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## Honesty, Privacy, And Shame: When Gay People Talk About Other Gay People to Nongay People

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HONESTY, PRIVACY, AND SHAME:  
WHEN GAY PEOPLE TALK ABOUT OTHER GAY  
PEOPLE TO NONGAY PEOPLE

*David L. Chambers\**  
*Steven K. Homer\*\**

*"What is whispered in the closet shall be proclaimed  
from the housetops."*<sup>1</sup>

There is a longstanding convention among lesbians and gay men<sup>2</sup> in the United States: Do not reveal the sexuality of a gay person to a heterosexual person; unless you are certain that the gay person does not regard his sexuality as a secret. Lie if necessary to protect her secret. Violating the convention by "outing" another person is widely considered a serious social sin.

Many gay people view the convention as protecting closeted gay people's right of privacy. A few reject it as resting on outmoded, even harmful, notions that it is shameful to be gay. This essay describes the convention in operation and its justification in an era in which more and more gay people believe that the most important agent for reducing both officially sanctioned and private intolerance toward gay people is to increase the number of people known to be gay.

The outing of politicians and celebrities in gay magazines and other news media has been written about extensively elsewhere.<sup>3</sup> Our subject is somewhat different. We write about the convention as it applies in the context of conversations between individuals about acquaintances, friends, and the person next door. We focus on the outing of ordinary people by other ordinary people because

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1. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890).

2. We use the term "gay person" and "lesbians and gay men" as a loose shorthand for all those whose sexual attractions are not limited to persons of the opposite sex.

3. See generally LARRY GROSS, *CONTESTED CLOSETS: THE POLITICS AND ETHICS OF OUTING* (1993); MICHELANGELO SIGNORILE, *QUEER IN AMERICA: SEX, THE MEDIA, AND THE CLOSETS OF POWER* (1994).

the day-to-day lies openly gay people tell to protect friends and acquaintances often place the tellers in a personal ethical quandary. Moreover, in cumulative effect these little lies seriously limit the number of persons known to be gay. We conclude that the conventional notions of "rights" and "privacy" are not helpful in thinking about the issues outing poses. We also conclude, however, that for now gay people should continue to adhere to the convention of silence. Honesty is not yet the best policy. A wiser policy at this point is for openly gay people to press closeted gay people more aggressively to reveal themselves as gay.

### *The Story of Oliver Sipple*

We begin with the story of a celebrated outing of a person who, up to nearly that moment, had not been celebrated, who had simply been the acquaintance, the friend, the person next door.<sup>4</sup> On September 22, 1975, Oliver Sipple joined a crowd in Union Square in San Francisco, waiting to catch a glimpse of President Gerald R. Ford when the President visited the city. As Ford approached, Sipple saw a woman step out of the crowd and aim a gun. Just as she fired, Sipple struck her arm and, by doing so, probably saved the President from serious injury or death. Sipple was treated as a hero in the contemporary news accounts of the event.

Sipple was gay. He was an energetic member of San Francisco's growing gay community. He had worked on the campaigns of both Harvey Milk for city supervisor and Mike Caringi for gay "Emperor" of San Francisco. He had marched in gay pride parades in San Francisco and in other cities. He had been mentioned and photographed in several gay newspapers in connection with his activities. Dozens of gay friends in San Francisco and other large cities knew he was gay. He was not, however, known to be gay by his biological family or heterosexual friends back in Texas where he had grown up.

On the day after the assassination attempt, someone in the San Francisco gay community violated the convention of silence. Proud of Sipple's heroism, this person called Herb Caen, a *San Francisco Chronicle* columnist, and told him that Sipple was gay. The next day, Caen published a column reporting that after the shooting "Sipple

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4. The facts we report are drawn from the opinion in *Sipple v. Chronicle Publishing Co.*, 201 Cal. Rptr. 665 (Ct. App. 1984).

. . . was the center of midnight attention at the Red Lantern, a Golden Gate Ave. bar he favors.”<sup>5</sup> Caen also reported conversations with Milk and another leader of the gay community, the Rev. Ray Broshears, in which both “claim[ed] to be among Sipple’s close friends.”<sup>6</sup> Milk and Broshears, said Caen, described themselves as ““proud—maybe this will help break the stereotype.””<sup>7</sup> Other newspapers picked up on Caen’s column, some reporting that President Ford had failed to thank Sipple promptly and speculating that the failure might have been due to Sipple’s sexual orientation. Eventually, through these accounts, Sipple’s family and friends in Texas discovered his homosexuality before he was ready for them to learn of it.

Sipple’s story is both unusual and common. The usual occasions for the convention are more mundane. Three elements of Sipple’s unusual story are nonetheless common. First, someone who is gay revealed another gay person’s sexuality. Second, though the revealer wished to cause no harm, some harmful consequences arose from the revelation. (Sipple believed they were disastrous; he claimed that after the news traveled to his parents and siblings, they “abandoned” him, causing him great distress.)<sup>8</sup> Third, Sipple was angry about the public revelation of his sexuality; to him, the revelation was not simply harmful, it was wrongful.

