

# Hofstra University School of Law

Legal Studies Research Paper Series

Research Paper No. 04-21

## To Be or Not To Be . . . Out in the Academy

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*Law and Inequality: A Journal of Theory and Practice*, Vol. 22, No. 1, p. 141, Winter 2004

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## To be or Not To Be . . . Out in the Academy

Michael R. Siebecker\*

### Introduction

Being out is not like being pregnant. You can hardly be a little bit pregnant, but gay people can—and many do—live with varying degrees of openness about their sexuality in different spheres of their lives. With that in mind, what concerns should gay law teachers take into account before deciding to embrace publicly their sexual orientation? Do law professors have some special duty to disclose (or conceal) their sexual identity? What risks do gay teachers face in coming out to their students and colleagues?

In this Essay, I attempt to address those questions from a highly personal perspective, as a gay man at the start of a teaching career.<sup>1</sup> The very nature of the subject matter almost requires such a personal approach. In contrast, much of the literature addressing gay identity reduces the complexity of issues to a few, though not necessarily easy to understand, theoretical propositions. That approach seems somewhat ironic, because much of that same scholarship advocates the need to invest academic discourse with personal perspectives and narratives. Moreover, little attention has been paid to how an individual reading the literature might attempt to wade through the hodgepodge of often conflicting principles and theories, each of which purports to provide clear direction on how to act.

So, this project involves a kind of vivisection. Based on my own personal values, commitments and experiences, I attempt to present and react to a variety of arguments culled from the literature. In Part I (“Personal Concerns”) I discuss issues relating to identity and personhood, including career risks, threats

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1. Although this Essay focuses on teaching law, much of the discussion is applicable to teaching in other institutions of higher learning as well.

of violence, and perceptions of unnecessary social defiance or “flaunting.” In addition, I examine some special academic responsibilities that embracing an openly gay identity might entail, such as a duty to pursue gay legal scholarship and a need to develop an expertise in teaching critical legal studies. Part II (“Concerns for Students”) takes a less solipsistic approach and attempts to investigate how a decision to come out might affect my students. I cover matters relating to a student’s personal development as well as pedagogical concerns related to the quality of education students might receive. Turning further outward, in Part III (“Concerns for Community”) I address how my choice to disclose my sexual orientation might affect members of the gay community, the non-gay community, and society as a whole. Issues considered include the role of positive gay images, mentoring, normalcy, homophobia, and the strength of social ties within and across various identities. Finally, my analysis leads me to the conclusion that I should be an out gay law teacher, at least in some respects. I remain somewhat undecided, however, with respect to exactly what academic responsibilities that commitment might entail.

On a cautionary note, my intent throughout is not to argue that the conclusions I draw apply beyond the confines of my personal values and experiences. Quite to the contrary, I simply hope to provide some insight into how particularity—my particularity no less—affects an interpretation of theory in the realm of gay identity.

### **I. Personal Concerns**

For me, the personal issues surrounding a decision to be out can be roughly divided into two categories. The first category involves concerns affecting my own body and identity that might arise through a public act of identification as a gay teacher. In a sense, those are fundamental threshold concerns that perhaps control the basic issue of whether or not to be out in any sense as a gay teacher. The second category touches more on certain special academic responsibilities that a gay teacher might face. Of course, those responsibilities may well affect the decision to embrace a public gay identity at the outset. But at least as I conceive them, the issues address the nicer question of how much to be out after the threshold concerns have been overcome. Moreover, because I will discuss different potential responsibilities of gay teachers throughout this Essay, I limit the discussion in this section to just two responsibilities against which I have particularly self-

interested or selfish reactions, reactions that stem from my personal awareness and acceptance of what I believe being an out gay teacher entails.

### A. *Identity and Personhood*

#### 1. Risk To Career

One important consideration in deciding whether or not to be out is the adverse effect embracing a public gay identity might have on my career prospects. Employment discrimination based on sexual orientation is real, even in the academy. The current state of the law in many jurisdictions does not afford much protection to gay people<sup>2</sup> and stories abound involving reprimand or dismissal of gay teachers who simply reveal their sexual orientation in the classroom or to their colleagues.<sup>3</sup> Even if safe from disciplinary action at a particular institution, some fear that tenure decisions may sometimes become infected with an anti-gay bias as well.<sup>4</sup> Perhaps in order to avoid that kind of embarrassment too far down the road, some universities simply require prospective teachers to sign a pledge to abide by a particular religious or moral code (which prohibits homosexuality)

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2. BARRY BURLAND & HAYDEN COLEMAN, LAMBDA LEGAL DEFENSE FUND, INC., SEXUAL ORIENTATION DISCRIMINATION IN EMPLOYMENT: A GUIDE TO REMEDIES 1, 8-13 (1998) at <http://www.lambdalegal.org/sections/library/employment.pdf> (last visited Sept. 18, 2003) (describing the limited protections against employment discrimination afforded to gay people under state and federal law); see generally MERRICK T. ROSSEIN, EMPLOYMENT DISCRIMINATION: LAW AND LITIGATION (Clark Boardman ed. 2003); EVAN WOLFSON, OUT ON THE JOB, OUT OF A JOB: LESBIAN/GAY EMPLOYMENT (1993).

3. See, e.g., JOHN K. WILSON, THE MYTH OF POLITICAL CORRECTNESS 43, 48, 50 (1995); Anthony E. Varona, *Setting the Record Straight: The Effects of the Employment Non-Discrimination Act of 1997 of the First and Fourteenth Amendment Rights of Gay and Lesbian Public Schoolteachers*, 6 COMMLAW CONCEPTUS 25, 30-32 (1998).

4. See William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607, 644 (1994) (describing Professor Eskridge's experience of being denied tenure at the University of Virginia as a direct result of being open, though "discreet," about his sexual orientation); see also Laurie Rose Kepros, *Queer Theory: Weed or Seed in the Garden of Legal Theory?*, 9 TUL. J.L. & SEXUALITY 279, 306-07 (2000) (suggesting that pursuing gay scholarship limits job opportunities); Toni M. Massaro, *Gay Rights, Thick and Thin*, 49 STAN. L. REV. 45, 49-50 (1996) ("The professional consequences of even raising gay issues have historically deterred scholars who feared being judged as doing marginal work or being labeled as closeted homosexuals pursuing self-interested ends under the mask of objective scholarship."); David Román, *Speaking with the Dead*, in WHO CAN SPEAK 165, 169-70 (Judith Roof & Robyn Wiegman, eds., 1995) (noting the scarcity of teaching positions in gay and lesbian studies and the abuse to which even tenured gay professors are subjected).

in order to gain and retain employment.<sup>5</sup>

The potential conflict between embracing a public gay identity and enjoying a successful academic career raises questions about the priority I place on particular aspects of my identity. Do I consider myself first and foremost a teacher or a gay man? If the former, must I conceal my sexual orientation to avoid discrimination that threatens to disrupt a more important element of my identity? On the other hand, would silence about my sexual identity prohibit me from developing into the kind of teacher and scholar I might otherwise want to become? These are certainly difficult questions. And quite frankly, I feel a great deal of anguish and resentment that these are questions society forces me to answer.

