CREATION STORIES: STANLEY HAUERWAS, SAME-SEX MARRIAGE, AND NARRATIVE IN LAW AND THEOLOGY

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> When I think about— members of my own staff who are incredibly committed, in monogamous relationships, same-sex relationships, who are raising kids together. When I think about— those soldiers or airmen or marines or— sailors who are out there fighting on my behalf— and yet, feel constrained, even now that Don't Ask, Don't Tell is gone, because— they're not able to— commit themselves in a marriage. . . At a certain point, I've just concluded that— for me personally, it is important for me to go ahead and affirm that— I think same-sex couples should be able to get married.[1]
>
> President Barack Obama

I

INTRODUCTION

On June 24, 2011 New York became the most recent, and largest, state in the United States to legalize same-sex marriage.[2] More recently, and perhaps importantly, President Obama announced his support for same-sex marriage, after a very public "evolution" on the subject.[3] Even more recently, the United States Court of Appeals for the First Circuit held that the Defense of Marriage Act violated the Constitution.[4] Along with the recent decision by the United States Court of Appeals for the Ninth Circuit denying a rehearing of its decision invalidating California's constitutional amendment outlawing same-sex marriage, a seismic shift has occurred in the gay marriage movement.[5] In some

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1. Interview by Robin Roberts, ABC News, with President Barack Obama (May 9, 2012), *available at* http://abcnews.go.com/Politics/transcript-robin-roberts-abc-news-interview-president-obama/story?id=16316043.

2. Nicholas Confessore & Michael Barbaro, *New York Allows Same Sex Marriage, Becoming Largest State to Pass Law*, N.Y. TIMES (June 24, 2011), *available at* http://www.nytimes.com/2011/06/25/nyregion/gay-marriage-approved-by-new-york-senate.html?pagewanted=all.

3. Peter Wallston & Scott Wilson, *For Obama, Gay Marriage Stance Born of a Long Evolution*, WASH. POST (May 10, 2012), *available at* http://www.washingtonpost.com/politics/for-obama-gay-marriage-stance-borne-of-a-long-evolution/2012/05/10/gIQAIDIlGU_story.html.

4. Massachusetts v. Dep't. of Health and Human Servs., 682 F.3d 1 (1st Cir. 2012).

5. Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), denying rehearing en banc, 681 F.3d 1065 (9th

quarters, the successful push to legalize same-sex marriage is seen as the culmination of the movement for lesbian, gay, bisexual, and transgender (LGBT) equality.[6] The success of the campaign to legalize same-sex marriage might be understood as the ratification of the LGBT equality movement's goal of making the lives of LGBT individuals less foreign to those within the larger political community.[7] The translation of LGBT lives to the larger public has been one of the most significant strategies of the mainstream LGBT equality movement. Advocates for LGBT equality have argued that eradicating prejudice against LGBT persons rests on the LGBT community's ability to undermine stereotypes of LGBT persons held by the straight community.[8] Narrative has been a central mechanism by which advocates of LGBT equality have sought to undermine stereotypes about LGBT people because of its capacity to draw others into participation in, and identification with, the LGBT community.[9]

The turn to narrative is not unique to the movement for LGBT equality. In the areas of gender and race, proponents of progressive social reform have turned toward narrative as a way of providing a framework through which the experiences of "outsiders" might be understood by "insiders."[10] Advocates who have sought to highlight issues of racial and gender inequity have enlisted narratives through which the experiences of racial and gender hierarchies might be understood.[11]

Cir. 2012).

    6. *See e.g.,* Mark Spindelman, *Homosexuality's Horizon*, 54 EMORY L.J. 1361 (2005).

    7. That this "translation" has been successful is evidenced by the statement by New York State Senator Mark Grisanti, who had run for office opposing the state recognition of same-sex marriage, explaining his decision to support legislation legalizing it, saying: "I cannot deny a person, a human being, a taxpayer, a worker, the people of my district and across this state, the State of New York, and those people who make this the great state that it is the same rights that I have with my wife." Confessore & Barbaro, *supra* note 2. In Vice President Biden's announcement of his support for same-sex marriage he declared that "'Will and Grace' probably did more to educate the American public than almost anything anybody's ever done so far. And I think—people fear that which is different." Meet the Press Interview with Joe Biden (May 6, 2012), *available at* http://www.msnbc.msn.com/id/47311900/ns/meet_the_press-transcripts/t/may-joe-biden-kelly-ayotte-diane-swonk-tom-brokaw-chuck-todd/#.T6bhguhSQrU. Each of these is far different from the statement attributed to Justice Powell, who is alleged to have stated, "I don't believe I've ever met a homosexual," when *Bowers v. Hardwick*, 478 U.S. 186 (1986) reached the Court. *See* Linda Greenhouse, *The Legacy of Lewis F. Powell Jr.*, N.Y. TIMES (Dec. 4, 2002), *available at* http://www.nytimes.com/2002/12/04/politics/04SCOT.html?pagewanted=all.

    8. *See, e.g.*, Marc Fajer, *Can Two Real Men Eat Quiche Together?: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511, 514 (1992) (arguing that disrupting "non-gay pre-understanding about gay people" is central to the eradication of anti-gay prejudice).

    9. *See id*. That narrative has the capacity to expand the ability to generate sympathy has been addressed by, among others, see generally MARTHA NUSSBAUM, FROM DISGUST TO HUMANITY: SEXUAL ORIENTATION AND CONSTITUTIONAL LAW (2010).

    10. *See, e.g.*, Imani Perry, *Occupying the Universal, Embodying the Subject: African American Literary Jurisprudence*, 17 LAW & LITERATURE 97 (2005).

    11. *See, e.g.*, Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2324 (1989) (arguing that narrative allows for the inclusion of "history from the bottom," which assists in making the law responsive to substantive injustices in real-world contexts).

The commitment to narrative also represents an intellectual challenge to the capacity of abstract principles such as anti-discrimination, equality, or accommodation to embody the specificity of the experience of individuals who live without the presumptions that attend life as a male, as a white person, or as an able-bodied person.[12] Narrative challenges the capacity of legal or doctrinal categories to dislodge dominant, prejudicial perspectives and presumptions.[13] The recourse to narrative serves the twin goals of demonstrating the "outsider" status of certain identity categories and experiences,[14] and deploying the "outsider" perspective to undermine the dominant position of the "insider" perspective as it relates to the distribution of societal goods—including non-material goods.[15]

Within the academic community, the use of narrative had special significance in the work of a subgroup of progressive legal scholars, who had grown disillusioned by the limits of even transformative legal and social change. These scholars, whose work ranges across gender,[16] race,[17] and sexuality,[18] deploy narratives to call into question the success of commitments to formal equality in the contexts of race and gender.[19] Among advocates of LGBT equality, the deployment of narratives uncovers the law's inability to guarantee formal equality, and its role in denying LGBT persons inclusion in American society.[20]

The turn to narrative was not limited to the legal academy. Academic theology turned to narrative, even before its widespread appearance in legal scholarship. Narrative theology rejects what it understands to be the "compromised" Christian identity that was too comfortable with, and conformable to, the intellectual and cultural dictates of the modern

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12. *See, e.g.*, Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941, 945–46 (2006) (arguing that "narrative methodology . . . is essential to charting the space between law as it is imagined and law as it is experienced").

13. For an insightful discussion of the ways in which law reinforces prejudice about gay fathers, see Clifford J. Rosky, *Like Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia*, 20 YALE J. L. & FEMINISM 257 (2009).

14. *Id*.

15. *See generally* Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

16. *See, e.g.*, Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issues of Separation*, 90 MICH. L. REV. 1 (1991).

17. *See, e.g.*, DERRICK A. BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); Derrick A. Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985).

18. *See, e.g.*, William N. Eskridge, *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994) (advocating a confrontational posture of gay narratives against legal structures whose narratives focus on "legal elites," whom he describes as "overwhelmingly white, male, affluent, and ostensibly heterosexual"); Fajer, *supra* note 8, at 511.

19. Patricia J. Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989).

20. *See, e.g.*, WILLIAM N. ESKRIDGE, GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET (1999).

Enlightenment project.[21] Among the advocates of the narrative basis for Christian theology, the most influential has been Stanley Hauerwas. Hauerwas has argued that Christianity's desire for relevance in a secular culture disfigures its "authentic" identity.[22]

The narrative turn in theology, like that in law, reflects a disenchantment with the contemporary American liberal democratic project. While the modern state makes space for Christian identity, its acceptance of Christian identity is predicated upon Christianity's identification with the mainstream institutions of the contemporary nation-state.[23] In this respect, Christian identity fuses with state identity, compromising its independent identity. As a consequence Christian identity relinquishes its identity as a source of alternative normative meaning. The state's normative aspirations become Christianity's aspirations.

