Michael Warner,
The Trouble with Normal

Chapter Three

Beyond Gay Marriage

"There are no societies which do not regulate sex, and thus all societies create the hope of escaping from such regulations."
—Michel Foucault, 1973

In 1996, debating the so-called Defense of Marriage Act in the House of Representatives, Illinois Republican Henry Hyde delivered what he thought was a clinching argument against same-sex marriage: "People don't think that the traditional marriage ought to be demeaned or trivialized by same-sex unions." Massachusetts Democratic Congressman Barney Frank quickly seized on what seemed a careless phrase. "How does it demean your marriage? If other people are immoral, how does it demean your marriage?" Hyde, who was later forced to admit an adulterous affair even as he came to head the Republican prosecution in the Clinton impeachment, could not manage much of an answer. "It demeans the institution," he said, lamely. "My marriage was never demeaned. The institution of marriage is trivialized by same-sex marriage."

The thing that makes Hyde's remark wrong—not just illogical or pompous—is that it becomes a program not for his own sexuality, but for someone else's. He doesn't just want his marriage to be holy; he wants it to be holy *at the expense of someone else's*. To see gay marriage as "demeaning" is, in his view, a way of seeing "traditional marriage" as more significant. Barney Frank and other marriage advocates have only to expose such thinking to the ridicule it deserves in order to point up its injustice.

But the invidiousness of Hyde's remark is a feature of marriage, not just *straight* marriage. Marriage sanctifies some couples at the expense of others. It is selective legitimacy. This is a necessary implication of the institution, and not just the result of bad motives or the high-toned non sequiturs of Henry Hyde. To a couple that gets married, marriage just looks ennobling, as it does to Hyde. Stand outside it for a second and you see the implication: if you don't have it, you and your relations are less worthy. Without this corollary effect, marriage would not be able to endow anybody's life with significance. The ennobling and the demeaning go together. Marriage does one only by virtue of the other. Marriage, in short, discriminates.

That is one reason why same-sex marriage provokes such powerful outbursts of homophobic feeling in many straight people, when they could just as easily view marriage as the ultimate conformity of gay people to their own norms. They want marriage to remain a privilege, a mark that they are special. Often they are willing to grant all (or nearly all) the benefits of marriage to gay people, as long as they don't have to give up the word "marriage." They need some token, however magical, of superiority. But what about the gay people who want marriage? Would they not in turn derive their sense of pride from the invidious and shaming distinction between the married and the unmarried?

It must be admitted from the outset that there is something unfashionable, and perhaps untimely, about any discussion 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 Hyde, or Senator Jesse Helms, or the 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," as Helms put it on the Senate floor. Pope John Paul II is reported to have claimed that same-sex marriage "is a serious threat to the future of the family and society itself." If the arguments against gay marriage are as silly and phobic as this, then naturally marrying will seem to strike deep against bigotry. What purpose could be served by a skeptical discussion of marriage now, given the nature of the opposition?

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*—the Hawaii Supreme Court decision that appeared to pave the way for gay marriage—we should "end, or at least suspend, the intra-community debate over whether to seek marriage. The ship has sailed." 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 last thing the courts are likely to care about is whether marriage is a good idea from a queer point of view.

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 on this, as on so much else, it may be the courts that will prove to have the narrow view. Within 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 been formed around this belief. But the commitment is not universally shared, to put it mildly. Gay men, lesbians, and many other unmarried people on the street are just as likely to be made slightly sick by the topic, or perhaps 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 was more surprised by the rise of the gay marriage issue than many veterans of earlier forms of gay activism. To them, marriage seems both less urgent and less agreed upon 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 by heterosexual privilege. Before the election of Bill Clinton in 1992, marriage was scarcely a visible blip on the horizon of queer politics; Paula Ettelbrick and Tom Stoddard's 1989 debate on the issue seemed, at the time, simply theoretical. 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." Both within the

United States and abroad, people have tried or discussed an immense array of other options—from common-law marriage and domestic partnership to the disentangling of health and other benefits from matrimony, to the Scandinavian model of a second-tier marriage (identical to straight marriage except for parenting rights), to the French model of legal concubinage, to the newer package of reforms known in France as the *pacte civil de solidarité* (PACS, a "civil solidarity pact" that bestows benefits on households of all kinds, including cohabiting siblings). Given this variety of alternatives, it may well strike many as odd that the question has suddenly been reduced to this: same-sex marriage, pro or 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 courts. It was launched by a relatively small number of lawyers, not by a consensus among activists. It remains a project of litigation, though now with the support of the major lesbian and gay organizations. So far the 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 of 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 the year 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, and in some ways 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 goals 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 at least 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 as 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 larger context of state regulations about sexuality be changed? Behind the question of gay marriage as it is posed in the United States, these fundamental questions are not being aired. But they are the questions that count. We cannot wait until American courts have settled the marriage issue before addressing them, not least because the way they are answered will play a large part in determining the meaning and consequences of marriage.

Marriage—Why Not?

Marriage became the dominant issue in lesbian and gay politics in the 1990s, but not before. If marriage is so fundamental to a program of rights, why did gay men and lesbians resist it over the twenty-five-year period of their most defiant activism? The issue had been raised from the beginning. In 1970, riding a burst of radical enthusiasm after Stonewall, the Reverend Troy Perry officiated a ceremony for two lesbians. Under California law at the time, common-law marriage could be formalized by a church ceremony after a couple had lived together for two years. (California law said nothing about the sexes of the couple.) The two women had lived together for just over two years, and so demanded (unsuccessfully, it turned out) that California recognize theirs as an already 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 the 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." 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 seemed scandalous to the straight press. 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 strategy over the next twenty years. Why not? Was it simply 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 being told by the advocates of same-sex marriage, back in the headlines after more than a quarter century. But we should not discount other explanations. There were, I think, strong and articulate reasons why the gay movement for decades refused to pursue the path on which it is now hellbent. They lay at the heart of an ethical vision of queer politics and centered on the need to resist the state regulation of sexuality. Queer thought both before and after Stonewall rested on these principles:

- It called attention to the mythology by which marriage is idealized.
- It recognized the diversity of sexual and intimate relations as worthy of respect and protection.
- Indeed, it cultivated unprecedented kinds of commonality, intimacy, and public life.
- It resisted any attempt to make the norms of straight culture into the standards by which queer life should be measured.
- It especially resisted the notion that the state should be allowed to accord legitimacy to some kinds of consensual sex but not others, or to confer respectability on some people's sexuality but not others.

- It insisted that much of what was taken to be morality, respectability, or decorum was, in practice, a way of regulating sexual pleasures and relations.
- It taught that any self-esteem worth having must not be purchased by a disavowal of sex; it must include esteem for one's sexual relations and pleasures, no matter how despised by others.
- 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 those who become, for the purposes of marriage law, queer.
- 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.
- It became alert on principle to the danger that those same hierarchies would continue to structure the thought of the gay and lesbian movement itself—whether through "internalized homophobia," in-group hostility, or simply through the perspective unconsciously embedded in so much of our thought and perception.
- It tried to correct for the tendency of U.S. debates to ignore other societies, on whom they nevertheless have an impact.

