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FOUNDERING ON THE SEAS OF HOPELESSNESS

Mary C. Dunlap*

GAYS/JUSTICE: A STUDY OF ETHICS, SOCIETY, AND LAW. By Richard D. Mohr. New York: Columbia University Press. 1988. Pp. ix, 335. \$30.

I wanted badly to like this book. By itself, the scarcity of excellent, comprehensive scholarship on the subject of sexual orientation and the law made me cheer for *Gays/Justice* to be a major hit. The particular absence of works that bring multidisciplinary perceptiveness to the problems confronting gay, lesbian, and bisexual persons gave me all the more cause to root for a victory here. As a public interest law practitioner and teacher who has become increasingly concerned with "gay rights" cases,¹ I am acutely aware that cases involving sexual minorities are about politics and psychology at least as much as they are about the content of law. That awareness caused me to be especially enthusiastic about a book so openly and generously entitled *Gays/Justice*, whose jacket features a quotation by May Sarton, a brilliant and brave lesbian feminist novelist and poet, who promises that Mohr's work is not only "challenging and timely," but "heroic."

Let us begin with the claim that Professor Mohr's book is "heroic." It is correct that, in his introduction, he identifies himself as a gay person, and dedicates the work to his "lover and husband," Robert Switzer (p. 17). To this extent, I agree that the book *is* heroic. It is hard to be openly gay and to hold a position as a professional or aca-

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1. Since about 1980, I have been a solo practitioner of civil rights law. Before that time, I co-founded Equal Rights Advocates, Inc., in San Francisco, California, a women's rights law firm that is about to celebrate its fifteenth anniversary as a public interest law organization. My career as a practitioner has afforded me several important opportunities to represent gay and lesbian persons and organizations seeking equal justice under the law. Among the best-known of my cases are: *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522 (1987) (upholding USOC's trademark-based claim of right to suppress use of "Gay Olympic Games" by nonprofit corporation seeking to challenge homophobia, and rejecting constitutional claims on basis that U.S. Olympic Committee is not engaged in "state action"); *Hill v. INS*, 714 F.2d 1470 (9th Cir. 1983) (vindicating right of foreign national not to be excluded from U.S. based on homosexuality unless and until medical basis for exclusion is established); *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied*, 452 U.S. 905 (1981) (rejecting, *inter alia*, claims of bisexual/lesbian Navy member who contended that her absolute ineligibility for reenlistment, based solely on homosexuality, violated her privacy and liberty rights). My other career, as a teacher of civil rights law since the early 1970s, currently includes teaching courses concerning sexual orientation and the law at Golden Gate University (1984-1988) and Stanford University (1988-1989) law schools.

demic person in a nation whose highest court, at least by some readings of *Bowers v. Hardwick*,² has branded each and all of us who are gay, lesbian, or bisexual as criminals. The Court in *Hardwick*, after all, called the claim to privacy for our adult, consensual, and noncommercial sexual lives conducted in physical privacy, "facetious."³ Moreover, people have lost their jobs for doing little or nothing more than what Professor Richard Mohr has done — identifying himself as gay in a context subject to publicity — and such terminations have been upheld in several courts.⁴

Indeed, it is very hard to be openly gay in this nation, regardless of one's occupation and social status. A full litany of the wrongs accompanying gay identification in this legal and social system has been recited elsewhere.⁵ Consider simply the greater likelihood that those of us who are, as well as those who are believed to be, gay/lesbian may be spat upon, struck, harmed, and even killed simply because of the per-

2. 478 U.S. 186 (1986) (upholding Georgia's criminal proscription of all anal-genital and oral-genital contacts as punishable "sodomy," as against challenge by gay man claiming that statute violated his federal constitutional right to privacy).

3. 478 U.S. at 194.

