

NORMAL AND NORMALLER

Beyond Gay Marriage

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There are no societies which do not regulate sex, and thus all societies create the hope of escaping from such regulations.

—*Michel Foucault*

To evaluate the policy question of gay marriage is, implicitly or explicitly, to make judgments about what sex is, whether states can or should regulate it, and how the intimate life of pleasure and affect does or does not matter publicly. Deciding whether gay marriage is a good thing quickly involves questions that are at once practical and theoretical: Do gay people yearn to be normal in a way that might be satisfied by marriage? Or is the idea of normal gays oxymoronic? If so, is it because the repetition or performativity of norms renders them unstable, as some queer theory suggests? Or is it because there are historical contradictions among sexual norms that cannot be resolved by broader access to matrimony? Is sex normal? Is it normal to want to be normal? Or is there a deepening rift between those who in some important sense aspire to be normal and those who either aspire otherwise or have no choice—that is, between normal gays and queers? Does an institution like marriage change the people to whom it is extended, or is it that the entry of gay people into marriage would change the meaning of marriage? These world-historical judgments are the often unrecognized subtext of queer theory and are misrecognized when taken to be simply theoretical.¹ Let us suppose, then, that the significance of marriage for queers might still be posed as a question. At the very least, tracking the responses of activists and intellectuals to the issue of marriage can teach us a lot about how little we understand the dynamics of a political moment.

It must be admitted from the outset that there is something unfashionable,

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and perhaps untimely, about any questioning of marriage as a goal in gay politics. One is apt to feel like the unmannerly wedding guest, gossiping about divorce at the rehearsal dinner. At this point the only people arguing against gay marriage, it seems, are those homophobic dinosaurs—like Senator Jesse Helms and feminist philosopher Jean Bethke Elshtain—who still think that marriage is about procreation or that same-sex marriage somehow threatens to “tear apart America’s moral fabric.”² Why join them? In such a context, what purpose can be served by a theoretical discussion of gay marriage? None at all, says Evan Wolfson, director of the Marriage Project at the Lambda Legal Defense and Education Fund. Wolfson argues that in the wake of *Baehr v. Lewin* we should “end, or at least suspend, the intra-community debate over whether to seek marriage. The ship has sailed.”³ He cites the need for a united front against the wave of homophobic state and national initiatives designed to wed marriage indissolubly to heterosexuality. As he also points out, there is ample room for foolishness or hubris when intellectuals ask, at this date, whether or not gay marriage is a worthy political cause. The decision is no longer up to us. The legal system of the United States has its own momentum. The courts do not much care what queer theorists think.

There is a kernel of truth in this. One has only to pop the question—for or against gay marriage?—to find oneself at once irrelevant to a process that is no longer a debate, blinded by the urgent temporality of the headline, and suckered into a phony plebiscite. But again, it may be the courts, not academic theory, that will prove to have the narrow view. One of the advantages of an intellectual public—like the readership of this essay—is that it can stray beyond the preoccupations of the courts and media of the United States. In the context that Wolfson takes for granted, dissent is indeed almost unheard. Since the 1993 March on Washington, marriage has come to dominate the political imagination of the national gay movement in the United States. To read the pages of the *Advocate* or *Out* is to receive the impression that gay people hardly care about anything else, other than entertainment. I have no doubt that a large constituency has formed around this belief. But the commitment is not universal, to put it mildly. Gay men and lesbians on the street are just as likely to be made slightly sick by the topic or to shrug it off as yet another example of that weird foreign language that people speak in the media world of politics, policy, and punditry.

No one is more surprised by the current language of gay politics than many veterans of earlier forms of gay activism, to whom marriage seems both less urgent and less agreed-on than such items as HIV and health care, AIDS prevention, the repeal of sodomy laws, antigay violence, job discrimination, immigration, media coverage, military antigay policy, sex inequality, and the saturation of everyday life

with heterosexual privilege. Before the election of Bill Clinton in 1992, marriage was scarcely a blip on the horizon of queer politics; Paula Ettelbrick and Tom Stoddard's debate on the issue in 1989 seemed simply theoretical.⁴ Many gay activists abroad are equally baffled by the focus on marriage in the United States. To them, at least, it is hardly up to Americans to "suspend . . . the intra-community debate." Given the immense array of options that people have tried or discussed—from common-law marriage and domestic partnership, to the disentangling of health and other benefits from matrimony, to French-style legal concubinage—it may well strike many as odd that the question has suddenly been reduced to "same-sex marriage, pro and con."

The time is ripe to reconsider the issue. The campaign for marriage, never a broad-based movement among gay and lesbian activists, depended for its success on the lawyers and the courts. But that campaign has come up dry. After initial success with the Supreme Court of Hawaii in *Baehr v. Lewin*, advocates of same-sex marriage had reason to be optimistic. The tactic of legal advocacy had apparently worked. But outside the courtroom, the homophobic backlash was building. First, the so-called Defense of Marriage Act was passed by Congress and signed by President Clinton. Then, in November 1998, a statewide referendum in Hawaii neutralized the *Baehr* decision by allowing the legislature to amend the constitution so as to restrict marriage to heterosexual couples. A similar measure passed in Alaska, and another is on the ballot for California in 2000. Moreover, the Hawaii vote was not even close. Though advocates of same-sex marriage had predicted an even battle, the final vote was nearly 70 percent to 30.

Are these merely stumbles in the progress of history? States are codifying restrictions on marriage that had merely been tacit custom before, making new obstacles to marriage reform for the future. Powerful antigay forces have been mobilized around the issue. If reform of marriage was the goal, the tactics of legal advocacy have not worked; in some ways they have made the problem worse. And if a reconsideration of the tactics seems to have been forced by this turn of events, it is also reasonable to reconsider the long-term strategic goal, since debate over the ultimate goal of reform was cut short by the turn to legal advocacy in the first place. "The ship has sailed," Wolfson confidently declared; but now that the ship has run aground, we might ask whether it was headed in the right direction.

How did the shift in an American national agenda come about? What will its consequences be? For whom would marriage be a victory? What would the value of gay marriage be, for example, to sexual dissidents who are not marrying couples? It is possible that the worst consequences would fall on those who did not recognize the question of gay marriage as an "intra-community debate" at all

but considered it something foisted on them by fundamentally alien organizations. (It is no accident that the organizations promoting marriage are defined primarily as advocates for lesbian and gay identity rather than for nonnormative sexual cultures.) Where does the politics of gay marriage lead? What kind of marriage are we talking about, and how might its place in the context of state regulations about sexuality be changed?

Behind the question of gay marriage as it is posed in the United States, these basic questions have not been aired. But they are the questions that count, and addressing them cannot wait for the American courts to settle the marriage issue, not least because the way they are answered will play a large part in determining the meaning and consequences of marriage. Refusing to ask these questions now is a way of inducing massive amnesia about fundamental principles in queer politics. If the campaign for marriage requires wholesale repudiation of queer culture's best insights on intimate relations, sex, and the politics of stigma, then it is doing more harm than marriage could ever be worth.

In 1970, riding a wave of radical enthusiasm after Stonewall, the Reverend Troy Perry officiated a ceremony for two lesbians. Under California law, common-law marriage could be formalized in a church ceremony after a couple had lived together for two years. (The law said nothing about the sexes of the partners.) The two women had lived together for just over two years, so they demanded (unsuccessfully) that California recognize theirs as an established common-law marriage. The same year, a gay male couple in Minnesota made national headlines by applying for a marriage license. One of the men, Jack Baker, wrote a lengthy rationale for what they had done. Baker emphasized that marriage was "used by the legal system as a distribution mechanism for many rights and privileges" and that as long as American culture considered marriage a right, it was necessary to demand it: "When any minority allows itself to be denied a right that is given to others, it is allowing itself to be relegated to a second-rate position."⁵ The mere posing of the issue was a jolt. It made the heterosexuality of marriage visible, to many people, for the first time. It drew attention to the exclusions entailed by marriage, through provisions for inheritance, wrongful death actions, tax rates, and the like, and it advanced a claim of equality that had undeniable appeal. Baker's claims scandalized the straight press, but they sparked animated discussions of theory and strategy within the groups that had organized in the wake of Stonewall.

Despite the strength of Baker's reasons, and despite the potent theatrical appeal of the issue, gay and lesbian groups did not pursue marriage as a central part of their agenda during the next twenty years. Why not? Was it a matter of lesbian resistance derived from the feminist critique of marriage? Were gay men just too

busy snorting poppers at the baths? Was American culture simply “not ready” for gay marriage? These are the stories now told by the advocates of same-sex marriage, who are back in the headlines after more than a quarter century. But we should not discount other explanations. There were cogent reasons that the gay movement for decades refused to take the path on which it is now hell-bent. They lay at the heart of an ethical vision of queer politics that can be summarized as follows:

1. Queer thought both before and after Stonewall centered on the need to resist state regulation of sexuality.

2. It called attention to the mythology by which marriage is idealized.

3. It recognized the diversity of sexual and intimate relations as worthy of respect and protection.

4. Indeed, it cultivated unprecedented kinds of commonality, intimacy, and public life.

5. It resisted any attempt to make the norms of straight culture the standards by which queer life should be measured.

6. It especially resisted the notion that the state should be allowed to grant legitimacy to some kinds of consensual sex but not others or to confer respectability on some people’s sexuality but not others’.

7. It insisted that much of what was taken for morality, respectability, or decorum was, in practice, a way of regulating sexual relations and pleasures.

8. It taught that self-esteem must not be purchased with a disavowal of sex; it must include esteem for one’s sexual relations and pleasures, no matter how despised they may commonly be.

9. It made itself alert to the invidiousness of any institution, like marriage, that is designed both to reward those inside it and to discipline those outside it: adulterers, prostitutes, divorcees, the promiscuous, single people, unwed parents, those below the age of consent—in short, all who are, for the purposes of marriage law, queer.

10. It insisted that any vision of sexual justice begin by considering the unrecognized dignity of these outcasts, the ways of living they represent, and the hierarchies of abjection that make them secondary, invisible, or deviant.

11. It became alert to the danger that the same hierarchies would continue to structure the thought of the gay and lesbian movement itself, whether through “internalized homophobia,” in-group hostility, or simply the heteronormative perspective unconsciously embedded in so much of our thought and perception.

12. It tried to compensate for the tendency of U.S. debates to ignore other societies, on which they nevertheless have an impact.

These insights and principles are so basic that they found expression equally in the work of academic theorists and of untutored activists.⁶ They made up the ethical vision I encountered in the writings of 1970s gay activists when I was coming out; the same vision later served as a basis of the AIDS activist movement. Because of these basic commitments, when gay and lesbian organizations did include the expansion of marriage in their vision of change after Stonewall, they usually contextualized it in more sweeping changes designed to ensure that single people and non-standard households, not just same-sex couples, would benefit from it. In 1972 the National Coalition of Gay Organizations, for example, called for the “repeal of all legislative provisions that restrict the sex or number of persons entering into a marriage unit and [the] extension of legal benefits of marriage to all persons who cohabit regardless of sex or numbers.” The coalition also demanded the “elimination of tax inequities victimizing single persons and same-sex couples.”⁷ It may not have been a focused, detailed reform program, but it showed an insistence that the demands of couples be accompanied by those of the unmarried and of nonstandard households.

Those who now advocate gay marriage have not shown how doing so is consistent with this tradition. They have induced amnesia about it. It is possible, at least in theory, to imagine a politics in which sex-neutral marriage is seen as a step toward the more fundamental goals of sexual justice: not just formal equality before the law, based on a procedural bar to discrimination, but a substantive justice that would target sexual domination, making possible a democratic cultivation of alternative sexualities.⁸ (This kind of question was explicitly ruled out of consideration by the *Baehr* court.)⁹ But the advocates of gay marriage have not made this case.¹⁰ Indeed, many have made the opposite case: pursuing marriage means abandoning the historical principles of the queer movement as antiquated “liberationism.” For writers such as Andrew Sullivan, Gabriel Rotello, Michelangelo Signorile, Jonathan Rauch, and Bruce Bawer, this is part of the appeal of marriage. Others argue, ingenuously or disingenuously, that marriage has nothing to do with these historical commitments; it is not a question of social change or cultural politics at all but a neutral matter on which each individual must decide. This is the official or semiofficial position of the major national gay and lesbian organizations: the National Gay and Lesbian Task Force, the Human Rights Campaign, and Lambda Legal Defense. Either way, the crucial founding insights behind several decades’ worth of gay and lesbian politics are now being forgotten.

For example, Robert M. Baird and Stuart E. Rosenbaum, editors of the reader *Same-Sex Marriage: The Moral and Legal Debate*, clearly have no idea at all why the gay movement has refused to woo marriage. In their introduction they try—briefly—to acknowledge some of the people who are so odd as to oppose it:

“Among some gays, lesbians, and feminists, traditional marriage is integral to the corrupt authoritarian structures of society; it is a suspect institution embodying within itself the patriarchy they see as a cultural enemy of more desirable institutions.”¹¹ Their strained, murky language shows that Baird and Rosenbaum cannot imagine a gay argument against marriage. The sentence, supported only by a vague footnoted reference to Monique Wittig as quoted by someone else, is freighted with obscure logic (“integral to,” “embodying within itself”), abstractions (“structures,” “society,” “patriarchy,” “more desirable institutions”), and ponderous qualifiers (“traditional” marriage, as opposed to marriage; “corrupt” authoritarian structures, as opposed to clean ones; the patriarchy “they see,” poor things; a “cultural” enemy, as opposed to a social or political or legal obstacle). It is a remarkably foggy description to be standing in for the most powerful tradition of thought on marriage to emerge from the several decades of the queer movement. How can a book so uncomprehending purport to represent “the moral and legal debate”?

Andrew Sullivan’s *Same-Sex Marriage, Pro and Con* fares little better.¹² William Eskridge’s *Case for Same-Sex Marriage*, which shows at least a nodding acquaintance with the history of gay and lesbian arguments against marriage, side-steps the most telling ones. Like Baird and Rosenbaum, and Sullivan, Eskridge deals almost exclusively with the brief article that Paula Ettelbrick published in 1989.¹³ But to Ettelbrick’s straightforward claim that “marriage creates a two-tier system that allows the state to regulate relationships,”¹⁴ Eskridge’s best counterargument is that “to the extent that same-sex marriage might embolden some couples to be open, the institution might help all gay men, lesbians, and bisexuals.” He then draws the conclusion that “the greatest beneficiaries” of gay marriage would be “the next generations of homosexual youth,” because they would have more open role models or, as Eskridge quaintly puts it, “a gay authority figure who can provide initial support.”¹⁵ (The paternalistic character of his argument is unmistakable.) For queer youth “the insider-outsider issue would seem almost irrelevant,” writes Eskridge (82), despite the fact that all gay youth would be outsiders to gay marriage; that their minority would be a legally demarcated division between them and other queers precisely because of marriage; that age-of-consent laws, newly legitimated by gay marriage, would restrict not only their marrying but their right to other kinds of sexual relations; that many of those youth, like queer adults, might aspire to a different kind of sexual maturity besides that of the married couple; and that such an alternative would be harder than ever to articulate or legitimate, since marriage would have received the imprimatur of the very movement that had come into being to open up different life horizons for them.

