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Freedom, Discourse, and the Subject: A Critical Analysis of Jakobsen and Pellegrini's *Love the Sin*

Mitchell Paul Ronningen

Faculty Mentor:
Dr. Mark Hulsether

University of Tennessee, Knoxville
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Thesis Defense Committee:
Dr. Mark Hulsether
Dr. Lynn Sacco
Dr. Christine Shepardson

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April 21, 2008

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I. INTRODUCTION

If sex is repressed, that is, condemned to prohibition, nonexistence, and silence, then the mere fact that one is speaking about it has the appearance of a deliberate transgression.

—Michel Foucault

This senior thesis represents the culmination of four years of academic study on the topic of sex and gender—with particular interest in the construction and perpetuation of sexualities. Such a study, however, must prioritize which academic lenses or perspectives are most relevant and useful. My approach has been largely informed by the broad scholarly approach known as 'cultural studies'[1] on one hand, while simultaneously dialoguing with religion, history, and critical theory. This thesis, then, brings together some of these dialogues in synthetic, critical analysis of a book by Janet Jakobsen and Ann Pellegrini entitled *Love the Sin*.

I begin by acknowledging the profound service Jakobsen and Pellegrini have done in writing *Love the Sin*; this book is a generally successful attempt to urge citizens and academics alike (in a rare work accessible to both) to rethink the notion of tolerance as well as their assumptions about sexual and religious freedom in the United States. *Love the Sin* contextualizes the history and origins of tolerance as "developed in Europe in response to the 'wars of religion' that were sparked by the Protestant Reformation."[2] Jakobsen and Pellegrini use the religious

[1] Cultural Studies is defined here as an interdisciplinary movement that analyzes how the exercise of power relates to symbolic discourse within political, racial, sexual, and economic contexts. See Sardar's *Introducing Cultural Studies.*
[2] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 45

history of tolerance to frame our current mainstream notions of sexual tolerance. They go on to show that tolerance does not exist in a vacuum that is neutral with respect to power, but rather, as the product and reification of specific hierarchies about appropriate sexual morality. The most obvious example for my purposes would be the toleration of homosexuals within mainstream U.S. culture. In this context, there are very specific and hegemonic Christian notions of the appropriate roles of men and women, which tolerate gays and lesbians (if at all) only so long as they actualize their homosexuality only within the private sphere of the home. Such limited tolerance does not embrace the contribution of sex to public discourses about the family, sex, or morality.

Tolerance, then, because it restricts and subjugates certain people and sexual acts, must be deconstructed to make space for more pluralistic and diverse discourses of sexuality. As Jakobsen and Pellegrini note, it is possible to work towards such an end by paralleling a 'free exercise of sex' to the free exercise of religion. Because this free exercise of religion draws upon the tradition of 'freedom' as the core of American life, suggesting a free exercise of sex paralleling this free exercise of religion would be useful in setting up a paradigm shift for the evaluation of sex. Jakobsen and Pellegrini advance this argument by drawing on case law as well as contemporary rhetoric over sex, specifically as it concerns gays and lesbians. As a corrective to this 'un-freedom,'[3] the authors suggest tolerance must be cast off and freedom embraced. "Tolerance can never be an effective replacement for freedom."[4]

I will argue, however, that the use of the term freedom here represents a tricky point for Jakobsen and Pellegrini, given its connotations of individualist autonomy within mainstream

[3] Tolerance represents 'un-freedom' for Jakobsen and Pellegrini in so far as reinforces a hierarchy of sexual acts into which all acts must insert themselves.
[4] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 45

discourse. While Jakobsen and Pellegrini are presupposing a Foucaultian conception of 'practices of freedom,' they run the risk of having their argument about freedom not only misunderstood by their audience, but also co-opted by more repressive discourses about sex and the body. The primary task here will be to then clarify Jakobsen and Pellegrini's background assumptions more explicitly while acknowledging the dangers inherent in un-nuanced appeals to 'freedom,' thus helping both Jakobsen and Pellegrini as well as the reader steer clear of such flawed conceptualizations. Further noteworthy is the observation that Jakobsen and Pellegrini do not labor under the mistaken notion that what is *really* needed is a more complete separation of Church and State, the public and the private, or the secular and religious. What Jakobsen and Pellegrini very usefully point out in *Love the Sin* is that we cannot simply assume that secular discourses are divorced from religious discourse. Secularism and the religious sphere are mutually constituted halves of the same coin. An attempt to separate them uncritically misses the ways in which religious discourses legitimate certain secular discourses. Granting the inherent problems in secularization narratives, Jakobsen and Pellegrini suggest reconceptualizing sex not as necessarily repressed by all religious discourse, but rather, as a site for the production of values.

Continuing with these primary theses, I want to offer both critique and greater contextualization of *Love the Sin*. First, I clarify what Jakobsen and Pellegrini do and do not mean in their use of the term 'freedom.' I believe general appeals to freedom, while an extremely useful reference point for the general public, are a bit more problematic academically. I argue we must examine more critically the implications of freedom on the subject. Used carelessly, freedom could imply an objective subject rather than one constituted by regulatory discourse. I do not believe Jakobsen and Pellegrini have in mind such an objective subject, but

the possibility for confusion begs this idea be more clearly explicated. In so far as Jakobsen and Pellegrini are understood to juxtapose tolerance (as a kind of regulative discourse) to a generalizable and abstract 'freedom' (imagined as unregulated) it becomes difficult to conceptualize the kinds of free practice they have in mind (inevitably regulated and discursively constructed). We must clarify: the issue at hand is not a choice between regulation/tolerance and freedom, rather, between more repressive discourse and less repressive, though still regulatory, discourse. It is this choice between more repressive (read: 'tolerance') and less repressive (read: 'freedom') discourse which Jakobsen and Pellegrini clarify by drawing upon Foucault's 'practices of freedom.' This is a point to which we shall certainly return. Finally, suggesting an illusory notion of general freedom draws focus away from the concrete reality of actual people and the necessary task of reworking regulatory discourse; their goal, after all, is to get and keep concrete practices of freedom in focus. As noted earlier, I do not believe Jakobsen and Pellegrini are advocating, or even acknowledging the possibility of, such a general freedom. However, if the audience fails to see the distinction, intention is lost; it is for this reason I insist on clarifying their position.

To the end of reworking regulatory discourse, I continue by examining juridical and theological discourse as examples to show their malleability to transformative intervention. My goal here is to illuminate the inherent problems with the identity/conduct distinction within legal discourse by supplementing examples offered by Jakobsen and Pellegrini with the Pentagon's policy of 'Don't ask; don't tell,' and court decisions in *Boy Scouts of America v. Dale*, *Beller v. Middendorf*, and *Lawrence v. Texas*. In a theological vein, I also argue that religious discourse must grapple with the same difficulties of the identity/conduct distinction. Although Jakobsen and Pellegrini's book is a blend of nearly equal parts sex and religion, they do not address these

discursive and subject-position issues within mainstream Christian theological discourse. This is an important avenue for exploration if we proceed under the assumption, as Jakobsen and Pellegrini do, that we cannot simply shut out religious discourse from the secular discourse. The split is certainly not clear, nor are either discursive strains discreet. Secondly, I also deconstruct the primacy and permanence of the Christian Right's conception of family using early Christian texts to create space for critical intervention in, not de-regulating, but re-regulating the family. This is a vitally important task because such discourses have extremely repressive concrete effects on the creation and position of sexual subjects within not only theological, but also juridical discourse. This is one of the most profound arguments Jakobsen and Pellegrini have advanced in their book.

My most significant critique is to pose to Jakobsen and Pellegrini the question: where are the transsexuals? In the entire book, nowhere are transsexuals discussed, or even mentioned in passing (bisexuals get referenced fleetingly but not frequently enough to warrant inclusion in the index). This is a topic that provides fertile ground for theorists and activists alike aiming to unravel hegemonic narratives of sexuality and Jakobsen and Pellegrini fail to take advantage of this discursive opening. Further, this perspective reveals the ways in which Jakobsen and Pellegrini implicitly aid in the perpetuation of the homo/hetero binary, which requires the exclusion of the transsexual as destabilizing, and leads into greater concerns about the emergence of 'identity politics'. One could argue this point is simply irrelevant, but I believe it speaks to a greater need for inclusion and a conscious restructuring of sexual discourses.

The case of the absent transsexuals serves as an effective springboard into a discussion of the ways in which Jakobsen and Pellegrini seem to presuppose not only the existence and naturalization of the homo/hetero binary, but also the stability of the same binary. Can Jakobsen

and Pellegrini really attempt to redraw the lines of sexual regulation through a framework of freedom if they conceive of sex in hegemonic ways? I do not believe so. In Jakobsen and Pellegrini's argument to replace tolerance with freedom (even if this is regulated freedom), they have seemingly left problematic discourses of sex and gender intact and bi- and transsexuals at the margins. Further, as I noted earlier, I believe an appeal to freedom suggests to readers that such discourses of the either-or conceptions of gender and sex, for example, are of secondary concern to attaining the unattainable 'freedom.' Here then, we have lost sight of the concrete concerns of Lesbian, Gay, Bisexual, and Transgender persons. As the primary task for Jakobsen and Pellegrini is to open up space for the free exercise of sex, we must remain cognizant of the need to open this space wide enough for a diverse exercise of sexualities. Here again, we encounter a parallel to religious regulation. While the US professes a freedom of religion, the freedom is more accurately described as a freedom to be Christian in mainstream ways. However, even professedly Christian denominations such as the Church of Jesus Christ of Latter Day Saints are often marginalized from mainstream Christian discourse. We cannot imagine and achieve religious freedom by thinking and focusing only on ways in which one can be Christian without consciously working in Islam, Judaism, Buddhism, etc.; likewise we cannot achieve sexual freedom by focusing on how one can be either homo- or heterosexual. Rather, we must think more pluralistically given the fluid nature of sexuality. This also leads us into the need to examine the homo/hetero binary and how leaving this binary construct and posited as stable and natural can present a profound roadblock to arguing for or even enacting a re-regulation of sexuality, sexual freedom, etc. How can we seriously suggest the notion of 'freedom' if we are working through definitionally un-free constructions of sex? This notion of the homo/hetero binary also glosses over the significant ways in which heterosexual sex and sexuality are

regulated, which could inform and aid in the pursuit of sexual coalition building universally. The homo/hetero binary, much like the black/white binary with regards to race, undergirds the very logic upon which identity politics rest while simultaneously shuffling over the complexities of reality. Identity politics, however, are exactly the opposite of the strategy of freedom Jakobsen and Pellegrini are arguing for throughout the entire book. Leaving this binary assembled, as Jakobsen and Pellegrini do, inherently prevents them from organizing sexuality along the more over-arching value of 'freedom.'

One way to re-regulate sexuality would be to de-articulate constricting and essentializing subject positions of homosexual or heterosexual. These binaries restrict subjects' abilities to name themselves. As naming oneself as a sexual subject is a fundamental 'practice of freedom,' Jakobsen and Pellegrini are remiss in not taking advantage of the possibility to deconstruct such binary discourses.

In the last major section of this thesis, I address the issue of sexual ethics. In the final chapter of their book—entitled *Valuing Sex*, Jakobsen and Pellegrini suggest making sex a legitimate "site for the production of values."[5] I believe this is an extremely important task. As Jakobsen and Pellegrini point out, "Sexual relations are human relations, and the activity of making sex forges these relations."[6] Thus, the reason freedom is valued as such a central American value is because "freedom, from this perspective,…opens the door to democratic contestation. Such possibilities will be underrealized, however, unless we develop richer vocabularies for discussing values and moral difference."[7] It is this need for a more diverse and pluralistic vocabulary of sexual ethics that requires sex not be relegated to the private sphere, but

[5] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 127
[6] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 127
[7] *Ibid.*, p. 133

rather, to be allowed to participate in the discourse of ethics. I grant such an analysis of the relationality between sex and ethics. Here, I supplement Jakobsen and Pellegrini's analysis with a case study of the HIV/AIDS crisis and how an ethic of communal care developed out of the need to care for those dying. As both religious organizations/charities as well as the Federal Government have adopted this model of care, the AIDS crisis offers a concrete example of how sexually derived ethics can inform larger, mainstream constructions of ethics.

Although, Jakobsen and Pellegrini offer relatively little on how this might be achieved in this book, other scholars have recently produced a great deal of work on this very topic.[8] In *Sex and the Church*, Kathy Rudy, for example, suggests, "Hospitality can be the new criterion by which we determine the morality of sexual acts."[9] As a supplement to this chapter on ethics, I will explain such a production and mainstreaming of ethics through the HIV/AIDS crisis. The beginning of the HIV/AIDS crisis in 1981 in major cities such as San Francisco and New York led to the organizing of community-based health services by gay and lesbian activists in an attempt to care for the gay men dying at shocking rates. With little support from mainstream health services for the first several years of the crisis, the impetus fell on the LGBT community to care for those dying. The model of care developed centers around an ethics of community and has been mainstreamed by both private organizations as well as the Federal Government. Nearly all federal funding for AIDS, through such acts as the Ryan White CARE Act, relies upon the same model developed in San Francisco in the 1980s for an organizational framework and distribution of funds. Religious—largely Christian here—charities and organizations also minister to HIV/AIDS patients within the ethic of communal care mainstreamed from the San

[8] See: Carter Heyward, Christine Gudorf, Gayle Rubin, James Nelson, Steven Seidman, and Rowan Williams as starting points.
[9] Rudy, *Sex and the Church*(1997), p. 126

Francisco's gay community. The AIDS case serves as an example of the ways in which sex can provides a site of production for ethics of sex.

