

Love, Change

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I. A MORAL ISSUE

Catharine MacKinnon once chose the title “Not A Moral Issue,” to separate obscenity claims from subordination claims in her response to pornography.¹ MacKinnon’s reminder: it’s about power, is my starting point, in what for me IS a moral issue.²

This is morality: to include all as human and entitled to the deepest love and care. This is the distillation of everything I fight for as a feminist, a critical race theorist, and a peace activist. Since we are at war, having sent to date 1,500 U.S. soldiers off to die, speaking against war and for peace is a current imperative.³ Then comes this invitation to speak as a critical race theorist on the subject of same-sex marriage.

Students in my peacemaking class started a blog for peace.⁴ In an early post, they mentioned global warming. A challenger wrote in to ask why they were shoehorning an environmental issue into their peace agenda. Your definition of peace, Anonymous said, is “anything the authors of this blog think is good.”⁵ I am a shoehorner. Not because I believe peace is a garbage can into which we throw all causes, but because peace is a universal need, and it will come only when we undermine every place in our culture in which power is over, rather than for, others; in which taking, using, exploiting, smashing,

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1. CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, at 146 (1987).

2. *See id.*

3. *See* Will Dunham, *U.S. Military Death Toll in Iraq Approaches 1,500*, REUTERS, February 25, 2005, at <http://www.political-news.org/breaking/6937/US-military-death-toll-in-iraq-approaches-15000.html> (last visited Apr. 13, 2005).

4. The Peace Project, at http://thepeaceproject.blogspot.com/2005_03_01_thepeaceproject_archive.html (last visited April 13, 2005).

5. *Id.* at http://thepeaceproject.blogspot.com/2005_02_01_thepeaceproject_archive.html.

deploying, consuming—whether women's bodies, the biota, or a worker's labor—is normal. War must end. Peace must come. We must make it so.

If, as I believe, homophobia is a building block for war,⁶ what do I make of same-sex marriage? The debate within the gay and lesbian community is rich, smart, nuanced, and critical on the questions of why gay marriage, why now.⁷ Self-determination is a first principle of coalition-building. Thus, as an ally, I defer significantly to the warriors in my sister community, offering two tentative principles, drawn from the legacy of liberation struggles we have watched and learned from.

1. Any argument that takes as a starting point the limits of liberation constructed by the perceived power of the oppressor is suspect.⁸

6. Cf. SUZANNE PHARR, *HOMOPHOBIA: A WEAPON OF SEXISM* (1988). Pharr describes how ideologies of dominance and control maintain power over others. Specifically, in a patriarchal, sexist system, gender roles are enforced with the "weapons of sexism: economics, violence, homophobia." *Id.* at 8.

The maintenance of societal and individual power and control requires the use of *violence and the threat of violence*. Institutional violence is sanctioned through the criminal justice system and the threat of the military—for quelling individual or group uprisings. . . . [F]or all groups it is not just the physical violence that controls us but the ever constant *threat of violence*. For women, it is not just the rape or battering or threat of these abuses but also that one's life is limited by the knowledge that one quite likely will not be honored in court. The violence is constantly nurtured by institutions that do not respect those different from the norm. Thus, the threat of violence exists at every level.

Id. at 8, 55-57. The tactic of domination and control through violence and threat of violence has become a culturally and legally sanctioned rule of fear. I have argued in earlier works that homophobia is a form of thinking that perpetuates the patriarchal violence against women and of war. See Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1190 (1991); see also Mari J. Matsuda, *Forward: Homophobia as Terrorism*, 1 GEO. J. OF GENDER AND THE L. 1 (1999) ("[The form of thinking that advocates for "fighting terrorism"] is the same kind of thinking that the government used fifty years ago to lock up my father's family in a World War II internment camp. It is a form of thinking that views a perceived threat as more important than civil rights. It is a form of thinking that reminds me of and that echoes homophobia: there is something different and we must fear it, we must eliminate it. It is a form of thinking that presages militaristic patriarchy: we need a real man to out-gun the threat.").

7. See e.g. Symposium, *Breaking With Tradition: New Frontiers for Same-sex Marriage*, YALE J. L. & FEMINISM (forthcoming 2005).

8. The argument that the oppressed cannot allow, the power of the oppressor to define the limits of their struggle is echoed throughout anti-colonial literature and the civil rights movement. Speaking about the emancipation movement in the West Indies, Frederick Douglass stated that if one were to: find out just what the people will submit to [then] you will have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue until they are resisted with either words or blows, or both. The limits of tyrants are prescribed by the endurance of those whom they oppress.

FREDERICK DOUGLASS, *The Significance of Emancipation in the West Indies*, reprinted in THE FREDERICK DOUGLASS PAPERS: SPEECHES, DEBATES, AND INTERVIEWS, 1841-1846, at 204 (John W. Blassingame ed., 1985) (1857). Dr. Martin Luther King echoed this sentiment in his Letter from Birmingham Jail:

[L]amentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals. We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct-action campaign that was 'well timed' in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This 'Wait' has almost always meant 'Never.'

2. Any argument that starts with a utopian vision of true, substantive equality for all human beings must stay on the table regardless of what interim choice is made.⁹

I see two sets of arguments against gay marriage emanating from the gay and lesbian community: The first, that now is not the time to ask for gay marriage since they have all the power and they are prepared to smash us,¹⁰ is, for me, somewhat more suspect than the second, that marriage as presently constructed is a heterosexist, patriarchal, capitalist institution and fighting for it is not only a distraction but is the opposite of liberation.¹¹ These positions pose hard questions without simple answers. I do not answer them here.

We must come to see, with one of our distinguished jurists, that 'justice too long delayed is justice denied.

MARTIN LUTHER KING, Jr., *Letter from Birmingham Jail*, reprinted in LETTER FROM BIRMINGHAM JAIL (Harpercollins 1994) (1963). One cannot look to the oppressor to define the limits of their struggle because as Friere noted, it is only when the oppressed "take away the oppressors' power to dominate and suppress, [that] they restore to the oppressors the humanity they had lost in the exercise of oppression." Paulo Freire, *The Pedagogy of the Oppressed*, in APPROACHES TO PEACE: A READER IN PEACE STUDIES, at 142 (David P. Barash ed. 2000). See e.g. Tom Mbaya, *African Freedom*, in LANGSTON HUGHES, AN AFRICAN TREASURE (1960). See also Frantz Fanon, *WRETCHED OF THE EARTH* (1959). See MALCOLM X, MALCOLM X SPEAKS 150 (George Breitman ed., Grove Weidenfeld 1990) (1965) ("Power never takes a back step—only in the face of more power."); see Nelson Mandela, *The Shifting Sands of Illusion*, LIBERATION (June 1953), reprinted in THE STRUGGLE IS MY LIFE 44 (1986) ("We must accept the fact that in our country we cannot win one single victory of political freedom without overcoming a desperate resistance on the part of the Government, and that victory will not come of itself but only as a result of a bitter struggle by the oppressed people. . . . The theory that we can sit with folded arms and wait for a future parliament to legislate for the 'essential dignity of every human being irrespective of race, colour, or creed,' is crass perversion of elementary principles of political struggle.").