Eskridge is no flake. Recently appointed to a senior position at the Yale

Law School, he is the most prominent out gay voice at Yale and perhaps the most widely respected authority on same-sex marriage. Yet for the most part he simply sets aside the arguments for sexual justice that would either reject or modify marriage. He accounts for their historical power by claiming that the leaders of the gay movement in the 1950s, 1960s, and 1970s were distracted by more pressing issues, or were themselves young, or were simply confused by the swinging ethos of the times.¹⁶ Thus he gives himself permission to repudiate the social vision of queer politics. Worse, he does so in the name of AIDS, adding AIDS activism to his menu of forgetting:

Whatever gravity gay life may have lacked in the disco seventies it acquired in the health crisis of the eighties. What it lost in youth and innocence it gained in dignity. Gay cruising and experimentation . . . gave way to a more lesbian-like interest in commitment. Since 1981 and probably earlier, gays were civilizing themselves. Part of our self-civilization has been an insistence on the right to marry. . . .

. . . The AIDS epidemic that ripped through the eighties not only cast a pall over the sexual freedom of the seventies but, more important, illustrated the value of interpersonal commitment for gay people generally —and not just for safety's sake. To the person with AIDS the value of a committed partner is incalculable. (58, 74)

Never mind that the “disco seventies” might have challenged Eskridge’s prim notion of “gravity” or extended the sense of “dignity” to ways of living that he remains willing to stigmatize. Never mind that the AIDS epidemic hardly represented a loss of “innocence.” Never mind that many lesbians, far from serving as models of homey monogamy, were at that time fighting the feminist sex wars and are even now developing a lesbian culture of experimentation. Never mind that many gay people have developed their own sense of what “civilizing themselves” means or that nonmarital sex and nonmarital intimacies have been crucial parts of their alternatives. Never mind that it was homophobia, not AIDS, that “cast a pall over the sexual freedom of the seventies,” that it was precisely because of their virulent hatred of gay sex that so many straight Americans did nothing about AIDS and still continue to impede its prevention. Never mind that “interpersonal commitment” can be a lousy prophylactic, if that is what Eskridge means by “safety’s sake.” Never mind that the very cultivation of nonstandard intimacies during the “disco seventies” gave gay men social networks with which to support each other and rally in the midst of the crisis. Never mind that the caretaking relationships

developed by people with AIDS have often differed dramatically from those that would be legally recognized under Eskridge's reforms. Never mind that from Eskridge's paragraphs on AIDS one would never suspect that there was such a thing as AIDS activism or that it drew on the resources of the liberation movement to elaborate a strong vision of health care and of noninvidious public recognition of diverse sexualities.¹⁷ AIDS, Eskridge would have us think, was a much-needed sobering lesson. It shut down gay liberation, and not a moment too soon. This revisionist and powerfully homophobic narrative, taken over from the straight media, is indicative of the pattern in Eskridge's book in which the queer critique of sexual normalization and state regulation simply disappears.

Everywhere in the literature supporting gay marriage one sees a similar will to ignorance substituting for engagement with the best of queer politics. At least Sullivan and Eskridge frankly avow their desire to repudiate that history. Worse, in a way, is the apparently benign position that has become dogma in the major national gay organizations and that is fast becoming entrenched as the new common sense. It is best expressed by Kerry Lobel, executive director of the National Gay and Lesbian Task Force: "Marriage is an important personal choice and a basic human right. Whether gay people decide to get married or not, it should be our choice." This line of thinking was established by the late Tom Stoddard, who worked hard to launch both the gay marriage and the military service campaigns. He wrote in 1989 that the fundamental issue "is not the desirability of marriage, but rather the desirability of the *right* to marry."¹⁸ Activists, in Stoddard's view, were obliged to work for as many options as possible for gay people, even if they disliked the sanctioned form of marriage.

A conception of activism as enlarging the life options of gay men and lesbians has a manifest appeal. And it is undeniable that many gays and lesbians want to marry. But this way of thinking says nothing about whether pursuing legal marriage is a good political strategy, about the ethical question of what marrying does, about state regulation, or about the normativity of marriage. Is marrying something you do privately, as a personal choice or as an expression of taste, that has no consequences for those who do not marry? That would be true only if marriage were thought to lack the privileged relation to legitimacy that makes people desire it in the first place, or if the meaning of marriage could be specified without reference to the state. But as long as people marry, the state will regulate the sexual lives of those who do not. It will refuse to recognize the validity of intimate relations—including cohabiting partnerships—between unmarried people or to grant them the same rights as those enjoyed by married couples. It will criminalize our consensual sex. It will stipulate at what age and in what kind of space we

can have sex. It will send the police to harass sex workers and cruisers. It will restrict our access to sexually explicit materials. In the modern era, marriage has become the central legitimating institution by which the state penetrates the sexuality of its subjects; it is the “zone of privacy” outside which sex is unprotected.¹⁹ To speak of marriage as merely one choice among many is at best naive; it might be more accurately called active mystification.

Wolfson, making the same argument as Stoddard, quotes Arnie Kantrowitz as follows: “If it is freely chosen, a marriage license is as fine an option as sexual license. All I ask is the right to choose for myself, but that is exactly the right that society has never granted.”²⁰ Presenting marriage as an unconstrained individual option—a “license” in the same sense as “sexual license”—requires us to forget that it is a social system of both permission and restriction. Kantrowitz’s flip remark is more telling than he or Wolfson realizes, because he has it exactly wrong. A marriage license is the opposite of sexual license. Sexual license is everything the state does not license, and therefore everything the state allows itself to punish or regulate. The gay and lesbian movement was built to challenge this regulatory system. But now we are told, by the leaders of our own organizations in the United States, that marriage is merely a matter of choice or personal taste, a right that some can exercise with no consequences or with only good consequences for others.

This line of thinking is reduced to its greatest absurdity by Mary C. Dunlap, who goes so far as to argue that legal marriage will be necessary to preserve the “value of diversity”: “The most important unresolved question about the value of diversity in this controversy is whether those of us engaged in the debate about lesbian and gay marriage can agree to disagree in our conclusions. If we can, then those who believe that lesbian and gay marriage can be a liberating and valuable step will be free to pursue it, while those unconvinced of its valuable potentials can pursue other avenues.”²¹ In effect, Dunlap is saying that whoever gets state support first, wins. You are free to “pursue other avenues” but, of course, not to blame us if you find yourself stigmatized, abjected, or criminalized. Don’t bother us with talk about social justice for the unmarried, because that would deprive married couples of their right to diversity.

A more honest argument for gay marriage is made by those who know very well that marriage has consequences beyond oneself. Jonathan Rauch, for instance, has no truck with the illusion of choice or innocent diversity: “If marriage is to work, it cannot be merely a ‘lifestyle option.’ It must be privileged. That is, it must be understood to be better, on average, than other ways of living. Not mandatory, not good where everything else is bad, but better: a general norm,

rather than a personal taste.”²² Similarly, Gabriel Rotello argues that gay marriage would be a system of rewards and punishments designed to steer gay men into monogamy and away from sex with other partners: “Marriage would provide status to those who married and implicitly penalize those who did not.” Rotello frames this argument in a behavioristic and economistic model that explicitly mimes the language of ecology: “In a culture where unrestrained multipartnerism has produced ecological catastrophe, precisely what it needed is a culture in which people feel socially supported as gay men to settle down with partners for significant periods of time.”²³

I will leave aside Rotello’s specious arguments about AIDS, such as his claim that “multipartnerism,” not HIV, “produced” catastrophe. I have elsewhere argued that his version of AIDS prevention targets public sex rather than HIV.²⁴ Rotello at least acknowledges the normalizing intent of his argument about marriage. Most gay advocates of marriage, he notes, are “careful not to make the case for marriage, but simply for the *right* to marriage. This is undoubtedly good politics, since many if not most of the major gay and lesbian organizations that have signed on to the fight for same-sex marriage would instantly sign off at any suggestion that they were actually encouraging gay men and lesbians to marry.”²⁵

Sullivan, Rauch, and Rotello hold contradictory beliefs: on one hand, all gay people are normal or want to be, whether they know it or not, and promarriage politics therefore serves their interests; on the other hand, one of the principal arguments for gay marriage is that it would alter, indeed normalize, the “behavior” and self-understanding of queers.²⁶ Again Rauch is more honest than most: “If gay marriage is recognized, single gay people over a certain age should not be surprised when they are disapproved or pitied. That is a vital part of what makes marriage work. It’s stigma as social policy. . . . Heterosexual society would rightly feel betrayed if, after legalization, homosexuals treated marriage as a minority taste rather than as a core institution of life. It is not enough, I think, for gay people to say we want the right to marry. If we do not use it, shame on us.”²⁷ Likewise, Eskridge at times pretends that marriage would be a noninvidious recognition of gay lives, but his book’s subtitle, *From Sexual Liberty to Civilized Commitment*, reveals that it would be a state-sanctioned program for normalizing gay sexuality. As one reader notes, Eskridge’s title bespeaks “the puritanical impulse to make bachelorhood equivalent to moral lassitude, where all sexual expression outside wedlock is morally tainted.”²⁸ When leading gay legal theorists dismiss gay sexuality as mere liberty, uncivilized and uncommitted, it is no wonder that so many gay men and lesbians feel either indifferent to or assaulted by this campaign allegedly waged on their behalf.

But Eskridge and others like him are not content to pass private moral judgment on unmarried queers. They see marriage as an engine for social change and the state as the proper instrument of moral judgment. These deep assumptions about the social welfare and the state's role are almost never challenged. Even liberal writers, such as the editors of the *New York Times*, typically endorse the idea that the state's business is "to foster stable, long-term" coupling.²⁹ But this kind of social engineering is questionable. It brings the instrumental reason of administration to bear on the realm of pleasures and intimate relations. It authorizes the state to make an already normative way of living even more privileged. The state's administrative penetration into contemporary life may have numbed us to the deep coerciveness of this kind of thinking. We take it for granted. Yet it is blind majoritarianism, armed not only with an impressive battery of prohibitions and punishments but with an equally impressive battery of economic incentives and disincentives, all designed to manipulate not just the economic choices of the populace but its substantive and normative vision of the good life.³⁰

The ability to imagine and cultivate forms of the good life that do not conform to the dominant pattern would seem at least as fundamental as any putative right to marry. If so, the state's role should be to protect *against* the abuses of majoritarianism.³¹ The claim that the state has an interest in fostering long-term coupling is profoundly antidemocratic. When the state imposes a majoritarian view of the good life, it cannot claim to act on the basis of a neutral consideration of the possibilities; it acts to prevent such consideration. Sullivan, for one, makes the antidemocratic impulse clear:

There are very few social incentives of the kind conservatives like for homosexuals *not* to be depraved: there's little social or familial support, no institution to encourage fidelity or monogamy, precious little religious or moral outreach to guide homosexuals into more virtuous living. This is not to say that homosexuals are not responsible for their actions, merely that in a large part of homosexual subculture there is much a conservative would predict, when human beings are abandoned with extremely few social incentives for good or socially responsible behavior. But the proper conservative response to this is surely not to infer that this behavior is inevitable, or to use it as a reason to deter others from engaging in a responsible homosexual existence, if that is what they want; but rather to construct social institutions and guidelines to modify and change that behavior for the better.³²

Marriage, in short, would make for good gays—the kind who would not challenge the norms of straight culture, who would not flaunt their sexuality, and who would not insist on living differently from ordinary folk. These behavioristic arguments for gay marriage are mostly aimed at modifying the sexual culture of gay men. Left and right, advocates of gay marriage assume that marriage as a social institution is, in the words of Bishop John Shelby Spong, “marked by integrity and caring and . . . filled with grace and beauty”; that it modifies “behavior”; and that a culture of “gay bars, pornography, and one-night stands” is desperately in need of virtue.³³ This idealization of marriage is typical of those who are excluded from it: priests, gays, adolescents. It shows extraordinarily willful blindness, as one observer notes: “To presume that morality follows on marriage is to ignore centuries of evidence that each is very much possible without the other.”³⁴ Worse, it is predicated on the homophobic equation of “gay bars, pornography, and one-night stands” with immorality—the very equation against which the gay movement came into being. If the conservative arguments *against* gay marriage reduce to almost nothing but homophobia, these arguments in favor of it are underpinned by homophobic assumptions as well.

It may be more precise to call these arguments antiqueer rather than homophobic, and, as a way of commandeering the resources and agenda of gay politics, that is what they are. Yet the image of the good gay is never invoked without its shadow in mind—the bad queer, the kind who has sex, who talks about it, and who builds with other queers a way of life that ordinary folk do not understand or control. Although gays who married would be as likely to divorce, cheat on, and abuse each other as anyone else, any politics that makes full social membership conditional on the proprieties of the marital form is ultimately a way to pave over the collective world that lesbians and gays have made. Until recently, gay activism understood itself as an attempt to stave off the pathologization of gay life—by the police, by the McCarthy inquest, by psychologists and psychiatrists, by politicians, by health and sanitation departments. Now we are faced with gay activists who see the normalizing of queer life as their role.

What makes these conservative or cryptoconservative activists potentially powerful is that they are the only ones setting a cultural spin on the meaning of gay marriage as a transformative step. They are likely to succeed more than they might otherwise because they have stepped into a spin vacuum. Their arguments are echoed from the editorials of the *New York Times* to the commonplace comments of gay people on the street. The historical dynamic of cultural change is so volatile that little can be predicted with certainty from structural factors, so to the casual observer the conservative narrative sounds plausible, especially since there

has been no competing narrative in which same-sex marriage is imagined as a step toward further change, intended to benefit queers who are not in marrying couples. The official dogma of the gay organizations, as Rotello points out, is silent on the consequences of marriage for the unmarried. It claims to be neutral on the normativity of marriage. Indeed, it pretends that the extension of matrimony would be only benign and that single people need not worry about it, because marriage would not be part of any normative program of change. So the field of opinion and self-understanding is wide open for the narrative in which sexual liberty-to-civilized commitment is simply the meaning of marriage. Because the dogma of the gay organizations is hollow at best, and in bad faith at worst, it demands a more morally inflected narrative about the direction of change. The gay organizations have made no effort to provide a rival narrative of long-term goals and trends. The conservative story has become dominant both because it is what many people want to hear and because it is *all* they hear.

