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Comment: Between Women/Between Men: The Significance for Lesbianism of Historical Understandings of Same-(Male)Sex Sexual Activities

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The two primary articles in this Symposium each contribute significantly to the project of providing a history for same-sex sexual activities and desires. That project is politically and intellectually valuable, both in its own right and as a means toward understanding contemporary "homosexuality."[1] It also has potential legal

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1. I do not use the word "homosexuality" in describing same-sex erotic attachments in other cultures. The meaning of that term is complex and contested even within contemporary culture. *See, e.g.*, Anne B. Goldstein, *History, Homosexuality, and Political Values: Searching for the Hidden Determinants of* Bowers v. Hardwick, 97 YALE L.J. 1073, 1079-80 (1988). Applying it trans-historically compounds these problems. Instead, I refer to the congeries of erotic attractions and practices between men or between women as "lovemaking." (Thanks to Anne Goldstein for suggesting the use of this capacious and non-medicalized term.) The degree of similarity between practices in other cultural contexts and contemporary Western gay or lesbian practices, or between responses of dominant cultures to such practices, is a contested question, whose answer is unnecessary for this Comment. By avoiding the terms "gay" and "lesbian" for the practices of other times and places, I mean only to leave the answer open. *Cf.* EVA CANTARELLA, BISEXUALITY IN THE ANCIENT WORLD vii (1992) (noting "how imprecise and misleading it is to speak of 'homosexuality' with reference to the ancient world").

Morris and Valdes help remind us that contemporary homosexualities (or, more precisely, gay male and lesbian relationships) are also products of a particular, historically situated culture. As scholars, we can study the past and the present. We do not, and cannot, know how desire might be constructed, or what the significance of the sex or gender of one's erotic partner might be, in a possible future world without patriarchy. I applaud Valdes' attempt to rescue desire from procreation and other instrumental uses, wherever that might lead. Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender, and Sexual Orientation to its Origins*, 8 YALE J.L. & HUMAN. 161, 208-09 (1996).

implications. The term "law office history" is a pejorative, not because history is irrelevant to law, but because the history put to use for legal causes is so often bad history. By contrast, both these articles appear to be good history, theoretically sophisticated and well-grounded in the relevant source materials. They are also, however, limited history, for each focuses overwhelmingly on the history of lovemaking between men.

In the first part of this Comment, I want to consider the significance of that androcentrism—of the articles and of the historical records upon which they build—for the legal implications each author seeks to draw from the history he has uncovered. Can this history be used on behalf of the legal interests of lesbians?[2] The second part of the Comment focuses more directly on the relative absence of a rich anthropological and historical record of female lovemaking in these cultures. What does that historical gap mean for lesbians and our interests? What can one infer about these cultures from the relative thinness of the record? If, as I suggest, erotic attachments between men and erotic attachments between women were not historically viewed as essentially similar practices, what would that mean for contemporary understandings of homosexuality, both by the law and within gay and lesbian communities? These latter questions are enormously important; I hope here at most to inscribe them in our consciousness as a topic for continued discourse.

Preliminarily, I briefly summarize the theses of Morris and Valdes insofar as they relate to the topic of this Comment. *Configuring the Bo(u)nds of Marriage: The Implications of Hawaiian Culture & Values for the Debate About Homogamy*,[3] by Robert Morris, consists, in part, of an evocative and revealing study of the existence and cultural significance of the *aikāne* in traditional Hawaiian culture. Mining Hawaiian language material as well as the commentaries of early *haole*, he argues that the *aikāne* is properly viewed as akin to a spouse, rather than merely a same-sex friend or companion.[4] He presents evidence of *aikāne* relationships in Hawaiian legend and pre- and post-colonial Hawaiian history. Morris' historical work is particularly valuable, since Hawaiian culture—unlike classical Greco-Roman culture—is relatively unexplored in English language sources. Morris has, *inter alia*, produced a pathbreaking work that will allow

2. Without purporting to define or delimit those interests, I assume that one of them is reducing the social and legal homophobia directed against us.

3. Robert J. Morris, *Configuring the Bo(u)nds of Marriage: The Implications of Hawaiian Culture & Values for the Debate About Homogamy*, 8 YALE J.L. & HUMAN. 105 (1996).

4. *See, e.g., id.* at 136.

future students of sexuality to include Hawaiian material in their cross-cultural and historical studies. [5]

Morris makes two related legal claims on the basis of his material. First, he uses it to chip away at the foundations of *Bowers v. Hardwick*.[6] In footnote 6, the *Bowers* majority includes Hawai'i among the jurisdictions outlawing sodomy in 1868, when the Fourteenth Amendment was passed.[7] Morris shows convincingly that this assertion is rooted in a misreading of Hawaiian history. The point seems well taken, and any attack on the legitimacy of *Bowers* is always welcome.[8] But the point is also of extraordinarily limited relevance. Justice White was engaging in the worst form of law office history, using history as a weapon rather than as a basis for analysis. As previous scholars have demonstrated, the history in *Bowers* has other and more pervasive flaws.[9] Even positing that criticism of *Bowers* will reduce its continuing legal and rhetorical force, deleting Hawai'i from the list of jurisdictions outlawing sodomy in footnote 6 would scarcely have changed the outcome, nor would it significantly affect anyone's view of the opinion's legitimacy.[10] Moreover, since Hawai'i was not part of the United States in 1868, its contemporaneous position on sodomy or same-sex sexuality seems almost irrelevant to the alleged issue of whether the framers of the Fourteenth Amendment would have perceived such practices as protected.

The more significant legal use Morris makes of his history is in the context of *Baehr v. Lewin*.[11] The Hawai'i Supreme Court in *Baehr* found that a ban on same-sex marriage would be permissible only if it served a compelling state interest, since such a ban was a form of discrimination on the basis of sex, subject to strict scrutiny under the Hawai'i State Constitution.[12] The court rejected, however, a due process/privacy claim that same-sex couples had a fundamental right to marry.[13]

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5. Since I speak even less Hawaiian than my "little Latin and less Greek" (*i.e.*, one word, *aloha*, rather than a dozen or so), I assume the accuracy of Morris' historical facts about *aikāne* relationships and, in large measure, his interpretation of the significance of those facts in Hawaiian culture. I could hardly do otherwise.

6. 478 U.S. 186 (1986).

7. 478 U.S. at 192-93 n.6 (citing, *inter alia*, "Kingdom of Hawaii: Haw. Penal Code, ch. 13, §11 (1869)").

8. *Bowers* looms over sexual orientation law like a brooding and malevolent omnipresence.

9. *See, e.g.*, Janet E. Halley, *Reasoning About Sodomy: Act and Identity in and After* Bowers v. Hardwick, 79 VA. L. REV. 1721 (1993); Nan Hunter, *Life After Hardwick*, 27 HARV. C.R.-C.L. L. REV. 531 (1992).

10. Morris seems to suggest that a more nuanced view of Hawaiian tradition and legal history would instead place Hawai'i in a "footnote 6a" of jurisdictions recognizing same-sex lovemaking. Even this reversal would not significantly change the opinion's legitimacy.

11. 852 P.2d 44 (1993).

12. *Id.* at 65.

13. *Id.* at 57.