Sipple in fact was so offended by the revelation that he sued the newspaper.<sup>9</sup> For our purposes, it would be a better story if he had also sued the gay person who informed the newspaper. However, the language Sipple invoked in his lawsuit was the same language that gay people use in day-to-day conversations about individual gay people’s violations of the convention: Sipple sued the *Chronicle* for a breach of his “right of privacy.” He claimed that the fact that he was “homosexual in his personal and private sexual orientation” were “private facts” that the newspaper was prohibited from revealing without his consent.<sup>10</sup>

On its face, there is something anomalous about Sipple’s indignant reaction. It is difficult to understand how a person who engages

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5. *Sipple*, 201 Cal. Rptr. at 666.

6. *Sipple*, 201 Cal. Rptr. at 666.

7. *Sipple*, 201 Cal. Rptr. at 666.

8. *See Sipple*, 201 Cal. Rptr. at 667.

9. *See Sipple*, 201 Cal. Rptr. 667.

10. *Sipple*, 201 Cal. Rptr. at 667.

in such a wide range of public activities, activities known to hundreds of people, could feel wounded when someone truthfully reports about those activities. And yet he did. Even now, though twenty tumultuous years have passed since the Sipple incident, many gay people still feel aggrieved when their sexuality is revealed by another gay person. Like Sipple, they live bifurcated lives: they are known as gay by large numbers of other gay people, but not by their biological families or by heterosexuals among whom they live and work. They expect other gay people to help them sustain their secret, and it is the gay community's adherence to this convention of secrecy that makes it possible for so many gay people to sustain these separate spheres.

### I. THE CONVENTION OF SILENCE

We can find no empirical research on the degree to which gay people actually adhere to a convention of silence and deception or on the ways they honor or evade it. We report here simply on the convention as we understand it from our own experiences, from conversations with others about their experiences, and from the writings of others about their own experiences of the convention. When we use the term "convention," we mean an expected pattern of behavior<sup>11</sup>—expected both in the sense that the behavior is predictable and anticipated and in the sense that it is required as a matter of good manners or good morals. Among gay people, silence about the sexuality of others is thus "expected" in much the same way that two people each "expect" the other to show up when they have agreed to meet at a certain time.

To understand the convention in common operation, consider Oliver Sipple in a more ordinary context than the celebrated event for which he is known. If a lesbian acquaintance of his, call her Paula, saw Sipple at a gay pride parade and later talked to a straight friend of Sipple's, the convention would require Paula to keep silent about any information that might lead to inferences about Sipple's sexuality. If Sipple's name came up in the conversation, Paula might have to lie: "No, I haven't seen him lately." Or, if she were quick enough, she might be truthful but misleading or incomplete: "Yes, I bumped into him on the street a few weeks ago." In certain circumstances, Paula

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11. See DAVID K. LEWIS, *CONVENTION: A PHILOSOPHICAL STUDY* (1969).

might even be called upon to dissemble about her own sexuality. If, for example, Paula and Sipple were talking on a street corner and a colleague of Sipple's from work joined them, Paula might try to pass as straight or avoid gay topics in order not to implicate Sipple by association. In other circumstances, when Paula encountered Sipple with others and saw that Sipple was trying to avoid her eye, she might even pretend not to know him. She would walk by, invisible.

The convention adds to already existing social rules and conventions about secrecy that apply to all people, gay and straight. Participants in groups such as twelve-step programs, for example, agree to maintain confidentiality about anything said during meetings. We also honor more general conventions that oblige us to keep our promises to individuals when we have explicitly agreed not to reveal something. Friendship, less explicitly, imposes such constraints in the name of loyalty. Because we know our friends well, we will often be able to make good judgments about what they would like to have said about them, even in the absence of specific promises—not just about their sexuality but also about other subjects such as their health or their finances. The convention of silence about sexuality applies in all these contexts, but, for gay people, it applies more broadly to include people with whom we do not share any of these relationships, people with whom we have made no agreements nor formed any bonds of friendship.<sup>12</sup>

The convention demonstrates the radical asymmetry that exists between the lives of gay people and heterosexuals; it is the asymmetry between what may be told and what must be hidden. A discreet heterosexual person would not, under normal circumstances, reveal information that a heterosexual friend finds embarrassing. A discreet gay person keeps silent in addition about that which is (or ought to be) most joyful. A gay person who was Sipple's friend would not have told straight people about the celebration at the Red Lantern, or even about more everyday information about a wonderful new boyfriend in

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12. The application of this (or any) convention to these classes of people is directly related to the conceptualization of homosexuality as an identity one can "be," even when not having sex, which (certain mythical gay men of the 1970s excepted) is most of the time for most of us. Thus, whatever conventions govern kissing and telling, we have come to find ourselves "being gay" or "being lesbian" around other people in contexts in which but for the convention there would be no special expectations about secrecy.