These insights and principles are so basic that they found expression equally in the work of academic theorists and untutored activists. They made up the ethical vision I encoun-

tered in the writings of 1970s gay activists when I was first coming out, and the same vision later served as the basis for much 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 as part of more sweeping changes designed to ensure that single people and nonstandard households, and not just same-sex couples, would benefit. In 1972, for example, the National Coalition of Gay Organizations called for the "repeal of all legislative provisions that restrict the sex or number of persons entering into a marriage unit and extension of legal benefits of marriage to all persons who cohabit regardless of sex or numbers." They also demanded "elimination of tax inequities victimizing single persons and same-sex couples." This 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 widespread 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. (This kind of question was explicitly ruled out of consideration by the *Baehr* court.) The advocates of gay marriage have not made this case. Many, indeed, have made the opposite case—that pursuing marriage means abandoning the historical principles of the queer movement as an 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, either ingenuously or disingenuously, that marriage has nothing to do with these historical commitments, that 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. If the campaign for marriage requires such a massive repudiation of queer culture's best insights on intimate relations, sex, and the politics of stigma, then the campaign is doing more harm than marriage could ever be worth.

For example, Robert Baird and Stuart Rosenbaum, editors of the reader *Same-Sex Marriage: The Moral and Legal Debate*, do not mention why the gay movement has historically 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." It appears from their strained, murky language that Baird and Rosenbaum cannot really imagine a gay argument against marriage. The sentence, which is supported only by a vague footnote to Monique Wittig as quoted by someone else, gets lost in obscure logic ("integral to," "embodying within itself"), indefinable nouns ("structures," "society," "patriarchy," and those "more desirable institutions"), and ponderous qualifiers ("*traditional* mar-

riage," as opposed to marriage; "*corrupt* authoritarian structures," as opposed to clean authoritarian structures; the "patriarchy *they* see"—poor things; a "*cultural* enemy," as opposed to a social or political or legal obstacle). This is a remarkably foggy description to be standing in for the most powerful tradition of thought on marriage to emerge from several decades of the queer movement. How did it come about that a book so uncomprehending could purport to represent "the moral and legal debate"?

It is not unusual. Andrew Sullivan's *Same-Sex Marriage: Pro and Con*, manages little better. William Eskridge's *The Case for Same-Sex Marriage*, which shows at least a nodding acquaintance with the history of gay and lesbian arguments against marriage, sidesteps the most telling arguments. Like Sullivan and Baird and Rosenbaum, for example, Eskridge deals almost exclusively with the brief article that Paula Ettelbrick published in 1989. But to Ettelbrick's straightforward claim that "marriage creates a two-tier system that allows the state to regulate relationships," the best counterargument ventured by Eskridge 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." (The paternalistic character of this argument is unmistakable.) For queer youth, "the insider-outsider issue would seem almost irrelevant," Eskridge writes, 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 legitimized by gay marriage, would restrict not only their marrying but their right to other kinds of sexual relations; or 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 once come into being to open up different life horizons for them.

William 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 those 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. He thus 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 commit-

> ment 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 that they extended the sense of "dignity" to forms of life 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 standing as models of homey monogamy, were at that time fighting the feminist sex wars, or that many 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 neglected to do anything about AIDS and still continue to impede its prevention. Never mind that "interpersonal commitment" can be a lousy prophylactic, if that's what Eskridge means by "safety's sake." Never mind that it was precisely the cultivation of nonstandard intimacies during the "disco seventies" that gave gay men the 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 a noninvidious

public recognition of diverse sexualities. AIDS, Eskridge almost seems to say, 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 larger pattern in Eskridge's book in which the queer critique of sexual normalization and state regulation simply disappear. Everywhere in the current literature supporting gay marriage, one sees a similar will to ignorance substituting for engagement with the best of queer politics.

Marriage Without Cost

A much more benign position on marriage has become the creed of the major national gay organizations and 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, in a press release announcing support for gay marriage: "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 military service campaigns. He wrote in *Out/Look* in 1989 that the fundamental issue "is not the desirability of marriage, but rather the desirability of the *right* to marry." Activists, in Stoddard's view, were obliged to work for as many options as possible for gay people, even if they disliked marriage in its currently sanctioned form.

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 mar-

riage 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, with no consequences for those who do not marry? Is it a private act, a mere choice, like an expression of taste?

That would be true only if marriage were somehow thought to lack the very privileged relation to legitimacy that makes people desire it in the first place, or if the meaning of marriage could somehow be specified without reference to the state. As long as people marry, the state will continue to regulate the sexual lives of those who do not marry. It will continue to refuse to recognize our intimate relations—including cohabiting partnerships—as having the same rights or validity as a married couple. 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. All this and more the state will justify because these sexual relations take place outside of marriage. In the modern era, marriage has become the central legitimating institution by which the state regulates and permeates people's most intimate lives; it is the zone of privacy outside of which sex is unprotected. In this context, to speak of marriage as merely one choice among others is at best naive. It might be more accurately called active mystification.

Evan Wolfson, making the same argument as Stoddard, quotes Arnie Kantrowitz as saying, "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." 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 on a challenge to 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, a personal taste, a right that some can exercise with no consequences, or with only good consequences to others.

This line of thinking is reduced to its greatest absurdity by the pro-marriage activist Mary 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.

In effect, Dunlap's argument means this: Whoever gets state support first wins. You are free to pursue "other avenues," but, of course, don't blame us if you find yourself stigmatized, abjected, or criminalized. Just don't bother us with talk about social justice for the unmarried, because that would deprive married couples of their right to diversity.

The idea that marriage is simply a choice, a right that can be exercised privately without cost to others, dazzles by its

simplicity. To most Americans it seems unthinkable that one might argue with it. And that is the key to its success, since it makes us forget the history of principled critique of marriage in queer politics. The same might be said of the other dominant argument for marriage: that it is just about love.

Many gay men and lesbians in America, echoing the language of Lobel, Stoddard, and Wolfson, seem to think that considerations of social consequence and institutional change are beside the point. They believe that marrying has nothing to do with the unmarried, nor with the state regulation of sex, nor 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," Evan 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."

This definition plays well to the kind of pious common sense that people nod along 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." You can make a public statement with any kind of ceremony, or by talking to people, or by circulating a queer zine. A legal marriage, on the other hand, might well be private or even secret. The *Baehr* court, which Wolfson celebrates, is more

frank in its definition: "Marriage is a state-conferred legal partnership status." Wolfson mentions the sanction of the state only as a kind of amplifying power for 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 legally enforceable benefits, entitlements, and obligations that come with marriage. To them, marriage is a statement. For example, a writer named Barbara Cox asks: "How could a feminist, out, radical lesbian like myself get married a year ago last April?" (Of course it turns out that she has not gotten "married" in the legal sense; she means that 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." In this way the state disappears when gay men and lesbians think about marriage. They assimilate it to the model of *coming out*. 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." Even though people think that marriage gives them validation, legitimacy, and recognition, they somehow think that it does so without invalidating, delegitimating, or stigmatizing other relations, needs, and desires.

The naivete of this thinking is all the more striking because Cox writes as a legal theorist. Such is the world-canceling force of love that Cox can imagine 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 in 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, this notion of pure love, like so much else in contemporary 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, no politics. It is the human heart, not ideology. Its intentions are pure. It has no unconscious.

I would argue that any 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 that it serves to reinforce the privilege of those who already find it easiest to imagine their lives as private. Then, too, the transcendent self-evidence of love leads people to think that any question 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 always absolve themselves of their participation in marriage by appealing to the self-validating nature of their love—which strictly speaking should have rendered marriage unnecessary.