Morris provides a subtle and clever alternative basis for grounding this right in what he calls the "Hawaiiana Clauses."[14] The argument, grossly oversimplified, is as follows: (1) The Hawaiiana Clauses protect traditional Hawaiian usages from state interference, so long as they are not "actually harmful";[15] (2) Among those traditional Hawaiian usages, according to the Hawaiian sources, were same-sex relationships akin to marriage;[16] (3) Same-sex marriage, what Morris calls "homogamy," is protected by the Hawaiian Constitution. In effect, Morris' argument is that homogamy is constitutionally protected because it is the contemporary analogy to practices found in traditional Hawaiian culture.[17] Such a historically grounded basis for the expected decision in *Baehr* on remand would strengthen the legitimacy of the decision, though it also runs the risk of particularizing it in a way that would limit the decision's perceived relevance for challenges in other states.

Francisco Valdes uses a different history to make a different historical-legal argument. In *Unpacking Hetero-Patriarchy: Tracking the Conflation of Sex, Gender, & Sexual Orientation to its Origins* he traces that conflation to its historical roots in the treatment of sex, gender, and sexual orientation in classical Greece.[18] He briefly notes the changes made by the Romans, by the early Christians and, finally, the understandings of these concepts in contemporary Euro-America. In each of these societies, there is a relatively clear cultural meaning of gender: two patterns of behavior which might loosely be designated, in contemporary language, as "masculine" and "feminine." Valdes, it should be noted, uses the term "gender" to refer both to social gender—the congeries of public behaviors that most writers mean by the term gender[19]—and sexual gender—those sexual

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14. Morris defines these as "a cluster of Hawaiian constitutional and statutory texts" that mandate "deference to Hawaiian usages, custom, practices and language," at the time of first Western contact. Morris, *supra* note 3, at 111.

15. *Id.* at 140.

16. Morris acknowledges that opposite-sex intimate relationships among commoners in Hawai'i were only analogous to, not identical with, Euro-American conceptions of marriage. *See, e.g., id.* at 129-30.

17. Morris also uses his knowledge of Hawaiian language, history, and culture to argue for an alternative jurisprudence. *See, e.g., id.* at 139-40 (discussing different connotations of the Hawaiian words used to translate "due process" and "equal protection of the laws"). This melding of Hawaiian source material and American jurisprudence may be the most pathbreaking aspect of the article; it is, however, outside the scope of this Comment.

18. The article is, as Valdes notes, a kind of prequel to his exploration of the current understandings of those concepts in law and culture and the implications of unpacking the conflation. *See* Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender" and "Sexual Orientation" in Euro-American Law and Culture,* 83 CAL. L. REV. 1 (1995).

19. *Cf.* Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 839 (1989) (analyzing need for "a rule that avoids the traditional correlation between gender and sex, a rule that is sex- but not gender-neutral" in context of discussion of legal rules regarding family and

practices, including but not limited to the sex of one's partner, that in a particular culture are considered appropriate for "masculine" or "feminine" persons. The relationship between gender and sex and the existence and meaning of a concept of sexual orientation, he demonstrates, varies across these cultures.

Valdes refers to an alternative, historically grounded vision of the possible relationship between sex, gender, and sexual orientation. He argues that in Native American cultures there was no determinative relationship between sex, i.e., biological sex as determined by external genitalia, and gender.[20] Each child was raised to be either masculine or feminine, but the choice of the gender in which to raise the child was only partially determined by the child's sex. Since a "masculine" gendered person, who would take on the social and sexual roles of that gender, might have either a penis or a vagina, the Euro-American concept of sexual orientation, in which sex, gender and the sex/gender of one's sexual partner are co-determined, simply does not apply. The *berdache*—the person whose sex and gender are unmatched—is a recognized cultural figure.[21] He or she is not condemned as a "gender-traitor," as is the homosexual.[22]

In Greece and, to a much lesser extent, Rome, Valdes indicates that the relationship between sex and gender, and thus the significance of same-sex sexuality, was neither as open-textured as in Native American cultures, nor as wholly conflated as in contemporary Euro-

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workplace). *But cf.* SANDRA BEM, THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY 82 (1993) ("[A]ny individual with cross-gender desires, whether sexual or nonsexual, was seen as but another instance of . . . 'sexual inversion.'").

20. This discussion, scattered in footnotes in this article, is more fully developed in Valdes, *supra* note 18, at 211-42.

21. Some define the *berdache* as a person with the sex of a man but the gender of a woman, or vice-versa. *See, e.g.*, Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage,"* 79 VA. L. REV. 1535, 1538 (1993) (noting that most *berdache* unions "were in fact gendered . . . with both partners . . . acting out their traditional gender roles"). Others have suggested that the *berdache* is a third category that mixes genders. *See, e.g.*, Charles Callender & Lee M. Kochems, *Men and Not-Men: Male Gender-Mixing Statuses and Homosexuality, in* THE MANY FACES OF HOMOSEXUALITY: ANTHROPOLOGICAL APPROACHES TO HOMOSEXUAL BEHAVIOR 165 (Evelyn Blackwood ed., 1986). Valdes' position is unclear. He refers to them as "socially cross-gendered," but then says they constitute a "unique gender category" neither male nor female. Valdes, *supra* note 1, at 188 n.97. This may reflect Valdes' conflation of social and sexual aspects into a single concept of gender. *See id.* at 164.

22. Valdes, *supra* note 1, at 188 n.97. The *berdache* can have sexual relationships, if male, with non-*berdache* men and, if female, with non-*berdache* women. *Berdache* do not appear to form sexual bonds among themselves. This suggests that the *berdache* concept involves a fluidity of persons between gender roles, but not a challenge to the gender roles themselves. Thanks to Mary Anne Case for this insight.

Callender and Kochems provide other evidence that Native American cultures did not conflate gender and sexual orientation. There were *berdache* who did not engage in homosexual activity and there were non-*berdache* who did. What defined a man or woman as *berdache* was the gender inversion. Callender & Kochems, *supra* note 21, at 174. That is, Native American cultures did not conflate "queers and sissies" or "dykes and tomboys."

America. A male adult citizen was required to take on the gender of masculinity. This included social roles designed and reserved for men. It also included a particular sexuality, defined in terms not of the sex of one's partner, but of one's role in the relationship. In classical Greco-Roman culture, sexuality was divided into the two categories of active and passive; being masculine meant being active.[23] A man gendered as masculine played the active role, whatever the sex of the passive partner. Correspondingly, the passive partner was gendered as female, whatever his or her sex. In classical Greece, for instance, the institution of pederasty structured a relationship in which an older male citizen played the active role vis-a-vis young citizen boys, who were expected, as part of their education, to adopt and perform the passive role sexually in that relationship.[24] Thus, gender was relatively fluid,[25] for male citizens would pass through a stage of sexual (though not social) female gender before becoming men.[26] In Rome, too, male citizens' gendered sexuality was coded as active, and could include sexual activity with a passive man without bringing the active partner's masculinity into question. In contrast to classical Greece, however, male lovemaking came to be seen less as a form of intergenerational transmission of cultural values and more as the

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23. *See, e.g.*, Valdes, *supra* note 1, at 179-80. Active and passive might well be recharacterized as "penis-using" and "non-penis-using"—categories as sex-linked as the Supreme Court's later division of "pregnant persons" and "non-pregnant persons." *See* Geduldig v. Aiello, 417 U.S. 484, 497 n.20 (1974); *cf.* Mary Anne Case, *Disaggregating Gender from Sex and Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 14 (1995) ("For much of Western history . . . women together with males who allowed themselves to be penetrated orally or anally were opposed and seen as subordinate to 'active' penetrative males.").

24. Although Valdes uses the term gender for both sexual and social roles, the youths were effeminized only sexually. The social roles of young males and young females were radically different. This effeminization, however, extended beyond the genital contact itself to the context in which it arose. Thus, for example, the boy was expected to play the coy role later associated with women in cross-gender romance. Valdes, *supra* note 1, at 189-90.