Sipple's life. Even our best news must often be concealed from heterosexuals.

While there is no written code of the convention or any common law of exceptions, we suspect that even those who honor it in its fullest form believe that it is permissible to disclose the homosexuality of other people regardless of their probable wishes when the harms of silence are sufficiently great. (We mean harm greater than that of complicity with homophobia, which is always present in honoring the convention and about which we will have more to say.) If, for example, a closeted male supervisor sexually harasses or sexually assaults a male employee who is openly gay, the employee will need to reveal facts about the offender's behavior and apparent orientation if he seeks relief through a disciplinary process or criminal prosecution. Few would demand that the victim respect the supervisor's wish not to be out. A circumstance such as this, however, is rare enough that it does not diminish the otherwise widespread applicability of the rule;<sup>13</sup> in the great majority of other occasions it is considered inappropriate to reveal a person as gay or lesbian to nongay people.

The convention as commonly practiced does not, however, apply to discussing a person's sexual orientation with lesbians or gay men, especially with close friends.<sup>14</sup> Indeed, gay persons often expect their friends to share such information.<sup>15</sup> Sharing permits the forming of social or romantic connections and helps gay people recognize that they are part of a larger community. Gay people generally withhold information from gay friends only when they have explicitly promised to, when they fear that the friend will be indiscreet and reveal the third person's sexuality to inappropriate others, or when they regard

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13. There are even rarer occasions in which it would be appropriate to out someone even if the closeted person has done no harm. Karen Thompson surely acted appropriately in revealing the sexuality of her partner Sharon Kowalski after an accident that left Sharon brain damaged and unable to communicate, since outing Sharon was necessary in order to enable Karen to assert herself as Sharon's appropriate caretaker. *See* KAREN THOMPSON & JULIE ANDRZEJEWSKI, *WHY CAN'T SHARON KOWALSKI COME HOME?* (1988).

14. A lesbian friend, Mary Dunlap, read this piece in draft and wrote us that she would never reveal the sexuality of a closeted person even to another lesbian, without the closeted person's consent. We do not know how many others exercise the same degree of restraint, but we believe that Mary is in the minority.

15. *See* JAMES D. WOODS, WITH JAY H. LUCAS, *THE CORPORATE CLOSET: THE PROFESSIONAL LIVES OF GAY MEN IN AMERICA* 122 (1994).

revealing the information to be gossip that would violate their personal standards of behavior.<sup>16</sup>

We have stated the convention in a broad form: Don't reveal the identity of gay people to heterosexuals unless you are certain that the gay person would not object. In the process of writing this piece, we have learned that this view of the convention does not fully describe actual practice today even among gay people who think of themselves as discreet and protective. For example, one writer who has recently defended the convention of silence reports with apparent approval that some lesbians today talk openly about other lesbians to heterosexual women with whom they are close, trusting the heterosexual women's discretion.<sup>17</sup> Others who live in academic settings in large cities have told us about feeling free to tell their supportive heterosexual friends, both male and female, about closeted persons. They trust these friends not to inflict harms and not to tell others who might do so. In addition, many of us who are gay probably make assumptions that some particular gay acquaintances are out in general without taking care to confirm that it is actually so. Thus, when we know that a particular person is gay and also know that he works at a bar in the Castro in San Francisco or dances professionally in a ballet company or runs an AIDS service organization, we may guess that he is out to the world and talk about him to our heterosexual friends without advertent to the slight possibility that we would be revealing a secret.

Eventually, perhaps, the convention may disappear because all straight people will be supportive or nonthreatening; but this is not the case now. A considerable majority of Americans still believes that all forms of same-sex sexual and romantic behavior are immoral.<sup>18</sup> In small towns throughout America like the Texas town where Oliver Sipple grew up, few people may feel ready today for any but the firm-

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16. Avoiding gossip is a problematic reason for concealing information about another person's sexuality. Gossip is, after all, information about a person that he or she probably would not want reported because it usually has an illicit edge, a "psst" attached to it. It is because homosexuality is stigmatized that talking about it can be experienced as gossip. Revealing in a whispered tone that someone was born in December or likes to eat applesauce typically fails as gossip.

17. See Claudia Card, *Other People's Secrets: The Ethics of Outing*, in *LESBIAN CHOICES* (1995). Card would reveal information to straight women in circumstances under which she would not speak to a gay male friend. See Card, *supra* at 215.

18. According to surveys conducted in 1991 and 1992, 65 to 72% of Americans believe that sexual relations between adults of the same sex are always wrong. See EDWARD O. LAUMANN, ET AL., *THE SOCIAL ORGANIZATION OF SEXUALITY* 599 tbl. B.4 (1994).



est rule of silence.<sup>19</sup> In this essay we ultimately and reluctantly defend silence, but begin by exploring its costs.