There is a further irony in the appeal to love as an argument for marriage. Love, as Cox describes it, is deeply anti-nomian—a revolt against law. Like Hester Prynne in Nathaniel Hawthorne's *The Scarlet Letter*, Barbara Cox is saying to her critics, "What we did had a consecration of its own." (Unlike

Hester, though, she thinks that it should therefore be consecrated by law.) Love is self-validating. This claim for her love allows Cox to say that no one has a right to judge her and her lover. She directs this rebuke to gay critics of marriage, but it also extends to the fifty states, which, by sanctioning heterosexual marriage, are felt to pass judgments of illegitimacy on gay love. The appeal for legal marriage, in this way, 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 do have at least some of the flavor of queer protests. 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 tradition, love is more than a noble virtue among others, and more than a mass of disorderly and 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 concluded that marriage should be a purely secular matter left to magistrates, other reformers such as George Fox (whose followers came to be known as Quakers) questioned the validity of the institution outright: "The right joining in marriage is the work of the Lord only," he wrote, "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 legal-

ity of the modern 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." By 1852 the American physician M. Edgeworth Lazarus could write a treatise whose title says it all: *Love vs. Marriage*. In post-Romantic culture especially, the antinomian and world-canceling moment has even become necessary to validate love as love. That is why nearly all the great love stories have not been stories of marriages, but stories of extramarital or illegitimate love: Hester and Arthur, Tristan and Isolde, Catherine and Heathcliff, *The Bridges of Madison County*, *Titanic*. Occasionally a politics has been built on the basis of 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 to be fragile, largely because it was built 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 horrors of an arranged marriage in *Titanic* do not imagine that marriage itself—arranged or not—might be dropped in the ocean as lightly as that diamond necklace. 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. 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 Gluck writes in the opening sentence of *Jack the Modernist*, "You're not a lover till you blab about it.") 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, *sanctioning* it. One simply doesn't inquire into what it means for the state to sanction a statement. The state can piggyback on sentimentality in this way, making itself the silent partner and constitutive witness to what people imagine as their most private and authentic emotion.

The culture of marriage, in fact, thrives on stories of revolt against it. This has been true ever since the Enlightenment, when marriage ceased to be understood as an alliance of families forged to preserve estates. The modern legal machinery 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 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 in this way feel that they have turned the law under foot. It might seem in such moments that whether the emotion or the pleasure results in shared property or common respectability has no bearing on its authenticity. Outside the tearoom such claims 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 don't sentimentalize it in a way that requires the state to be our solemn witness. The language of the love-couple is different. It wants recognition. It wants to rule.

Evan 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 contemnable [*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.

Wolfson is right, I think, to reject the idea that gays and lesbians who want to marry are simply imitating straights. That 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. But there is also a will to naivete 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? Isn't that the idea? False consciousness is an undeniable force throughout history. From age to age, serfs have revered their masters, young men have marched gaily off to be slaughtered on behalf of deities and nations, and wives have lovingly obeyed patriarchal husbands. Why should gay people be immune to similar mistakes about their interests? It would not be surprising if they adhered to alien interests even on sober reflection. Marriage, after all, is a concrete personal benefit imbued with intense affect and nearly universal legitimacy. The alternative, a world capacious enough in its recognition of households to be free from such invidious regulatory institutions altogether, can easily seem abstract, even unimaginable. These options are not equally weighed, for the simple reason that marriage has a taken-for-grantedness and an apparently natural emotional force that prevent anything resembling rational choice.

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 a context the full ramifications of which remain unconscious to them. When he 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. This assumption, characteris-

tically American, obscures the issue. Whether an individual is right or wrong in choosing to marry, whether he or she is sincere or not, acting in false consciousness or not, or *intends* all of the consequences of marrying, has little to do with the ramifications of the act.

People might marry for all kinds of reasons. They might want to stick it in the face of 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 eyes wide open 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 for intimacy. They might simply not trust the relationship to last without third-party assurances. They might think that marriage will relieve their fears of getting old, fat, or undesirable. They might marry for no better reason than that marrying is what one does. Or they might want in-laws. Judge Richard Posner worries, rather extravagantly, that a gay man would marry a succession of AIDS patients in order to collect the life insurance. It's likely enough that people will have many motives and that most will be marked by ambivalence. That's life.

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

> 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 constitutive 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.

This 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, and feminists such as Card have long shown courage in addressing it. No won-

der 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.

It is undeniable that the restriction of marriage to heterosexual couples is a potent form of discrimination, regulation, and stigma. But to combat that inequality requires us to think beyond the mere inclusion of gay couples and to recognize that marrying has consequences for the unmarried. Those consequences can be treated, roughly, under the following headings:

- the menu of privileges and prohibitions, incentives and disincentives, directly tied to marriage by the state;
- the material incentives and disincentives tied to marriage in civil society;
- the matrix of state regulations of sexuality of which marriage is the linchpin; and
- the broader cultural normativity of marital status.

Each of these should be challenged, not celebrated, as a condition of same-sex marriage.

The strategic question facing the lawyers is this: should we try to extend benefits and recognition even further beyond conventional marriage, uncoupling them from marital status and making them available to individuals, households, and intimate relations? Or should we claim for ourselves the status of marriage and thereby restrict entitlements and recognition to it? *This is not the decision that is posed to individual lesbians and gay men in the form of a choice to marry.* A poll of gay men or lesbians does not address this issue. 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 marry have chosen to sell out less assimilationist or privileged queers in order 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. 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 as simply a personal choice, like Cox's, or like Lobel's, is wholly inadequate to evaluate the strategy of pursuing legal marriage because it neglects marriage's legal and cultural consequences for others—those who resist marriage, as well as those who are drawn to it for a mix of reasons not of their own 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, and 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."

Stigma as Social Policy

A more honest argument for gay marriage is made by those who know very well that to marry has consequences beyond

oneself. Jonathan Rauch, for instance, has no truck with the illusion of choice or innocent diversity: "If marriage is to work," he writes, "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." Similarly, Gabriel Rotello, in a cover story for *The Nation* excerpted from his book *Sexual Ecology*, 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," he writes. 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."

I will leave aside Rotello's specious arguments about AIDS, such as his claim that it was "multipartnerism," not HIV, that "produced" catastrophe. I have elsewhere argued that his version of AIDS prevention targets public sex rather than HIV. Rotello at least acknowledges the normalizing intent of his argument about marriage. Most gay advocates of marriage, he notes, "are generally 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."

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 pro-marriage politics therefore serves their interest; 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. 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.

Hardly anyone else has the guts to embrace the politics of shame quite so openly in arguments for gay marriage. It is generally implicit. William Eskridge at times pretends that marriage is a noninvidious recognition of gay lives, but the subtitle of his book, *From Sexual Liberty to Civilized Commitment*, reveals that it is rather a state-sanctioned program for normalizing gay sexuality. (One reviewer noted that Eskridge's title bespeaks "the puritanical impulse to make bachelorhood equivalent to moral lassitude, where all sexual expression outside wedlock is morally tainted.") 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.

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 in the current debate. Even allegedly 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. But this kind of social engineering is questionable. It brings the machinery of administration to bear on the realm of pleasures and intimate relations, aiming to stifle variety among ways of living. It authorizes the state to make one form of life—*already normative*—even more privileged. The state's administrative penetration into contemporary life may have numbed us to the deep coerciveness in this way 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 economistic incentives and disincentives, all designed to manipulate not just the economic choices of the populace, but people's substantive and normative vision of the good life.

