

4. What sort of formal policies, if any, should companies have regarding sexual harassment and sexual conduct by employees? Should companies discourage dating and office romances?
5. Are corporations genuinely concerned about sexual harassment? Is it a moral issue for

them, or are they only trying to reduce their legal liability? Is Schultz right that corporations tend to focus on sexual misconduct while ignoring larger questions of sex equality? If so, what explains this?

## READING 11.3

### Job Discrimination and Gay Rights

JOHN CORVINO

*Many gay, lesbian, and bisexual Americans suffer from job discrimination because of their sexual orientation. After distinguishing between two different senses of discrimination, John Corvino argues that discriminating against a person because of a certain characteristic is justified only if that characteristic is job relevant and that sexual orientation, like race or religion, is not directly relevant to most jobs. Turning then to the contention that discrimination against gays is acceptable because homosexuality is immoral, Corvino rebuts three common arguments: that homosexuality is wrong because it is unnatural, that it is wrong because it is harmful, and that it is wrong because it is contrary to religion. None of these arguments justifies job discrimination against gays and lesbians, Corvino argues; moreover, such discrimination undermines important moral values. John Corvino teaches philosophy at Wayne State University in Detroit and writes on gay rights at [www.johncorvino.com](http://www.johncorvino.com).*

Todd is an attorney for a well-respected law firm in a large midwestern city. Although there are no municipal, state, or federal laws prohibiting sexual-orientation discrimination where he lives, his firm has explicit guidelines forbidding such discrimination. Yet Todd—who is gay—for the most part stays “in the closet” at work.

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Asked why, he explains, “Anti-discrimination ordinances are great, but they don’t fix people’s ignorance.” Todd characterizes some of his firm’s partners as “homophobic”—a few have made gay jokes in his presence—and he worries that, were his sexual orientation to become known, it would affect his workload, advancement opportunities, and general comfort level. When colleagues talk about their weekend activities, Todd remains vague. When they suggest fixing him up with single female coworkers, he jokes that “I don’t buy my meat and bread from the same aisle”—then quickly changes the subject.

Polls indicate that most Americans reject job discrimination on the basis of sexual orientation, and many companies—including 90 percent of *Fortune* 500 companies—prohibit it. Still, in most states it is perfectly legal to fire someone for being gay. (The passage of a federal ENDA—Employment Non-Discrimination Act—would change that.) Even where such discrimination is prohibited, gay, lesbian, and bisexual Americans often remain closeted at work. Like Todd, many fear that even if their jobs are secure, they may suffer more subtle job-related discrimination: lousy assignments, poor performance reviews, “glass ceilings,” and so on.

Is it wrong to discriminate against gays in employment, and if so, why? This essay considers that question. I am concerned with the *moral* constraints on discrimination rather than the legal constraints, although these are related in important ways. Furthermore, for simplicity’s

sake I mainly focus on discrimination in *hiring*, although job discrimination against gays may occur in a variety of ways.

### DISCRIMINATION AND RELEVANCE

Some think that it's obviously wrong to discriminate against gays in employment, because discrimination is wrong by definition. To address this concern, let us first distinguish between different senses of the term *discrimination*. In one sense, to discriminate is simply to treat things differently. Call this the "value-neutral" sense of *discrimination*. Sometimes discriminating—treating things differently—is a good thing. We talk about "discriminating shoppers" or "discriminating tastes." Moreover, it is not wrong to discriminate against blind people when hiring bus drivers, or to discriminate in favor of attractive people when hiring magazine models.<sup>1</sup> Indeed, the hiring process might be described as a process of discrimination wherein employers try to sort the better candidates for a given position from the weaker.

In another sense, however, to discriminate is to treat things differently for unjust reasons. In this (perhaps more familiar) sense, discrimination is indeed necessarily wrong. Call this the "value-negative" sense of *discrimination*. When people talk about "job discrimination," they generally have this negative sense in mind.