25. Gender was fluid in another context as well. A male slave would be gendered female when serving as the passive partner of a male citizen, but he would be gendered male when he took the active role with a female slave. *Cf. id.* at 192-93 (noting contingency of sexual gender in inter-class couplings on actor's place in dyadic social hierarchy).

26. *Id.* at 192. In Valdes' terminology, gender in Greece was deductive, i.e., determined by sex, but not intransitive, since male citizens could change genders over their lifespan. By contrast, it was not wholly deductive in Native American culture and is both deductive and intransitive within dominant contemporary ideology.

Valdes is generally careful to note that this fluidity existed only for men in Greco-Roman society, *see, e.g., id.* at 196, though even he is not immune to woman-obscuring statements, as when he observes that the ancient Greeks "engaged in a form of pan-sexuality that transcended . . . sexual orientation identities and categories," *id.* at 177 n.65. Some of his sources are particularly prone to false conflation across gender lines. *See, e.g.*, Maud W. Gleason, *The Semiotics of Gender Physiognomy and Self-Fashioning in the Second Century, in* BEFORE SEXUALITY: THE CONSTRUCTION OF EROTIC EXPERIENCE IN THE ANCIENT GREEK WORLD 389, 390 (David M. Halperin et al. eds., 1990). Gleason states that "[t]he essential idea [was] that there exist masculine and feminine 'types' that do not necessarily correspond to the anatomical sex of the person in question." This is true only insofar as the "person in question" is anatomically male.

expression of male licentiousness and domination. The Roman norm was that the male partners for active male citizens ought to be non-citizens or slaves.[27] Thus, in both cultures, playing the passive role was roundly condemned for male citizens.[28] Valdes sees this as part of the strict patrolling of gender lines, in furtherance of androcentrism and patriarchy.

Finally, with the intermixture of Judeo-Christian concepts, all homosexuality becomes proscribed. Sexuality itself is disapproved of, except as necessary for procreation.[29] Same-sex sexual activity, inherently for pleasure rather than procreation, is subject to social and, ultimately, legal condemnation.[30] Valdes shows how, in this process, gender and sex are conflated, as are sexuality and procreation.[31]

Valdes uses his historical and cross-cultural material for a quite different legal-cultural purpose than does Morris. Valdes seeks to give the conflation of sex, gender, and sexual orientation a history. This history is relevant because both *Bowers* and the ban on gay marriage reflect a belief that men and women are inherently and necessarily different, and that part of that difference is manifested in heterosexuality. Valdes, however, highlights cultures, including cultures to which Euro-American culture is linked geographically or historically, in which it is accepted that being a man anatomically does not necessarily require one to take on a particular social or sexual gender. His aim is to explode the claim that the conflation and the

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27. CANTARELLA, *supra* note 1, at x; *see also* Valdes, *supra* note 1, at 200 n.136.

28. Condemnation, of course, does not mean that the practice did not occur. Indeed, it suggests that such practices did occur and thus were in need of condemnation. *See, e.g.*, DAVID COHEN, LAW, SEXUALITY & SOCIETY 149 (1991); John J. Winkler, *Laying Down the Law, in* BEFORE SEXUALITY, *supra* note 26, at 176.

29. *See* Valdes, *supra* note 1, at 200. *But see* JOHN BOSWELL, CHRISTIANITY, SOCIAL TOLERANCE, AND HOMOSEXUALITY 115 (1980) (suggesting that even Saint Paul did not demand that sexuality be limited to procreation, but only "disapproved of any form of sexuality which had as its end purely sexual pleasure," and "regarded licit sexuality as that contained within a permanent and monogamous sexual relationship").

30. The sources of Judeo-Christian heterosexism are far too complex to summarize here. What is relevant is the way in which this heterosexism built upon and interacted with the pre-existing patriarchy of the Mediterranean societies in which Christianity developed.

31. This ideological shift also underlies the conflation of male and female lovemaking in gender-neutral notions of sodomy and, later, homosexuality. Even in Greece and Rome, cultural norms for women conflated sexuality and procreation, while men were also permitted or encouraged to engage in non-procreational lovemaking. The advent of Christianity imposed on men the same denial of sexuality for pleasure.

The very periodization that makes early Judeo-Christianity appear radically different from pagan Greece and Rome reflects a focus upon male same-sex sexuality. Women, both before and after, were ideologically constructed, socially and sexually, in relation to men. *Cf.* Joan Kelly-Gadol, *The Social Relation of the Sexes: Methodological Implications of Women's History, in* THE SIGNS READER: WOMEN, GENDER & SCHOLARSHIP (Elizabeth Abel & Emily Abel eds., 1983) 11, 12-14 (noting that examining history through lens of gender challenges traditional notions of periodization).

hetero-patriarchy that it enforces are natural, normal, and moral.[32] In effect, he aims to show that societies have existed in which same-sex sexual activities have been accepted as normal and even culturally desirable. By doing so, he denaturalizes, and thus helps delegitimate, their condemnation.[33]

In each article, as I explore further below, the examples are overwhelmingly of erotic attachments between men. To that extent, the legal-political arguments of Morris, though not of Valdes, are somewhat problematic for a project of lesbian liberation. Morris provides strong proof of male lovemaking in traditional Hawaiian culture and, thus, a constitutional basis for protecting such relationships. As a practical matter, many contemporary proscriptions on "homosexuality," including the ban on same-sex marriage, have been applied across genders. It is highly unlikely, in such cases, that a constitutional decision protecting gay male marriage would not in fact be extended to lesbian marriage as well, but that effect is indirect.[34] It should also be noted, however, that Morris' data provides additional support for Valdes' thesis: Traditional Hawaiian culture, as he describes it, seems to have had relatively strict and determined social gender roles, but more fluid sexual gender roles.

Valdes' thesis, by denaturalizing heterosexuality, destroys an argument that can be and has been used against *any* non-heterosexual relationship. Indeed, by placing patriarchy and the enforcement of gender roles at the center of his analysis, Valdes may provide a particularly lesbian-friendly approach to understanding and fighting heterosexism.

To what extent are the cultures described and the sources used in describing those cultures by the authors of these articles androcentric? What might one learn about gender and sexual orientation by focusing on the fragmentary evidence of women's lovemaking? What might one learn from the fact that the evidence *is* so fragmentary? It is important here to recognize that this androcentrism appears to be a characteristic of both history and the available historical

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32. *See, e.g.*, Valdes, *supra* note 1, at 204.

33. Valdes' argument, then, is analogous to William Eskridge's argument against the ban on same-sex marriage. By demonstrating the historical existence of same-sex marriages, Eskridge shows that "the definitional argument essentializing marriage around male-female intimacy is factually wrong." William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419, 1422 (1993).

34. The extension is logically compelled in *Baehr*, since the decision rests only on the Hawai'i Constitution's ban on sex discrimination. If, as Morris suggests, the legal claim has been interpreted as requiring some relationship to the land, Morris, *supra* note 3, at 116, 120-21, the extension of constitutional protection to *aikāne* relationships may be limited to male-male relationships, since all his examples that provide such a linkage to the land are male-male, *see, e.g., id.* at 144-45 (discussing relationship of Lono and Kapā'ihi).

materials.[35] Within those confines, both Morris and Valdes seek to mitigate that androcentrism.[36]

Morris' discussion of *aikāne* relations is entirely about male lovemaking. Although he begins his discussion of the term *aikāne* by defining it as marking "persons of any gender in a homogamous relationship," his specific examples, from both legend and history, are all of male-male *aikāne*. Indeed, when he lists the elements of an *aikāne* relationship, two of those elements appear to assume that the relationship is between a chief and a commoner, and thus presumably between men.[37] Again, near the end of his article, Morris asserts that the *aikāne* relationship operated similarly for both men and women,[38] but he does not provide the concrete information that would give us confidence in this claim of gender equality.