9. See URVASHI VAID, *VIRTUAL EQUALITY* 298 (1995) ("what if our work were defined not as getting for gay people what other minority groups have won, but as dealing with the violence that threatens all of us?"). See also Charles R. Lawrence, III, Mari J. Matsuda, Richard Delgado & Kimberlè Williams Crenshaw, *Introduction*, in WORDS THAT WOUND 6-7 (Robert W. Gordon & Margaret Jane Radin eds., 1993) ("Critical race theory works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression. Racial oppression is experienced by many in tandem with oppression on grounds of gender, class, or sexual orientation. Critical race theory measures progress by a yardstick that looks to fundamental social transformation. The interests of all people of color necessarily require not just adjustments within the established hierarchies, but a challenge to hierarchy itself. This recognition of intersecting forms of subordination requires multiple consciousness and political practices that address the varied ways in which people experience subordination.").

10. After John Kerry's loss in the November 2004 election, many commentators argued that the loss was attributable the ostracization of moderate voters and a conservative backlash to court rulings supporting gay marriage. The Democrats' inability to court religious and moderate voters, some argued, was because of the Democrats' marginal support for civil unions and gay marriage. See David S. Broder, *Need to Connect with Religious, Rural Voters Needed*, THE WASH. POST, November 4, 2004, at A35. Many believed that Democratic candidates were harmed because of conservative voter turnout, encouraged by the issue of gay marriage. See e.g. Noelle Straub, *Bitter Battles Unlikely to End*, THE BOSTON HERALD, November 3, 2004, at 10.

11. See, e.g., Third World Gay Revolution, *What We Want, What We Believe*, in OUT OF THE CLOSET ("We want the abolition of the institution of the bourgeois nuclear family. We believe that the bourgeois nuclear family perpetuates the false categories of homosexuality and heterosexuality by creating sex roles, sex definitions and sexual exploitation. The bourgeois nuclear family as the basic unit of capitalism creates oppressive roles of homosexuality and heterosexuality. All oppressions originate within the nuclear family structure. Homosexuality is a threat to the family structure and therefore to capitalism. The mother is an instrument of reproduction and teaches the necessary values of capitalist society, i.e., racism, sexism, etc., from infancy on. The father physically enforces (upon the mother and children) the behavior necessary in a capitalist system: intelligence and competitiveness in

What I want to speak of is love, and why—all the good arguments trashing marriage remaining on the table—I want to dance at my gay cousin's wedding. If you study the archives of bus-spotters,¹² you will find quaint photos of the Vintage Hippie Bus. "Love" loops around the peace symbol painted over the circle in the front of the bus face, where the chrome VW emblem was removed. This loopy love is not what I refer to, although in its playful resistance to convention we can certainly make room for it in the footnotes.¹³

The love relevant here¹⁴ is the one that drives the labor organizer who e-mailed to tell me he is tired and frustrated. "It seems that working people have either forgotten how to stand up for themselves, don't care, or have been beaten into submission," he writes. He tells me his son has died, a son he raised to always stand up to bullies, stand up for what is right.

Seeing little hope, the labor organizer approaches yet another time: "remember me, I'm from the union, I wonder if you're ready to sign that card yet?". You face rejection all day, and you need a reason to come back again.

This stranger wrote to me because I had written a polemic, calling for massive support for unions.¹⁵ It was intended as inspirational, so the stranger wrote to beg for inspiration. What can I say to a man who has lost his son and is weary of struggle? "We have to keep organizing because even if we are losing now we won't always be, and we won't see the moment when we can start winning because we will be in it. We won't see it when we are in it, but we have to be there or it won't happen."

He is an organizer. He will understand what I mean. I console myself at not having exactly the words to say what I know is true, given the long arc of history that we have on our side. Our side will win because we have the love. The other side is the market, empire, capitalism, patriarchy, racism, and

young boys and passivity in young girls. Further, it is every child's right to develop in a non-sexist, non-racist, non-progressive atmosphere which is the responsibility of all people, including gays, to create."); see ROBIN WEST, *CARING FOR JUSTICE*, 242-58 (NYU Press, 1997) (arguing that women may suffer emotional and physical suffering that is perpetuated and legitimated by the institution of marriage itself and the state of mind it inculcates).

12. See, e.g. TheSamba.com, at <http://www.thesamba.com/vwforum/album.php> (last visited April 13, 2005); Vintage Bus.com, at <http://www.vintagebus.com/> (last visited April 13, 2005).

13. See, e.g. Gurney Norman, *Divine Rights' Trip*, "Love," in *THE WHOLE EARTH CATALOG* 48 (1968) ("I love you, and you, and you too, you're all just lovely, and I love you. I love the bus, I love those people down there at the other table, I love that big truck, and its driver, and the drivers of all those cars going by. I love the desert, I love the sky, I love the mountains in the distance, the oceans beyond the mountains, and those who dwell in the lands beyond the oceans. I love all sentient beings everywhere, regardless of their race, color, creed, place of national origin, or species.").

14. Following Marease, Haunani-Kay Trask defends eros as a political force against the charge of romanticism. See HAUNANI-KAY TRASK, *EROS & POWER* 174 (1986). ("Given a definition of Eros as the life force, the liberatory vision of the feminist Eros is focused on the expansion of Eros and the lessening of its counterpart, Thanos. As in other liberatory visions, however, its utopian quality contradicts the secularized, positivist posture of modern thinking: thus the "romantic" criticism.).

15. E-mail from Anonymous, to Mari Matsuda, Professor of Law, Georgetown University Law Center (Mar. 3, 2005)(on file with author). The author of the e-mail was an organizer for a construction local, writing after reading my article "Union Made." Mari Matsuda, *Union Made*, 35 SOC. POL. 2 (2004), available at <http://socialpolicy.org/index.php?id=1106>.

homophobia. It is not a club for lovers, and I know that on any given day half the students I am trying to teach law to are concerned primarily with their hearts. Will I find love, will it last, who will love me, does she love me, why doesn't he love me anymore, if she loves me why do I feel so lonely, should I leave. Lovers is what we are first and whenever our engines hit neutral. Sitting still. The thought returns: of love.

Maximizing shareholder value, seeking rents, utility preference, or whatever jargon you apply to a world in which getting more of whatever one jolly well pleases for oneself is all there is, is not where anyone I know actually resides in the interior of their hearts. My students speak of love. And when invited to, they speak of God, to me, the atheist.

I am not trying to sell valentines cards, but rather to say that this is so profoundly who we are: human beings with breakable hearts, needing one another and fearing that we are alone.