The ability to imagine and cultivate forms of the good life that do not conform to the dominant pattern would seem to be at least as fundamental as any putative "right to marry." If so, then the role of the state should be to protect *against* the abuses of majoritarianism. 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. Andrew 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.

Marriage, in short, would make for good gays—the kind who would not challenge the norms of straight culture, who would not flaunt 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 will modify "behavior"; and that a culture of "gay bars, pornography, and one-night stands" is desperately in need of virtue.

This idealization of marriage is typical of those who are excluded from it: priests, gays, adolescents. It shows an 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." 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 powered by homophobic assumptions as well.

It may be more precise to call these arguments anti-queer rather than homophobic, and as a way of commandeering the resources and agenda of gay politics, that's 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. Marriage could hardly produce in reality the Good Gays who are pictured in this rhetoric: gays who marry will be as likely to divorce, cheat, and abuse each other as anyone else. The more likely effect is much uglier, since 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. From the homophile movement 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 activists who see the normalization of queer life precisely as their role.

So it seems as though there are two ways to argue for gay marriage: embrace the politics of shame outright, allowing married gay couples to be relieved of stigma in order to make its coercive effects felt all the more by the unmarried; or simply deny that the legal institution of marriage has any connection to the politics of shame at all. 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.) Many gay activists who currently toe the party line—that marriage is simply a personal choice—privately oppose it. They feel uncomfortable publicly criticizing those who want to marry. Because no one is publicly voicing any opposition, the party line seems a safe way out. It also frees activists in the national identity organizations from having to recognize any connection between the gay marriage debates and the growing crackdown on all queerer forms of sexual culture in the United States. Apologists for gay marriage, such as Gabriel Rotello and Andrew 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. Too many activists see marriage only as a way of overcoming the stigma on identity and are willing to ignore—or even celebrate—the way it reinforces all of the other damaging hierarchies of shame around sex.

People who think that queer life consists of sex without intimacy are usually seeing only a tiny part of the picture, and seeing it through homophobic stereotype. The most fleeting sexual encounter *is*, in its way, intimate. And in the way many gay men and lesbians live, quite casual sexual relations can develop into powerful and enduring friendships. Friendships, in turn, can cross into sexual relations and back. Because gay social life is not as ritualized and institutionalized as straight life, each relation is an adventure in nearly uncharted territory—whether it is between two gay men, or two lesbians, or a gay man and a lesbian, or among three or more queers, or between gay men and the straight women whose commitment to queer culture brings them the punishment of the "fag hag" label. There are almost as many kinds of rela-

tionship as there are people in combination. Where there are patterns, we learn them from other queers, not from our parents or schools or the state. Between tricks and lovers and exes and friends and fuckbuddies and bar friends and bar friends' tricks and tricks' bar friends and gal pals and companions "in the life," queers have an astonishing range of intimacies. Most have no labels. Most receive no public recognition. Many of these relations are difficult because the rules have to be invented as we go along. Often desire and unease add to their intensity, and their unpredictability. They can be complex and bewildering, in a way that arouses fear among many gay people, and tremendous resistance and resentment from many straight people. Who among us would give them up?

Try standing at a party of queer friends and charting all the histories, sexual and nonsexual, among the people in the room. (In some circles this is a common party sport already.) You will realize that only a fine and rapidly shifting line separates sexual culture from many other relations of durability and care. The impoverished vocabulary of straight culture tells us that people should be either husbands and wives or (nonsexual) friends. Marriage marks that line. It is not the way many queers live. If there is such a thing as a gay way of life, it consists in these relations, a welter of intimacies outside the framework of professions and institutions and ordinary social obligations. Straight culture has much to learn from it, and in many ways has already begun to learn from it. Queers should be insisting on teaching these lessons. Instead, the marriage issue, as currently framed, seems to be a way of denying recognition to these relations, of streamlining queer relations into the much less troubling division of couples from friends.

What Is Marriage?

I have argued here that the *debate* over gay marriage has been regressive. Is that true of gay marriage necessarily? That depends in part on what kind of marriage we are talking about. The first thing to get over, in thinking about the possibility of a better politics and ethics of marriage, is the idea that marriage just is what it is. People mean very different things by marriage, and not simply because they are confused. If we begin by recognizing that it is a package rather than a single thing, it might be easier to imagine redefining it.

It is always tempting to believe that marrying is simply something that two people do. Marriage, however, is never a private contract between two persons. It always involves 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 the third party is others, generally. Either way, marital benefits are vast.

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 Richard Posner notes in *Sex and Reason*, "is a status rich in entitlements." The Supreme Court of Hawaii, in *Baehr v. Lewin*, handily lists some of those entitlements:

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. post-divorce rights relating to support and property division;
12. the benefit of the spousal privilege and confidential marital communications;
13. the benefit of the exemption or 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 visitation, medical decision making, and burial. There are also federal entitlements—including federal tax advantages or immigration and naturalization benefits—as well as local ones such as rent control benefits, already available to domestic partners in some cases. Even this list of state-guaranteed benefits, or rights, doesn't touch on the benefits that can be collected in civil society in the form of kin groups, 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, and buy you housewares from Bloomingdale's.

Most of these benefits could be extended to other kinds of households and intimate relations. Very few have a necessary

relation to a couple or intimate pair—perhaps, logically enough, only those having to do with divorce. All the others could be thought of in different ways. Many, such as health care and tax equality, are social justice issues and should be extended to single people. Why should being in a couple be necessary for health benefits? Yet for many in the United States, it is. Health care is uppermost in the minds of many couples who apply for domestic partnership where it exists, and it is the issue that gives an edge of urgency to marriage. But think about the implication: that we happily leave single people uninsured. A just health care system would remove this distinctive privilege from marriage.

Other benefits, such as those having to do with property sharing, are specific to households rather than romantic couples and could be broadened to cover all cohabiting arrangements (ex-lovers, relatives, long-term intimate friends, etcetera). This is one of the most interesting features of PACS, the marriage reform proposed in France; it is a status giving legal recognition to living arrangements rather than regulating sex. It allows people to share property, inherit, and provide mutual care, whatever their emotional or sexual relation.

Still other benefits, such as immigration rights, parenting rights, rights to bring wrongful death actions, and even the prohibition against spousal testimony in court seem to be attached to powerful intimate commitments; but these need not be thought of as marriages. Such benefits could be extended to domestic partners, nondomestic partners of the kind described by Claudia 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. Even in the United States, a country not known for enlightened immigration policy, it was pos-

sible to win special consideration for intimate partners until 1996. Then Congress made it impossible for judges to waive deportation on humanitarian grounds, even in the case of partners who shared mortgages, businesses, or children. The painful separations that result from this policy testify vividly to the costs of marriage for those excluded from it. Gay marriage is not the only solution, nor necessarily the best one. Even if marriage were now allowed by a state, the Defense of Marriage Act prevents its extension to federal benefits such as immigration. It would be better if the right to intimate association were recognized and interdependencies valued in any form, not just the married couple.

Similarly, child custody could be linked to relations of care rather than to marriage. Gay and lesbian parenting arrangements very often involve three adults, rather than two, a situation that is denied by the attachment of parenting rights to marriage. Courts in some states have already made strides toward redefining family to reflect the reality of people's relationships. Why reverse that trend by linking everything to marriage?