## II. THE HARMS OF THE CONVENTION

The convention of silence and dissembling evolved at a time when gay and lesbian persons could almost never safely acknowledge their sexuality to persons who were not also gay or lesbian. At that time, the convention was largely self-enforcing because gay persons who revealed the sexuality of other gay persons risked revealing themselves. Moreover, at that time, to a greater extent than today, silence was reinforced by shame: the great majority of gay men and lesbians accepted the judgment that being homosexual was pathologic or sinful or both.

But life is different today for growing numbers of lesbians and gay men. Many are out (often after many years in hiding) and the convention imposes burdensome costs. First, and for some of us most significantly, the convention demands that we lie. For many people, lying of any sort about matters of importance offends deeply held personal values. For many who have come out, lying about the sexuality of others carries special pain because it reminds them of the lying they did about their own sexuality for so many years and that they are relieved to have left behind. They accept who they are and hate tiptoeing around when speaking of their friends. For others, after a life of practice, the lying still comes easily and carries no cost of which they are conscious, but may nevertheless subtly revive the self-hate they have worked to get beyond.

Richard Mohr, a gay man and libertarian philosopher, believes that this corrosion of self-respect is at the heart of what is wrong with the convention.<sup>20</sup> In his view, the convention of secrecy is "the social convention that most centrally defines the community" of lesbians and gay men in the United States, and he believes it must be discarded.<sup>21</sup> Every time gay men and lesbians obey the convention, he claims, they ratify the view of most heterosexuals that gay people are

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19. See generally FARM BOYS: LIVES OF GAY MEN FROM THE RURAL MIDWEST (Will Fellows ed., 1996).

20. See RICHARD D. MOHR, *The Outing Controversy: Privacy and Dignity in Gay Ethics*, in GAY IDEAS: OUTING AND OTHER CONTROVERSIES 11-48 (1994).

21. See MOHR, *supra* note 20, at 29.

loathsome and disgusting, and they cater to heterosexuals' desire that gay people remain invisible. Concealing for others undermines the concealer's sense of dignity and self-respect.

Mohr prizes the person who "lives in the truth" by refusing to conceal her own sexuality or the sexuality of others.<sup>22</sup> The truth teller's dignity, he argues, is more than the dignity of not telling lies; it is the dignity of affirming the worthiness of being gay.<sup>23</sup> Mohr believes that the openly gay person's interest in dignity would trump the interests of the closeted person in almost every case.<sup>24</sup>

Mohr greatly overstates the case against the convention. Lesbians and gay men may lie or keep silent about friends and acquaintances for reasons other than the belief that we are loathsome and disgusting. Mohr is correct, however, that concealing the homosexuality of another person is not a cost-free social maneuver for the openly gay or lesbian person: it checks us on occasions when we might say something positive about the lives of our gay and lesbian friends, and simultaneously suppresses the value of certain aspects of our own lives. For Paula to follow the convention and lie to protect Oliver Sipple would not mean that she accepted that being gay was "loathsome," but it would devalue her homosexual identity. At its worst, on occasions when nongay people realize that we avoid talking about other gay people in front of them, we reinforce their belief that being gay is embarrassing or demeaning, regardless of our own views about it.

Thus, the convention causes other harms. When a young gay person knows an older, financially successful gay person who is closeted at work, the younger person may falsely conclude that her own success will depend on remaining closeted. In the workplace the closeted employee may even actively impede the openness of other gay employees. James Woods, in his study of the workplace entitled *The Corporate Closet*, relates how closeted male co-workers seek to protect themselves by encouraging other gay employees to be less open, how they shun gay colleagues instead of providing helpful mentoring, and how they sometimes discriminate against lesbians and gay men in hiring and promotion decisions.<sup>25</sup>

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22. MOHR, *supra* note 20, at 37–39.

23. See MOHR, *supra* note 20, at 40–43.

24. See MOHR, *supra* note 20, at 40–43.

25. See WOODS, *supra* note 15, at 127–32; see also GROSS, *supra* note 3, at 45 (quoting writer Armistead Maupin on enforced secrecy among gay celebrities).

Other harms caused by the convention are more general. Poll data suggest that the sympathy and support of nongay people for gay men and lesbians, and specifically for legal protections of their rights, increase when they know gay or lesbian people.<sup>26</sup> By concealing the identity of our gay friends and acquaintances, we preserve a world in which large numbers of persons are unaware that they know anyone who is lesbian or gay. And because being out is, in the end, our principal political strategy, a convention catering to the closeted individual conflicts with our efforts to promote outness generally.