The turn to narrative in both law and theology in the last quarter of the twentieth century demonstrates the continued status of race, gender, sexual orientation, and religion as identities capable of "othering" individuals from the dominant normative framework that either excludes other identities (sexual orientation) or merely tolerates them (race, gender, and religion) as long as they conform to the dominant paradigms established by norms of formal equality (law) and do not challenge the primacy of the state for the citizen's loyalty (religion). The narrative claims (or reclaims) "othered" identity as the basis of communal integrity, and as the source of an epistemological authority that appeared inaccessible when viewed from within the dominant frameworks of the larger religious and legal culture.

Perhaps unsurprisingly, the connections between narrative in law and theology have been largely ignored within the scholarly literature.[24] It is beyond the scope of this article to comprehensively examine the connections between narrative theological and legal scholarship, but it is worth identifying points of comparison. One of the clearest distinctions is their respective conceptions of

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21. *See, e.g.*, HANS FREI, THE ECLIPSE OF THE BIBLICAL NARRATIVE: A STUDY IN EIGHTEENTH AND NINETEENTH CENTURY HERMENEUTICS (1980).

22. It is worth quoting Hauerwas at length: "[Theological convictions] have lost their power to train us in skills of truthfulness, partly because accounts of the Christian moral life have too long been accommodated to the needs of the nation state, and in particular, to the nation state we call the United States of America. As a result the ever present power of God's kingdom to form our imagination has been subordinated to the interest of furthering liberal ideals through the mechanism of the state. To recover a sense of how Christian conviction may be true (or false) requires a recovery of the independence of the church from its subservience to liberal culture and its corresponding agencies of the state." STANLEY HAUERWAS, AGAINST THE NATIONS: WAR AND SURVIVAL IN A LIBERAL SOCIETY 6–7 (Oxford Press 1985).

23. *See, e.g.*, *id.*

24. Some scholars have drawn comparisons between certain "movements" or figures in theology and law. *See, e.g.*, W. Burlette Carter, *What's Love Got to Do With It: Race Relations and the Second Great Commandment*, *in* CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 133, 136-142 (Michael W. McConnell et al. eds., 2001) (comparing the development of critical race theory and black liberation theology in the legal and religious academy, and discussing the experiential influences of such writing); Davison M. Douglas, *Reinhold Niebuhr and Critical Race Theory*, *in* CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, *supra*, at 149.

the relevant audience, which impacts their respective postures toward societal reform. Narrative theological scholarship, represented for my purposes primarily by Hauerwas, relies on a separation between religious adherents and the larger, secular society. As such, the audience for the Hauerwasian narrative is the Christian community whose story is being told. The narrative theology project aims to recover an authentic Christian identity *for* the Christian community's self-understanding, rather than for its comprehension by the external community. A Christian community that seeks to remain "relevant" and influential in the larger world must project an identity that, at least in some important respects, seeks to find alliance with the larger world.[25] Reclamation of the Christian community's identity through the telling of its narrative has been the central ambition of Hauerwas's turn to narrative.

Proponents of narrative in identity-based legal scholarship likewise champion "outsider" stories, but with a different set of objectives than Hauerwas. Outsider status provides an analytical frame through which advocates of narrative resist what they see as the tyranny of dominant legal perspectives on equality. The outsider perspective challenges the success that dominant frameworks have had at making race and gender irrelevant in determining inclusion within the American democratic project. However, unlike Hauerwas and the narrative theology movement, narrative legal scholarship is not content with simply attaining the status of outsider. The outsider's objective is to critique, reject, and ultimately transform the dominant paradigms of the larger society in a way that will result in a more successful *inclusion* of racial, gender and other "outsiders" into the American democratic project.[26] By contrast, social transformation is never the standard by which Hauerwas measures Christianity's relevance.[27]

Finally, and most importantly for this article, I argue that narrative legal and theological scholarship conceive of narrative in different ways. Narrative, as conceptualized in legal scholarship, is an individualized construct and performance.[28] That is, narrative represents individual perspective and experience; even when narrative has a more communal dimension, it does not appear to exist within a context of larger, constraining narratives.[29] In this

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25. I have addressed this question with regard to Hauerwas's work and his position within the larger scholarly theological community in an earlier essay. *See* Charlton C. Copeland, *God-Talk in the Age of Obama: Theology and Religious Political Engagement*, 86 DENV. U. L. REV. 663, 667–76 (2009) (discussing separationist themes in Hauerwas's scholarship).

26. *But see* DERRICK A. BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF AMERICAN RACISM (1993) (expressing doubts about the possibility of racial transformation in America).

27. *See, e.g.*, STANLEY HAUERWAS & ROMAND COLES, CHRISTIANITY, DEMOCRACY, AND THE RADICAL ORDINARY: CONVERSATIONS BETWEEN A RADICAL DEMOCRAT AND A CHRISTIAN (2010).

28. *See, e.g.*, PATRICIA J. WILLIAMS, ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR 19–20 (1991) (recounting the individual perspective that narrative provides).

29. This is not meant to suggest that all legal scholars who deploy narrative use it to convey only individualized experience. *See, e.g.*, BELL, *supra* note 26.

depiction of the use of narrative, the individual exercises choice in how and whether to deploy a particular narrative.[30]

By contrast, the theological conception of narrative, articulated by Hauerwas, understands narrative as constitutive of both individual and communal identity. In the Hauerwasian sense, it is clear that the individual is "owned" by a particular narrative, that her identity is shaped by her place in the communal narrative of Christianity. While it is certainly possible to live outside of this narrative-formed community, it is not altogether clear that Hauerwas recognizes the possibility that one can claim an authentic Christian identity outside of this community's narrative.

At this point one might suggest that I have seized upon the fact of "narrative" in each of these normative discourses only to offer the unremarkable statement that it does not work in the same way across disciplines. While understanding the differences that narrative plays in each discourse is not insignificant in that it offers competing conceptions of narrative for both advocates and critics of narrative, my objective in this article is a bit more concrete. For Hauerwas, Scripture, understood as distinct from the Biblical text, is the ground of the Christian community's identity; its narratives lay claim to Christian identity and performance, and constrain the Christian ethical framework. While there is no reliance on a similar "text," the gay and lesbian equality movement's goal of eliciting the support of straight society has involved the strategic deployment of narratives that reduce the differences between gays and lesbians and heterosexual society. Even more than campaigns against anti-sodomy restrictions, the marriage equality movement has deployed narratives that position access to marriage as central to the aspirations of gays and lesbians, and gay and lesbian relationships as appropriate for inclusion into the institution of marriage. Narratives of gays' and lesbians' lives are offered as "texts" that redefine the popular reputation of both gays' and lesbians' identity.

At their core, criticisms of the marriage equality movement challenged the circumscribed narratives that do not accommodate identities deemed inconsistent with the advancements of marriage equality. Such criticism should not be understood as simply anti-same-sex marriage. Though there is surely opposition to the marriage equality movement based on an opposition to the domesticity that marriage represents, a Hauerwasian perspective offers a different framing of the this criticism. Some critics of the marriage equality movement are asking, in the deepest Hauerwasian sense, "Who will we be if these are our stories?" "Who will we have become if these narratives, as narrative must, shape our character, as well as transform mainstream society?"

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30. Marc Fajer has described two types of narratives, each of which have different functions: (1) inclusive narratives; and (2) persuasive narratives. Inclusive narratives (or storytelling) function to build community within a particular group, and also serve to broaden the range of narratives available for those beyond the particular group. Persuasive narratives (or storytelling) serve (as the term suggests) to persuade "outsiders" by creating empathy or commonality between the storyteller and the listener. Fajer, *supra* note 8, at 517–22. Fajer notes that persuasive storytelling involves the "storyteller carefully choos[ing] and craft[ing] the story as a tool to convince others." *Id.*

The Hauerwasian perspective of narrative and identity provides insights into the critiques of the narratives deployed in attempts to advance gay and lesbian interests, particularly in the area of marriage equality. Juxtaposing Hauerwasian narrative deployment against its use in liberationist legal movements demonstrates the ways in which narratives create identity, and place constraints on our freedom to jettison other narratives in order to advance strategic goals. This understanding of the relationship between experiences and identity calls into question a commitment to positions that appear to offer greater advances toward the inclusion of once-marginalized identities into mainstream institutions. That is, identity may serve to regulate the integrative ideal so dominant in marginalized liberation movements.

The "text" on which Hauerwasian narrative is based is more complicated than we might imagine; although the Bible is the foundational "text," the text is understood to have authority only to the extent that it is understood to give meaning to the community's life and identity over time.[31] In this sense, Hauerwas's conception of authority might be analogized to the way in which we speak of a canon. While Hauerwas is not concerned with whether the canon provides "answers" to specific problems, the canon is the canon to the extent that it must be wrestled with as a data point in the articulation of our identity. A community must grapple with both extant and new interpretations of its identity in the light of its canon. Again, Hauerwas provides perspective on how we might think of critics of the marriage equality movement's prioritization of narratives that appear to exclude other experiences and identities in the gay and lesbian community. While Hauerwas's perspective makes it possible to jettison narratives—to evict certain narratives from their place of authority for the community's normative self-understanding—he clearly rejects the possibility that such exclusion can come from mere denial.[32] It appears that they must be confronted. Hauerwas's perspective gives critics a claim on the canon, but not an exclusive claim. They can no more exclude narratives of domesticity and practices that mark gays and lesbians as "just like straights" than they can be excluded.

