

Courage, Postimmunity Politics, and the Regulation of the Queer Subject

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ABSTRACT

In this paper, I argue that courage is invoked in contemporary political discourses in such a way as to regulate queer legal subjectivities. That is, the discourses of courage re-articulate the social, legal, and political relations that define and restrict the lives of lesbian, gay, bisexual, and transgender (LGBT) citizens. Drawing on Roberto Esposito's theoretical elaboration of the concept of immunity, I remap the legal and political dynamics through which nations incorporate LGBT citizens into the polity. I discuss how the regulation of gay rights in a growing number of democracies in Europe, the Americas, and South Africa has contributed to a new political discourse within which LGBT citizens are conceived as possessing human rights. Granted unprecedented equality rights by a growing number of national legislatures, LGBT citizens are accommodated and courted within changing practices of capitalism at the international level, while at the same time their newfound status barely troubles the gender, sexual, and class alterities on the domestic front. In doing so, I argue that the logic of immunity helps us to understand the larger and messier manifestations of nationalism in relation to LGBT rights and claims. I conclude by explaining how the discourse of courage is animated by a postimmunitary logic that demarcates a new form of civic subjectivity for LGBT citizens.

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INTRODUCTION

In this paper, I argue that the idea of courage is invoked in political discourses to regulate queer legal subjectivities. The discourses of courage re-articulate the social, legal, and political relations that define and restrict the lives of lesbian, gay, bisexual, and transgender (LGBT) citizens. Drawing on the theoretical work of Roberto Esposito, I remap the legal and political dynamics through which nations incorporate LGBT citizens into the polity. I discuss how the regulation of gay rights in a growing numbers of democracies in Europe, in the Americas, and South Africa have contributed to a new political discourse within which LGBT citizens are becoming a global subject of human rights. Granted unprecedented equality rights by a growing number of national legislatures, the global gay fits into the changing global practices of capitalism at the international level, while barely troubling the gender, sexual, and class alterities on the domestic front.

At the center of my argument is Esposito's treatment of immunity as a legal procedure through which people who are not members of a community are nevertheless permitted to live within it. For Esposito, the inclusion of those who would otherwise be excluded—what he calls an “exclusionary inclusion”—is central to the formation of a community. In this paper, I show that the logic of immunity is traditionally aligned with the discourse of pride in queer politics. By contrast, the invocation of courage in the service of the nation, both by queers and by people speaking to and for queers in contemporary politics, disrupts this alignment. This emergent discourse of courage is bound up with a different logic, what I would like to call *the logic of postimmunity*.

This essay challenges a trend in queer theory in which queer people are thought to occupy a position of repudiation or exclusion. In queer theory, we often rehearse the idea that society at large refuses the humanity of queers, as if queers constitute a category mistake. Such a conceptual posture assumes that the formal inclusion of LGBT subjects under the rubric of the law signals the capitulation of queers to homonormativity.¹ In such arguments, “homonormativity” refers to the compliance of homosexuals with the norms and values of

1. See LISA DUGGAN, *THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY* 50-51 (2003); JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* 9 (2007); Martin F. Manalansan IV, *Race, Violence, and Neoliberal Spatial Politics in the Global City*, *SOC. TEXT*, Fall-Winter 2005, at 141, 142; see also CHANDAN REDDY, *FREEDOM WITH VIOLENCE: RACE, SEXUALITY, AND THE US STATE* 191-92 (2011) (discussing the alignment of mainstream groups with gays and lesbians in the United States in the quest for gay rights as an instance of what has been termed “homonormativity”).

heterosexuality, which is seen as the price of inclusion. Homonormativity is then described as “a politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them.”² As a consequence, homonormativity “creates a depoliticizing effect on queer communities as it rhetorically remaps and recodes freedom and liberation in terms of privacy, domesticity, and consumption.”³ For its critics, homonormativity is a rejection of the position of the repudiated, a rejection which is seen as politically debilitating because it surrenders the position of radical critique that is associated with the term “queer.”⁴

In this paper, I reconsider the normative spaces occupied by queers. I propose that, in the current legal and political landscape, queer subjects are neither excluded in the ways they have been historically, nor included in the ways identified by critics of homonormativity. For instance, “victories” such as the legalization of same-sex marriage or the