Someday I will dance at my gay cousin's wedding.¹⁶ I have 200 cousins, so I am not outing anyone, and none of them are out to me. That is my point. There is no other way the mostly working and middle class people I call kin can understand family. They aren't post-modern; they live in a world in which you start sending birthday presents when people cross the line from girlfriend to wife. That is the signal that you have to show up at her parent's funeral, stand vigil at the hospital when she is sick, and bring her into the family drama of why didn't you and I thought you would and I didn't mean it that way I LOVE YOU, I would take a kidney out of my body for you if you needed one because now you are family. To add a same-sex in-law to that circle would take us over a rainbow bridge. We could do it—the love is that strong—but my guess is no one in my extended family knows as yet that we could do it and everyone is scared to try. But if the weddings started, the aunties would cluck over the invitation and call each other to ask “what should we do,” and the answer they would come to is “same as we have always done,” start folding cranes and decide what to wear.

This current of love that I have floated on all my life could crack through homophobia. Gifts were prepared for me and the cousins before we were even born. Strong women fed us, watched us, promoted and protected us. They could do it still for any of us who showed up with a same-sex wedding invitation. And in doing that, the words of the gaybashers¹⁷ who stole the last

16. If you want a sound track here, you might know the extremely overwrought song, “I Hope You Dance.” LEE ANN WOMACK, *I Hope You Dance* (MCA Nashville, 2000).

17. In this piece I use “gaybashing” in reference to acts and words that subordinate gays and lesbians. I use “homophobia” for the fear that underlies gaybashing. In conversations with students who come to their opposition to gay marriage from their religions, I see a need to distinguish between those who engage in gaybashing, and those who oppose gay marriage without wanting to subordinate. My part of this conversation is expressing skepticism about the ability to reconcile an anti-equality position with a deep respect for others. My learning is witnessing how opposition to gay marriage can come from people to whom the appellation “gaybasher” should not apply. I feel it is a particular wrong

presidential election would deflate for them, the fear of difference subsumed in the knowledge of connection to someone whose diaper you changed, who is family, who is beloved.

Maybe. We won't know we are winning this battle when we are in it. But I already see how my gay neighbors are changing world views with their baskets of cookies and the collections they take up to send flowers when someone is grieving on our block. You can't hate someone who has done that for you, and you cannot hear the lies in the same way when "those people" are no longer an abstraction.

This contradiction of hate existing in a context of actual care¹⁸ can resolve to justice whether or not our gay neighbors marry, but legal marriage may be a significant location for pushing a change in the culture of domination.

II. THE SOCIAL MEANING OF FORMAL EQUALITY IN MARRIAGE

Without marriage you can do everything that counts in marriage except that which requires the imprint of the state. What you can do is love, honor, cherish, cleave unto, struggle with, present to the world as two together. What you cannot do is obtain the formal legal advantage of marriage, and more significant culturally, you cannot obtain the social meaning of marriage as constructed through the formal equality to marry.

People with privilege or gumption, and usually both, tend to think they can invent themselves and their relationships. This love is like no other, and we can make it what we want it to be for ourselves and those to whom we matter. In this tradition, we have free love, the sexual revolution, polyamory, and meadows full of commitment ceremonies scripted to mean exactly what the committed want them to mean, including love transcending patriarchy.¹⁹ As

that such honest opposition is co-opted by people in power and translated into something I certainly would call gaybashing, particularly in the political arena. I am moved by the essay *On Living the Gospel*, by Mormon theorist Eugene England, brought to my attention by my student, Joe Cutler. Eugene England, *On Living the Gospel*, at http://www.affirmation.org/learning/_on_living_the_gospel.asp (last visited April 30, 2005) England's essay depicts one person's struggle to reconcile his God's command to treat all human beings with unconditional love, and the revelation of his church that gay marriage is wrong. We pray, and we wait for God's word, England said, with humility, with pain, and with recognition that there is deep harm in not granting full recognition to gay personhood. What England is trying to do within the constructs of his faith is not what I mean when I use the term gaybashing.

18. Patricia Williams illustrates this contradiction in her story about overhearing a well-dressed, well-educated set of parents having a conversation with their child that was full of "affection, humor, and great politeness" but transmitting stereotypes in "redneck jokes." Williams says, "Hate learned in a context of love is a complicated phenomena." PATRICIA WILLIAMS, *THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE*, 113-15 (1995).

19. First Wave Feminism started the tradition of public marriage vows that denounced patriarchy. See, e.g., *Marriage Protest of Lucy Stone and Henry B. Blackwell (May 1, 1855)* in HOWARD ZINN, *VOICES OF A PEOPLE'S HISTORY OF THE UNITED STATES* 129 ("While acknowledging our mutual affection by publicly assuming the relationship of husband and wife, yet in justice to ourselves and a great principle, we deem it a duty to declare that this act on our part implies no sanction of, nor promise

with traditional marriage, those who seek the alternative have both good and bad stories to take with them out of the experience; however, those who seek the alternative cannot partake of the cultural meaning of formal legal marriage.

A lesson of critical race theory is that law carries meaning, which inscribes socially, and that socially inscribed meaning plays out actually and materially on our bodies.²⁰ There was a system of law, called Jim Crow, that had the immediate, physical consequence of separation and limited access to important goods, such as housing. Jim Crow also had a social effect of reinforcing and constructing a belief system under which some are human and some are not; some are deserving of legal identity, protection, and agency, and some are not.²¹ The idea of Jim Crow has more costs than the immediate effect of segregation, since the idea is cultural, embedded, and at least thus far, lasting in its effects.²² It justified lynching, it outlasted segregation, it burrowed into our collective subconscious where it governs our lives a full generation after the end of formal inequality based on race. Thus critical race theorists have asked for two things as elements of justice:²³ first, the end of formal inequality in all its manifestations; second, an end to the substantive inequality that is the product of the Jim Crow culture; in short, an end to the effects of racism.

of voluntary obedience to such of the present laws of marriage, as refuse to recognize the wife as an independent, rational being.”). See also Maura I. Strassberg, *The Challenge of Post-Modern Monogamy: Considering Polyamory*, 31 CAP. U. L. REV. 439 (2003). Strassberg argues that a new “postmodern polygamy” may “reflect postmodern critiques of patriarchy, gender, heterosexuality, and genetic parenthood.” *Id.* at 339-440.

20. Mari Matsuda, *Beyond and Not Beyond, Black and White: Deconstruction Has a Politics, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* 397 (Francisco Valdes et al. eds., 2002) (“And what if we are all outliers—if race is nothing but variability and gender nothing but theater? What if we could choose, invent, and dance up, down, and all around categories? If you love human beings, you see this transcendent potential. If you love them under present political circumstances, you see their unbearable vulnerability. Count the bodies as they fall, even as you imagine freedom from the template they fall through.”).

21. See Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 439-40 (“*Brown* held that segregated schools were unconstitutional primarily because of the *message* segregation conveys—the message that black children are an untouchable caste, unfit to be educated with white children. Segregation serves its purpose by conveying an idea. It stamps a badge of inferiority upon blacks, and this badge communicates a message to others in the community, as well as to blacks wearing the badge, that is injurious to blacks.”).