4. See, e.g., *Rowland v. Mad River Local School Dist.*, 730 F.2d 444 (6th Cir. 1984), cert. denied, 470 U.S. 1009 (1985) (overturning jury verdict of sexual orientation discrimination in favor of guidance counselor terminated from employment for "coming out" as "bisexual," declaring that she had failed to prove that heterosexuals would have been treated differently); *Acanfora v. Board of Educ.*, 491 F.2d 498 (4th Cir.), cert. denied, 419 U.S. 836 (1974) (secondary schoolteacher fired for "coming out" as gay on a television program — in the company of his parents — lost appeal, where Court of Appeals held that he was not fired for being gay, but for misrepresentation, consisting of failing to recite on his initial teaching application that he had been a member of the Homophiles of Penn State); *McConnell v. Anderson*, 451 F.2d 193, 196 (8th Cir. 1971), cert. denied, 405 U.S. 1046 (1972) (university librarian denied employment for being openly gay and denied application for marriage license with his male partner was held not to have been deprived of equal protection or other constitutional rights, because the Court of Appeals concluded that by his gay identifying statements he sought "to foist tacit approval of this socially repugnant concept [equal treatment for "homosexuals"] upon his employer . . . an institution of higher learning"). But see, e.g., *National Gay Task Force v. Board of Educ.*, 729 F.2d 1270, 1272 (10th Cir. 1984), affd. per curiam by an equally divided Court, 470 U.S. 903 (1985) (upholding appellate decision invalidating provisions of Oklahoma statute that enabled terminations of employment of any persons found to be "advocating, soliciting, imposing, encouraging or promoting . . . homosexual activity"); *Van Ooteghem v. Gray*, 654 F.2d 304 (5th Cir. 1981), cert. denied, 455 U.S. 909 (1982) (determining that termination of employment of gay public servant for public speaking on homosexuality was unconstitutional deprivation of first amendment rights).

5. Such a litany — which would have to include criminalization of gay/lesbian sex; illegitimation of gay/lesbian families; pathologization of gay/lesbian persons; mistreatment due to AIDS/ARC; discrimination in both military and nonmilitary employment; silencing and trivialization of gay/lesbian speech and association; rejection and harassment by family, church, and state; and active commercial and economic discrimination including that historically inflicted and recently intensified (based on AIDS/ARC discrimination) by the insurance industry — readily can be derived from the briefest perusal of any of several publications, including: *LAVENDER LAW SOURCEBOOK* (National Conference on Lesbian and Gay Legal Issues, Golden Gate University Law School, Nov. 11-13, 1988); *SEXUAL ORIENTATION AND THE LAW* (R. Achtenberg ed. 1985); Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons In the United States*, 30 *HASTINGS L.J.* 799 (1979).

mission afforded to homophobes in this society.⁶ Bigoted violence is on the rise, and its victims plainly include those perceived, correctly or incorrectly, to be gay.⁷ In this era, the attribution of heroism to Richard Mohr for his writing from an openly gay vantage point seems somewhat appropriate.

Further justification for the "heroic" appellation of Mohr's work derives, in my opinion, from his effort to follow the challenging ethics of admitting the life experiences that affected his viewpoints and motivated him to write *Gays/Justice*. Writing as a gay person who vocally cherishes freedom and equal justice, who considers himself married to his lover, and who along with his lover has been the victim of anti-gay violence (p. 17), Mohr surely fulfills the moral mandate of contemporary legal scholarship that a writer should "come out" about those aspects of his/her life that most prominently affect the writing itself.⁸ It was constitutional scholar Laurence Tribe who first wrote in 1978 that "the morality of responsible scholarship points not at all to the classic formula of supposedly value-free detachment and allegedly unbiased description. Instead such morality points to an avowal of the substantive beliefs and commitments that necessarily inform any account of constitutional arguments and conclusions."⁹ I take Professor Tribe's mandate a bit further than he perhaps intended, and believe

6. The "individualized" violence caused by homophobia is perhaps one of its most atrocious forms, but hardly the only one. "Symbolic" violence against gay/lesbian people seems to be happening regularly, as Mohr's work appropriately stresses, especially where it emphasizes the jeopardy to our dignity that results from this systemic sociolegal assault upon us. See pp. 315-37. One of the most powerful sources of this rhetorical violence against us appears to be the United States government, at least during the Reagan era. Former President Reagan's declaration of AIDS Awareness Month at the end of the month when it was to take place (October 1988), for example, not to mention the Reagan administration's AIDS policies generally, signify homophobia in a vivid and highly destructive form. See Dunlap, *AIDS and Discrimination in the United States: Reflections on the Nature of Prejudice in a Virus*, 34 VILL. L. REV. (1989) (forthcoming).