2. DUGGAN, *supra* note 1, at 50.

3. Manalansan IV, *supra* note 1, at 142.

4. For a historical overview of the concept of “queer,” see Siobhan B. Somerville, *Queer*, in *KEYWORDS FOR AMERICAN CULTURAL STUDIES* 203, 203 (Bruce Burgett & Glenn Hendler eds., 2d ed. 2014). Somerville explains that:

“Queer” causes confusion, perhaps because two of its current meanings seem to be at odds. In both popular and academic usage in the United States, “queer” is sometimes used interchangeably with the terms “gay” and “lesbian” and occasionally “transgender” and “bisexual.” In this sense of the word, “queer” is understood as an umbrella term that refers to a range of sexual identities that are “not straight.” In other political and academic contexts, “queer” is used in a very different way: as a term that calls into question the stability of any such categories of identity based on sexual orientation. In this second sense, “queer” is a critique of the tendency to organize political or theoretical questions around sexual orientation per se. To “queer” becomes a way to denaturalize categories such as “lesbian” and “gay” . . . revealing them as socially and historically constructed identities that have often worked to establish and police the line between the “normal” and the “abnormal.”

Id. On the other hand, Lisa Duggan suggests that the meaning of queer can be organized in three categories: “(1) Identity, or *queer* as a synonym for LGBT populations; (2) Practice, or *queer* as a broad umbrella term for dissenting sexual practices and gender expressions, and (3) Politics, or *queer* as a designation similar to *feminist* that appears quite independently of an advocate’s identity or sexual/gender practices.” Lisa Duggan, *Queer Complacency Without Empire*, *BULLY BLOGGERS* (Sept. 22, 2015), <https://bullybloggers.wordpress.com/2015/09/22/queer-complacency-without-empire>. In this paper, I use “queer” as a subject position (and not only as an identitarian in nature) that calls for a cultural and legal critique of the outlaw and the abnormal through a sexual and racial paradigm. For a critique of “queer” via an anti-minoritizing lens à la Queer Nation, see Lauren Berlant & Elizabeth Freeman, *Queer Nationality*, in *FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY* 193 (Michael Warner ed., 1993).

overturning of the Defense of Marriage Act⁵ force us to reconsider the relationship of queerness and queer to the human, and by definition the status of queer as outlaws. In this sense, the legalization of gay marriage completely destabilizes the status of queers as “outsiders within.” The advent of marriage equality makes queers simply insiders.

Through the discursive linking of courage and the idea of service to the nation, queer subjects are transformed from being “queer” into LGBT citizens. What we see in contemporary politics is not the capitulation of queers to homonormativity, but the death of the queer subject as outlaw or sexual deviant. I suggest that to see the pairing of courage and sexual politics as indexing the demise of queerness and the rise of bona fide LGBT citizenship is to gain new purchase on the way that sexuality is deployed within liberalism to reinvigorate the idea of the nation.

The relationship between nationalism and homosexuality has been recently discussed by queer theorists. For instance, Jasbir Puar coined the term “homonationalism” to describe the appropriation of a historically threatening homosexual other—reducing, if not eliminating, her counterpower—in order to strengthen the nation in its efforts to fight the new Islamic terrorist other fabricated in the aftermath of September 11, 2001 (9/11). Puar explains that the analytical framework of homonationalism opens up

a critique of how lesbian and gay liberal rights discourses produce narratives of progress and modernity that continue to accord some populations access to cultural and legal forms of citizenship at the expense of the partial and full expulsion from those rights of other populations. Simply stated, homonationalism is the concomitant rise in the legal, consumer and representative recognition of LGBTQ subjects and the curtailing of welfare provisions, immigrant rights and the expansion of state power to engage in surveillance,

5. See the decision *United States v. Windsor*. Edith Windsor was the plaintiff in the landmark case that struck down the Defense of Marriage Act (DOMA) in 2013. Windsor went to court after Thea Clara Spyer, her spouse of over forty years, died in 2009. The two were married in Toronto, Canada, in 2007, and their marriage was recognized by New York state law. Spyer left her estate to her spouse, and because their marriage was not recognized by federal law under the Defense of Marriage Act, the government imposed \$363,000 in taxes on the asset. On November 9, 2010 Windsor challenged Section 3 of DOMA as unconstitutional. Three years later, in a 5-4 decision, with the majority opinion authored by Justice Anthony Kennedy, the Supreme Court held that Section 3 of DOMA was unconstitutional. See *United States v. Windsor*, 133 S. Ct. 2675, 2682-84 (2013).