It is of course possible, given the dissociative consciousness that prevails in American culture on the topic of sex, to believe both that marriage is a private choice without normative consequences and that it would make the queers behave themselves. It is equally possible, apparently, to believe both that marriage is just a neutral choice and that it is a crazy idea. “Mad vow disease,” Kate Clinton calls it. Discreet inquiries have disclosed that many gay activists who toe the party line—marriage is a personal choice—privately oppose it. But they feel uncomfortable publicly criticizing the demands of those who want to marry. Because no one publicly voices any opposition, the party line seems a safe way out. It also frees activists in the national identity organizations from having to recognize the connection between the gay marriage debate and the growing crackdown on queerer forms of sexual culture in the United States.³⁵ Apologists for gay marriage, such as Rotello and Sullivan, can make that connection explicit again and again, yet the gay organizations have not entertained the possibility of such a connection long enough to take a stand against it.

Many gay men and lesbians in America, laboring under the illusion promoted by Lobel, Stoddard, and Wolfson, find considerations of social consequence and institutional change beside the point. They believe that marriage has nothing to do with the unmarried or with state regulation of sex or with changing cultural norms. They seem to think that marriage is a long-term relationship of commitment between two people who love each other—end of story. “Whatever the history,” Wolfson writes, “today marriage is first and foremost about a loving union between two people who enter into a relationship of emotional and financial commitment and interdependence, two people who seek to make a public statement

about their relationship, sanctioned by the state, the community at large, and, for some, their religious community.”³⁶ This definition readily accommodates the kind of pious common sense that people nod in agreement with as long as their everyday knowledge of sex and status is suspended. It is an exceedingly odd definition for Wolfson to offer in what is generally a tightly reasoned theoretical essay. A shrewd lawyer, he might be expected to know that love is not necessary for legally sanctioned marriage, and vice versa. One can be married without love, just as one can love without marrying. Nor is the purpose of legal marriage to make a “public statement”; any public ceremony makes a public statement, just as talking to people or circulating a queer ’zine does, while a legal marriage might well be private or even secret. The *Baehr* court, which Wolfson celebrates, is more frank: “Marriage is a state-conferred legal partnership status.”³⁷ Wolfson mentions the sanction of the state only as a kind of amplification of the public statement of marriage, as though the state’s role in marriage were nothing more. His definition works hard to mystify the institution. But it is typical of what passes for common sense.

Many gay men and lesbians who now say that they want marriage seem to focus on the way it confers, in their view, respectability and public acceptance. Often they do not even mention the extensive slate of legal benefits, entitlements, and obligations that come with marriage. To them, marriage is a statement. For example, Barbara Cox asks, “How could a feminist, out, radical lesbian like myself get married a year ago last April?” (Of course, she has not gotten married in the legal sense; she has had a private ceremony.) “My ceremony was an expression of the incredible love and respect that I have found with my partner. My ceremony came from a need to speak of that love and respect openly to those who participate in my world.”³⁸ In this way the state disappears when gay men and lesbians assimilate marriage to the model of coming out. To them, it is a nonstate performative act.³⁹ It is driven by expressive need. It speaks a self-validating truth, credible because it is “incredible.” It is without invidious distinction or harmful consequence to others. It transforms the surrounding world, making what Cox calls a “radical claim.”⁴⁰ Even though people think that marriage gives them validation, legitimacy, and recognition, they somehow think that it does so without invalidating, delegitimizing, or stigmatizing other relations, needs, and desires.

Such naïveté is all the more striking because Cox writes as a legal theorist. Such is the world-canceling force of love that Cox imagines the government as merely the most general audience for her private relations—another guest at the ceremony. Although she argues for legally sanctioned marriage, the transition from private ceremony to public regulation appears seamless to her. Ceremonies can do many laudable things, especially by making concrete the social worlds that queers

make for themselves. They are a kind of public. But as a way of thinking about legal marriage, the notion of pure love, like so much else in U.S. politics, is an image of sentimental privacy. Love, it says, is beyond criticism and beyond the judgments of the law. Where law adjudicates conflict and competing claims, love speaks an inner truth in a space where there is no conflict and no politics. It is of the human heart, not of ideology. Its intentions are pure. It has no unconscious.

I would argue that a politics based on such a sentimental rhetoric of privacy is not only a false idealization of love and coupling; it is an increasingly powerful way of distracting citizens from the real, conflicted, and unequal conditions governing their lives, and one that reinforces the privilege of those who already find it easiest to imagine their lives as private.⁴¹ Then, too, the transcendent self-evidence of love leads people to think that any thought of the ethical problems of marrying must be crass or at best secondary. If their unmarried friends ever express resentment about marital privilege, the married can absolve themselves of their participation in marriage by appealing to the self-validating nature of their love—which, strictly speaking, should have rendered their marriage unnecessary.

But there is a further irony in appealing to love as an argument for marriage. Love, as Cox describes it, is deeply antinomian. Like Hester Prynne in Nathaniel Hawthorne's *Scarlet Letter*, Cox is saying to her critics, "What we did had a consecration of its own."⁴² (Unlike Hester, though, she thinks that it should therefore be consecrated by law.) Love is self-validating. This claim allows Cox to say that no one may judge her and her lover, and although her rebuke is directed at gay critics of marriage, it also extends to the fifty states, which, by sanctioning heterosexual marriage, are felt to pass the judgment of illegitimacy on gay love. Thus the appeal for legal marriage is also a form of resistance to the legal character of marriage. That is why Cox can think of it as "radical," and why mass solemnizations such as the one at the 1987 March on Washington have the flavor of queer protests.⁴³ Nothing shows the tensions and contradictions of our historical moment more clearly than the way the upsurge of sentiment about marriage among gay people gives voice to an antinomian protest—in the very act of demanding marriage.

In the antinomian view of marriage, love is more than a noble virtue and more than a mass of errant desire: it is a determinate negation of legality. Christopher Hill traces this idea back at least to the fifteenth century, when religious reformers known as the Lollards denied the necessity of church marriage. While the American Puritans took this denial to mean that marriage should be a purely secular matter left to magistrates, other reformers such as George Fox questioned the validity of the institution outright: "The right joining in marriage is the work

of the Lord only, and not the priest's or magistrate's for it is God's ordinance and not man's. . . . Friends marry none; it is the Lord's work, and we are but witnesses." After the Restoration, as government grew to be a more active participant in marriage, making marriage more and more a legal institution of the nation-state rather than a customary network of kinship, the appeal of love's rebelliousness in the face of spreading regulation intensified. The legalism of the modern nation-state changed the background conditions of love.

In the early nineteenth century the poet John Clare was able to describe an unsolemnized relationship as "not felon-like law-bound, but wedded in desires."⁴⁴ In postromantic culture especially, the antinomian and world-canceling moment has been necessary even to validate love as love.⁴⁵ That is why nearly all the great love stories have been stories not of marital but of extramarital or illegitimate love: Tristan and Isolde, Hester and Arthur, Catherine and Heathcliff, *Titanic*, *The Bridges of Madison County*. Occasionally, a politics has been built on the antinomian strand. "We don't need no piece of paper from the city hall keeping us tied and true, no," sang the oft-married-and-divorced Joni Mitchell in 1971. But this politics has proven fragile, largely because it rests on the self-validating claims of the couple form rather than on a recognition of other relations, intimacies, or sexualities.

After all, those stories of extramarital and illegitimate love may have prepared some people to do without that piece of paper from the city hall, but they have hardly brought the legal institution of marriage to an end. Most people who thrill to the spectacle of young unwed lovers revolting against the constraints of an arranged marriage in *Titanic* do not imagine that marriage itself—arranged or not—may be dropped into the ocean as lightly as that diamond necklace is. Why not? Why is the institution so resilient, even though so many have come to recognize that you can have a perfectly legitimate love without that piece of paper from the city hall? Is love any less valid because it has not been certified by the government? Most Americans would offer an instinctive and vigorous answer: no. But then why does anyone imagine that love is an argument for marriage?

One reason may be that the couple form is sentimentalized by the internalization of a witness, as when Cox speaks of her "incredible love" and "a need to speak of that love." One admires one's being in love. (As Robert Glück writes in the opening sentence of *Jack the Modernist*, "You're not a lover till you blab about it.")⁴⁶ Just as easily as the mass audience is permitted to sigh, weep, and throb during the lovers' most intimate moments, so also the state in its generality can embody the witnessing of that private consecration. When Wolfson speaks of making a "public statement," it does not seem surprising that the state is there, sanc-

tioning it. One simply does not inquire into the meaning of the state's sanctioning of a statement. The state can piggyback on sentimentality, making itself the silent partner of and the constitutive witness to what people imagine as their most private and authentic emotion.⁴⁷

In fact, the culture of marriage has thrived on stories of revolt against it ever since marriage ceased to be understood as an alliance of families forged to preserve estates. The modern state apparatus of marriage is powered, paradoxically, by the love couple's ability to transcend law. The state merely certifies a love that is beyond law, but by doing so it justifies its existence as keeper of the law.

No other form of intimacy or sexuality has this power to couple with the state. One could make an antinomian claim to validity on behalf of, say, a blow job given in a tearoom. Especially if the blow job expressed a stigmatized, forbidden, and oppressed sexuality, the pleasure of its realization might be intensified by a sense of the wrongness of the law that banned it, as that law embodied an unjust social order and a lifetime of oppressive experience, all swept aside in the discovery, through pleasure, that the desire to reject that social order was shared with another. People in any nonnormative intimate or consensual sexual situation may feel, similarly, that they have turned the law underfoot. It might seem at such moments that whether the emotion or the pleasure results in shared property or common respectability has no bearing on its authenticity. But outside the tearoom such a claim would fall flat, lacking any reverberation in the carefully tuned wind chimes of sentimental couplehood. Whatever we value in a tearoom, or whatever we sentimentalize there, we do not sentimentalize it in a way that requires the state to be our solemn witness.

Wolfson draws on the powerful hidden resource of self-validating love when he argues that we have no right to question lesbians and gay men who want marriage. He believes that their desires must be valid just because they *are* desires:

The suggestion that lesbians and gay men who want equal marriage rights do not know what is best for them as gay people is not uncommon in the intra-community arguments against pursuing marriage. In the charge that the demand for equal marriage rights is insufficiently radical or liberationist, a contemptable [*sic*] desire to "mimic" or "emulate" the non-gay world, or a sell-out of less "assimilationist" or less "privileged" gay people, there is an inescapable whiff of imputed false consciousness. However, given the diversity and number of women and men within our communities who strongly want the equal right to marry, the imputation seems wrong, as well as unfair.⁴⁸

Wolfson is right, I think, to reject the idea that gays and lesbians who want to marry are simply imitating straights. It is a naive view of how norms work. He is also right to say that the argument against marriage has too often been put in these terms.⁴⁹ But there is also a will to naïveté in the implication that false consciousness cannot exist. What kind of reasoning would tell us that something could not be false consciousness because it was widely shared? Is that not the idea? Wolfson seems to assume that whatever passes as common sense must be right; people are never mistaken in numbers, their actions never have consequences that they themselves do not foresee, and they never act in contexts whose full ramifications remain unknown to them. When Wolfson asks, rhetorically, “Does everyone who gets married, from Ruth Bader Ginsburg to Catherine [*sic*] MacKinnon, endorse every retrograde aspect of marriage?” he implies that the meaning of an act lies in the actor’s motive.⁵⁰ This characteristically American assumption obscures the issue. Whether an individual is right or wrong in choosing to marry—whether he or she is sincere or not, is acting in false consciousness or not, or *intends* all of the consequences of marrying—has little to do with the ramifications of the act.

Gay people might want to marry for all kinds of reasons. They might want to stick it to the straights. They might want access to health care. They might want a public armature for their own will to sustain a relationship of care. They might have chosen with open eyes to embrace a world in which a coupling supported by shared property is the only sign of real belonging and the only publicly recognized context of intimacy. They might not trust the relationship to last without third-party assurances. They might think that marriage would relieve them of their fears of getting old, fat, or undesirable. They might want to marry simply because marrying is what one does. Or they might want in-laws. Richard A. Posner worries, rather extravagantly, that a gay man would marry a succession of AIDS patients to collect their life insurance.⁵¹ People are likely to have many motives, most marked by ambivalence. That’s life.

Claudia Card illustrates well the difficulties posed by marriage for queers with nonstandard intimacies:

My partner of the past decade is not a domestic partner. She and I form some kind of fairly common social unit which, so far as I know, remains nameless. Along with such namelessness goes a certain invisibility. . . . We do not share a domicile (she has her house; I have mine). Nor do we form an economic unit (she pays her bills; I pay mine). Although we certainly have fun together, our relationship is not based simply on fun. We share the sorts of mundane details of daily living that [Richard] Mohr finds con-

stitutive of marriage (often in her house, often in mine). We know a whole lot about each other's lives that the neighbors and our other friends will never know. In times of trouble, we are each other's first line of defense, and in times of need, we are each other's main support. Still, we are not married. Nor do we yearn to marry. Yet if marrying became an option that would legitimate behavior otherwise illegitimate and make available to us social securities that will no doubt become even more important to us as we age, we and many others like us might be pushed into marriage. Marrying under such conditions is not a totally free choice.⁵²

Card's account reminds us that lived intimacies seldom take the form imposed by marriage. It also shows that people are likely to encounter in marriage a mix of constraints and that the meaning of marriage is only partly what they themselves bring to it.

Because the institution of marriage is itself one of the constraints on people's intimate lives, to judge the worthiness of the institution is not to condemn the people in it. But it does mean that marrying should be considered as an ethical problem. It is a public institution, not a private relation, and its meaning and consequences extend far beyond what a marrying couple could intend. The ethical meaning of marrying cannot be simplified to a question of pure motives, conscious choice, or transcendent love. Its ramifications reach as far as the legal force and cultural normativity of the institution. That is a heavy ethical burden to take on. No wonder people are so grateful to Wolfson, Lobel, and others who are willing to dismiss the ethics of marriage in such a radical and shallow way.

The strategic question facing lawyers is whether to extend benefits and recognition even further beyond conventional marriage or to extend the status of marriage and thereby restrict entitlements and recognition to it. But this is not the question posed to lesbians and gay men as a choice to marry or not to marry. No poll of gay men or lesbians addresses this issue (and we have good reason to be alarmed, given the potential for majoritarianism, when apologists such as Wolfson appeal to a silent majority that favors marriage). You need not argue that gays who want to marry have *chosen* to sell out less assimilationist or privileged queers to believe that the effect would be to reinforce the material privileges and cultural normativity of marriage. Individual choices to marry are not only rewarded, with material benefits and normative recognition, but made from the limited slate of socially supported alternatives. Since the desire to marry is an aspect of the normativity of marriage, it cannot be said to validate the norm, any more than the desire to buy a Coke validates capitalism. But buying commodities sustains the

culture of commodities, whether the buyers like it or not. That is the power of a system. Just so, marrying consolidates and sustains the normativity of marriage. And it does so despite what may be the best intentions of those who marry.