This article proceeds in three parts. Part II provides a historical and intellectual background of the theological antecedents of the work of the narrative (or postliberal) theological movement. This part introduces unfamiliar

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31. Scripture for Hauerwas means "texts" that have a claim of authority on a particular community, including the Christian community. Such authority is derived from the fact "that the church relies on them in a normatively decisive manner." Authority, for Hauerwas, is local. He writes, "The meaning of authority must be grounded in a community's self-understanding, which is embodied in its habits, customs, laws, and traditions; for this embodiment constitutes the community's pledge to provide the means for an individual more nearly to approach the truth." STANLEY HAUERWAS, A COMMUNITY OF CHARACTER: TOWARD A CONSTRUCTIVE CHRISTIAN SOCIAL ETHIC 60 (1991).

32. Hauerwas writes, "[I]nterpretation must remain open to a new narrative display not only in relation to the future, but also whenever we come to a new understanding of our past. . . . [I]t is often the case that interpretation of the scripture does not mean the discovery of new meaning (as if there was no previous meaning there), but the reappropriation of the tradition with a greater depth of understanding." *Id.* at 61.

readers to the issues that underwrite narrative theology's rejection of liberal theology's optimism about the larger world, and religion's role in transforming it. Part III explains narrative theology's conception of narrative and its relationship to Christian identity and community by examining its claim for both the specificity and particularity of Christian religious experience and for the autonomy of Christianity's generation of normative meaning. This part explores Hauerwas's commitment to maintaining normative distance from the state, and contrasts the role of Christian normative autonomy with the law-reform movements of the lesbian and gay civil rights struggle. Finally, part IV explores the role that narrative plays in the lesbian and gay civil rights movement, especially as it relates to the question of marriage equality. It discusses the distance-minimizing moves that the marriage equality movement deploys, and their impact on the character of gay and lesbian politics and communities.

II

LIBERALISM AND CHRISTIANITY: RECONCILIATION AND RELEVANCE

The reconciliation of religion and the secular social order was motivated by Christian theology's ambition to remain relevant in a modern world whose central claims appeared to undermine the very legitimacy of religious belief.[33] As theologian William Placher has described, liberal Christian theology claimed the task of demonstrating that "one could be an intelligent, modern person and still be a Christian."[34] The attempt to reconcile Christian belief with modernity's commitment to rational inquiry resulted in the reorientation of religious experience from particularized expressions of religious experience in dogma, orthodoxies, or symbols, to an emphasis on individual experience of the divine and the natural order.[35] The reconciliation of Christianity with the surrounding culture, including the state, impacts Christianity's autonomous normative discourse capable of transcending and critiquing current cultural predispositions. Christianity's perceived abdication of its moral autonomy was a driving factor in the rise of postliberal theology in the last quarter of the twentieth century.[36]

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33. WILLIAM C. PLACHER, UNAPOLOGETIC THEOLOGY: A CHRISTIAN VOICE IN A PLURALISTIC CONVERSATION 18 (1989) (arguing that the nineteenth-century German theologian, Friedrich Schleiermacher worried that the modern era might be a world in which "Christianity becomes identified with barbarism and science with unbelief").

34. *Id*.

35. The dominant voice in the reinterpretation of religious experience was Schleiermacher, who by the time of his death was the most important German Protestant theologian. *See generally* FRIEDRICH SCHLEIERMACHER, ON RELIGION: SPEECHES TO ITS CULTURED DESPISERS (Richard Crouter ed. & trans., 2d ed. 1996) (1988).

36. Karl Barth, argued against liberal theology's attempt to reconcile God with human culture or its achievements. *See, e.g.*, KARL BARTH, THE EPISTLE TO THE ROMANS (Edwyn C. Hoskyns trans., Oxford Univ. Press 1968). Barth's rejection of the alliance between Christianity and culture was significant in his rejection of the impact that Nazism had on German Christianity. Barth was the principle author of the Barmen declaration, which challenged German Christianity to resist relationship

A. Reconciliation and Optimism in Liberal Theology

The liberal theological project overcomes what might appear to be a "crisis" in the modern world by rejecting any ultimate separation between religion and the larger secular culture. Theologian David Tracy has described the contemporary theologian's plight as embodied by the question of whether the rich mythical imagination and style of Western Christianity can survive the modern world's "demand for freedom from oppressive authorities and freedom for autonomous, critical rational thought."[37] That is, the contemporary theologian finds herself committed to both "[her] faith in the modern experiment [and her] faith in the God of Jesus Christ."[38] Tracy contends not only that a "proper understanding of the explicitly Christian faith" can help the modern theologian make sense of the faith in secularity that is modernity's hallmark, but also that the modern theologian "believes that the Christian faith is at its heart none other than the most adequate articulation of the basic faith of secularity itself."[39] For Tracy, who epitomizes liberal theology in contemporary America, the answer to the challenge of modernity is reconciliation.

The modern theologian embodies H. Richard Niebuhr's "Christ of culture, described as those who seek to reconcile the central tenets of Christian belief with the larger culture."[40] The reconciliation of "Christ" and "culture" is exemplified in modern theology's conceptualization of the identity and work of Christ in universalistic terms that transcend the specificity of religious understanding. Moreover, modern theology conceptualizes the secular social order as participating in the transformative work that embodies Christianity's ambition.

Reconciliationists understand Christ by "selecting from his teaching and action as well as from the Christian doctrine about him such points as seem to agree with what is best in civilization."[41] Simultaneously, they emphasize aspects of the broader civilization that are congenial to Christianity. The reconciliationist does not imagine the person or work of Christ as inaugurating a new community starkly at odds with the created order. Concomitantly, the reconciliationist interprets the social order by reference to that which is most compatible with Christ. The result is a harmonization of the life of Christian

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with Adolph Hitler. *See generally* FRANK JEHLE, EVER AGAINST THE STREAM: THE POLITICS OF KARL BARTH, 1906-1968 (2002).

37. DAVID TRACY, BLESSED RAGE FOR ORDER: THE NEW PLURALISM IN THEOLOGY, 4–5 (1975).

38. *Id.* at 4.

39. *Id*. at 10.

40. H. RICHARD NIEBUHR, CHRIST AND CULTURE (50th Anniversary ed., HarperCollins 2001). In the modern era, the most significant theological voice for the reconciliation of Christ and culture has been the theologian of the Social Gospel movement in the early twentieth century, Walter Rauschenbusch. *See generally* WALTER RAUSCHENBUSCH, A THEOLOGY FOR THE SOCIAL GOSPEL (Westminster John Knox Press 1997) (1917); WALTER RAUSCHENBUSCH, CHRISTIANITY AND THE SOCIAL CRISIS (Westminster/John Knox Press 1991) (1907).

41. NIEBUHR, *supra* note 40, at 83.

faith and the social order in which it resides.

Adherents to the reconciliationist school interpret the life and work of Christ as "the fulfiller of [society's] hopes and aspirations, the perfecter of its true faith, the source of its holiest spirit."[42] Richard Niebuhr suggested that the reconciliationist values the "great work of Christ . . . as the training of men in their present social existence for the better life to come."[43] Rather than emphasizing the role of Jesus as the once-dead Savior or other metaphors that highlight his role in a "cosmic," salvific event, reconciliationists identify Jesus as the "great educator." Here, the behavior that Jesus models relates less to the victory over sin and the inauguration of the kingdom of God than it does to the instruction of humanity that they might "attain wisdom, moral perfection, and peace."[44]

Reconciliationists attempt to universalize the work of Jesus's instruction by describing its aim as strengthening humanity so that it might overcome man's perennial conflict, not with God or the other, but with nature. For the reconciliationist, humanity's conflict with the natural world involves man's encounter with both the limits of his powers of self-assertion—his impotence and the limits of his impact—and his insignificance. Jesus's life and work "assure man that he stands close to the supramundane God and gives him the certainty that he is destined for a supramundane goal."[45] Understood in these terms, Jesus is the evidence of humanity's importance and power. As such, the reconciliationist vision is at bottom an optimist vision of humanity and its capacity to overcome nature's constraints. Overcoming these constraints is consistent with Christianity's ultimate goal of establishing that the individual, and her aspiration, are ends rather than means. Rather than interpreting the Jesus event as evidence of humanity's imperfection and sinfulness, reconciliationists interpret the work of Christ as evidence of humanity's capacity for advancement against its constant limitations.[46]

Alongside the reconciliationist image of the Jesus event interpreted through the lens of culture is the interpretation of culture through the lens of Christ. The reconciliationist does not merely collapse Christianity into the culture, but rather picks out those things in culture that are most consistent with the values of Christianity, and deems them to be the constituent elements of the social order.[47] The ground of union between the social order and the religious order is the fact of humanity's moral striving. The reconciliationist sees no great abyss between the moral aspirations of these two worlds. The reconciliationist accepts that the social order's aspiration is distinct from, and indeed diminished when compared to, the religious domain, but they are not seen as endemically at