Thus, the convention does impose some harms, but it does not necessarily follow that abandoning it would eliminate them. If openly gay people refused to conceal their closeted acquaintances, the number of people known to be gay would surely increase, but the increase might only be temporary. Ending the convention might make many closeted lesbians and gay men even more vigilant about hiding. They might never make the first contacts with other gay people that would lead, eventually, to their coming out voluntarily to the world in general. In addition, outing those who are unwilling to be out might also backfire in cases in which the outed person is mired in self-doubt and displays the very sense of shame that heterosexuals expect. Forced outing could thus fail to generate the positive change that might be hoped for in the attitudes of others.

While it is possible that abandoning the convention could have this silencing effect, we believe it is more probable that perpetuating the convention itself keeps the number of known gay men and lesbians artificially low. When we follow the convention we permit closeted lesbians and gay men to remain in a "safe" environment; the larger the community of people who are out, the easier and more comfortable it is for others to come out as well. Additionally, as more and more people come out, the convention becomes overly conservative even to serve its own goals: because it applies whenever we do not know for certain that a gay person is out, it causes us to construct closets for some people who may actually be willing or eager to be known. More fundamentally, our guess is that many lesbians and gay men who really are closeted would still search out others like themselves even if they knew that there was no convention of secrecy. After

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26. See discussion of studies in Susan Becker, *The Immorality of Publicly Outing Private People*, 73 OR. L. REV. 159, 208-11 (1994) (discussing the theory that "being out creates tolerance").

all, for decades men and women have visited gay bars for the first time without knowing that any convention of silence existed.

### III. WHY SOME CONVENTION IS NEEDED

Among gay people, the most common defense of the convention has been that it protects every gay individual's "right of privacy," a right to keep personal information to oneself, or, more accurately perhaps, a right to control the dissemination of information about oneself. Thus, a recently published book of "gay manners and etiquette" instructs the gay reader that "outing a colleague—intentionally or unintentionally—is a violation of that person's privacy. Don't do it!"<sup>27</sup> Columnist Mike Royko of the *Chicago Tribune* has argued that "if a secret homosexual's home is his castle, his closet is a nook in his castle, and if he doesn't want to be dragged out of his closet, that's his right."<sup>28</sup>

In our view, reliance on the language of privacy to criticize revealing homosexuality distorts a sensible view of what privacy is all about and muddies rather than illuminates the issues at hand.<sup>29</sup> The closet is a metaphor, not a place.<sup>30</sup> A public revelation is a violation of a right of privacy when the information is obtained in illegal or intrusive ways that a society wishes not to countenance—for example, by hidden cameras or the like. But this is not what has happened in most situations in which gay persons discover and then reveal the sexuality of another gay person. In Sipple's case and in most cases, gay people who "out" other gay people have come to know about the person's sexuality because they have observed something in a perfectly lawful and nonfurtive manner: they saw the closeted person at a dance or a bar or a Pride Parade or talked with others who had observed the closeted person in such circumstances. When a person engages in open behavior such as this, it is peculiar to argue that he or she then has a

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27. STEVEN PETROW WITH NICK STEELE, *THE ESSENTIAL BOOK OF GAY MANNERS AND ETIQUETTE* 28 (1995).

28. Mike Royko, *Antsy Closet Crowd Should Think Twice*, CHI. TRIB., Apr. 2, 1990, § 1, at 3, reprinted in GROSS, *supra* note 3, at 227.

29. For similar conclusions, see MOHR, *supra* note 20 at 18; SIGNORILE, *supra* note 3, at 79–80.

30. For discussions of the multiple meanings and functions of the term "closet," see EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* 3, 67–90 (1990); Kenji Yoshino, *Suspect Symbols: The Literary Argument for Heightened Scrutiny for Gays*, 96 COLUM. L. REV. 1753, 1794–1802 (1996).

moral claim or "right" to keep others who observed or heard it from talking about it. Where exactly would such a right come from? One might argue that the right originates in the convention itself—the closeted person is entitled to rely on expectations created by the custom of secrecy. Such an argument is problematic, however, as applied to any particular gay person who has never chosen to subscribe to the convention and who may never have relied on its shelter; it is unacceptable as a justification for retaining an otherwise unsatisfactory convention into the future.

Claims of an invasion of his right to privacy were nonetheless precisely what Oliver Sipple relied upon when he sued the *San Francisco Chronicle*.<sup>31</sup> A California trial judge found a basis in state law for the tort of invasion of privacy and said that the tort applied to the inappropriate disclosure of "private facts."<sup>32</sup> The Court then rejected Sipple's claim because Sipple had failed to prove that the facts revealed had been previously concealed from view.<sup>33</sup> The tort, the court held, did not apply to "information about the plaintiff which is already public" or that "relates to matters which the plaintiff leaves open to the public eye."<sup>34</sup> The *Chronicle*, the court found, had merely reported behavior that was already known to hundreds of others.