My last contribution is to offer a secondary frame through which to think about sex. Jakobsen and Pellegrini build their argument about the 'free exercise' upon the first amendment's 'free exercise of religion.' I suggest this formulation could also be informed by a parallel argument to the first amendment's freedom of speech. Here, I will suggest we can understand sex as akin to expression, and, perhaps, subject to protection as such.

Finally, I conclude by arguing we need to nuance more clearly Jakobsen and Pellegrini's position on actualizing political strategies; how should activists and citizens more generally create space for 'practices of freedom'? Should we throw out strategies that involve lobbying Congress for inclusion into federally mandated non-discrimination clauses because they do not advocate freedom, but rather, promote liberal tolerance? Should we rebuild political coalitions centered around one's position to power rather than a constructed subject-position? Or, perhaps we can blend the best of both? The conclusion aims to bring together these strains in an argument of the embrace of both broad-reaching and transformative political coalitions as well as more gradual, tolerance based approaches such as that illustrated by the *Lawrence* decision which have direct effects on the lives of LGBT people; these strategies do not have to be a zero-sum choice. Ideally, I believe more expansive political coalitions that do not focus on subject position based organizing such as us-them, homo/hetero political movements should be our end-goal organizing strategy. As Beverly Harrison points out, "strategies against oppression are much poorer if they are not informed by a deepening consciousness of the interstructuring of

oppression that operates in society."[10] Such simple identity-based movements are dangerous and, in significant ways, unhelpful because they elide the crucial areas of overlap, not simply between the regulation of homo and heterosexual sexuality (which is significant), but also the implications of sexual regulation on economic conditions of class. This overlap forces deeper questions about race in relation to sexual regulation and class at the same time. Such a broader coalition built, not based upon identity, but in terms of relation to power[11] is necessary to reconstruct oppressive power dynamics more universally. What does this mean more generally about decisions such as *Lawrence* and the LGBT activists pursuing them? At the end of the day, I believe Jakobsen and Pellegrini support the pursuit of 'tolerant' discourses, such as those pursued by groups such as the Human Rights Campaign, in so far as such strategies do not exhaust our efforts. While not ideal, even these discourses open a greater variety of 'practices of freedom' for LGBT people.

What is ideal is a pragmatic synthesis of 'freedom' and 'tolerance.' We offer tolerance-based interventions when the goal is transforming discourse from a tolerance to freedom based framework by the very inclusion of LGBT people into, for example, non-discrimination clauses. Meanwhile, more broadly based coalitions build upon the issues of race, class, and gender must pursue transformative, structural change. Jakobsen and Pellegrini leave something of a hole in terms of strategies and so the goal of the final section is to offer a concrete way in which to blend both types of coalitions which can widen discursive space for 'practices of freedom' while carrying forth the foundation of their argument built on first amendment 'freedom' grounds. My last contribution is to offer a secondary frame through which to think about sex. Jakobsen and

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[10] Harrison, "Theological Reflections in the Struggle for Liberation" in *Making the Connections: Essays in Feminist Social Ethics*(1985), p. 239-40

[11] Currah, "Queer Theory, Lesbian and Gay Rights, and Transsexual Marriages" in *Sexual Identities, Queer Politics*(2001).

Pellegrini build their argument about the ‘free exercise’ upon the first amendment’s ‘free exercise of religion.’ I suggest this formulation could also be informed by a parallel argument to the first amendment’s freedom of speech. Here, I will suggest we can understand sex as akin to expression, and, perhaps, subject to protection as such. In this vein, I suggest a useful avenue for exploration is the parallel of sexual expression with speech expression and, thus, subject to the same protections.

II. EXPLORING SEX

Every person who comes to a queer self-understanding knows in one way or another that her stigmatization is connected with gender, the family, notions of individual freedom, the state, public speech, consumption and desire, nature and culture, maturation, reproductive politics, racial and national fantasy, class identity, truth and trust, censorship, intimate life and social display, terror and violence, health care, and deep cultural norms about the bearing of the body.

—Michael Warner

Throughout history, sex acts have been constructed through a profoundly complex matrix of interacting and dynamic regulatory cultural ideals. To ground our investigation into these regulatory cultural ideals, we need to explicate the idea of 'culture' more concretely. E.B. Tylor in his 1871 book *Primitive Culture* posited an early conceptualization of culture as a "complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities acquired by man as member of society."[12] Such attempts to describe culture as a coherent whole, however, have not withstood the post-structuralist turn of critical theory that began in the 1970s. The post-structuralist turn and the rise of theorists such as M. Foucault and J. Derrida, among others, questioned the value and motives of such grand narratives. Derrida in particular, articulated the critical tool of deconstruction[13] which presupposes and exposes the internal *in*coherence of such narratives. Thus, deconstruction allows this incoherence to illustrate the forcibly constructed nature of the same narratives. Foucault's concerns with the interconnectedness of power, discourse, and the subject dovetail with Derrida in allowing

[12] Tylor, *Primitive Culture*(1871), p. 1
[13] Derrida, *Of Grammatology*(1967).

theorists to explore the intense power dynamics lurking below the surface of 'universal narratives.'[14]

The general post-structuralist critique of grand-narratives about culture then revolves around three primary points: (1) challenging the notion that stability and coherence can be said to exist in the group being analyzed, (2) positing culture as falsely ahistorical, and (3) marginalizing the realities of "transnational migrations, hybrid identities, and global flows of information and commodities—in short, a kaleidoscope of local, regional, national, and global forces."[15] Essentially then, grand-narratives gloss over complexity in the goal of, at best, tidiness and, at worst, reinforcing hegemonic norms and representations of the 'other.'[16] Meta-narrative conceptualizations then are, "the prime anthropological tool for making [the] 'Other'."[17]

T. Masuzawa suggests understanding culture as "an argument, a theoretical object that comes with a certain discipline, persuasions, and admonitions."[18] Thus, culture neither exists objectively nor independently from the very disciplines[19] which seek to study it. This more sophisticated understanding recognizes the constructed nature of culture and the baggage that various academic frameworks carry into their observations. Carrying this acknowledgement into our exploration, we accept then that sex exists as a locus of intersecting cultural arguments. As a matrix, we can understand these various disciplines in three-dimensional terms as layered and intersecting planes respectively labeled theology, biology, jurisprudence, and psychology[20] all

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[14] "A global or totalizing cultural narrative schema which orders and explains knowledge and experience" Stephens, *Retelling Stories, Framing Culture*(1998).
[15] Hulsether, "Religion and Culture" in *Routledge Companion to the Study of Religion*(2005), p. 493
[16] 'Other' here refers to no specific other, but rather represents the instances of other-ing based on gender, race, religion, etc.
[17] Abu-Lughod, "Writing Against Culture" in *Recapturing Anthropology*(1991), p. 147
[18] Masuzawa, "Culture" in *Critical Terms for Religious Studies*(1998), p. 87
[19] Reference to discipline here is to academic disciplines such as psychology, literature, history, etc.
[20] We could continue this list indefinitely.

carrying their own "persuasions and admonitions."[21] We must accept, therefore, that no way of studying sex exists divorced from its own assumptions and workings of power. To a casual observer, a fair question would seem to be, but why sex? Why is sex such a regulated locus of power-laden discourse? What is it about the regulation of bodies and their acts that so deeply concerns so many disciplines?

The famed psychoanalyst and father of modern psychology, Sigmund Freud, suggested that the all-consuming libidinal desires of the Id are, during development, slowly sublimated through various channels to more socially accepted ends by the Ego. As T. Eagleton points out, "it is by virtue of such sublimation that civilization itself comes about: by switching and harnessing our instincts to these higher goals cultural history itself is created."[22] For Freud, it is this repression of unacceptable libidinal desires and the sublimation of others which ultimately constructs our consciousness.[23] If so, force (for Freud—the Id) associated with our most basic sexual desires gives rise to our very consciousness and civilization itself.

Another way to explain the inordinate amount of cultural space taken up by sex is offered in Plato's *Symposium*, the character Aristophanes recounts the origins of love (and consequently, sex):

> After the division the two parts of man, each desiring his other half, came together, and throwing their arms about one another, entwined in mutual embraces, longing to grow into one, they were on the point of dying from hunger and self-neglect, because they did not like to do anything apart; and when one of the halves died and the other survived, the survivor sought another mate, man or woman as we call them, being the sections of entire men or women, and clung to that… so ancient is the desire of one another which is implanted in us, reuniting our original nature, making one of two, and healing the state of man.[24]

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[21] Masuzawa, "Culture" in *Critical Terms for Religious Studies*(1998), p. 87
[22] Eagleton, *Literary Theory*(2006), p. 132
[23] Freud, *Three Essays on the Theory of Sexuality*(1905).
[24] Plato, *Symposium*(2000), p. 32-9

Plato's suggestion here is that sex fulfills a central and primitive need for humanity. While sex is evolutionally instinctual, it is also a primally raw and basic form of self-expression. In this vein, we could view the regulation of sexual acts as parallel to the regulation of speech.[25] Beyond all our human capacities for communication by way of language or music or art lies sex, which precedes them all. From the moment of human sentience and our conscious awareness of ourselves and others, we have striven to communicate and to express ourselves. Sex, then, was likely among the first medium for the conscious expression of abstract emotion. Beyond its function for mere reproduction and innate evolutionary drives, sex offered an outlet for the expression of the very qualities that we believe make us truly human. While one cannot say for certain that sex was the first action truly infused with abstract meaning and the first step down the road of the human need for expression and communication, we must acknowledge that sex taps into something at the very root of humanity: a sense of wholeness, community, and, despite all of our advances in art, literature, and science, an expressive outlet which remains profoundly and inescapably alluring.

The intense interest in the regulation of sex (largely within the context of the twentieth century) spurred Janet Jakobsen and Ann Pellegrini to publish *Love the Sin* in 2003. One of the central premises of the book rests upon the central observation that the American ideal of freedom fails to hold (seemingly) any ideological weight with regard to sex. As Jakobsen and Pellegrini explain:

> One of the reasons we wrote this book is because we wanted to understand why the high value set on freedom in the United states comes crashing to the floor when it comes to sex. If freedom is such an important value in American life, then why isn't sexual freedom a mainstream American value too? Instead, to advocate sexual freedom, as this book does, is to risk being written off as radical or extremist, even un-American.[26]

[25] We will examine court cases in which sexual acts are, in specific ways, elided with speech at a later point.
[26] Jakobsen and Pellegrini, *Love the Sin*(2004), p. ix

Additionally, Jakobsen and Pellegrini suggest that sexual freedom could usefully be rearticulated and linked to our notions of religious 'freedom':

> Quintessential American assumptions about religion, values, and public life are crucially connected to sexuality and its regulation…our proposal to make religion the ground of sexual freedom, rather than the *justification* for sexual regulation, is not just an attempt to intervene in contemporary debates over homosexuality and gay rights.[27]

As noted in the introduction, our task is to clarify the primary points of Jakobsen and Pellegrini, reinforcing and better contextualizing those that we grant, while pushing further and critiquing both primary arguments as well as underlying assumptions where necessary. One of the major purposes of this thesis is to foreground the background assumptions about freedom that are operational in Jakobsen and Pellegrini's usage of the term, and to separate these from the more dangerous assumptions inherent in general appeals to universal freedom (whether sexual or religious). Carried further, we shall explore the usage of freedom and its implications in the identity formation of sexual subjects. Because the relation of the subject to 'freedom' forms a central point of critical inquiry, we must clarify what Jakobsen and Pellegrini mean by 'practices of freedom' in relation to discourses of 'freedom' that presuppose specific and post-Enlightenment construction of 'the subject.' J. Butler and M. Foucault have problematized this conception of freedom, with which we do not want Jakobsen and Pellegrini's 'practices of freedom' confused.

My critique and analysis works from a largely Foucaultian frame concerning the interconnectedness of power, discourse, and the subject. Foucault addresses the ways in which discourses and discursive formations produce various systems (the penal and prison systems, medicine, sexuality, etc.) and are regulated by power in specific ways. He challenged the

[27] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 4-16

conventional and 'taken for granted' understandings of the world and the relationship between objects (including people) and discourses. Thus, rather than accepting that, for example, 'insanity' and its subject counter-part 'the madman' exist and that discourses about them and reflect their reality, Foucault argues that power veiled as discourse exercises itself through the creation of such concepts as 'insanity' and 'the madman'.[28] This power[29] functions by placing certain ideas concerning 'sanity' outside the realm of what is 'sayable' or 'thinkable.' Finally, this frame addresses who is able to make truth claims about these objects/knowledges (i.e., the doctor, judge, psychiatrist, etc.). Michèle Barrett succinctly explains the importance of such a discursive frame, claiming, "the Foucaultian concept of discourse allows us to think about the epistemological power of discursive regimes and how important it is to understand what can be articulated when."[30] With this *terra firma* undergirding our analysis, let us preview the primary arguments advanced by Jakobsen and Pellegrini.