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42. *Id.*
43. *Id.* at 84.
44. *Id.* at 90–92.
45. *Id.* at 100.
46. For a discussion of these issues, see generally Copeland, *supra* note 25.
47. NIEBUHR, *supra* note 40, at 84.

odds. Richard Niebuhr describes the reconciliationist as having great respect for the work of secular philosophers, who "in their care for the state . . . give evidence of an evangelic and apostolic perfection and come little or nothing short of the Christian religion."[48] In fact, Jesus is seen as one who is "[does] in a higher degree what Socrates and Plato had done before him."[49]

B. The Persistence of Relevance in Realist Theology

Reinhold Niebuhr's Christian realism leveled the most significant challenge in the American context to the optimism of liberal Protestantism. Unlike the reconciliationist position, which sought to protect religion's relevance by reducing the gulf between the aims of Christianity and the secular social order, Reinhold Niebuhr sought to protect religion's relevance by forcing Christianity to take seriously the nature of the political contestation in the social order as the contestation of interests that were not easily reconcilable with Christianity. Reinhold Niebuhr believed that Christianity could not directly apply the ethic(s) of Jesus to existing social problems without abdicating its role as a relevant actor in social transformation.[50] Reinhold Niebuhr argued that religious reformers should resist the dangerous optimism about human nature and its capacity for improvement. A failure to take seriously the limitations on human progress, whether defined as sin or as entrenched social interests that held societies in their grip, would result in Christianity's aiding and abetting unjust social orders. Christian realism called for a posture of skepticism rather than optimism about religion's capacity to transform human society, and about society's capacity for transformation. Like the reconciliationist position, however, the relevance of Christianity in the social order was a predominate concern of the realist theology of the middle twentieth century.

Reinhold Niebuhr's conception of the relationship between love and justice exemplifies his understanding of the relationship between Christianity and the social order. He defines the love command as requiring that man not transgress upon the rights of the "other" and that the "other," having suffered such a transgression, accept it and forgive his transgressor without anything further. By contrast, the domain of justice for Niebuhr is marked by interests and contestation. He writes, "The struggle for social justice in the present economic order involves the assertion of rights, the rights of the disinherited, and the use of coercion . . . . The social struggle involves a violation of the pure ethic of love, not only the assertion of rights, but the inevitable use of coercion."[51]

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48.   *Id.* at 90 (internal quotation marks omitted).

49.   *Id.*

50.   REINHOLD NIEBUHR, AN INTERPRETATION OF CHRISTIAN ETHICS 62 (1935) ("Prophetic Christianity . . . demands the impossible; and by that very demand emphasizes the impotence and corruption of human nature, wresting from man the cry of distress and contrition, 'The good that I would, do I not; but the evil that I would not, that I do. . . . Woe is me . . . who will deliver me from the body of this death.'"

51.   Reinhold Niebuhr, *The Ethic of Jesus and the Social Problem*, *in* LOVE AND JUSTICE: SELECTIONS FROM THE SHORTER WRITINGS OF REINHOLD NIEBUHR 29, 34–35 (D. B. Robertson ed.,

Although, for Reinhold Niebuhr, the love ethic cannot be abandoned for the Christian community as it fashions a witness effective to the demands of the modern industrial economy and political world, it nevertheless remains an ideal that is seemingly impossible to demand of the political contestation within the social order.

Indeed, Reinhold Niebuhr's realism underwrites his admonition that Christians realize the ways that even their best intentions are distorted when they participate in the social order, even as agents of transformation. He argues that Christians must recognize the distinction between balancing of interests and finding harmony within the political domain and "the final harmony or love of the Kingdom of God."[52] The equation of a particular political cause with Christian convictions allows us to "obscure the morally ambiguous element in [our own] political cause by investing them with religious sanctity."[53] It is Niebuhr's constant call to separate even the noblest ends that we achieve in the political domain—however just—from the ultimate reality of God's Kingdom that underscores his conception of the political domain as marked by the contestation over interests. For Niebuhr, the establishment of justice "by the contest of interest against interest" is required because we are not as good as the Christian perfectionist believes himself to be.[54] Niebuhr argues that moral idealists are incapable of recognizing the fact that man is always selfish when left to his own devices. Therefore, moral idealists "live under the illusion that they can be so unselfish that they will be able to grant other people justice without any pressure on the part of the latter."[55] He continues:

> [A]ny religious realist who has ever looked deeply into his heart and felt the scrutiny of a holy God upon his sin will not make such a mistake. He will say with Saint Paul: "I know nothing against myself, but I am not thereby justified. He who judges me is the Lord." We can of course do a good deal to judge ourselves by our own highest standards. But our own highest standards are nevertheless very much our own and are conditioned by our own interests. The number of people who do not mix a considerable amount of will-to-power with their kindness and philanthropies is extremely small.[56]

Despite the clear differences between the optimism of the reconciliationists and the realism of Reinhold Niebuhr, they are both driven by a desire for religion's (that is, Christianity's) continued relevance in the modern world. For Niebuhr, the consequence of this desire is that he comes to accept "relative justice" as the best that can be done by a political domain dominated by selfish interests. This is evidenced by Niebuhr's statement that the "realm of justice

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52. Reinhold Niebuhr, *Christian Faith and Political Controversy*, *in* LOVE AND JUSTICE: SELECTIONS FROM THE SHORTER WRITINGS OF REINHOLD NIEBUHR, *supra* note 51, at 59.

53. *Id.*

54. Reinhold Niebuhr, *The Conflict Between Individual and Social Morality*, *in* REINHOLD NIEBUHR: THEOLOGIAN OF PUBLIC LIFE 70 (Larry Rasmussen ed., 1991).

55. Reinhold Niebuhr, *When Will Christians Stop Fooling Themselves*, *in* LOVE AND JUSTICE: SELECTIONS FROM THE SHORTER WRITINGS OF REINHOLD NIEBUHR, *supra* note 51, at 40, 42.

56. *Id*. at 42–43.

is . . . a realm of tragic choices, which are seldom envisaged in a type of idealism."[57] "[T]he tragic character of our moral choices" seems to allow for too much realism and not enough moral imagination in the domain of justice.[58] One wonders how or whether love really works as a substantive corrective of the claims of justice, or if it simply works in a procedural sense. Does Niebuhr's love "get dirty" or does it stand only at a critical and chastising distance, telling us to take ourselves and our ends less seriously, while failing to interrogate (and decide among) our ends on substantive grounds? Indeed, even Niebuhr himself says, "[n]o possible historic justice is sufferable without the Christian hope."[59] One wonders if there are degrees of "imperfection" beyond which Niebuhr calls the deal off and walks away from the domain of justice. It is the fact that Niebuhr seems not to provide us with the resources to do this that is the biggest worry in his ethical reconstruction. Although Niebuhr's lack of substantive content appears to allow for transcendence and criticism of every end, it also assumes too much relativity, particularly, for the oppressed. It is this accommodation in search of a continued relevance that separates Niebuhr's critique of liberal Christianity from its later varieties, whose central mission was the recovery of Christian identity from the dangers of relevance.

III
NARRATIVE THEOLOGY: BEYOND THE SEARCH FOR RELEVANCE

Narrative theology rose in response to the efforts of reconciliationist and realist theologies to structure a relationship between Christianity and its surrounding culture. Stanley Hauerwas and his fellow travelers in narrative theology, conceive of narrative as constitutive of communal Christian identity. For narrative theologians, narratives are creation stories, which constitute both identity and a normative framework that was obscured in the period of reconciliationist theology and compromised during the period of realist theology. Postliberal theologies' central themes are the separation and normative independence of Christian identity in the modern age.

A. Recovering Narrative and Reclaiming Community in Postliberal Theology

Central to Hauerwas's claim of the normative independence of the Christian community is the basis upon which such normative identity and independence rests. He has emphasized the fact that knowledge of God, and of ourselves, is impossible apart from our engagement with the narratives of God's engagement with creation.[60] For our purposes there are two important implications of

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57. Reinhold Niebuhr, *Justice and Love*, *in* LOVE AND JUSTICE: SELECTIONS FROM THE SHORTER WRITINGS OF REINHOLD NIEBUHR, *supra* note 51, at 27, 29.

58. *Id.* at 29.

59. *Id*.

60. STANLEY HAUERWAS, THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS 24–30 (1983) ("Just as narrative is a crucial category for the knowledge of the self, so it is for our knowledge of God. 'God,' we must remember, is a common name, to which we ascribe attributions only as we

Hauerwas's focus on narrative. The first is the particularity of the Christian identity and experience.[61] The second is that narrative establishes the contingency of the world's and humanity's existence.[62] Each of these is crucial in understanding Hauerwas's attempt to protect (or reclaim) Christianity's capacity to generate norms capable of challenging the hegemony of the state's normative dominance.