detention and deportation.⁶

Her approach to thinking about homosexuality and nationalism has proved instructive for making sense of the political, sexual, and racial mess of the post-9/11 period. It has had great utility for tracing the politics of ultranationalism that shapes U.S. institutional and ideological domestic and international politics. Puar's concept, however, stems from a historical myopia and is attached to a specific logic of religious racialized immunity. My use of immunity allows engagement with other nationalist and patriotic agendas that are not strictly state-based or legible through a post-9/11 lens. As I argue here, the logic of immunity helps us to understand the larger and messier manifestations of nationalism in relation to LGBT rights and claims.

In Part I, I sketch the political and legal developments that transform the status of LGBT people in national and international arenas. In Part II, I give a detailed account of Esposito's argument of immunity as a political and legal procedure. In Part III, I compare the distinct conceptual logics of pride and courage as they are invoked in relation to issues of social recognition and political and legal inclusion. The Conclusion explains how the postimmunitary logic that animates the discourse of courage demarcates a new form of civic subjectivity for LGBT citizens.

I. THE WHITE GLOBAL GAY

LGBT rights have never been regulated by states as they have been over the past decade. Marriage and the military, among others, have now become official institutions that normalize and incorporate a class of citizens once excluded by the nations. Codes and laws are regularly amended or drafted to accommodate this increasing culture of equality. Public and private institutions are asked to comply with a cascade of decisions that affect the judicial and civil environment. Once considered quasi-exclusively a domestic domain, LGBT rights increasingly feature in international relations. Countries that have decriminalized homosexuality do not hesitate to pressure others that treat homosexuality as a crime. While African countries such as Uganda or Egypt are often under diplomatic watch, lately superpowers like China and Russia have been the targets of various diplomatic and, to a lesser extent, economic sanctions. It is to embrace (even partially) this legal

6. Jasbir K. Puar, *Homonationalism as Assemblage: Viral Travels, Affective Sexualities*, JINDAL GLOBAL L. REV., Nov. 2013, at 23, 25. The term was originally coined in Puar's monograph *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES*, *supra* note 1, at 4.

protection at the global level that Western leaders (among them, U.S. President Barack Obama, U.K. Prime Minister David Cameron, former Canadian Prime Minister Stephen Harper, French President François Hollande, and German Chancellor Angela Merkel) decided not to attend the opening ceremony of the 2014 Sochi Winter Olympic Games in protest of Russia's 2013 legislation against "gay propaganda."⁷ Ironically, while the picture of the absent leaders made a gay-friendly family portrait for the media, it did not stop the same protesting countries from sending full delegations of competitors to Sochi.⁸ One has to assume that national pride is more politically and economically successful than gay pride.

Yet this globalization of gay rights has informed the implementation of a range of regulatory measures—political and economic—at the international level. The sudden interest in the plus value of queerness as both a national and international currency has allowed the creation of what I call a *gay-friendly freedom front* by democratic regimes such as the United States, Canada, the United Kingdom, and France against countries that violate the terms of the Universal Declaration of Human Rights regarding sexual orientation. It is important to note that such diplomatic and economic interventions are often perceived by the target states as a direct violation of their political and territorial sovereignty. They are thus condemned as postcolonial and imperialist manifestations of a neoliberal world order particular to North America and Europe. However, the influence of that freedom front has grown exponentially in the last few years, as demonstrated by the adoption of a series of warnings and sanctions against state administrations that still refuse to comply with international laws vis à vis their LGBT citizens.⁹

As international organizations such as the Human Rights Campaign (HRC) and the International Gay and Lesbian Rights Commission (IGLRC) have reported, the globalization of gay rights and sexual

7. Gay propaganda was an expression coined by the Western politicians as well as the Western media to describe the Russian's homophobic law. For a good account of the gay propaganda critical rhetoric, see Uri Friedman, *How Sochi Became the Gay Olympics*, THE ATLANTIC (Jan. 28, 2014), <http://www.theatlantic.com/international/archive/2014/01/how-sochi-became-the-gay-olympics/283398/>

8. Cf. Niraj Chokshi, *Eight U.S. States Have Policies Similar to Russia's Ban on Gay Propaganda*, WASH. POST, (Feb. 3, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/02/03/eight-u-s-states-have-policies-similar-to-russias-ban-on-gay-propaganda/> (discussing criticism of the U.S. for purporting to disapprove of Russia's anti-gay law while multiple U.S. states maintained similar laws).