One of the major points of concern for Jakobsen and Pellegrini is the production, subsequent reproduction, and function of the 'identity vs. conduct' distinction within mainstream discourse concerning lesbian, gay, bisexual, and transgender (henceforth LGBT) people, what Jakobsen and Pellegrini refer to as the status-conduct distinction. This key distinction between subject and act, Jakobsen and Pellegrini claim, creates a moral middle ground that participates in the active construction of 'tolerance' as a morally valid standpoint towards LGBT people. The driving questions for our analysis of tolerance will be: what assumptions regarding 'freedom' and subject generally are required for the coherence of tolerance and Jakobsen and Pellegrini's relation to it? How is such an identity constructed; via what discursive mechanisms/forces? In

[28] Foucault, *Madness and Civilization*(1961).
[29] I do not intend for the singular grammatical denotation of 'power' here to imply that strains of power function in isolation from one another or are not mutually reinforcing.
[30] Barrett, "Words and Things: Materialism and Method in Contemporary Feminist Analysis" in *Destabilizing Theory* (1992), p. 203-4

what ways are identity and conduct culturally elided into one entity, or distinctly separated from each other? Or both, depending on context? Finally, in what ways is this elision or division achieved? These questions are extremely important for understanding the discursive ordering and perceived normalization of sexuality, and homosexuality in particular. If we grant Foucault the notion that subjects are created through discourse, the subject itself becomes a window into understanding, not only discourse, but the power(s) that produce a given discourse. As Foucault points out, "discourses on sex did not multiply apart from or against power, but in the very space and as the means of its exercise."[31] This understanding seems a likely prerequisite to our goal of consciously restructuring discourse, and thereby, power.

The second major issue that Jakobsen and Pellegrini tackle is the way in which mainstream LGBT activists posture discourse concerning the origins of homosexuality. Rather than embracing the fluidity of sex and sexual expression, activists attempt to parallel homosexuality to existing discourses of racial justice and posit homosexuality in a similar vein as 'a benign immutable difference'. In other words, LGBT rights activists, with the goal of avoiding the intractable moral arguments surrounding the origins of homosexuality, attempt to exploit the tolerant middle ground discussed above by suggesting homosexuality is loosely akin to race in as far as it is not a choice and ought to be treated and protected as such. This strategy raises serious questions concerning the inherent value of homosexuality and homosexual expression, as well as racial justice, which Jakobsen and Pellegrini illustrate in greater detail.

This discussion then segues into an examination of the ways in which religion (Protestant Christianity in particular) and sex are intimately linked in the United States. "We are bringing together homosexuality and religion not because we want to make hard and fast claims about what it is to be religious or to be gay, but because we want to refocus public attention on

[31] Foucault, *The History of Sexuality: An Introduction* (1990), p. 32

practices of freedom."[32] Jakobsen and Pellegrini suggest that by refocusing our energies on developing a sexual framework centered on freedom, as our religious frame is in theory, Americans can transform societal notions of sexual regulation. The liberal tolerance which is now advocated, however, cannot. The stumbling block here, as Jakobsen and Pellegrini point out, is that religious freedom as is ideally imagined does not actually exist in America. "We do not have genuine disestablishment; as we have seen, Christianity is the de facto established state religion."[33] Further, despite false ideas of the privatization of religion, inherent in the notion of tolerant secularism are largely Protestant Christian values as a response to, as Jakobsen and Pellegrini noted earlier, constant religious strife. Their project of reconceptualizing freedom requires that we reexamine the ways in which regulation, rather than freedom, undergird our understandings of both religion and sex.

Finally, Jakobsen and Pellegrini argue, and rightfully so, for expanding mainstream understanding of the role of sex as a site for the production of ethical values:

> We make a case for sex, including homosexual sex. Sex, we argue, can be a site for the production of values. To support this claim, we turn to the rich varieties of gay and lesbian community formation and consider how sex, precisely because it is embedded in interpersonal relations, can help constitute new forms of social life and belonging.[34]

As noted in the introduction, we shall clarify what Jakobsen and Pellegrini mean by 'freedom,' analyze contemporary discourses that speak about sexuality, critique their exclusion of bi- and transsexual persons, and finally expand upon the notion of sex as a site for the production of ethics.

We must start with the basic goal of 'freedom' upon which Jakobsen and Pellegrini construct their arguments. For 'freedom,' two distinct usages could be called upon by the

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[32] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 103
[33] *Ibid.*, p. 104
[34] *Ibid.*, p. 17

audience. The first is a definition of freedom that presupposes a very specific, Enlightenment (and subsequently Protestant) conceptualization of 'the subject.' This general freedom is most likely how the majority of Jakobsen and Pellegrini's audience understand the term. However, Jakobsen and Pellegrini's arguments cannot support the weight of such a heavy handed understanding of freedom, nor are they intended too. For this reason, we must differentiate this broad-strokes version of freedom with a more nuanced, and implied, understanding of 'practices of freedom' suggested by Foucault. Further, because regulatory 'freedom' has direct effects on the construction of the sexual subject, we must examine how subjectivity and identity are created and maintained.

Our second task is to examine more closely several veins of discourse that contribute to the construction of the sexual subject. This exploration will involve both an analytic examination Jakobsen and Pellegrini's notion of the subject and the question of status vs. conduct within both juridical as well as religious and theological discourse. While engaging legal discourse seems a useful locus for examination, the engagement of religious and theological discourse may rightfully give pause to more traditionalists. We grant Jakobsen and Pellegrini the notion that biblical exegesis on the nature or status of the 'homosexual condition' in terms of sin, grace, and redemption should not dominate secular discourse; there do exist contexts, however, in which such an exegesis warrants exploration (such as in a Church's bible study discussion) and queer theory would be short-sighted to eschew such contexts and opportunities for dialogue. As an illustration, we shall explore the example of the Christian Right's discourse of the family and how such discourse provides logical support for secular discourse and about the function of marriage and who the state will allow to participate in marriage. The importance of highlighting such a connection here is a clear contribution to Jakobsen and Pellegrini's initial argument. Thus,

by opening up the possibilities for contestation within a Christian context of family discourse, we can leverage this into secular discourse as well.

III. FREEDOM AND THE SUBJECT

Sodomy—that utterly confused category.

—Michel Foucault

A critique of the ethical maxim 'love the sinner; hate the sin' forms the center of Jakobsen and Pellegrini's exploration in *Love the Sin*. How does this maxim inform understandings of the relationship between the 'sinner' and the 'sin'? For starters, this very phrase presupposes the idea that the 'sinner' and 'sin' are not inextricably linked, but rather, entirely discreet. This is a notion that can hardly be granted easily, especially in the case of the homosexual/homosexuality. Michel Foucault problematizes this in the first volume of his The *History of Sexuality* by noting:

> As defined by the ancient civil or canonical codes, sodomy was a category of forbidden acts; their perpetrator was nothing more than the juridical subject of them. The nineteenth-century homosexual became a personage…nothing that went into his total composition was unaffected by his sexuality;…the homosexual was now a species.[35]

For Jakobsen and Pellegrini, the status/conduct distinction represents the discursive space between homosexual identity as a state of being, or status, and homosexuality as a collection of acts, or conduct. They comment on the distinction inherent in the "love the sinner; hate the sin" maxim by pointing out that it functions to allow "people to take positions that are punitive towards their fellow citizens, while at the same time experiencing themselves as being not

[35] Foucault, *The History of Sexuality*(1977), p. 43

simply ethical, but compassionate and even tolerant of difference."[36] This tolerance is problematic because:

> Tolerance doesn't really fight the problem of hatred; it maintains the very structures of hierarchy and discrimination on which hatred is based…Not only does tolerance reinforce structural inequality, but it also sets up a political culture in which extremism, rather than injustice, is the major problem to be addressed in public life…Rather, when the situation is characterized by tolerance, the public is not expected to take a stand against injustice, but merely to tolerate both sides of a conflict.[37]

With this in mind, Jakobsen and Pellegrini, "advocate the value of freedom rather than tolerance, because freedom opens up the possibility that an expansive, rather than a narrow majoritarian, public might be built in America."[38]

Before we look more closely at concrete examples of such identity/conduct distinctions within mainstream sexual and religious discourse, we must address and clarify the theoretical relationship between 'freedom' and 'the subject' as well as what we do and do not mean by 'freedom.' Recall Jakobsen and Pellegrini's guiding question, "why isn't sexual freedom a mainstream American value?"[39] Further, they aim, "to make religion the ground of sexual freedom, rather than the *justification* for sexual regulation."[40] Clearly, Jakobsen and Pellegrini are presupposing the possibility of 'freedom' (in some sense), and sexual freedom more specifically. What we must first make clear is what Jakobsen and Pellegrini do not mean by 'freedom.'

Because freedom has such a powerful appeal in American life, rhetoric of freedom can prove a particularly persuasive tool. We must make sure, however, that the reader does not misunderstand the conditions of the 'subject' in conceptualizing 'freedom.' Freedom, here, must

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[36] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 1
[37] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 50-9
[38] *Ibid.*, p. 73
[39] *Ibid.*, p. ix
[40] *Ibid.*, p. 16

be thoroughly dislodged from its problematic Enlightenment baggage. General, un-nuanced conceptualizations of 'freedom,' necessarily require an objective, autonomous subject able to exercise such freedom. This 'free subject' grounds itself in an Enlightenment understanding of subjectivity. According to Stuart Hall, this Enlightenment, 'Cartesian subject' "was based on a conception of the human person as a fully centered, unified individual, endowed with the capacities of reason, consciousness and action, whose 'centre' consisted of an inner core…The essential centre of the self was a person's identity."[41] Post-structuralist theorists such as Foucault, Derrida, Butler, and others have challenged this materialist basis for the subject, claiming instead that no subject exists outside a given regulatory discourse which produces said subject. Derrida once stated famously, "il n'y a pas d'hors texte"[42]—there is nothing outside the text. Michèle Barrett critiques the 'Cartesian subject' most pointedly:

> It [the Cartesian subject] displaces and marginalizes other subjects and other forms of subjectivity. It also denies what many would now accept as a central contribution of psychoanalysis—that the self is built on conflict and tension rather than being an essential or given…the critique of the Cartesian subject has posed a new set of questions about identity and experience.[43]

Moira Gatens points out the significance that twentieth-century psychoanalysts have had in the evolution of the 'subject':

> The works of Jacques Lacan, Maurice Merleau-Ponty and Paul Schilder offer an account of the body image which posits that a body is not properly a human body, that is, a human subject or individual, unless it has an image of itself as a discrete entity, or as a *gestalt*. It is this orientation of one's body in space, and in relation to other bodies, that provides a perspective on the world and that is assumed in the construction of the signifying subject.[44]

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[41] Hall, "The Question of Cultural Identity" in *Modernity and Its Futures*(1992), p. 275
[42] Derrida, *Of Grammatology*(1967), p. 10
[43] Barrett, "Words and Things: Materialism and Method in Contemporary Feminist Analysis" in *Destabilizing Theory*(1992), p. 208
[44] Gatens, "Power, Bodies and Difference" in *Destabilizing Theory*(1992), p. 131

Foucault, building on such materialist subject critiques, expounded reconceptualizing the subject, not as a unified, self-evident, and pre-existent entity, but rather as the result of regulatory discourse:

> The individual is not to be conceived as a sort of elementary nucleus, a primitive atom, a multiple and inert material on which power comes to fasten or against which happens to strike, and in so doing subdues or crushes individuals. In fact, it is already one of the prime effects of power that certain bodies, certain gestures, certain discourses, certain desires, come to be identified and constituted as individuals. The individual, that is, is not the *vis-à-vis* of power; it is, I believe, one of its prime effects.[45]

Foucault views the subject as an entirely historicized being and the result of similarly historicized discourses. So too, then, is subjectivity also a 'discursive production.' In this discussion we must understand that Foucault conceptualizes discourse as bodies of knowledge while discursive formations are essentially clusters of ideas and knowledge across discursive sites. Sex, for example, exists as a discursive formation. Ideas and knowledge about sex exist in discourses of morality, medicine, theology, education, etc. 'Discourse' is what both allows and prohibits thinking and speaking during an historical period. In other words, "discourse constructs, defines, and produces the objects of knowledge in an intelligible way while excluding other forms of reasoning as unintelligible."[46] This is critical to understand because, for Foucault, truth then becomes a direct function of discourse; truth is what can be said. Therefore, discourse is often referred to as 'regulatory.' Foucault also argues that discourse is historically contextual. He rejects the notion that discourse on various subjects is in any way continuous or linear; rather, discourses are discontinuous in that historical periods alter the way in which objects or knowledges are conceptualized.[47]

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[45] Foucault, *Power/Knowledge*(1980), p. 98
[46] Barker, *Cultural Studies: Theory and Practice*(2003), p. 101
[47] Foucault, *Power/Knowledge*(1980).

Chris Barker takes this argument from the abstract to the concrete by explaining, for example, "ethical discourses, which circulate independently of any given particular individual, are ways by which we constitute ourselves, bring ourselves into being."[48] Judith Butler has also used Foucault's delineation of the subject in the critical task of rethinking gender:

> The question here will be: To what extent do *regulatory practices* of gender formation and division constitute identity, the internal coherence of the subject, indeed, the self-identical status of the person? To what extent is 'identity' a normative ideal rather than a descriptive feature of experience? And how do the regulatory practices that govern gender also govern culturally intelligible notions of identity? In other words, the 'coherence' and 'continuity' of 'the person' are not logical or analytic features of personhood, but, rather, socially instituted and maintained norms of intelligibility.[49]

Framing her investigation with these questions, Butler pushes further on the assumption that 'women' can be an ontological subject of feminism. She points out, "the question of 'the subject' is crucial for politics…because juridical subjects are invariably produced through certain exclusionary practices that do not 'show' once the juridical structure of politics has been established."[50] Hence, if we accept 'women' as a discursively produced subject, such a subject-position as a foundation for feminism is inherently self-defeating.