But the very fact that society forces me to answer these questions seems to compel me to a particular answer as well. When I was first coming out to friends and family during my third year of law school, I would give the same carefully crafted speech to each person and also have at hand a set of pat answers to predictable questions. One typical concern centered on whether or not my being gay would change the person they knew. To allay that fear I would invariably say: "Look, if I had to list the ten most important things about me, I'm not even sure my being gay would make it on the list." I truly felt that way. I truly believed that sexual orientation was a purely private matter that would in no way affect my outlook on the world, general relationships with

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5. Pepperdine University, for example, requires that all prospective job applicants sign a document by which they acknowledge that certain lifestyles and practices are incompatible with the particular moral and religious code to which the University is committed. Part E of the Application for faculty members [as reprinted in 2001] states:

"PART E. THE MISSION OF PEPPERDINE UNIVERSITY[:]  
Pepperdine University is a Christian university committed to the highest standards of academic excellence and Christian values, where students are strengthened for lives of purpose, service, and leadership. As a private institution under the control of an independent Board of Regents, the University from its beginning has maintained a close relationship with the Churches of Christ. Supportive individuals with a variety of religious backgrounds comprise the faculty, governing board, staff and student body of the School. The University expects from all of its students and employees the highest standard of moral and ethical behavior in harmony with its Christian philosophy and purpose. *Engaging in or promoting conduct or lifestyles inconsistent with traditional Christian values is not acceptable.* Please discuss the extent and nature of your interest in and ability to contribute to the University's mission and educational philosophy as expressed above. (followed by a blank space for a written response).]"

Richardson R. Lynn, *Mission Possible: Hiring For Mission In a Vague World*, 33 U. TOL. L. REV. 107, 109 n.10 (2001) (citation not provided in original) (setting forth the pledge) (emphasis added).

others, goals, and values.

But times change. Were I to list the ten most important things about me today, being gay would rank at the very top. That change angers me somewhat because I feel that in some fundamental sense nothing has changed, or perhaps, nothing should have changed. I do not mean to suggest, however, that being gay is intrinsically bad or unworthy of top status generally. Rather, I feel forced to elevate the status of my sexual orientation in terms of my own identity, even though I know the core of who I am remains essentially the same. So, why the change? At the time I first came out, I had only been aware of my true sexual orientation for a few months; I had not lived in society as a gay man for very long. Now almost ten years later, I can reflect on a host of experiences that undermine my assumption that sexual orientation is a purely private matter. Threats of violence, discrimination in the workplace, verbal harassment, intolerance of former friends, and strained familial relationships, among other things, make it impossible to ignore the apparent importance *others* place on my sexual orientation. Even if I do not personally experience the typical tragedies that so many gay people endure, knowing those tragedies occur necessarily affects my sense of self. The discrimination, bigotry, hatred, and violence society displays towards gay people forces me to recognize that despite any predilections I might have to downplay being gay, at various important points in my life, others may very well deem my orientation to be of paramount importance.

To me then, it seems rather ironic that society's abhorrence of homosexuality causes me to elevate my sexual orientation to such prominence in my own sense of self. That prominence precludes me from subjugating that aspect of my identity to any other. So no matter how strong my sense of identity might be linked to being a teacher, I am a gay man first. Therefore, even though my being an out gay teacher might undermine my success in the academy, I do not believe that potential serves as an adequate reason for me to deny an essential aspect of my identity.

## 2. Threat of Violence

Perhaps a more fundamental consideration in embracing a gay identity as a teacher is the threat of physical violence. Certainly, as a general matter, violence against gay people is all too common today.<sup>6</sup> I personally know of no gay person who has

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6. See Susan J. Becker, *Tumbling Towers as Turning Points: Will 9/11 Usher in*

not been at least threatened with violence due to his or her sexuality. With respect to my own experiences, not long ago my partner and I were accosted by a man who, after barraging us with the typical gay epithets, brandished a box cutter razor and threatened to “put [us] in the hospital.” The event occurred just a half block from our home in New York City as we were taking our dogs on their morning walk. The event brings home—literally—the notion that homophobic violence is not something for gay people to take lightly.<sup>7</sup>

But violence or threats of violence may manifest themselves in a more profound way by creating fear of physical aggression, a fear that curtails the sense of freedom with which gay people attend to their daily lives.<sup>8</sup> That sense of paralysis may arise from the existence of sexual orientation as a relatively hidden identity. Choosing not to manifest a gay identity (e.g., displaying public affection, openly discussing one’s sexual orientation, etc.), in a sense provides a form of protection from abuse. Many gay people, even those who consider themselves to be openly gay, adopt at least some kind of incremental response to the threat of violence. We may be generally open about our identities but remain somewhat mindful of the circumstances within which we choose to make ourselves vulnerable. For example, although my partner and I are generally out to our family, friends, and colleagues, we have second thoughts about holding hands as we pass through certain parts of the country on our annual vacation.

Some may think that although the threat of violence might represent a concern in society as a whole, coming out as a teacher would not in any way affect the likelihood of a violent incident.

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*a New Era for Gay Men and Lesbians in the United States?*, 9 WM. & MARY J. WOMEN & L. 207, 244-45 (2003) (detailing a variety of anecdotal and statistical evidence demonstrating the prevalence of hate crimes based on sexual orientation); Didi Khayatt, *Paradoxes of the Closet: Beyond the Classroom Assignment of In or Out*, in INSIDE THE ACADEMY AND OUT: LESBIAN/GAY/QUEER STUDIES AND SOCIAL ACTION 31, 45-46 (Janice L. Ristock & Catherine G. Taylor eds., 1998) (discussing anecdotal accounts of violence against gay people in order to illustrate the risks of embracing an openly gay identity).

7. See also Jennifer C. Pizer & Doreena P. Wong, *Arresting “The Plague of Violence”: California’s UNRUH Act Requires School Officials To Act Against Anti-Gay Peer Abuse*, 12 STAN. L. & POL’Y REV. 63, 70-71 (2001) (detailing the rise of hate crimes against gay people over the last decade); Annie Steinberg et al., *Youth Hate Crimes: Identification, Prevention, and Intervention*, 160 AM. J. OF PSYCHOL. 979 (2003) (describing among other statistics, a California study indicating that in the gay population of Sacramento, one-fifth of the women and one-fourth of the men reported being the victim of a hate crime since age sixteen).

8. See Khayatt, *supra* note 6, at 46 (detailing anecdotal evidence of violence against gays and lesbians).

After all, am I really concerned that one of my own students or a member of the law school community would attack me? In the end, the real issue may be one of control and comfort with the cumulative scope of disclosure in the lives of gay people. My concern about disclosing my identity to my law school class or colleagues may focus less on the actual members of that particular community and more on my comfort with the general level of exposure to vulnerability that disclosure entails. I personally liken the situation to my willingness to overcome a fear of flying. Although I understand my logic is somewhat suspect, I have this terrible anxiety that the more I fly, the greater my chances of one day plummeting from the sky in a ball of flames. My fear is based on cumulative sensibility that the more flights I take, the more certain the disaster becomes. In a similar fashion, the more I disclose my sexuality, the greater sense I have that violence will come my way.

Although I take seriously the threat of violence, the existence of that threat does not cause me to hide my identity as a gay teacher. Why? I choose to overcome my fear of flying because air travel is sometimes necessary for me to get where I want to go. Similarly, accepting the increased threat of violence may simply be necessary for me to remain true to my identity and to become the kind of teacher and person I aspire to be.