Morris does suggest that his *aikāne* material demonstrates the existence of non-patriarchal, as well as non-heterosexist, erotic relationships. In almost all his examples, the *aikāne* relation is between a chief and a person who serves him.[39] The relationship between the two, however, is often described as relatively non-hierarchical.[40] Morris suggests that one characteristic of *aikāne* relationships is that they "blur or erase the usual lines of social hierarchy and rank."[41] The *aikāne* relationships also serve as evidence of the existence of marriage-like relationships not based on

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35. The frequent disappearance of lesbian legal history in "homosexual" secondary sources has been examined in Ruthann Robson, *Lesbianism in Anglo-European Legal History*, 5 WIS. WOMEN'S L.J. 1 (1990). Robson suggests that this problem is only partly explained by the disproportion in the available primary sources. Researchers may be insufficiently sensitive to material indicative of female lovemaking. *Id.* at 14-15.

I focus here almost entirely on the Greco-Roman era, where other English-language sources are more readily available. My analysis of the relative place of female lovemaking in traditional Hawaiian culture and in Native American culture is based almost solely on the materials as presented in Morris' and Valdes' articles. It is worth noting, however, that in a 276-page book on women in Hawaiian culture, there is essentially nothing about their sexuality vis-à-vis Hawaiian men or other Hawaiian women, suggesting a lack of adequate, accessible primary material. JOCILYN LINNEKIN, SACRED QUEENS AND WOMEN OF CONSEQUENCE: RANK, GENDER, AND COLONIALISM IN THE HAWAIIAN ISLANDS (1990).

36. Both use gender-neutral language in describing the data and their implications (even, I suggest, where such gender-neutrality may be misleading). Both seek to explore the liberatory potential of history for sexual minorities of both genders. Valdes in particular appears to recognize the erasure of lesbians in much legal and cultural material. *See* Valdes, *supra* note 1, at 167 (noting "the practice within legal (and social) culture of relegating gender to the realm of 'women's issues' and sexual orientation to the realm of 'sexual minorities' issues'; the twain are assumed hardly ever to meet").

37. *See* Morris, *supra* note 3, at 145.

38. "*Kapu, mana*, and the related concepts [are] seen in these *aikāne* stories, where sisterhood and brotherhood are spoken of synonymously with loverhood." *Id.* at 154.

39. The only apparent exception is the case of Namakaokai'i and Namakaopao'o, two young chiefs who lived as a couple in greatest *kapu*. *See id.* at 151 n.224.

40. *See, e.g., id.* at 144-45 (discussing Lono and Kapā'ihi).

41. *Id.* at 111.

gendered dominance and submission.[42] Morris suggests that the missionaries' opposition to *aikāne* relationships is logically linked with their attempts to impose more Western concepts of marriage.[43]

Because of the paucity of examples of female *aikāne* relationships, one cannot tell from Morris' material if there were differences between these relationships and those between male *aikāne*. It would be surprising if there were not in a culture where social gender mattered a great deal. The paucity itself suggests a difference in the relationships or at least in the cultural salience of the relationships. I was also left curious about the qualities of *aikāne* relationships. For example, to what extent were they sexualized? The materials Morris presents rarely include explicit reference to genital activity, though the language is often tinged with erotic feeling.[44] Did the extent or form of sexualized expression between *aikāne* differ by gender? I do not raise these questions as complaints. The article Morris has written is fascinating and important. It would be ungenerous to take issue with him for not writing a different one.[45] Rather, I hope that he—or someone else with equal theoretical sophistication and familiarity with the Hawaiian language materials—will write as good an article from a lesbian-centered perspective.

There is a much richer record in the Greek and Roman materials but no more definitive answers. Valdes, like most writers about

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42. The limited significance of *aikāne* relationships for reconceptualizing heterosexual marriage is suggested by Morris' argument that there was no gender-like hierarchy apparent in such relationships. *Id.* at 138 n.153. Native American *berdache* marriages reinstate gendered and unequal relationships among same-sexed persons; Hawaiian *aikāne* relationships permit ungendered, equal relationships, but only among same-sexed persons.

43. *Id.* at 155-56.

44. Morris himself insists on the erotic nature of these relationships. *See, e.g., id.* at 145 n. 185. But the examples suggest a more complex and ambiguous situation. For example, in one story, the character 'Umi is described as having adopted sons. *Id.* at 146. Morris suggests such adoptions were a "means by which a person became the lover of another person of the same sex." *Id.* Yet 'Umi also had other associates designated as *aikāne*. Did 'Umi engage in lovemaking with both his *aikāne* and his adopted sons? What distinguished these relationships? Morris insists on the necessity of context to understanding the meaning of these various relationships, but in this article provides frustratingly little specific detail.

Perhaps *aikāne* relations were almost always homosocial but not necessarily always homosexual. This would be consistent with the cited conclusion of Mary Kawena Puku'i that "homosexuality was not forbidden or wrong," though so far as she knew in her youth "the *aikāne* relationship was 'never homosexual.'" *Id.* 150 n.216; *cf.* ADRIENNE RICH, *Compulsory Heterosexuality and Lesbian Existence, in* BLOOD, BREAD AND POETRY 23, 51-54 (1986) (discussing lesbian continuum, of which explicit lesbian sexuality is only endpoint).

As Morris notes, we cannot know the precise meaning of the Hawaiian language "translation" of sodomy, *moe aikāne*, in terms of sexual activities. Morris, *supra* note 3, at 129. Furthermore, the use of the term *aikāne* in reference to children who entered the service of chiefs might call into question whether even homosociability is an essential aspect of an *aikāne* relationship. *Id.* at 134 n.131.

45. Indeed, Morris *has* written an article that comes closer to answering these questions in earlier drafts. The later drafts and the published article, unfortunately, eliminate almost all of the fascinating narrative fragments describing the female *aikāne* relationships between Ua and Kā'ala and between Hi'aka and Wahine.

Greco-Roman same-sex sexuality, concentrates on male lovemaking.[46] As noted above, gender lines were strictly patrolled, but male sexual gender was defined by the taking of the active role, rather than by the sex of the partner. In this context, young boys, but not male citizens, were socially permitted to take the passive role. If male citizens did so, they violated their masculine gender role and were referred to, pejoratively, as *kinaidos*.[47]

Being gendered as male, then, allowed for the possibility of sexual attachments to another who was of the male sex, but the relationship was expected to be hierarchical by age or by class: A masculine Greek citizen could play the active sexual partner with a woman, a male youth, or a male slave. On the other hand, anyone sexually gendered as female was expected to play a passive role. And anyone born with female genitalia was necessarily gendered female: Greek concepts of gender and sexuality did not allow for gender fluidity among women.

One question this material raises is what role, if any, female lovemaking played in the lives of Greek women or in the world view embedded in Greek culture. What scholars know most clearly is how little they know. Many Greeks wrote about male lovemaking; Greek poetry and vase paintings often took it as a subject. There is enough material to form the basis for entire books about Greek male lovemaking.[48] The primary sources on female lovemaking are much more fragmentary. Thus, Valdes' article, like much of the other secondary material, focuses only incidentally on the topic. Eva Cantarella, who began her research planning to examine the place of women in Greece and Rome, explains in the preface to her book that the available literature led her instead to write primarily about men.[49] In a major work on bisexuality in the ancient world, she has only two short segments on female lovemaking in Greece and in Rome, plus scattered other references.[50]

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46. *See* KENNETH J. DOVER, GREEK HOMOSEXUALITY 171 (1978) (noting that his own lack of discussion of female lovemaking "reflects the paucity of women writers and artists in the Greek world and the virtual silence of male writers and artists on these topics").