It is crucial to point out here, however, that Foucault does not believe power and, by association, discourse are necessarily repressive. As he explains in *Power/Knowledge*, "[power is] generating forces, making them grow, and ordering them rather than one dedicated to impeding them, making them submit, or destroying them."[51] Annamarie Jagose says of Foucault's argument, "that sexuality is a discursive production rather than a natural condition is part of his larger contention that modern subjectivity is an effect of networks of power. Not only

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[48] Barker, *Cultural Studies: Theory and Practice*(2005), p. 234
[49] Butler, *Gender Theory*(2006), p. 23
[50] *Ibid*., p. 3
[51] Foucault, *Power/Knowledge*(1980), p. 136

negative or repressive but also productive and enabling, power is 'exercised from innumerable points' to no predetermined effect."[52] Of course, Foucault put it most succinctly:

> What gives power its hold, what makes it accepted, is quite simply the fact that it does not simply weigh like a force which says no, but that it runs through, and it produces things, it induces pleasure, it forms knowledge, it produces discourse; it must be considered as a productive network which runs through the entire social body much more than as a negative instance whose function is repression.[53]

If we give Jakobsen and Pellegrini's argument the benefit of the doubt and concede that this is *not* the freedom their argument envisions, we must clarify what they do mean. Jakobsen and Pellegrini are able to sidestep the problematic aspects of freedom discussed above while maintaining the ethical agency on the part of the subject by drawing upon the idea of 'practices of freedom.'[54] Here we must clarify that the constitution of the subject by power relations and discourse is not necessarily repressive and, further, such power relations are "mobile, reversible, and unstable."[55] Jakobsen and Pellegrini's 'out' (so to speak) with freedom rests upon two points: 1) the constitution of the subject is never complete; 2) power-relations are necessarily repetitive. Taking these two points to together we can then understand that what Jakobsen and Pellegrini mean by freedom, and practices of freedom more specifically, is the potential for difference in the actualization of these power-relations. Oksala remarks, "the undefined freedom of the lived body opens up a space in which political freedom can be sought."[56] It is here that Jakobsen and Pellegrini suggest the notion of a 'free exercise of sex' as a corrective. A 'free exercises of sex' not relegated to the tolerance of the private sphere of the home offers a profound way in which to redefine power relations in the context of sex. Such a 'free exercise' allows Jakobsen and Pellegrini to attack directly a secular liberal tolerance (read: Protestant

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[52] Jagose, *Queer Theory*(1996), p. 80
[53] Foucault, *Truth and Power*(1979), p. 36
[54] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 144
[55] Foucault, *The Essential Foucault*(1994), p. 34
[56] Oksala, *Foucault on Freedom*(2005).

values in disguise) that demands the privatization of sexual acts. Thus, while freedom cannot produce a subject emancipated from power/knowledge networks that originally constitute it, it can produce space for a dynamic shift in the repetition of power-relations that, in itself, produces a powerful form of freedom. Foucault reminds, "in power relations there is necessarily the possibility of resistance because if there were no possibility of resistance (of violent resistance, flight, deception, strategies capable of reversing the situation), there would be no power relations at all."[57] As a corrective to the repressive discourse of sex, Jakobsen and Pellegrini suggest these 'practices of freedom' can be the introduction of alternative ethics of sex which rethink the power-relations of mainstream, repressive, and largely Christian discourses. Additionally, these practices of freedom also allow us to reframe the mainstream liberal tolerance framework which undergird secular proscriptions against specific sexual acts among specific persons.

[57] Foucault, *The Essential Foucault*(1994), p. 34

IV. NAVIGATING JURIDICAL DISCOURSE

Our obligation is to define the liberty of all, not to mandate our own moral code.

—Planned Parenthood of Southeastern Pa v. Casey, 505 U.S. 850 (1992)

Sex, as a discursive formation, intersects many strains which speak about sex in different ways. While we have acknowledged that a sexual subject cannot exist outside of sexual discourse, this does not leave us to merely accept the 'sexual status quo' or preclude a critical intervention. The next two chapters will explore separate, yet equally resonant—and, as Jakobsen and Pellegrini suggest, intertwined—discursive strains: jurisprudence and theology. In looking at juridical discourse, we shall examine the ways in which the law constructs the homosexual subject in relation to the acts that define the class or status. Our ultimate goal with this exploration is to show the inherent disorder in the discourse attempting to define the homosexual. The following chapter shall illustrate the ways in which theological discourse must reconcile the same questions of identity vs. conduct. Further, I will make an argument, based upon Jakobsen and Pellegrini's assumptions about secularism, for the engagement of mainstream Protestant Christian discourse around the family. More pointedly, our task will be to deconstruct the New Christian Right's (NCR) man-woman family as ahistorical and suggest a theological and historical foundation for the legitimacy of alternative familial units.

Jurisprudence provides a rich reservoir for the examination of regulatory discourse. By making certain sexual acts legal and others illegal, the law reveals a clear investment in sexual

regulation and is uniquely positioned to enforce these regulations. Jakobsen and Pellegrini begin with the basic issue of the homosexual subject with the illustration of the status/conduct distinction discussed earlier within mainstream 'secular'[58] legal discourse by using the 1986 Supreme Court case of *Bowers v. Hardwick*.

At its core, the case concerned the constitutionality of Georgia's sodomy law which forbid both "oral and anal sex." The central question concerned whether the right to privacy established by the Court in *Griswold v. Connecticut* and upheld by *Roe v. Wade* "protected homosexuals in their sex acts."[59] In 1982, Michael Hardwick was arrested in his bedroom after police arrived to serve an arrest warrant for failure to appear and found him engaging in oral sex with another man. The case wound its way through the appeals process to arrive eventually at the U.S. Supreme Court in 1986. Serving as council for the plaintiff was famed legal scholar and liberal activist Lawrence Tribe, a professor of law at Harvard University, backed by the American Civil Liberties Union. The result of the case was a resounding defeat for the gay community.

The Supreme Court, in a 5 to 4 decision, upheld the Georgia sodomy statute claiming, "The Constitution does not confer a fundamental right *upon homosexuals* to engage in sodomy [emphasis added]."[60] The Court ruled that a state has the authority to regulate the sexual acts of consenting adults for the sake of morality, and specifically in regard to homosexuality, due to a "millennia of moral teachings."[61] What is noteworthy here is the Court's specific ascription of the ruling to homosexual sodomy while ignoring the issue of "other acts of sodomy."[62] Jakobsen

[58] Bear in mind Jakobsen and Pellegrini would hardly count the use of the term 'secular' in this instance as secular.
[59] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 21
[60] *Ibid*., p. 25
[61] *Ibid*., p. 31
[62] *Ibid*., p. 28

and Pellegrini argue that the result of the court's silence on the issue of heterosexual sodomy was:

> …to narrow the state's regulatory reach… [and] intensify a link between particular kinds of conduct and particular kinds of identity. Sodomy statutes reflect an older way of thinking about sex and bodies—one that pivots around permitted and proscribed acts. The Court's parsing of the difference between sodomitical acts the state should and could constitutionally regulate ("homosexual sodomy") and those about which the Court has "no opinion" (the never named "heterosexual sodomy") indicates a more recent concern with status or identity.[63]

This distinction, they argue, reinforces the Court's reliance upon what Justice Burger refers to as "Judeo-Christian moral and ethical standards"[64] in an unbroken tradition of condemnation of homosexuals; thus allowing the Court to regulate the sexual acts of some members of the community solely because of their identity while reinforcing notions of heteronormativity as well as hegemonic ideas about religion in the U.S. using 'secular' laws.

A second juridical example of this supposed middle ground between person and act can be found in the Pentagon's policy on gays in the military, informally known as 'Don't ask; don't tell'. The election of President Bill Clinton in 1992 put a Democrat in the White House for the first time in twelve years and offered gay rights activists the hope of resuming dialogue with a receptive president. Clinton was the first presidential nominee to specifically court the LGBT community during the election. Among other things, he promised to repeal the ban on gays in the military. After a protracted fight with the Armed Services Committee and the Joint Chiefs of Staff, however, Clinton decided he lacked the political capital to carry through on the repeal. Ultimately, he compromised with the currently policy of 'Don't ask; don't tell.' It was signed into law by Clinton in 1993 and allows homosexuals to serve in the military provided that they remain silent about their sexual orientation. Thus, 'don't ask; don't tell' logically *requires* a

[63] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 28-9
[64] *Ibid.*, p. 31

separation of identity from conduct. Allowing closeted gay/bisexual men and women (that is, those who neither identify themselves as homosexuals nor engage in homosexual conduct of which the military is aware) to serve in the military subtly reinforces the centrality of homosexual conduct to military policy while distinguishing it from an 'identity of homosexual.' If the military acknowledges a standing or 'status of homosexual' definitionally infused with conduct, they must bar even closeted homosexuals from serving. This, however, is not required if the Pentagon concedes the pivotal issue is conduct. Thus the statute reads:

> Sexual orientation will not be a bar to service unless manifested by homosexual conduct. The military will discharge members *who engage in homosexual conduct*, which is defined as a homosexual act, a statement that the member is homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender[emphasis added].[65]

Additionally interesting in this statue is the definition of a homosexual act. Here, a self-avowed heterosexual may be discharged for committing one homosexual act, while a service member with homosexual desires who denies him/herself an outlet for such expression and has never engaged in sexual intercourse with a member of the opposite sex is apparently more thoroughly heterosexual and thus fit for service. The inclusion of the phrase "bisexual" also illuminates that the definition of heterosexuality rests not on the performance of heterosexual acts, but the absence of homosexual ones. Hence, heterosexuality is defined here by the absence of homosexuality. We shall return to this codependence in the next section. This not only reveals the inherent messiness of such attempted distinctions between, and stabilizations of, homo- and heterosexuality but also the question of who has "the epistemological authority to know and to designate what (and who) a homosexual is."[66] This law, again, illustrates the 'tolerant' moral middle ground to which Jakobsen and Pellegrini refer. The military can continue the recruitment

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[65] 10 U.S.C. §654

[66] Halley, "The Construction of Heterosexuality" in *Fear of a Queer Planet*(1993), p. 88

of needed volunteers while officially maintaining the stance that homosexuality undermines unique features necessary for the military to function, such as troop cohesion.[67]

Such a discourse of producing space between identity and conduct can hardly be said to be occurring in consistent ways. The 2000 Supreme Court case of *Boy Scouts of America* (henceforth BSA) *et al. v. Dale*[68] attempts a dramatic reversal of the identity/conduct distinction embedded in the Bowers's decision as well as 'don't ask; don't tell', aiming instead to elide the subject (or identity) indistinguishably with homosexual conduct. *BSA v. Dale*, then, provides a useful window into the working logic of the status/conduct distinction for the Court fourteen years later. This case, which was omitted by Jakobsen and Pellegrini, is particularly important because the decision, unless overturned in the future, stands the very real possibility of becoming hegemonically embedded into not only legal discourse, but sexual discourse as well.

At issue in this case was whether the dismissal of James Dale, an assistant scoutmaster, from the BSA for being "an avowed homosexual and gay rights activist"[69], violated New Jersey's public accommodation statute[70] which prohibits discrimination on the basis of sexual orientation. Dale argued that his dismissal constituted a violation of the New Jersey statute, while the BSA claimed the statute violated their freedom of speech and association because Dale's forced inclusion in the BSA would constitute 'compelled speech'. In a 5-4 decision, the Supreme Court reversed the decision of the New Jersey State Supreme Court and ruled for the BSA. After determining that the BSA does indeed engage in 'expressive association,' the Court ruled that because the BSA:

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[67] Troop cohesion is one of the more frequently cited concerns with regards to homosexuals in the military http://www.nytimes.com/2007/01/02/opinion/02shalikashvili.html?_r=1&oref=slogin
[68] *Boy Scouts of America et al. v. Dale*, 530 U.S. 640
[69] *Ibid.*
[70] N.J. Stat. Ann. §§10:5-4 and 10:5-5

> believe[s] that homosexual conduct is inconsistent with the requirement in the Scout Oath…and that homosexuals do not provide a desirable role model for Scouts…Dale's presence in the Boy Scouts would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.[71]

In accepting the BSA's argument about 'compelled speech,' the Court tacitly ruled that no space existed between the 'sinner' and the 'sin.' The Court's logic suggests Dale is, quite literally, interchangeable with 'homosexual conduct' itself. Dale the person may be barred because the BSA "believe[s] homosexual conduct is inconsistent with the requirement in the Scout Oath;" in the last three lines of the above quotation, the Court directly elides Dale the person with homosexual conduct. Beyond Dale's assertion of his homosexuality, the Court acknowledges no evidence which asserts Dale has even engaged in 'homosexual conduct;' this is apparently irrelevant.[72] This question of epistemological privilege in terms of who may speak for what is homo- or heterosexual is an important factor in subject creation as well as discursive reconstruction and one to which we shall return. This lack of distinction between subject and act profoundly contradicts the logic of both 'don't ask; don't tell' and *Bowers v. Hardwick*. As Jakobsen and Pellegrini note, "One of the many odd features of the majority's decision in *Hardwick* is that its legal analysis of sexual acts is overtaken by an underlying preoccupation with questions of sexual identity."[73] This 'preoccupation', of course, presupposes the separation between identity and conduct. Meanwhile, the elision in *BSA v. Dale* provides tension in terms of 'love the sinner; hate the sin' which we shall exploit later.

Unlike in the case of Bowers, where the police witnessed actual sexual conduct, the case of Dale presented no such circumstance. In fact, the issue was not even Dale's speech within the

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[71] *Boy Scouts of America et al. v. Dale*, 530 U.S. 640

[72] I make explicit here the implication in this sentence that identification as a homosexual no more rests upon the performance of homosexual acts than identification as a heterosexual rests upon the performance of heterosexual acts.