Hauerwas's claim that the biblical narrative establishes a "story-formed" community rests on an understanding of the Bible's narrative as articulating a "discrete reality" that is capable of "identifying a group of people as a community."[63] One of postliberal theology's key contributions has been its attempt to reclaim the particularity of the biblical narrative. Postliberal theology is an explicit rejection of the liberal theological project that arose in response to the Enlightenment. Liberal theology decentered the community created by the biblical text in favor of the individual experience of religion that made religious belief more universally cognizable. Narrative theologians have sought to recover the particularity of their specific religious inheritance.

Building on the work of cultural anthropologists, philosophers of language, and sociologists, postliberal theologians have argued for a conception of religion as "a kind of cultural and/or linguistic framework," through which all life is understood.[64] Religion, understood in cultural-linguistic terms, is "an idiom that makes possible the description of realities."[65] In contrast to liberal theological (or reconciliationist) conceptions of religion that understand the particularities of religious expression—doctrines, narratives, beliefs, for example—as the result of an individual experience that exists prior to such expression, postliberal theology argues for a conception of religion as the shaper of human reality, without which the expression is incomprehensible. Rather than being understood primarily in individualist terms, the cultural linguistic conception of religion "is a communal phenomenon that shapes the subjectivities of individuals" rather than being shaped by—or grounded in—individual experience. This is the basis of Hauerwas's suggestion that the individual "discover[s] the self through a community's narrated tradition."[66]

Postliberal theology calls for an "intratextual" theological methodology for assessing the meaning of religion for its adherents. A theology's faithfulness, in postliberal theology's construction, is measured by the extent to which its descriptions "correspond to the semiotic universe paradigmatically encoded in holy writ."[67] This is exemplified in the work of George Lindbeck for whom

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learn of God through history.").

    61.   *Id.* at 28.

    62.   *Id.*

    63.   *Id.*

    64.   GEORGE A. LINDBECK, THE NATURE OF DOCTRINE: RELIGION AND THEOLOGY IN A POSTLIBERAL AGE 33 (1984).

    65.   *Id* at 33.

    66.   HAUERWAS, *supra* note 60, at 28.

    67.   LINDBECK, *supra* note 64, at 116.

scripture creates and maintains its own system of meaning and as such is "able to absorb the universe."[68] This absorption of the universe is held in contradistinction to the absorption of the scripture's meanings into the universe.

For postliberal theology, the direction of interpretation is consistent with this conception of the textual community. The text is taken to be the "instantiation" of the "communal language." There can be no normative meaning for the Christian community that does not first reside in the text. Again, this is evidenced in Hauerwas's identification of the text and the community as one. Rather than construct a Christian identity by reference to the world around it, the theologian is called to identify Christian identity by reference to the text that calls it into being and the practices that arise out of faithful commitment to that textual identity. The postliberal theologian's task is to offer a "thick description"[69] of the community's practices.

B. Christianity's Folklorist: Stanley Hauerwas's Narrative Theology

Stanley Hauerwas, arguably the most important American theologian of the last quarter century, embodies the postliberal theologian as no one else in the contemporary religious academy or culture. Hauerwas's approach to Christian theology has championed the folklorist model of one who is committed to the importance of the stories that shape Christian identity. Hauerwas began his classic work, *A Community of Character*, by calling the church to recognize the fact that it is a community shaped by the narrative of the Gospel.[70] For Hauerwas, narrative serves as the modality by which Christian identity is liberated from the grip of its desperate attempts to remain relevant in the modern world, thereby obviating its need to transform itself into the handmaiden of the surrounding culture.

Hauerwas describes modern ethical theory as involving a retreat from narrative, by which Hauerwas appears to mean a rejection of "special pleading from [an] agent's particular history, community identification, or otherwise particular point of view to establish truthfulness."[71] The liberated agents in the Enlightenment's description of moral inquiry have been freed (or cut loose, as Hauerwas might suggest) from their "stories." The freedom from the encumbrance of one's particularity provides us with a conception of "moral life that is not subject to any community or tradition."[72] Here, narrative for Hauerwas serves as the mode by which Christian identity can recover its

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68.   *Id* at 117.

69.   *Id* at 115. For Linbeck the conception of a thickly described religion stands in opposition to an understanding of a religion as primarily about doctrinal categories or as a formal system, but rather that a religion is best understood by attention to its practices. The examination of Hauerwas will expand upon this discussion.

70.   HAUERWAS, *supra* note 32 at 51–52.

71.   Stanley Hauerwas and David Burrell, *From System to Story: An Alternative Pattern for Rationality in Ethics*, *in* WHY NARRATIVE?: READINGS IN NARRATIVE THEOLOGY (Stanley Hauerwas & L. Gregory Jones eds., Wipf & Stock Publishers 1997) (1989).

72.   *Id*. at 162.

particularity, traditions, and moral vocabulary.

Modern ethical theory, Hauerwas argues, is obsessed with thinking about specific problems to be resolved by resort to the tools of rationality. Modern moral theory seeks to articulate universalizable principles capable of establishing for the rational agent what should be done. Hauerwas rejects the framework through which "ethics becomes a decision procedure for resolving conflict-of-choice situations."[73] The identity of the agent is further obscured, as Hauerwas understands it, when ethics is packaged as a set of problems to be resolved. Against this conception of ethics, Hauerwas contends that ethics might be understood as the development of skills and attributes—that is, character—that moral agents develop. Indeed, Hauerwas suggests that we can only recognize "problems" as "problems" or dilemmas by first understanding something about our character. Understanding ourselves and our character and its development is impossible without the narrative context in which character develops. That is, narrative, understood as the "idiom" in which our realities are given meaning, is indispensable in framing problems. If we understand ethics as the formation of character, rather than the resolution of discrete problems, we come to understand that, for Hauerwas, abstract ethical theories fail because their propositional quality cannot form characters in the way that narratives are able to do.

The centrality of character formation to ethics has significant implications for the posture that Christians take with respect to the surrounding culture. His prescription for the relationship between Christianity and the surrounding culture is one that obligates Christians to remain committed to their identity as a community created by the narrative of the Gospel, which distinguishes it from the secular, liberal political system. Hauerwas criticizes the church's search for a socially relevant and transformative role for the church in society, which "has made [the Christian church] forget [its] more profound political task."[74] Hauerwas notes that this has resulted in the church aping the practices and presuppositions of liberal political life within the domain of the church.[75] He diagnoses the separation between liberal society and the church as a separation between a polity that has ceased to cultivate virtue among its citizens and sees itself as merely aggregating private preferences (Hauerwas says "desires"), and a polity that "encourage[s] in its members virtues."[76]

Though the moral autonomy of Christian identity might be protected by separation, Hauerwas does not require it. For Hauerwas, it is more important that Christians understand what reconciliationists did not and what realists thought they had figured out: interaction with the social order is risky. That the social order, particularly the state, has pretensions to a normative

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73. *Id* at 163.
74. STANLEY HAUERWAS, A COMMUNITY OF CHARACTER: TOWARD A CONSTRUCTIVE CHRISTIAN SOCIAL ETHIC 73 (1981).
75. *Id.*
76. *Id.* at 74.

monopolization, which must be guarded against by those who would protect their ability to resist the ends of the larger culture and the state.[77] Nevertheless, Hauerwas does not advocate Christian withdrawal from society as an obligation of Christian identity. But Hauerwas clearly thinks that Christian identification with society distorts the distinctions between the ends of liberal society and those of the Christian community, whose ultimate end is God.[78] He writes:

> Christians must again understand that their first task is not to make the world better or more just, but to recognize what the world is and why it understands the political task as it does. The first social task of the church is to provide the space and time necessary for developing skills of interpretation and discrimination sufficient to help us recognize the possibilities and limits of our society. In developing such skills, the church and Christians must be uninvolved in the politics of our society and involved in the polity that is the church. Theologically, the challenge of Christian social ethics in our secular polity is no different than at any other time or place—it is always to form a society that is built on truth rather than fear. For the Christian, therefore, the church is always the primary polity through which we gain the experience to negotiate and make positive contributions to whatever society in which we may find ourselves.[79]

I turn now to Hauerwas's discussion of the role of the Christian community in the abortion debate, and the terms upon which Christians might participate in political life. Hauerwas demonstrates the need for Christians both to be engaged in the questions that affect life and well-being, and to resist the temptation to frame their criticisms within the narrow framework of the state. Hauerwas declares that Christians have failed in their opposition to abortion because they have sought to "meet the moral challenge within the limits of public polity, [and] have failed to exhibit our deepest convictions that make our rejection of abortion intelligible."[80] Hauerwas blames the failure of Christians to affect the debate over abortion because they have given up their vocabulary in an effort "express [their] opposition to abortion in terms acceptable in a pluralist society."[81]

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77. *See* Robert Cover, *The Supreme Court 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 17-19 (1983) (arguing in favor of the liberal state's recognition that law is a competes with other domains for normative supremacy in the lives of citizens who have overlapping identity commitments).