47. *See* Valdes, *supra* note 1, at 195. The negative connotations applied even to the most powerful men, if they played the role of *kinaidos* or its Roman equivalent, *cineadus*. Caesar "was celebrated in antiquity for having been the lover of Nicomedes, king of Bithynia, and, therefore, "was publicly mocked. . . . Catullus . . . defines him bluntly as *cinaedus*." CANTERELLA, *supra* note 1, at 156; *cf.* Valdes, *supra*, at 199 n.134. Caesar retained respect, nonetheless, in part because of "his fame as an adulterer." CANTARELLA, *supra* note 1, at 157. Caesar, it might be concluded, played the roles simultaneously of a ladies' man and a man's lady.

48. *See, e.g.*, BEFORE SEXUALITY, *supra* note 26; CANTERELLA, *supra* note 1; DOVER, *supra* note 46.

49. CANTERELLA, *supra* note 1, at vii.

50. Cantarella, like Valdes, recognizes female lovemaking. In contrast, Cohen neglects it entirely. Indeed, he apparently assumes away its very existence in his discussion of women in arranged marriages, saying that "adultery might be the only opportunity they would ever have for a romantic-erotic attachment." COHEN, *supra* note 28, at 169.

This lack of information suggests that the topic was not of much interest to those—almost all men—who produced the Greek and Roman literature and art.[51] Valdes' theory of the relationship between sex, gender, and sexual object choice helps explain this lack of interest. The subject of interest to men was man.[52] It was important to understand what manliness meant and how a man's sexual activities might affect perceptions of his maleness. In Greek ideology, a man who took the active role in sex was manly.

Pederasty was a permissible form of sexuality for the adult male partner and acceptable for the boy so long as its physical and emotional manifestations did not unduly effeminize him. Concern for the youth's future manly role seems to have affected the norms for pederasty. Some of the literature suggests that the citizen youths were not to be penetrated and that they were not to take sexual pleasure from the activity.[53]

Women were both assumed and required to be passive. Passivity did not mean passionlessness; women were also assumed to be lustful and to lack the male virtue of self-control.[54] Thus their chastity was to be enforced by seclusion in the home away from other men. Such seclusion—one is tempted to refer to it as closeting—may have made female lovemaking more difficult, but it also made it less visible.[55] Like adultery, it was an affront to patriarchy, for it suggested that the man's control of his wife and daughters was imperfect. The idea of female lovemaking may also have been difficult for Greek culture to comprehend, since it posited a sexual encounter without any active

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51. "Love between women, as it did not serve as an instrument to form the citizen . . . was perfectly irrelevant, [and] remained something of which only women continued to speak. Thus, sadly, we know little or nothing of how they experienced it. . . . Everything we know about female homosexuality (apart from what men say about it) comes, in fact, from Sappho." CANTERELLA, *supra* note 1, at 78. One of the tragedies for the possibility of an adequate history of female lovemaking is that only a few fragments of Sappho's work survive.

52. Contra my computer's grammar check, this does *not* mean "human being."

53. CHRISTINE DOWNING, MYTHS AND MYSTERIES OF SAME-SEX LOVE 141 (1989) (the youth "expects no physical gratification."); DAVID M. HALPERIN, ONE HUNDRED YEARS OF HOMOSEXUALITY 55 (1990). *See generally* Valdes, *supra* note 1, at 190-91. In ancient Greece, as in contemporary America, practices, no doubt, could not wholly be predicted from ideals. Indeed, the existence of a norm often suggests a desire or practice in need of disciplining.

54. *See* Valdes, *supra* note 1, at 179. "Women are assumed to be markedly more open to erotic emotion than men and sexually insatiable once aroused." Anne Carson, *Putting Her in Her Place: Women, Dirt and Desire, in* BEFORE SEXUALITY, supra note 26, at 135, 138. *See also* COHEN, *supra* note 28, at 138 ("[I]n her passionate and emotional nature and the violence of her sexual instincts, which she is felt as little able to control, [woman] is regarded as irrational, unstable, dangerous.").

55. As Winkler says, "simply knowing the protocols [i.e. the fundamental conventions] does not tell us how people behaved." John J. Winkler, *Laying Down the Law, in* BEFORE SEXUALITY, *supra* note 26, at 171, 176. *See supra* note 28.

As Cohen points out, the seclusion was never completely successful, else there would be no opportunity for adultery and hence no need to punish it. COHEN, *supra* note 28, at 135.

partner.[56] Such practices would also have been insignificant to the underlying social structure. Women were important to the Greek polity insofar as they were available for men sexually and procreationally. This availability, in Greco-Roman society, would not have been incompatible with female lovemaking. Women might spend some time in their lives in all-female company; then, or at other times, they might be involved with other women with whom they came in contact. Those same women would also be linked with men for economic survival.[57] Women citizens would be wives and mothers; other women might be prostitutes.

The few fragmentary references to female lovemaking by male Greek and Roman writers are consistent with this perspective. Unlike pederasty, lovemaking between women was viewed negatively. Plato describes women attracted to other women as "savage, uncontrollable, dangerous females."[58] The woman seen as the initiator of the encounter was constructed as having assumed a male gender.[59] "In the Roman imagination, female lovemaking could only mean an attempt by a woman to replace a man."[60]

The notion of female lovemaking as a violation of female gender norms is perhaps most vividly illustrated in Ovid's story of Iphis and Ianthe. Iphis is born a girl, but her mother, at the advice of the gods, placates her husband by telling him that she has borne a son. Iphis is thus raised as a boy. When she reaches adulthood, her father betroths her to Ianthe, with whom she is in love. The myth assumes

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56. Valdes describes the gender transitivity of the Greek male citizen over his lifespan as involving the treatment of youth—like female objects "while preserving their capacity to act as 'male' *subjects* socially and sexually later in life." Valdes, *supra* note 1, at 190 (emphasis added). Female lovemaking would, on that conception, entail sexuality without subjectivity. *Cf.* Sylvia Law, *Homosexuality and the Social Meaning of Gender*, 1988 WIS. L. REV. 189, 202 ("Lesbians were censured by silence; sexual acts between two women were unimaginable.").

The dominant culture, both in ancient Greece and today, associated activity with sexual pleasure; the (active) (male) partner is the one whose sexual pleasure was central. Oddly, it is only within lesbian culture that one encounters the radical separation of activity and pleasure in the figure of the stone butch, who actively seeks the pleasuring of her partner but ideally is never the object of sexual pleasuring by that partner.

57. Female "marriages" could not readily have occurred in the ancient world "because women had fewer economic opportunities, and less social and legal freedom than men." Eskridge, *supra* note 33, at 1419, 1447.

58. CANTERELLA, *supra* note 1, at 92; *see also id.* at 166 (noting that Romans viewed women loving women as "worst form of female depravity"). Thus, I think Valdes slips into androcentrism when he says, "Greek sex/gender arrangements remained aggressively androsexist, though not especially heterosexist." Valdes, *supra* note 1, at 162. At a different point, Valdes acknowledges the "meta-androcentrism" of such an assertion, when he notes that Greek women were "subjected" to "compulsory heterosexuality for life." *Id.* at 196.