[73] Jakobsen and Pellegrini, *Love the Sin* (2004), p. 29

context of the BSA; it was his mere presence. As dissenters Justices Stevens, Souter, Ginsburg, and Breyer point out, "BSA has not contended, nor does the record support, that Dale had ever advocated a view on homosexuality to his troop."[74] Justice Stevens clarifies:

> The only apparent explanation for the majority's holding, then, is that homosexuals are simply so different from the rest of society that their presence alone—unlike any other individual's—should be singled out for special First Amendment treatment. Under the majority's reasoning, an openly gay male is irreversibly affixed with the label 'homosexual.' That label, even though unseen, communicates a message that permits his exclusion wherever he goes.[75]

The idea that Dale's presence alone constituted 'compelled speech' radically re-conceptualizes the very distinctions between the 'sinner' and the 'sin' that must exist to make 'love the sinner; hate the sin' even coherent. If in fact, as this decision suggests, discourse is transforming the categories between sin and sinner more thoroughly, and in this case legally, into one, how can 'love the sinner; hate the sin' function? Simply put, it cannot.

Returning to the question of epistemological privilege and the discursive production of the homo/hetero distinction, Harvard Law professor Janet Halley discusses the lower court case of *Beller v. Middendorf*.[76] Within the context of court cases concerning homosexuals from the period following the Bowers decision in 1986 through the publication of this article in 1993, Halley argues that the courts have relied on either "deviance [or] personhood definitions"[77] of homosexuality in their rulings. For Halley, the deviance definition, "identifies the class by transgressive sexual practice."[78] A personhood definition, however, "attempts to make a dichotomy of homosexuals and heterosexuals…It originates in a distinction between *sexual conduct* and *sexual orientation*, so that the 'class' of homosexuals, under this definition, is

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[74] Dissent in *Boy Scouts of America et al. v. Dale*, 530 U.S. 640
[75] *Ibid.*
[76] *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980).
[77] Halley, "The Construction of Heterosexuality" in *Fear of a Queer Planet*(1993), p. 93
[78] *Ibid.*, p. 91. Halley includes *Hardwick* as a case which relies upon this deviance definition.

characterized not by a particular species of acts but by an 'orientation'."[79] As we shall see in the following case examples, these working assumptions are problematic for Halley. The 'personhood' definition has been the route largely pursued by contemporary LGBT legal activists and divests the subject of the ability to name him/herself.

The case of *Beller* concerned the dismissal of Naval officer James Miller from military service due to Miller's admission of homosexual conduct.[80] Throughout the dismissal proceedings, however, Miller insisted his homosexual acts were regrettable and non-habitual and affirmed his self-identity as a heterosexual. Despite this, Halley notes, "even as Miller claimed to expel himself from the class of homosexuals and to constitute himself as heterosexual, he was expelled from the class of heterosexuals and constituted as homosexual by an act of definitional power over which he had no control."[81] This definitional constitution of the homosexual is necessary for the construction of its heterosexual complement and the legal discourse ordering these cases provides an effective avenue. Thus, the delineation of the stable, though illusory, homosexual, "foments another [illusion], that the class of *heterosexuals* is stable, natural, and transparent."[82] The personhood definition then, "exposes an unexpressed assumption of the deviance definition: that rigid, fixed sexual identities constitute the definitional essences of persons." This is, as we noted earlier, an untenable assumption. However, in so naming and bifurcating sexual persons, heterosexuality is constructed as exclusionary, natural, and thus privileged. Such ordering also precludes the agency of sexual subjects to name themselves, as Miller discovered to his chagrin. A subjects' ability to name themselves is, I suggest, a profound

[79] Halley, "The Construction of Heterosexuality" in *Fear of a Queer Planet*(1993), p. 91
[80] Note: This case was decided prior to the adoption of "Don't ask; don't tell."
[81] Halley, "The Construction of Heterosexuality" in *Fear of a Queer Planet*(1993), p. 87-8
[82] *Ibid.*, p. 91

'practice of freedom' and, for this very reason, we must address the conditions which address this 'epistemological privilege'.

Finally, let us examine the recent 2003 Supreme Court case of *Lawrence v. Texas*.[83] *Lawrence* presents a fact situation very similar to *Hardwick*, though the Court arrives at a very different decision. *Lawrence* overturned the *Bowers* case as well as the Texas sodomy statute—and all subsequent state statutes—as unconstitutional. While this decision represents a profound step forward for the right of LGBT individuals to express themselves sexually without fear of arrest and prosecution, it is not without difficulties. Justice Kennedy, writing for the majority, points out that laws such as the Texas sodomy statute have "far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home."[84] Drawing upon the right to privacy established in *Griswold* and reaffirmed in *Roe*, the Court ruled neither federal nor state governments have the right to regulate the private sexual acts of consenting adults. The Court makes clear, however, the extent of the ruling is limited only to the sodomy statutes in question, announcing, "it [the ruling] does not involve public conduct [or] whether the government must give formal recognition to any relationship that homosexual persons seek to enter."[85] Heterosexual conduct, however, is not confined to the privacy of one's home. Through the recognition of such institutions as marriage, the government makes heterosexual conduct (if not explicitly, then implicitly) quite public. The relegation of sex acts performed between some individuals are confined to the private sphere and others to the public. The result is the production of a two-tiered system between the relationships and sexual acts of homo- and heterosexuals that, intentionally or not, parallels male/female regulation of spheres. Gatens points out we cannot forget, "that the public sphere has historically been an

[83] *Lawrence v. Texas*, 539 U.S. 558 (2003).
[84] *Ibid.*
[85] *Ibid.*

almost exclusively male sphere…In this sense the (traditionally male) public sphere of liberal society can be understood as one which defines itself in opposition to the (traditionally female) private sphere."[86] If we accept that the privatization of the homosexual and of homosexual relationships builds upon the foundation embedded in the public/male and private/female binary, feminism becomes a critical component of coalition-building in reworking these discourses.

These inconsistencies offer valuable leverage in moving from focusing on narrow case laws, which attempt to construct sexual-subject positions, to rethinking public discourse more broadly in terms of free exercise. However, we should be extremely concerned about the ability of juridical discourse to name and define our sexual subject positions and the ways in which this divests us of this critical agency and limits our potential free exercise and practices of freedom.

[86] Gatens, "Power, Bodies, and Difference" in *Destabilizing Theory*(1992), p. 124

V. INCORPORATING THEOLOGICAL DISCOURSE

There is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus.

—Galatians 3:28

The interest in the distinction between the subject and conduct within regulatory discourse is not limited to juridical discourse; religious discourse also grapples with how either to understand the space between subject and conduct or to decide no such space exists. Here, I am expanding upon Jakobsen and Pellegrini, who fail to address explicitly the status/conduct distinction within mainstream Christian discourse. If we accept Jakobsen and Pellegrini's assumptions about the mutual constitution of the secular and religious spheres, we can also use deconstruction of the Christian family as a tool within larger mainstream discourse to leverage for greater pluralism and diversity.

Moving forward from this point, we must examine the relationship that is said to exist between sexual and religious freedom. More pointedly, what are the implications of a sexual 'freedom' informed by a religious 'freedom?' Jakobsen and Pellegrini argue that this demands reimagining religious freedom as a legal strategy for true sexual freedom. The notion of religious freedom itself, however, poses many complexities. We are required to grapple with the inherent difficulties of secularization narratives, as they relate to the 21st-century United States, as the

frame through which to understand religious freedom. Some of the earliest works on secularization, such as those by sociologist Talcott Parsons, describes a bifurcation of daily life into the public sphere, inhabited by the state, and the private sphere, inhabited by religion. Rodney Stark and Roger Fink, however, suggest, "After nearly three centuries of utterly failed prophesies and misrepresentations of both present and past, it seems time to carry the secularization doctrine to the graveyard of failed theories and there to whisper 'requiescat in pace.'"[87]

Rational-choice theory economic types have more recently suggested reconceptualizing religion as a commodity function in an open marketplace of ideas. Stephen Warner, in his article "Work in Progress toward a New Paradigm for the Sociological Study of Religion in the United States," argues for a paradigm shift in understanding how religious groups function within the context of modern day United States. The older paradigms suggest that religion will become more inconsequential as the U.S. progresses down the road of modernity. However, it has become astonishingly clear in recent years that this paradigm is no longer tenable. Warner draws on a variety of evidence, from polling to the rise of the Religious Right, to discredit the traditional 'steady progress towards secularism.' The paradigm Warner suggests to replace this flawed model views religious affiliation as a disestablished commodity that must compete in the free market like any other. This paradigm, Warner claims, is able to account for several of the problems that exist with older secularization models, namely: the plurality of religious communities that exist in the US, the structural flexibility, and their use in the empowerment of minorities. Warner further suggests that these religious communities have fought to stay relevant (or be bought within the context of the market) through a number avenues, chief among which

[87] Stark and Finke, *Acts of Faith*(2000), p. 79

includes the empowerment of minorities. R. Lawrence Moore echoes this sentiment in the introduction of his book *Selling God: American Religion in the Marketplace of Culture* as he insists, "religion is pervasive, even if it is compartmentalized… [and] churches have grown by participation in the market."[88]

Jakobsen and Pellegrini's understanding of the relationship between the religious and the secular rests upon the premise that "the secular and the religious are mutually constituting."[89] Because of this "the secular as such is always already modeled in the particular image of the Christian, or at least of a particular strain of the Christian, reformed post-Enlightenment Protestantism."[90] In other words, Jakobsen and Pellegrini reject the notion that the secular and religious represent two autonomous spheres of existence that can be easily divorced from one another. Rather, Protestant Christianity, as *Love the Sin* has shown, profoundly informs secular sexual discourses of liberal tolerance that construct 'love the sinner/hate the sin' type moral options. While the tendency of traditional secularists, especially with the LGBT community, has been largely to ignore religious discourse and insist on a strict division between the religious and secular, Jakobsen and Pellegrini's argument suggests that engaging religious discourse can represent another of the 'practices of freedom' that aim to open up more diverse ethical possibilities.

The first example I have chosen to use is that of the 'ex-gay' movement Exodus International.[91] This group, which promotes itself as an interdenominational Christian organization, relies upon the status/conduct distinction in its policy statement. It cites:

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[88] Moore, *Selling God*(1994), p. 5
[89] Jakobsen and Pellegrini, "Getting Religion" in *One Nation Under God?*(1999), p. 102
[90] *Ibid.*
[91] Exodus International was founded in 1976 and includes over a 120 local ministries in the USA and Canada http://exodus.to/content/category/6/24/57/

> cites homosexual tendencies as one of many disorders that beset fallen humanity. Choosing to resolve these tendencies through homosexual behavior, taking on a homosexual identity, and involvement in the homosexual lifestyle is considered destructive, as it distorts God's intent for the individual and is thus sinful.[92]

Similarly, an analyst for the Family Research Council, a large anti-gay organization, notes that, "the central distinguishing characteristic of homosexuality is not identity, but a set of behaviors."[93] Framing "homosexual tendencies" as distinct from the individual allows groups such as Exodus International to maintain a theological grounding that affirms the possibility of salvation for all people, while continuing to cite "homosexual tendencies" as antithetical to "God's intent." This sense of being able to have it both ways resounds with what we saw earlier in the case of 'don't ask; don't tell'.

What I hope to have shown with the above examples are the ways in which juridical and theological discursive strains seek to speak about sexuality, and homosexuality in particular, in competing ways. Even within a particular discursive strain, such as jurisprudence, little consistency can be said to exist. Both of these strains as well can be deconstructed in similar ways given the difficulty of defining subject positions. This provides space in which to exercise our own agency as sexual subjects without opting-out of discourse to the nebulous plane of freedom. Such agency is vitally important if we wish to contest our division into essentializing distinctions based upon sexual subject choice. However, problematic, essentilizational discursive moves into the realm of identity politics have been the historic result of accepting such discourses at face value and unchallenged in their legitimacy. In the final section, we will suggest broader range coalition building as an alternative to strict identity politics.

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[92] http://exodus.to/content/view/34/118/
[93] Schwalm, "Kinsey, Kids, and 'Gay' Sex: Why Schools are Teaching Your Kids about Homosexuality" (http://www.frc.org:80/podium/pd98i1hs.html), December 1998.

A second theological example of the discursive ordering and stabilizing of sexuality can be seen in the Christian Right's conception of 'the family.' In employing both theological critique as well as historical and textual hermeneutics, we are able to draw upon New Testament Gospels as well as other early Christian texts to deconstruct the inevitability of the man/woman/children family and create greater possibilities for familial, and thereby sexual, constructions. This illustrates further the opportunities within discourse to re-regulate, rather than de-regulate, sex and the family. Hermeneutics was a tool developed largely by Heidegger and, "bases itself upon questions of historical interpretation rather than on transcendental consciousness."[94] By reexamining selected texts from the New Testament, we are able to expose the forcibly constructed nature of 'the family' while simultaneously demonstrating not only the theological acceptability of alternative familial models, but a theological mandate to re-center familial organization.