22. “To believe that we live in a colorblind society, free of the legacy of slavery and separation, is to deny what we see and hear every day. . . . The effect of this ideology of formal equality is to make it possible to pretend that racism doesn’t exist.” CHARLES H. LAWRENCE & MARI J. MATSUDA, *WE WON’T GO BACK* 77 (1997). See also Mari Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, in *WORDS THAT WOUND* 17 (Mari Matsuda et al. eds., 1993). Jim Crow persists today in the form of private clubs and de facto segregated schools and neighborhoods, is seen as less offensive than cross burnings. Covert disparate treatment and sanitized racist comments are commonplace and socially acceptable in many settings. The various implements of racism find their way into the hands of different dominant-group members. Lower- and middle-class white men might use violence against people of color, whereas upper-class whites might resort to private clubs or righteous indignation against “diversity” and “reverse discrimination.” Institutions—government bodies, schools, corporations—also perpetuate racism through a variety of overt and covert means. *Id.* at 23.

23. See generally *Minority Critiques of the Critical Legal Studies Movement* 22 HARV. CIV. RIGHTS CIVIL LIB. L. R. 297 (1987). This collection is considered the beginning of Critical Race Theory; the authors were attempting to both draw insight from and transcend to the critique of rights.

Ending formal inequality was the work of lawyers like Justice Thurgood Marshall and, in the gender arena, of lawyers like Justice Ruth Bader Ginsberg. This work is not trivialized by critical race theorists. It was an important step in confronting systems of inequality to attack the apartheid state, so that education and housing and jobs were offered, at least in formal terms, equally to all. Much of the work of critical race theorists asking for more legal protection for the unprotected is a version of the initial attack on formal inequality. Why won't the law protect us from the defamation of racial hate speech when it will protect others from defamation in their personal reputation?²⁴ The absence of law is a kind of formal inequality: law will go here, but not there, based on race. Two different versions of the first amendment, one absolutist ("colored") and one nuanced ("white"), comprise Jim Crow in access to legal protection. Having two sets of rules is part of the Jim Crow culture of racism.

Beyond formal inequality, critical race theorists—with full support from the historical legacy of the Thurgood Marshalls²⁵ and the Ruth Bader Ginsbergs²⁶—have demanded substantive equality: equality in effects and results, not just equality in form. This requires affirmative action and the *Griggs* effects test.²⁷ It also requires support for the means by which people attain the ability to claim legal personality and to participate as full legal

24. The law of defamation and privacy recognizes that certain forms of expression are qualitatively different from the kind of speech deserving absolute protection. The legal imagination is able to contemplate to have one's likeness used for commercial gain without consent. American law has even, at times, provided a tort remedy for white plaintiffs who are "insulted" by "imputation of association with persons of a race against which there is prejudice." When the legal mind understands that reputational interests, which are analogized to the preferred interest in property, must be balanced against first amendment interests, it recognizes the concrete reality of what happens to people who are defamed. Their lives are changed. Their standing in the community, their opportunities, their self-worth, their free enjoyment of life are limited. Their political capital—their ability to speak and be heard—is diminished. To see this, and yet to fail to see that the very same things happen to the victims of racist speech is selective vision. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, in *WORDS THAT WOUND* 47 (Mari J. Matsuda et al. eds., 1993).

25. See RICHARD KLUGER, *SIMPLE JUSTICE* 215-38 (1975) (describing formal equality cases leading up to *Brown v. Board of Education*).

26. See EARL M. MALTZ, ED., *REHNQUIST JUSTICE: UNDERSTANDING THE COURT DYNAMIC*, 2003. Ruth Bader Ginsburg, while working as a law professor at Rutgers, argued cases for the ACLU Women's Rights Project that paved the way for gender equality. She formulated her strategy in *Reed v. Reed*, the first Supreme Court case invalidating sex-based discrimination, and argued that sex, like race, should be treated as an inherently suspect classification. *Id.* at 226-29.

27. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). *Griggs* established that proof of employer intent to discriminate is not required where a practice "operate[s] invidiously" to discriminate. The burden is on the employer to show the business necessity or job relatedness of the practice. *Id.* at 430-31. The Court invalidated an employer practice requiring that workers have a high school education or pass a standardized general intelligence test in order to work in or transfer to non-labor jobs, when neither standard was significantly related to successful job performance; both requirements disqualified blacks at a substantially higher rate than white applicants; and the jobs in question formerly were reserved for white employees only. *Id.* at 425-26. "The *Griggs* test is how to equality if you believe that the real world counts." Mari Matsuda, *Beyond and Not Beyond, Black and White: Deconstruction Has a Politics*, in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* 396 (Francisco Valdes et al. eds., 2002).

subjects in our system of rights. It requires adequate education and the means of survival; it is the true right to life, the opposite of the *Rodriguez* case.²⁸

Marriage echoes this analysis. State recognition of marriage means state recognition of the choice of two to claim the social status of a loving unit. However cynically one interprets the institution as a byproduct of capitalism—certainly the evidence is strong in this regard—the current legend of marriage is love. The romantic social meaning of marriage pronounces to the world (now I sing it from the highest hill) that we cast our lot with permanent monogamy, family, home, and hearth, and we want everyone who cares about us to support us in that choice (even told the golden daffodil) because it is not easy, and we need you to know and recognize our effort and the realm of mutual care we enter and require, as we follow in the tradition of those who loved us who made the same effort, that has redounded to our benefit (we, we are family) as crazy as it may seem in a world stunningly devoid of collective love, care, respect, and permanent connection, we choose to try and you will support us.

As I left the temple after a student's wedding, a rainbow rose over the mountains while the sun came through in long, golden rays of late afternoon. I wept. Bless them. They are young and beautiful and taking a chance on love. The handmade invitation, the white dress, the siblings and cousins making jokes at the reception, the aunties who stayed up late into the night making the centerpieces—all made clear the obligations of those surrounding the marrieds: Support this love, they are family now. State-sanctioned marriage gives this to heterosexuals, and it helps. Monogamy is hard enough without the ennui of ambiguous status. The clarity of your desire to forge a life together—there for all the world to see, from your old law professor to your mother's sister's husband's sister—makes your way easier. The social expectation of what marriage will mean reinforces your intention to say to one another, "I am with you. Days will come when I wish I were not, and I will remember this promise, witnessed by all the world and formalized by our signatures. This promise will carry love over the bad days, because there is something we both want and need in our choice not to live alone."

Here is the disclaimer. We can't actually know whether monogamy will work for any given couple. It certainly lets many fall bitterly, as endless lamentations for the broken hearted reveal. Nonetheless, many long for it, and see it as a realization of their best and ultimate selves. Why not let them try, particularly in the face of a culture pushing greed and self-interest at every turn, to make of themselves something transcending the one lonely pod alone in a

28. See *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973). In *Rodriguez*, plaintiff-appellees brought a class action on behalf of poor schoolchildren living in low property tax base school districts, and argued that the Texas school finance system's reliance on local property taxation favored the rich and violated equal protection requirements because of gaping interdistrict disparities in per-pupil expenditures. The Court rejected wealth as a suspect class and reasserted that the right to education is not a fundamental liberty interest. *Id.* at 25-29, 35.

lonely world? Let them stand, as Robin West suggests,²⁹ in opposition to the central conception of bankrupt liberal individualism.