59. Women who took the active role vis-à-vis other women were seen as "los[ing] the natural characteristics of their sex, becoming a sort of caricature of maleness." CANTERELLA, *supra* note 1, at 93. In Martial's satire, the woman Bassa is condemned as follows: "You dare to bring together a couple of quims, and your portentous lust imitates a man." *Id.* at 167.

60. *Id.* at 170.

that this love of one woman for another would be seen as unnatural and shameful.[61] The gods solve the dilemma by turning Iphis into a boy. Thus the split between gender and sex is solved by a miraculous precursor to transsexualism.[62]

The most extensive information about female lovemaking in ancient Greece, of course, comes from the poetry of Sappho. Unfortunately, what survives are only a few fragments of the poems and references to Sappho and her poetry in the works of other ancient writers.[63] The evidence is insufficient to draw any definitive conclusions, but it appears that female lovemaking as practiced by Sappho and others was different than the male lovemaking epitomized by pederasty.

Relations among women likely occurred within all-female social groupings, such as *thiasoi* and groups of *maenads*. The *thiasoi* were societies of young maidens, led by teachers such as Sappho. While in the *thiasoi*, the girls "loved other women . . . with a passionate love, experienced with exceptional sensibility and ecstasy."[64] The same-sex eroticism, with the teachers or among themselves, might have been a kind of rite of passage for the young girls, but it would have been a life-long practice for the teachers.[65] *Maenads* were legendary groups of married women temporarily away from their husbands in a religious ritual centered around Dionysus. "They seem to have represented an initiation of women by women into women's own sexuality, into arousal for its own sake."[66] One can infer erotic linkages within these groups, and at least some of the linkages appear to be between equals.[67] Cantarella suggests that the homosexual bond within the *thiasoi* "appears less like an educational relationship and more like the free expression of reciprocal feeling, giving rise to

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61. Iphis is quoted as saying, "Cows do not love cows, nor mares, mares; but the ram desires the sheep, and his own doe follows the stag. . . . In the whole animal world there is no female smitten with love for female. . . . The daughter of the Sun loved a bull . . . my passion is more mad than that." 2 OVID, METAMORPHOSES 55-57 (Frank J. Miller trans., Harvard University Press 1916).

62. The transformation of sex rather than gender when the two are misaligned would have been seen as less extraordinary in premodern times. Contemporary understanding is that biological sex is fixed, and gender the cultural epiphenomenon. By contrast, in earlier periods, "*sex*, or the body, must be understood as the epiphenomenon, while *gender*, what we would take to be a cultural category, was primary or 'real.'" THOMAS LAQUEUR, MAKING SEX: BODY AND GENDER FROM THE GREEKS TO FREUD 8 (1990).

63. Contemporary books on Sappho include GUY DAVENPORT, SEVEN GREEKS/TRANSLATIONS (1995); JEFFREY M. DUBON, ANCIENT AND MODERN IMAGES OF SAPPHO: TRANSLATIONS AND STUDIES IN ARCHAIC GREEK LOVE LYRICS (1983); FROM SAPPHO TO DE SADE: MOMENT IN THE HISTORY OF SEXUALITY (Jan Bremmer ed., 1989).

64. CANTERELLA, *supra* note 1, at 79.

65. *See, e.g.*, ARTHUR EVANS, THE GOD OF ECSTACY 72-74 (1988).

66. DOWNING, *supra* note 53, at 194. Nymphs were unmarried females who similarly took part temporarily in an all-female world. *Id.* at 197.

67. By contrast, as Valdes notes, while male "social equals sometimes bonded as mates," "these socially symmetrical bondings were deemed problematic." Valdes, *supra* note 1, at 193.

an equal relationship between two people who have chosen each other."[68]

Thus, the histories of male and of female lovemaking in ancient Greece and Rome appear to be quite different. The nature and frequency of the practices may have been different. The social significance of the practices were surely different. And the responses to the practices in the surviving literature are quite different.

In Hawaiian and Native American cultures, the gender differences appear less powerful. There seems to be less androcentrism in the literature, i.e., the narratives and discussions are less overwhelmingly male-centered. It may also be true that the gender of the same-sex couple is less significant within these cultures. This would be consistent with Morris' suggestion that heterosexual couplings in traditional Hawaiian culture were less gendered than in Euro-American culture.[69]

How might the meaning and potential uses of history change if one were to focus on the gendered differences in the histories of same-sex sexualities? First, the history explicit and implicit in the Morris and Valdes articles provides additional evidence for the proposition that the concept of "homosexuality" is itself historically contingent. There is no necessary connection between male-male lovemaking and female-female lovemaking.

I suggest that two facts about Euro-American culture make the conflation of these practices into the single term "homosexuality" seem natural. First, heterosexuality is both assumed as the natural and normal form of sexual practice, and assumed away as a subject to be examined. Second, patriarchy, which makes heterosexuality a joining of two unequal genders, is similarly both pervasive and invisible. Only when heterosexuality is centered, and the patriarchy that it underpins is obscured, do same-sex relations between women and same-sex relations between men appear fundamentally the same, because each becomes defined simply as "not heterosexual."

The use of gender-neutral language, like "homosexuality," in describing practices of both this and other cultures is politically understandable. Indeed, I believe that theorizing and acting on the basis of a concept of homosexuality is a politically desirable choice in

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68. CANTERELLA, *supra* note 1, at 83. *See also* David M. Halperin, *Why is Diotima a Woman, in* BEFORE SEXUALITY, *supra* note 26, at 257, 274. Halperin suggests that mutuality and equality may have been seen by the Greeks as a characteristic inherent in female sexuality. "[E]rotic reciprocity was relegated to the province of women, who were thought capable of both giving and receiving pleasure in the sexual act at the same time and in relation to the same individual." *Id.* at 270.

69. *See, e.g.*, Morris, *supra* note 3, at 154-55. I suggest this quite tentatively, given the limited nature of the materials provided by Morris and Valdes and my ignorance of any extensive additional materials.

many contexts. Such conflation, however, may obscure the particularly gendered nature of both sexual practices and responses to those practices.[70]

The meaning and sources of lesbianism and gay maleness may be similar or different in complex ways. Though both involve same-sex activities, one is between people raised as men and the other between people raised as women; that will make them distinctive phenomena in any deeply gendered society.[71] There are tantalizing hints of such differences in the Greco-Roman material. These were cultures in which gender was a fundamental organizing principle and people born female were always gendered as feminine. They were thus expected to live in subordinate relationships with men.[72] This same principle of dominance operated in relationships between "masculine"/active males and "feminine"/passive males. Lovemaking between women, however, may not have embodied the same hierarchical relationship.[73] Reactions to it also differed. While male lovemaking was a subject of careful consideration and approval, subject to particular rules of conduct, lovemaking between women was either ignored[74] or derided as a failed attempt at "being male."[75] One might find

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70. *See* Goldstein, *supra* note 1, at 1074 n.9 (noting that "women had different social and biological roles and responsibilities," and thus history of attitudes toward and treatment of male lovemaking would be different than one regarding female lovemaking).

Both Valdes and Morris use gender neutral language in the context of discussions in which essentially all the provided examples are male. I do not single them out, both because these authors are not unique in this regard and because I recognize the double-bind of appearing either to ignore lovemaking between women or to conflate it with lovemaking between men when one is discussing materials that are overwhelmingly about the latter. Nonetheless, we must constantly be aware of this linguistic and epistemological dilemma.