Since the 1980s, a coalition of groups loosely referred to as the 'New Christian Right,' which includes Focus on the Family, the Family Research Council, the Family Foundation, and the now defunct Moral Majority, have exploded onto the mainstream political scene. Many commentators[95] suggest this was largely in response to the perceived surge in sexual immorality that came in tow with the 1960s and 70s. More generally, however, this explosion was the result of the radical restructuring of white, straight, male, Protestant hegemony, which was being deconstructed not only by the sexual revolution, but also by second-wave feminism and the civil rights movement. One rhetoric these groups employ in attempting to reverse many of these

[94] Eagleton, *Literary Theory*(1996), p. 57
[95] See Sara Diamond, *Roads to Dominion*; Lisa MacGirr, *Suburban Warriors: The Origins of the New American Right*

changes is that of 'the family;'[96] thus, it is hardly a coincidence that the majority of these groups use the word 'family' in their names. 'The family,' for these groups, represents a very specific and narrow construction of family as one man and woman with children. Regulating the construction of families allows these groups simultaneously to regulate sexuality. The Family Research Council proclaims that its mission is to "champion marriage and family as the foundation of civilization, the seedbed of virtue, and the wellspring of society."[97] The guiding principles of Focus on the Family state, "we have firm beliefs about both the Christian faith and the importance of the family,"[98] while their "About Family.org" page claims, "It's in our DNA as a non-profit Christian ministry who follows God by supporting, encouraging and strengthening families worldwide."[99] Of course, this rhetoric of family is not limited solely to Protestant groups. The Catholic Education Resource Center suggests in the *Compendium of the Social Doctrine of the Church*, "Sacred Scripture repeatedly underlines the importance and centrality of the family…Given its vital importance the family has priority over society and the state."[100] Jerry Falwell, however, most succinctly sums up this 'ideology of the family': "The family is the basic unit that God established, and its continued health is a prerequisite for our healthy, prosperous nation. No nation has ever been stronger than the families within her."[101]

For this rhetoric of family to enforce a generally Christian and specifically Protestant ordering of society, however, the very idea of the family must be stabilized. Or, more accurately, it must be *presented* as stable and defended as correct. This presentation is twofold: first, that the familial unit, as the Christian Right envisions it, is ahistorical and acontextual, and second that

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[96] 'The family' denotes the specific Christian Right construction of family
[97] http://www.frc.org/get.cfm?c=HISTORY_ABOUT
[98] http://ww.focusonthefamily.com/aboutus/A000000408.cfm
[99] http://www.focusonthefamily.com/aboutus/A000000410.cfm
[100] http://www.catholiceducation.org/articles/social_justice/sj00188.html
[101] Falwell, *Listen America*(1980), p.104-5.

the husband/wife/children family is ordained by God. In other words, by presenting 'the family' as a concrete, ahistorical structure which has been ordained by God since creation, indeed the *only* acceptable familial construction, these groups gain significant leverage within mainstream U.S. discourse about family, not only in hegemonizing their specific discourse, but also in marginalizing other discourses as 'anti-family.'

In order to advocate for alternative familial units, we must destabilize the deeply entrenched hegemonic construction of the Robertson/Falwell/Dobson family. One way to do this, which we will pursue in this section, is to re-contextualize 'the family' both theologically as well as historically by using alternative, though equally Christian, texts to present a spectrum of acceptable Christian familial constructions. These texts suggest further that a theological focus on the primacy of the blood family, such as that espoused by the Christian Right, was understood by early Christian to hinder the formation of the Christian community and possibly salvation itself. By deconstructing 'the family' with texts from the first several centuries of Christianity, such as the canonical gospels and texts concerning both martyrs and ascetics, we are able to expose the forcibly constructed nature of Falwell's 'family' while simultaneously demonstrating not only the theological acceptability of alternative familial models, but a theological mandate within early Christianity to re-center traditional familial organization.

Kathy Rudy, in *Sex and the Church*, suggests that the relatively modern emphasis on a tightly bound, blood-centered family grew out of the impact that the Industrial Revolution and urbanization had on the nineteenth-century social fabric.[102] With the growth of industry jobs, the need for a large family, or even a family at all, was called into question. Linda Nicholson clarifies, "A market economy based on wages and payment for factory-produced goods undermined the necessity of the family as a means of survival, at least for adults able to obtain

[102] Rudy, *Sex and the Church*(1997), Chapter 2

incomes of a certain size."[103] Rudy further argues that the 'Cult of Domesticity' restructured American theological thought around the idea that the wife is responsible for the salvation of the family and that thus, "If God is the father and women are responsible for conducting that relationship, then the family, the home, and the heterosexual relationship appear to mimic the most holy way of negotiating life."[104] These implications run deep in modern Christian Right theology because, "the configuration of the traditional family is itself the vehicle that leads these Christians to God."[105] With such a theological grounding, the Christian Right's investment in a particular familial construction becomes clearer.

How effectively the Christian Right can leverage the rhetoric of 'the family' largely depends, as I have mentioned above, on how persuasively they can argue there is only one theologically acceptable familial unit. While Stephanie Coontz suggests these traditional familial units do not and never did exist, but are products of 'our' cultural imagination and that the "most powerful visions of traditional families derive from images that are still delivered into our homes in countless reruns of 1950s television sitcoms,"[106] our task is to unravel this superficially stable theology with the introduction of other, equally valid[107] Christian conceptions of family.

The very words attributed to Jesus himself from the New Testament gospels offer one of the most useful starting points for our argument. Several stories in the Gospels illustrate a radical juxtaposition on the value of the family from that extolled by the aforementioned sources.[108] At one point Jesus rebukes an attempt by this mother and brothers to see him, replying to the stranger, "'Who are my mother and my brothers?'...Then he looked at those seated in a circle

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[103] Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family*(1986), p. 3
[104] Rudy, *Sex and the Church*(1997), p. 39
[105] Rudy, *Sex and the Church*(1997), p. 44
[106] Coontz, *The Way we Never Were: American Families and the Nostalgia Trap*(1992), p. 39
[107]While one could disclaim the validity of these conceptions, to do so would be theologically dangerous given other ideological investments.
[108] See footnotes 96-100 for clarification

around him and said, 'Here are my mother and my brothers! Whoever does God's will is my brother and sister and mother'."[109] The Gospel of Matthew retells the incident nearly verbatim,[110] while the Gospel of Luke offers a slightly abbreviated version, omitting the rhetorical question, "who are my mother and brothers?" What is suggested here is that Jesus views the earthly, blood family as little more than a distraction from the ultimate goal of salvation, and that his interest is in creating a community of believers on Earth that supercedes the birth family. This rather anti-family theme continues when Jesus derides two followers, one for asking if he may help bury his father, and another for wishing to say goodbye to his family. "Let the dead bury their own…[and] No one who puts his hand to the plow and looks back is fit for service in the kingdom of God,"[111] are his terse replies to these men respectively. In Luke 12, Jesus announces he has come to bring, not peace, but division. This division will be exemplified by discord within families, as Jesus proclaims:

> From now on there will be five in one family divided against each other, three against two and two against three. They will be divided, father against son and son against father, mother against daughter and daughter against mother, mother-in-law against daughter-in-law and daughter-in-law against mother-in-law.[112]

Finally, Jesus pronounces most dramatically, "If anyone comes to me and does not hate his father and mother, his wife and children, his brothers and sisters—yes, even his own life—he cannot be my disciple."[113]

What can we say after examining these passages? Carolyn Osiek points out, "It is interesting that no positive sayings about the goodness of family life were preserved and

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[109] Mark 4:31-4(*The New International Version*)
[110] Matthew 12:46-50(*Ibid.*)
[111] Luke 9:59-62(*The New International Version*)
[112] Luke 12:52-3(*Ibid.*)
[113] Luke 14:26*(Ibid.)*

attributed to Jesus."[114] It seems clear that Jesus did not unconditionally exalt the family, even if it did consist of one man joined with one woman and their children, nor that he would agree that the family is, "the foundation of civilization, the seedbed of virtue, and the wellspring of society,"[115] as the Family Research Council would like all to believe. In another way, however, the theological assumptions that undergird Jesus's ministry remain consistent and make no exception for the family. Central to Jesus's message for true disciples is the renunciation of the earthly goods and ties that bind us to our fallen and imperfect state. In fact, I suggest, in these Gospels Jesus is actively aiming to deconstruct the blood family to make space for the reorganization of communities along, primarily, the Christian/non-Christian binary, thereby replacing our earthly familial ties to kin with those to the heavenly Father and brothers and sisters in Christ. Many contemporary scholars support this theological reading. [116] Rudy argues, "Traditional family values produce a social fabric…in which these 'traditional families' themselves usurp the place of the Christian community…In short, we are losing our ability to imagine the radical nature of the Body of Christ."[117] Mary Stewart VanLeeuwan writes, "Jesus's own life and teachings underscore the fact that marriage and family now take a back seat to the universal proclamation of God's salvation and the formation of a new 'first family'—a world-wide kingdom-building company, in which membership depends not at all on bloodlines, but on faith in the Messiah."[118] Howard Clark Kee noted:

> Peter's challenge in Mark 10:28 suggests that in the Markan community the break with family, home, personal, and economic security, and even the seeming irresponsibility towards one's own offspring, would be compensated for in the new pattern of relationships and identity that would develop in the Christian

[114] Osiek, "Family Matters" in *Christian* Origins(2005), p. 218
[115] http://www.frc.org/get.cfm?c=HISTROY_ABOUT
[116] See Kathy Rudy, Mary Steward VanLeeuwan, Rodney Clapp, Janet Fishburn, Elizabeth Fiorenza, and Ruether.
[117] Rudy, *Sex and the Church*(1997), p. 72
[118] VanLeeuwan, *Gender and Grace*(1990), p. 171

community, culminating in the full achievement of blessedness in the Age to Come.[119]

So far, we have mainly cited gospel stories, and while the early Pauline letters carry forth our argument, many of the later deutero-Pauline and pastoral epistles (such as Ephesians, Colossians, and I Timothy) seem to untie the argument we have presented. However, Bart Ehrman echoes the strong case supported by the majority of scholars of early Christianity that the later deutero-Pauline letters which address familial relationships[120] are later in origin and attributed to Paul erroneously.[121] So while Colossians and Ephesians define 'household rules,' "It is interesting to note that Paul himself never set such rules."[122] It is, of course, ironic that the Christian Right would prefer the deutero-Pauline epistles to the gospels and Pauline letters in constructing their case for the importance of family.

So while it seems clear that in surviving sources Jesus was advocating for what Kee called a, "new pattern of relationships and identity that would develop in the Christian community"[123] at the expense of blood relationships, a secondary point is that the New Testament, with its liberal use of the terms of address 'brother,' 'sister,' etc., is filled with subtle jabs aimed squarely at deconstructing the primacy of the blood family. By utilizing these familial terms of address, the New Testament's language itself clearly redefines the distinction between kin and non-kin while simultaneously inducting Christians into a larger community which, by re-employing familial language, attempts to usurp the blood family as the primary organizational pattern for society.[124]

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[119] Kee, *Community of the New Age: Studies is Mark's Gospel*(1983), p. 153
[120] For example, Colossians, Ephesians, and I Timothy
[121] Ehrman, *The New Testament*(2003), p. 376-80
[122] *Ibid.*, p. 380
[123] Kee, *Community of the New Age: Studies is Mark's Gospel*(1983), p. 153
[124] See: Rudy, Clapp, and Fishburn.

In addition to the canonical gospel stories, there are also several primary source texts about martyrs which offer windows into this early Christian perspective on the centrality of the blood family. *The Martyrdom of Ss. Perpetua and Felicitas*[125] offers a window into the relative value of the family. For Perpetua, the threat of violence pits Perpetua against her blood family, when her father, "was so angered by the word 'Christian' that he moved towards me as though he would pluck my eyes out."[126] This response would not have been uncommon; as Miles comments "Some Roman parents felt so thoroughly betrayed by their daughters' rejection of the social roles for which they had been trained that they became violent."[127] The text also presents the reader with a clear illustration of what Harold Clark Kee referred to as, "seeming irresponsibility towards one's own offspring,"[128] when Perpetua refuses to apostatize her Christianity, despite the pleas from her father for the sake of her newborn son "perform the sacrifice—have pity on your baby!...Think on your brothers, think on your mother and aunt, think of your own son who will not be able to live after you. Set aside pride lest it overturn all of us."[129] As Andrew Jacob's points out, "She abandons her father's will to seek the will of another Father."[130]Here, Perpetua's blood family and own son clearly take second chair to her identification with the Christian community. Later, Felicitas seems concerned that her pregnancy will delay her martyrdom; as the author notes, "she was very distressed that her martyrdom would be postponed because of her pregnancy."[131] To Felicitas's relief, two days before the

[125] While the origin and validity of this text is not known definitively, scholars generally agree the text is likely to be historically based from circa 200 C.E. in Carthage N. Africa.
[126] *The Martyrdom of Ss. Perpetua and Felicitas*, III, p. 43
[127] Miles, *Becoming Male*, p. 55
[128] Kee, *Community of the New Age: Studies is Mark's Gospel*(1983), p. 153
[129] *The Martyrdom of Ss. Perpetua and Felicitas*, XI, p. 45
[130] Jacobs, "A Family Affair" in *The Apocryphal Acts of the Apostles*(1999), p. 107
[131] *The Martyrdom of Ss. Perpetua and Felicitas*, XXV, p. 47

scheduled martyring, "she gave birth to a girl; and one of the sisters brought her up as her own."[132]

Another example is *The Acts of Thecla*. Thecla was a young women who defied her parents' wishes by breaking her engagement with her fiancé Thamyris and joining the apostle Paul on his journeys. This would have been extremely unconventional given, among other things, the historical context, and, in climactic frustration, her mother proclaims during Thecla's trial, "Burn the wicked one; burn her who will not marry in the midst of the theatre."[133] Here again, is theme of familial violence upon which Miles earlier commented. Later in the text, Thecla meets Queen Tryphaena (the foil to Thecla's mother) who offers her protection and, as the text's author points out "loved her dearly like a daughter"[134] and later addresses her as, "Thecla, my second child."[135] This story can be understood on one level as Thecla's familial reorientation from her blood family to a larger Christian community, which supercedes and, in fact, replaces the former. Thecla is placed into a struggle of loyalty between the identity and expectations of her blood family and her family in Christ. Ultimately, Thecla and Queen Tryphaena—who fits the loving matriarch role much better than Thecla's birth mother—reconfigure the construction of family[136] from an emphasis on blood to one based upon inclusion in the Christian community. Thus, God becomes Thecla's father, Queen Tryphaena her mother figure, and all Christians her siblings.