Wolfson's view of marriage, like Cox's, or like Lobel's view of marriage as a strictly personal choice, is wholly inadequate to an evaluation of the strategy of pursuing legal marriage, because it neglects marriage's legal and cultural consequences for others—those who resist marriage and those who are drawn to it for reasons not of their making. Whether they like it or not, married people have countless privileges, some that define marriage and some that ought to have nothing to do with it. They are taken more seriously than unmarried people; they are more likely to be invited to dinner parties, offered jobs, elected to public office. In short, they have status. It is therefore hard to credit Wolfson's blunt assertion that the marriage issue is not about "the pros and cons of a way of life."⁵³

The consequences that marrying has for others can be treated, roughly, under the following headings:

1. The menu of privileges and prohibitions, incentives and disincentives, directly tied to marriage by the state
2. The material incentives and disincentives tied to marriage in civil society
3. The matrix of state regulations of sexuality of which marriage is the linchpin
4. The broad cultural normativity of marital status

Each of these headings should be challenged, not celebrated, as a condition of same-sex marriage. But is it possible to imagine a campaign for gay marriage that would challenge them and thereby take us beyond the pro-and-con platitudes?

To do so requires some tricky historical judgments. Marriage means very different things to different people, and not simply because people are confused. Marriage takes place in different registers, cuts across contexts and discourses, and, as we have seen, can even express protest against itself. Who, then, is to say what its ultimate significance is? The question is a real one; the situation is one of profound historical dynamism. Yet we cannot take imminent progress on the four fronts delineated above for granted.

Apologists for marriage rely on two contradictory versions of its history. Many writers, such as Wolfson and Eskridge, tell both at once, apparently without noticing the contradiction. In the first version, nothing about marriage changes. It is a basic human right, even though the details of marriage law may be socially constructed. In the second, everything about marriage changes, and for the better. It sheds its patriarchal roots. Gay people push it to be something more radically

egalitarian. Apologists for marriage hold both a fluid view of institutions and an often unquestioned commitment to the inevitability of progress. Eskridge writes that his critics “come close to essentializing marriage as an inherently regressive institution.” Wolfson, in a logical leap that few Americans can resist, writes that marriage is “socially constructed, and therefore transformable.”⁵⁴ This view places a high rating on conscious will. It shoulders aside social structure and the unconscious dimensions of history. Some things about marriage, of course, we can transform. But others are part of our very perceptions and desires. Even when we think we are transforming something, we are not free of the history that socially constructs both marriage and us.⁵⁵ To say that marriage is socially constructed tells us nothing about how transformable it is or how regressive it is. So light are the constraints of an institution on an individual, for Wolfson, that he can draw an analogy between entering the institution of Harvard (which one might do despite certain aspects of Harvard) and entering the institution of marriage.⁵⁶ The analogy would hold only if everyone were supposed to have been born at Harvard, if it took special legal procedures to leave Harvard, if there were an explicit slate of legal and economic incentives for being at Harvard, if Harvard had for millennia defined everyone’s place in the structures of gender and kinship, and if all sexual activity outside Cambridge, Massachusetts, were criminalized. Meanwhile, so deep is Wolfson’s belief in progress that he argues, against Polikoff, that the question of strategy or priority is not important; same-sex marriage will be followed by further beneficial change, and anyone disadvantaged in the short term by the expansion of marriage will nonetheless take the step it represents toward full equal rights.⁵⁷ (Note that this end point presupposes the first version of the history of marriage, in which it is simply a right.)

American optimism in progress, riding a wave of triumphalism about “the end of AIDS” and the arrival of gay characters on sitcoms, has swept aside all objections and, it would seem, all evidence. At a time when homophobic initiatives are gaining ground at local, state, and federal levels, when even the movement to repeal sodomy statutes has all but stalled, the assumption of inevitable progress toward equal rights for everyone should give us pause. The military service campaign has resulted in a *higher* rate of discharge for homosexuality under the “don’t ask, don’t tell” policy, which codified into law for the first time the claim that homosexuality is incompatible with military service.⁵⁸ The marriage campaign resulted in the Defense of Marriage Act and, for the first time, the codification into state and federal law of the heterosexuality of marriage. Both the military policy and DOMA were signed by President Clinton. Both sanction homophobia as national policy. Both exemplify an overconfidence in progress that has led to results

that, even on their own terms, are regressive. These are minor matters, barely significant compared to certain antidemocratic structural trends, like the corporatization of media. But everywhere we turn, in the United States and abroad, regressive tendencies are mingled with, and often overshadow, progress.⁵⁹

I have argued here that the *debate* over gay marriage is regressive. But would gay marriage itself necessarily be? It depends in part on what kind of marriage we mean. Like heterosexuality, marriage is a contradictory amalgamation of histories and contexts, including

1. a Stone Age economic order of household formation and traffic in women;⁶⁰
2. a pagan and Christian symbolic order for male domination;⁶¹
3. the central institution that justifies the state's power to restrict sex in all other contexts;
4. a distinctively modern contractual relationship of individuals, certified by the state and other third parties but usually understood as a private relationship of equality and intimacy;⁶² and
5. an ancient ritual vocabulary of recognition and status that has a nonstate performativity quite apart from issues of state regulation.

The very complexity of this history encourages people to take a nominalist or antinomian view of marriage. Should we throw our hands up and conclude that there is just no way to tell what the future holds? That, too, would be a mistake. Not everything changes at the same rate. Some aspects of marriage are more stable than most cultural attitudes; indeed, in anthropology marriage has often been seen—ideologically, in my view—as the originating mechanism of social structure.⁶³ Legal change also has an institutional gravity that impedes further change. In the face of all these layers of history, it is simplistic to say that gay people should “appropriate” marriage or create their own meaning for it. Several of the historical layers are manifestly conflicting; hence the difficulty of saying how the addition of married same-sex couples into the multimillennial jumble would play out. These different aspects of marriage also have different implications for queers.

Let us begin with the menu of privileges directly tied by the state to marriage. Marriage is nothing if not a program for privilege. “Marriage,” as Posner notes in *Sex and Reason*, “is a status rich in entitlements.”⁶⁴ In *Baehr* the Supreme Court of Hawaii handily lists some of them:

1. A variety of state income tax advantages, including deductions, credits, rates, exemptions, and estimates
2. Public assistance from and exemptions relating to the Department of Human Services

3. Control, division, acquisition, and disposition of community property
4. Rights relating to dower, curtesy, and inheritance
5. Rights to notice, protection, benefits, and inheritance under the Uniform Probate Code
6. Award of child custody and support payments in divorce proceedings
7. The right to spousal support
8. The right to enter into premarital agreements
9. The right to change of name
10. The right to file a nonsupport action
11. Postdivorce rights relating to support and property division
12. The benefit of the spousal privilege and confidential marital communications
13. The benefit of the exemption of real property from attachment or execution
14. The right to bring a wrongful-death action

To these state entitlements would have to be added others, such as next-of-kin privileges in hospital visitations, medical decision making, and burials.⁶⁵ There are also federal entitlements—including tax advantages and immigration and naturalization benefits—and local ones, such as rent control benefits, already available to domestic partners in some cases. Yet even this list of state-guaranteed benefits and rights does not touch on the benefits that can be collected in civil society in the form of kin groups and discounts on and joint applications for services, memberships, and insurance policies—not to mention trousseaux or the power to make all your friends and relations fly hundreds of miles to see you, wear expensive costumes for the occasion, and buy you housewares from Bloomingdale's.

It is always tempting to believe that marrying is simply something that two people do. Marriage, however, is never simply a private contract between two persons. It always calls for the recognition of a third party—and not just a voluntary or neutral recognition but an *enforceable* recognition. We speak of entitlements when the third party is the state and of status when it is others generally. Either way, the benefits of marriage are vast. Their monopolization is an issue of both distributive justice and cultural recognition.⁶⁶

Most of these benefits could be extended to other kinds of households and intimate relations. Very few have necessary ties to couples or other intimate pairs—perhaps only those having to do with divorce. Many, such as health care and tax equality, are social justice issues and should be extended to single people. Others, such as those having to do with property sharing, are specific to households and

could be broadened to all cohabiting arrangements (ex-lovers, relatives, long-term intimate friends, etc.). Still others, such as immigration rights, parenting rights, the right to bring wrongful-death actions, and even the prohibition against spousal testimony in court, are attached to powerful intimate commitments, but these need not be thought of as marriages. Such benefits could be extended to domestic partnerships, nondomestic partnerships as described by Card, legal concubinage, or common-law relations. In Australia, for instance, immigration policy already treats all unmarried couples alike, whether gay or straight, under the “interdependency” category of the country’s visa regulations. Gay and lesbian parenting often involves three adults, rather than two, a situation denied by the attachment of parenting rights to marriage.⁶⁷ In other words, marriage is defined partly by the bundling of various privileges and statuses into a single package. The argument for gay marriage no doubt appeals to many people because it is a shortcut to equalizing these practical social advantages. But the unmodulated demand for same-sex marriage fails to challenge the bundling of privileges that have no necessary connection one to another, or to marriage; indeed, if successful, it will leave that bundling further entrenched in law. Squeezing gay couples into the legal sorting machine will only confirm the relevance of spousal status and leave unmarried queers looking more deviant before a legal system that can claim broader legitimacy.

Interestingly, the gay marriage debate almost never turns on specific benefits or entitlements. As the lawyer David L. Chambers notes, in the only extensive review of the legal entailments I have seen, “Whatever the context of the debate, most speakers are transfixed by the *symbolism* of legal recognition.”⁶⁸ Argument turns on the status conferred informally by marriage, on the function of marriage in altering “behavior,” and on the real or imagined social purpose of marriage. This is an odd fact, considering that the past several decades have seen many efforts to detach state entitlements, such as spousal support, from the symbolic status and normativity of marriage, for straight and gay couples alike, and that these efforts have created new possibilities (e.g., palimony). Extending benefits as an issue of justice apart from marriage reduces the element of privilege in marriage, as many conservatives fear. This strategy has enjoyed considerable success in the Scandinavian social democracies. But the United States seems headed down the opposite path, given the revived popularity of marriage among straight couples and the generally conservative turn of the culture.

For example, the Family and Medical Leave Act of 1993 provides for leaves to care for spouses, children, and parents but, as Chambers points out, “makes no provision of any kind for friends, lovers, or unmarried partners.”⁶⁹ A congressional commission on immigration policy, meanwhile, has widened the gap between the

treatment of noncitizen spouses and the treatment of all other noncitizen relatives or partners. Republican reforms in the tax code are designed to provide further incentives to marry. Citing such developments, Chambers contends that gay couples would benefit from marriage. My argument runs counter to Chambers's, but I find his evidence more useful to my argument than to his own. Chambers shows that gay couples would gain many benefits from marriage. No one doubts that. But this does not mean that these benefits should be restricted to married people, or that they should be bundled together, or that their acquisition by married people would be either beneficial or neutral to unmarried queers. Chambers's review is admirably broad and detailed, but it does not show that same-sex marriage would be the appropriate solution to all the exclusions he documents. Rather, it shows, in case after case, that such areas of law as probate, custody, and immigration need far more sweeping reforms than same-sex marriage. Pursuing same-sex marriage as a strategy fails to address the privilege of spousal status that is the core of the problem. The conservative trend of shoring up this privilege is mirrored in the decision of U.S. advocates of gay marriage to subordinate a vast bundle of entitlements to the status of marriage.

Despite the *Baehr* decision, there is no sign that the strategy of demanding the package currently defined as marriage is working. In fact, like the rest of the "mainstream" program of gay politics—so often justified in the name of pragmatic realism—it seems to lead backward. The reaction to it has further codified the distinctness of spousal status and its bundling. In Hawaii, the *Baehr* decision has not resulted in marriage for anybody. It has resulted in a number of new homophobic initiatives, including the referendum that allowed the state legislature to codify the heterosexuality of marriage. It has also given rise to a politically brokered compromise whereby, to win moderate and liberal support for this referendum, the state has passed a new domestic partner bill. It is the most sweeping domestic partner legislation in the country. It may therefore seem to be a progressive gain. But there is a catch to it, in addition to its having been a sop to buy off critics of marriage: domestic partnership is now available only to those who are not allowed to marry. For heterosexuals, in other words, it eliminates an alternative to conventional marriage. There have been two results: a sharper commitment on the part of the state to the privilege of spousal status and a sharper distinction among couples on the basis of sexual identity. The first result, in my view, has been wrongly embraced by gay advocates. The second is the unintended consequence of their efforts.

Apart from the question of what benefits we understand to constitute marriage, there is the more fundamental question about what the state's role in it is or

should be. Government plays a much more direct role in marriage now than it has for most of Western civilization's history. In the anthropological literature, the main debate about marriage is whether its primary function in nonmodern society is to establish alliances between men or lines of descent.⁷⁰ But in modern societies, marriage has less and less to do with either. The powerful tension in premodern societies between marriage and the moiety system—in which one's spouse is a social foreigner, a representative of all that is alien to one's own kin—is lost and, for most moderns, unimaginable.⁷¹ In-laws are less and less material. Bastardy laws, where they remain on the books, seldom have any effect. People reckon family and descent through households, affinity, and blood rather than through the symbolic exchange of ritual marriage. Some early modern features of marriage, like publishing the banns, have vanished; others, like the fertility ritual of flinging rice, survive only in vestigial form. Still others, like giving away the bride, probably retain greater significance than anyone would like to admit. But as the world-orienting horizons of kinship and exogamy have receded, the state as mediator has loomed up in their place.⁷²

In the contemporary United States, unlike most times and places in world history, state certification is a constitutive event, not a secondary acknowledgment of an established relationship. Some people naively imagine that marriage licenses are essential to marriage. But the marriage license is a modern invention. Even the widespread use of parish registers to formalize marriages does not go back much farther than the eighteenth century. Until then common-law marriage was the rule, not the exception. (In America it is currently recognized, even for heterosexual couples, in only one-fourth of the states.) Mohr argues that it is the best model for the legitimation of same-sex households:

In a common-law arrangement, the marriage is at some point, as the need arises, culturally and legally acknowledged in retrospect as having existed all along. It is important to remember that as matter of law, the standard requirement of living together seven years is entirely evidentiary and not at all constitutive of the relation as a marriage. . . . Indeed, that immigration fraud through marriage licenses is even conceptually possible is a tacit recognition that marriage *simpliciter* is marriage as a lived arrangement, while legally certified marriage is and should be viewed as epiphenomenal or derivative—and not vice versa.⁷³

To Mohr, this is an argument for common-law marriage. In my view, common-law marriage suffers from many of the same limitations that other kinds of marriage

do. But the distinction Mohr makes is important, because it dramatizes how the state's constitutive role is taken for granted when we ask only whether we want "marriage." Countless systems of marriage have had nothing to do with a state fetish or with the regulatory force of law. Most of these options are not open to us. But others might be if we did not think that the question was simply same-sex marriage, pro or con.