Sipple and other gay people who speak about privacy may nonetheless be using the word in another sense. Sipple did not deny that he had revealed his sexuality to many people, but he seemed to assert a permanent right to control information about what additional people would learn. These claims for controlling information about one's sexuality sound similar to claims for controlling access to one's own body. Just as a woman who has intercourse with many men never loses the right to determine with whom she has sex in the future, so a lesbian, the argument runs, may reveal her sexuality to whomever she

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31. See *Sipple v. Chronicle Publ'g Co.*, 201 Cal. Rptr. 665, 667 (Cal. Ct. App. 1984); *supra* notes 5–10 and accompanying text.

32. For a formulation of the tort as accepted in several states, see RESTATEMENT (SECOND) OF TORTS § 652(A) (1989); Harry Kalven, Jr., *Privacy in Tort Law—Were Warren and Brandeis Wrong?*, LAW & CONTEMP. PROBS. 326 (1966).

33. For two recent articles arguing that there should be relief for outing in tort actions based on unjustified intrusion into privacy, see Katheleen Guzman, *About Outing: Public Discourse, Private Lives*, 73 WASH. U.L.Q. 1531, 1583–92 (1995); Ronald F. Wick, *Out of the Closet and Into the Headlines: "Outing" and the Private Facts Tort*, 80 GEO. L.J. 413 (1991). Both Guzman and Wick focus on outings that involve the news media, not outings by private citizens engaged in ordinary conversation.

34. *Sipple*, 201 Cal. Rptr. 201 at 669.

pleases, but never lose her right to determine the additional people who learn of her sexuality. This claim has some rhetorical force, but information is distinguishable from our bodies. What we tell people or show people commonly becomes an appropriate subject of public discourse unless we negotiate an agreement of secrecy. Heterosexual people care about protecting their bodies, but do not assume that their heterosexuality is information that others cannot discuss without their consent.

Still, even if neither of these uses of the notion of privacy is persuasive in defending the convention of silence, it does not follow that the convention is unsupportable. "Privacy," loosely used, may well encode other concerns that are entitled to weight. Among the many reasons advanced for the practice of following the convention, two reasons—closely related to each other and indirectly related to the goals behind recognizing interests of privacy—strike us as compelling across a broad range of cases. First, the convention attempts to protect closeted gay men and lesbians from the harms that other people inflict on people known to be gay or lesbian, and second, it attempts to permit each person to choose when to come out.

#### *A. Protecting Gay People From Harm*

Claudia Card, a lesbian and philosopher, disagrees with Mohr's contention that the convention is indefensible, and accepts the convention on the ground that it helps shield gay people from the harms that other people impose.<sup>35</sup> She acknowledges that the convention is bleak and sinister, "when a requirement of secrecy would be justified only were the secret shameful, compliance conveys that the secret *is* shameful, however unintended the message."<sup>36</sup> But unlike Mohr, she reluctantly defends the convention because of the numerous harms that women and men still suffer when known to be lesbian or gay. Susan Becker, a lesbian and law professor, also defends the convention, devoting nearly the first half of a seventy-page article on the immorality of outing to the harms that lesbians and gay men continue to suffer when their sexuality becomes known.<sup>37</sup> We agree with Card and Becker: all gay men and lesbians know that in many places and in

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35. See Card, *supra* note 17, at 206.

36. Card, *supra* note 17, at 200.

37. See Becker, *supra* note 26, at 166–97.

many contexts in our society to be known as a homosexual is at least a disqualification and sometimes leads to violence. Even today, twenty years after Sipple's act of heroism, many young people who come out are rejected by their parents. When revealed, some gay people lose their jobs, their housing, or even the custody of their children. Many are beaten up and some lose their lives. Even gay people who do not fear specific harms themselves may choose not to disclose the homosexuality of other people out of a desire not to be the one who puts those other people in harm's way. They may gladly risk whatever costs come with being out, but hesitate to impose the same risk on others.

Mohr argues that a fear that closeted gays and lesbians might be subject to various harms is not a sound reason for refusing to out them.<sup>38</sup> In his view, the person morally culpable for any harms that occur is not the person who speaks the truth but the person who uses the information to inflict harm. Thus, though he disapproves of revealing a person's sexuality for unseemly reasons (for example, to get even for some slight), he writes that he would not shrink from being honest about the sexuality of a lesbian who was involved in a custody dispute over her child, even if he knew that to do so would cost her custody; the wrongdoer would be the judge who inappropriately deemed her unfit.<sup>39</sup> In his view, the mother's assertion of an interest in parenting "that is dependent on upholding or giving effective voice to the prejudices of others . . . will not count toward an exception to outing."<sup>40</sup>

Mohr's position is monstrous. Losing custody is both a grave and an all-too-common consequence of being identified as lesbian. The mother (and her child) may have no formal "right" to our silence, but it does not follow that we are behaving decently in exposing them to the viciousness of others. Indeed, it seems that allowing the parent and child to be separated solely because of the mother's lesbianism gives a highly effective voice to a force that degrades gay men and lesbians.