The only kind of benefit that is necessarily linked to marriage is divorce. Even here, a number of different legal statuses could be made available to people, with different means of dissolution. This remains one of the principal differences between concubinage and marriage in French law, for example, and there is no reason why domestic partnership might not eventually be expanded so as to cover the same benefits as marriage, for both gay and straight couples, while allowing for less bureaucratically encumbered dissolutions.

Marriage, in other words, is defined partly by the bundling of various privileges and statuses as a single package. The argument for gay marriage no doubt appeals to many people because it is a shortcut to equalizing these prac-

tical social advantages. But the unmodulated demand for same-sex marriage fails to challenge the bundling of privileges that have no necessary connection to one another or to marriage. Indeed, if successful, the demand for same-sex marriage would leave that bundling further entrenched in law. Squeezing gay couples into the legal sorting machine would only confirm the relevance of spousal status and would leave unmarried queers looking more deviant before a legal system that could claim broader legitimacy.

Interestingly, the gay marriage debate almost never turns on specific benefits or entitlements. As the lawyer David 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." 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 marital status, for straight and gay couples alike, and that these efforts have created new possibilities (for example, palimony). Extending benefits as an issue of justice, apart from marriage, reduces the element of privilege in marriage, as many conservatives fear. That strategy has enjoyed considerable success in the Scandinavian social democracies. 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 David Chambers points out, "makes no provision of any kind for friends, lovers, or unmarried partners." 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 will benefit from marriage. My argument here runs counter to Chambers's, but I find his evidence more useful to mine than to his own. Chambers shows that gay couples would gain many benefits from spousal status. No one doubts that. It does not follow that those benefits should be restricted to spouses, or that they should be bundled together, or that their acquisition by spouses 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 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, wittingly or unwittingly, by the decision of U.S. advocates of gay marriage to subordinate an entire bundle of entitlements to the status of marriage.

Apart from the question of what benefits exactly we mean by "marriage," there is the more fundamental question about what the state's role in marriage is or should be. Government now plays a much more direct role in marriage 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. In modern societies, marriage has less and less to do with either of these aspects of kinship systems. The powerful dynamic tension in premodern societies between marriage and the moiety system—in which your spouse is socially foreign to you, a representative of all that is opposite to your own kin—is lost and, for most moderns, unimaginable. In-laws are less and less material. Bastardy laws, where they remain on the books, seldom have an effect. People reckon family and descent through households, affinity, and blood rather than through the symbolic exchanges of ritual marriage. Some early modern features of marriage, like "publishing the banns," have all but vanished. Others, like the fertility ritual of flinging rice, survive only in vestigial form. Still others, like giving away the bride, probably retain more significance than anyone would like to admit. As these world-orienting horizons of kinship and exogamy systems have receded, the state as mediator has loomed up in their place.

In the contemporary United States, unlike most times and places in world history, state certification is a constitutive event, not a secondary acknowledgment of a previously established relationship. Some people naively imagine that marriage licenses are essential to marriage. But the marriage license is a modern invention. (Its history, as far as I know, remains unwritten.) Even the widespread use of parish registers to formalize marriages does not go back much before 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.) Gay philospher Richard Mohr points to the importance of this fact, arguing that the best model for the legitimation of same-sex households would be common-law marriage.

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.

To Mohr, this is an argument for common-law marriage. In my view, common-law marriage still suffers from many of the same limitations that other kinds of marriage do. But the distinction Mohr makes here is important, because it dramatizes how the state's constitutive role is simply 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 the options are not open to us. Others, more or less live, might be open 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 recognizing what Mohr calls "marriage as a form of living and repository of norms independent of law," 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 parents 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. The current drive for gay marriage appeals to gay people partly because of that 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. They want the stipulative language of law rewritten and then enforced. Certainly *Baehr* has triggered a trend toward a more active and constitutive role for statutory law in controlling the evolution of marital practice. This trend comes at a time when the 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 tax incentives for marriage. The campaign for marriage may be more in synchrony with that program than its advocates intend.

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 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 ini-

tiatives, 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, in order to win moderate and liberal support for the referendum, the state passed a new domestic-partner bill. It is the most sweeping domestic-partner legislation in the country. It might 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 under the new law is 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 by 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.

The legal system is not likely to produce a clear verdict of the kind that its champions imagine. 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 for some time. Should the gay organizations win similar battles in Vermont, California, and elsewhere, the future would likely hold a long and complex series of state-by-state struggles over federal policy, the "full faith and credit" clause of the Constitution, and other limitations on the meaning of marriage.

Is Marriage a Step in the Right Direction?

Perhaps these are temporary setbacks leading to the eventual victory for same-sex marriage. And perhaps some readers will object that marriage, with all its flaws, might itself be a step

toward further progress. How can we decide what the future is likely to hold? Marriage takes place in different registers, cuts across contexts. And, as we have seen, it can even express protest against itself. Who, then, is to say what its ultimate significance will be? The question is a real one; the situation is one of profound historical dynamism. But we cannot take for granted that marriage will result in progress on the package of privileges, prohibitions, incentives, and regulations that marriage represents.

Apologists for marriage rely on two contradictory stories about its history. Many writers, such as Evan Wolfson and William Eskridge, tell both at once, apparently not 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. Marriage is shedding its patriarchal roots. Gay people can 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." Evan Wolfson, in a logical leap that few Americans can resist, writes that marriage is "socially constructed, and therefore transformable." 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. Others are part of our very perceptions and desires. That is what it means to be socially constructed. Even when we think we are transforming something, we are not free from the history that socially constructs both marriage and us. 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. The analogy would hold only if everyone were supposed to have been born in Harvard, if it took special legal procedures to get out of Harvard, if there were an explicit slate of legal and economic disincentives for not 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 of Cambridge, Massachusetts, were criminalized. Meanwhile, so deep is Wolfson's belief in progress that he argues 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 be included in the step it represents toward full equal rights. (Note that this end point presupposes the first version of the marriage story, 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 been able to sweep 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 military discharges for homosexuality under the "Don't Ask, Don't Tell" policy. 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 overreaching confidence in progress that has led to results that, even in their own terms, are regressive. These are minor policy matters, barely significant compared to certain antidemocratic structural trends, like the global corporatization of media. Everywhere we turn, in the United States and abroad, regressive tendencies mingle with and often overshadow progress.

Changes at the institutional level of the state seem likely to take many directions. Some, like the trend toward a more constitutive role of government in defining marriage, have been long in developing, are not consciously reflected upon in the debate, and can hardly be stemmed by the voluntary "appropriation" of marriage by gay couples. Many of the changes seem to have a local dialectical necessity; others seem highly contingent on political processes; 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 any 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 posed too narrowly. It assumes either that marriage must mean a single bundle of status and privilege or that merely inhabiting the bundle can 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—already includes so many layers of history, and so many norms, that gay marriage is not likely to alter it fundamentally, and any changes that it does bring may well be regressive.

Like "heterosexuality," marriage is a contradictory amalgamation of histories and contexts, including:

- a stone-age economic structure of household formation and the traffic in women;
- a pagan and Christian symbolic order for male domination;
- the central institution that justifies the state's power to restrict sex in all other contexts;
- 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; and
- an ancient ritual vocabulary of recognition and status—one that has a nonstate performativity quite apart from issues of state regulation.