9. According to ILGA, as of June 2015, 75 countries still criminalize homosexuality; 11 of these make it a capital crime. See Aengus Carroll & Lucas Paoli Itaborahy, *State Sponsored Homophobia 2015: A World Survey of Laws: Criminalization, Protection, and Recognition of Same-Sex Love*, INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION (2015).

equality has dramatically impacted the social and economic dimension of human and material exchanges.¹⁰ Following governments, key players in the private sector and major economic organizations, as well as powerful corporations, have all taken a keen interest in including concern for LGBT subjects in the redefinition of the global market. As Joseph A. Massad has eloquently pointed out in *Desiring Arabs*, we can read global concern for “the gay” as careful economic regulation of gay civil rights. Massad argues that “the gay rights as human rights” analogy has been used systematically by Western democracies to measure progress toward democracy and human rights in countries that violate the rights of their LGBT citizens. This argumentative analogy has in turn created the figure of the “Gay International.”¹¹ This so-called Gay International is rooted in what Massad describes as a “prediscursive axiom.”¹² To read the Gay International thus is to constitute homosexuality as an integrative device by virtue of the timelessness of homosexuality. In other words, the universality of homosexuality, the fact that homosexuality exists beyond spatial and historical considerations, makes it an integrative device.¹³ What motivates foreign governments and international bodies such as the European Union, United Nations, and the Group of Eight (G8) to sanction a country is not necessarily a commitment to the idea that gay rights are a fundamental component of human rights. Rather, corporations and governments are driven to protect LGBT citizen-consumers by a belief in homosexuality as the universal figure for the excluded.

Government sanctions that champion the legal protection of LGBT citizens allow governments to pursue a double agenda. First, the internationalization of homosexuality gives political legitimacy to countries such as the United Kingdom, France, Canada, the United States, and the Netherlands who “racialize” their relations to their minorities. In these countries, which champion multiculturalism and

10. See HUMAN RIGHTS CAMPAIGN FOUND., EQUALITY RISING: 2014 GLOBAL EQUALITY REPORT 17 (2015), available at http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Equality_Rising_Interior-Rev_8_22.pdf. See generally INT’L GAY & LESBIAN HUMAN RIGHTS COMM’N, PERSPECTIVES: 2011 TO 2013 (2013), available at <https://www.outrightinternational.org/sites/default/files/PerspectivesFinalWithCoverLR.pdf> (compiling a series of pieces discussing gay rights across the world).

11. JOSEPH A. MASSAD, *DESIRING ARABS* 161 (2007).

12. *Id.* at 163.

13. See Margot Canaday, *Thinking Sex in the Transnational Turn: An Introduction*, 114 AM. HIST. REV. 1250, 1252 (2009). Canaday in fact analyzes a certain historiographical approach that makes sexuality an ahistorical analytical trope. As she explains: “Shaped perhaps by this timing, some early transnational histories made sexuality into an ‘integrative device’ of the micropolitics of international encounter.” *Id.*

sexual tolerance, the official discourse on integration and diversity is overwhelmingly framed so that “sexual diversity” is pitched against what is figured as a heteronormative religious or ethnic fundamentalism.¹⁴ Every legal decision that is made in favor of an LGBT “population” is celebrated as a victory and exemplary expression of Western superiority to establish the universal rules of the democratic game. Second, the universalization of homosexuality creates a need to expand and regulate the market of consumers and stockholders for which the “gayification” of the clientele might call. For example, the World Economic Summit had an official gay item on its agenda for the first time in January 2015 in Davos.¹⁵ Guided by the imperatives of market growth and diversification of markets outside the G8, this precedent speaks to the paradoxes at work in the encounter between the demands of the global market and still emerging minority rights constituencies. In other words, at the core of the growing gay international culture is the production of a queer subject that is measurable and exportable under the capitalization of the so-called “pink” economy.

