuality.¹⁴ The religious may not conveniently ignore any of this. Certainly, they may not focus upon homosexuality as if there were biblical evidence that homosexuality ranks the absolute worse among the sins of humankind. Even if homosexuality is a sin, it does not follow at all that one thereby has a reason to make it illegal. With perfect consistency, there are all sorts of things that we may think that people ought not to do,

gay culture thus understood, the failure to distinguish it from gay marriage constitutes a stumbling block with respect to the realization of gay marriage. I suppose that this is missed by many because it is mistakenly thought that severing the two entails some form of shame or moral disapprobation of gay culture. No, severing the two entails no more than that gay marriage is on one moral plane and gay culture, as characterized by Moore, is on quite another. Surely this is right. No matter how proud a person may be of his ability to seduce one person after another, we take there to be a qualitative difference of the most dramatic sort in the pride that comes with having stood by one's ill partner for years until that partner breathed his last breath.

¹⁴ I indebted here to John Corvino's most remarkable essay, "By Their Fruits Ye Shall Know Them: Homosexuality, Biblical Revisionism, and the Relevance of Experience," John Corvino (ed.), *Remapping the Humanities: Identity, Memory, Community, and (post)Modernity* (Wayne State University Press, 2006). As he so rightly points out, it is not enough to note that this or that claim is made in the bible. We must also endeavor to understand the context in which the claim is made in order to understand its applicability to present times. And the proof of this is simply that in practice no one truly gives equal weight to every single passage in the bible, protestations to the contrary notwithstanding.

where the “ought” is a moral or religious one, without being committed to the view that the activity in question should be rendered illegal in society itself. Adultery is surely a case in point. Numerous people who find such behavior utterly despicable would find the idea of its being illegal rather absurd.

Finally, it would be remiss of me not to point out that, in addition to his strong condemnation of homosexuality, the Apostle Paul also had some extremely hostile things to say about Jews for steadfastly refusing to accept Christ as the Messiah. And it is arguable that much antisemitism down through the ages can be attributed to his words. It is quite significant, however, that since the latter part of the 20th Century an enormous effort has been made, and with considerable success, to downplay the apparent harshness of the Apostle’s words concerning Jews. Thus, we have the most felicitous words of Pope John Paul II, whereby he refers to the Jews as “our elder brothers” in his highly regard statement “We Remember: A Reflection on the Shoah (16 March 1998). Committed Christians found a way to see themselves as faithful to the Christian doctrine, even as they have rejected the Apostle Paul’s harsh words concerning the Jews. So, on pain of inconsistency, it simply cannot be held that exactly what the biblical text literally says regarding every single matter is exactly what adherents to that religion must embrace in order to regard themselves as faithful to that religion. In particular, it cannot be argued that a literal interpretation holds for homosexuality, all the while rejecting a literal interpretation for other equally direct and forceful biblical passages.

In any case, do we have sexual intimacy between Jonathan and David or extraordinary love (without sexual intimacy) between equals, which did not exist at that time between a woman and a man?¹⁵ The answer really does not matter. Certainly we have a most powerful affirmation of love here with psychological health well in place. Furthermore, the story is understood as one of majestic courage and commitment and excellence between two people that transcended otherwise formidable social boundaries between them. It is a story that takes us beyond the banality of equality.

Every struggle for equality would do well to bear in mind the significance of looking beyond the banality of equality to the nobility of equality. Invariably, this puts any struggle for equality on a more sure moral footing. It does so even from the “back of the bus”.

¹⁵ See, e.g., the article by Jennifer Lee entitled “The Man Date,” *New York Times* (10 April 2005). It is noted in the article that gender equality has in fact made it more awkward for two men (as opposed to a group of men) to spend time quality time with one another in public—time where the getting together is not mediated by sports or a rowdy bar scene. When women were not viewed as the moral or intellectual equal of men, it was quite natural for two men to spend so-called quality time with one another. After all, the account of the difference between women and men pretty much entailed that, *sex aside*, there was a measure of quality time that a man could only have with another man. This is in keeping with the point made in the last paragraph of fn. 5 regarding ignoring historical differences.