7. Pp. 27-29; see also *Report Says Violent Crimes Against Gays are Increasing*, Wash. Blade, Jan. 15, 1988, at 8, col. 1 (describing National Council of Churches report, which concluded that "violent crimes committed against Gays have increased because of growing national hysteria about the AIDS crisis [and] the rhetoric of anti-Gay activists . . ."); 134 CONG. REC. 523-26 (daily ed. Jan. 25, 1988) (remarks of Sens. Cranston and Kerry in support of the Hate Crimes Statistics Act of 1988, which was passed by the Senate Judiciary Committee but did not reach the full Senate). Senator Paul Simon of Illinois, joined by 29 Senators, introduced a virtually identical bill in the 101st Congress. See 135 CONG. REC. S1563 (daily ed. Feb. 22, 1989).

8. I have made an effort, in this vein, to unify the personal and the political and to advance the cause of liberating legal scholarship from pretenses of neutrality, by means of a long footnote in an article on sexual speech in which I "come out" in some areas that help to explain my value judgments about pornography and related subjects. Dunlap, *Sexual Speech and The State: Putting Pornography in Its Place*, 17 GATED GATE U. L. REV. 359, 363 n.10 (1987).

9. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* iv (1978). Professor Tribe was lead counsel for Michael Hardwick in *Bowers v. Hardwick*. In his petition for rehearing in *Hardwick*, Professor Tribe wrote what I consider to be the most memorable and powerful one-sentence statement of Hardwick's argument: "[T]he question before the Court is not what Respondent Michael Hardwick was doing in the privacy of his own bedroom, but what the State of Georgia was doing there." Petition for Rehg. at 10, *Hardwick*, July 24, 1986.

that little scholarship (legal or otherwise) in which the scholar's beliefs and experiences are hidden from view by vocabularies and customs of depersonalization is of lasting usefulness or value. To the extent that such beliefs and expertise are sublimated they are likely to muddle the contents and conclusions of the work. From this perspective, what is most heroic about Mohr's openness in identifying his work as stemming from his own experience as a gay person is his willingness to take the risk that some in the academic and professional circles reading *Gays/Justice* will rush to condemn Mohr's work as merely personal or severely biased. Unlike those who continue to play academic hide-and-seek behind walls of "neutral principles" and third-person declarations, Richard Mohr is bravely "out" in *Gays/Justice*.

Unfortunately, the heroism of Mohr's openness about his experiences ends there, in the introduction of his book. Mohr has confused the power of personal honesty as a matter of academic ethics with the force of idiosyncrasy and quirkiness. While the first has the capacity to change our lives, the second can prove alienating, if not downright distracting, to a reading public. Mohr's frequent assertions of his experience degenerate into moral mandates and political prescriptions; where the candor ends, sadly, the egoism begins, continuing untempered by human dialogues that might have given this book depth and strength beyond one person's unchallenged ideas.

The book itself is full of poorly justified value judgments, cloaked in assertions of logical rectitude and philosophical purity. Underneath is an outraged and lonely Richard Mohr, ranting in stubborn and sometimes arrogant "isolation" (p. 16) against the entire world that he set out to reason with and perhaps to change. While I empathize with the gay person Richard Mohr, many of whose feelings of rage, disgust, and loneliness I share as they pulsate throughout the book, I am disappointed and irritated by the writer Richard Mohr who has allowed himself to become so victimized by and so lost in his subject. And I am utterly unpersuaded by the scholar Richard Mohr, whose categorical pronouncements about controversial subjects are not so much "heroic" as pompous, grandiose, and, academically speaking, reckless.