71. Blackwood, in calling for a breaking of the conflation of the two in anthropological studies, criticizes the "assumption that lesbian behavior is the mirror-image of male homosexuality. . . . [T]he act of having sex with a member of one's own sex may be culturally defined in rather divergent ways for men and women." Evelyn Blackwood, *Breaking the Mirror, in* THE MANY FACES OF HOMOSEXUALITY: ANTHROPOLOGICAL APPROACHES TO HOMOSEXUAL RELATIONS 1, 6 (Evelyn Blackwood ed., 1986).

Consider the complex reactions within the lesbian community to male-to-female transsexuals who seek acceptance as lesbians. The resistance reflects in part a belief that such persons inevitably take on certain masculine characteristics which differentiate them from women-born women. *See* KATE BORNSTEIN, GENDER OUTLAW: ON MEN, WOMEN, AND THE REST OF US 41-42 (1995). The range of contemporary attitudes and practices among lesbians and their relationship to the social gender of the women who engage in such practices is beyond the scope of this Comment.

72. *Cf.* Valdes, *supra* note 1, at 174 ("The construction and operation of 'femininity' therefore increasingly denoted, and required, socio-sexual deference and surrender to 'masculinity.'").

73. Greco-Roman female lovemaking would also have been distinctively different than either Greco-Roman male lovemaking or contemporary lesbianism, because of women's exclusion from public life.

74. Our knowledge of female lovemaking in Greece is largely of practices from earliest Greek myth and legend. "The old lesbian circles were completely gone and so repressed were women in classical Athens that we have almost no information on lesbianism from this period." EVANS, *supra* note 65, at 108.

75. CANTERELLA, *supra* note 1, at 93.

echoes of contemporary differences in lesbian and gay male practices and in social-legal responses to lesbians and gay men. The extent to which these differences reflect gender differences common to all patriarchal cultures is a subject for further examination.

Whatever the commonalities between gay men and lesbians today in the subjective experience of same-sex sexuality, they clearly share experiences of being subjected to homophobia. To the extent, then, that homophobia can be historicized and denaturalized, this effort is of direct benefit to lesbians. The relevance to us of the history of male-male erotic attachments per se is more problematic.[76]

Even homophobia, however, is not a gender-neutral phenomenon. It is true that contemporary law and social attitudes yoke together gay men and lesbians and condemn, often in similarly hostile language, those sexual practices in which members of each group engage (while generally ignoring the frequency of such practices among heterosexuals).[77]

The different responses to lesbians and gay men by the dominant culture, I think, can be linked in part to the different ways in which lesbians and gay men are traitors to their gender roles. Patriarchy is one thread that links together Greece and contemporary Euro-American society.[78] In patriarchal cultures, male homosexuality will draw hostility because it suggests the refusal of the dominant role the society offers and thus threatens the naturalness and legitimacy of male superiority.[79] As others have pointed out, a man who rejects the mantle of maleness is seen as a queer, a fag, a threat to the

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76. Such histories are a necessary part of examining the question of historic differences and commonalities. It is important for lesbians simultaneously to develop and discover as much and as rich a history of female lovemaking as the sources will allow. For examples of contributions to that project, see, e.g., LILLIAN FADERMAN, ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH CENTURY AMERICAN (1991); ELIZABETH LAPOVSKY KENNEDY & MADELINE D. DAVIS, BOOTS OF LEATHER, SLIPPERS OF GOLD: THE HISTORY OF A LESBIAN COMMUNITY (1993); CARROLL SMITH-ROSENBERG, DISORDERLY CONDUCT: VISIONS OF GENDER IN VICTORIA AMERICA 244-96 (1985); Judith C. Brown, *Lesbian Sexuality in Medieval and Early Modern Europe, in* HIDDEN FROM HISTORY: RECLAIMING THE GAY & LESBIAN PAST 67 (Martin Bauml Duberman et al. eds., 1990).

77. *See* Bowers v. Hardwick, 478 U.S. 186 (reconstructing challenge to sodomy statute as question of constitutionality of ban on "homosexual sodomy"). Pat Buchanan's condemnation of gays and lesbians as part of his "cultural war" for "family values" furnishes an additional example. Philip Gailey, *Bush Embraces a Divisive Strategy*, PETERSBURG TIMES, Aug. 21, 1992, at 15A; Tom Teepen, *GOP Takes Aim at "Other" America*, THE ATLANTA CONST., Aug. 21, 1992, at A11.

78. Valdes argues that patriarchy is absent from Native American societies. Though Morris does not discuss patriarchy, his discussion of traditional Hawaiian culture suggests a world perhaps more like Native American cultures, in which the genders have different roles, but they are not connected by subordination and domination of women by men.

79. Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men is Sex Discrimination*, 69 N.Y.U. L. REV. 197, 235-36 (1994); *cf.* JOHN STOLTENBERG, REFUSING TO BE A MAN 50-52 (1989)(describing mutually reinforcing relationships between male supremacy and sexual objectification).

natural order.[80] Men's rejection of their gender roles is incomprehensible and therefore condemned.

Although such responses are common, they are, of course, conceptually unstable. Contemporary dominant culture defines homosexuality by the sex of the partner, so that a man who is the active partner of another man is a homosexual. Yet is he a gender-defying "sissy"? The paradoxes of seeing homosexual acts performed by "non-homosexual" actors reflects the intertwined but incoherent conceptions of active-passive, sexual orientation (defined by sex of partner), and maleness.[81] The conflation does not fully reflect reality,[82] but the belief that gay men are not real men helps fuel the basis for the straight world's fear and hatred.

The reaction to lesbianism is somewhat different.[83] Rejecting the female social gender is, while inappropriate, understandable. Everyone knows why girls would be tomboys, though most people expect them to grow up to be real women.[84] The dominant culture expects women in the world of work to exhibit certain masculine characteristics, such as assertiveness, which seem necessary to success, while simultaneously expecting them to be feminine. Women are thus expected both to be women and to succeed on terms that require them to be "men."[85] In terms of sexual gender as well, homophobia

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80. *See generally* Case, *supra* note 23, at 62-63; Marc Fajer, *Can Two Real Men Eat Quiche Together*, 46 U. MIAMI L. REV. 511, 621-23 (1992); Valdes, *supra* note 18. Interestingly, Morris highlights a concern with manliness among the Christian missionaries to Hawai'i as one of the roots of their disapproval of aspects of Hawaiian culture, including its insufficient patriarchy and, inferentially, its recognition of same-sex sexualities. Morris, *supra* note 3, at 125.

81. In prison, for example, the man who "takes" another man sexually is still constructed by himself and others as heterosexual. *See* RICHARD POSNER, SEX AND REASON 121-22 (1992) (discussing this and other examples of what he calls "opportunistic homosexuality").

This paradox is perhaps most vivid in the Department of Defense policies regarding homosexuals in the military. The policy purports to be based upon actions. However, a man who has had sex with another man may nonetheless be retained in the military by showing that the act was out of character, that he was a heterosexual who happened to have sex with a homosexual man. *See* Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499, 549 (1991).

82. "It seems to make little difference whether a man takes the active or the passive role . . . any sexual desire by one male for another leads to categorization as an effeminate sodomite." Randolph Trumbach, *Gender and the Homosexual Role in Modern Western Culture: The 18th and 19th Centuries Compared, in* HOMOSEXUALITY, WHICH HOMOSEXUALITY 149, 153 (Dennis Altman et al. eds., 1989).

83. For a thorough discussion of the ways in which the conflation of gender and sexual orientation is itself gendered, see Case, *supra* note 23. That is, we respond differently to sissies than to dykes. Case suggests that, at least in the public world, the most severe consequences are imposed on those, female or male, who are excessively feminine and that this both reflects and exacerbates patriarchal norms.