78. Hauerwas writes: "Christians have rightly thought that they have a proper investment in making this, and other societies, more nearly just, but have forgotten that genuine justice depends on more profound moral convictions than our secular polity can politically acknowledge." HAUERWAS, *supra* note 74, at 74. While this might strike some as exactly the sort of religious language that leads to an attempted take-over of the public domain by religionists, Hauerwas abdicates any political role for the church in society as presently constructed. He writes:

> Christians must again understand that their first task is not to make the world better or more just, but to recognize what the world is and why it understands the political task as it does. The first social task of the church is to provide the space and time necessary for developing skills of interpretation and discrimination sufficient to help us recognize the possibilities and limits of our society. In developing such skills, the church and Christians must be uninvolved in the politics of our society and involved in the polity that is the church.

Id.

79. *Id.*

80. *Id.* at 212.

81. *Id.* at 213. Hauerwas contends that the assumption that religionists can translate their moral convictions into language accessible to all in a plural democracy assumes that Christianity and the

Hauerwas points to the impasse in the abortion debate regarding the issue of when life begins. Hauerwas rejects this as the determining factor for the moral acceptability of abortion and asserts that the fact that it has become the crux of the debate suggests that religionists have failed to articulate their moral vision. He writes,

> When the debate is so limited [to the issue of when life begins,] it has already been uncritically shaped by the political considerations of our culture, the "moral" has already been determined by the "political," and the very convictions that make us Christian simply never come up. . . . As a result the Christian prohibition of abortion appears as an irrational prejudice of religious people who cannot argue it on a secular, rational basis.[82]

In the case of abortion, he contends that Christians must resist a focus on the narrow question of when life begins, but rather focus on "why it is that the Christian way of life forms people in a manner that makes abortion unthinkable."[83] The Christian political decision to narrow its witness against abortion to the vocabulary that might have resonance in the larger culture, Hauerwas suggests, elides its own narrative as a community in which children are welcome. Rather than a Christian politics marked by the fear of irrelevance, Hauerwas envisions a Christian politics capable of "sustaining a community capable of resisting *the allure of significance* that is the breeding ground of violence."[84]

In one of Hauerwas's most affirmative statements about politics, he recognizes the work of the Student Nonviolent Coordinating Committee (SNCC) as emblematic of a politics that "seek[s] justice rather than glory."[85] To Hauerwas, the early work of the SNCC exemplified the slow, painful task of organizing among "ordinary" people and recognized the capacity for leadership within the "communities SNCC came to organize."[86] Such a politics was based on preexisting communal bonds but also transformed the nature of the communal attachments among "indigenous activists" in the Mississippi communities. For Hauerwas, SNCC's early political engagement resisted the demands for "relevance" on terms defined by those not within the community of "indigenous activists" who sought to eradicate the injustices of Jim Crow Mississippi. However, he recognizes that the advancement of their work required the social order's attention. That is, in order to be effective, SNCC's politics had to remain relevant to the mainstream white world. Such relevance, he posits, undermined SNCC's ability to maintain "the stories necessary to

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surrounding culture share a common moral vocabulary. Further, it assumes that the only terms that ought to inform the moral decisions of religionists are terms that could be acceptable to all rational persons in a plural democracy.

82. *Id.* at 213–14.

83. *Id.* at 222.

84. STANLEY HAUERWAS & ROMAND COLES, CHRISTIANITY, DEMOCRACY, AND THE RADICAL ORDINARY: CONVERSATIONS BETWEEN A RADICAL DEMOCRAT AND A CHRISTIAN 24 (2008).

85. *Id*. at 26.

86. *Id.* at 27.

sustain the everyday,"[87] in part because the movement's work was "discovered by the national media"[88] with an appetite for a different narrative that emphasized leadership (glory) rather than the martyrdom of the ordinary citizen who struggled against the indignities of Jim Crow racism.

Though Hauerwas does not claim SNCC's early work as the work of the church, he stresses that Christian political engagement must be modeled after the willingness to risk irrelevance for the sake of the construction of a community capable of yielding to the mainstream social order's political calculus. In short, Christian identity for Hauerwas must be capable of generating ethical norms that stand at a distance from the norms advocated by the society because they must remain free to critique societal norms. Hauerwas offers an object lesson for all who would engage in the risky work of social transformation, especially those who might advocate in the shadow of the state's authority.

IV

MARRIAGE EQUALITY AND NARRATIVE CHOICE IN THE LAW

An examination of the LGBT civil rights movement would lead many to conclude that marriage equality is at, or near, the very top of the agenda for the advancement of LGBT equality. Few people might have thought that state recognition of same-sex marriage would become synonymous with LGBT equality in 1993, when the Supreme Court of Hawaii became the first court in the United States to hold that the exclusion of same-sex couples from civil marriage violated the state's constitution.[89] However, since the U.S. Supreme Court overturned state statutes that criminalized sodomy,[90] marriage equality has not only become the crucial "next frontier" in the movement for equality, it has become the most galvanizing issue in the LGBT civil rights movement.[91]

More significant than its prioritization, some champions of marriage equality have framed it as the last significant battle of the movement for full LGBT inclusion in American society.[92] The arguments in favor of marriage equality highlight the material costs that attend same-sex couples' inability to participate in legally sanctioned marriages—particularly at the federal level.[93]

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87. *Id.*

88. *Id.*

89. Baehr v. Lewin, 852 P.2d 44 (Haw. 1993).

90. *See* Lawrence v. Texas, 539 U.S. 558, 585 (2003).

91. This is not to suggest that same-sex marriage has not galvanized those in opposition to marriage equality to introduce significant changes in public policy to forestall the recognition of same-sex marriages. For a discussion of the Defense of Marriage Act, see generally Andrew Koppelman, *Dumb and DOMA: Why the Defense of Marriage Act is Unconstitutional*, 83 IOWA L. REV. 1 (1997).

92. *See, e.g.*, WILLIAM N. ESKRIDGE, THE CASE FOR SAME SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT (1996). *See also* Spindelman, *supra* note 6, at 1361 ("Look into the political distance: There's nothing beyond marriage for lesbians and gay men as far as the eye can see").

93. Eva Rosenberg, *Giant Tax Headaches for Gay Couples*, MSN MONEY, http://web.archive.org/web/20070409061745/http://articles.moneycentral.msn.com/Taxes/PreparationTips/GiantTaxHeadaches

Advocates argue that same-sex couples' exclusion from marriage denied them something of equal significance—the opportunity to "elevate" their relationships to the status that they deserve. No matter what the level of commitment or the longevity, without access to the institution of marriage, same-sex couples are denied the opportunity to express the development and "maturity" of their relationships.[94]

The push for marriage equality has been criticized from several quarters within the LGBT community. Though criticisms have different shapes, the arguments against the prioritization of marriage equality can be separated into two camps. The first appears to be those who criticize the method by which its advocates seek to achieve it. These critics have argued that while it is important to eradicate the homophobia that underwrites the exclusion of same-sex couples from the institution of marriage, the privileging of the institution of marriage as against other relationship forms casts those who seek to live outside the boundaries of marriage—for whatever reason—as outsiders.[95] Others have criticized the marriage equality movement's strategies by arguing that the movement privileges the lives of LGBT persons whose identity characteristics make them more palatable generally to the larger straight community with whom coalition must be made.[96] The strategic move privileges mostly white, middle-class LGBT families more than other LGBT families with "complicating" identity characteristics.[97] Finally, critics of the marriage equality movement argue that it drains resources and attention from other important issues that affect the lives of a broader constituency within the LGBT community, for example the passage of legislation to protect the LGBT community from workplace discrimination.[98]

The second strand of criticism is of a stronger form. These critics argue that marriage as an institutional form is problematic in that it is inextricably linked to a history of sexist domination of women and the perpetuation of gendered norms that will be further legitimized by the inclusion of same-sex couples.[99]

ForGayCouples.aspx (last visited Mar. 23, 2012).

94. This is highlighted in narratives that suggest that same-sex couples' inability to marry denies them the opportunity to take "the natural next step in their relationship." CARLOS A. BALL, FROM THE CLOSET TO THE COURTROOM: FIVE LGBT RIGHTS LAWSUITS THAT HAVE CHANGED OUR NATION 153 (2010).

95. This has been argued effectively by, among others, Katherine M. Franke, *Longing for Loving*, 76 FORDHAM L. REV. 2685 (2008).

96. The difficulties of romantic association and marriage have been insightfully addressed by, among others, Russell K. Robinson, *Structural Dimensions of Romantic Preferences*, 76 FORDHAM L. REV. 2787 (2008).

97. *See* Melissa Murray, *What's So New About the New Illegitimacy,* 20 AM. U. J. GENDER, SOC. POL'Y & L. 387 (2012).