This new model of international politics allows legalistic conceptions of free human agency and equality to cohabit with the needs of the global human rights market. The globalization of gay rights sets the conditions for the state and its political and corporate partners to define who is worthy of receiving economic, political, and social protection. It is no coincidence that U.S. Secretary of State John Kerry said in his speech announcing the appointment of Randy Berry as the first special envoy for the human rights of LGBT persons in 2015,

We have a moral obligation to speak out against the persecution and the marginalization of LGBT persons. And we have a moral obligation to promote societies that are more just, fair, and tolerant. It is the right thing to do. But make no mistake: It’s also a strategic necessity. Greater protection of human rights leads to greater stability, prosperity, tolerance, inclusivity, and it is not a

14. Fatima El-Tayeb, *Gays Who Cannot Properly Be Gay: Queer Muslims in the Neoliberal European Cities*, 19 *EUROPEAN JOURNAL OF WOMEN'S STUDIES*, 79 (2012); Jin Haritaworn, Tamsila Tauqir, and Esra Erdem, *Gay Imperialism: Gender and Sexuality Discourse in the War on Terror*, in *OUT OF PLACE: INTERROGATING SILENCES IN QUEERNESS/RACIALITY* 71–75 (2010).

15. See Andrew Ross Sorkin, *Debates at Davos Get Around to Gay Rights*, *N.Y. TIMES* (Jan. 19, 2015), http://dealbook.nytimes.com/2015/01/19/debates-at-davos-finally-will-include-gay-rights/?_r=0.

question of occasionally--always this is what happens.¹⁶

With the appointment of an openly gay diplomat, it is clear that, from the point of view of the U.S. administration, LGBT rights constitute a powerful tool of negotiation for diplomatic talks and economic agreements outside Western nations. In fact, Roderick Ferguson observes, in light of Martin Manalansan's analysis of gay transnational politics, that "queer appeals for recognition and legitimacy are always articulated globally as well as nationally."¹⁷

In the next section, I discuss the extent to which this new legal and political status attributed to LGBT citizens redefines the relationship between minority inclusion and the legal and political procedures of immunity.

II. IMMUNITY

In his book *Immunitas*, Roberto Esposito argues that immunity is a legal and political mechanism through which a community protects itself from "a danger."¹⁸ Historically, the danger in question might be a foreign official or diplomat, someone who is not "of" the community but who nonetheless resides in it. This protection afforded by immunity takes shape, not through a constitutive exclusion or through the expulsion of an offending term, but rather through an incorporation that takes the form of an "exclusionary inclusion or exclusion by inclusion."¹⁹ This kind of incorporation, which is a "non-negation" of the threatening term, contains the danger by making an exception of it. The exception at issue here concerns the rules, obligations, and mutual service—the *munus* that constitutes the community.²⁰ Esposito remarks that, whereas *munus* "refers to an office—a task, obligation, duty (also in the sense of a gift to be repaid)—by contrast, *immunis* refers to someone

16. John Kerry, Sec'y of State, U.S. Dep't. of State, Remarks at Welcome Reception to Commemorate the Announcement of Special Envoy for the Human Rights of LGBT Persons Randy Berry (Feb. 27, 2015) (transcript available at <http://www.state.gov/secretary/remarks/2015/02/238036.htm>).

17. RODERICK A. FERGUSON, *THE REORDER OF THINGS: THE UNIVERSITY AND ITS PEDAGOGIES OF MINORITY DIFFERENCE* 222 (2012).

18. ROBERTO ESPOSITO, *IMMUNITAS: THE PROTECTION AND NEGATION OF LIFE* 5 (Zakiya Hanafi trans., Polity Press 2011) (2002) ("The more life is hounded by a danger that circulates without distinction throughout all its practices, the more its response is concentrated into the mechanisms of a single device: as risk of the common becomes increasingly extensive, the response of the immune defense becomes increasingly intensive.").

19. *Id.* at 8.

20. *Id.* at 5.

who performs no office.”²¹ In this reading, to be an immune subject is to be “disencumbered, exonerated, exempted” from “performing services for others,” whether that service would be “personal, fiscal, or civil.”²² Immunity, then, is “an exception to a rule that everybody else must follow.”²³

What is particularly interesting in Esposito’s account of immunity is the way he traces the different “lexical shifts”²⁴ through which immunity operates. No longer simply legal, the concept also has purchase in the domains of biology, politics, anthropology, and theology. In this broader set of dynamics, what immunity contains is “a danger that circulates without distinction throughout all [a community’s] practices.”²⁵ Indeed, the link that Esposito sees between immunity and exemption from service brings into focus two of the most visible exclusionary inclusions suffered by queers: the long-standing prohibitions against gays and lesbians serving the nation in the military and against their forming families through marriage. The immunitary legal mechanism historically has excluded queers from the kinds of civil and military service that both constitute and index citizenship. Thus, immunity protects even as it defines the nation as constituted through heterosexual blood kinship.

