In his blistering dissent in *Romer v. Evans* (which we discussed at length in chapter 1) Supreme Court Justice Antonin Scalia accused homosexuals (and their advocates) of dedicating themselves “to achieving not merely a grudging social toleration, but full social acceptance, of homosexuality.” Our view of the matter is rather different: we think homosexuals (and their advocates) have been asking for far too little. Lesbian and gay advocates have been asking for tolerance and equal rights, not freedom and equal justice. They have accommodated their political arguments and legal strategies to the us-them structure of tolerance (which we criticized in chapter 2). They haven’t challenged the exclusionary nature of the “general public” in which difference from dominant norms must be minimized as a condition of belonging or membership.

In practice this has meant bringing together two apparently competing arguments about gay identity: an assimilationist, or universalizing, argument that minimizes any difference from the “general public” and a minoritizing approach
that allows for lesbian and gay difference but analogizes this difference to the constitutionally protected categories of sex, and especially race. Both of these
tacks—assimilationist and minoritizing—focus on identity and bracket ques-
tions of conduct or practice. But as we have seen in chapter 1, first, the identity-
act relation is an unstable one, and second, the issue of "homosexual conduct"
cannot be so easily sidestepped. Certainly, the issue of homosexual conduct cannot
be sidestepped if we are interested in the freedom not simply to be gay, but the
freedom to "do" gay. In this chapter we'll explore why lesbian and gay ad-
vocates so often frame their arguments in such narrow terms. As we will show,
the dominant ways of arguing for "gay rights" do not simply offer limited and
limiting models for sexual freedom, but they also pose real risks for social justice,
including racial justice.

Opponents of lesbian and gay rights have overwhelmingly depicted homo-
sexuality as a behavior-based identity, as a lifestyle choice only, and a bad choice
at that. Proponents of lesbian and gay rights have responded by portraying homo-
sexuality as innate, in some way rooted in an individual's essential na-
ture. Here, for instance, is journalist and openly gay neoconservative commen-
tator Andrew Sullivan responding to Reverend Jerry Falwell's and Reverend Al-
bert Mohler Jr.'s (President of the Southern Baptist Theological Seminary)
characterization of homosexuality as a willfully chosen behavior: "Homosexu-
ality is not a behavior. It is something we are. It is a deep and integral part of
our personality. It is a deep and integral part of our soul." (Sullivan made these
comments during a televised debate on "Larry King Live," on October 17, 1998,
the evening after Matthew Shepard's funeral.)

As literary scholar Eve Kosofsky Sedgwick points out, the claim that homo-
sexuality is immutable—unchangeable—is frequently motivated by a desire to
"insulate[]" gay and lesbian identity from "societal interference," moral con-
demnation, and even eradication. The "born that way" argument is not simply
a matter of political strategy or convenience; it is also a sincerely held view.

Many gay men, lesbians, bisexuals, and transgender people would describe their
identities as inborn, something they were aware of from a very young age. At a
minimum, they would say that they could not be other than who and what they
are.

It may even be that the claim, "I was born this way," is a way of describing
this feeling of unchosenness, this sense that the "I" could not be any other way.
However, once this way of narrating and making sense of an individual's iden-
tity gets put into play as a political strategy for an entire group, the political and
moral implications of such assertions must be scrutinized. While we understand
both the political and experiential stakes of grounding gay and lesbian identities
in an individual's essential nature, we also believe the "born that way" approach
has serious, even dangerous, limitations.

The "born that way" argument is poised against both secular and Christian-
inflected, biblically based arguments against lesbian and gay rights, but it works
better against secular-scientific homophobia. This is because biblically based
homophobia can have it both ways. It can object to homosexuality on the
grounds that homosexuality contravenes divine purpose and it can object to ho-
mosexuality on the grounds that it is contra nature. On this view, divine purpose
may or may not correspond to nature's laws.

A fascinating and revealing example of this rhetorical shuttling between sci-
entific appeals to nature and religious appeals to God's law is found in Alveda
King's testimony, in May 1999, before a joint House-Senate Judiciary Committee
of the Massachusetts legislature. King, the niece of Martin Luther King, Jr., was
testifying in favor of a Massachusetts version of the Defense of Marriage Act
(DOMA); her visit to Boston was arranged by conservative groups backing the
antigay bill. In her testimony, King cited scripture to make her case for DOMA
and against same-sex marriage. The biblical passages she selected were, in her
view, unambiguous condemnations of homosexuality and by implication of
same-sex marriage. A member of the joint committee pressed King on her use of
the Bible and asked her to respond to the striking coincidence that opponents of civil rights for African Americans in the fifties and sixties had also drawn upon the Bible—and indeed on some of the very same passages King was citing—to justify their racism as divinely sanctioned. In reply, King shifted the ground of her objection to homosexuality and same-sex marriage from theology to biology. She told lawmakers that they should not “confuse skin color with sexual orientation.” The comparison between homosexuality and race was invalid; African Americans, she argued, were denied civil rights because of an immutable characteristic, something in their very nature, which they could not change. But homosexuality, according to King, is a behavior-based identity, something homosexuals have chosen; it is not natural and, thus, not deserving of protection.