The problem, of course, is determining whether discrimination (in the value-neutral sense of treating things differently) is just in a given case. It seems permissible to discriminate in favor of attractive people when hiring models, but what about when hiring flight attendants? It seems permissible to discriminate against black actors when hiring someone to play John F. Kennedy for a TV movie, but what about when hiring someone to play Shakespeare's Romeo for a community-theater production?

One might answer that the justice of discriminating against people with particular characteristics depends on whether the characteristic is *relevant* to the job in question. It is permissible to discriminate against blind people when hiring bus drivers because blind people cannot drive (or at least cannot drive well). It is permissible to discriminate against

blacks when hiring an actor to portray John F. Kennedy because (barring elaborate makeup) black actors would make less convincing JFKs than would white actors, all else being equal. But it is not permissible to discriminate against blacks when hiring, say, an accountant, because (without further background information) race does not appear relevant to the job of being an accountant.<sup>2</sup> The operative principle seems to be this: Job discrimination against people on the grounds of characteristic X is permissible whenever X is relevant to the job in question; it is usually impermissible otherwise.<sup>3</sup>

Is sexual orientation ever relevant to jobs? In rare cases, it surely is: Imagine hiring a peer counselor for a gay and lesbian community center, for example. But sexual orientation—like race—does not seem directly relevant to most jobs.

Some philosophers, such as Michael Levin, argue that a characteristic is job-relevant as long as the employer considers it relevant. He uses the example of Bob, who (due to some employers' distaste for homosexuality) finds that being gay bars him from some positions. Levin writes,

It might seem unfair for Bob to have to extend himself in ways heterosexuals do not, but everyone in a labor market must to some extent conform to employer demands, just as employers must to some extent conform to employee demands if they hope to find a workforce. It might also seem unfair that Bob should have to settle for less because of a trait that is not job-related, but phrasing the complaint that way begs the question. Since the employer with whom Bob is dealing considers sexual orientation relevant, it is relevant. Jobs are not Platonic entities with qualifications internal to their essences; they exist in concrete bargaining situations where interactants impose whatever conditions they deem appropriate. Relevance is in the eyes of the bargainers.<sup>4</sup>

Levin's view that relevance is in the eyes of the bargainers seems extreme. Although jobs are not "Platonic entities," neither are they entirely a function of an employer's whims. The "concrete bargaining situations" in which they exist include legitimate social expectations, as well as

nonarbitrary facts about the world. They also include certain moral constraints. Thus, even if Levin could make the case that relevance is entirely determined by the person offering the job, that conclusion would not settle questions of justice.

For illustration, consider the following case. Suppose Margaret is a restaurant owner who wants to hire a white waiter for her “whites only” restaurant. An applicant’s race would indeed be relevant to the job that Margaret is offering as Margaret envisions it. But we wouldn’t conclude from this example that race is relevant to the job of being a waiter in general. And we certainly wouldn’t conclude that Margaret’s discrimination against nonwhites is morally justified. What this example shows is that a characteristic’s being job-relevant (in Levin’s understanding of relevance) is not by itself sufficient to morally justify discrimination on the basis of that characteristic. Justifying discrimination requires looking at, among other things, the effects of such discrimination on individuals and society.

### RACE VERSUS SEXUAL ORIENTATION

Some might object to the “whites only” example on the grounds that racial discrimination and sexual-orientation discrimination are different. As former secretary of state and retired U.S. Army general Colin Powell once put it, “Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.”

Powell made this statement in 1993, when he was chairman of the Joint Chiefs of Staff, in response to the gays-in-the-military debate. His more recent comments suggest that his position on gays in the military has softened. Nevertheless, this objection to the analogy between race and sexual orientation is a familiar one. But the objection falters for several reasons. It misunderstands the nature of racism, the nature of homophobia, and the comparison between the two.

Although race is in some sense “nonbehavioral,” racism is all about chosen behaviors. The racist doesn’t simply object to people’s skin color: he or she objects to their taking

certain jobs, moving into certain neighborhoods, marrying certain partners, and so on. In other words, the racist objects to *behaviors*, both real and imagined. Calling race “non-behavioral” misses this important fact.