Could they do this without formal marriage? Yes, but it is harder and lacks clarity. Not necessarily for lawyers and post-modernists, who can claim and construct anything with language and the theatre of their lives; but for ordinary working people, those who rely on the signalings and understandings that law provides, legal marriage is culturally understood and confers significant social benefit.

Law is how we make claims both for social meaning and for ultimate validation of our personhood. Legal status matters because law constructs the culture of who is an entitled person. Jim Crow in marriage—YOU can't get married—acts as Jim Crow always does, as public speech, to mark some as less than others, with consequences ranging from social shunning to lynching. All human beings are fully human. In a legalized culture, we say this through legal recognition. Thus I think, though I am not sure, that my empathy for the marriage quest is more than the product of growing up on the now-non-existent Top 40 radio format and the still alive-and-well supermarket newsstand propaganda for hetero-romance. It is an application of the critical insight that cultural meaning is constructed by law to the particular question of same-sex marriage; and the answer is that the enemies of justice are fighting same-sex marriage for a reason, and the reason has to do with full recognition of personhood. The leverage of claiming that recognition for sexual outsiders matters.

III. WHY DO THEY CARE?

The mystery in quoting Douglass and King and Fanon is that in the struggle to end slavery, Jim Crow, and colonialism, the oppressed really were asking for control of the means of production, for the fruits of their own labor, for a change in who would sit in the state legislature, for transformation of the distribution of wealth and power in ways that would have immediate material costs to elites. It is obvious why someone would fight desperately to keep their plantation. It is not so obvious why they would fight desperately to prevent someone they don't even know from getting a marriage license. Yet homophobic opposition to same-sex marriage carries the force and vehemence of the colonizer's opposition to nationalizing oil wells. Do they know something I don't know about what will fall when homophobia falls? Or will

29. See Robin West, *Universalism, Liberal Theory, and the Problem of Gay Marriage*, 25 FLA. ST. U. L. R. 705 (1998). The point of marriage, Professor West suggests, "may be to provide a structure within which we learn to define and continually redefine ourselves as caring rather than egoistic beings—as connected to rather than alienated from the concerns and well-being of others." *Id.* at 730.

the door simply open when we push, since less than they believe is actually at stake?

Either way, it may be the right choice to push with all the intelligence and skill we can deploy, to see what we learn. Perhaps the opposition only seems monolithic, intransigent, and overwhelming. A student tells me of her parents' conservative church, which is threatening to implode over the issue of gay rights. Her parents are members of over twenty years standing. Twenty years of shared prayer, bible study, grieving, and celebration. In church you drop the façade of "it's all okay." In church you hear about the pain in another family, as they ask that others pray for them. For twenty years, this couple did this, and then one day they chose to, as they describe it, "come out" as people who believe gays are welcome in the family of God. They thought this confession would end the conversation and end their relationship with the church. It did not. Instead of a door closing, they found one opening, with fellow church members saying we cannot accept what you are saying, but pray with us, still. None of us knows the will of God, and in our prayer and humility, let us struggle with this unthinkable thought.

I don't know how this story will end, but I repeat it because I know of organizers out there trying to talk to people through the door: Hello in there, yes, I know what you believe about gay people. Tell me why you think that and let me tell you what I think. What will you lose if your gay neighbors are allowed to marry? A conversation about loss may follow—loss of a way of life, a belief system, a sense of security and belonging, that might enlighten both sides of the exchange.³⁰ The rhetoric of loss fills the airwaves of the country music channels and the right wing talk shows. It is a rhetoric than contains populist seeds that can flower into a progressive prairie. The seed is this: We HAVE lost something—the good old days of family, community, care, neighbors, honest work, and certainty of food on the table. We have lost it not to gay marriage, but to Wal-Mart, to runaway shops, to unrestrained globalization, and to the corrupting ideology of every person for themselves/greed is good. That ideology stole Mama's health care and Daddy's job, and someone needs to write a long lonesome cowboy blues ballad about that. Maybe k.d. Lang.

30. Melissa Chua, my research assistant, told the following story: "I was talking to an older neighbor of mine the other day, a Black woman who has lived on my street for years. I noticed that she was dressed in her finest and coming home from church. When we said hello, she mentioned that the sermon that day had been about gay marriage. My parents aren't extremely religious but they are Catholic and Filipino, so I understood what my neighbor meant when she said that the 'harm' that would be done to her by allowing gay marriage was a part of a larger harm that was being done to the fabric of our society. She associated gay marriage with children having babies, profanity on television, and guns in our streets. Gay marriage was to her just another way that our society was drifting even further away from a virtuous Christian one. I had never heard the argument against gay marriage articulated that way before but it was really fascinating to me. I believed in God, I told her, but a God that embraced everyone equally and with love for everyone. I thought that if God could embrace a gay couple and allow them to love each other, why couldn't we?" E-mail from Melissa Chua, in file with the author.

Behind door number one, then, is the possibility that if we struggle we might actually change the culture as we win the votes for same-sex marriage.

Behind door number two, we might find that the wall becomes fortified and the opposition turns vicious. I defer to experienced strategists such as Mr. Matt Coles³¹ to help us understand when and where it is foolish to enter the dragon's den, but knowing it is a dragon we face is information. Why all this fire breathing around something as lovely as a wedding in the meadow? Perhaps the opposition is right. If love breaks loose in this way, the dragon keepers will never win.

What would it mean to lose a centrally held notion of deviance, to defy the ultimate command of the patriarch, to liberate the absolutely forbidden thing and wave it all over town like a rainbow flag. Love unbound might mean the dragon really has no power at all. The thing some of us have said over and over and over in so many struggles might actually be true: another world is possible, it doesn't have to be this way. Every time I have stood up as a feminist or critical race theorist or peace marcher or friend of labor to ask for something that people need and do not have, I am given a hundred reasons why they can't have it. Can't stop the rape in Darfur. Can't forgive the debt of third world countries, nor those of law students indentured to their student loans. Can't bring home the troops, can't open the prison doors, can't house the woman on the street, can't fund Headstart, can't pay a living wage. The way it is, is the way it is supposed to be.

If we force a change in the place that seems unchangeable, in a culture of homophobia so naturalized that it is learned by young children who don't even know what sex is, we might chip the beginning of a hairline crack that will split the glacier. The culture of militaristic, free market patriarchy—the take, smash, and never go soft world view—may understand better than I its vulnerability to the millions of people for whom love and the desire to make a life together will give them courage to come out and claim marriage. Look at us, whom you have taught everyone to despise and fear, it is not we who bring harm. What we bring is gentle, vulnerable, and good. It is the adoring gaze of a parent into the eyes of the baby child, the gaze we all seek in our lonely, grown-up hearts. Why did you tell the lie that our love would harm others? Why did you need it, what bloodletting and robbery did you commit while hiding behind the bluster of gaybashing? Look at us, who want only to care for one another. We will take nothing from our good neighbors, but we may take the big stick away from you, when your lie is revealed for what it is.