There are good reasons to resist an analogy between sexual orientation and race, but they are not the reasons King supplies. In fact, we need to look at the logical entailment of King’s argument: the only reason race is a constitutionally protected category is because people of color cannot change; they were born that way. What does this imply for racial justice? We’ll come back to this question.

In a context framed by the type of biblical or “Christianized” homophobia that King promotes, proponents of lesbian and gay rights have sometimes tried to out-exegete their opponents. Let’s return to the October 17, 1998, broadcast of “Larry King Live.” If Matthew Shepard’s murder provided the immediate context for the televised debate, the telecast also provided an opportunity—ultimately a wasted one—to discuss the terms under which homosexuality and gay rights could properly be addressed and argued over in public life. A particular flash point was a series of full-page national advertisements, taken out by fifteen conservative organizations in the summer of 1998, promoting the idea that homosexuality is chosen behavior, not immutable identity. To rebut this view, Elizabeth Birch, director of the Human Rights Campaign, the largest and best-funded national organization for lesbian and gay rights, tried her hand at biblical exegesis. In response to the question directed at her by guest host Wolf Blitzer (“What do you say to the argument that Reverend Jerry Falwell is a theologian and he is strictly going by what the Bible says about homosexuality?”) Birch argued:

Everyone is a sinner. Reverend Falwell is a sinner. He had a very unruly teenagehood. The fact is that those messages [the newspaper advertisements] miss the central message of the scripture, and the central message of the scripture is about love, and it’s about unity and not about division and divisive messages.

Note what Birch does not say. She does not mention the separation of church and state; she does not remind the audience that in the United States, no single religion—in fact, no religion at all—is established as the one and true religion. At no point in her response does she suggest that even if the Reverend Falwell’s interpretation of scripture were correct, his theological perspective should not and cannot dictate the application of state and federal laws. Instead, she casts her argument in Falwell’s terms (in the language of Christian values and biblical truths) and seeks to displace his homophobic interpretation with a gay-affirmative one. This theological turn does not challenge the Christianized terms of discussion; it accedes to them.

In fairness to Birch, in the particular public space she was then occupying, “Larry King Live,” and in view of the representatives of the “other” side (two men whose authority derives from their ministries, Reverend Jerry Falwell and Reverend Albert Mohler, Jr.), her theological gambit may be seen as a canny attempt to co-opt their terms. It may also have seemed to Birch to be the only rhetorical path available to her, given the way the debate was being framed.
Has lesbian and gay politics come down to this? To counter antigay laws, pronouncements, and even violence, advocates for gay rights must play not just the biology game (for example, “born that way”), but also the Bible game, arguing about what the Bible really does or does not say about homosexuality? This form of argumentation does not make more room for difference. In fact, it reinforces a Christian public sphere.

In July 1998 a coalition of fifteen conservative Christian and ex-gay groups took out full-page ads in the New York Times, USA Today, and the Washington Post, among other papers, promising “hope and healing for homosexuals.” The names of the sponsoring organizations appeared at the bottom of the advertisement, their names introduced in this way: “In the public interest, this message was paid for by the following organizations, representing millions of American families” (italics in original). The sponsoring organizations were Alliance for Traditional Marriage-Hawaii, American Family Association, Americans for Truth about Homosexuality, Center for Reclaiming America, Christian Family Network, Christian Coalition, Citizens for Community Values, Colorado for Family Values, Concerned Women for America, Coral Ridge Ministries, Family First, Family Research Council, Liberty Counsel, National League Foundation, and Kerusso Ministries. This last group, Kerusso Ministries, is an “ex-gay” organization; it even sponsors an annual “National Coming Out of Homosexuality Day” (which takes place, appropriately, the day after “National Coming Out Day”). Donald Wildmon, the high-profile head of the American Family Association, has praised “National Coming Out of Homosexuality Day” as “a means whereby to dispel the lies of the homosexual rights crowd who say they are born that way and cannot change.”

The sophisticated ad campaign of July 1998 took aim at these same “lies.” The first ad, which appeared in the New York Times on July 13, received the most media attention; it featured Anne Paulk, “wife, mother, former lesbian” (Figure 4). The ad’s text unfolds as a first-person narrative; quotation marks set off each new section of text to authenticate the narrative as Anne Paulk’s own. “I’m living proof,” the ad begins, “that Truth can set you free.” Before presenting an account of Paulk’s coming to lesbianism and her coming out of it, the text offers this anticipatory justification for the outrage the ad is calculated to produce:
“Recently, several prominent people like Trent Lott, Reggie White, and Angie and Debbie Winans have spoken out on homosexuality... calling it a sin. When I was living as a lesbian I didn’t like hearing words like that... until I realized that God’s love was truly meant for me.” (italics, quotation marks, and ellipses in original)

The ad is a carefully structured interplay of text and image. A close-up of Paulk fills the upper third of the full-page ad, and a diamond ring and wedding band adorn her hand, signaling her newfound relationships to God, husband, and self.

Interestingly, the relationship enabled by her coming out of homosexuality is not a relation to a man, but to God and Truth. Indeed, in an italicized aside, which occupies the center of the full-page ad, another narrative voice—that of the sponsoring organizations—interrupts as if to comment on Paulk’s individual story and the promise it holds out to all homosexuals: “Thousands of ex-gays like these have walked away from their homosexual identities. While the paths each took into homosexuality may vary, their stories of hope and healing through the transforming love of Jesus Christ are the same.” In the place of love of the same, there is the same love for all: Jesus Christ’s. Ultimately, the ad does not narrate a transition to a new sexual identity, but to a newly found sectarian one.