The apparent ease with which both of these new mothers are able to relinquish their children (admittedly, less so for Perpetua than Felicitas) rather than forsake their Christian identity is no doubt jarring to contemporary readers. I suggest, however, it is possible and, in

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[132] *Ibid.*
[133] *The Acts of Thecla*, XX, p. 281
[134] *Ibid.*
[135] *Ibid.*, XXIX, p. 282
[136] Note the characteristic use of familial language in this reconfiguration—child, daughter, etc.

fact, very likely that the frame through which we as contemporary readers experience this story is one in which this text is filtered through our societal emphasis on the importance of the blood family. Such a frame forces us to understand the relationship between mother and child as (nearly) sacred. If we hermeneutically recontextualize Perpetua and Felicitas both historically and theologically, however, we can shed fresh light onto a possible frame on their perspective. Both of these women understand their Christian identity as more basic and primary than their familial identities. Given this understanding, it carries through logically that the obligations owed to their Christian identity would supercede any others, including those to their children. If we grant Perpetua and Felicitas this theological frame which reconstructs familial order and configures all Christians into a primal family of believers, while marginalizing the blood family, the ability of Perpetua and Felicitas to separate from their children can become, if we understand blood familial ties as hindrances to spiritual salvation, significantly reconfigured as a salvific act for both mother and child. Ultimately, as Miles points out, "her [Perpetua, but we can presume Felicitas as well] only connection is with her Christian confession and with the other confessors who share her experience."[137] This connection not only reinforces the superiority of the Christian community to the blood family, but also pushes forward the notion of a familial unit based, not on blood, but kinship in Christ as a theologically valid alternative to 'the family.'

What is generally accepted, however, is that both of these paths were deemed theologically acceptable ways of negotiating life, despite being at the expense of, "the foundation of civilization, the seedbed of virtue, and the wellspring of society"[138] or, 'the family.' Meanwhile, Ascetics sought, in the spirit of Jesus's message, to cast off their blood ties in favor of a more profound community of believers. They seem to have managed to answer and

[137] Miles, *Becoming Male*, p.60
[138] http://www.frc.org/get.cfm?c=HISTORY_ABOUT

understand Jesus's unasked question, "is it proper to define yourself by those around your transient human form or by the eternal and heavenly father?" in a variety of valid ways. Meanwhile, the Christian Rights has intentionally rewritten theology for contemporary political purposes. Jesus's marginalization of the birth family could be explored further through the vein of liberation theology as an attempt to promote the equality and liberation of humanity by deconstructing the inherent status distinctions carried through blood relations.[139] Janet Fishburn applies a thread of this argument to contemporary America, claiming:

> [We] have not been able to sustain a legitimate critique of poverty and injustice in America because the family ideals of the American Dream continue to be linked to democratic values and economic stability. Uncritical loyalty to the family makes it very difficult to see or comprehend the plight of the poor and homeless, the oppression of minority persons, as anything but their own fault.[140]

This critique of poverty and injustice, hindered by Fishburn's "uncritical loyalty to the family," is the very heart of Jesus's revolutionary message. The Christian Right's intractable emphasis on a particular Christian family then, strikes a radically muting blow to a central message of the New Testament gospels.

As our selected martyrs, Paul, and Jesus all demonstrate, the Christian familial unit is historically varied and *not* constituted by bloodlines, despite what the Robertson/Falwell/Dobson types would like to suggest. The Christian Right's emphasis on primacy of 'the family' is at best erroneous, and at worst, theologically dangerous. As Kathy Rudy argues, the Christian Right has championed the family at the expense of the larger Christian identity and community.[141] The very community that Jesus and other early Christians have worked to construct, which Jacobs points out attempts "to empower Christian communities [and]…construct a resistant and

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[139] This is a point which I think could be expanded very usefully.
[140] Fishburn, *Confronting the Idolatry of Family*(1991), p. 51
[141] Rudy, *Sex and the Church*(1997).

subversive identity,"[142] has been largely undone by the modern emphasis on 'the family' as society's center of gravity. In the end, we have shown that because we accept Jakobsen and Pellegrini's assertions that religion cannot be privatized, and that any attempt to do so is counter-productive to the end of the production of a wider ethical spectrum with regards to sex, engaging religious discourses which speak about sexuality and opening them to more pluralistic understandings of, in this case, the family, can profoundly alter the foundation upon which secular arguments about marriage and the family are built, namely, repressive Protestant Christian conceptualizations.

[142] Jacobs, *The Apocryphal Acts of the Apostles*(1999), p. 137

V. WHERE ARE THE TRANSSEXUALS?

One is not born a woman, but rather becomes one.

—Simone de Beauvoir

As the title of this section suggests, the question I wish to pose to Jakobsen and Pellegrini here is: where are the transsexuals? Having read through *Love the Sin* several times now and scoured the index thoroughly, I cannot find so much as a passing mention of transsexuals or transgender persons. You may well be asking, why does this matter? It is crucial because Jakobsen and Pellegrini have left unchallenged the regulatory discourses that posit sexuality and sex as a clear either/or proposition; either you are male or you are female—either you are heterosexual or you are homosexual. This questions relates directly to the ability of sexual subjects to name themselves vs. being named by juridical or theological discourses. Can free exercise arguments open up these discourses to inclusion of bi- and transsexuals? I believe this is possible, but we must be very clear that we do not mean these sexual positions get marginalized. Cathy Cohen argues:

> The inability of queer politics[143] to effectively challenge heteronormativity rests, in part, on the fact that despite a surrounding discourse that highlights the destabilization and even deconstruction of sexual categories, queer politics has often been built around a simple dichotomy between those deemed queer and those deemed heterosexual.[144]

[143] Though the quote is addressing queer politics specifically, I believe it applies to sexual politics more generally as well.
[144] Cohen, "Punks, Bulldaggers, and Welfare Queen: The Radical Potential of Queer Politics" in *Sexual Identities, Queer Politics*(2001), p. 203

Jakobsen and Pellegrini's omission of both bi- and transsexuals contributes to the reification of this dichotomy. By leaving such discourses of the body, sex, and homo/heterosexuality unchallenged, the transsexual cannot exist, and, more importantly, cannot offer a critique of such discourse. Thus, if we simply accept the body as bifurcated into the physical categories of male and female, the transsexual must necessarily be pushed into the margins. Let me say here, however, I do not believe that Jakobsen and Pellegrini aim to do this consciously, and in fact, I believe that they are profoundly concerned about the material situation of transsexuals in relation to sexual discourse. My point, however, is that in their focus necessitates this marginalization.

Jakobsen and Pellegrini leave several crucial discursive strains largely unchallenged in *Love the Sin*. The assumptions of such discursive strains must be brought to the surface and examined more closely. Throughout their book, Jakobsen and Pellegrini seem to be spinning out from their argument the notion that the homo/hetero binary is relatively stable, and, more crucially, relatively natural. Again, while I do believe Jakobsen and Pellegrini would disagree vehemently with what I suggest on the objective fact of whether the homo/hetero binary is either natural or stable, their arguments in *Love the Sin* do not present so clear a position. Their arguments use such terms as 'homosexual' without questioning the nature and motives of such a term. It is exceedingly practical to use short-hand such as homosexual, as I myself have done in this paper, but it is also critically important to make clear homosexual and heterosexual do not exhaust the limit of sexual experience and identity as well as recognize their constructed nature. Rather, we must acknowledge the way the employment of such terms can, in fact, be counterproductive. This point had ought to resound even more loudly when one is arguing for 'sexual freedom.' Thus, presenting sexual subjects and experience in such stark, either/or contrast unnecessarily restricts freedom.

What then, can we say about categories such as homosexual and heterosexual? As Janet Halley pointed out earlier, often times employment of such terms means ceding the agency to name ourselves as sexual subjects. 'Practices of freedom' definitionally require this agency. This point is also essential to Butler's critique of the notion of 'women' as a legitimate starting point for feminism. In *Gay New York*, George Chauncey notes:

> [I]n important respects the hetero-homosexual binarism, the sexual regime now hegemonic in American culture, is a stunningly recent creation. Particularly in working-class culture, homosexual behavior per se became the primary basis for labeling and self-identification of men as "queer" only around the middle of the twentieth century; before then, most men were so labeled only if they displayed a much broader inversion of their ascribed gender status by assuming the sexual and cultural roles ascribed to women.[145]

We have shown the 'homosexual' defines itself in opposition to the heterosexual and the heterosexual in opposition to the homosexual. Is the reality of sexuality, and our concern with sexual regulation really so simple and clean? Further, what aim does such a division achieve and for whom? Steven Seidman argues:

> Gay identity constructions reinforce the dominant hetero/homo sexual code with its heteronormativity. If homosexuality and heterosexuality are a coupling in which each presupposes the other, each being present in the invocation of the other, and in which this coupling assumes hierarchical forms, then the epistemic and political project of identifying a gay subject reinforces and reproduces this hierarchical figure.[146]

Herein lies the danger of a politics based upon unchallenged assumptions about identity. The early homophile organizations of the 1950s provides a clear example of these inherent difficulties.

1951 saw the formation of the first homophile organization in the United States, the Mattachine Society. "The Mattachine Society's political task was to foster a collective identity among homosexuals who, recognizing the institutional and hegemonic investments in their

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[145] Chauncey, *Gay New York*(1995), p. 13
[146] Seidman, "Identity and politics in a 'Postmodern' Gay Culture" in *Fear of a Queer Planet*(1993), p. 130

continued marginalization, might consequently be energized and enabled to fight against their oppression."[147] This first crucial step, the forging of a common identity among oppressed homosexuals would, unknowingly, set into motion a series of events that continue to reverberate throughout the movement today, as well as setting the stage for the identity-based politics strategy that would emerge later in the movement. The Mattachine Society would also take the first step in an assimilationist, or conformist-based rights strategy. Of particular note is the way in which these homophile groups "publicly dissociated themselves from anyone who transgressed notions of gender propriety, such as drag queens or even butch women."[148] "Their strategy was to present themselves as reasonable, well-adjusted people, hoping that these heterosexual arbiters of public opinion would rethink their assumptions regarding homosexuality."[149] The hope of the movement was that in suppressing those features of the GLBT community that could be perceived as deviant or 'abnormal' and emphasizing the conformity of those members of such groups as the Mattachine Society to the public's perceptions of gender appropriateness, the "information-producing elites"[150] would be persuaded, for example, to revisit their decision on the medical status of homosexuality. The collective 'identity,' however, the Mattachine Society managed to foster was one to the exclusion of women and which attempted to highlight the similarities of homosexuals to the heterosexual majority while downplaying any deviance from the standards of gender and gender appropriate behavior. The cost of this technique was astronomical in that it alienated the vast number of homosexuals who did not fit into such molds. This cost takes on greater significance as we realize that this severely limited the ability of the movement to speak to and address the

[147] Jagose, *Queer Theory*(1996), p. 25
[148] Jagose, *Queer Theory*(1996), p. 27
[149] Rimmerman, *From Identity to Politics*(2002), p. 22
[150] Yang, "Models of Mass Opinion Change" in *Sexual identities, Queer Politics*(2001).

conditions of those members of the community who were most on the fringes of society and thus, most in need of a voice.

In more recent years, the Human Rights Campaign has come under fire from trans-activist groups for their seeming reluctance to genuinely embrace the transsexual cause. Fall 2007, for example, brought strong criticism from groups such as the National Gay and Lesbian Taskforce for the HRC's failure to oppose a revised version of the US Senate's Employment Non-Discrimination Act which excluded transsexual persons from discrimination protection. As a Gay City News article points out:

> At the time, HRC, in a comment to Advocate.com, indicated it was "deeply disappointed and did not assent to this position," but it declined to sign onto a letter initiated by NGLTF[National Gay and Lesbian Taskforce] and endorsed by 12 groups, saying, "We would also oppose any employment nondiscrimination bill that did not protect transgender people."[151]

From a sexual freedom perspective, such strategies are inherently problematic. How do we avoid such intractable and identity-based positions? I suggest the answer lies in the very task of deconstructing ourselves as primarily homosexual in a hegemonic sense. Rather, we had ought to re-imagine a larger and more expansive coalition of sexual politics. We shall examine this proposition in the final section.

[151] Schindler, "HRC Alone in Eschewing No-Compromise Stand"; http://www.gaycitynews.com/site/news.cfm?newsid=18883568&BRD=2729&PAG=461&dept_id=568864&rfi=6

VI. SEXUAL ETHICS AND AIDS

Ethics becomes a project of imagining and enacting forms of life, a project that is not solitary or restricted to a zone of privacy.

—Jakobson and Pellegrini

In this section, I want to expand upon Jakobsen and Pellegrini's notion of sex as a "site for the production of values."[152] This rethinking of the relationship of sex to values is necessary for two reasons: 1) "when sex is constructed as the problem…there is little room to think about sex itself as a kind of ethical relation and still less room to think about sex as a practice of freedom"[153] 2) sex as a site for the production of values can introduce moral alternatives to, not only sexual restriction and repression, but also tolerance-based standpoints. For Jakobsen and Pellegrini, "the challenge of democracy is the challenge of public engagement with moral difference."[154] What Jakobsen and Pellegrini are quite clearly arguing against is an ethics of sex that attempts to privatize sex. "Privatization does not expand the possibilities for free exercise. Additionally, treating sex as a purely private issue gets in the way of a richer public discussion about sex and ethics. By focusing on privacy, we lose a major strategic possibility for talking about and revaluing sex."[155]

At the end of *Love the Sin*, Jakobsen and Pellegrini touch briefly on the possibilities for such a valuing of sex within the context of the HIV/AIDS crisis. "A willingness to take

[152] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 127
[153] *Ibid*., 128
[154] *Ibid*., 132
[155] *Ibid*., p. 132

responsibility for each other, which can grow out of sexual relations, has certainly been on view in both gay and lesbian responses to HIV and AIDS."[156] This has been a topic of exploration by queer theorists within the last fifteen years and I would like to supplement Jakobsen and Pellegrini's treatment of this topic as an historical example of how, not only can sex become a site for the production of ethics, but, further, how an ethic coming out of the LGBT community can become a powerful force within mainstream discourse.