98. *See* Darren Hutchinson, *Who Cares About LGBT Workers?*, THE HUFFINGTON POST (July 31 2011), http://www.huffingtonpost.com/darren-hutchinson/who-cares-about-lgbt-work_b_914122.html.

99. *See, e.g.*, Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage"*, 79 VA. L. REV. 1535 (1993); *but see, e.g.*, Nan D. Hunter, *Marriage, Law, and Gender: A Feminist Inquiry*, 1 LAW & SEXUALITY 9 (1991).

Another strong argument is that the marriage equality movement, in seeking the sanction of the state in same-sex relationships, has broken faith with one of the central values of the LGBT rights movement, which rejected the state as a legitimizing force in intimate relationships. Finally, and not unrelated to the methodological point raised earlier, critics argue that marriage is such an encompassing social institution that its inclusion of same-sex couples will inevitably lead to the exclusion of those who choose to exist outside its reach.

In a provocative essay in which she criticized the LGBT civil rights community's desire to read *Lawrence v. Texas* as the contemporary equivalent of *Loving v. Virginia*,[100] Katherine Franke searched for analytical frameworks that would deliver "access to the legal institution of marriage while at the same time undertaking the project of unsettling marriage as the institutional measure of all things."[101] After reviewing, and dismissing, various literatures, Franke suggested that the marriage metaphor might be decentered by the metaphor of friendship, which is capable of accommodating many different kinds of relationships within its ambit.

Although Franke's ultimate argument is illuminating, her discussion fails to sufficiently interrogate the significance that narrative plays (and will continue to play) in the strategies for LGBT equality. That is, Franke's argument, as do others, presupposes a community that is owed a greater obligation than is recognized by what she fears is the single-minded pursuit of marriage equality. Without the presupposition of a normative community, Franke's claims of the marriage equality movement's obligation are mere wishful thinking. This article has to this point attempted to lay the groundwork for offering the Hauerwasian conception of narrative and experience as constitutive of the LGBT community. This conception constrains the freedom of actors within the community to act in ways that might limit the methods by which they seek particular goods, and might constrain the particular goods sought.

Communal constraints are impossible if the community is incapable of "norm generation."[102] The Hauerwasian framework articulated above also provides an important resource for thinking about a community's relationship to the state as the source of normative meaning. Hauerwas rejects both the reconciliationist and realist conceptions of the relationship between Christianity and society, in part because each appeared to capitulate to the recognition of the state as the primary generator of normative meaning. Hauerwas's turn to narrative was, in part, an effort to recover the autonomy of the Christian community for the generation of norms capable of providing meaning in the lives of its adherents. Here, Hauerwas offers critics of the LGBT movement's prioritization of state-recognized marriage a resource for questioning the marriage equality movement's capitulation to the state as the sole bearer of normative meaning in relationships.

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100.   Loving v. Virginia, 388 U.S. 1 (1967) (invalidating state prohibitions of interracial marriage).

101.   Franke, *supra* note 95, at 2689.

102.   *Id.*

Though writing after *Bowers*, in the shadow of the Court's affirmation of the criminalization of same-sex sodomy,[103] Marc Fajer's storytelling by (and about) gays and lesbians is illustrative of the role that narrative plays in the LGBT civil rights movement. Fajer clearly advocates storytelling as a way of generating identification and empathy by legal decision-makers. Fajer advocates the careful selection and deployment of narratives that will generate identification by a judiciary whose demographic composition might lead to its rejection of stories that challenge certain idealized societal institutions. As a result, Fajer champions stories that emphasize certain characteristics within the LGBT community as against other characteristics. Specifically, Fajer criticized the *Bowers* legal team for failing to offer narratives that would combat the dominant heterosexual reading of the LGBT relationships as all about sex.[104] In place of abstract legal categories, Fajer argued, proponents of extending legal protections to LGBT relationships should seek to evoke identification and empathy through narrative.

In Fajer's recognition of the task of narrative advocacy, he argues that lawyers present stories of "long-term relationships."[105] He argues that these narratives provide context for understanding LGBT sexual intimacy in concrete form and afford the basis for their inclusion in the circle of constitutionally protected, sexually intimate relationships.[106] However, he also argues that narratives that emphasize long-term relationships help to undermine the "sex-as-lifestyle" stereotype that pervades the heterosexual community's "pre-understanding" of the LGBT community.[107]

Fajer goes beyond merely supporting the use of narratives that demonstrate the existence of long-term, committed relationships within the LGBT community. He includes particular narratives that provide tangible support for the role that relational intimacy plays in the lives of LGBT persons. These narratives are deployed in ways that highlight the intimacy between same-sex partners,[108] their self-description of their relationships as long-term commitments,[109] and the diminished role that sex plays in such relationships over time.[110] Additionally, Fajer highlights the significance of financial

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103. *See* Bowers v. Hardwick, 478 U.S. 186 (1986). It is safe to say that marriage equality was not on the agenda of most gay and lesbian civil rights activists.

104. Fajer argues that the legal counsel's resort to abstractions such as "consensual noncommercial sexual acts" and "sexual intimacy" sought to create community with the heterosexual community, but failed to take into account the underlying prejudice that would allow decision makers to exclude same-sex sexual relationships from the kinds of relationships deserving of the protections of those that embody "intimacy." Fajer, *supra* note 8, at 526.

105. *Id.* at 569.

106. *Id.*

107. *Id.*

108. Fajer notes that "lesbians and gay men often use the word 'love' to describe their feelings for their partners." *Id.* at 551.

109. Fajer notes that "many same-sex couples describe their relationships as 'marriages,' or 'like marriages.'" *Id.* at 552.

110. Fajer notes that "[f]or a number of gay couples . . . the sexual fire often burns quite low after a

partnership, shared commitments to a home, pet, or child, and the bonds shared between the families of same-sex partners. Each of these narratives is deployed to demonstrate that LGBT persons are capable of making enduring affectional commitments, and that many aspire to live within the boundaries of such commitments in ways not very distinct from heterosexual persons.

Fajer's narrative offerings are not very different than those deployed by supporters of marriage equality. For example, in their advocacy of marriage equality, both William Eskridge and Carlos Ball depict Genora Dancel and Ninia Baehr, two of the named plaintiffs in the Hawaii same-sex marriage litigation, as asking that the law accommodate the emotional commitments that they had already made to one another. Ball highlights the romantic dimension of Dancel and Baehr's relationship, noting that Dancel "was deeply in love and wanted to spend the rest of her life with Baehr."[111] Ball recounts the fact that Dancel and Baehr had sought to include one another as beneficiaries on life insurance policies they had purchased, but found that they could not name someone who was not related by blood, marriage, or adoption, nor could Dancel add Baehr to her employer-based health care insurance, a benefit only available to spouses and children of employees.[112]

These narratives in themselves might not appear noteworthy, even for people who might question the LGBT community's prioritization of marriage equality. However, the narratives have been coupled with an interpretation of marriage as synonymous with the maturation of the LGBT community in general, and LGBT relationships in particular. For example, in arguing in favor of the prioritization of marriage equality within the LGBT civil rights community, Eskridge constructs a continuum of relationship behavior that is to be accorded greater seriousness ranging from "verbal assurances" of romantic affection to "exclusive dating arrangements" to "[m]oving in together" to "[g]etting married."[113] He writes, "Getting married signals a significantly higher level of commitment . . . ."[114] Eskridge's description of marriage as the ultimate destination of relationships of meaning is further evidenced when, proposing a menu of options for couples, he writes, "A couple who wanted legal reinforcement for their lifelong commitment could choose marriage while a couple who wanted to *ease into* commitment could choose domestic partnership, with marriage as a possibility in the future."[115]

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while." *Id.* at 553.

111.   BALL, *supra* note 94, at 153.

112.   *Id*. at 154.

113.   ESKRIDGE, *supra* note 92, at 71.

114.   *Id.* at 71.

115.   *Id*. at 78. The hierarchy is even more evident when Eskridge writes,

[Lesbians and gays] do not want to be just another pair of friends or lovers, nor do they want to be domestic partners whose relation can end at the drop of a termination statement. The large majority of us feel as Genora Dancel does, "I want to be able to say at the end of my life that I had loved someone really well for a long time." Gay and lesbian partners want a level of commitment that domestic partnership does not provide. More deeply, lesbian and gay couples desire a link to the larger historical community, something marriage (in all its troubled

Eskridge, for example, has so championed marriage equality that he appears to suggest that the legal status of marriage is the only factor that legitimizes its prioritization by the LGBT community. But more than this, Eskridge appears to argue that the law is the only source of normative meaning. His narratives about the desires of the LGBT community suggest that the expression of love and commitment cannot be recognized if they do not come in the form of marriage. Indeed, he suggests that a couple might have to enter into marriage in a particular way to convey the appropriate level of seriousness. He writes, "The very choreography of marriage imbues it with a significance that flat, boring domestic partnership cannot easily match. The pomp, gravity, and religiosity of marriage might appall the avant-garde, but they lend the institution an air of sanctification that is meaningful to its participants."[116]

The narrative deployments by scholars such as Ball, Eskridge, and Fajer have not gone without criticism by some within the LGBT legal movement.[117] Critics of the mainstream LGBT civil rights movement appear to have a similar understanding of the communal dimensions of narrative as does the narrative theological movement represented by Hauerwas. Although the criticisms of the marriage equality movement have been varied—ranging from the inherently patriarchal nature of the institution, to the challenge of the racial dimension of the marriage movement—this article focused on two challenges that embody the extent to which criticisms of the marriage equality movement represent a challenge for LGBT identity: (1) the extent to which the marriage equality movement expands the state's role in intimate relationships, contrary to the experiences and aspirations of the LGBT community; and (2) the extent to which the pursuit of marriage equality inherently privileges marriage as a relational form, resulting in the denigration of alternative forms of intimacy.