At the same time, calling homosexuality “behavioral” misses quite a bit as well. Put aside the nature/nurture debate over the cause or origin of sexual orientation. It’s true that homosexuality (like heterosexuality) is expressed in behaviors. But one need not be sexually active to be fired from a job, kicked out of one’s apartment, or verbally or physically abused for being gay. Merely being perceived as gay (without any homosexual “behavior”) is enough to trigger the discrimination. So the sharp boundary Powell draws between behavioral and nonbehavioral characteristics, with sexual orientation falling on the one side and race falling on the other, is both false and misleading when applied to real-world discrimination.

But Powell doesn’t merely misunderstand the nature of racism and homophobia. He also misunderstands the comparison between the two. Whether a comparison is apt (or “valid,” as Powell puts it) depends crucially on the point of the comparison. In the discussion above, I compared race and sexual orientation on the grounds that neither characteristic is directly relevant to performing most jobs. That fact remains true regardless of whether either characteristic is behavioral. Analogies don’t involve comparing two things that are similar in *every* respect; they involve comparing two things that are similar in some relevant respect(s). Here, the similarity involves the job relevance, or the lack thereof, of the trait in question. It is also worth noting that something’s being behavioral doesn’t disqualify it from being a wrongful subject of discrimination. A person’s religion is chosen—and changeable—yet discrimination on the basis of religious practice is almost universally condemned in this country.

### DISCRIMINATION AND MORALITY

Thus far I have argued that discrimination (in the sense of treating things differently) is sometimes justified, that relevance is an important

but potentially insufficient factor in determining when discrimination is justified, and that comparison to other traits (such as race and religion) can be useful in understanding the issue of relevance. But we still haven't confronted the main factor in job discrimination against gays and lesbians: the belief that homosexuality is immoral.

One might object that this belief is—or should be—irrelevant to the hiring process. Why should one care about the “private” moral character of the people one hires? But this objection is shortsighted. For one thing, the line between “private” morality and “professional” or “public” morality is problematic. Moral character is moral character, and it is not unreasonable for employers to use personal virtue (for example, by asking for character references from job applicants) as a proxy for business virtue. Beyond that, business has a profound impact on society. The increasing presence of openly gay people in various professions has influenced social acceptance of gays and lesbians (and vice versa). Those who object to such acceptance on moral grounds might reasonably object to hiring open gays and lesbians, all else being equal.

The moral arguments against homosexuality tend to fall into three categories: nature, harm, and religion. Let me briefly address each in turn.<sup>5</sup>

### Nature

People often argue that homosexuality is “unnatural.” But what does that mean? On the one hand, many things we value—like clothing, medicine, and government—are unnatural in some sense. On the other hand, many things we detest—like disease, suffering, and death—are “natural” in some sense. If the unnaturalness charge is to be more than an empty rhetorical flourish, those who levy it must specify what they mean.

### What Is Unusual or Abnormal Is Unnatural

One meaning of *unnatural* refers to that which is statistically abnormal. Obviously, most people engage in heterosexual relationships. But does it follow that it is wrong to engage in homosexual relationships? Relatively few people read Sanskrit, play the mandolin, breed goats, or write with both hands, yet none of

these activities is immoral simply because it is practiced by a minority of people.

### What Is Not Practiced by Other Animals Is Unnatural

Some argue, “Even animals know better than to behave homosexually; homosexuality must be wrong.” This argument is doubly flawed. First, it rests on a false premise: Numerous studies have shown that some animals do form homosexual pair-bonds. Second, even if that premise were true, it would not prove that homosexuality is immoral. After all, animals don't cook their food, brush their teeth, attend college, or read the newspaper; human beings do all of these without moral censure. The notion that we ought to look to animals for our moral standards is simply facetious.