### 3. Social Defiance and “Flaunting”

My struggle with the decision to become an out gay teacher involves some consideration of the tension between social defiance and perceptions of “flaunting.”<sup>9</sup> The very act of being out may inescapably represent a statement of social defiance. William Eskridge perceives that revealing your sexual orientation, in a sense, requires others to choose sides.<sup>10</sup> According to Eskridge,

[the] decision to come out is not merely an individual assertion of identity, but also a risky act of social defiance. “I acknowledge that your category includes me, but deny your ability to shame me by it.” Coming out denies the power of the dividing practice—it is a great cry of “So what?” The defiance is familial and social as well as political, for coming out challenges one’s family, friends, colleagues: “You must choose

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9. Mary Beth Heinzlmann, *The “Reasonable Lesbian” Standard: A Practical Deterrent Against Bias in Hostile Work Environment Cases*, 12 TUL. J.L. & SEXUALITY 337, 348-49 (2003) (describing the problem of flaunting sexual identity and linking flaunting to instances of employment discrimination).

10. Eskridge, *supra* note 4, at 635-36.

me or the dividing practice.”<sup>11</sup>

I believe Eskridge is right about the import of the act of coming out, but the tone of his description (and of other similar passages from gay scholars)<sup>12</sup> seems to promote the notion that being out is a continual act of militancy. Although being out may generally advance gay social and political goals, Eskridge seems to hint that being out entails adopting a continually confrontational and combative posture towards others.<sup>13</sup>

This notion of social defiance plays into the perception of some that being out necessarily involves a negative element of “flaunting.”<sup>14</sup> As *Time* magazine reported in the early part of the 1990s, “[t]he love that once dared not speak its name now can’t seem to keep its mouth shut.”<sup>15</sup> Some believe that gay people should be tolerated but not glorified. Gay relationships are fine as long as gay people “don’t rub our noses in it.”<sup>16</sup> In general, I am not particularly sympathetic to complaints about flaunting because it sends “the clear message that . . . defend[ing] our rights is to step out of our place.”<sup>17</sup> On the other hand, I support the reduction of what seems to be an increasing aggressiveness and hostility in all aspects of society. Discourse about every issue seems to take place at a high decibel and I am somewhat loath to ratchet up the volume.

My overall take on the balance is that the goals of social defiance are best achieved through maintaining softer tones. I simply cannot accept the notion that being an openly gay teacher

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11. *Id.*

12. See, e.g., Scott N. Ihrig, *Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students*, 14 LAW & INEQ. 555, 583-84 (1996).

Gay, lesbian, and bisexual students in law school need to strive to come out in as many ways as possible. It is a responsibility which, although maybe not comfortable, is necessary for advancing the GLB liberation movement. . . . We must be more than just present in the classroom. We must engage our colleagues, students and faculty alike, in a principled dialogue about the realities of our lives and the ways in which the law's construction intentionally excludes or inadvertently overlooks us. We must work to transform the fears held by straight people into acceptance. Visibility alone is no longer sufficient.

*Id.*

13. See Eskridge, *supra* note 4, at 635-36.

14. See Heinzlmann, *supra* note 9, at 348 (describing the problem of flaunting generally); Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 838 (2002) (“In some sectors of American culture, it is now permissible to be gay and to say that one is gay, as long as one does not flaunt one’s homosexuality.”).

15. Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511, 587 (1992).

16. *Id.* at 588.

17. *Id.*

requires me to become a kind of zealot whose classes become a catechism on gay liberation. I do not intend to suggest, however, that gay people should not vigorously pursue gay rights or attempt to change the prevailing attitudes in society. Instead, I simply mean to posit that continual and brash confrontation may backfire and undermine the very goals that social defiance intends to promote.

The question remains whether being open about my sexuality when I deem relevant or discussing a gay perspective on legal issues would constitute inappropriate flaunting. While I certainly would not harangue students or colleagues for failing to see “the light” as quickly as I might like, being a gay teacher involves helping people think logically about sexual orientation issues. But, at least for me, it is very hard to concentrate when there is a lot of noise. Turning down the volume of the discourse might better enable people to reflect and embrace what might be the inevitable conclusion that no logical basis exists for the hatred of, or discrimination against, gay people. Thus, fear of flaunting does not cause me to remain silent about my sexuality. It does, however, lead me to the awareness that social defiance, at least for me as a gay teacher, may involve a more cajoling kind of resistance.

### *B. Special Academic Responsibilities*

#### 1. Duty To Contribute

Does being an openly gay teacher impose a duty to address gay critical perspectives in the courses I teach? Does my sexual orientation place some special obligation on me to contribute to the scholarship on gay issues? There are strong arguments for answering “yes” to each of those questions. Some claim that gay people possess an innate gay sensibility, a special awareness that possibly derives “from gays’ and lesbians’ instinctive awareness of the absurdity and arbitrariness of gender-based expectations.”<sup>18</sup> The possible existence of that innate gay sensibility supports the further notion that only those members of subordinated groups “can best teach and write about their subordination because only they embody and experience it and therefore truly understand it.”<sup>19</sup> Moreover, there may be a continuing need to develop strong

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18. Jerry G. Sherman, *Speaking Its Name: Sexual Orientation and the Pursuit of Academic Diversity*, 39 WAYNE L. REV. 121, 126 (1992).

19. Peter Halewood, *White Men Can't Jump: Critical Epistemologies, Embodiment, and the Praxis of Legal Scholarship*, 7 YALE J.L. & FEMINISM 1, 22

gay perspectives in scholarship to advance gay rights and, more generally, to invest legal discourse in traditional areas with an ability to take adequate account of the particular circumstances of gay people in society.<sup>20</sup> So if teaching and writing about gay perspectives is important and there is something about being gay that, in a sense, disqualifies non-gay people from taking up the task effectively, might not gay teachers actually have some special duty to incorporate their sexual identity into their academic pursuits?

From a purely selfish perspective, I would very much like to accept Peter Halewood's conclusion that those outside subordinated groups are able to do an adequate job teaching and writing about law and subordination.<sup>21</sup> Quite frankly, although I am particularly interested in the goals and results of gay scholarship, I am not particularly interested in pursuing gay scholarship myself. For me to pursue an area of scholarship in which I cannot manifest a keen academic interest would seem to undermine not only the quality of the scholarship, but also my reasons for desiring a career as a scholar in the first place. But I am terribly torn. I do recognize in myself that "innate gay sensibility" others describe. And I do recognize the need for law and society to take account of the existence and circumstances of gay people.

No matter how much I struggle, however, I cannot seem to

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(1995); see also Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 497, 561 (1984) (advocating greater minority scholarship in civil rights discourse); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324, 346 (1987) (suggesting that critical legal scholarship benefits by listening to the "special voice" of those who have experienced discrimination).

20. See Katherine M. Franke, *Homosexuals, Torts and Dangerous Things*, 106 YALE L.J. 2661, 2682-83 (1997) (articulating a need for gay studies casebooks); see also Jennifer Durkin, *Queer Studies I: An Examination of the First Eleven Studies of Sexual Orientation Bias by the Legal Profession*, 8 UCLA WOMEN'S L.J. 343, 366, 374 (1998) (detailing seven studies addressing sexual orientation; one of which calls for more gay and lesbian law faculty members, and two of which call for courses addressing gay legal issues); Timothy E. Lin, *Social Norms and Judicial Decisionmaking: Examining the Role of Narratives in Same-Sex Adoption Cases*, 99 COLUM. L. REV. 739, 744 (1999) (promoting increased reliance on gay narratives in courtroom advocacy); Kellye Y. Testy, *Adding Value(s) to Corporate Law: An Agenda for Reform*, 34 GA. L. REV. 1025, 1037-38 (2000) (positing that outsider scholarship, including gay and lesbian theory, should inform the regulation of corporate culture).