Advocates of marriage equality emphasize the fact that it is a legal institution that has significant social meaning. While the conferral of material benefits is not irrelevant in the marriage equality movement, it is significantly less important than its broader status as a state-sanctioned institution. Marriage equality means that the state has ceased to exclude lesbians and gays from the most foundational of societal institutions. Necessarily, at the center of the marriage equality movement is the state. This is in stark contrast to the LGBT community's relationship with the state during the era of *Bowers v. Hardwick*, when the state's authority to criminalize same-sex sexual intimacy was challenged by the LGBT equality movement. Critics of the marriage equality movement contend that advocates have rushed headlong into the state's embrace without interrogating what the state's embrace means for the LGBT

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richness) provides and the just-concocted domestic partnership does not. *Id*. at 79.

116.   *Id*.

117.   *See generally* Serena Mayeri, *Reconstructing the Race-Sex Analogy*, 49 WM. & MARY L. REV. 1789 (2008); Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell",* 108 YALE L.J. 485 (1998).

community.

Critics argue that the marriage equality movement's search for the law's public approval is required by the very nature of legal reasoning. To the extent that legal reasoning is largely analogical reasoning, it necessarily requires that the LGBT community make arguments that emphasize sameness over difference.[118] Specifically, it has been argued that the effort to convince the state to integrate the institution of marriage requires the LGBT community to convince decision-makers that marriage will be safe in the hands of same-sex couples. Nitya Duclos has argued that this means the LGBT community must "establish that gay and lesbian relationships conform to prevailing legal ideologies of family and marriage."[119] Such acceptance of the terms of the institution of marriage is antithetical to the history of the LGBT community's critiques of the institution of marriage, most often leveled by lesbians within the LGBT community. Moreover, critics have argued that given the centrality of the state's authority to criminalize same-sex intimacy to the history of LGBT communities—only affirmed by the *Bowers* decision—the LGBT community might pause before demanding the state's sanction and presence in intimate relations.[120]

Beyond these criticisms lies perhaps a more serious critique—that the marriage equality movement risks ceding authority for normative articulation to the state. To the extent that marriage advocates idealize marriage's recognition by the law—remember Dancel's equating legal marriage with the ability to say that she has "loved someone really well for a long time"—they suggest that other forms of relationship are of diminished normative quality.[121] The value of the relationships described by Fajer, for example, did not rely on the state's sanction to provide normative meaning to the commitments embodied therein. However, one might wonder whether relationships within the LGBT community were ever sustained in the absence of the law's recognition.[122] The narratives offered about the significance of the law's role have had the perverse effect of diminishing the role that the LGBT community's own system of values has played in the ability of its members to sustain important relational commitments in periods defined, not by the law's benign neglect, but by its outright and active hostility.

The second dominant criticism is that advocates underestimate marriage's

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118. For recognition of the dangers of the sameness arguments in legal reform movements, see Fajer, *supra* note 8, at 522–30; Spindelman, *supra* note 6, at 1365 (arguing "the remarkably uncomplicated proposition: Lesbians and gay men are just like heterosexuals")

119. Nitya Duclos, *Some Complicating Thoughts on Same-Sex Marriage*, 1 LAW & SEXUALITY REV. 31, 50 (1991).

120. Franke, *supra* note 95, at 2692–93 (arguing that marriage equality advocates undervalue the significance of "the current under-regulation of same-sex sexual activity in the post-*Lawrence* period").

121. ESKRIDGE, *supra* note 92, at 79.

122. In some respects this is not very different from criticisms of the post-*Brown v. Board of Education* era, which tended to suggest that all all-black (or brown) schools were inevitably inferior to racially integrated schools. Critics have argued that black schools had successfully educated black students in the period prior to *Brown*.

dominance of the category of intimate relationships such that all other forms of relationship will be denigrated.[123] The criticism of the marriage equality movement arises from a debate about the centrality of sexual liberation in the LGBT community's broader identity. While this argument is not disconnected from the argument about the role of the state in sanctioning (or criminalizing) same-sex sexual intimacy, it is largely about the political ideals of the LGBT community. Michael Warner, perhaps the most prominent critic of the "normalization" of the LGBT community, is a narrator of the LGBT community as defined by its opposition to the state's (and society's) authority to regulate relational forms. He argues that the institution of marriage can elevate some forms of relationships and intimacies only by discriminating against other forms—a position, he argues, that is antithetical to the project of sexual liberation at the heart of the LGBT movement.[124] Warner, among others, has argued that the privatized rhetoric of love and commitment as the underlying principles of marriage are inconsistent with marriage's public role in society, whose impact goes beyond the two individuals who enter into the institution. Understood this way, the failure of marriage advocates to recognize the impact that marriage as a form of social regulation will have on those who do not participate in the institution is inconsistent with what Warner, and perhaps Franke, see as the LGBT community's historic commitment to a norm of anti-hierarchy in relational forms. Here, one is reminded of Eskridge's continuum, which appears to carry with it a normative valuing of the level of commitment based on the ease of entry and exit. Warner argues that "deviant" sexualities will necessarily be stigmatized along such a continuum. He writes, "[the idealization of marriage] 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."[125]

Both Warner and Franke offer a corresponding set of "creation" narratives. Franke depicts a gay and lesbian community defined by its opposition to the state's regulative role in intimate affairs. To return to conception of the canon or "gay scripture," *Bowers* remains definitional for the gay and lesbian identity. What happens to a gay community that strives to participate in the state's regulatory role in intimate relationships by gaining access to the institution of marriage, Franke wonders. Similarly, Warner returns to origins of the LGBT rights movement in its opposition to the state's role in the stigmatization of "deviant" sexualities. The normative thrust of these experiences of stigmatization and opposition to the state's monopoly remains canonical for Franke, Warner, and many others. However, what a Hauerwasian perspective provides is a recognition that the normative strengths of these narratives, and

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123. *See, e.g.*, MICHAEL WARNER: THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE (1999).

124. *Id.* at 82–85*; see also* Alice Ristroph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236 (2010) (arguing in favor of a deprivileging of marital familial forms in favor of plural forms of family).

125. WARNER, *supra* note 123 at 113.

the identities they construct, only remain canonical to the extent that the community continues to realize them as true for who they are and aspire to be. What this means is that gay and lesbian critics of the marriage equality movement are not free to simply say that dyadic commitment and partnership are antithetical to gay identity. If ever this narrative was canonical for the LGBT community, the narratives in support of marriage equality suggest that these are no longer recognizable as true. What can be claimed by critics is that the prioritization of intimate relationships, and the hierarchy of sexual connection, clearly rests uncomfortably with a community whose central narratives are stigmatization by so-called "normal" people and communities. Rhetorical and strategic deployments of narratives that lend support to such stigmatization, while always possible as a reappropriation of the community's narrative and identity, must contend with the community's extant interpretation of its narratives. Textual complications notwithstanding, narratively grounded normative claims undergird intra-community criticism and critique.

More broadly, Warner, Franke, and others struggle for a framework in which to capture what is at risk for the LGBT community in ceding normative authority to the state and the marriage equality movement's seeming rejection of the insights of LGBT history and experience. The search for frameworks should not stop with frames recognized in current legal discourse. The work of Stanley Hauerwas, as an exemplar of the narrative turn in Christian theology, provides a valuable resource for articulating the need for queer "counterpublics" that resist the collapse of the LGBT community's normative claims into those cognizable by the state. Christian theology has, for centuries, struggled with its relationship with its surrounding cultures, including the state. As such, it provides a significant framework through which "queer" critics might understand the claims they make on the larger LGBT community and its politics. Contrary to conceptions of queer criticism of marriage equality and other efforts at normalization of LGBT politics as inconsistent with the normative insights of Christianity,[126] this article demonstrates convergence between one of the most important twentieth-century American theologians and queer critics of LGBT marriage equality advocates. In the search for an expanded normative vocabulary and moral imagination, which extend beyond the law and legal victories, both Christian communities and queer legal scholars and political activists might recognize something of themselves in one another's narratives.

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126. *See, e.g.*, Cathy J. Cohen, *Punks, Bull Daggers and Welfare Queens: The Radical Potential of "Queer" Politics*, 3 GLQ 437 (1997).