### What Does Not Proceed from Innate Desires Is Unnatural

Some people argue that homosexual people are “born that way” and that it is therefore natural and good for them to form homosexual relationships. Others insist that homosexuality is a “lifestyle choice,” which is therefore unnatural and wrong. Both sides assume a connection between the origin of homosexual orientation and the moral value of homosexual activity. And insofar as they share that assumption, both sides are mistaken.

Consider first the side that assumes that all innate desires are good ones. This assumption is clearly false. Research suggests that some people are born with a predisposition toward violence, but such people have no more right to strangle their neighbors than does anyone else. So even though some people may be born with homosexual tendencies, it doesn't follow that they ought to act on them.

Nor does it follow that they ought *not* to act on them, even if the tendencies are not innate. I probably do not have any innate tendency to write with my left hand (since I, like everyone else in my family, have always been right-handed), but it doesn't follow that it would be immoral for me to do so. So simply asserting that homosexuality is a “lifestyle choice” will not prove that it is an immoral lifestyle choice.

### What Violates an Organ's Principal Purpose Is Unnatural

Perhaps when people claim that homosexual sex is unnatural they mean that it

cannot result in procreation. The idea behind the argument is that human organs have various “natural” purposes—eyes are for seeing, ears are for hearing, genitals are for procreating, and so on. According to this view, it is immoral to use an organ in a way that violates its particular purpose.

Many of our organs, however, have multiple purposes. I can use my mouth for talking, eating, breathing, licking stamps, chewing gum, kissing women, or kissing men, and it seems rather arbitrary to claim that all but the last use are “natural.” (And if we say that some of the other uses are “unnatural but not immoral,” we have failed to specify a morally relevant sense of the term *natural*.)

Just because people can and do use their sexual organs to procreate, it does not follow that they should not use them for other purposes. Sexual organs seem well suited for expressing love, for giving and receiving pleasure, and for celebrating, replenishing, and enhancing relationships—even when procreation is not a factor. This is why heterosexual people have sex even if they don’t want—or can’t have—children. To allow heterosexual people to pursue sex without procreation while forbidding homosexual people to do the same is morally inconsistent.

### Harm

The Roman emperor Justinian believed that homosexuality causes earthquakes, plagues, famine, and various other maladies. Modern-day critics have been only slightly less creative in their allegations. Homosexuality has been blamed for the breakdown of the family, the AIDS crisis, sexual-abuse scandals, even the 9/11 attacks.

Let us put aside the ridiculous allegations and focus on the more plausible ones. If homosexuality were indeed harmful to individuals or society, that fact would seem to provide a significant moral strike against it. But is it really harmful? And do the allegations prove what the critics claim—namely, that homosexuality is morally wrong?

Consider one of the more common charges: that homosexuality causes AIDS. On a straightforward reading, this claim is simply false. HIV

(human immunodeficiency virus) causes AIDS, and without the virus being present, homosexual people can have as much sex as they like without worrying about AIDS. (Fatigue, yes; AIDS, no.)

But the critics doubtless mean something a bit more sophisticated—namely, that (for men) homosexual sex is statistically more likely than heterosexual sex to transmit HIV. This claim is true (given various significant qualifications), but it is unclear what follows. Consider the fact that, for women, heterosexual sex is statistically more likely than homosexual sex to transmit the virus. Yet no one concludes from this that the U.S. surgeon general ought to recommend lesbianism, or that lesbianism is morally superior to female heterosexuality. There are simply too many steps missing in the argument. The general form of the harm argument seems to be the following:

Premise (1): Homosexual sex is risky.

Premise (2): Risky behavior is immoral.

Conclusion: Therefore, homosexual sex is immoral.

Both premises are false as written. Some homosexual sex is risky, as is some heterosexual sex, not to mention many nonsexual activities. Some risky behavior is immoral, but much is not. (Consider: Driving is riskier than walking, football is riskier than chess, coal mining is riskier than accounting, and so on.)