Of course, there are plenty of conservatives for whom marriage is assumed to be a rational institution endowed with the forethought of generations and the loftiest purposes of mankind. They would have us forget that it carries over from the Stone Age. Each era of human history has given marriage a new layer of meaning, but at no point has any society been able to deliberate freely whether it wanted to inaugurate and enforce something called marriage. Moral rationales for marriage have always been created after the fact.

Perhaps the very complexity of this history encourages people to take a nominalist or antinomian view of marriage. Should we throw our hands in the air, concluding 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, so much so that in anthropology marriage has often been seen—ideologically, in my view—as the originating mechanism of social structure. Legal change also has an institutional gravity that impedes further change. In the face of all

these layers of history, it is facile to say that gay people should "appropriate" marriage, or create their own meaning for it. Several of these 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.

So I have my doubts when legal scholar 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 Hunter. And not without reason. Hunter is undoubtedly right to claim that same-sex marriage would further weaken the model of subordination that has typified marriage. If marriage were not necessarily heterosexual, people could more easily view it as equal partnership. This is to say only that same-sex marriage might improve things, if not for queers then (indirectly) for women married to men.

Most claims for the power of marriage to transform cultural norms are even less clear and often contradictory. Richard 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 McWhirter and Andrew Mattison report that only seven of the 172 male couples they studied were totally monogamous, and none of the couples that stayed together for five years or more were. (Similarly, Claudia Card notes an underrecognized tradition among lesbians of having "more than one long-term intimate relationship during the same time period.") Would we expect

the figures to be the same if those 172 couples were in state-sanctioned marriages, with their status aura, their shadow-theater of stigma, and their web of regulations regarding adultery, privacy, and divorce? As we have seen, such writers as Gabriel Rotello and Jonathan Rauch confidently predict the reverse: marriage, they think, would curtail gay men's sexual lives. It would certainly cloak their sex in the invisibility of the zone of privacy, since that is one of the most noticeable features of marriage in the cultural imagination. (It was not Bill Clinton'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. Morris Kaplan, in his book *Sexual Justice*, understates the issue when he 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."

Outside the legal system, 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 possibility than it is now, by making it a free act. Thus, it is indeed plausible to claim that the historical process makes it difficult to predict fully what the evolution of marriage will look like.

It probably is true, to an extent, that gay marriage—at least, gay marriage *ceremonies*—would have a cultural impact similar to that of coming out. *I'm gay! I do!* Many of the gay people who now say they want marriage, like Barbara 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 the Reverend Troy Perry in 1970, or the more recent wedding of two undergraduates in the Princeton University chapel, are performances in relatively unknown territory. They call attention to the nonuniversality of the institution. They force reactions in settings where the scripts are not yet 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, names its object, locates it in an already formed partnership. Where coming out always implies some impropriety because it breaks the rules of what goes without saying and what should be tacit, marrying embraces propriety, promising not to say too much. And where coming out triggers an asymmetry between gay and straight people, since straight people cannot "come out" in any meaningful way as long as the world already presumes their heterosexuality, marrying affirms the same repertoire of acts and identities for straights and gays. It 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. 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 of 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. Gay marriage ceremonies lend themselves to each of these fictions. One can easily imagine ceremonies with a difference—in which people might solemnize a committed household, ironize their property sharing, pledge care and inheritance without kin-

ship, celebrate a whole circle of intimacies, or dramatize independence from state-regulated sexuality. A movement built around such ceremonies could be more worthwhile and more fun than the unreflective demand for state-sanctioned marriage. Indeed, some people already experiment in these ways. Why do they get no press?

If one wanted to develop such alternatives, one would need not only the ceremonies, but some reflection on them. 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 can think about the topic apart from some kind of narrative about long-term social change, usually on the national scale. 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. And always the issue implies not just abstract debates, like this one, but a story, a "news angle." 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 or other: 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.

Andrew Sullivan's is one of the clearest, and the following passage from an article in *The Advocate* deserves quotation at length:

> 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 . . . [T]here 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.

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. Those 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, of course, 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 way marriage marks out the narrative of life. 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. It makes people feel grown up. What an extraordinary power we grant the government over our innermost lives! Nothing but the customary story of the life course 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 not only that many of them have found important pleasures and intimacies in promiscuous sex but also that in doing so they weren't rejecting all of society—only a hostile and restrictive version of morality. The reward for this largesse of forgetting is the ability to think of oneself as "society."

That's just the beginning of the amnesia required here. When Sullivan asks us to believe that the "pathologies" of sex and queerness are politicized by queer theory, we must forget that this 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—by people who kept the idea but challenged its connotations. The same thing has happened with "queer." Sullivan thinks that "to respond to the taunt of 'queer' by simply embracing it" is mere relativism, or "a facile celebration of our woundedness." Shouldn't the same logic apply to the way an earlier generation embraced "homosexual"? Can Sullivan not see that "queer," like "homosexual," is a way to embrace the term precisely in order to reject the framework of pathology?

When gay people express a desire to build their own world or to transform the rest of the world, Sullivan interprets this desire as a pathology—one that we are now happily on the verge of surrendering now that our "maturity" is about to be made possible by marriage. Isn't it really a stretch to imagine that a gay man going to a sex club does so in a desperate and failed search for the kind of intimacy associated

with marriage? Surely if that were the goal, he would go about it 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 place because "wounded self-esteem" somehow 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 who don't match his ideal image. Even if gay men did suffer "wounded self-esteem," then wouldn't the most likely result be not promiscuity—which can take a fair amount of courage and dignity in defying the stigma and abjection associated with it—but rather the compulsive idealization of love and the desperate need to have validation conferred on one's intimate life by state-certified marriage? If you need legal marriage to give you self-esteem, then you can be sure that 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, smack in the middle of the Lewinsky affair.)

Sullivan, in short, leaves every reigning norm in American culture unchallenged, except those bearing on the minor issue of the extension of marriage. Any other dissatisfaction with the world as it is currently ordered he dismisses as utter

relativism, or victim pathology, or the quixotic desire to do without norms altogether. So 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 mass, 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 in *The Human Condition*, "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."

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. Notice how much else he would have us shun: drugs and parties; 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 he is thinking of mantras like "Fight AIDS, not sex!"). Instead, he appeals to the private sentiments of "the rest of us." Who's 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 with 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 it were not so revealing of a conceptual impasse: the "pale intimation of a deeper longing that most of us inwardly aspire to." Do we have this "intense need and longing for intimacy," 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 simply equality and intimacy fail to be seen as a rather 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"; 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," he 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." Pathology is our pathology. Normally, we would be normal.

Meanwhile, what of the queer theorists for whom Sullivan has such scorn? What does queer theory tell us about whether marriage might represent progress? Sadly, not much. In much of 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 Morris Kaplan calls "historical judgments and predictions concerning the effects of legal and social innovation." That either side can exploit the vagueness of our vocabulary here—"transform," "subvert," "change," "appropriate"—suggests that our theory has begged many of the evaluative questions. Kaplan himself, in an ostensibly Foucaultian analysis, hears the queer objection against 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 individuals of the capacity to shape and revise the institutions they voluntarily create." Again, we see a faith in the voluntary creative efforts of individuals that would seem to be about 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.