This is not to say that the ad presents the choice between homosexuality and heterosexuality as a matter of moral indifference. Far from it: the conversion narrative clearly presents Paulk’s former lesbian identity as a profound misstep, one launched by the immoral actions of others, but exacerbated by Paulk’s own bad choices. We want to make clear at this juncture that just as we value the way that individual gay men and lesbians tell the story of their identity, so too are we willing to grant Paulk her story, her way of telling her own identity. However, we can allow for the sincerity of Paulk’s ex-gay conversion narrative even as we also critically assess the way her individual story is being framed for a public audi-ence and put to decidedly political use. Why, we must ask, is Paulk’s sectarian conversion presented as being “in the public interest”?

The story of Paulk’s undoing and ultimate redemption unfolds over the course of seven sections of text; each narrative unit is set off by a boldface section heading that encapsulates the section’s main theme. The first section is entitled “One boy’s sin and the making of a lesbian,” and in it we discover the traumatic core of Paulk’s lesbianism: “I was four years old when a teenage boy molested me. When he warned me not to say anything, I went silent. But as I grew, the pain wouldn’t stay quiet.” The next section (“Being a woman became a mystery”) continues the causal narrative, linking the sexual violation Paulk experienced as a girl to her growing discomfort with being a woman:

“By the time I hit my teens I was rough... my heart cold. I believed being “feminine” meant being weak and vulnerable... so looking and dressing hard felt right. I had so thoroughly rejected my own femininity that, even though I had a lot of male friends, I just wasn’t attracted to men sexually. I became drawn to other women who had what I felt was missing in me. But the pain inside kept yelling.” (italics, ellipses, and quotation marks in original)

The sexual injury experienced by Paulk as a young girl has resulted in two related traumas: an inability to identify properly with her “own” sex and a corresponding inability to desire the “opposite” sex. Paulk’s later same-sex object-choice comes across as a deferred response to molestation; her lesbianism is acquired, not innate. What’s more, because her same-sex desires are depicted as emerging out of sexual violation, her lesbian identity is a coerced acquisition, not something she would have chosen for herself. 8

This theme of sexual exploitation returns in the third section of the text, but with an interesting twist. Section three (“There’s a God-shaped hole in everyone’s
heart") finds Paulk at college, where she comes out as a lesbian and into the gay
college scene. Paulk's coming out story implicates a gay college counselor and
the campus gay and lesbian group as coauthors of her lesbianism. The narrative
effectively plots her homosexual experiences in college as a continuation of the
earlier scene of childhood (heterosexual) molestation. The insinuation is that
lesbianism is not just caused by molestation; it is itself a form of molestation.
The teenage boy was Paulk's first molester; the "gay college counselor who af-
affirmed [Paulk's] feelings [for women]" was another.

Paulk's coming out story is not a happy one; she is fighting herself—fight-
ing for herself—at every step. We follow her turn to prayer as she seeks a way out
of the lesbian life. As befits the conventions of the conversion narrative, Paulk's
spiritual struggle is not a straight path, but a circuitous and surprising route
home, to what the narrative calls the "real healing" of God's love.

In staging Paulk's self-discovery as a coming out of lesbianism narrative, the
ad brilliantly recasts the relations between homosexuality and heterosexuality,
narrative and truth. It is heterosexuality, not homosexuality, that gets poised as
the underdog: heterosexual and Christian identity is the truth that a too-per-
missive culture would relativize away.9

Lesbian and gay rights groups' response to this campaign was to take out
gay-affirmative full-page ads in the same papers in which the initial antigay
advertisements had appeared. One such ad appeared in the New York Times, on July
19, 1998, and was explicitly framed with and against Anne Paulk's ex-gay narra-
tive (Figure 5). Like the antigay ad, this progay response mixes image and text,
and its organizing narrative is similarly subdivided into seven individually
named sections. The ad was sponsored by a coalition of groups and individuals:
Gay and Lesbian Alliance Against Defamation, Gay and Lesbian Victory Fund
Foundation, Gay, Lesbian and Straight Education Network, The Gill Foundation,
Andrew Tobias and Charles Nolan, Human Rights Campaign Foundation, An
Uncommon Legacy Foundation, National Black Lesbian and Gay Leadership

Figure 5. Full-page advertisement in New York Times (July 19, 1999), 17.

Forum, National Center for Lesbian Rights, National Gay and Lesbian Task Force,
National Latina/o LGBT Organization, National Youth Advocacy Coalition, and
Parents, Families and Friends of Lesbians and Gays. The Human Rights Cam-

paign Foundation produced the ad. Like the fifteen groups who sponsored the
antigay ads, the thirteen progay groups also claimed the public interest—and with the same billing notice: “In the public interest, this message was paid for by the following organizations, representing millions of American families” (italics in original).