Perhaps all power in the hands of the undeserving few is at stake, and thus is the source of a resistance that breathes fire. We don't have their firepower and we don't want it or need it as our source of strength. Drop all metaphors of

31. See Matt Coles, Address at the Yale Law School Symposium, *Breaking With Tradition: New Frontiers for Same-sex Marriage* (March 5, 2005).

war and pick up the oldest wish and hold it in your hand: See me, love me, know me.

IV. CRITICISM, SELF-CRITICISM, MARRIAGE

“Nikki, isn’t this counterrevolutionary. . .?”³²

When I was learning to crawl, and then to walk, and then to run out of the trap of liberal legal ideology as taught in all the cases in the casebooks, I read the work of a woman who changed everything about how equality looks to me. Catharine MacKinnon asked simple questions: Equal to what? Same as what? Different from what?³³ Who is the center against which all dreams of equality are measured? “If only I could have what he has,” is the wrong dream, she said. He has it because he took it, and “it” is what he could take. MacKinnon forces us to look at power, never to compare two things in an unequal world without asking who has the power.

I am cautioned that the same-sex marriage struggle is yet another play for equality in an unequal world: Why can’t I have what he has, in this case marriage, as though marriage were not part of the problem in a world in which sex, love, procreation, family, citizenship, and everything else is culturally and politically shaped by a white, male, heterosexual norm.

32. NIKKI GIOVANNI, *Seduction, in LOVE POEMS 27* (1997).

33. See CATHARINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987).

What is a gender question a question of? What is an inequality question a question of? These two questions underlie applications of the equality principle to issues of gender, but they are seldom explicitly asked. I think it speaks to the way gender has structured thought and perception that mainstream legal and moral theory tacitly give the same answer to them both: these are questions of sameness and difference.

. . . Upon further scrutiny, two alternative paths to equality for women emerge within this dominant approach, paths that roughly follow the lines of this tension. The leading one is: be the same as men. . . an alternate one. . . be different from men. . .

There is a politics to this. Concealed is the substantive way in which man has become the measure of all things. Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the difference standard, we are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure. Gender neutrality is thus simply the male standard, and the special protection rule is simply the female standard, but do not be deceived: masculinity, or maleness, is the referent for both. Think about it like those anatomy models in medical school. A male body is the human body; all those extra things women have are studied in ob/gyn. It truly is a situation in which more is less. Approaching sex discrimination in this way—as if sex questions are difference questions and equality are sameness questions—provides two ways for the law to hold women to a male standard and call that sex equality.

Id. at 32-34.

In the context of gay and lesbian rights, Marc Spindelman argues that “[s]ex-equality theorists see in *Lawrence* the invigoration of formal-equality thinking that requires members of socially subordinated groups—be they women or non-heterosexuals—to conform to the norms of socially dominant classes in order to be afforded their rights.” Marc Spindelman, *Surviving Lawrence v. Texas*, 102 MICH. L. REV. 1615, 1633 n.97 (2004). Spindelman acknowledges that while rights may be delivered to the oppressed in the formal-equality context, they are conditioned “on the terms that the socially privileged set for themselves, assuming as it does that socially dominant groups—whether men, or in *Lawrence*, heterosexuals—should be the standard against which constitutional claims are judged and rights both discovered and delivered.” *Id.*

My students can list the problems of formal equality easily, as they did one day in class: Ducking accountability, denying subordination while it occurs, normalizing and shielding power disparities, concealing majoritarian bias, creating ahistoricism, breeding complacency, never getting us what we really need, diverting resources.³⁴ That is their list, to which they countered: but the formal declaration has power; it is a lever to push for substantive equality; it doesn't have to be all we ask for. Law students today, at least if they take a couple of critical courses, are familiar with the critique and rehabilitation of equality.³⁵

In the context of exploring my own Japanese-American community's quest for equality in the context of the illegal World War II internment, I have argued that framing justice as a quest for formal equality is how one becomes a nominal legal citizen in exchange for giving up all claims to economic justice.³⁶

As to marriage, there is first the problem that seeking formal equality reinforces the conservative aspects of that claim generally: this is all people should ever seek.³⁷ On the other hand, formal equality gets you. . . formal equality.³⁸ It is a gain, and it is up to us to make sure it is not the end of our demands.

More significantly, what if marriage is the problem: a deadening, ownership-based system of human relationships that functions to privatize,

34. Notes From Class Discussion, Asian Americans and Legal Ideology Seminar at Georgetown University Law Center (Apr. 13, 2005) (on file with author).

35. Class Discussion, Asian Americans and Legal Ideology Seminar at Georgetown University Law Center (Apr. 6, 2005).

36. Mari J. Matsuda, *McCarthyism, the Internment and the Contradictions of Power*, 19 B. C. THIRD WORLD L.J. 9 (1999). Once the demand for jobs, housing, healthcare, and workplace dignity were excised from the civil rights movement, the quest for formal, legal equality was the paltry remains. . . . Defining equality narrowly, as critical race theorists have explained, is exactly what was needed to deny responsibility for institutional racism, unconscious racism, and continuing racist social practices.*Id.* at 24-25.

37. For an elaboration of this critique, see generally M. Spindelman, *Homosexuality's Horizon*, EMORY L.J. (forthcoming 2005).

38. It is not so easy to theorize about the trap of equality when women who are neither friends of oppression nor easily duped tell me, simply, that they want same-sex marriage for themselves. A friend writes: "I find myself bristling at all this queer theory and critical race theory and weighing of pros and cons and, even, the strange dichotomy of unbridled romance and staunch cynicism about marriage that ran through your article. . . . See, my problem is that I am in love and I don't care about any of that because I love someone so very much and so deeply . . . that all that just pales in comparison. . . . This is where you love someone so much that you can't wait to stand before God and your family and your friends and profess your love to all and commit yourself to them for the rest of your life. . . ." Correspondence from Anonymous, to Mari Matsuda, Professor of Law, Georgetown University Law Center (Apr. 2005) (on file with author). Another writes: "Last year, I thought the State should get out of marriage entirely. . . I am over that. That argument is safe. I want marriage—and all its baggage and bonuses. . . my friends in awful bridesmaids dresses, a kick ass wedding. The rights are important, but I want to 'feel' 'own' and 'experience' the rights." Correspondence from Anonymous, to Mari Matsuda, Professor of Law, Georgetown University Law Center (Apr. 2005) (on file with author). Or as my mother once said in response to my explication of the critique of rights, "only people who have always had rights would believe that."

normalize, and hide violence.³⁹ What if equal freedom to marry means equal access to a bankrupt system of social relationships?⁴⁰ My tentative response is: that gives too much power to marriage. The problem is The Problem, also known as our inability to live lives transcendent of systems of domination. There is no proof, but from the evidence of my own heartbreak and yours, I suspect that even in a world free from fear and patriarchy, some will choose marriage and some won't. Hearts will still break in either case, but without patriarchy to blame.