The dynamics of immunity explained by Esposito resonate with the phenomenon of what feminist legal scholars Patricia Hill Collins and Mari J. Matsuda have described as an outsider status. While Collins uses the term “outsider within” to describe how Black feminists can make “use of their marginality—their outsider within status—to produce (...) a special standpoint,”²⁶ Matsuda refers to the term “outsider” to designate the different forms of consciousness that outsiders (regardless of the size of their community) develop, and between which they shift as they engage in the social and political domains in which they are denied full inclusion.²⁷ Aware of the political

21. *Id.*

22. *Id.*

23. *Id.* at 6.

24. *Id.* at 9.

25. *Id.* at 5; see also ED COHEN, *A BODY WORTH DEFENDING: IMMUNITY, BIOPOLITICS, AND THE APOTHEOSIS OF THE MODERN BODY* 6 (2009) (discussing immunity as a concept in biological, military, and political thinking).

26. See Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 *SOC. PROBS.* S14, S14–S16 (1986). I’m not doing justice here to Collins’s sophisticated analysis. I’m also aware that Collins is addressing the specifics of the black feminist thought as generated by the lives of Afro-American women. However, her description of the challenges of outsider within status does resonate with the issue of immunity discussed in this paper.

27. Mari J. Matsuda offers a slight variation on Collin’s concept in her discussion of “outsiders.” See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and*

histories of exclusion, power relations, and forms of injustice of which others around them are largely unaware, such outsiders shift between the different assumptions and perspectives that operate in the social and political domains they enter, negotiate, and inhabit.²⁸ What is particularly interesting in Matsuda's analysis is her insight that exclusion is not necessarily *marginalization* but rather an *exclusionary inclusion*, a form of belonging that sets those so designated apart. I want to suggest that this has been the spatial orientation of queers—not marginalized by rather included in an exclusionary way.

Whereas queer theorists such as Judith Butler portray queers as on the margins and possibly nonhuman²⁹, the immunity logic I unfold here portrays queers as at the very center and foundation of the nation's self-conception. In this schema, queers are not outside the norms through which the community constitutes itself.

From Esposito's immunitarian perspective, queers are incorporated in a manner that excepts them, that particularizes and marks them in ways that reconfirm heterosexual affiliation as the organizing principle of the polity. Esposito explains, "[t]he immunitary mechanism presupposes the existence of the ills it is meant to counter . . . [i]t reproduces in a controlled form exactly what it is meant to protect us from."³⁰ It is not that queers are incorporated through a reluctant

Reparations, 22 HARV. C.R.-C.L. L. REV. 323, 344-45 (1987) (discussing alternative sources). Matsuda's conceptualization of 'outsider' is akin to Patricia Hill Collins's "outsider within."

28. *Id.* at S29. Mari Matsuda refutes also the popular argument that tolerance is about tolerance. As she observes: "Tolerance of hate speech is not tolerance borne the community at large. Rather, it is a psychic tax imposed on those least able to pay." Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989). Some queer theorists have formulated severe critiques of the politics of tolerance as a means of inclusion. For instance, Ann Pellegrini and Janet R. Jakobsen argue that tolerance constitutes a powerful secular *dispositif* for containing the locus of homo threat in U.S. politics, while consolidating a structure of exclusion for its minorities. As they note, "[n]ot only does tolerance reinforce structural inequality, but it also sets up a political culture in which extremism, rather than injustice, is the major problem to be addressed in public life." JANET R. JAKOBSEN & ANN PELLEGRINI, *LOVE THE SIN: SEXUAL REGULATION AND THE LIMITS OF RELIGIOUS TOLERANCE* 58 (2003). They follow this with "[f]raming our public discussions in terms of tolerance versus hate makes it seem as though the major problem we confront as a nation is one of misplaced feelings rather than problematic social relations." *Id.* at 60.