Where the antigay ad gestured “toward hope and healing for homosexuals,” the progay ad addressed itself “toward hope and healing for America.” The face of America is supplied by Dave, Ruth, and Margie Waterbury, the smiling white family gazing out from the upper third of the full-page ad. If Anne Paulk is “living proof that Truth can set you free,” the Waterburys—father, mother, and daughter—are “living proof that families with lesbian and gay kids can be whole, happy and worthy of all that this great country promises.”

The first-person narrator of this ad is plural, not an “I” but a “we”—significantly, the “we” of Margie’s parents. Margie’s voice is absent from the narrative; the lesbian daughter is spoken about and for, but does not speak for herself. This is a telling decision, one that reveals much about the complex of assumptions undergirding the ad. Given that the antigay ad was constructed in the voice of an individual ex-lesbian protagonist, we might have expected the progay ad to counter with the personal story of a self-identified “practicing” lesbian. But this ad is cultivating the “middle,” attempting to speak not just to “the heart of America” but from it. The ad’s boldface reminder, “Minnesota is in the heart of America,” does more than specify the Waterburys’ geographic home. It identifies them as occupants of the symbolic center, the American middle ground. Of course, many gay men and lesbians live in the middle west; presumably the Waterburys’ daughter Margie is among them. But lesbians and gay men do not and, arguably, cannot occupy the symbolic “heart” of America. The very terms of the debate have already rendered them “extremists.” This lesbian daughter—no matter how “mainstream” her views, no matter her zip code—cannot speak on behalf of those values of reason and tolerance that distinguish the center from its margins.

In the previous chapter, we examined how the emergence and legitimacy of “the middle” and its fantasized “tolerance” depend on the construction of two opposed sides. Not only are these two sides opposed to each other, but more importantly, they are also opposed to precisely the values of reason, tolerance, and civility the middle comes to represent. This analysis helps us to understand how the progay ad works, but it is not an understanding that provides any comfort. The progay ad does not simply speak to the middle; it actively participates in its ongoing construction.

If the center embodies the values of reason, tolerance, and civility just named, this embodiment is made manifest through faith and family. Faith and family are not neutral values, however, but themselves encode particular norms of Christianity and heterosexuality. It is no accident that the family selected to represent American values is white, from the middle west, active members of a Christian denomination, reproductive (they have two daughters; the other daughter “happens to be heterosexual,” the Waterburys tell us in the first section of the text), and Republican. In the next-to-last section of the narrative (“Equal rights, not special rights”) the Waterburys assure us that their plea for tolerance and equality is nonideological because they “happen to be Republicans.” In a political context where gay rights have been “assigned” to the Democratic party, the Waterburys’ Republican credentials function, paradoxically, to assure us of their impartiality and moderation.

Significantly, the progay ad does not attempt to counter the “homosexuals can change” argument through an appeal to origins. Indeed, the ad entirely skirts the question of what “causes” homosexuality. This would be a major accomplishment if the ad did not exchange one governing opposition (Is homosexuality acquired or innate?) for another (Are homosexuals just like us, or not?). That the ad answers in the affirmative—homosexuals are just like us!—is no great advance when the “we” enacted and assumed by the ad already leaves so many outside its bounds.
The gay-affirmative ad is a point for point rejoinder to the ex-gay narrative of Anne Paulk. It seeks to legitimate gay identity by taking up and reusing the terms of the ex- (and anti-) gay ad. As an initial political response, the gay-affirmative ad was absolutely necessary. Its short-term effectiveness, however, does not mitigate its high longer-term costs. The progay ad reasserts a conservative approach to both homosexuality and religion. It does not contest or reverse the terms of the antigay ad, but rather recycles them. Within the terms of the ad, the tolerance claimed for homosexuality is a specifically Christian tolerance. The values staked out for and by the ad are Christian values, as if the language of values can only be run through a discourse of religion. The gay-affirming ad does not challenge the cultural centrality of Reform Protestantism, then, but even reasserts it in the name of tolerance.

The discrepancy between short-term, “local” tactics and goals and their longer-term effects is noteworthy. The progay ad speaks the language of “the center.” Yet we need to consider how this phantom center functions to solicit identifications with an idealized “we the people” as well as the fact that this “we” does not speak for all. Unfortunately, by framing the debate in the language of Christian values, both the antigay ad and the gay-affirming one present very limited ways of thinking about and enacting connections among sexual practices, identities, and values. Despite their apparently opposed viewpoints, both ads promote a narrow vision of the good life. If for the antigay ad being a good Christian means being heterosexual, for the progay ad being a good homosexual means being Christian. Are our options really that narrow?

The point-counterpoint approach of the gay-affirmative ad labors under a misconception of how homophobia works. It is not the truth or falsity of particular claims about who homosexuals really “are” that needs to be challenged, but rather how such claims are deployed, how they legitimate some subjects and delegitimate others, if they recognize them at all. In light of this, we urge a shift in focus away from the content of particular propositions about homosexuality to the way these propositions circulate and operate culturally. In practice, this redirection is a caution against trying to out-reason and out-exegete homophobia, as if falsifying homophobic pronouncements were sufficient to assure equal rights, civility, or even grudging “tolerance.”