In a way, the common-law tradition seems to be what writers like Cox and Wolfson have in mind when they treat the state as if it merely recognized a marital relationship that the partners had created by themselves. This tradition harks back to a time not only before parish registers and marriage licenses but before vice cops, income taxes, social security, and the rest of what we now call "the state." If American culture were better at perceiving "marriage as a form of living and repository of norms independent of law,"⁷⁴ and if state recognition were more widely understood as deriving from that "form of living" rather than as authorizing it, then it might be easier to push the state to recognize single parenthood and other nonstandard households, interdependencies, and intimacies that do not take the form of shared property. In fact, all of these arrangements have gained status during the twentieth century. In respect to the family, real estate, and employment, for example, the state has taken many small steps toward recognizing households and relationships that it once did not certify as marriages. The drive for gay marriage appeals to gay people partly because of this trend. People conclude, reasonably, that the state should be forced to recognize same-sex households as well.

But the drive for gay marriage also threatens to reverse the trend, because it restores the constitutive role of state certification. Gay couples don't just want households, benefits, and recognition. They want marriage licenses.⁷⁵ They want the stipulative language of law rewritten and then enforced. Certainly, *Baehr* has triggered a more active and constitutive role for statutory law in controlling the evolution of marital practice. This trend comes at a time when state recognition of nonstandard households is being rolled back in the United States and is increasingly targeted by a neoconservative program of restricting divorce, punishing adultery, stigmatizing illegitimacy, and raising the tax incentives for marriage. The campaign for marriage may be more in synchrony with that program than its advocates intend.

In short, institutional change in the state matrix of marriage is likely to come in many forms. Some, like the trend toward the more constitutive role of government in defining marriage, have long been developing, are not consciously reflected on in the current debate, and can hardly be stemmed by the "appropriation" of marriage by gay couples. Many of the changes seem to have a local dialectic

tical necessity; others seem highly contingent on political processes and still others on the relatively autonomous legal system. In none of these areas can we assume that change will be progressive for anyone but marrying couples, especially in the absence of an organized effort to make it so. This way of thinking about the institutional character of marriage is also a way of saying that the normative question of the debate—will marriage normalize queers, or will queers radicalize marriage?—is too narrow. It assumes either that marriage must mean a single bundle of status and privilege or that merely inhabiting the bundle will alter its fundamental meaning. The definition of marriage, from the presupposition of the state's special role in it to the culture of romantic love, draws from so many layers of history and from so many norms that gay marriage is not likely to alter it fundamentally, and any changes that it does bring about may well be regressive.

So I have my doubts when Cass Sunstein, for example, argues that gay marriage would redress gender inequality by “subverting” traditional marriage, making it no longer the heterosexual matrix of women's subordination. This view enjoys great popularity among lesbian and gay apologists for marriage, including Wolfson and Nan D. Hunter, and not without reason. Hunter is undoubtedly right to claim that same-sex marriage would further weaken the model of subordination in marriage. If marriage were not necessarily heterosexual, people could more easily view it as equal partnership. But this is to say only that same-sex marriage in this culture might slightly improve things, if not for queers, then, indirectly, for women married to men.⁷⁶

Most claims for the power of marriage to transform cultural norms are even less clear and are often contradictory. Mohr, for example, asserts that the entry of gay men into marriage would loosen the knot of monogamy associated with marital status. Gay men, he writes, know that sexual exclusiveness does not have a necessary relation to commitment or love. The evidence bears him out. David P. McWhirter and Andrew M. Mattison report that only 7 of the 172 male couples they studied were totally monogamous and that none of the couples that stayed together for five years or more were. (Similarly, Card notes the under-recognized tradition among lesbians of having “more than one long-term intimate relationship during the same time period.”)⁷⁷ But would we expect the figures to be the same if these 172 couples were in state-sanctioned marriages, with their aura of status, their shadow theater of stigma, and their web of regulations regarding adultery, privacy, and divorce? As we have seen, such writers as Rotello and Rauch confidently predict the reverse: marriage would curtail gay men's sexual lives. It would certainly cloak their sex in the zone of privacy, one of the most noticeable features of marriage in the cultural imagination. (It was not Bill Clin-

ton's relations with Hillary that made his sex life the greatest national media spectacle of the 1990s.) It seems rather much to expect that gay people would transform the institution of marriage by simply marrying. Understating the issue, Morris B. Kaplan notes, "This argument is not easily evaluated in part because it requires complex historical judgments and predictions concerning the effects of legal and social innovation."⁷⁸

It is probably true, to an extent, that gay marriage—at least, gay marriage ceremonies—would have a cultural impact similar to that of coming out. Both acts can be thought of as the performative management of recognition: I'm gay! I do! Many gay people who now say that they want marriage, like Cox, seem to want an intensified and deindividuated form of coming out. This desire is powerful, unanticipated, and interesting, to say the least. Gay marriage ceremonies, like the one staged by Perry in 1970 and the more recent wedding of two undergraduates in the Princeton University chapel, are performances in relatively unknown territory. They call attention to the hitherto invisible heteronormativity of the institution of marriage. They force reactions in settings where the scripts have not yet been written. They turn banal privacy into public-sphere scenes. At the same time, taking part in them is safer than coming out. Coming out publicly exposes you as a being defined by desire. Marrying makes your desire private and locates its object in an already formed partnership. Where coming out implies impropriety, because it breaks the rules of what goes without saying, marrying embraces propriety, promising not to say too much. Where coming out triggers an asymmetrical dialectic, since straight people cannot come out in any meaningful way as long as the world presumes their heterosexuality, marrying affirms the same repertoire of acts and identities for straights and gays and thus supplies a kind of reassurance underneath the agitational theater of the ceremony.

The recognition drama of marriage also induces a sort of amnesia about the state and the normative dimensions of marriage. Thus discussions of gay marriage fall into characteristically American patterns of misrecognition; for example, the meaning of marriage is not social or institutional at all but one of private commitment between two loving people; marriage has neither normative nor regulatory consequences for the unmarried and is uncoercive, because it simply fulfills the right to marry as a free, individual choice; marriage means whatever people want it to mean; and so on. In each of these truisms there is just enough truth to render hopelessly reductive the opposite approach of defining marriage solely from the vantage of state regulation and entitlement or from that of an undifferentiated realm of norms.

There is another way to think about the normative issue whereby the ques-

tion of same-sex marriage, and the way that the question is posed, may be rather more consequential. The issue is, after all, not merely a theoretical question *about* marriage, as though the debate did not have its own normative implications. The public sphere in which the discussion takes place is one of the contexts that *define* marriage. Although marriage has layers of meaning that are relatively resistant to spin, it is worth noting that the subject of same-sex marriage is so thoroughly mediated by public-sphere discourse that few are able to think about it apart from some kind of narrative about long-term social change, usually on the national scale. The mere mention of gay marriage triggers a consciousness of national policy dispute. It is as though a pollster and a reporter were in your bedroom, asking you if you wanted a judge or a cop to join the party. Always the issue implies not just abstract debates, like this one, but a story, a news angle.⁷⁹ No discussion of the issue can occur without some idea of what would count as progress. To take a view on same-sex marriage, pro or con, is implicitly to imagine movement toward some future: Whither America? Whither faggotry? Here, too, it is difficult to assume that the trend is one of progress. Or rather, what seem to be prevailing are regressive narratives of progress.⁸⁰

Sullivan's is one of the clearest:

In one sense you can look at the gay male fondness for anonymous promiscuity as a rejection of all that our society values and offers. And you will find no end of "queer" theorists who will rush in to politicize such pathologies. "There is no orgasm without ideology," as one of them once (hilariously) put it. And you will also find no end of post-Stonewall gay novelists and playwrights who persist in seeing these one-night stands as some kind of cultural innovation or political statement. But for the rest of us, it isn't hard to see this proclivity for quick and easy sex as in fact a desperate and failed search for some kind of intimacy, a pale intimation of a deeper longing that most of us inwardly aspire to and deserve. Maybe this too is a projection, but I think I detect around me among many gay men both an intense need and longing for intimacy and an equally intense reluctance to achieve it—a reluctance bred by both our wounded self-esteem as homosexuals and our general inculturation as men.

But the answer to this reluctance is surely not a facile celebration of our woundedness—or, on the other hand, a harsh condemnation of those who exhibit it—but an honest attempt to help one another find the stability and love we really need and deserve. We have to believe that we are capable of such a noble and ennobling love, and we have to do much

more to affirm and celebrate the many couples who have achieved it and the many others who are manfully struggling to find it. It is easier, of course, to remain wounded and to blame others—often plausibly—for our condition. And easier still to hold conferences and write articles to provide reasons for why struggle is unnecessary or why fidelity is the goal of “neopuritans” or why our promiscuity is “a collective way of life.” How much less troubling, after all, to respond to the taunt of “queer” by simply embracing it or by denying that there is any hierarchy of human goods or any way of life better or deeper than any other.

So there are plenty of people—especially among a few activist elites—who prefer to chant mantras of decades gone by and pretend that somehow this is 1957 and straight America is initiating a *Kulturkampf* against sex in parks and that somehow this is the defining issue of our times. But this is nostalgia masquerading as politics. It is not a “sex panic,” as they call it. It is a victim panic, a terror that with the abatement of AIDS we might have to face the future and that the future may contain opportunities that gay men and women have never previously envisaged, let alone grasped. It is a panic that the easy identity of victimhood might be slipping from our grasp and that maturity may be calling us to more difficult and challenging terrain.

It is not hard to see what that terrain is. It is marriage.⁸¹

You have to love something about this way of writing. It’s shallow, it’s mean, sure, but its style breathes new and bitchy life into jesuitical pieties you thought you would never hear in public again. These pieties are packaged here as progress. The story works, for many, because it is rooted in a developmental narrative. It makes the “we” of gay people into a big individual who experiences history as the phases of maturation, like acne. The decades leading to and following Stonewall were “our” adolescence. Now “we” are adult and ready to marry.

This is bad history. It dismisses even the adulthood of activists who disagree with Sullivan now, as well as that of all those who preceded him. It is also bad psychology, since it relies on a normative view of development that even a slight acquaintance with Freud (or with children) might have challenged. Of course, it will be said, Sullivan’s “we” is just a figure of speech. But the rhetoric goes a long way toward legitimating, without argument, Sullivan’s repudiation of queer politics, and it does so by relying on the normativity of marriage as a marker of life narrative. Adults who marry are not necessarily more mature than adults who do not; often enough the reverse is true. Yet marrying is deeply embedded in

the cultural unconscious as a sign of majority attained. Nothing but the customary story of the life course, a narrative rich in heteronormative unreason, grounds Sullivan's claim that marriage represents progress.

As a media strategy, too, Sullivan's ad copy for marriage is hard to beat, because it imagines the world from the viewpoint of an unmarked mass-media public, with no connection to queer life. When Sullivan writes that promiscuity is "a rejection of all that our society values and offers," he expects his readers to forget that many of them not only have found important pleasures and intimacies in promiscuous sex but have engaged in it without rejecting "all that our society values and offers"—only a hostile and restrictive version of morality. The reward for this largesse of forgetting is the ability to think of oneself as "society."

Moreover, when Sullivan asks us to believe that the "pathologies" of sex and queerness are politicized by queer theory, we are supposed to forget that the rhetoric of pathology was itself politicized by the gay movement, and long before academic queer theorists came on the scene. The gay movement came into being only when the assumption that homosexuality was pathological was suddenly resisted. If "to respond to the taunt of 'queer' by simply embracing it" is mere relativism or "a facile celebration of our woundedness," then should we also feel chastised for having embraced the pathology that gave us the word *homosexual*?

When gay people express the wish to build their own world or to transform the rest of the world, Sullivan interprets their desire as a pathology, which we are happily on the verge of surrendering now that our "maturity" is about to be made possible by marriage. But isn't it a stretch to imagine that a gay man who goes to a sex club does so in "a desperate and failed search" for the kind of intimacy associated with marriage? Surely, if this were his goal, he would go about things differently. Perhaps Sullivan thinks it necessary to view all gay men as retarded in this way because he cannot imagine that there might be other kinds of intimacy that gay men have come to value and that they know how to find them. Do they go to the wrong places because "wounded self-esteem" keeps them from dating and sharing property? Here again Sullivan, assuming a public stance not exactly calculated to raise the self-esteem of gay men, pathologizes those gay men who do not match his ideal. Even if gay men did suffer from "wounded self-esteem," the most likely result for them would not be promiscuity—which calls for a fair amount of courage and dignity on the part of those who defy the stigma and abjection associated with it—but a compulsive idealization of love and a desperate need to have validation conferred on their intimate lives through state-certified marriage. If you need legal marriage to give you self-esteem, then you can be sure you aren't getting it. You're getting a privilege conferred by another. The need for official validation,

not to mention the conformity that official validation rewards, is the opposite of self-esteem.

(I will leave aside Sullivan's notion that sex panics could not have happened after 1957, perhaps not coincidentally the last time it was possible to speak of "noble and ennobling love" without sounding like a Sunday-school teacher. But then, Sullivan could not have anticipated the irony of publishing his essay, full of ridicule for the idea that sex panics are a defining issue of our time, in the middle of the Lewinsky affair.)

Sullivan, in short, leaves all reigning norms in American culture unchallenged except those bearing on the minor issue of the extension of marriage. Every other expression of dissatisfaction with the world as it is currently ordered he dismisses as utter relativism or a symptom of victim pathology or the quixotic desire to do without norms altogether. Aside from their wanting marriage, gay people have, in his view, no relation to the world except their undifferentiated belonging to "society." Society is an imaginary object, a vacuous term for the masses, and of course there cannot really be any question of belonging to it or not. Try *not* belonging to society. Sullivan's utopia is not, in any event, a social one; the grail he elevates is the worldlessness of love. As Hannah Arendt puts it, "Love, by its very nature, is unworldly, and it is for this reason rather than its rarity that it is not only apolitical but antipolitical, perhaps the most powerful of all antipolitical forces."⁸²

In the name of love, Sullivan would obliterate not just queer theory, with its conferences and articles—that goes without saying—but the world-making project of queer life. He would have us shun the "post-Stonewall gay novelists and playwrights"; "activist elites"; drugs and parties; "sex in parks," and indeed sex out of wedlock anywhere; and the "mantras of decades gone by" (I imagine that he is thinking of mantras like "Fight AIDS, not sex!"). Instead, he appeals to the private sentiments of "the rest of us." But who is left? A potent constituency, to be sure, but with no politics, no public, no history of activism or resistance, no inclination to deviate from the norm, and no form of collective life distinct in any way from that of "society." What we have left to "affirm and celebrate" turns out to be *couples* and those who are "manfully struggling" (perhaps a whiff of bondage here) to be in a couple. Marriage is the perfect issue for this dequeering agenda, because it privatizes our imagination of belonging. Thus the imagination of belonging appears, for Sullivan, only in a rush of redundantly massed privations that one would dismiss as bad and unedited writing if they were not so revealing of a conceptual impasse: the "intimation of a deeper longing that most of us inwardly aspire to," and "an intense need and longing for intimacy." Do we have this need, or do we only intimate that we inwardly aspire to have a longing for it? Whatever it

is, it seems to be inaccessibly inward, deeper than something intimated, so much less public than our own desires that we can only secretly long to long for it. Yet it is in this impossibly pure intimacy that we are supposed to be integrated, at last, with “society.”