In *The Psychic Life of Power*, the eminent feminist and queer theorist Judith Butler takes as her problem the way "forms of regulatory power are sustained in part through the formation of a subject." This approach might seem promising well for the kind of problem we have been following. What Butler is trying to do is to explain the possibilities of queerness, subversion, and resistance as enduring despite the force of norms. What's more, she sees this subversion as inevitable in the formation of "normal" subjects. If this 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.

Some readers—but not Butler—have drawn the conclusion that the further imposition of any norm such as marriage offers undiminished potential for queerness and resistance.

Butler's theoretical analysis, for these readers, produces a weak optimism: subjection is "inadvertently enabling." In the case of marriage, a change in the meaning of marriage might come about through a revision of key terms, including "self-esteem" and "marriage"; I have tried to suggest how this might be done. It will not come about merely by marrying and thus instantiating the norms of marriage, nor by having

an unconscious and a body. 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 change the meaning of marriage, then it will have failed the aspiration to resist normalization.

Beyond Gay Marriage

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.

Apologists for marriage often say that it 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 in the movement itself—as its enemies are repositioned, its battles redefined, its new leaders and spokespersons identified, and as millions of dollars of scarce resources are poured into 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, and this score alone, Andrew Sullivan can claim tremendous success.

What makes these conservative or crypto-conservative activists potentially very powerful, though, is that they are the only people who are actively setting the 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. It is easy to see why. The historical dynamic of cultural change is so volatile that very little can be predicted with much certainty from structural factors, so to the casual observer the conservative narrative sounds plausible—especially since there has been no competing narrative in which we could imagine same-sex marriage as a step toward further change, to benefit queers who are not in marrying couples.

Officially, the gay organizations, as Gabriel Rotello points out, are simply silent on the consequences of marriage for the unmarried. They claim to be neutral on the normativity of marriage, pretending that extension of matrimony would be only benign, that single people simply need not worry about

it, because marriage would not be part of any normative program for change. So the field of opinion and self-understanding remains entirely 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 future, interpreting the direction of change. The gay organizations have made no effort to provide a rival narrative of what the long-term goals and trends are or should be. The conservative story has become a dominant paradigm both because it is what many people want to hear and because it is *all* they hear.

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 the structural developments mentioned in chapter 2: 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; 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; and the heavy neoliberal spin on the movement in straight press and gay media alike. Under these combined conditions, the prospects for dequeering the gay movement are, indeed, bright. If it will ever be possible to pursue marriage as something other than a strategy to normalize gay sexuality, it will first 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 fore-

ground of the national scene in part because Andrew Sullivan and others realized its potential for realigning American gay politics under these new conditions. Gay organizations have by and large accepted the mainstreaming project and, 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.

Is it possible to have a politics in which marriage could be seen as one step to a larger goal, and in which its own discriminatory effects could be confronted rather than simply ignored? I can at least imagine a principled response to this challenge that would include ending the discriminatory ban on same-sex marriage. It could not be a program that said simply that marriage is a right, or a choice. It would have to say that marriage is a desirable goal only insofar as we can also extend health care, tax reform, rights of intimate association extending to immigration, recognition for joint parenting, and other entitlements currently yoked to marital status. It would have to say that marriage is desirable only insofar as we can eliminate adultery laws and other status-discriminatory reglations for sexuality. It might well also involve making available other statuses, such as expanded domestic partnership, concubinage, or something like PACS for property-sharing households, all available both to straight and gay people alike. Above all, a program for change should be accountable to the queer ethos, responsive to the lived arrangements of queer life, and articulated in queer publics.

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 counteract 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 dominant ideology—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. And 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.

quotes from James Collard are in "Leaving the Gay Ghetto," *Newsweek*, August 17, 1998.

71–72 "two major forces that have roiled" . . . "who want to throw rocks through the window": Adam Nagourney, "Gay Politics and Anti-Politics: A Movement Divided," *New York Times*, October 25, 1998.

77 At about the same time, the national organizations realigned themselves: Urvashi Vaid, who witnessed many of these developments from the inside in her years of working at the National Gay and Lesbian Task Force, wrote insightfully about the realignment of the 1990s in her 1995 book *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Doubleday, 1995).

Chapter Three: Beyond Gay Marriage

81 "The institution of marriage is trivialized by same-sex marriage": The exchange of May 30, 1996, is reproduced in Andrew Sullivan, ed., *Same-Sex Marriage: Pro and Con* (New York: Vintage, 1997), pp. 225–26.

83 What purpose could be served by a skeptical discussion of marriage now, given the nature of the opposition? Jesse Helms's speech on the Senate floor in favor of the Defense of Marriage Act is printed in Robert M. Baird and Stuart E. Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate* (Amherst: Prometheus Books, 1997), p. 22. Jean Bethke Elshtain's "Against Gay Marriage" appeared in *Commonweal*, October 22, 1991, and is reprinted in Andrew Sullivan, ed., *Same-Sex Marriage: Pro and Con: A Reader* (New York: Vintage, 1997), pp. 57–60. Pope John Paul II is quoted by the *New York Times*, "Pope Deplores Gay Marriage," February 23, 1994.

83 "The ship has sailed": 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): 567–615, p. 611. See also Evan Wolfson, "Why We Should Fight for the Freedom to Marry," *Journal of Gay, Lesbian, and Bisexual Identity* 1 (Jan. 1996).

90 "repeal of all legislative provisions . . . victimizing single persons and same-sex couples": quoted in William Eskridge, *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: The Free Press, 1996), p. 54.

91 "Among some gays . . . enemy of more desirable institutions": Robert M. Baird and Stuart E. Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate* (Amherst: Prometheus Books, 1997), pp. 10–11.

92 "to the extent that same-sex marriage might embolden some couples . . . would seem almost irrelevant": Eskridge, *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: The Free Press, 1996), p. 82.

93 "Whatever gravity gay life may have lacked . . . the value of a committed partner is incalculable": Eskridge, *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: The Free Press, 1996), pp. 58, 74.

95 the fundamental issue "is not the desirability of marriage, but rather the desirability of the right to marry": Tom Stoddard, "Why Gay People Should Seek the Right to Marry," *Out/Look* 6.8 (1990); repr. in Mark Blasius and Shane Phelan, eds., *We Are Everywhere: A Historical Sourcebook of Gay and Lesbian Politics* (New York: Routledge, 1997), quotation on p. 756.

96 "If it is freely chosen . . . the right society has never granted": Evan Wolfson, "Crossing the Threshold," pp. 582–83.

97 "The most important unresolved question . . . can pursue other avenues": Mary C. Dunlap, "The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties," *Law and Sexuality* 1 (1991): 63–96, p. 90.

98 "Whatever the history . . . and, for some, their religious community": Evan Wolfson, "Crossing the Threshold," p. 479.

99 "How could a feminist, out, radical lesbian like myself . . . those who participate in my world": Barbara Cox, "A (Personal) Essay on Same-Sex Marriage," in Baird and Rosenbaum, *Same-Sex Marriage: The Moral and Legal Debate*, pp. 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.

101 "The right joining in marriage is the work of the Lord only . . . . we are but witnesses" [Fox] and "Not felon-like law-bound, but wedded in desires" [Clare]: both quoted in Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies* (London: Penguin, 1997), pp. 201–203.

104 "The suggestion that lesbians and gay men . . . the imputation seems wrong, as well as unfair": Evan Wolfson, "Crossing the Threshold," p. 585.