This qualification seems especially urgent in the case of biblically based pronouncements against homosexuality. The temptation to play “the Bible game” will be strong. But turning to what the Bible “really” says about homosexuality reasserts the cultural authority of the Bible and the political pronouncements of its interpreters. (We think we are on safe ground when we predict that some traditions of biblical interpretation will be given wider public credence than others.) Now, there may well be local contexts in which it makes sense to engage in biblical interpretation and argument. For example, individuals active in their synagogue or church may want to engage biblical passages as a matter of religious practice and not simply as political strategy. What we are objecting to is allowing “the” Bible to frame public discussions of sexuality. But this is what Elizabeth Birch does.

Moreover, as we have already tried to suggest, there is no such thing as winning the “truth of homosexuality” game. Homophobia does not rise and fall on the coherence of its claims. Quite the contrary. As David M. Halperin argues in Saint Foucault, you falsify one claim—and taken individually, they are usually easy claims to disqualify—and another will take its place, sometimes even a claim directly contrary to the hydra’s head you have just lopped off. But the incoherence and contradictions of homophobic discourse do not incapacitate it; rather, they keep this particular monster alive. You say that homosexuals are not sinners, lapsed moral agents, who have willfully chosen to act contrary to God’s law or the law of nature? Fine, then we will take homosexuality out of the churches and out of the courts and transfer it to medical experts, who might
assess the anterior region of a particular hypothalamic region or tweak the amniotic fluid of the developing protohomosexual fetus.

When it comes to homosexuality, heterosexuality speaks out of both sides of its mouth, but without its message being disqualified on those grounds. Think back to Trent Lott’s toggle between describing homosexuality as a sin and analogizing it to physical addiction (alcoholism) and psychological “disturbances” (sex addiction and kleptomania). Or recall the legislative testimony of Alveda King, whose opposition to homosexuality and gay rights moved easily between a discourse of Christian morality and a discourse of nature. Christianized homophobia does not have to decide between opposing homosexuality as contra nature or opposing it as contra divine purpose.

Here is another example of contradiction at work in the service of homophobia. A familiar staple of antigay discourse is the claim that exposure to the mere fact of homosexuality’s existence can overthrow a person’s “natural” heterosexual identity. What is fascinating about this line of argument is the implied vulnerability of heterosexuality. On the one hand, everyone is really heterosexual. On the other, exposure to homosexual possibilities at too young an age (and the age that is too young seems to have neither basement nor ceiling) can pervert nature’s course.

An interesting version of this fantasy appears in Jerry Falwell’s much-mocked 1998 “outing” of the children’s television character “Tinky Winky.” Falwell’s warning to parents—that Tinky Winky’s homosexuality might entice their children into the homosexual “lifestyle”—depends on a particular Christian theological conception of human nature. In this worldview, human nature is vulnerable to the distorting effects of culture. Falwell’s worry that Tinky Winky is coming for your heterosexual child is an apocalyptic vision of cultural determinism, in which an immoral culture overrides ever-corruptible human nature. This is why opposition to the so-called homosexual agenda often clusters around children, who serve as placeholders for larger cultural anxieties about changes in national identity, gender relations, and family structure. Because homosexuals cannot reproduce, this strain of thought goes, they must recruit. In their innocence and openness to new things, children—the nation’s future and the family’s guarantee—are held to be especially vulnerable to homosexual missionizing. One too many episode of “Teletubbies,” or “Ellen,” and there goes the nation.

Attempts to advance the morality of a queer way of life need to move beyond refutations of Christian-inflected claims about homosexuality or sexuality in general in which we (whoever “we” are) counter their “homosexuals are like that” and “sex is for this” with our “are not like that; do too want this.” We need to develop other ways of thinking and doing sexual subjectivity, ways that do not demand the Faustian bargain of saying once for all who and what we are. Instead of ceding the question of sexual values to opponents of lesbian and gay rights, as the born that way approach does; and instead of reinforcing the cultural authority of the Bible, as seeking to out-interpret explicitly biblical homophobia does, we want to develop an alternative paradigm for sexual identity and sexual justice. We also need to develop a richer language of sexual values and ethics, one that does not require coming out for or against the Bible. Can sexual values only speak through the language of Christianity?

Both the progay and the antigay ads are caught up in an ongoing impasse over the “origins” of homosexuality. What causes it? Where do homosexuals come from, and won’t they please go away? To do an end run around this impasse has seemed impossible for many gay rights activists in part because of the force with which the antigay conversion narrative is promulgated, but also because of a historical tendency to frame lesbian and gay rights claims through a paradigm of “race” and by analogy to the civil rights claims of African Americans. Just as we are concerned with the overall implications of the “born that way” argument,
this correlative “homosexuality is like race” argument has serious limitations, not the least of which is the way this analogy flattens important historical differences between the way racism and homophobia work.

The “like race” argument depends on naturalized notions of race, as well as essentialized and naturalized notions of sexuality. By anchoring gay rights claims in a civil rights paradigm dependent on “benign immutable difference” (born that way), advocates for lesbian and gay rights participate in the mystification of race, sex, and now sexuality. They forget that historically the naturalization of racial and sexual difference has more often been used to justify discrimination than to prevent it. (Besides, making sex and race discrimination illegal, as the 1964 Civil Rights Act did, has hardly ended it.)

Even more importantly, “born that way” arguments were not an absolutely required component of antidiscrimination law. As legal scholars Janet E. Halley and David A. J. Richards have both argued, physical immutability has not been the only criterion used by the courts to justify equal protection doctrine. In fact, as Halley points out, immutability has played a relatively minor role until recently (50, 66).