Given such rhetoric, the marriage issue can be understood as a way to wed the gay movement to the organized bad faith of the mass-mediated public that is increasingly its home environment. Only in such a realm could integration into a mainstream be imagined as our ultimate goal; only in such a realm could an idealization of marriage as simple equality and intimacy fail to be seen as a corny platitude; only in such a realm could people be induced to dismiss the “richly depersonalizing intimacies” of queer sexual culture as “ways we have used to medicate and alleviate the stresses of our lives”;⁸³ only in such a realm could we seriously entertain a narrative of gay people commonsensically embracing marriage en masse, in the temporality of the headline, in a giant pink surge toward Hawaii; only in such a realm could this lurch toward a national altar be presented, as it is in Sullivan’s essay, as a celebratory response to the end of AIDS, which he thinks has somehow arrived in the absence of a cure or a vaccine, and at a point when the most fundamental lessons of AIDS activism have been forgotten.

The success of Sullivan’s argument depends on its ability to make its readers forget, in short, that they belong to a counterpublic. This piece of voodoo can also be stated as a predictive theory: when gay people give up the perverse notion that they are perverse, they will discover that they have been normal all along. “Marriage,” Sullivan writes, “is not, whatever its enemies say, a means to tame or repress or coerce gay men and women. On the contrary. It is, in fact, the only political and cultural and spiritual institution that can truly liberate us from the shackles of marginalization and pathology.”⁸⁴ Pathology is our pathology. Normally, we would be normal.

In much queer theory, a view of the normal that is apparently the opposite of Sullivan’s turns out to be entirely consistent with his prediction about the politics of marriage. That is because it tries to evaluate the politics of marriage without making what Kaplan calls “historical judgments and predictions concerning the effects of legal and social innovation.” That either side can exploit the vagueness of our vocabulary—“transform,” “subvert,” “change,” “appropriate”—suggests that our theory has begged many of the evaluative questions. Kaplan himself, in an ostensibly Foucauldian analysis, hears the queer objection to marriage only as a “worry that success on this front would result in the assimilation of a distinct lesbian and gay ethos and to [*sic*] the imitation of heterosexist models.” This worry, he replies, “overstates the extent to which such recognition deprives indi-

viduals of the capacity to shape and revise the institutions they voluntarily create.”⁸⁵ Again, we see a faith in the voluntary creative efforts of individuals that seems as far removed from Foucauldian thought as it could be. Marriage here is considered only as “recognition.” Its effects are described only for the individuals who are in it, and they, though shaped by the institution and its culture, are seen as shaping and revising and voluntarily creating marriage.

Perhaps Kaplan is led to this atypical and unconvincing conclusion, despite his own best insights, because the problem of the normativity of marriage has been flattened, for him, into a question of whether norms, or models, constrain individuals. The social, institutional, and narrative dimensions of normativity are not analyzed. The focus is on an individual’s imitation of a model—where it may well seem that constraints are weak.

The question of how constrained individuals might be by the normative models they introject has preoccupied much queer theory. The problem is imagined as one of metanormative analysis, which tries to describe a politics in the way that norms are imitated, instantiated, or subverted. This paradigm may turn out to be singularly irrelevant for making the “historical judgments and predictions” that would be necessary to understand to what extent marriage is or is not normalizing. It may also lure queer theorists into false optimism about an institution such as marriage and the nature of its power.

In *The Psychic Life of Power* Judith Butler takes as her problem the way that “forms of regulatory power are sustained in part through the formation of a subject.” Her approach seems promising for the kind of problem we have followed, especially if the “formation of a subject” not only includes individuals’ selves, affects, and desires but also encompasses the formation of the couple as a kind of subject. But Butler treats the problem of “regulatory power” as one of “the incorporation of norms.”⁸⁶ This turns out to be an intrapsychic problem (despite what I take to be Butler’s intentions), as Butler uses “norms” interchangeably with “ideals” and hence with the psychoanalytic ego-ideal: “This viable and intelligible being, this subject, is always produced at a cost, and whatever resists the normative demand by which subjects are instituted remains unconscious. Thus the psyche, which includes the unconscious, is very different from the subject: the psyche is precisely what exceeds the imprisoning effects of the discursive demand to inhabit a coherent identity, to become a coherent subject. The psyche is what resists the regularization that Foucault ascribes to normalizing discourses” (86). The unconscious exceeds, and can therefore subvert, the “imprisoning” demand for coherence, here represented by ego-ideals, that is, norms. Later, “the body” offers the same possibility of excess and subversion.

This constellation of theoretical claims is of no mean significance in queer theory. Butler tries to explain that the possibilities of queerness, subversion, and resistance endure despite the force of norms. What is more, she sees this subversion as inevitable in the formation of “normal” subjects. If her argument were successful, it would add up to the strongest possible rebuttal to Sullivan. He sees gay people as intrinsically normal but deluded into pathological queerness by the leagued forces of immature theorists, wounded self-esteem, and the prohibition on marrying. Butler sees all people as intrinsically resistant to the normal, even though they are formed by the normalizing “demand to inhabit a coherent identity.” For Sullivan, gay men and lesbians are “virtually normal.” For Butler, all creatures straight and gay are virtually queer. For Sullivan, marriage brings about the perfect normalization that gay people have wanted all along. It is only a slight exaggeration to say that for Butler, people have all along resisted, just by having psyches and bodies, the norms that form them; so the further imposition of a norm such as marriage on them presumably offers undiminished potential for queerness and resistance.⁸⁷

It should be clear that I find this reasoning unpersuasive. How norms encounter resistance is to some degree a false question: it is in the nature of norms to offer resistance to some state of affairs. If there isn't resistance, it isn't a norm. Moreover, Butler's line of argument strikes me as metaphysical, insofar as “the subject” stands in an unmediated relation to “power.” This power seems to lack social relations, a social terrain, institutions, histories, temporality, and, above all, conflict or contradiction. Setting up the problem in this way means that the key evaluative questions go begging. It is taken for granted that “resistance” is the thing to value, that “norms” and “power” are devoutly to be resisted, and that anything that resists “the demand to inhabit a coherent identity” can be pressed into the service of this cause. In Butler's book, “norms,” “the normative demand,” and “normalizing discourses” follow one another indistinguishably, as do ego-ideals and “the demand to inhabit a coherent identity.” Power seems to be synonymous with oppression. But norms, normative demands, normalization, ego-ideals, coherence, oppression, and power are vastly different from one another in Foucault's usage and in almost everyone else's. I do not believe that any of them can be given a theoretically negative valuation. (Foucault speaks of normalization with consistent loathing; for him, however, the term refers not to the general problem of the incorporation of norms as Butler frames it but to a distinct historical phenomenon, peculiar to modern societies, with their statistical-demographic imagination.)⁸⁸ Nor should we take it for granted that subversion and resistance are things to value independently of *which* norms they subvert or resist.

It could hardly be the case that norms are all on the side of ego-ideals, consciousness, and coherent identity or that resistance stems from the psyche and the body. At least, we should hope not, because if “whatever resists the normative demand by which subjects are instituted remains unconscious,” then resistance will be unavailable to consciousness. In an overdetermined history, the only context in which power and resistance ever arise, norms have both conscious and unconscious force and are both individual and collective. Resistance, too, can be either conscious or unconscious: it can be manifest in bodily realms of pleasure or abjection that are not explicitly thematized as norms, but it can just as easily take the form of explicit norms and, indeed, of demands to inhabit a coherent identity. As we have seen, resistance to the norms and regulatory power of marriage can be driven by an articulate ethical vision that includes a higher-order claim for coherent identity and even a better version of “self-esteem,” namely, one that is not predicated on the disavowal of sex. For this resistance to become a politics, it has to find some articulacy, some scene of action, and some normative force of its own.

But it would be too much to expect this to happen simply in the relation between individuals and the norms they introject. In explaining how resistance enters politics, Butler describes normalization according to the model that she elsewhere calls performativity:

For Foucault, the subject who is produced through subjection is not produced at an instant in its totality. Instead, it is in the process of being produced, it is repeatedly produced (which is not the same as being produced anew again and again). It is precisely the possibility of a repetition which does not consolidate that dissociated unity, the subject, but which proliferates effects which undermine the force of normalization. The term which not only names, but forms and frames the subject—let us use Foucault’s example of homosexuality—mobilizes a reverse discourse against the very regime of normalization by which it is spawned. . . . [It] is in the possibility of a repetition that repeats against its origin that subjection might be understood to draw its inadvertently enabling power.⁸⁹

Here the theoretical frame of metanormative analysis produces a weak optimism. Subjection is “inadvertently enabling.” But can the mobilization of a “reverse discourse” be attributed to “precisely the possibility of a repetition”? Does it not seem that whether anything should count as a reverse discourse or simply as more of the same discourse depends not on the mere fact of recontextualization but on

the specifics of recontextualization? A “reverse discourse,” as Butler elsewhere acknowledges, requires more than the iterability of a lexical item like “homosexuality.” In the case of marriage, a counterdiscourse may arise partly through a resignifying of key terms, including *self-esteem* and *marriage*. I have tried to suggest how this might be done. But it will not come about merely by repeating the words, or by marrying and thus instantiating the norms of marriage, or by having an unconscious and a body. In short, no theory that takes queerness as inevitable in principle, or normalization as impossible in principle, can be of much use in making the world-historical judgment of the politics of gay marriage. Perhaps the theory was not intended for that purpose. But if such theoretical arguments lull queer theorists into a false optimism about the ability of queers to resignify marriage, then it will have failed the aspiration to resist normalization.

Where does this leave us? Not at the altar, to be sure. In the straight press, and often in the gay press, the marriage issue is presented as the final frontier in the antagonism between gays and straights. Most queer people I know, however, do not see it that way. The marriage issue, defined as “same-sex marriage, pro or con,” seems to most of us a lose-lose proposition for queers. The most disturbing aspect of the debate, to my mind, is that its framing has created a widening gap in the United States between the national lesbian and gay movement and queers. In addition to the arguments I have made here against the strategy of pursuing legal marriage as it is, we face a serious issue that threatens only to get worse: the campaign for gay marriage is not so much a campaign for marriage as a campaign about the constituency and vocabulary of the gay and lesbian public. The normalizing interpretation of marriage is increasingly established as the self-understanding of the national gay public. Whether marriage is normalizing or not for the individuals who marry, the debate about marriage has done much to normalize the gay movement and thus the context in which marriage becomes a meaningful option.

The worry is not that some same-sex couples might marry. The legal system is not likely to produce a clear verdict of the kind Sullivan imagines. Given the spectacular political reaction against the campaign for same-sex marriage in Hawaii and Alaska, the outcome has been a definitive, homophobic repudiation of gay marriage. If the gay organizations win similar battles in Vermont and California and elsewhere, the future is likely to hold a long, complex series of state-by-state struggles over the “full faith and credit” clause of the Constitution, federal policy, and other limitations on the meaning of marriage. Outside the legal system, too, change will certainly be complex. For example, introducing the mere possibility of marriage would vastly broaden the meaning of gay couples’ refusal to marry. In fact, it would make gays’ rejection of marriage a more significant possi-

bility than it is now, by making it a free act. Thus it is indeed plausible to claim that the historical process renders it difficult to project the evolution of marriage.

The apologists of marriage often say that attaining same-sex marriage would give the gay movement new power to demand further reforms. What they do not take into account, besides the deep and nearly inaccessible power of the institutions and norms of marriage, is the change that the campaign is likely to bring about in the movement itself as its enemies are repositioned, its battles redefined, and its new leaders and spokespersons identified and as millions of dollars of scarce resources are spent waging fights that most of us would never have chosen. In fact, since the campaign is not likely to result in same-sex marriage, despite the claims of its triumphal prophets, the most significant dimension of the marriage struggle may turn out to be these internal effects. On this score alone Sullivan can claim tremendous success.

Like the marriage issue, the struggle over the meaning of the gay movement is more than a matter of spin. The gap between gay and queer understandings of the movement is growing, I think, because of a number of developments in the 1990s: the changed nature of the AIDS epidemic; the decline of direct-action activism; the 1992 election and the rise of Clintonian politics; the growing importance of big-money political campaigns and the resulting prominence of a fat-cat donor base; the growing centralization of gay politics by national organizations headquartered in Washington, D.C.; the rise of highly capitalized "lifestyle" magazines as the movement's principal public venues; the consequent rise of a politics of media celebrity, in which a handful of gay pundits dominate opinion making; and the extraordinary success of some of these pundits in putting a neoliberal (i.e., neoconservative) spin on the gay movement. Under these conditions, the prospects for dequeering the gay movement are indeed bright. If it is ever to be possible to pursue marriage as something other than a strategy to normalize gay sexuality, it will be necessary to redevelop a queer public and, at the very least, to put a different spin on the issue.

In the early 1990s marriage was pushed to the foreground of the national scene in part because Sullivan and others realized its potential for realigning American gay politics under these conditions. Sullivan has taken this impulse farther than most. "Following legalization of same-sex marriage and a couple of other things," he has declared, "I think we should have a party and close down the gay rights movement for good."⁹⁰ Although few gay organizations are willing to herald their own obsolescence with this much aggressional glee, they have by and large accepted the mainstreaming project, in particular the elevation of the marriage issue as the movement's leading goal. The burden now lies on the advocates of

marriage, especially the national gay organizations, to explain what they intend to do about the invidious consequences—intended or unintended—of their policy.

In the meantime, the triumphalist narrative, according to which we have emerged from the long night of marginalization into the full glory of our rights, our acceptance, our integration, and our normalcy, goes almost unchallenged. Queer theory cannot counter this narrative by insisting that we are inevitably, permanently queer. To do so is to give up the struggle for the self-understanding not only of individual queers—who may be persuaded, despite their best instincts and the evidence of their daily lives, that their sense of world alienation is their private moral failing rather than a feature of heteronormativity—but also of the gay world's media and publics, which increasingly understand themselves as belonging to a market niche rather than to a counterpublic. Queer counterpublics still exist and have not lost their vitality. But they have become increasingly isolated as their connection with the national organizations, magazines, and publics has eroded. What will matter more and more is the world-making activity of queer life that neither takes queerness to be inevitable nor understands itself from the false vantage of “society.” Because love, privacy, and the couple form obscure this effort, even the most generous estimate of the politics of marriage puts new pressure on keeping the world-making project in view. Because sexual culture and nonnormative intimacies are so commonly the practices of this world making, any argument for gay marriage requires an intensified concern for what is thrown into its shadow.