In 1981, the first case of AIDS, or GRID (Gay Related Immune Deficiency) as it was known at the time, was reported in the United States. This year marked a dramatic shift in the terrain of gay politics as well as the mainstream health care system. As AIDS panic raced across the United States, it quickly became clear that the homosexual community accounted for a hugely disproportional number of cases. As the LGBT community responded to the HIV/AIDS crisis, it became clear the mainstream political and health establishments had little interest in the community affected by this disease early on. The difficulty, as Vaid points out was, "how…to motivate political leaders to spend money on the unpopular segments of society affected by AIDS."[157] Finding the mainstream political establishment unresponsive, the LGBT community in New York City and San Francisco, the epicenters of the outbreak, began privately organizing services for the huge number of gay men affected by the epidemic. "In the early years of the AIDS epidemic, volunteers in communities throughout the country offered practical assistance and emotional support to their friends and neighbors with AIDS because 'someone has to do it.' They channeled their concern and energy into small AIDS service organizations whose shoestring budgets were cobbled together from fund-raising events."[158] Groups such as the Gay

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[156] *Ibid*., p. 145
[157] Vaid, *Virtual Equality*(1995), p. 74
[158] Andriote, "The Ryan White CARE Act: An Impressive, Dubious Accomplishment" in *Creating Change*(2000), p. 407

Men's Health Crisis organized to help provide medical assistance as well as basic living assistance for those gay men, in the early years, living with HIV/AIDS through large networks of volunteers, many of whom were gay as well.

The model upon which these organizations based themselves was developed in 1982 and known as the 'San Francisco Plan.' Andriote recounts the inception:

> Pat Norman, the first director of the office of lesbian and gay health concerns in San Francisco's public health department, pulled together a group of five people in San Francisco to lay out a plan for providing a range of services for those afflicted by AIDS…it [the San Francisco Plan] united health and social service organizations throughout the city to offer a range of services.

This model provided a basic framework for AIDS service organizations across the country, both private and state-based. In October of 1987 the National AIDS Network "concluded that community-based AIDS service organizations would remain the backbone of the nation's response."[159] In 1990, Congress authorized the Ryan White CARE Act: the largest federally funded program for people living with HIV/AIDS and the federal government's *only* disease specific program.[160] "The CARE Act grew out of service models created largely by gay people operating AIDS service organizations and out of lobbying efforts aimed at institutionalizing the variety of coordinated, community-based AIDS services put together by gay people in San Francisco in the earliest years of the epidemic."[161] The idea of community-based AIDS services continues to be the primary framework for providing AIDS related services nationally.

This model has even been adopted by religious charities and organizations. The Central Baptist Church of Knoxville's Samaritan Ministries provides an exemplar of this model by a religious organization. Samaritan Ministries was established in 1996 and is one of only two faith-

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[159] Andriote, "The Ryan White CARE Act: An Impressive, Dubious Accomplishment" in *Creating Change*(2000), p. 412
[160] *Ibid*., p. 409
[161] *Ibid*., p. 408

based AIDS ministries in East Tennessee. Samaritan Ministries began as only a few members of the Central Baptist Church providing transportation and groceries for a handful of people in the community with HIV and AIDS. The program began expanding organically by word of mouth and eventually began receiving formal funding from the Church. As of 2008, Samaritan Ministries operates on a budget of approximately $85,000 a year and receives funding from the State of Tennessee as well as private agencies. What is interesting here is not so much the logistics or funding sources of the program, but the framework for services. In itself, Samaritan Ministries does not provide case management or any medical services explicitly. It instead functions in much the manner as the early, limited resource HIV/AIDS programs in the 1980s. Samaritan Ministries works with community organizations such as the Lions Club to provide PWA (Persons with AIDS) with eye-glasses, the Helen-Ross McNabb Center and Centers of Excellence to provide medical care, and the Knoxville Food Pantry to provide meals.

All of these AIDS service organizations illustrate quite vividly what Jakobsen and Pellegrini argue is the potential to transform sex from subject to ethics to a site for the production of ethics. Robert Goss writes of his experience with AIDS:

> The sexual fecundity of our relationships found further expression in forming an AIDS based community for HIV+ people, loved ones and friends. It was expressed in the founding of Food Outreach, a major AIDS service organization in St. Louis that provides meals and nutritional supplements to indigent HIV+ people…Love gave birth to compassionate outreach and a commitment to justice."[162]

If we understand that Rudy believes "gay and radical sex communities are composed…of people who have organized their sexual-social lives on a different model, a model that is fundamentally communal,"[163] the community-based response to the HIV/AIDS crisis seems a natural extension of this ethic of community and care. It also provides what Jakobsen and Pellegrini call a 'practice

[162] Goss, *Jesus ACTED UP: A Gay and Lesbian Manifesto*(1993), p. 127
[163] Rudy, *Sex and the Church*(1997), p. 75

of freedom' and firmly locates sex as a site for the production of values within the context of ethical discourse. This communal ethic as a 'practice of freedom' has profoundly informed mainstream organizing, both public and private, in response to the HIV/AIDS crisis as well as understandings of our role in caring for the sick.

VII. CONCLUSION

> We forget that all significant political change, and this is going to be the case for gays more than anyone, doesn't just need a wide spectrum of styles and strategies—it depends on a wide range of styles and strategies.
>
> —Franklin Kameny

I want to conclude with a summation of the major points I have discussed throughout this paper, followed by a call for a diversity of political tactics from more broad-reaching and transformative political coalitions. Jakobsen and Pellegrini's book *Love the Sin* represents a profoundly powerful call for sexual freedom and a critical reexamination between the relationship of sexual and religious regulation and subsequent tolerance. Chief among these concerns was a clarification of exactly what Jakobsen and Pellegrini mean by 'freedom.' As we understand subject position construction, a sexual subject cannot exist outside of sexual discourse. This discourse, however, though always regulatory, is not necessarily repressive or cohesive. The openings in the various discursive strains of jurisprudence and theology we explored illustrate this incoherence and represent the possibility for 'practices of freedom' and the exercise of agency in contestation and deconstruction. This would allow sexual subjects to work within discourse and actively challenge those hegemonic strains for other which we suggest are more just and less repressive.

Next, we wanted to challenge not only the notion of identity politics, but also the ground work foundation for such a politics laid unintentionally by Jakobsen and Pellegrini. In this vein, I posed the question: where are the transsexuals? This is important in reimagining the present

sexual binaries and, in their perpetuation re-inscribe marginalizing hierarchies within such sexual relations. Instead of marginalizing and essentializing binaries and identity politics, what is ultimately more useful, both in terms of practical results and theoretical critique is the formation of a broader coalition of sexual politics. One of the results of the bifurcation of sexual subjects into the homosexual and heterosexual (and thus the reason it is so important to press Jakobsen and Pellegrini on this point) is that it yields an 'us vs. them' political mentality which inherently prevents moves towards broader sexual freedom. Additionally, such a mentality forces us to envision a monolithic and largely false heterosexual whole. According to Paisley Currah:

> Mary Dunlap made those connections explicitly, arguing that there is a "commonality" among women, homosexuals, mothers of illegitimate children, and sexually reassigned persons "who have suffered from the power of the law to prescribe sex identity, and, correlatively, to enforce sex roles in all areas of life." She concluded, "If the individual's authority to define sexual identity were to replace the authority of law to impose sex identity, many of the most difficult problems currently associated with the power of government to probe, penalize, and restrict basic freedoms of sexual minorities would be resolved.[164]

An 'us-them' mentality blinds 'us' to the ways in which heterosexual sexuality is regulated. Often lost in the fray, for example, is that a woman's right to choose or not choose parenthood is a fundamental problem that should be of concern to 'us' in so far as we mean sexually oppressed minorities rather than 'homosexuals' in the strictest sense. This issue, meanwhile, is clearly linked to the economic issues facing many women of color. In such a coalition, we will be able to organize not simply around our imposed identity of gay or straight, but rather around subjects of unjust sexual regulation perpetrated by the state.

Determining how to pursue such political change can be as problematic as determining who should pursue it. Jakobsen and Pellegrini make the point, "Lesbian and gay advocates have been asking for tolerance and equal rights, not freedom and equal justice…They haven't

[164] Currah, "Queer Theory, Lesbian and Gay Rights, and Transsexual Marriages" in *Sexual Identities, Queer Politics*(2001), p. 185

challenged the exclusionary nature of the 'general public' in which difference from dominant norms must be minimized as a condition of belonging or membership."[165] However, there are opportunities for the expansion of both free exercise of sex and practices of freedom in such decisions as *Lawrence*. While we have made very clear earlier that the *Lawrence* decision was not unproblematic, I believe there is more room for optimism in the decision than Jakobsen and Pellegrini would suggest. 'Equal justice', for example, *does* represent a profound challenge to the notion of the general public in so far as it produces a concrete difference in the lives of LGBT people, such as the *Lawrence* decision. Inclusion, whether begrudging or not, into the general public represents opportunities to expand the 'general public' from within rather than envisioning that it can only occur as a break from the outside. As we *must* work within sexual discourse, this decision represents a profound and certainly not trivial reversal of earlier holdings of the Court. What is clear is that we must advocate for a wide variety of strategies within a wide variety of discursive strains. The point is that the American political system is remarkably open to change; we just have to be flexible enough to adjust our tactics as they fit our dynamic needs and our situations. The Human Rights Campaign should continue to pursue change through electoral legislative politics, while Lambda Legal tackles the courts to win rights elected officials cannot yet bring themselves to confer. Meanwhile, broad-coalition-based grassroots organizing needs to occur across the country to empower communities and let them lead us into the newest battle field, state politics. In the end, this has been a call for the redirection from problematic identity politics to a more thorough analysis of regulatory sexual ideals and suggestions as to how these can inform the construction and strategies of more overarching sexual coalitions towards concrete material ends.

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[165] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 75

Finally, to carry this argument about free exercise forward from the *Lawrence* decision, I suggest re-couching the free exercise of sex in terms of free exercise of speech. In these terms, the *Lawrence* decision relying on privacy as justification for sexual expression would feel something like suggesting a free exercise of speech expression only in so far as it is private. Speech regulation is there terms makes no sense and I believe we can carry such an analysis forward into the exercise of sex. The link proposed by Jakobsen and Pellegrini between religion and sex: "Quintessential American assumptions about religion, values, and public life are crucially connected to sexuality and its regulation"[166] suggests possibilities for reframing both sexual and religious regulation in terms of speech. At the core of Jakobsen and Pellegrini's argument is that, because sexual regulation and freedom are linked to our notions of religious tolerance, we must re-imagine religious tolerance for religious freedom. Because such a religious freedom is at the bedrock of American civic life (in theory), it provides a useful starting point towards sexual freedom. I believe the contributions Jakobsen and Pellegrini have made in this vein are extremely valuable. They have eloquently connected the dots between the history of religious regulation and tolerance from the colonial period through the present to sexual regulation. However, a more useful parallel may be between sexual regulation and speech regulation.

One of the primary purposes of the Constitution's First Amendment is to guarantee the freedoms of speech and association enshrined in our Constitution and protect these freedoms, which the founding fathers believed essential to the functioning of a democratic state, from undue abridgement by the government. To this end, one of the Supreme Court's primary roles is to weigh the government's interest in limiting speech against the citizen's right to express a given message. Of course, this balancing act has never been simple; the Court continues to

[166] Jakobsen and Pellegrini, *Love the Sin*(2004), p. 12

struggle with maintaining an equilibrium between advancing legitimate government interests while promoting the free exchange of ideas, regardless of content.

Reconceptualizing sexual regulation along these lines might prove informative as well. In this way, the Court had ought to regulate sex only as they relate to legitimate government interests, as in the case of rape or the protection of children. Where such an interest is lacking, the state ought to view sexual expression as fundamental a right as speech expression. There does exist precedent with the Court for understanding basic expression as extending beyond the scope of simple utterances. In the landmark case of *Tinker v. Des Moines Independent School District*,[167] the Court acknowledged the right of students to wear, without regulation, black armbands in protest of the Vietnam war, considering such expression akin to pure or symbolic speech. What could be more quintessentially pure or symbolic speech than sex? Even the case of *Dale*, based in the Court's own opinion, offers an argument for such ruling. Recall the Court ruled that Dale as a homosexual conveyed a message so powerful it warranted his exclusion from the Boy Scouts. Of course, Dale is a homosexual only in so far as he performs homosexual acts. As it is only these specific sexual acts, which we must assume, based upon the Court's decision, Dale has committed, which distinguish Dale from those permitted in the Boy Scouts, the Court has essentially conceded his acts are expressive. Of course, I would hardly expect such a line of reasoning to withstand the scrutiny of the Court, instead, I offer it only to make the following point: in addition to considering how religious regulation could inform a reconstitution of sexual discourse, perhaps a connection to speech regulation could as well. Such an argument could provide fertile ground for scholars, such as Jakobsen and Pellegrini, aiming to rethink public discourse around the regulation of sex in terms of its protected free exercise.

[167] *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969).

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