29. See JUDITH BUTLER, *PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE* at XIV-XVI (2004).

30. ESPOSITO, *supra* note 18, at 7-8 ("[L]ife combats what negates it through immunitary protection, not a strategy of frontal opposition but of outflanking and neutralizing. Evil must be thwarted, but not by keeping it at a distance from one's borders; rather, it is included inside them. The dialectical figure that thus emerges is that of exclusionary inclusion or exclusion by inclusion. The body defeats a poison not by

adherence to the idea of inclusion, but rather that they must be included in order to confirm and substantiate the heteronormative basis of the nation. Exclusionary inclusion and what I am here calling the procedures of immunity are linked.³¹

Using the logic of immunity, we see that queer people live a kind of exclusionary inclusion, among and in interaction with heterosexual communities, rather than “on the fringes.” I propose that queers are not the constitutive outsiders, but the constitutive *insiders*. This conceptual approach represents a drastic change from seeing queers as nonhuman and outlawed or, in other words, as “gender outlaws.”³²

To think about queer people as occupying a position of repudiation or exclusion is to think of queerness as the constitutive outside of heterosexuality and normal sociality. This perspective is consonant with those of two prominent scholars that have shaped queer theory: Michel Foucault and Judith Butler.³³ Foucault traces the practices and procedures through which so-called normal sexuality and sexual identities are produced according to their differentiation from abnormal sexualities and sexual identities. To consider queer people occupying the position of the constitutive other is to suggest that queerness is a necessary condition of the formulation or conceptualization of heterosexual normality. This is also the argument made by feminist philosopher Judith Butler. In her work, Butler maintains that norms and identities contribute to fixing the border between human and nonhuman.³⁴ She positions the human less as a legal category or an identificatory moment and more as a nexus through which queer

expelling it outside the organism, but by making it somehow part of the body. . . . [I]mmunitary logic is based more on a non-negation, on the negation of a negation, than on an affirmation.”).

31. “The experience of the struggle against oppression provides a built-in immunity against realist despair.” Cf. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 349 (1987) (discussing justifications for Critical Legal Studies scholars’ view that they can and should support and represent the interests of marginalized people of color).

32. KATE BORNSTEIN, *GENDER OUTLAW: ON MEN, WOMEN, AND THE REST OF US* 67 (1994).

33. 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION* (Robert Hurley trans., Vintage Books 1990) (1976). See generally MICHEL FOUCAULT, *ABNORMAL: LECTURES AT THE COLLÈGE DE FRANCE 1974-1975* (Valerio Marchetti et al. eds., Graham Burchell trans., Picador 2003) (1999) (compiling a series of Foucault’s lectures from a course on the emergence of the abnormal individual in the nineteenth century); MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLÈGE DE FRANCE, 1977-78* (Michel Senellart et al. eds., Graham Burchell trans., Palgrave Macmillan 2007) (2004) (compiling a series of Foucault’s lectures from a course focusing on “biopolitics” and “governmentality”). See BUTLER, *supra* note 29.

34. See BUTLER, *supra* note 29, at XIV–XVI.

subjects can still pretend to a certain social intelligibility and gain, at the same time, political viability.³⁵ However, Butler recognizes that, in our liberal system of rights distributions, not all individuals are honored as human material and, to an even greater degree, that nations and states have been powerful screens of humanness.³⁶ Yet, she argues, the unintelligible individual is still an important figure despite his or her apparent lack of humanness, if only by virtue of that individual's power to disrupt the universalism of the category "human."³⁷

Following this rationale, immunity processes and mechanisms can be understood as operating to contain homosexual or queer lives to protect the nation based on blood kinship from dissolution amid exposure to queer sexualities. Butler has described this dynamic as a fear of contagion evident in the now repealed "Don't Ask, Don't Tell" policy that allowed gays to serve in the U.S. military but not to be out about their sexuality.³⁸

Recent legal developments are such that queers are related to their communities no longer through exclusionary inclusion. We can see this in the array of civil and legal rights they have been granted. This change in the relationship of queer people to their communities and nations is also visible in the rhetorical shift in legal battles from the language of pride to a language of courage.