The honesty of Mohr's introduction and experiential illustrations do not come close to healing the gaping flaws in *Gays/Justice*. My desire to celebrate this book as a work long overdue in an area in dire need of philosophical scrutiny has been flattened, in the end, by the book itself.

The book's cynical, pessimistic tone is exacerbated by Mohr's failure to stay current with the progress of the gay/lesbian rights movement. Refusing to recognize what gains have been made, Mohr dwells on and even overstates setbacks in order to maintain his dingy perspective on future possibilities.

Mohr declares that "the stereotype of gays as sick continues apace

in the mind of America" (p. 23). Although here, as in countless other places in *Gays/Justice*, Mohr fails to provide so much as a footnote to support his generalization, apparent support for this particular generalization could be divined from the recent publication of studies on AIDS indicating that "[a] substantial minority of Americans see AIDS as a deserved punishment for offensive or immoral behavior and show signs of intolerance and outright hostility to those with the disease."¹⁰ This generalization and many others in Mohr's work paint the entire population of the United States as bigots; nowhere are such statements softened by any indication that the gay and lesbian rights movement has achieved the slightest degree of success in diminishing the image of gay people as diseased. Asserting that science cannot do much to alter stereotypes, Mohr ignores the potent force both of the American Psychiatric Association's 1974 determination that homosexuality is neither a mental disorder nor a condition of sexual abnormality,¹¹ and of activists' efforts to educate Americans about AIDS and the gay and lesbian community.¹² Set on convincing the reader of the devastation of anti-gay bigotry, Mohr effaces all efforts that have come before and alongside him to reduce, resist, and overcome that bigotry. What a mistake such narrow and pessimistic accounting of this part of the civil rights movement is; to read Mohr's account, one would readily conclude that the last twenty years of work in the movement for gay and lesbian rights have been nothing but a gigantic waste.

Stylistically, the work suffers from a similar arrogance. Mohr's metaphors and analogies often seem glib and sloppy. For example, he compares anti-gay discrimination, and queerbashing in particular, to rape and to lynching (pp. 27-28). This is a powerful comparison, and might have proved to be an effective one had Mohr paid even the

10. Blendon & Donelan, *Discrimination Against People with AIDS*, 319 *NEW ENG. J. MED.* 1022, 1023 (1988).

11. Anyone who seriously doubts the force of that move by the APA should read the decisions of both the Surgeon General of the United States and of Robert P. Aguilar, U.S. District Judge for the Northern District of California, whose determinations that gay and lesbian people must not summarily be excluded from immigration to the U.S. are based in significant part on the medical evidence that homosexuality is not a mental disorder and on a memorandum by Surgeon General Julius B. Richmond to the Public Health Service. See *Lesbian/Gay Freedom Day Comm. v. INS*, 541 F. Supp. 569, *affd. in relevant part sub nom. Hill v. INS*, 714 F.2d 1470 (9th Cir. 1983).

12. It is hard to believe, for example, that Mohr can write of the AIDS crisis and not take any significant note of the Names Project's AIDS Memorial Quilt, a nationwide grassroots project of more than 15,000 patchwork pieces bringing together art, craft, political statements, and personal mementos of people who have lost their lives to AIDS. A recent letter to *The Washington Blade* states:

The Quilt is a melting pot. It brings together Gay and straight, young and old, parent and child, weak and strong.

But most of all, the Quilt is a call to arms. . . . Never before being an activist in Gay issues, I am now confronted with the challenge of doing something for others, and for myself.