84. "One is not born, but rather becomes a woman." SIMONE DE BEAUVOIR, THE SECOND SEX 301 (Vintage Books 1974).

85. Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) ("An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch-22: out of a job if they behave aggressively and out of a job if they do not."); *see also* Case, *supra* note 23, at 26; Vicki Schultz, *Telling Stories About Women and*

as constructed through patriarchy is gendered. Lesbians are condemned both for what we do not do as well as for what we do—engage in "unnatural" sexual practices. Lesbians are seen as women who hate men and who refuse to make themselves sexually available to men.[86] One canard is that lesbians are simply women who have never had good heterosexual sex.[87] Not surprisingly, heterosexual male pornography is full of images of "lesbianism," in which the women perform for men, as a foreplay to performing under men.[88] This vision of lesbianism is used to police all women. Feminism is dismissed as a lesbian-led attack on the American (heterosexual) way of life.[89] Women's availability to men in the military is enforced by the threat that saying no to one man's sexual advances is equivalent to saying no to all, and thus announcing oneself as a lesbian.[90]

The history suggests that lesbian and gay men are linked at least as much by their oppression as by their practices. Each is condemned for the perceived denial of true gender, but the genders to which they are disloyal are different. The demand for gender loyalty is, in turn, an essential precondition to the enforcement of patriarchy. Thus, the oppression of gay men and lesbians is linked to the oppression of women as women, whether heterosexual or lesbian. This linkage between heterosexism and patriarchy sometimes tends to disappear in discussions of gayness. One aspect of that disappearance is linguistic: Lesbians are women, but "women" often means heterosexual women; lesbians are homosexual, but "homosexual" often means homosexual men.[91] I recognize that there is no simple

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Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument, 103 HARV. L. REV. 1750, 1832-37 (1990); Williams, *supra* note 19, at 842.

86. "Lesbianism . . . is a form of insubordination: it denies that female sexuality exists, or should exist, only for the sake of male gratification." Koppelman, *supra* note 79, at 236. Adrienne Rich accepts and inverts this link between lesbianism and independence from men. *See* RICH, *supra* note 44.

87. Thus, George Socarides includes as the first group in his taxonomy of homosexual women those women who "retain their interest in men" but "are intent upon being accepted by men as one of them . . . [and] complain of . . . their unjust and ill treatment by men." They are defined as less normal than women who play the passive role in lesbian sex-"the penis is replaced by a tongue or finger" of a woman. HOMOSEXUALITY 139-40 (1978). Koppelman makes this point slightly more crudely. Koppelman, *supra* note 79, at 248.

88. *But cf.* Douglass v. Hustler Magazine, 769 F. 2d 1128 (7th Cir. 1985). In *Douglass*, Judge Posner, considering a claim of false light privacy by a model who said she had been depicted as a lesbian, stated, "Few men are interested in lesbians. The purpose of showing two women in apparent sexual embraces is to display the charms of two women." *Id.* at 1135.

89. Koppelman, *supra* note 79, at 236. *See generally*, RICH, *supra* note 44.

90. *See* Michelle M. Benecke & Kirstin S. Dodge, *Lesbian Baiting as Sexual Harassment: Women in the Military, in* HOMOPHOBIA: HOW WE ALL PAY THE PRICE 167, 167-76 (Warren J. Blumenfeld ed., 1992).

91. *See* Cheshire Calhoun, *The Gender Closet: Lesbian Disappearance under the Sign "Women,"* 21 FEMINIST STUDIES 7 (1995). This problem of the disappearance of those at the

solution to this problem. The obscuring is built into our language, in which every word seems to carry with it the unmarked category in all other dimensions: "Women" are both white and heterosexual unless I say otherwise; "gays" are white men.

It may be useful to be more explicit in recognizing that the politics around issues of sexualities is inherently coalition politics.[92] Lesbians and gay men have issues in common around which we can work, but we are not the same, and our issues are not always the same.[93] Issues, leadership questions, and strategies must always be specific, tentative and provisional.

Understanding the relationship between heterosexism and patriarchy and the conflation of sex, gender, and sexual orientation, and understanding the effect of these ideologies on lesbians, on gay men, and on all women is necessary, but not sufficient, for deconstructing them. These are ideologies, not objective truths, but that does not mean that they will simply evaporate on being exposed to light. What the work of Valdes, Morris, and others does is to create a space for politics. They demonstrate that civilizations have flourished without compulsory heterosexuality and without compulsory gender roles for men and, though less often, for women.

In the political space opened up by these ongoing historical, sociological, and anthropological efforts, we may want to build our coalition politics around "queerness." The concept of queerness is useful to a coalition politics, insofar as it purports to focus on differences from the dominant group without privileging any particular other category.[94] If queerness is to serve such a role, however, it must shed its image (reality?) as a movement of young, predominantly male, sex radicals.[95]

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intersection of oppression has been most thoroughly analyzed in the context of women of color. "Women and people of color" leaves women of color everywhere and thus nowhere; a similar problem arises with the phrases "women and gays" or "women and sexual minorities."

92. For a beginning of a conversation about the relationships between gay men and lesbians and the possibilities of connection, see SISTER AND BROTHER: LESBIANS AND GAY MEN WRITE ABOUT THEIR LIVES TOGETHER (Joan Nestle & John Preston eds., 1994).

93. Thus, one might hope that the intense effort many lesbians have engaged in as part of the struggle against AIDS will induce a reciprocal commitment by gay men to the struggles around women's health issues.

94. Evelynn Hammonds, *Black (W)holes and the Geometry of Black Female Sexuality*, 6 DIFFERENCE 126, 129 (1994).

95. As Mary Becker says, "[T]here is no feminist politics in queer theory and practice, nor any politics of race and class. What is key is a notion of sexual (or gender) outlawry." Mary Becker, Sexuality and What (Many) Women Want 37 (unpublished manuscript, on file with author) (footnotes omitted). *See also* JUDITH BUTLER, BODIES THAT MATTER 228 (1993); Suzanne Moore, *Looking for Trouble: Queering the Pitch for Lesbians*, THE GUARDIAN, June 11, 1992, at 19 ("Many lesbians feel they have once more been made invisible by the queer movement which has simply reproduced an agenda that is primarily white and male."). Others argue that the notion of queerness can and should transcend the androcentrism of the term "gay." *See* Melanie Phillips, *Politics of the New Queer*, THE GUARDIAN, June 23, 1992, at 19.

It may also be useful to center our queer politics around lesbians.[96] Valdes argues, persuasively I believe, that patriarchy is the deeper root around which heterosexism has entwined itself. The disentangling of this tangle of oppressions might best begin from the position of those most crushed by hetero-patriarchy. Consider, for instance, if our understanding of the opposition to gay marriage or to gays in the military might be different if it focused first upon lesbians who were denying sexual access to heterosexual men, rather than upon gay men who were "flaunting" the possibility of an alternative sexuality for men. Imagine if we focused our reconceptualization of family on lesbian couples who were building their families with the assistance of sperm banks. Would this help us to unravel Judeo-Christianity's conflation of heterosexuality, procreation, and family? There are many questions and challenges. Questions and challenges, however, are a sign of progress. No longer, if ever, is the story of lesbianism to be one of lies, secrets, and silence.[97]

96. As Judith Butler suggests, we should rethink the relationship between concepts of gender and sexuality "in order to muddle the lines between queer theory and feminism." BUTLER, *supra* note 95, at 239.

97. *Cf.* ADRIENNE RICH, LIES, SECRETS AND SILENCE: SELECTED PROSE 1966-1978 (1979).