Halley goes on to show that gay rights advocates have focused on the moments when the courts, “in the course of justifying... equal protection doctrine, had observed that race and sex were ‘immutable characteristics’” (50). In arguing for gay rights, advocates have crafted their own legal briefs so as to make immutability the leading edge of the argument rather than one component among others. And they specifically linked the putative immutability of homosexuality to the putative immutability of race. Like race, homosexuality is unchosen, and just as it is illegal to discriminate on the (unchosen) basis of race, so too should it be illegal to discriminate on the (unchosen) basis of sexual orientation. Or so the argument goes. But these legal strategies in which homosexuality is analogized to race so as to assert the immutability of homosexuality have failed miserably in the courts.

Although “homosexuality is like race” arguments have been unsuccessful in advancing gay rights through the courts, they have had unforeseen consequences on the other side of the analogy. Halley identifies a deeply disquieting effect of this analogical thinking. She suggests that the rhetoric of “special rights,” which opponents of lesbian and gay rights have so brilliantly (and disingenuously) used to recast equal rights for lesbians and gays as fewer rights for everyone else, has been taken up by conservative opponents of affirmative action. Among the ironies of this rhetorical drift, in which the language of “special rights” comes to characterize and disqualify affirmative action for racial minorities and women, is that the “gay rights are special rights” equation was sometimes tailored to appeal specifically to African Americans and other racial and ethnic minorities. Yet, once lesbian and gay efforts to secure the same legal protections that the 1964 Civil Rights Act gave racial and ethnic minorities and women are recast as “special rights,” it is no real stretch to characterize all antidiscrimination ordinances and laws as “special rights.”

The rhetorical expansion of “special rights” to cover not just gay rights in particular but civil rights protections in general is not the only problematic effect of the “like race” analogy. Halley locates another, when she argues that during the 1990s courts have come, increasingly, to make immutability a prerequisite of suspect status classification. Gay “like race” appeals, with their stress on immutability, must, she says, bear some responsibility for this interpretive narrowing.

Even assuming, however, that race or sex were matters of immutable difference (an assumption we do not share), we wonder at any argument that would defend civil rights on the ground of nature. This kind of reasoning is limited, and on numerous counts. “Born that way” arguments can have the unanticipated effect of separating identity from practice. Such arguments may create a space for homosexual identity, but they can also allow for the regulation of what is often euphemistically called “homosexual conduct.”
In other words, it might be okay to be homosexual, but it is not okay to act on homosexual desire. This is the world of “don’t ask, don’t tell,” the current policy on “gays in the military.” This policy was supposed to be a “compromise” that would allow gay and lesbian people to serve in the military without harassment or threat of discharge as long as they remained silent about their homosexuality. Instead, according to Pentagon statistics, the effects of the policy have been higher than ever rates of discharge and harassment.14

The analogy to race and sex that the “born that way” argument so often leans upon is also deeply troubling for its assumptions about the value of racial and sexual differences from the “norm.” What, after all, are the implications of saying that civil rights depend upon innate physical or biological characteristics? Let’s examine the implicit moral imperative to such a claim. Supposedly innate characteristics, race and sex, could only be an issue if there is an underlying assumption that there is something wrong or, at minimum, less desirable with being other than the dominant identity (white and/or male). If individuals could pick and choose their race or sex (and remember that many opponents of gay rights imagine that gay men and lesbians blithely pick and choose their sexual “preferences”), could they be required either to become the model American or to suffer discrimination? As extreme as this scenario sounds, it is, in fact, the ultimate logic of justifying civil rights protections on the ground of nature.

Where do such assertions land us? Characteristics that are taken to be immutable, such as skin color or sex, will be tolerated. But when traits or behaviors are taken to be discretionary and volitional, people can be asked, indeed compelled, to change their behavior and assimilate to dominant norms. This puts us right back in the realm of love the sinner, hate the sin. Gay identity may be protected by the courts (as it was in Romer), but “homosexual conduct” certainly is not (as we have seen in Hardwick).

However, as Halley noted and we want to underscore, this is not just a problem for sexuality. If we say that we should not discriminate against women, for example, because sex difference is innate, are we saying that it is only okay to be a woman because they—women—can’t help it? In other words, there is a very big difference between claiming that we should not discriminate against women because sexual difference is innate, and claiming that we should not discriminate against women because it is okay or even good to be a woman.

Let’s look at an example at the intersection of race and sex, Rogers v. American Airlines, Inc.15 This 1981 case concerned Renee Rogers, an African American woman employed as an airport operations officer by American Airlines. American Airlines enforced a grooming policy for its employees that banned all-braided hairstyles. Rogers, whose hair was fully braided, was given the “option” of changing her hairstyle or being fired. Instead she sued, asserting that the policy violated Title VII’s protections against both race and sex discrimination.