105 "Does everyone who gets married . . . endorse every retrograde aspect of marriage?": Evan Wolfson, "Crossing the Threshold," p. 602.

106 "My partner of the past decade is not a domestic partner . . . Marrying under such conditions is not a totally free choice": Claudia Card, "Against Marriage and Motherhood," *Hypatia* 11.3 (Summer 1996): 1–23, p. 7.

110 "If marriage is to work . . . a general norm, rather than a personal taste": Jonathan Rauch, "For Better or Worse?" *The New Republic*, May 6, 1996; repr. in Sullivan, *Same-Sex marriage, Pro and Con*, 169–81, quotation on p. 180.

110 "Marriage would provide status to those who married . . . for significant periods of time": Gabriel Rotello, "Creating a New Gay Culture: Balancing Fidelity and Freedom," *The Nation*, April 21, 1997, 11–16. See also Gabriel Rotello, *Sexual Ecology: AIDS and the Destiny of Gay Men* (New York: Dutton, 1997), p. 15.

110 Most gay advocates of marriage "are generally careful not to make the case for marriage . . . encouraging gay men and lesbians to marry": Gabriel Rotello, "Creating a New Gay Culture."

111 "If gay marriage is recognized . . . shame on us": Rauch, "For Better or Worse?" in Sullivan, *Same-Sex Desire, Pro and Con*, pp. 180–81.

111 "the puritanical impulse . . . where all sexual expression outside wedlock is morally tainted": Fenton Johnson, "Wedded to an Illusion: Do Gays and Lesbians Really Want the Right to Marry?" *Harper's*, November 1996, 43–50, p. 47.

112 "There are very few social incentives of the kind conservatives like . . . to modify and change that behavior for the better": Andrew Sullivan, *Same-Sex Marriage: Pro and Con: A Reader*, p. 168.

113 marriage as a social institution is "marked by integrity and caring . . . gay bars, pornography, and one-night stands": Bishop John Shelby Spong, "Blessing Gay and Lesbian Commitments," in Sullivan, *Same-Sex Marriage, Pro and Con*, pp. 79–80.

113 "to presume that morality follows on marriage is to ignore centuries of evidence that each is very much possible without the other": Fenton Johnson, "Wedded to an Illusion: Do Gays and Lesbians Really Want the Right to Marry?" *Harper's*, November 1996, 43–50, p. 47.

117 "Marriage is a status rich in entitlements": Richard Posner, *Sex and Reason*, quoted in Andrew Sullivan, *Same-Sex Marriage: Pro and Con*, p. 209.

121 "Whatever the context of the debate, most speakers are transfixed by the *symbolism* of legal recognition": Eskridge devotes some space to the legal benefits, but Chambers points out that it amounts to six out of his 261 pages. David L. Chambers, "What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," *Michigan Law Review* 95 (November 1996): 447–91, p. 450.

123 "In a common-law arrangement . . . marriage is and should be viewed as epiphenomenal or derivative—and not vice versa": Richard Mohr, "The Case for Gay Marriage," in Baird and Rosenbaum, *Same-Sex Marriage: The Moral and Legal Debate*, p. 94.

127 writes that his critics "come close to essentializing marriage as an inherently regressive institution": William Eskridge, *The Case for Same-Sex Marriage*, p. 76.

127 marriage is "socially constructed, and therefore transformable": Evan Wolfson, "Crossing the Threshold," p. 589.

131 Richard Mohr, for example, asserts . . . does not have a necessary relation to commitment or love: Richard Mohr, "The Case for Gay Marriage," p. 96.

131 David McWhirter and Andrew Mattison report . . . five years or more were: David P. McWhirter and Andrew M. Mattison, *The Male Couple: How Relationships Develop* (Englewood Cliffs: Prentice-Hall, 1984), pp. 252–59.

131 "more than one long-term intimate relationship during the same time period": Claudia Card, "Against Marriage and Motherhood," p. 8.

132 "This argument is not easily evaluated . . . the effects of legal and social innovation": Morris Kaplan, *Sexual Justice* (New York: Routledge, 1997), p. 225.

136 "It is marriage": Andrew Sullivan, "The Marriage Moment,"

The Advocate, January 20, 1998, pp. 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 Halperin, "Historicizing the Sexual Body: Sexual Preferences and Erotic Identities in the Pseudo-Lucianic *Erôtes*," in Domna C. Stanton, ed., *Discourses of Sexuality: From Aristotle to AIDS* (Ann Arbor: Univ. of Michigan Press, 1992), 236–61, quotation on p. 261; also in Jan Goldstein, ed., *Foucault and the Writing of History* (Oxford: Basil Blackwell, 1994), 13–34, quotation on p. 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."

Chapter Four: Zoning Out Sex

154 evidence that there has been no "sex panic" in New York: Gabriel Rotello, editorial, *LGNY*, July 27, 1997.

163 "an influx of polluting revelers": quoted in "As Piers Close, Gay Protesters See a Paradise Lost," *New York Times*, September 14, 1997.

166 sex "dominates gay male—and now young lesbian—culture . . . it is consumeristic and ultimately hollow": *The Advocate*, Sept. 6, 1994, p. 80.

180 "the careful work of disattention": Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963; repr. New York: Simon & Schuster, 1986), p. 41.

181 Americans "should have the absolute right to buy all magazines and books judged to be legal": Marcia Pally, *Sex & Sensibility: Reflections on Forbidden Mirrors and the Will to Censor* (Hopewell, NJ: Ecco Press, 1994), pp. 69–70.

184 "dead citizens": Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham: Duke University Press, 1997), passim.

188 "at least that's my perception . . . just coming out now because they feel more protected": Michelangelo Signorile, *Life Outside* (New York: Harper Collins, 1997), p. 195.

191 "The human being has the need to accumulate energies and to spend them . . . Would there not also be the need for a time for these encounters, these exchanges?": Henri Lefebvre, *Writings on Cities*, trans. Eleonore Kofman and Elizabeth Lebas (Oxford: Blackwell, 1996), pp. 147–48.

Conclusion: The Politics of Shame and HIV Prevention.

200 "promote . . . sadomasochism, homo-eroticism, the sexual exploitation of children, or any individuals engaged in sexual intercourse": *Congressional Record*, 1st. session, 1989, v. 135, no. 134, S12967.

201 Until three years ago the Health Department . . . of which a third went to gay organizations: "AIDS Fears Rise as Gay Bars Offer Fewer Condoms," *New York Times*, April 25, 1999.

202 At a time when charitable grant making in general has grown . . . cutting personnel and programs formerly considered essential: see the 1999 report from Funders Concerned about AIDS, *Philanthropy and HIV: Assessing the Past, Shaping the Future.*

203 The law that mandated these programs is a curious text . . . too lenient on birth control, abortion, and safer sex: much of the information in these paragraphs can be found in the Sexuality Information and Education Council of the United States (SIECUS) 1999 report titled Between the Lines: States' Implementation of the Federal Government's Section 510(b) Abstinence Education Program in Fiscal Year 1998.

208 Representative Tom Coburn (R—Oklahoma) . . . justified his bill as a way of delivering treatment to those who needed it: See, for example, his remarks in "Tom Coburn Talks AIDS," *Poz*, July 1997.

214 "defy safer sex practice . . . the rest of us": Michelangelo Signorile, *Out*, June 1997.