21. See Halewood, *supra* note 19, at 6-7 ("[W]hite male law teachers should engage in scholarship investigating the relation of law to social and political subordination, provided that they do so in ways that respond to feminist and minority critiques of scholarship, and provided that in doing so they do not preempt or displace scholars who are white women or people of color.").

come to a final resting point. At best, I can pledge to make the effort to teach gay critical perspectives in class and to keep an open mind about areas of gay scholarship that might overlap with my own interests. But I find it hard to accept the position that being an openly gay teacher requires a kind of uniform attention to particularly gay issues. Were that the case, the forced nature of gay scholarship would seem to undermine the very appreciation of diversity the scholarship intends to promote.

## 2. Requirement Of Expertise

Assuming an openly gay teacher has an obligation to teach critical gay perspectives, does the difficulty in teaching identity issues affect the consideration of whether or not to be an openly gay teacher in the first place? The concern here stems from awareness that teaching gay identity issues is really quite a difficult task.<sup>22</sup> Although I may possess some innate gay sensibility, that special awareness does not, in itself, provide me with sufficient background to teach about current issues in gay scholarship, litigation strategies involving gay rights or gay claimants, the role of gay narratives in legal discourse, etc. Instead, incorporating identity issues into the classroom involves a great deal of work and potential costs as well.<sup>23</sup> Not only must a law teacher engage in substantial historical, sociological, economic, and scientific research in order to compile special readings that address outsider perspectives, but teachers often must expend significant political capital convincing students and colleagues that addressing identity issues in traditional law school classes enhances rather than detracts from the educational experience.<sup>24</sup> And as one law professor laments, “it is, in my

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22. See Kepros, *supra* note 4, at 306 (contending that “teaching about sex is difficult” and detailing the institutional impediments to incorporating queer legal theory into law school curricula).

23. Lisa Chiyemi Ikemoto, *Some Tips on How to Endanger the White Male Privilege in Law Teaching*, 19 W. NEW ENG. L. REV. 79, 81-83 (1997).

24. Ikemoto states that:

Making race and other points of marginalization visible in a law course is a lot of work. . . . It takes more time to compile readings that expressly address race, gender, sexual orientation, and class than it does to compile readings that express the “law-is-neutral” approach. . . . You have to critically evaluate the standard approaches to the course, and rethink the topic in order to figure out how to make the social issues apparently relevant. In addition, you have to do extra research . . . [which] often means taking an interdisciplinary approach. As a practical matter, that means cramming in a bit of history, sociological method, science, and other areas. . . . This works has costs. For example, the time it takes to rethink the topic and put the reading materials together might be spent writing articles that would get more credit at promotion and tenure time, or

experience, easier to do this work badly than it is to do it well.”<sup>25</sup> Therefore, for someone not particularly interested or well versed in critical legal studies, the obligation of teaching gay identity issues poses a rather daunting task.

But is the task so daunting that it causes me to keep my sexual orientation hidden in order to avoid the duty of taking up the challenge? For me, the answer is no. The difficulty in teaching identity issues certainly makes me less sanguine, however, that I will ever fully embrace critical gay perspectives in my teaching. My main fear really lies in causing more damage than good through an inartful teaching attempt.<sup>26</sup> Despite the difficulty and fear associated with the project, however, I believe that being an openly gay teacher at least requires me to make some effort. And as I examine how embracing a gay identity in the classroom might benefit students and the community as a whole,<sup>27</sup> the effort becomes a bit easier to make.

## II. Concerns for Students

While the previous discussion regarding special academic responsibilities focused on my own competence and duties as an aspiring scholar,<sup>28</sup> the concerns for students targeted in this section assess how a decision to embrace an openly gay identity as a law teacher might affect the students I teach. My concerns for students can be divided into two general categories. The first category addresses issues of personal development; the second category deals with pedagogical concerns that focus primarily on the effects of teaching from a gay perspective. Again, the division serves simply as a heuristic device for me to make my way through the various, sometimes overlapping, issues that surround a decision of whether or not to be—or in what way to be—an openly gay teacher.

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perhaps, better salary increases. Teaching from an “alternative” perspective often has political costs. . . . [T]he fact that you are teaching that race and gender are relevant may be perceived as threatening to the authority of others, as well as to the authority of majority viewpoints. This can negatively affect both teaching evaluations and relations with some students and colleagues. You may have to use political capital to defend your teaching. Or you may simply lose your political capital.

*Id.* at 81-83.

25. *Id.* at 83.

26. See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, 80-84 (1991) (describing how good intentions with respect to teaching identity issues can go seriously wrong).

27. See *infra* Parts II, III.

28. See *supra* notes 18-27 and accompanying text.

*A. Personal Development*

## 1. Coming Out

Perhaps the paramount concern for me in deciding whether to be open about my sexuality as a teacher is the effect that decision might have on my students' ability to come to terms with their own sexuality. Understanding why this might be a great concern, however, requires some understanding about what is at stake by remaining closeted. Unfortunately, gaining that understanding often seems quite difficult for non-gay people. Simply going through a litany of psychological or social ills associated with a closeted lifestyle somehow fails to capture the complexity and gravity of the problem, or perhaps, the web of problems.

Although I do not know if there is a more useful method than the litany approach, the short "fantasy" constructed by Brian McNaught provides an incredibly effective pedagogical tool.<sup>29</sup> His "fantasy," which describes a world in which everybody is gay except you, attempts to give non-gay people some understanding of what fundamental struggles gay people face along the road to coming to terms with their sexuality.<sup>30</sup> From prom dates and first kisses to professional discrimination and familial betrayal, McNaught's fantasy invites non-gay people to imagine the unsettling experiences they might endure if heterosexuals, rather than gay people, were the despised minority.<sup>31</sup> As for the standard litany, the literature makes no secret of the various problems of remaining hidden. Among the many devastating effects of the closet, some of the most frequently discussed include loneliness, alienation, internal confusion, pain, fear of rejection, hostility to others, stress, fear of revelation, fear of intimacy, inability to trust, diminished productivity, lack of self esteem, lack of confidence, emotional instability, and suicide.<sup>32</sup> To the extent my being openly gay as a teacher helps students come to terms with their sexual orientation and escape the ills of the closet, I may have some moral duty to be open. The big question is, does my being out

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29. BRIAN MCNAUGHT, GAY ISSUES IN THE WORKPLACE 18-24 (1993).

30. *Id.*

31. *Id.*

32. See, e.g., Catherine G. Taylor, *Teaching for a Freer Future In Troubled Times*, in *INSIDE THE ACADEMY AND OUT: LESBIAN/GAY/QUEER STUDIES AND SOCIAL ACTION* 15-16 (Janice L. Ristock & Catherine G. Taylor, eds., 1998); Fajer, *supra* note 15, at 596-99; Lynn Miller, *The Legal Closet*, *STUDENT LAW*, Feb. 1988, at 14-16; McNaught, *supra* note 29, at 7.

really help others?