Mohr can come to his position on outing only by viewing gay and lesbian persons as independent actors solely concerned with their

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38. See MOHR, *supra* note 20, at 34.

39. See MOHR, *supra* note 20, at 34. Mohr concedes that it would be wrong to reveal a person's homosexuality if the government were engaged in a pogrom of killing lesbians or gay men, but then offers no explanation for the difference in principle in revealing the gay or lesbian parent who faces wrongfully losing his or her child. See MOHR, *supra* note 20, at 34.

40. MOHR, *supra* note 20, at 34.

and a recognition of a common fate—not a fate of his choosing, to be sure, but a fate dictated by the culture in which we live. And it is this common fate that should make us—and Mohr—more sympathetic to the harms that she may face, whether or not she has any “right” to his protection.

*B. Permitting Gay Persons to Choose When to Come Out*

A second reason to follow the convention of silence is to allow people to control the timing of their coming out. The convention permits lesbians and gay men to decide when they are ready to face the costs that are likely to follow from being identified as gay and allows them to experience the satisfaction of taking the step. Hunter Madsen argues that “[w]e must cherish the process of coming out. No gay person should deny another the incomparable, irreplaceable, once-in-a-lifetime opportunity to come out of the closet under his or her own steam, as the fruit of deep personal reflection, courage and conviction.”<sup>41</sup> Madsen makes coming out a little more thrilling than most of us found it. Still, many men and women report great satisfaction in having made and acted upon the choice to come out. A recent story in the University of Maine alumni magazine offers an everyday example of the essential soundness of Madsen’s point. An undergraduate at the university, who was a member of ROTC, acknowledged to himself that he was gay and slowly made himself known to a few other gay students. Ultimately, he informed his commanding officer and now says of himself “Today I’m free. . . . It’s a wonderful feeling. No more dark secrets.”<sup>42</sup> On his way to making that statement, he relied on what he called a “code of silence” in the gay community: “Everyone knew I was in ROTC and that I was struggling to come to grips with

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41. Hunter Madsen, *Tattle Tale Traps*, *OUTWEEK*, May 16, 1990, reprinted in GROSS, *supra* note 3, at 237. Similarly, Vito Russo has argued that “the act of coming out is a personal political act, [and] it loses its value unless you know why you’re doing it. You have to have the courage to do it on your own; otherwise, what does it mean?” quoted in Stuart Byron, *Naming Names*, *ADVOCATE*, Apr. 24, 1990, at 37, reprinted in GROSS, *supra* note 3, at 233. See also David Tuller, *Uproar over Gays Booting Others Out of the Closet*, *SAN FRANCISCO CHRON.*, March 12, 1990 (quoting Urvashi Vaid, then Executive Director of the National Gay and Lesbian Task Force), reprinted in GROSS, *supra* note 3, at 220.

42. *Yes Sir: I’m Gay*, *MAINE*, Fall 1992, at 10, 11.



dark secrets."<sup>42</sup> On his way to making that statement, he relied on what he called a "code of silence" in the gay community: "Everyone knew I was in ROTC and that I was struggling to come to grips with my sexuality, so they just supported me and were quiet, which was what I needed."<sup>43</sup>

Not everyone benefits from being left to choose her own time for coming out. Occasionally, people are grateful for having been involuntarily outed, believing that they were better off than if left to come out on their own.<sup>44</sup> But most gay people are probably better off for taking the step on their own, feeling a new measure of self-respect from the experience of having been the ones who told their parents, friends, and coworkers. They also get the opportunity to characterize their sexuality as they wish—as bisexual, for example, if that is how they view themselves.<sup>45</sup>

Thus, on balance, we believe Mohr is wrong. He believes that the convention must be abandoned to prevent the loss of dignity that ensues from being forced to keep silent or lie. But a loss of dignity befalls those of us who keep silent for others only when we do so out of acceptance of our own worthlessness. If we are keeping silent to spare others from harm or to let them decide to come out on their own timetable, then our dignity is not lost; rather, our altruism is especially morally worthy. Indeed, it is Mohr who risks lacking dignity if he uses a third person for his own end of shoring up his sense of worth.<sup>46</sup>

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42. *Yes Sir: I'm Gay*, MAINE, Fall 1992, at 10, 11.

43. *Yes Sir: I'm Gay*, *supra* note 42, at 10, 11.

44. In his book, Mohr gives the single extended example of Congressman Gerry Studds of Massachusetts. Studds, he relates, was outed under deeply embarrassing circumstances, when it was revealed that he had had sex a decade earlier with a young man who was working as a page in the House of Representatives. Studds said after being outed, however, that he felt "[b]etter than I've ever felt in my life." See MOHR, *supra* note 20, at 41–43. We too know from our own experience of a few others outed in adverse circumstances who quickly came to see it as a blessing, but, like Mohr, we are white, male, and comparatively privileged. Mohr never acknowledges that the dignity of others may be more fragile and harder to resuscitate than that of Gerry Studds.