Letter to the Editor, *Wash. Blade*, Oct. 21, 1988, at 35.

slightest attention to the volume of literature on the subjects to which he is comparing anti-gay violence. Instead, Mohr plays the misanthrope throughout the work, casting aside the parallel experiences of lesbians, black persons, and women, with harsh and conclusory pronouncements about the differences of their experiences from his gay male focus. For example, Mohr asserts in his introduction that

[o]ne of the most remarkable features of the black civil rights movement . . . was that its legal successes were achieved without anything remotely resembling an articulated, ramified pattern of reason and argument, let alone a political theory. . . . [T]heory and argument were not needed. There was no articulated, substantive, argumentative opposition to that movement, and religious sentiment and appeal filled in where words failed or were lacking altogether. [p. 2]

This statement almost knocked the wind out of me.¹³ Could this obviously well-read and highly educated man possibly be so ignorant of the history of the legal aspects of black civil rights development that he is unaware of the decades that black scholars, writers, and teachers spent assembling the theory of equal justice — the theory that eventually gained persuasive power through the efforts of then-advocate Thurgood Marshall and others in *Brown v. Board of Education*¹⁴ and other cases?¹⁵ Not even gay men escape Mohr's predilection for stereotypes; at one point he declares that "safe-sex is poor sex" and that "[s]ex is the core of gay male culture" (p. 232). As insulted as I am that Mohr is so chauvinistic toward lesbians,¹⁶ I suspect I would be even more insulted if I were a gay man on the target end of such aggressively homophobic generalities as "[g]ay male culture is largely a system of highly efficient sexual delivery systems" (p. 232); "gay turf consists of sex arcades" (p. 233); and, "[s]elf-respect, such as it is, for gays in our culture is the product of a robust sex life" (p. 233).

Richard Mohr's view of gay culture is the view of a person isolated from change and refusing to believe that it happens. Believing that most people are not up to reforming the system (p. 27) and shielded by the repeated use of "they" while talking of a group of which he is

13. Mohr clings to this position to the bitter end of his book, when he asserts that blacks had no "ramified, articulate system of political principles" in securing the gains of the civil rights movement to date. P. 329.

14. 347 U.S. 483 (1954) (*Brown I*) and 349 U.S. 294 (1955) (*Brown II*).

15. One of the best and most detailed accounts of what actually was the development of an "articulated, ramified pattern of reason and argument" by scholars, attorneys, and others supporting the rights of black Americans is contained in R. KLUGER, *SIMPLE JUSTICE* (1976); see also J. WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954-1965* (1987); *Eyes on the Prize* (PBS television series, 1987).

16. Richard Mohr's praise of me as "refreshingly brash" and "emanating dykeness like a supernova throwing off neutrinos," p. 323, does not alter my sense that his treatment of lesbians generally in *Gays/Justice* is chauvinistic. The numerous battles fought by and in behalf of lesbian and bisexual women are generally overlooked by Mohr, who keeps busy attributing us with separatist views, p. 15, or taking potshots at feminism ("Shallow feminism, paired with legal formalism, is for gays a loaded gun left unattended." P. 327).

himself a declared member, Mohr seems to have missed all or virtually all of the triumphal moments shared by gays and lesbians in the past two decades. Nowhere in this very long book is there a description of the thousands of proud and open gay and lesbian and pro-gay people striding into a San Francisco stadium for the "Gay Olympics" of 1982 and 1986; instead, Mohr invokes the defeat in the "Gay Olympics" case as another example of the hopelessness of the cause in our courts — after labeling the case as "completely trivial" and "wholly symbolic" (p. 316). Nowhere does Mohr so much as mention the activism of families of gay persons, despite the longevity and visibility of groups such as PFLAG (Parents and Friends of Lesbians and Gays) nor does he give any credence to parents such as Robert Bernstein, who proudly spoke of his lesbian daughter in *The New York Times*:

My daughter . . . is the light of my life. . . . It is estimated that there are upward of 25 million gay people, who by definition started out with some 50 million parents. Sooner or later, a large portion of those parents will want to enlist in the crusade for their children's dignity.¹⁷

Nowhere does he describe the October 1987 March on Washington in which 500,000 people participated in a protest for gay and lesbian rights. Mohr treats that watershed event with the same cavalier silence as did the straight media he repeatedly criticizes. Ignoring all these hopeful signs, Mohr opines that "[f]or gay politics, one chief consequence of the centrality of the coming out experience to gay existence is that nongay acquaintances, other dispossessed groups, friends, and even — or especially — blood families are not going to be very much help to the gay movement" (p. 327).