As legal scholar Kenji Yoshino says in his recent analysis of this case, on its face the grooming policy was both race- and sex-neutral; it applied to blacks as well as whites, to women as well as men.16 The courts certainly saw the policy this way. Yoshino relates that the federal court dismissed Rogers’s claim of race discrimination on the grounds that, first, hairstyle is easily changed and second, even if hairstyle (in this instance, comrows) were associated with a particular racial group, hair did not constitute an impermissible basis for discrimination. The court also dismissed Rogers’s claim of sex discrimination, holding that the airline’s grooming policy did not discriminate on the basis of any immutable characteristic (Yoshino 6). Yoshino believes the court’s reasoning is flawed. What does it mean to say that race and sex are protected categories when traits and behaviors expressive of race and sex difference—including how one does one’s hair—are not protected? Renee Rogers may have been protected from being fired for “being” black and for “being” a woman, but the court did not see fit to protect her from being fired for the way she expressed her identity as an African American woman. In effect, the grooming policy, with the federal court’s ultimate endorsement, forced her to choose between adopting a hairstyle
expressive of dominant racial and gender norms and forfeiting her job. This is no choice at all.

"Born that way" arguments, then, do not give us strong grounds for protecting conduct, whether that conduct be associated with gender, race, and/or sexuality. Additionally, there are good historical reasons for objecting to born that way arguments. As noted above, grounding racial and sexual difference in nature has more often worked in the service of discrimination, rather than against it. We should not forget that both slavery and racial segregation (in other words, some of the most painful experiences in the history of the United States) were defended on the grounds of nature. The idea that sex differences are natural has been no less pernicious for women.

Nor do we need to settle the question of what part (if any) of race, sex, and sexuality is biological. This is because biological difference is not itself the issue; the problem is the way that biology is mapped onto moral distinction, a mapping that ends up turning difference into a matter of superiority and inferiority. In our view, biological arguments should not be the basis for antidiscrimination ordinances. We need to develop persuasive accounts for the value, rather than mere toleration, of difference.

As we have noted earlier, there are sincere and sincerely contested beliefs about the origins of sexual identity, and this is not just a contest between opponents and proponents of gay rights. Gay men, lesbians, and bisexuals are themselves hardly in agreement as to the "origins" of their sexual desires and feelings. Some would say they experience their sexuality as innate; others understand their sexual orientation as a mixture of chosen and unchosen factors; and still others narrate their sexuality as volitional, perhaps reframing their sexual preferences as a question of political preferences. (If we turn our attention to the contested areas of racial and gender identity, there too we find that individuals have very different ways of describing their experiences and self-understandings.)

Nonetheless, the appeal to nature is attractive in the contemporary moment because it seems to avoid intractable moral arguments about homosexuality and religion. Rather than directly engaging the charges that homosexuality is wrong, advocates for gay and lesbian rights have by and large attempted to evade the moral and religious questions altogether by retreating to the supposedly amoral or supramoral realm of nature. Unfortunately, as we have just argued, "the biological" is not separate from the "moral." Moreover, avoiding the moral basis for many people's objections to homosexuality ends up ceding all moral language and claims to opponents of homosexuality and gay rights. (Additionally, as we saw in Elizabeth Birch's attempts to engage and best biblical homophobia in its own terms, on those occasions when gay advocates have tried to talk values, they have tended to say more of the same.)

We believe a strong case can be made for linking race, sex, and sexuality. Rather than depending on dubious appeals to innate differences, we argue for the positive value of freedom with regard to social difference. By eschewing a reliance on biology, it is possible to connect rights to freedom, thereby expanding the reach of movements that are now narrowly focused on gay "rights." This move would allow us to make alliances with African American civil rights movements, which have historically worked as freedom movements, without being dependent on the problematic "like race analogy."

We make this shift by switching from the current legal framework, with its focus on nondiscrimination, to one based on the free exercise of religion promised in the First Amendment. In so doing, we are not so much interested in pursuing a strict analogy between religious and sexual identity. Rather, we are interested in opening up new political, rhetorical, and perhaps even legal perspectives and possibilities.

We want first to explore the implications of shifting from a paradigm of race to a paradigm of religion. Ultimately, though, we want to push beyond the
analogue structure of either the "like race" or "like religion" framework. If, as we saw in chapter 1, sexual regulation in the United States is tied to the continuing establishment of religion in law, then sexual freedom and religious freedom are intimately tied together. And there is a multitude of other ways in which sexual freedom and the freedom to practice religion might be tied together. As Reconstructionist Rabbi and religious studies scholar Rebecca Alpert has noted, for example, the state’s refusal to recognize religiously authorized gay marriages (when it recognizes other marriages performed under the same auspices) is an abrogation of the free exercise of religion.17

An important virtue of the paradigm shift we are advocating is that it does not force us finally to settle the question of what "causes" homosexuality. In the end, it just does not—or should not—matter how an individual came to be homosexual, any more than it matters how heterosexuals became heterosexual. Rather, homosexual life and experience are to be valued, are in fact sources of value.

The religious freedom promised in the Constitution, under the First Amendment, extends protection for religion and from it. One of the reasons religion is protected is that it is a deeply held human value, with religious commitments and the freedom of conscience and exercise necessary to make them meaningful imagined to be at the core of an individual’s sense of who she or he is. The U.S. Constitution protects religion because, among other things, it recognizes that this human good is susceptible to coercion. In other words, religious identity is not understood as a natural given. Though individuals may be born into a particular faith tradition, because that is the faith practiced by their family and community, they can convert, or be coerced into converting, at some later time.18 That an individual can be forcibly converted is among the reasons religion is protected. If “I” am to be free to practice my religion, “I” must also be free from yours. And vice versa. (Individuals can claim the right not to practice or endorse any religion at all; atheism too is supposed to be constitutionally protected as the expression of an individual’s conscience.)