The quest for marriage equality also has the problem of suggesting that marriage is the ideal state for human connection. It erases the fluidity into and out of relationships and the multiplicity of relationship forms that comprise the reality of human connection for most people in our contemporary life. It makes it seem as though the woman gloriously on her own, sole trader, dependant on no other, is simply waiting around for someone to come along. I do not have enough space in this article to recount the ways in which the devaluation of a life without a partner is erroneous. Add simply this: supporting marriage for those who want it is not the same as supporting marriage as an end in itself. The orthodoxy of compulsory coupling is not good for singles or for couples.⁴¹

The final challenge, which I cannot begin to resolve, is what sex has to do with all of this. I wanted to write of love, and have avoided sex as beyond my expertise. Queer theory has demanded, however, that we take sex seriously,⁴² and I can only acknowledge that demand and wait for queer theory to resolve it as to marriage. Certainly, the partial answer to "why do they care who gets

39. See M. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* (Discussion of, *inter alia*, marriages as a location of violence against women, and women who are killed when they attempt to leave). The problem of violence in relationships is not an exclusively heterosexual phenomena; to the extent marriage increases the risk of violence, the danger extends to same-sex marriages. See, e.g., BETH LEVENTHAL AND BARBARA LUNDY, *SAME-SEX DOMESTIC VIOLENCE: STRATEGIES FOR CHANGE* (1999).

40. See Third World Gay Revolution, *What We Want, What We Believe*, supra note 11.

41. The "sole trader" was a legal status used in the 19th century legal American west to allow women to operate in commercial settings without a male partner. See M. Matsuda, *The West and the Legal Status of Women: Explanations of Frontier Feminism*, 24 *JOURNAL OF THE WEST* 53 (1985). See also Mary Helen Washington, *Working at Single Bliss*, in *MS. MAGAZINE*, October 1982, at 55-58.

42. See generally POWERS OF DESIRE: THE POLITICS OF SEXUALITY 9-10 (Ann Snitow et al. eds., 1983) ("[Michel] Foucault suggests that the public discussion of sex constitutes a chief way in which modern social institutions manipulate the consciousness and intimate experiences of great masses of people. Sex is supposedly secret and private, yet we do nothing but speak of it . . . and in speaking we unwittingly define and proscribe who may desire whom, when, and how. . . . Certainly, to skirt sexual issues now, given current political conditions, is to cede this crucial territory to those who have organized precisely toward the end of silencing feminism and the lesbian and gay movements. . . . The Right offers this anti-sexual program in defense of monogamous, heterosexual, procreative, sanctified, legalized, natural sex at a time when it has never been more apparent that sexuality, like gender, changes. As we create masculinity and femininity, so we also make love.") (citing MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* (1978)), *ASIAN AMERICA SEXUALITIES: DIMENSIONS FOR THE GAY + LESBIAN EXPERIENCE* (Russell Long, ed. 1996); see also Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 *CAL. L. REV.* 1 (1995) (Explaining how the conflation of sex, gender, and sexual orientation perpetuates heteropatriarchy).

married?” has some grounding in sex—and the fear and orthodoxy that exist around sex—under present power distributions. Beyond that, if sexual liberation requires liberation from constructs like marriage, then equality in marriage does nothing for sex. My fallback response is one I learned from experienced organizers: meet the people where they are. Some people want marriage as much as some people want to liberate sex, and some attempt valiantly to remake either or both into something more than what both devolve to in a commodifying world. Either path may reflect self-delusion, or the key to human liberation, but to the extent both are genuinely felt human aspirations, query where that aspiration leads us. It is part of the human experience. When England’s poet laureate speaks of the “green fuse”⁴³ on the occasion of a royal wedding, it is not entirely fraudulent. Kings and paupers want whatever that flower is, and taking human desire seriously, alongside a utopian vision of justice, might be exactly the way to get it.

This means anti-subordination analysis must come first, and it means no free pass just because you say, “this is what turns me on.” It is much harder work to say how healthcare for all AND same-sex marriage AND sustainability AND a living wage AND bringing home the troops AND reconstructing sex, gender, and love are all part of the same struggle. There is no other way, and going to the chapel before you do your work⁴⁴ is, I promise you, the fast track to sorrow.

V. ON MORTALITY

A therapist friend tells me that some in her profession believe that at bottom, all they are doing is trying to help people cope with the knowledge of their mortality. At other times, she tells me we all walk away from our families of origin wounded, each one of us, no matter how loved, and we wander the earth looking for someone to heal those wounds.

There are two stories, at least, of romance. In one, love lies possible, around every corner. An elevator door could open, revealing the person behind it as so splendid it makes you stop breathing both in the presence of the discovery and from being the object of discovery. Who are you, what would it feel like to touch your hand? Then, once finding out, and tiring of it, there is

43. Andrew Motion, *Spring Wedding*, available at <http://cnn.com/2005/WORLD/europe/04/09/royal.wedding.poem/> (Poem written for Charles & Camilla) (last visited Apr. 13, 2005). The “green fuse” is an allusion to Dylan Thomas. *The force that through the green fuse drives the flower*, available at <http://www.poets.org/poems/poems.cfm?prmid=1161> (last visited April 26, 2005).

44. A student asked what I meant by “before you do your work.” Before you do your political work means before you understand that marriage—gay or straight—can mask inequality and harbor violence; and before you find a place in the struggle to end injustice. Before you do your home work means before you know who you are, know what you need, know how to ask for it, know how to make change or walk away if you aren’t getting what you need. No, I am not recommending against marriage, nor am I cynical about marriage; I just know that the garden needs tending.

the next corner, the next trip, the next night when, across a crowded room there emerges again the possibility of another lover whose name you will remember as a bead on your heart's rosary.⁴⁵ Then there is the other story, the equally improbable hope of a lasting romance: my world moved and I was changed forever into someone who knew a life with you was all I needed. My only sorrow is that one lifetime is not enough with you, my one and only love. You might laugh at any of us who try to make either of these stories our own. These are just stories we make up in order to make it from birth to death without giving up.

Or you might say, the fact that so many try, and fail, and try yet again to make love work, the fact that some stay married and grieve to the deepest depths of grief when they lose a partner, that all of this is testament to the power of eros. We will run out of fossil fuels before we run out of human desire. My dream is that we capture that desire and use it to build the revolution that will bring peace and justice to every last corner of human existence. Yes, it will end global warming and stop war in places where oil sits under the ground teasing men to make war for it. It will free us from fearing one another. We will just drop the fear and leave it, like dead leaves blowing at curbside. We will learn we don't need our hate, and suddenly we will see all that was stolen from us while we were choosing hate as the way out of fear. Every religion I know of speaks of love.⁴⁶ Warriors for our movements come

45. See Kim Addonizio, *Getting Older*, in TELL ME 86 (2000) ("Sometimes it's enough just to say/ their names like a rosary, ordinary names / linked by nothing but the fact / that they belong to men who loved you. And finally / you depend on that, you pray it's enough / to last, if it has to, the rest of your life.").