Mohr's commitment to presenting the dismal side of the panorama of *Gays/Justice* causes him not only to disguise or omit our successes, but to overstate our losses. Even though he is expressly aware of the panel decision in *Watkins v. United States Army*,¹⁸ Mohr erroneously asserts that "[e]very federal circuit court that has been faced with a claim of gay equal protection has summarily rejected it" (p. 318); the fact that the equal protection claim in *Watkins* was sustained is relegated to a footnote (p. 318 n.8). So intent is he on his conclusion that "[t]he courts have simply not been up to the task of justice when it comes to gays" (p. 319) that he fails to cite or discuss most cases where courts have sustained gays' claims of constitutional infringements.¹⁹

The unsupported conclusions that riddle and ultimately ruin *Gays/Justice* stem from the declared anger of a person who claims that gay

17. Bernstein, *My Daughter Is a Lesbian*, N.Y. Times, Feb. 24, 1988, at A27, col. 1.

18. 837 F.2d 1428, *rehg. granted en banc*, 847 F.2d 1362 (9th Cir. 1988); *see infra* note 25.

19. *See, e.g.*, Van Ooteghem v. Gray, 654 F.2d 304 (5th Cir. 1981) (holding that gay public servant was unconstitutionally deprived of first amendment rights when he was fired for speaking publicly on the subject of homosexuality).

people are by themselves (I would say "ourselves" at this point, had Mohr not intentionally written lesbians out of his work from the introduction onward) in having to reason and argue for rights and for justice. In this regard, Mohr is tragically mistaken. Black people and other people of color have had to reason and argue for every inch of progress they have made in this legal system, and have repeatedly experienced irrational, arbitrary responses to their best-reasoned positions. The process of rational argument to preserve and improve civil rights gains for people of color continues.²⁰ While it may be heroic to wear the pink triangle in an environment and an era in which it is a badge of inferiority and an invitation to an attack, ultimately it is only foolish and self-destructive to assume that one's experiences of oppression and discrimination are completely unlike those of other minorities, or that the system one proposes to address is incapable of correcting those injustices.

I grant that it is difficult not to despair of such extreme problems when bigotry is so terrible and so hurtful. But I believe it is a great mistake not to recognize improvements, even little ones. Such sweeping condemnations of society and its institutions make it all the more difficult for those of us who are actively engaged in working for change from within to hold on to our justified and vital sense of progress. When Mohr declares that "police and juries simply discount testimony of gays" (p. 28) without acknowledging the progress that has been made in overcoming the prejudices of at least some who work in law enforcement and litigation, I feel irritated. Mohr ignores that "police and juries" include gay people.²¹ Moreover, Mohr seems to have missed a key forensic rule: Be sure to state the exceptions, lest others rebut you by dwelling upon them.

Mohr gets similarly carried away with his analyses of political and legal history. He mischaracterizes a verdict of not guilty due to mental illness as "*innocent* due to mental illness"²² when seeking to show how people who harm gays get away with it, and misstates the meaning of equal protection (pp. 90-91 n.102). He cites a thirteen-year-old book to support overstatements regarding the problem of employment discrimination against gay people, when the law has developed considerably since (p. 30). He skips over the fact that the late Dan White murdered not only gay leader and San Francisco Supervisor Harvey Milk but progressive Mayor George Moscone as well (p. 29). Here, as at numerous other junctures where Mohr could have taken notice of the victimization of nongay people, he chooses instead

20. In 1988, for example, the U.S. Supreme Court proposed to review the long-standing applicability of § 1981 to private racial discrimination. *Patterson v. McLean Credit Union*, No. 87-107 (U.S. argued, Oct. 12, 1988).

21. In California, there is a formal organization of gay and lesbian law enforcement officers nicknamed "Pigs In Paradise."