To say that religious identity is not encoded in the genes or passed through amniotic fluid or marked in the anterior region of the hypothalamus (some of the more popular sites for locating the “origins” of homosexuality) is not to say that individuals who identify as religious or with a particular religious tradition understand their religious identity as chosen in any simple way. The patterns of commitment that are entailed in religious identity may shift, but those patterns, which seem to touch the very core of a person—the soul even—establishing and anchoring an individual's moral center, are hardly a simple matter of “choice.”

Doesn’t this sound an awful lot like the experience of sexual identity, which feels to many of us—homosexual or otherwise—as if it could not be otherwise, as if we could not be other than who and how we are? Recall Andrew Sullivan’s words: “Homosexuality is not a behavior. It is something we are. It is a deep and integral part of our personality. It is a deep and integral part of our soul.”

Religion can be an individual experience as well as a deeply social one, forging common rituals, communities of shared interpretation, and relations between individuals too. For both individuals and communities, then, religion is never a matter solely of text and belief, but crucially involves—we could even say is instantiated by—practice. In light of this, we are struck by something Sullivan’s implicit analogy between homosexuality and religion leaves out: behavior, or practice. “Homosexuality is not a behavior,” he asserts. But if homosexuality is really akin to moral personality, as Sullivan’s reference to the soul suggests, how can it not involve practice?

When it comes to religion, the principles of the First Amendment do not just protect religious identity; they are supposed to protect religious practice. Moreover, as David A. J. Richards argues, the free exercise of conscience is not restricted to religiously inspired forms of conscience. Rather, the Supreme Court has “expand[ed] the constitutional concept of religion to protect conscience as
such from coercion or undue burdens.” In practice, this means that an individual’s identification and practice of the good life do not have to justify themselves in any one religion or any religion at all.

So often antigay rhetoric focuses on the malleability and “correctability” of homosexual identity (and the July 1998 advertisement discussed above is just one particularly explicit example of this tendency). But we need not restrict our responses to this rhetoric to assertions of immutability. Instead, lesbian and gay advocates could turn charges of malleability to their own advantage by taking the vulnerability of sexual identity to a logical, if unorthodox, conclusion. To require that homosexuals change or “convert” to heterosexuality in order to receive the full rights of citizenship is to compel sexual orthodoxy. And it is not simply that this sexual orthodoxy (heteronormativity) is akin to religious orthodoxy; it is an expression of a particular religious orthodoxy.

Despite the tendency—by the Supreme Court, among others—to assume and assert that moral opposition to homosexuality is a core human value, and one on which the world’s religious traditions are unanimously agreed, “world religions” are not one on the subject of homosexuality. We have already noted that there is widespread disagreement between, for example, Christianity and Judaism on the morality of homosexuality. We have noted too that there are ongoing debates about homosexuality within Christian denominations and within branches of Judaism. The diversity of religious and moral views on homosexuality increases exponentially once we remember that Christianity and Judaism hardly exhaust the range of religious traditions represented in the contemporary United States. Although the fifteen organizations that sponsored the antigay ad campaign are entitled to their sectarian views on homosexuality, the principles of religious freedom enshrined in the First Amendment—disestablishment and free exercise—forbid making these narrow, sectarian views the law of the land.

The paradigm shift we are advocating—from the language of benign immutable difference (with its “can’t change, can’t help it” logic) to the language of values and their free exercise—could also be of benefit in the cases of race and sex. In fact, movements for civil rights or women’s liberation have long connected rights to freedom. It is only with the whittling away of civil rights law since the 1980s that the focus on “benign immutable difference” has become preeminent. The gay rights movement of the last twenty years has participated in this narrowing. Alliances among these movements could be built to redress this narrowing and to resist the vision of all civil rights as “special rights,” in part by regaining a focus on practice—on free exercise—in relation to race and sex, as well as sexuality. Rejecting the essentialist and racialist wager of “born that way” arguments for gay rights, we want to open up different political and rhetorical strategies that are not grounded in “benign immutable difference.” After all, civil inclusion and protection from discrimination should not hinge on whether or not we were “born that way”—no matter who “we” are.

But “protection” and “rights” are not enough. A rights-based approach is too narrow to provide anything more than the type of liberal tolerance we criticized in chapter 2. By moving the ground of debate away from a constricted focus on “rights” to freedom, we hope to change a movement that, as it currently stands, is really only against something (discrimination) into one that is actively and unembarrassed for something (freedom).

The shift from being against discrimination to being for freedom also entails a shift in focus from identity to practice. We do not want to stop at an analogy between religious and sexual identity. Rather, we want to use this analogy to jump-start more expansive considerations of not just what it means to be different, but also what it means to enact our identities differently. Tolerance extends the welcome mat to those who are different only on the condition that they set aside their difference and appear the same—like “everyone else.” Instead, we hope to open social space for new forms of life that are not attached to prefixed notions of what it means to be “gay” or what it means to be “religious.”