46. In the Jewish tradition, one is commanded to "love your fellow Jew like yourself" or, more loosely translated, "love your neighbor as yourself." Vayikra (Leviticus) 19:18. From the tradition of Tibetan Buddhism, the fourteenth Dalai Lama writes:

No material object, however beautiful or valuable, can make us feel loved. We need something deeper, what I usually refer to as human affection. With human affection, or compassion, all the material advantages that we have can produce good results. Without human affection, however, material advantages alone will not satisfy us, nor will they produce in us any measure of mental peace or happiness. In fact, material advantages without human affection may even create additional problems. So when we consider our origins and our nature we discover that no one is born free from the need for love. And although some modern schools of thought seek to do so, human beings cannot be defined as solely physical.

TENZIN GYATSO, *THE COMPASSIONATE LIFE* 7 (2003). An ancient Hindu text, Tirukkural, describes the human desire for love:

Is there any fastening that can shut in love?
Tears of the affectionate will publish the love that is within. . . .
Though every outward part complete, the body's fitly framed;
What good, when the soul within, of love devoid, lies halt and maimed?
Bodies of loveless men are bony framework clad with skin;
Then is the body seat of life, when love resides within.

TIRUKKURAL 8:72-80 (Rev. Dr. G. U. Pope et al., trans., South India Saiva Siddhanta Works Publishing Society) (1958). Islam speaks of Allah's gift of love as an inspiration to religious faith:

By one of His signs He created you from dust; and, behold, you became men and multiplied throughout the earth. By another sign he gave you wives from among yourselves, that you might live in peace with them, and planted love and kindness in your hearts. Surly there are signs in this for thinking men.

THE KORAN 30:20-21.

from and for love, for a place at the family table, for the big party that is civilly disobedient marriage licensing, for the whoops and hollers when a hatemongering, gaybashing city council candidate is defeated in a red state.⁴⁷ I can convince you to stop global warming by talking to you about why oxygen is in your self-interest, but I can't help you find joy in making a tiny footprint on the planet unless we speak of love, and until we do that, we will live with the plague of war and violence.

Every religion speaks of love because religion is the opiate of the fragile.⁴⁸ The unbearable pain of knowing we cannot keep our loved ones safe finds no comfort other than faith. Have you ever fallen in love? Have you ever looked at someone's back and suddenly realized you want to put your hand on their back and bring everything good upon them—keep them safe, keep them in a circle of joy, make cruelty stay far, far away?

No one knows what utopian marriage looks like, and we face the hard fact that marriage, like religion, has led to carnage.⁴⁹ It is also simply true that in a world of radical inequality on the most basic level of our needs—food, shelter, medical care, work, education—that whatever social formations we make are largely eclipsed by the stark fact of have and have-not.⁵⁰ The desire to keep the

47. In Topeka, Kansas, lesbian city councilwoman Tiffany Muller turned back a primary challenge by Jael Phelps, whose hobby is picketing against homosexuals, Tim Hrenchir et al., *Residents Reject Repeal*, TOPEKA CAPITAL-JOURNAL, March 2, 2005; "A1, and whose grandfather, Rev. Fred Phelps Sr. is "possibly the nation's most vitriolic protester against gays." Jodi Wilgoren, *Vote in Topeka Hangs on Gay Rights and a Vitriolic Local Protester*, N.Y. TIMES, March 1, 2005, A13. A wide range of voters spoke against the Phelps clan in interviews, with a local evangelical church leader calling them "hatemongers," *Id.*, and another voter decrying the reputation the Phelps bring to their community, Tim Hrenchir et al., *Residents Reject Repeal*, TOPEKA CAPITAL-JOURNAL, March 2, 2005, A1. On the same ballot, Topeka voters rejected a question that would have barred the city from recognizing homosexuals as a protected class for at least ten years. Celebrating the victory, hundreds of community members supporting Tiffany Muller shouted together, "Freedom!" and praised Muller's leadership. The crowd greeted the announcement of the ballot question's defeat "with cheers, applause, hugs and tears." *Id.*

48. Since one reader thought this phrase was an attack on religion, here is the expansion: The allusion is to the Marxist saying "religion is the opiate of the masses," which I once understood as meaning the masses are doped into senseless passivity by religion. I later came to understand another interpretation. George Meyer tells the story of his father leaving for the coal mines every morning. His mother was terrified of this leave-taking, given all the friends and relatives they had lost in the mines. Don't worry, the father would say, God will keep me safe and I will return to you. The opiate was a pain killer, a salve, that allowed working people to make it through the pain of life under capitalism. Their use of religion was about survival and transcendence in the face of exploitation.

49. See, e.g., note 41, at 19. *State v. Aldridge*, 534 S.E.2d 629 (N.C. App., 2000). In this case, a man violently murdered his wife when she tried to leave their marriage. Police found the wife lying in the bedroom with eleven stab wounds, including two in the vaginal area, from kitchen knives. *Id.* at 632. The defendant's two ex-wives testified to their ex-husband's violent behavior towards the end of their marriages. The first ex-wife said that he "smacked" her four or five times near the end of their marriage and fired two pistol shots when she finally drove off with their children. *Id.* at 633. The second ex-wife "testified that after the first week of marriage, the defendant 'got really physically abusive. He would beat me, stomp me, choke me.'" When she left him after two years, "he threw rocks at her and her children and threatened to 'blow [her] brains out' and pointed a pistol at her." *Id.* at 634.

50. Statistics published by the United Nations illustrate these dramatic inequalities. For instance, only 13% of Afghanistan's population had access to improved drinking water sources in 2002, compared with 100% in the United States and Japan. Further, nearly 99% of the urban dwellers in Afghanistan, Chad and Ethiopia lived in slums in 2001, where as the United States stood at 6% and

beloved safe makes justice the cause of lovers. The urgency of our need for a precious one's safety is an elixir we might carry as we organize the world to end inequality. Whether the struggle is around marriage or around something else, we need a way to see that what we have in common is the need of lovers to love, the need to reside in little coves of family where we will rest, in a moment of safety, as we hurtle through a random universe, tiny, vulnerable, temporary specks that we are.

Singapore and Bahrain at 0% percent. In addition, while Afghanistan and Chad had illiteracy rates of nearly 99% in 2001, countries like the United States, Spain and Bulgaria had rates of lower than 6%. United Nations Millennium Indicators Database, http://millenniumindicators.un.org/unsd/mi/mi_goals.asp (last visited April 12, 2005); see also United Nations Social Indicators, Statistical Databases, <http://unstats.un.org/unsd/demographic/products/socind/default.htm> (last visited April 12, 2005).