22. P. 29 (emphasis added).

to ignore the obvious linkage between support for gay rights and a broader human rights movement. The larger phenomenon of violent attack upon representatives of progressive political activism represented by the twin assassinations of Milk and Moscone suggests possibilities of such a coalition.

Unfortunately, the word "coalition" is anathema to Richard Mohr. He insists that coalitions built to advance gay rights are ineffective and unnecessary, and that the struggles of other oppressed people are "not gays' fights" (p. 329). In what seems a desperate final effort to win this argument, he labels coalition politics a "communist fantasy" (p. 329). While Richard Mohr was busy writing this chapter decrying coalitions, gay and lesbian people worked with one of the broadest-based coalitions of the decade to defeat the Supreme Court nomination of Robert Bork, whose notoriety as anti-gay was at least as complete as his fame for being an opponent of civil rights for people of color and women.²³ Mohr's argument that gays are different from these other groups because "what gays want is simply what everyone else already has — rights and privileges — the acquisition of which does not diminish those of others" (p. 329) is myopic; once again, Mohr needlessly isolates himself. Mohr ought to acknowledge that the cry of the oppressed for freedom *is* heard as a threat by those whose freedom depends on that oppression. Whether he likes it or not, this fact gives real force to coalitions of oppressed people.

All too often in this book, Mohr pretends that other victims of discrimination, such as blacks and women, are better off than gay men. In doing so, Mohr forgets the continuing inequities of our legal and social system, while blunting the important reality that some gay men are also members of other oppressed groups. In his claim that this nation is done with anti-Semitism and anti-Catholicism, and that abortion and incest are no longer considered unnatural (p. 34), Mohr isolates himself and gay men from the rest of the world. Yet in a world where he is the only victim, who will listen to Mohr's cries? His failure to examine carefully the emotional content of his statements sets him so far apart from his audience that his conclusions lack credibility. Mohr is so set on having it worse than anyone else that he

23. The national coalition against the nomination of Robert Bork included many lesbian and gay leaders; I was a co-chair of the Northern California Coalition Against Bork in San Francisco, along with T.J. Anthony, a gay male political activist. We of the NCCAB closely and cooperatively with a wide and diverse array of civil rights community leaders, including Eva Jefferson-Paterson of the Lawyers Committee for Urban Affairs, a black female attorney; Abby Ginzberg, President of the local chapter of the National Lawyers Guild, a Jewish female attorney; and Ed Chen, of ACLU Northern California, an Asian male attorney. These coalitions grew from the recognition of mutual interest in preventing the appointment of a man who had been a vocal, vituperative enemy of every known group seeking its civil rights, from people of color to women to gay and lesbian people and poor people. If it had not been for this "communist fantasy," as Richard Mohr terms such coalitions, there can be little doubt that Bork's nomination would have been confirmed.

misses opportunities to connect with people and events that might give him hope.

In blaming bigotry's triumphs, in part, on the mindlessness of television and radio (p. 3), Mohr not only refuses to see the positive potential of the media in the struggle against heterosexism and homophobia, but ignores the centuries of mindless bigotry preceding these relatively modern inventions. It is this kind of narrow, categorical prescription about what is wrong and what causes anti-gay prejudice that is most disappointing in *Gays/Justice*.

It comes back to this: Richard Mohr is writing from an anti-collegial, isolationist perspective, refusing to recognize the diverse array of allies whose ideas and feelings might mitigate the severity and misanthropy of his own. Decrying the superficiality of others, Mohr barely skims the surface in his purported description of a world rife with bias against gay people. Disturbingly, Mohr himself accepts a definition of gay people based solely on sexuality (p. 22; pp. 232-34), when that same definition is at the heart of at least some bigotry toward gay people.²⁴ If Mohr had claimed to be uttering an unmodulated scream, at least that would have been intellectually as well as emotionally honest. Instead, he undermines his own reasoning at every turn by pretending to be utterly rational about things that are clearly (and justifiably) driving him mad. Raging against this homophobic world in which we