But what about risks to nonconsenting parties? If I choose to subject myself to risks in order to achieve certain aims, most people would consider that “my business.” But if I willfully impose risks on unsuspecting others, I can rightfully be blamed. Does homosexuality involve such “public” risks? Some critics, for example, blame gays and lesbians for their “threat to the family.” This claim is perplexing. Homosexual people come from families, many are quite devoted to their families, and an increasing number are forming families of their own. Provided that these families embody love, generosity, commitment—in short, family values—it’s not clear where the harm is. It is not as if the increased visibility of gay and lesbian couples will lead people to flee from

heterosexual marriage in droves. After all, the usual response to a gay person is not “Not fair! How come he gets to be gay and I don’t?”

The fact is that some people are happier in heterosexual relationships, some are happier in homosexual relationships, and some (relatively few) are happier alone. If we are concerned with the morally admirable goal of reducing harm, we must begin by acknowledging this fact. Otherwise, our efforts to reduce harm may unwittingly increase it—by pressuring people into relationships that are ultimately unsuitable for them (and for those they marry), and by needlessly ostracizing those whose romantic inclinations differ from the majority’s.

### Religion

A third and final type of moral argument stems from religion. It is difficult to provide a substantial treatment of religious arguments in a short space, for a variety of reasons: the diversity of religious belief, the challenges of interpreting ancient texts, the problems with justifying claims about a transcendent (and thus to some extent unknowable) deity, and so on. Instead, let us simply note the inconsistency of those who appeal to religious arguments about homosexuality in the public arena, when they would never do so regarding other subjects. If they quote Leviticus 18:22 to justify discrimination against gays in employment, do they quote Exodus 35:2 to justify discrimination against those who fail to observe the Sabbath, or Mark 10:9 or Luke 16:18 to justify discrimination against divorced people? Even if homosexuality were a sin—a point on which religious scholars differ—the tendency to treat it as a kind of “deal-breaker” sin, different from premarital sex, divorce, adultery, and other activities condemned by most religions—finds no justification in the scriptures quoted. Instead, this tendency suggests that discrimination against gays and lesbians is more about prejudice than about thoughtful and consistent appeal to religious values. Besides, as long as we remain committed to religious freedom, “My religion says so” provides an inadequate justification for discrimination in the public arena, including employment.

### WHY DISCRIMINATION IS WRONG

The most common moral arguments against homosexuality don’t withstand philosophical scrutiny—certainly not in a way that justifies using them to defend job discrimination against gays and lesbians. I want to conclude by refocusing the discussion on the morality of such discrimination. Insofar as such discrimination harms people’s ability to secure and maintain a livelihood, there are serious moral arguments against it. In his work *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*, the philosopher Richard Mohr details at least four important values undermined by anti-gay job discrimination: self-respect, self-sufficiency, general prosperity, and individual flourishing.<sup>6</sup>

1. *Self-respect*: Careers are a common constituent in self-identity—“What do you do?” is one of the first questions we ask upon meeting new acquaintances. Furthermore, people tend to derive a sense of purpose and meaning from their work. As Mohr writes, “A large but largely unrecognized part of the misery of unemployment is not merely poverty and social embarrassment, but also a sense of loss of that by which one defined oneself.”<sup>7</sup>
2. *Self-sufficiency*: Related to self-respect is self-sufficiency, the ability to provide for one’s own basic needs. Meeting such needs is a necessary condition for being able to carry out one’s other plans and projects. Children typically look to their parents to meet such needs, but adults typically look to employment. Without employment or independent wealth, they must seek assistance from the state. The resulting demands on the public purse are yet another social cost of discrimination.
3. *General prosperity*: Mohr identifies three ways in which eliminating anti-gay job discrimination would promote general prosperity. First, by eliminating extraneous factors in hiring decisions, it would maximize the fit between a worker’s qualifications and the tasks to be performed. Although there might be cases in which sexual orientation is relevant to job fitness—including, perhaps,

certain religious contexts—in most cases it is not. Second, it would minimize the distractions of the closet—the wasted emotional energy that goes into hiding a significant part of one’s life at work. In both of these ways eliminating discrimination would help promote efficiency. And third, it would promote the general happiness: Meaningful work fosters individual happiness, which in turn leads to a happy society.