Some suggest that positive gay role models serve an essential role in the coming out process.<sup>33</sup> For instance, Didi Khayatt presents the argument that coming out as a teacher serves to support students struggling with their identities.<sup>34</sup> The simple act of disclosure would

act as a means of support to those students who are struggling with their sexual identity. The logic of this presumption is that (potentially) lesbian and gay students would recognize the gesture of coming out as one of strength, pride in the identity, honesty, and integrity. By saying "I am a lesbian", to a class I am also telling them that I am not ashamed of my sexual orientation, that I am comfortable in my sexuality, that here I am, a tenured professor and yet a lesbian.<sup>35</sup>

Extending that basic concept to the specific context of law school faculties, Jeffrey Sherman suggests that "[t]he diversity argument for including more gays and lesbians on a law school faculty holds that they can be expected to . . . provide gay and lesbian students with needed role models."<sup>36</sup>

Although I remain a bit uncomfortable with the notion of role models generally (because the individuals who are deemed to serve in those capacities inevitably seem to disappoint in some way or another), in the gay community they seem to serve an especially important function. As a threshold matter, the very existence of openly gay people in the community combats the debilitating notion that an openly gay life is simply untenable, even if gay role models provide nothing more than simple visibility. Though that may seem a minor point to non-gay people, the perceived viability of a meaningful gay life represents an essential starting place for many in coming to terms with a gay identity. Because I feel so much can be accomplished by so little on my part, I feel almost compelled to be an out gay teacher—at least in some respect—for

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33. Theresa J. Bryant, *May We Teach Tolerance? Establishing the Parameters of Academic Freedom in Public Schools*, 60 U. PITT. L. REV. 579, 586-87 (1999) (describing the importance of gay role models for preventing isolation and despair among gay youths); Michelle Eisenmenger, *Sexual Orientation Discrimination: Teachers as Positive Role Models for Tolerance*, 31 J.L. & EDUC. 235, 244 (2002) (suggesting that openly gay teachers provide important role models for acceptance and tolerance of gay people); Nancy J. Knauer, "Simply So Different": *The Uniquely Expressive Character of the Openly Gay Individual After Boy Scouts of America v. Dale*, 89 KY. L.J. 997, 1051-52 (2001) ("[An] openly gay individual sends a message of gay pride, encourages others to embrace homosexuality, and puts an ordinary face on homosexuality for the non-gay majority.").

34. See Khayatt, *supra* note 6, at 39.

35. See *id.* at 37-38.

36. See Sherman, *supra* note 18, at 123-24.

this reason alone.

## 2. Ongoing Mentorship

Whether or not openly gay teachers can serve a valuable mentoring role for openly gay students provides another consideration in determining whether or not to be out. While the positive role model consideration focused chiefly on the effects a visible gay identity might have on students struggling to come to terms with their sexuality,<sup>37</sup> the mentoring aspect concerns the effects on already openly gay students. Responses from openly gay law students suggest they feel somewhat lost when attempting to cope with the variety of special issues that confront gay lawyers.<sup>38</sup> One study reported that 68% of first year law students and 84% of third year students felt that being gay would adversely impact their chances for success in the legal profession.<sup>39</sup> Many students also reported that law school career planning offices actually advised students to avoid “coming out” on their resumes.<sup>40</sup> That same study went on to report that students felt a need for openly gay professors and staff to serve as mentors in order to help address the confusing mix of concerns openly gay students face.<sup>41</sup> Moreover, gay student groups often rely on openly gay faculty advisers to sustain the strength of the organization and provide a sense of direction.<sup>42</sup> The degree of assistance a gay teacher could provide to openly gay students provides a strong reason for coming out as a gay teacher. In the end, while I do not believe my sexuality necessarily obligates me to serve as a formal mentor to gay students, the potential benefits of mentoring provide an extra impetus for embracing a public gay identity, especially in light of the costs that a decision to remain closeted might impose on students and the law school community.<sup>43</sup>

## 3. The Silencing Effect

Failing to come out fully as a teacher may have a significant silencing effect on gay students.<sup>44</sup> This silencing effect stems from

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37. See *supra* notes 34-36 and accompanying text.

38. See, e.g., Durkin, *supra* note 20, at 374.

39. See, e.g., *id.*

40. See, e.g., *id.*

41. See, e.g., *id.*

42. See Janice L. Austin, et al., *Results from a Survey: Gay, Lesbian and Bisexual Students' Attitudes About Law School*, 48 J. LEGAL EDUC. 157, 173 (1998) (describing the role gay faculty advisers play in the law school community).

43. See *infra* note 46 and accompanying text.

44. Cf. Bobbi Bernstein, *When Good Intentions Aren't Enough: Observations of an*

the disparity in power between a student and teacher and exists when a teacher who is known to be gay (by some or many) chooses not to embrace fully that gay identity. Gay students might perceive that a gay teacher who remains closeted intends to convey a message to other gay people that being open about sexual identity is inappropriate.<sup>45</sup> Because the teacher occupies a position of power relative to the student, a teacher's reticence may cast a pall of orthodoxy over students in a way that stifles open expression of sexual orientation. Moreover, a cycle of silence may result as students who once observed the silence of their gay teachers adopt the same approach as a default position when they later occupy positions of power.<sup>46</sup> The effect of failing to come out as a teacher may be to shove students back into the closet just when they were trying to get a peek at life outside.

### *B. Pedagogical Concerns*

#### 1. Providing a Safe Environment

Adopting an openly gay identity may better promote a safe environment within which gay (and non-gay) people can learn. Gay people in particular often feel that gay perspectives are avoided and discouraged by teachers or other students during discussions of traditional legal issues.<sup>47</sup> Moreover, gay students report experiences of being mocked, chastised, or threatened outside the classroom for gay perspectives that were shared in class.<sup>48</sup> Those kinds of experiences seem somewhat incompatible with the project of learning, at least to the extent learning relies on open consideration of diverse ideas and viewpoints.<sup>49</sup> Some suggest that the presence of an openly gay teacher—even one who

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*Openly Gay Law Firm Applicant*, 6 TUL. J.L. & SEXUALITY 127, 129 (1996) (describing the cycle of silence in the employment realm as applied to the student-teacher relationship).

45. *Id.*

46. *Id.* at 129. According to Bernstein, the reticence of legal employers to discuss issues relating to sexuality during the recruiting process encourages "gay applicants to remain closeted." *Id.*

47. See, e.g., Ihrig, *supra* note 12, at 163-66; Austin, et al., *supra* note 42, at 572-77; Miller, *supra* note 32, at 14-15.

48. See, e.g., Ihrig, *supra* note 12, at 163-66; Austin, et al., *supra* note 42, at 572-77; Miller, *supra* note 32, at 14-15.

49. See Kim Paula Kirkley, *Don't Forget the Safety Net that All-Gay Schools Provide in Considering the Issues Raised by All-Female Public Education*, 14 N.Y.L. SCH. J. HUM. RTS. 127, 132-36 (1997) (describing the importance of safe environments to education and, in particular, the establishment of the Harvey Milk School for gay youths as a response to the inability of some traditional schools to provide a safe environment within which gay students could learn).

does not necessarily incorporate critical gay perspectives in the materials—makes the learning environment a safer place for those who wish to express or explore gay perspectives in the class.<sup>50</sup> Promoting a safe environment for the discussion of gay issues and perspectives would in turn seem to enhance the educational environment for all people. For me then, the ability to enhance the safety of the learning environment by embracing publicly my gay identity serves as a strong reason to be out about my sexual orientation.

## 2. Developing Legal Skills

The usefulness of addressing gay legal issues to develop students' legal skills might provide some additional grounds for being out, at least with respect to incorporating gay issues or perspectives in teaching.<sup>51</sup> While the prior discussion focused on the potential duty a gay teacher might have to explore gay perspectives in legal scholarship,<sup>52</sup> the analysis here focuses on the benefits to students, and in particular, how exposing students to outsider perspectives in law school might help those students become better lawyers.