Notes

Many people have contributed to this essay through their ideas and discussions, sometimes in sympathy, sometimes in conflict. I wish to thank the members of Sex Panic! Lauren Berlant, Douglas Crimp, Didier Eribon, Eric Fassin, Bonnie Honig, Myra Jehlen, Kendall Thomas, and Evan Wolfson. But my greatest debts are to David M. Halperin, who offered detailed suggestions, and Sean Belman, who, in addition to offering thoughtful commentary, constantly showed that there is much to be said for life out of wedlock.

1. I am arguing not against theory but against a procedure of decontextualization that for many people defines theory. My own understanding of theory is discussed in Michael Warner and Lauren Berlant, “What Does Queer Theory Teach Us about *X*?” *PMLA* 110 (1995): 343–49; in the introduction to *Fear of a Queer Planet: Queer Politics and Social Theory*, ed. Michael Warner (Minneapolis: University of Minnesota Press, 1993); and in Chicago Cultural Studies Group, “Critical Multi-

- culturalism,” in *Multiculturalism: A Critical Reader*, ed. David Theo Goldberg (Oxford: Blackwell, 1994), 114–39.
2. The quotation is from Jesse Helms, speech delivered on the Senate floor in favor of the Defense of Marriage Act, in *Same-Sex Marriage: The Moral and Legal Debate*, ed. Robert M. Baird and Stuart E. Rosenbaum (Amherst, N.Y.: Prometheus, 1997), 22; see also Jean Bethke Elshtain, “Against Gay Marriage,” in *Same-Sex Marriage, Pro and Con: A Reader*, ed. Andrew Sullivan (New York: Vintage, 1997), 57–60.
 3. Evan Wolfson, “Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique,” *New York University Review of Law and Social Change* 21 (1994): 611. See also Wolfson, “Why We Should Fight for the Freedom to Marry,” *Journal of Gay, Lesbian, and Bisexual Identity* 1 (1996), 43–72.
 4. Paula Ettelbrick, “Since When Is Marriage a Path to Liberation?” *Out/Look* 6 (1989), rpt. in Sullivan, *Same-Sex Marriage, Pro and Con*, 118–24; Tom Stoddard, “Why Gay People Should Seek the Right to Marry,” *Out/Look* 6 (1989), rpt. in *We Are Everywhere: A Historical Sourcebook in Gay and Lesbian Politics*, ed. Mark Blasius and Shane Phelan (New York: Routledge, 1997), 753–57.
 5. Quoted in Donn Teal, *The Gay Militants* (New York: Stein and Day, 1971), 284.
 6. See, e.g., the excellent collection of historical documents assembled by Blasius and Phelan, *We Are Everywhere*, esp. Carl Wittman, “A Gay Manifesto” (1969), 380–88; Martha Shelley, “Gay Is Good” (1970), 391–93; “Statement of the Male Homosexual Workshop” and “Demands of the Lesbian Workshop,” both from a conference sponsored by the Black Panthers (1970), 402–4; the interview “Questions for Michel Foucault” (1978), 454–59; and Michael Denny, “Gay Politics: Sixteen Propositions” (1981), 485–97. To this list might be added most of the essays in Karla Jay and Allen Young, eds., *Out of the Closets: Voices of Gay Liberation* (1972; rpt. New York: New York University Press, 1992); and such classic theoretical works as Gayle Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” in *Pleasure and Danger: Exploring Female Sexuality*, ed. Carole S. Vance (1984; rpt. London: Pandora, 1992), 267–319.
 7. William Eskridge, *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996), 54.
 8. This distinction between formal and substantive justice derives from the critique of liberal jurisprudence most commonly associated with critical legal studies but arguable on pragmatist grounds as well and further developed recently by feminist and critical race theory. The basic concepts are laid out in Roberto Mangabeira Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: Free, 1976); and Unger, *The Critical Legal Studies Movement* (Cambridge, Mass.:

Harvard University Press, 1986). For more recent examples see Iris Marion Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990); and Kimberlè Crenshaw et al., eds., *Critical Race Theory: The Key Writings That Formed the Movement* (New York: New, 1995).

9. *Baehr* treats the ban on same-sex marriage as a question of sex discrimination under Hawaii's equal protection clause (even for male-male marriage). The issue is reduced to the formal or procedural one of whether classification on the basis of sex is admissible. What we would call heteronormativity is explicitly rejected as an issue. "Parties to a same-sex marriage," the court notes, "could theoretically be either homosexuals or heterosexuals." The sexual orientation of the plaintiffs, and all other questions of normativity and power, are deemed irrelevant.
10. Wolfson implies such an argument in "Crossing the Threshold," 591–608. But he attempts to show that a campaign for marriage does not necessarily prevent the pursuit of further goals; he does not argue that it must be seen as a step in a larger struggle. He has consistently claimed that marriage is a right in and of itself and that therefore no program of change is required to justify the demand for it. Wolfson's essay is an extended rebuttal of Nancy Polikoff, "We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not 'Dismantle the Legal Structure of Gender in Every Marriage,'" *Virginia Law Review* 79 (1993): 1535–50. Other significant works in the debate include Mark Strasser, *Legally Wed: Same-Sex Marriage and the Constitution* (Ithaca, N.Y.: Cornell University Press, 1997); Anthony C. Infanti, "Baehr v. Lewin: A Step in the Right Direction for Gay Rights?" *Law and Sexuality* 4 (1994): 1–34; and Suzanne Sherman, ed., *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies* (Philadelphia: Temple University Press, 1992).
11. Baird and Rosenbaum, *Same-Sex Marriage*, 10–11.
12. Sullivan notes in passing that "academic 'queer theorists' remain deeply suspicious of marriage" (*Same-Sex Marriage, Pro and Con*, 117). In over four hundred pages of debate about marriage, this is the only description of any argument deriving from queer theory or from more general traditions of critical theory, and Sullivan discredits it with quotation marks.
13. Eskridge also discusses Polikoff, "We Will Get What We Ask For" (*Case for Same-Sex Marriage*, passim). Works less often discussed include Steven K. Homer, "Against Marriage," *Harvard Civil Rights/Civil Liberties Law Review* 29 (1994), 505–16; and Richard Goldstein, "The Great Gay Marriage Debate," *Village Voice*, 9 January 1996. Important contexts for the rise of the marriage debate in the movement are described by Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Anchor, 1995).

14. Ettelbrick, "Since When Is Marriage a Path to Liberation?" 123. A fuller reprinting can be found in Blasius and Phelan, *We Are Everywhere*, 757–61.
15. Eskridge, *Case for Same-Sex Marriage*, 82.
16. *Ibid.*, 57.
17. The main features of AIDS politics summarized in this paragraph are best articulated in Douglas Crimp, ed., *AIDS: Cultural Analysis, Cultural Activism* (Cambridge, Mass.: MIT Press, 1988). See also Cindy Patton, *Inventing AIDS* (New York: Routledge, 1990); Steven Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley: University of California Press, 1996); and Douglas Crimp with Adam Rolston, *AIDS Demo Graphics* (Seattle: Bay, 1990).
18. Kerry Lobel, press release announcing the National Gay and Lesbian Task Force's support of gay marriage; Stoddard, "Why Gay People Should Seek the Right to Marry," (1995), 756.
19. On the "zone of privacy" in constitutional law after *Bowers v. Hardwick* see Kendall Thomas, "Beyond the Privacy Principle," *Columbia Law Review* 92 (1992): 1359–1516.
20. Wolfson, "Crossing the Threshold," 582–83.
21. Mary C. Dunlap, "The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties," *Law and Sexuality* 1 (1991): 90. Dunlap also sees marriage as an essential consequence of the value of privacy, apparently not noticing that being unmarried is the ground on which courts can and will continue to refuse protection of privacy for sexual acts. Likewise, she sees marriage as the expression of the value of autonomy—but not for the unmarried, whose autonomy becomes more and more fictitious as benefits and status accrue to marriage.
22. Jonathan Rauch, "For Better or Worse?" *New Republic*, 6 May 1996, rpt. in Sullivan, *Same-Sex Marriage, Pro and Con*, 180.
23. Gabriel Rotello, "Creating a New Gay Culture: Balancing Fidelity and Freedom," *Nation*, 21 April 1997, 11–16. See also Rotello, *Sexual Ecology: AIDS and the Destiny of Gay Men* (New York: Dutton, 1997), 15.
24. Michael Warner, "Media Gays: A New Stone Wall," *Nation*, 14 July 1997, 15–19, and subsequent letters. There have been many critiques of Rotello's book. See esp. Mark Schoofs, "The Law of Desire," *Village Voice*, 15 April 1997; Joshua Oppenheimer, review in *Gay Community News* 23 (1997): 40–45; Oppenheimer, "'Sexual Ecology' = Sexual Apartheid," *Harvard Gay and Lesbian Review* 5 (1998): 15–18; and Jim Eigo, "The Monogamy Code," in *Sex Panic!* (New York: Sex Panic! 1997), 15–21.
25. Rotello, "Creating a New Gay Culture."
26. See Jonathan Rauch, "A Pro-Gay, Pro-Family Policy," *Wall Street Journal*, 29

- November 1994; Andrew Sullivan, "Here Comes the Groom," *New Republic*, 28 August 1989; David Mastro, "Gay Marriage: Promoting Family and Values," *Daily Iowan*, 14 March 1994; and James Pinkerton, "A Conservative Argument for Gay Marriage," *Los Angeles Times*, 30 June 1993.
27. Rauch, "For Better or Worse?" 180–81.
 28. Fenton Johnson, "Wedded to an Illusion: Do Gays and Lesbians Really Want the Right to Marry?" *Harper's*, November 1996, 47.
 29. "The Freedom to Marry," *New York Times*, 7 April 1996, 10.
 30. This aspect of the modern welfare state, and the rational-choice theory that most vigorously supports it, has been the subject of a large literature. For an incisive overview see Jürgen Habermas, "The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies," in *The New Conservatism: Cultural Criticism and the Historians' Debate*, ed. and trans. Shierry Weber Nicholsen (Cambridge, Mass.: MIT Press, 1989), 48–70.
 31. This argument derives, of course, from Tocqueville. One powerful modern statement of it is Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic, 1983), although Walzer's discussion of kinship, love, and marriage shows how little he follows through on the principle.
 32. Andrew Sullivan, *Virtually Normal: An Argument about Homosexuality* (New York: Knopf, 1995), 107.
 33. John Shelby Spong, "Blessing Gay and Lesbian Commitments," in Sullivan, *Same-Sex Marriage, Pro and Con*, 79–80.
 34. Johnson, "Wedded to an Illusion," 47. On the idealization of marriage in contemporary nostalgia politics see Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap* (New York: Basic, 1992).
 35. See Warner, "Media Gays"; Warner, "Zones of Privacy," in *What's Left of Theory?* ed. Judith Butler, John Guillory, and Kendall Thomas (New York: Routledge, forthcoming); and Dangerous Bedfellows, eds., *Policing Public Sex: Queer Politics and the Future of AIDS Activism* (Boston: South End, 1996).
 36. Wolfson, "Crossing the Threshold," 479.
 37. Quoted in Richard D. Mohr, "The Case for Gay Marriage," *Notre Dame Journal of Law, Ethics, and Public Policy* 9 (1995), rpt. in Baird and Rosenbaum, *Same-Sex Marriage*, 90. See also Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights* (Boston: Beacon, 1994).
 38. Barbara Cox, "A (Personal) Essay on Same-Sex Marriage," in Baird and Rosenbaum, *Same-Sex Marriage*, 27–29. This essay was originally a long footnote to an article in the *Wisconsin Law Review*, so the disappearance of the law and the state from Cox's understanding of marriage is especially telling.
 39. Indeed, as Eve Kosofsky Sedgwick points out, marrying is for J. L. Austin the par-

- adigm case of performativity (“Queer Performativity: Henry James’s *The Art of the Novel*,” *GLQ* 1 [1993]: 1–16).
40. Cox, “A (Personal) Essay,” 29.
 41. Lauren Berlant treats this subject in “The Subject of True Feeling: Pain, Privacy, and Politics,” in *Cultural Pluralism, Identity Politics, and the Law*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1998), 73–98; in *Transformations: On Feminism and Its Futures*, ed. Jackie Stacey, Celia Lury, and Sarah Ferguson (forthcoming); and in *Political Theory and Cultural Studies*, ed. Jodi Dean (Ithaca, N.Y.: Cornell University Press, forthcoming). Berlant argues that the rhetoric of pain and trauma “confirms the centrality of interpersonal identification and empathy to the vitality and viability of collective life. This gives citizens something to do in response to overwhelming structural violence. Meanwhile, by equating mass society with that thing called ‘national culture,’ these important transpersonal linkages and intimacies all too frequently serve as proleptic shields, as ethically uncontested legitimating devices for sustaining the hegemonic field. . . . Its two scenes of citizenship can be spatialized: one takes place in a traumatized public and the other in a pain-free intimate zone. These zones mirror each other perfectly, and so betray the fetish form of sentimental citizenship, the wish it expresses to signify a political world beyond contradiction. . . . It claims a hardwired truth, a core of common sense. It is beyond ideology, beyond mediation, beyond contestation. It seems to dissolve contradiction and dissent into pools of basic and also higher truth. It seems strong and clear, as opposed to confused or ambivalent (thus: the unconscious has left the ballpark). It seems the inevitable or desperately only core material of community.” But “the reparation of pain,” she notes, “does not bring into being a just life,” and even the traumatic pain of subordinated populations should be analyzed as ideology. The same can be said of love. Berlant has made that argument as well in “Desire/Love,” in *Critical Terms for the Study of Gender and Sexuality*, ed. Catharine Stimpson and Gil Herdt (Chicago: University of Chicago Press, forthcoming).
 42. Nathaniel Hawthorne, *The Scarlet Letter*, in *Novels* (New York: Library of America, 1983), 286. For a brilliant discussion of Hawthorne’s romance in relation to law see Lauren Berlant, *The Anatomy of National Fantasy: Hawthorne, Utopia, and Everyday Life* (Chicago: University of Chicago Press, 1991).
 43. But not quite. See the discussion of queer kiss-ins in Lauren Berlant and Elizabeth Freeman, “Queer Nationality,” in Warner, *Fear of a Queer Planet*, 193–229.
 44. Quoted in Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies* (London: Penguin, 1997), 201–3.
 45. For a powerful interpretation of this phenomenon see Niklas Luhmann, *Love as*

Passion: The Codification of Intimacy, trans. Jeremy Gaines and Doris L. Jones (Cambridge, Mass.: Harvard University Press, 1986).