4. *Individual flourishing*: Finally, reducing anti-gay job discrimination would promote individual flourishing, both for reasons already stated and also by expanding individual choice. The idea here is that prohibiting sexual-orientation employment discrimination would not merely promote security, but would also promote autonomy—another core moral value.

In short, discrimination against gays and lesbians in employment has serious moral costs without any clear corresponding moral benefit. If one is going to deny a person employment—or undermine an existing employee’s professional opportunities—one ought to have a good reason. In most cases sexual orientation does not constitute such a reason.

Mohr argues in favor of civil rights legislation to prohibit discrimination on the basis of sexual orientation. Reasonable minds may differ on the appropriate role of the law here. But regardless of whether such discrimination should be legal—as it currently is in most states—it does not appear to be moral. A just society should seek to eliminate it.

### Notes

1. This is not to diminish important questions about the way advertising affects widespread (and sometimes unreasonable) standards of beauty.
2. One could provide cases with such background information: Suppose that one is hiring an accountant to serve a majority-black population that is far more comfortable with, and likely to use the services of, a black accountant. This fact would make race *relevant*, although it still leaves open the question of whether such discrimination would be unjustified on other grounds.

3. I don’t think this principle works when understood in terms of strict necessary and sufficient conditions, for reasons I will partly explain shortly.
4. Laurence M. Thomas and Michael E. Levin, *Sexual Orientation and Human Rights* (Lanham, MD.: Rowman & Littlefield, 1999), p. 92.
5. For a more thorough discussion, see John Corvino, “Why Shouldn’t Tommy and Jim Have Sex?—A Defense of Homosexuality?” in John Corvino, ed., *Same Sex: Debating the Ethics, Science, and Culture of Homosexuality* (Lanham, MD.: Rowman & Littlefield, 1997), pp. 3–16.
6. Richard Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights* (Boston: Beacon Press, 1994), pp. 77 ff.
7. *Ibid.*, p. 78.

### Review and Discussion Questions

1. Have you or has anyone you’ve known ever experienced discrimination on grounds of sexual orientation? In your view, how widespread is such discrimination? What do you think explains it?
2. What are the two senses of *discrimination* that Corvino distinguishes between? Do you agree with him that the justice of discrimination depends on whether the characteristic in question is job-relevant? Give examples of when a person’s race, sex, religion, or sexual orientation might be job-relevant. Or are such characteristics never job-relevant? Explain Michael Levin’s view of job relevance. What is Corvino’s response to it? Should employers be able to determine what is, and what is not, job-relevant?
3. On what grounds do Colin Powell and others reject the analogy between racial discrimination and sexual-orientation discrimination? Do you agree with Corvino’s response to this objection?
4. Some people argue that there is nothing wrong with homosexuality because homosexuals are “born that way.” Others argue that homosexuality is merely “lifestyle choice” and therefore unnatural and wrong. Explain why Corvino rejects both these arguments. Do you agree that debate over

the origin of homosexual orientation is morally irrelevant?

5. How does Corvino respond to the argument that homosexuality is unnatural because it violates the function of the genitals, which is to produce babies?
6. Critically assess Corvino's response to the contention that homosexuality is wrong because it is harmful. What about the argument that it contradicts religion? Are there moral arguments against homosexuality that Corvino has overlooked or failed to do justice to? If a private employer believes that homosexuality is immoral, is it wrong of the employer to choose not to hire homosexuals?
7. Following Richard Mohr, Corvino argues that job discrimination against gays undermines four important values. Explain what these values are and whether you agree or disagree with Corvino's argument. Do any values support discrimination on the basis of sexual orientation?
8. Corvino writes that reasonable people might disagree about the appropriateness of laws prohibiting discrimination on the basis of sexual orientation. What might be said in favor of such laws? What might be said against them?
9. Do companies have a moral obligation to discourage anti-gay sentiment among their employees? If so, how might they do so?