As a general matter, Mari Matsuda contends that adopting critical or outsider perspectives in the classroom enhances the development of essential legal skills.<sup>53</sup> Matsuda maintains that confronting the law from another's perspective develops a "multiple consciousness" that equips lawyers with a powerful tool for interpreting and directing the law.<sup>54</sup> That "multiple consciousness" helps secure the development of the law in a manner sensitive to gay people:

[L]aw schools are also training many of tomorrow's executive and legislative policymakers, judges, and legal scholars. If we want people in these positions to be able to think intelligently about the pressing social and legal questions raised by the gay and lesbian demand for equality, we need to give them the

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50. See Khayett, *supra* note 6, at 37-38.

51. See Kepros, *supra* note 4, at 306-07 ("In fact, part of the value of Queer voices in the law school is that diversifying the student body and faculty will better prepare future lawyers to serve the needs of outsiders.").

52. See *supra* notes 18-26 and accompanying text.

53. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 8-10 (1989) ("Outsider scholars have recognized that their specific experiences and histories are relevant to jurisprudential inquiry.").

54. See *id.* at 8-9 (explaining that "multiple consciousness" allows a lawyer to view the law from one viewpoint and then "shift out of it for purposes of critique, analysis, and strategy").

skills and information to do so.<sup>55</sup>

On a more mundane level, addressing gay issues in law school may cultivate rather practical legal skills that prepare law students to deal with the needs of increasingly prevalent gay clients or the special demands placed on gay lawyers.<sup>56</sup> The use of gay legal narratives in traditional law courses enables “students to contextualize materials, to challenge assumptions about the law and its impact on individuals, and to prepare for the practice of law upon graduation.”<sup>57</sup> Incorporating gay perspectives into legal education, then, may enhance not only the quality of legal education but also the caliber of the lawyers who practice in an increasingly diverse society.<sup>58</sup>

So, do the benefits of incorporating outsider perspectives into the curriculum influence my assessment of whether to acknowledge publicly my sexuality? Probably not. But the practical usefulness of gay legal perspectives seems to underscore the duty I might face as an educator, regardless of my sexual identity, to incorporate gay perspectives in my teaching. Thus, while I still do not believe that being gay imposes on me in particular some inescapable duty to pursue gay scholarship or to address gay issues in the courses I teach, the potential benefits to students provide independent grounds for exposing students to outsider perspectives in traditional law classes.

### 3. Circumventing Bias

As a related concern, the perceived bias in the legal profession against gay people often causes students to avoid certain classes that explicitly involve gay subject matter. Students cite a fear of having their transcripts effectively out them with listings of courses such as “Sexuality and the Law.”<sup>59</sup> As one legal reporter noted, students get “afraid potential employers will ask what the course is about, and if they’re honest, they won’t get the

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55. Jane S. Schacter, *Poised at the Threshold: Sexual Orientation, Law, and the Law School Curriculum in the Nineties*, 92 MICH. L. REV. 1910, 1926 (1994).

56. *Id.* at 1925-27 (suggesting that teaching sexual orientation issues in law school will help train lawyers to address more effectively the pervasive inequality suffered by gay people).

57. See Ihrig, *supra* note 12, at 556.

58. See Beth Barrett, *Defending Queer: Lesbian and Gay Visibility in the Courtroom*, 12 YALE J.L. & FEMINISM 143, 163-76 (2000) (discussing the role gay legal perspectives should play in representing clients’ interests).

59. See Durkin, *supra* note 20, at 374; see also Miller, *supra* note 32, at 14 (arguing that students fear the negative ramifications of the presence of classes related to gay and lesbian issues on their transcripts).

job.”<sup>60</sup> This creates a special problem if those courses provide the only forum in which to examine gay issues or perspectives. Obviously, incorporating critical gay perspectives into traditional legal subjects would provide one way to ensure students receive some exposure to gay perspectives. Again, that approach seems to place additional pressure on gay teachers to address sexuality issues in their classes. As the cumulative effect of that pressure builds, the more difficult it is for me as an openly gay teacher to avoid addressing critical gay perspectives in my classes, regardless of my general predilections to the contrary.

### III. Concerns for Community

The concerns about community relevant to my decision of whether or not to embrace an openly gay identity cover a broad range of issues and particular communities. Moreover, these concerns involve some of the more politically charged arguments for coming out, arguments that for me may provoke especially strong negative reactions. The concerns in this section are based on whether the issues discussed are primarily relevant to the gay community, the non-gay community, or society as a whole. And, as before, some of the concerns address the basic issue of whether or not it is important for me to be an out gay teacher. Others address the subsequent question of what kind of openly gay teacher I should become.

#### A. *The Gay Community*

##### 1. Strengthening Community

The need to maintain a strong gay community provides a compelling argument for coming out as a teacher. The arguments in the literature echo many of the points discussed earlier regarding the need for openly gay role models and mentors.<sup>61</sup> With respect to helping individuals come to terms with their sexuality, some suggest that “[t]he existence of the [gay] subculture is important for gays and lesbians to support their identities.”<sup>62</sup> From a more political perspective, the absence of a strong gay presence in law schools “reinforces our societal invisibility and denies us the privilege of community. Our lack of

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60. See Miller, *supra* note 32, at 14.

61. See *supra* notes 33-43 and accompanying text.

62. Fernando J. Gutierrez, *Gay and Lesbian: An Ethnic Identity Deserving Equal Protection*, 4 TUL. J.L. & SEXUALITY 195, 198 (1994).

presence enables the law to continue to develop without our input. As a result, our rights and concerns continue to be ignored by most of the legal community.”<sup>63</sup>

In contrast, the use of gay legal narratives and critical perspectives in academic scholarship helps develop and define a sense of community. According to Professor William Eskridge, because gay critical perspectives rely on narratives to make sense of the relationship between gay people and society, the use of gay legal narratives, in a sense, plays a strong creative role in shaping and defining the gay community itself.<sup>64</sup> In addition, the community of stories that make up the narratives can often provide a source of affirmation that helps sustain a positive gay outlook.<sup>65</sup> As one lesbian historian noted,

I started out the project thinking we needed an oral history of lesbians, and then it came to me how much I needed to hear these stories. I felt strengthened by them because they confirm a reality for me which had not been acknowledged by anybody else. I felt as if a new dimension to the past had been opened to me.<sup>66</sup>

Thus, the prevalence of gay stories in academic discourse also serves to bring gay people together as they recognize some common experiences previously ignored.

Concealing sexual identity, however, may significantly undermine the viability of a gay community. Among other potential deleterious effects, concealment may interfere with the creation and cohesion of a gay community, deprive closeted people of the support and benefits the community can offer, create a tension between visible and closeted gay people about the appropriateness of concealment itself, hinder communication and connection among gay people, and impose political costs on the gay community resulting from diminished visibility of gay people throughout society.<sup>67</sup>

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63. See Ihrig, *supra* note 12, at 561-62.

64. See Eskridge, *supra* note 4, at 624-25 (describing the relationship between gay legal narratives and community identity); WILLIAM N. ESKRIDGE, *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* 306-13 (1999) (detailing how narratives influence community values and perspectives); see also Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender" and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1, 354 (1995) (asserting that "queer legal theory" helps define gay identity and culture).