24. In *Watkins v. United States Army*, 837 F.2d 1428, *rehg. granted en banc*, 847 F.2d 1362 (9th Cir. 1988), Judges Norris and Canby distinguished the issue of a person's sexual orientation (status) from his/her sexual acts (conduct). The U.S. Army's policies assumed, as did Judge Reinhardt in dissent from the majority's rejection of the military's ban on homosexuals, that we are definable by our sex acts. "Sodomy is an act basic to homosexuality," asserted Judge Reinhardt, who went on to assert that anal and oral sex are the main forms of sexual activity of homosexuals. 837 F.2d at 1455 (Reinhardt, J., dissenting) (citing a single 1978 treatise). As a person who defines herself as a lesbian, I deeply resent the idea that it is my sexual activity per se that renders me one; if I never had sexual contact with another female (and did with males, for that matter), I am quite certain that I would still be a lesbian. My lesbianism has more to do with my perspective than it does with the gender of those with whom I engage in intimate physical contact. See Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 SIGNS 631 (1980). I am a "dyke" because that is the name men have given women who choose not to conform to the will of men. This is not a sexual act in the sense that either Judge Reinhardt or Richard Mohr means; by many definitions, it is simply freedom of speech. I am the "lesbian" of Sapphic poetry, whether or not I am fortunate enough to act out one of the poems. So when Richard Mohr declares that gay people do not choose to, but "simply find themselves having homosexual encounters" (p. 40), he does not describe my personal experience of struggle toward a lesbian consciousness. My sexual orientation is, to this degree, chosen; it goes much deeper than my sexual longings or experiences, to an essential part of myself which is woman-centered and woman-oriented in a way that I elect to call and permit others to call "lesbian" or "dyke." Perhaps it is this sort of independent self-definition that causes Richard Mohr to omit lesbians entirely from his definition of gay people, which he bases wholly and explicitly on Kinsey's "homosexual" headcounting. Pp. 21-22. Mohr's proviso, that he has determined to speak more about gay men than lesbians because he knows more about gay men, and that he has not attempted to address feminist lesbian issues where they differ from gay men's (pp. 15-16), is utterly irresponsible, as a philosophical and political matter. When Mohr defines "gay" to include only men, he reinforces the sexist treatment of lesbians within this society, and within the gay rights movement, as lesser if not invisible. Mohr's claim to speak less of lesbians because he knows less about us may be true, but proclaiming his ignorance does not excuse it.

find ourselves, Mohr's own biases so cloud his vision that it is hard to understand what he is seeing, past the rage itself. Mohr flagellates emotion even as he writes from it, as lawyers and philosophers alike have done for centuries.²⁵ In the end, his thoughts and his emotions left me unpersuaded.

Mohr repeatedly insists that people who are not gay cannot understand. If that is true, what is the point of his 357-page book? At the same time that he cries out for recognition of the need for gay dignity, he denies his audience its ability to respect his position. More painfully than most things I have read, *Gays/Justice* reminds me of a lesson I have learned over and over in my involvement with the human rights movement: s/he who would root out bigotry must, as a practical and ethical matter, start, continue, and never finish with her/himself.²⁶

25. Plato's *Republic*, for example, is loaded with passages about the inferiority of women that were no more rational in ancient Greece than they are today, yet *The Republic* is esteemed as a model of classical reasoning.

26. This year I will celebrate four years of sobriety and recovery from codependence, and one year as a member of the Al-Anon 12-Step Program. Every week we recite the AA Prayer: "[God/goddess] grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference." If Richard Mohr is serious in his view that the legal system and the social system are irremediably set upon destroying us, and if he is equally certain of the faithlessness and ignorance of the rest of us gay people (pp. 1-2, 328-37), then he must focus on himself as the only "thing" he can "change." Both my personal and my professional experience tell me that that change in focus may prove more valuable to Mohr's theoretical quest than all his remonstrations about what others have failed to see, do, or believe.