46. Robert Glück, *Jack the Modernist* (New York: Gay Press of New York, 1985), 3.
47. This way of talking about marriage and state sanctioning well illustrates the sublimity of the state fetish, as Michael Taussig calls it in his provocative essay “Maleficium: State Fetishism,” in *The Nervous System* (New York: Routledge, 1992), 111–40.
48. Wolfson, “Crossing the Threshold,” 585.
49. The claim that gay marriage imitates straight models makes a fairly weak critique of marriage. See the response to the 1971 wedding described in Teal, *Gay Militants*, as well as the passages that Wolfson cites from Polikoff, “We Will Get What We Ask For” (“Crossing the Threshold,” 582).
50. Wolfson, “Crossing the Threshold,” 602.
51. Richard A. Posner, *Sex and Reason* (Cambridge, Mass.: Harvard University Press, 1992), extract in Sullivan, *Same-Sex Marriage, Pro and Con*, 185–89.
52. Claudia Card, “Against Marriage and Motherhood,” *Hypatia* 11, no. 3 (1996): 7.
53. Wolfson, “Crossing the Threshold,” 580. Wolfson is so eager to avoid the question of sexual normativity in the context of marriage that he congratulates the *Baehr* court for “brilliantly sidestepping the legal thicket of sexual orientation politics” (581). But what the court did was to refuse to consider the reality of domination.
54. Eskridge, *Case for Same-Sex Marriage*, 76; Wolfson, “Crossing the Threshold,” 589.
55. For a concise expression of this point see David M. Halperin, *One Hundred Years of Homosexuality and Other Essays on Greek Love* (New York: Routledge, 1990), 51–52.
56. Wolfson, “Crossing the Threshold,” 591.
57. *Ibid.*, 591–610. On page 611 Wolfson says the opposite: “Bringing the wrong suit in the wrong way, even for the right objective, could do serious injury not only to our right to marry, but also to the broader range of lesbian and gay rights. The wrong case, wrong judge, or wrong forum could literally set us all back years, if not decades.” Here strategy matters, and the ultimate goal is a “broader range” of rights, though still only “lesbian and gay” rights.
58. See Janet E. Halley, *Don't: A Reader's Guide to the Military's New Anti-Gay Policy* (Durham, N.C.: Duke University Press, forthcoming).
59. On the assessment of the present see Michael Warner and Lauren Berlant, “Introduction to ‘Critical Multiculturalism,’” in Goldberg, *Multiculturalism*, 107–13. On regressive tendencies the contemporary literature, especially the work of the Frankfurt School, is large.

60. See Gayle Rubin, "The Traffic in Women," in *Toward an Anthropology of Women*, ed. Rayna R. Reiter (New York: Monthly Review Press, 1975), 157–210.
61. See, e.g., Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (New York: Morrow, 1970). Alice Echols provides a useful history in *Daring to Be Bad: Radical Feminism in America, 1967–1975* (Minneapolis: University of Minnesota Press, 1989).
62. The classic work is Lawrence Stone, *The Family, Sex, and Marriage in England, 1500–1800* (New York: Harper and Row, 1977). See also Jean H. Hagstrum, *Sex and Sensibility: Ideal and Erotic Love from Milton to Mozart* (Chicago: University of Chicago Press, 1980).
63. The standard reference is Claude Lévi-Strauss, *The Elementary Structures of Kinship*, trans. James Harle Bell, John Richard von Sturmer, and Rodney Needham, rev. ed. (Boston: Beacon, 1969). It is discussed critically in Rubin, "The Traffic in Women." For a survey of the anthropological literature on marriage from a queer point of view see John Borneman, "Until Death Do Us Part: Marriage/Death in Anthropological Discourse," *American Ethnologist* 23 (1996): 215–35.
64. Quoted in Sullivan, *Same-Sex Marriage, Pro and Con*, 209.
65. See Eskridge's list of the practical benefits of marriage in the District of Columbia (*Case for Same-Sex Marriage*, 66–67).
66. Nancy Fraser proposes these terms to distinguish among varieties of contemporary politics; she classes lesbian and gay politics only as a politics of recognition and thereby blocks from view the aspects of a problem such as marriage that have to do with its state and civil benefits, as well as with the regulation of sexuality ("From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age," *New Left Review*, no. 212 [1995], rpt. in *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* [New York: Routledge, 1997]), 56–81. In fact, the marriage issue perfectly illustrates the failure of the redistribution-recognition distinction to comprehend actual politics, and it falsely reduces queer politics to secondary importance.
67. See Nancy Polikoff, "This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families," *Georgia Law Review* 78 (1990), 459–85.
68. Eskridge devotes some space to the legal benefits, but Chambers points out that it amounts to 6 out of his 261 pages ("What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," *Michigan Law Review* 95 [1996]: 450).
69. *Ibid.*, 459.
70. See Borneman, "Until Death Do Us Part."
71. Greg Urban provides a fascinating reading of the moiety system and its anthropo-

logical analysis in *Metaphysical Community: The Interplay of the Senses and the Intellect* (Austin: University of Texas Press, 1996), 99–133.

72. Nothing better illustrates Foucault's claim about the profound shift in modern governmentality or in what he called biopower, the constitutive relationship between the modern state and the regulation of the life of a population. See Michel Foucault, *An Introduction*, vol. 1 of *The History of Sexuality*, trans. Robert Hurley (New York: Vintage, 1978), esp. the final chapter; and Graham Burchell, Colin Gordon, and Peter Miller, eds., *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991).
73. Mohr, "Case for Gay Marriage," 94.
74. *Ibid.*, 91.
75. Even Card missteps here. She makes an analogy between the lax requirements for a marriage license and the stringent ones for a driving license, arguing that "in our society there is greater concern for victims of bad driving than for those of bad marriages" ("Against Marriage and Motherhood," 14). But it is a bad analogy, partly because even good marriages result in disadvantages for the unmarried but also because the last thing we should encourage is more active state regulation of intimacy and sexuality. The state should confer derivative recognition, not stipulative licensing. It should approach its common-law role rather than assert statutory or administrative control.
76. Nan D. Hunter, "Marriage, Law, and Gender: A Feminist Legal Inquiry," *Law and Sexuality* 1 (1991): 9–30. See also Hunter, "Sexual Dissent and the Family," in Lisa Duggan and Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture* (New York: Routledge, 1995), 101–6.
77. Mohr, "Case for Gay Marriage," 96; David P. McWhirter and Andrew M. Mattison, *The Male Couple: How Relationships Develop* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), 252–59; Card, "Against Marriage and Motherhood," 8.
78. Morris B. Kaplan, *Sexual Justice: Democratic Citizenship and the Politics of Desire* (New York: Routledge, 1997), 225.
79. The national ground of the same-sex marriage debate is again evidence of the constitutive role of the nation-state in modern imaginings of the institution of marriage. This role is seldom rendered visible, as it is for the issues of immigration and citizenship. The relation between nationalism and marriage would be a fruitful topic for another essay, and the narrativity of social change would have to occupy a central place in it. See Eve Kosofsky Sedgwick, "Nationalisms and Sexualities in the Age of Wilde," in *Nationalisms and Sexualities*, ed. Andrew Parker et al. (New York: Routledge, 1992), 235–45. In this connection one might also note the appeal of a fantasy common to pious talk about marriage, as in one editorial (and cover story) in the *Economist*: "For society, the real choice is between

homosexual marriage and homosexual alienation. No social interest is served by choosing the latter” (“Let Them Wed,” *Economist*, 6 January 1996, rpt. in Sullivan, *Same-Sex Marriage, Pro and Con*, 204). The image of a society choosing, and choosing in the service of its own interests, and struggling to prevent the alienation of its members is a constant theme in the gay marriage debate. Again, the relation between policy and population illustrates well the phenomena of biopower and normalization described by Foucault: the effort to achieve normalization here is not the imposition of a fixed or a necessarily heterosexual norm but is a kind of adaptation. The unasked question, then, is not whether marriage is intrinsically heterosexual but whether the alienation of unmarried homosexuals might otherwise find expression in needs and norms that are not those of the society as a whole.

80. On the indispensability of progress to the modern imagination see Theodor W. Adorno, “Progress,” in *Critical Models: Interventions and Catchwords*, trans. Henry W. Pickford (New York: Columbia University Press, 1998), 143–60.
81. Andrew Sullivan, “The Marriage Moment,” *Advocate*, 20 January 1998, 61–63. Sullivan’s dismissive joke about the queer theorist who “hilariously” remarks that “there is no orgasm without ideology”—not a bad line at all, in my view—refers to David M. Halperin, “Historicizing the Sexual Body: Sexual Preferences and Erotic Identities in the Pseudo-Lucianic *Erôtes*,” in *Discourses of Sexuality: From Aristotle to AIDS*, ed. Domna C. Stanton (Ann Arbor: University of Michigan Press, 1992), 261; and in *Foucault and the Writing of History*, ed. Jan Goldstein (Oxford: Blackwell, 1994), 34. The sentence reads: “If the sexual body is indeed historical—if there is, in short, no orgasm without ideology—perhaps ongoing inquiry into the politics of pleasure will serve to deepen the pleasures, as well as to widen the possibilities, of politics.”
82. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 242.
83. Sullivan, “The Marriage Moment,” 62. “Richly depersonalizing intimacies” is a borrowing from Candace Vogler’s excellent essay “Sex and Talk,” *Critical Inquiry* 24 (1998): 328–65.
84. Sullivan, “The Marriage Moment,” 63.
85. Kaplan, *Sexual Justice*, 226.
86. Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford, Calif.: Stanford University Press, 1997), 19.
87. Butler herself asserts that this statement is an exaggeration: “This failure to approximate the norm . . . is not the same as the subversion of the norm. There is no promise that subversion will follow from the reiteration of constitutive norms; there is no guarantee that exposing the naturalized status of heterosexuality will

lead to its subversion” (“Critically Queer,” *GLQ* 1 [1993]: 22). This caveat points to a gap in the analysis—let us say, between virtually queer and critically queer—that cannot be closed in the terms in which the argument is posed.

88. Foucault derives the problem from Georges Canguilhem, *The Normal and the Pathological* (1943), trans. Carolyn R. Fawcett in collaboration with Robert S. Cohen (New York: Zone, 1989). Canguilhem argues that the desire to be normal—the idea, that is, that statistical or distributional norms express a normative value, like a natural law—presupposes the informational culture of statistics and demographics, as well as the rich modern imagination of population-based styles of thinking (such as the concept of race, which is in turn born of the demographic imagination). Foucault suggests that the statistical-demographic imagination has become a key dimension of the modern body: “[One] consequence of [the] development of bio-power was the growing importance assumed by the action of the norm, at the expense of the juridical system of the law. . . . Such a power has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendor; it does not have to draw the line that separates the enemies of the sovereign from his obedient subjects; it effects distributions around the norm. I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory. A normalizing society is the historical outcome of a technology of power centered on life” (*An Introduction*, 144). Consciousness of the normal presupposes countable data and the fungibility of persons in a population. The concept would make no sense in a status-rich society. You would not speak of a normal person if doing so required the peasant, the abbe, and the lord of the manor to weigh equally in the calculation of the norm. Thus Foucault dates normalization with modernity: “Like surveillance and with it, normalization becomes one of the great instruments of power at the end of the classical age. For the marks that once indicated status, privilege and affiliation were increasingly replaced—or at least supplemented—by a whole range of degrees of normality indicating membership of a homogeneous social body but also playing a part in classification, hierarchization and the distribution of rank. In a sense, the power of normalization imposes homogeneity; but it individualizes by making it possible to measure gaps, to determine levels, to fix specialities and to render the differences useful by fitting them one to another. It is easy to understand how the power of the norm functions within a system of formal equality, since within a homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of mea-

surement, all the shading of individual differences” (*Discipline and Punish: The Birth of the Prison* [New York: Vintage, 1979], 184). The conditions of mass culture are likely to preserve this confusion of statistical and medical norms, continually implanting the image of the mass—an implicit comparison with the mass of countable but indefinite other bodies—in the media by which people apprehend their bodies. Ordinarity by itself should be neither desirable nor undesirable. Yet as an image of health, it has a subtle normativity, capable of eclipsing what Canguilhem calls the normative capacity, which is manifest in variation.

When he reissued his study in 1966 as *The Normal and the Pathological*, Canguilhem added a lengthy section explaining that, like medicine, modern culture produces norms from its immanent regularities: “The normalization of the technical means of education, health, transportation for people and goods, expresses collective demands which, taken as a whole, even in the absence of an act of awareness [*prise de conscience*] on the part of individuals, in a given historical society, defines [*sic*] its way of referring its structure, or perhaps its structures, to what it considers its own good” (238). In *Discipline and Punish* Foucault summarized Canguilhem’s argument: “The Normal is established as a principle of coercion in teaching with the introduction of a standardized education and the establishment of the *écoles normales*; it is established in the effort to organize a national medical profession and a hospital system capable of operating general norms of health; it is established in the standardization of industrial processes and products” (184). Foucault’s language of coercion and standardization may have misled some readers, since self-regulation is not so much the imposition of a mechanical model from without as the mutual adjustment of immanent norms in search of and guided by the general regularity of the population or “society.” Canguilhem even writes that the “mechanization of life” may be said to express “the need, obscurely felt by society, to become the organic subject of needs recognized as such” (248). The organicism of modern normalization, however, always leaves a residue. As Canguilhem concludes: “It is enough that one individual in any society question the needs and norms of this society and challenge them—a sign that these needs and norms are not those of the whole society—in order for us to understand to what extent social need is not immanent, to what extent the social norm is not internal, and finally, to what extent the society, seat of restrained dissent or latent antagonisms, is far from setting itself up as a whole” (256). The contemporary understanding of queerness opposes the normal in each of the three senses that can be drawn from Canguilhem’s argument: (1) the notion of a physiological norm defined by pathological anomalies; (2) the legitimation of that norm as the standard deviation in a population; and (3) the regularization of a society, conceived as a whole, through a constant adjustment of needs and functions. Fou-

cault's later works attempt to incorporate this vital straying from the norm as an aspect of ethics, with a stress on *égarement* [self-straying or estrangement] in relation to oneself. Queer culture has a lot to teach on this subject, not least on the needs and norms that might be elicited in relations of intimacy. But this aspect of queer culture does not find expression in the gay marriage debate.

This Foucauldian line of speculation about modernity and social knowledge has lain underdeveloped in queer theory. Mary Poovey's recent work on statistics and on *Sex in America* is one important exception. But Foucault's analysis of normalization, while it describes the normativity of the discussion of gay marriage, may not address the policy issues attending this discussion. As Poovey points out, the statistical sense of the normal conveys a normative force, in American culture, on the topic of sex: "According to the authors of *Sex in America*, normal Americans are driven by the desire to be normal—and to know that they, and especially their sexual behaviors, are already normal. . . . The form that information must take to convince normal readers that they are normal is statistical—for, by the authors' own account, numbers metamorphose almost inevitably into the kind of evaluative thinking that makes people who belong to the statistical majority feel superior to those who do not" ("*Sex in America*," *Critical Inquiry* 24 [1998]: 374).

89. Butler, *Psychic Life of Power*, 93–94.

90. Quoted in David Groff, ed., *Out Facts: Just about Everything You Need to Know about Gay and Lesbian Life* (New York: Universe, 1997), 103.