65. See Fajer, *supra* note 15, at 520.

66. See *id.*

67. See Fajer, *supra* note 15, at 599; see also Nan D. Hunter, *Expressive Identity: Recuperating Dissent for Equality*, 35 HARV. C.R.-C.L. L. REV. 1, 9-10 (2000) (explaining the connection between identity and expression).

At least one of those community-based arguments against concealment, however, seems a bit ill conceived. In particular, the argument that failing to come out will create tension among out and closeted gay people seems to privilege the position of those who are out over those who choose to keep their sexuality hidden. Although the tension may indeed exist, it does not seem to follow logically that those who remain hidden represent the cause or that coming out provides the necessary cure. The tension that divides the community may result from a lack of empathy on the part of those who publicly embrace their sexuality and perhaps may be best cured by a greater respect for the choice of some to remain hidden. Concealment in itself should not be taken as necessarily detrimental to the gay community, nor should the blame for any tension that may exist rest solely at the feet of those who consider their sexuality a purely private matter.

My negative reaction to this community-based argument for coming out stems from a general aversion to notions of community that entail some sense of coercion. For me, this aversion becomes especially pronounced with respect to the gay community, where respect for difference seems like such a bedrock concern.<sup>68</sup> No matter what the public implications of embracing a gay identity might be (in terms of “social defiance,” disrupting perceptions of normalcy, etc.), coming to terms with one’s sexual orientation seems at its core to be an essentially personal matter. Put another way, although coming out may provide multifarious benefits, each individual should be afforded the opportunity to come out in his or her own way, in his or her own time. Pressuring people to come out only serves the cause of creating animosity and disrupting the very sense of community that such pressure intends to secure.

This is not an easy position for me to adopt, considering that I am out (so far) in all realms of my life and believe that the increased visibility of gay people provides one of the strongest weapons against continued discrimination. And yet, I cannot help but recall my own painful experience as a third year law student at Columbia. Just as I was beginning to come to terms with my own sexuality, I was outed by a prominent member of the gay community at the law school. Although the outing was at first confined to other members of the gay community, the news quickly

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68. See URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY AND LESBIAN LIBERATION* 285-90 (1995) (describing the multicultural nature of the gay community and the problems associated with promoting a unitary gay identity); see also Charles Fernandez, *Undocumented Aliens in the Queer Nation*, in *LESBIANS, GAY MEN, AND THE LAW*, 239-41 (William B. Rubenstein ed., 1993) (criticizing a lack of respect for diverse identities within the gay community).

spread to non-gay students as well. Soon I had the unfortunate experience of having a good friend come up to me and ask out of the blue: "Why didn't you tell me you were gay?" I certainly was not prepared to answer; I was not even sure I was really gay at that point. Being forced into a gay identity that I was not yet ready to embrace caused me great discomfort. I retreated from law school, only rarely attending classes.

As a result, I felt a bitter sense of betrayal from a community that I did not know but which claimed me, without my consent and without regard to my well-being. As you might guess, that sense of betrayal still endures to some extent. And that lingering bitterness is the crux of my point. The period during which people come to terms with their sexual orientation and emerge into the gay community is a delicate formative period. Coercion and pressure seem designed to ensure discomfort rather than to foster tight bonds of community. To encourage the continual development of a healthy sense of community, I think openly gay people should strive to make individuals' emergence into the gay community as positive an experience as possible.

In the end, I believe that my coming out as a teacher plays an important role in securing a healthy gay community. But I also believe that in coming out, it would be wrong for me to signal any kind of impatience towards those who continue to struggle with their sexual identities.

## 2. Combatting Homophobia

A fundamental goal of coming out seems to be combating the homophobia that plagues society. Making the circumstances and experiences of gay people meaningfully present in the lives of others undermines the ability to hate. Eskridge cites "[p]sychological studies [which] suggest that people who actually know an openly lesbian or gay person are less likely to be homophobic or to accept homophobic stereotypes."<sup>69</sup> Moreover, incorporating gay perspectives into the curriculum enhances people's appreciation of sexual diversity, because "[b]y discussing the experiences of gays and lesbians there will be less fear, misunderstanding, and hatred for those of a different sexual orientation."<sup>70</sup>

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69. Eskridge, *supra* note 4, at 614.

70. Kelli Kristine Armstrong, *The Silent Minority Within a Minority: Focusing on the Needs of Gay Youth in Our Public Schools*, 24 GOLDEN GATE U. L. REV. 67, 82 (1994); see Eskridge, *supra* note 4, at 614 (contending that the use of gay legal narratives makes prejudice against gay people more difficult to justify, because "the

In my opinion, a strong connection exists between gay people's openness about their sexuality and society's acceptance of gay people. Of course, acceptance often depends on the presentation. In gay politics, at least, this might represent a problem. But in everyday life, as more sons, daughters, mothers, fathers, doctors, lawyers, teachers, neighbors, and friends come out, I think the abstract fear and hatred towards gay people will decline.

### *B. The Non-Gay Community*

#### 1. Positive Gay Images

Some suggest that teachers should come out in order to present positive gay images to the non-gay community. The concern is intimately linked to the need to combat homophobia. I only distinguish this because I want to react against the suggestion vigorously. The basic notion is that out gay teachers "provide heterosexual students and faculty members with an image of gay and lesbian competence and value . . ." <sup>71</sup> That kind of positive image of gay people makes non-gay people feel more comfortable with gay sexuality and arguably diminishes hatred or ill will.

So how is providing positive gay images to non-gay people different than simply encouraging visibility of gay people? Promoting visibility of gay people attempts to increase an awareness that gay people are all around us and participate with non-gay people in each and every facet of social life. Visibility disrupts hatred, in some sense, because it makes being gay rather dull and commonplace. In contrast, promoting "positive" images of gay people seems somewhat condescending and controlling. The very notion that there are particularly "positive" gay images suggests that there is something illicit or inappropriate about the remainder of gay life. Although providing "positive" gay images to non-gay people might very well engender more sympathy for gay sexuality, it may also further marginalize those aspects or instances of gay life that fail to satisfy the "positive" criterion. Acquiescing to "positive" gay images for the sake of non-gay people

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individual stories reveal the substantial social costs of the exclusionary policy, and also put a human face on the policy's victims").

71. Sherman, *supra* note 18, at 124; see Khayatt, *supra* note 6, at 42 (describing a greater ability of gay people to gain acceptance "if many people, particularly respectable professionals (including teachers), identify themselves as lesbian (or gay, bisexual, [or] transsexual)").

is the first step down a very slippery slope toward members of the gay community discriminating against each other in much the same way that society has discriminated against gay people generally. Therefore, with respect to my decision about whether to be an openly gay teacher, the need for non-gay people to have positive images of gay life will play no role.

At first glance, some tension might seem to exist between my recognition of the need to provide openly gay “role models” for gay students and my abhorrence of promoting “positive gay images” for the benefit of non-gay people. That potential tension disappears, however, if the notion of “role model” entails nothing more than publicly embracing a gay identity. Although simply being openly gay may seem insufficient to qualify a teacher for “role model” status, as I described earlier, the perceived viability of a meaningful gay life represents an essential starting point for many in coming to terms with a gay identity.<sup>72</sup> By avoiding any substantive qualifications for role model status other than openness about sexual orientation, my recognition of the import of providing openly gay role models remains compatible with my distaste for promoting positive gay images to non-gay people.