45. See Card, *supra* note 17, at 211.

46. His notion of personal dignity seems to draw on Kantian metaphysics. Yet Kant believed that one must always treat others as an "end" in themselves not as a "means" for our own ends. See generally IMMANUEL KANT, *GROUNDING FOR THE METAPHYSICS OF MORALS* (3d ed., 1993).

## IV. THE FUTURE OF THE CONVENTION

In most discussions about outing, people take one of two positions. Some people believe outing is always justified as a way of "living in the truth." Others believe that outing is never justified, or that it is justified only when the outed person has caused affirmative harms to other gays. We hope that this essay has demonstrated the high costs of both these positions. Both telling lies and speaking truths can cause harm. Are there any middle grounds that might serve as alternatives?

Two possibilities occur to us. First, a convention of silence would be retained but would be applied in a somewhat narrower range of cases than it is currently. As we have reported above, we are already seeing an erosion of the convention today in communities in which gay men and lesbians have supportive and discreet straight friends they feel comfortable talking to about closeted acquaintances. A further erosion might be more dramatic, leading to disclosures to straight people not certain to be supportive.

We have argued that protective silence is justified for two reasons only: in order to protect lesbians and gay men from significant harms and in order to give them ample time to come out. If other gay men and lesbians come to accept these purposes, then they might in the future cease lying on behalf of persons who fit into neither of these categories. They might, that is, cease to lie on behalf of the privileged gay men and lesbians (and most of us know some) who are unlikely to suffer any serious harms if they were known to be gay and yet have ceased altogether to consider making their sexuality known to nongay people. They include, for example, the fictional well-heeled men on the "A-list" in Armistead Maupin's *Tales of the City*,<sup>47</sup> who reap the benefits of the gay world that those who are out have worked to create, but who are unwilling to pay even any minor price.<sup>48</sup> For men like them, gay men and lesbians might cease to be silent. On the other hand, for Sipple and the large numbers of closeted persons who might suffer harms or who are struggling with the decision to come out, they would keep silent or lie just as they do today.

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47. ARMISTEAD MAUPIN, *TALES OF THE CITY* (1978).

48. Maupin has written a series of books on life in San Francisco. In some of them, he describes a group of financially secure gay men who socialize together, but keep their sexuality hidden from heterosexuals. *See id.*

This new position is attractive in principle but unworkable in practice. A gay person who is out is rarely in a position to assess the magnitude of harm any particular closeted individual faces or the seriousness of the individual's internal struggle toward coming out. (Indeed, if he knew the closeted person well enough to know the answers to these questions, he would probably consider himself in the position of a friend, bound by other obligations of loyalty not to reveal what the closeted person would not want revealed, even if he thought his friend unjustified in staying in hiding.)

A second possible middle ground is at once more gentle and more forceful. Gay men and lesbians would adhere to the convention, but become more aggressive about urging closeted persons to reveal themselves. They would continue to let the young student at the University of Maine come out slowly to other gay men and lesbians and find his own way to the commander's office. They would let Sipple talk to his family on his own time. They would even keep silent for the A-list men. But they would be more assertive in their conversations with their closeted friends.

Today, two gay persons who are getting to know each other often ask how out the other person is—are you out at work? Out to your straight friends? Out to your parents? These are important conversations, since just asking the questions keeps the issues alive for the hearer. The closeted person when asked today often feels the need to justify why he or she has chosen not to tell her co-workers or her parents.

In the future, as they resist the convention more, and as they feel more self-assured in being out, gay people may have even more of these conversations. More and more often, when people admit that they are not out in some context, other gay people may begin to ask "why not?" Openly gay people may press the closeted to talk about the harms they foresee, for, though many are serious and probable, others once examined may seem less costly than the harms of staying perpetually in hiding. They may confront the closeted people with the costs to the rest of us, as individuals and as members of a community of lying on their behalf.

Such a change in the future may seem modest, but it would rest on a fundamental shift in the relationship of gay people to the convention, a change that we believe is desirable. Today, as we have related, gay people tend to speak of outness and closetedness as if they were purely individual matters: "I'm not going to tell her how out she

has to be," or, alternatively, "No one can tell me how out to be." Tomorrow, gay people may increasingly insist that any individual's outness or closetedness *is* an issue that matters to other gay and lesbian people, at the least because it dictates what they themselves may and may not talk about. Gay people who are out may thus work toward changing the atmosphere of their silence. They may stop thinking and stop conveying that the closeted have a "right" to our silence. They may convey instead that our silence and our lies are acts of charity that flow from sympathy and affection, and that those who are in the closet have responsibilities to those who have been protecting them, and to those who are yet to be born. ✽