## 2. Avoiding Insularity

A decision to become an out gay teacher, at least for me, must involve some consideration of whether that decision necessarily promotes an inappropriate sense of insularity or separation from non-gay people. Although there are many facets to this problem, I will only focus on how incorporating my own identity or critical gay perspectives in teaching might distance non-gay people from the gay community. Gay perspectives should be used, ideally, as a means to educate students generally, rather than as a tool relevant only to a discreet minority within the law school. Certain portrayals of gay scholarship, however, seem to suggest that gay legal discourse is essentially exclusive.<sup>73</sup> In reviewing William Rubenstein’s *Cases and Materials on Sexual Orientation and the Law*,<sup>74</sup> Katherine Franke<sup>75</sup> applauds Rubenstein’s work by stating,

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72. See *supra* notes 29-36 and accompanying text.

73. Franke, *supra* note 20, at 2669; see Sharon F. Rush, *Sexual Orientation: A Plea for Inclusion*, 10 BERKELEY WOMEN’S L.J. 69, 69 (1995) (discussing how to increase awareness of gay perspectives in legal discourse by avoiding exclusive scholarship).

74. WILLIAM B. RUBENSTEIN, *CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW* (2d ed. 1997).

75. See Franke, *supra* note 20, at 2668-72 (providing a positive review on this casebook).

“[t]his identity statement frames Rubenstein’s text: It is a book for and about gay men and lesbians.”<sup>76</sup> I find that kind of statement somewhat troubling because it seems to suggest that the experiences of gay people could not be made relevant to non-gay people. Although Franke later states that non-gay students “are welcome” to gain some exposure to critical gay perspectives, her comment evokes some preference for insularity.<sup>77</sup> As an out gay teacher, I believe I should take some care not to use language that makes the experience of being gay inaccessible to outsiders. To adopt an insular approach would undermine many of the purposes for my coming out in the first place.

### C. *Society as a Whole*

Although many of the issues already discussed involve various aspects of important social concerns, this section focuses on two particular concerns that affect the development of a sense of community in society as a whole. Specifically, I examine whether my coming out as a gay teacher would help strengthen the general sense of community in society while at the same time unsettling the dominant sense of “normalcy” that currently exists.

#### 1. Strengthening Community

Stemming the tide of homophobia promotes not just a sense of safety for gay people, but also strengthens the greater community. In the law school setting, ignorance of gay perspectives and “hostility towards GLB [gay, lesbian, and bisexual] people have a negative impact not only on GLB students but the school population as a whole by stigmatizing association with GLB people, narrowly defining gender roles, and limiting the breadth of acceptable dialogue.”<sup>78</sup> More generally, not only do critical gay perspectives make the lives of gay people more present in the experiences of the non-gay community, but they provide society with an essential tool to make sense of its own history.<sup>79</sup> Narrative inevitably serves to bring people together because “[i]t both builds community among members of the storyteller’s group

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76. *See id.* at 2669.

77. *See id.* In describing the purpose and focus of the book, Franke states “[s]hould non-gay people choose to take, or even teach, a class on the subject, they are welcome. Yet the fundamental ‘aspects of gay and lesbian lives’ is what this book is about, a subject for which many students and teachers are looking.” *Id.*

78. *See* Ihrig, *supra* note 12, at 563.

79. *See* Fajer, *supra* note 15, at 517; *see* Eskridge, *supra* note 4, at 614-16 (discussing the “informational value” of gay legal narratives).

and adds missing tiles to the mosaic of history that enrich society's understanding of itself."<sup>80</sup> To the extent my coming out as a gay teacher would help combat homophobia or expose non-gay people to gay perspectives, embracing a publicly gay identity might also serve to strengthen the ties that bind the greater community as well.

## 2. Unsettling Normalcy

One goal of coming out often discussed in the literature is the need to disrupt heterosexual notions of normalcy in society.<sup>81</sup> Although the concern touches upon many of the other issues already discussed, as Didi Khayatt conceives the issue, unsettling the dominance of heterosexuality involves not only "normalizing homosexuality" by demonstrating acceptance of gay people within certain social institutions, but also challenging the presumption that everybody is heterosexual, as instances of gay people coming out of the closet become increasingly common.<sup>82</sup> What Khayatt describes as "normalizing homosexuality" unfortunately seems to manifest a bit of the "positive gay image" problem discussed earlier. The selective promotion of certain gay behavior as sufficiently "normal," according to the values of heterosexual people, risks casting aside the remainder of gay life as illicit or

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80. See Fajer, *supra* note 15, at 517.

81. See Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103, 136 n.143 (1994) (discussing how some historical and mythical cultural accounts perpetuate myths of heterosexual normalcy); William N. Eskridge, Jr., *A Jurisprudence of "Coming Out": Religion, Homosexuality, and Collisions of Liberty and Equality in American Public Law*, 106 YALE L.J. 2411, 2442 (1997) (arguing that perceptions of normalcy can undermine the ability of gay people to foster meaningful social relationships); Joseph Evall, *Sexual Orientation and Adoptive Matching*, 25 FAM. L.Q. 347, 369 (1991) (stating that embracing a rich gay culture could disrupt traditional gender and sex roles); see also J. M. Balkin, *Media Filters, the V-Chip, and the Foundations of Broadcast Regulation*, 45 DUKE L.J. 1131, 1168, n.69 (1996) (asserting that demonstrations of gay affection in media would enhance the normalcy of gay relationships).

82. Didi Khayatt suggests that:

There are two parts to the assumption that by coming out in class a teacher is unsettling the normativity of heterosexuality. The first concerns a notion of normalizing "homosexuality." By this I mean the belief that the collectivities have a certain power to persuade the social order to include them. The special logic of this assumption is that if many people, particularly respectable professionals (including teachers), identify themselves as lesbian (or gay, bisexual, transsexual) the more likely "we" will be tolerated and accepted. The second aspect of this assumption is that the very act of coming out in class challenges heterosexualism, as well as the notion that everyone is heterosexual.

Khayatt, *supra* note 6, at 41-42.

unacceptable.<sup>83</sup> Despite that risk, the basic goal seems to be fostering a perception in society that being gay is just not a big deal after all. Thus, the project of unsettling normalcy really represents an attempt by the gay community to squeeze under society's umbrella, having been left out in the rain for too long.

Although the project of unsettling normalcy may seem rather combative, at least for me, the same results occur as inevitable secondary effects of achieving other goals. For example, my being an out gay teacher may very well disrupt some people's perception of who teachers are or should be, but the motivation for that choice may simply be to facilitate others coming to terms with their sexuality. Although disrupting heterosexual normalcy does not serve as a factor that motivates my behavior, many of the choices I might make as an openly gay man or teacher affect perceptions of what "normal" means. Unsettling normalcy in itself, however, seems more a semantic than a substantive fight.

### Concluding Thoughts

In the end, I feel confident that I should be an out gay teacher. Concerns for the well being of students and for the development of a community in which homophobia no longer exists seem to represent the most influential considerations in my assessment. Unfortunately, my analysis does not allow me to draw a clear conclusion with respect to exactly what being an out gay law teacher entails. That lack of clarity stems in part from a somewhat unresolved tension that exists between my sense of duty to incorporate critical gay perspectives into the classes I teach and my lack of desire and skill to fulfill that duty. Mastering the art of critical gay perspectives and gay legal narrative seems to present an incredibly difficult project. Despite the difficulty associated with the task of incorporating gay perspectives into my teaching, I believe that being an openly gay teacher at least requires me to make the effort. This Essay perhaps provides a good example of the pitfalls to be experienced in taking up the challenge.

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83. See *supra* notes 71-72 and accompanying text.