III. COURAGE

From a minority rights perspective, pride has been a formative vehicle of individual and collective resistance and dissent to protect an excluded minority from the violence of the sovereign. Contemporary examples where pride has served minority politics and collective mobilization abound: the civil rights movement of the 1950s and 60s, the gay liberation movement of the 1970s, the gay pride politics of the 1990s, and nationalist independence movements in postcolonial times. However, even in its most radical iterations of resistance, pride is haunted by the imperatives of inclusion. The chant popularized by

35. *Id.*

36. *Id.*

37. Here my approach is an attempt to put Foucault and Butler in conversation with Giorgio Agamben's concept of *homo sacer* in which the foregrounding of bare life invites us to consider how the body at the border of human and nonhuman is always made too visible by its racial, ethnic, and queer potential. See generally GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans., Stanford Univ. Press 1998) (1995) (advancing the idea that biological life is at the center of modern state sovereignty and power).

38. See JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* 110–12 (1997).

Queer Nation in the 1990s—“We’re here! We’re queer! Get used to it!”—is a great example of public address and political mobilization that uses a self-reflective mode of interpellation³⁹ to speak for an excluded group within the normative trope of inclusion. Whereas courage appeals to a communitarian politics of mobilization that marks a rupture with the collectivity, pride presumes exclusion and, as such, demands exceptional inclusion. As such, pride provides a mode of immunity for the *communitas*.

This is why the language of pride has been so instrumental in constituting the queer subject as outside of norms. It has been and is still a powerful strategy to vindicate the right queer subjects to occupy the public sphere as full agents. A strong response to the historical shaming of the abject body,⁴⁰ pride stands out as a feature of the gay agenda and queer politics; at the same time, it enables effective communal action while providing a strong coalition identity.⁴¹ However, as claims for equality—including the right to serve in the military and access to marriage—have recently taken a more collective turn, the language of pride has disintegrated to make room for a new form of public value: courage.

The concept of courage is used here to describe a new form of regulated subjectivity: one that is less shaped by ideological alliances and traditional divisions of gender, sexuality, and race, and more by the desire to serve the nation. As such, courage is not only performed by the injured subjects (e.g., queer subjects) but by any member of the community who has the nation’s protection and survival at heart.

The shift from pride to courage is more than semantic: it redefines the ways that political and legal strategies are deployed. Whereas pride is invoked by queer subjects, courage is used by LGBTs and straight people to negotiate the role of nonnormative sexuality in the imagination of the nation. Straight people who show courage are not necessarily allies of LGBT communities. Rather, courage as a political discourse enables even critics of the “gay lifestyle” to accede to a political reality. This kind of courageous action—the use of courage to explain reluctant support for gay rights—inscribes a specific, strategic relation to sexuality at the very heart of the nation.

39. *Queer Nation NY History*, QUEER NATION NY, <http://queernationny.org/history> (last visited Feb. 13, 2016). Queer Nation is an LGBTQ activist organization founded in March 1990 in New York City by HIV and AIDS activists from ACT UP. *See id.*

40. *See generally* SARA AHMED, *THE CULTURAL POLITICS OF EMOTION* 107 (2004) (discussing the politics of shame in queer culture).

41. *See generally* Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 *GLQ* 437 (1997) (discussing early rainbow coalition tensions).

Within this context, it might be useful to discuss briefly the ways courage has been traditionally depicted. According to Aristotle, courage is demanded of one by a particular situation.⁴² Those who show courage are celebrated as virtuous in the sense that they prove themselves to have achieved a certain perfection of human nature. In contrast to the self-referentiality of pride, courage calls for self-sacrifice as a gift to the community. It is no coincidence that courage has been celebrated over centuries as the fabric of warriors, soldiers, pioneers, heroes, and leaders of great nations across the political spectrum.⁴³

Courage, then, is outside the rubric of moral approval or disapproval. Courage is beyond abjection or inclusion since courage can be acknowledged even in one's fiercest enemy. Courage is about the action or initiative it allows, not the end result. It refers in many ways to a very Arendtian understanding of politics as presenting oneself to the public through one's actions rather than, say, acting on the basis of one's social or cultural identity (pride) or having an instrumentalist orientation to politics (with its focus on evaluation or end results).⁴⁴

Evoking Hannah Arendt, Nancy Schwartz reminds us in her analysis of fear and courage that the philosopher "in her exaltation of the Greeks in *The Human Condition*, considered [courage] a central virtue of political life. The 'virtue of courage [is] one of the most elemental political attitudes'; in ancient Greek political thought it 'became the political virtue par excellence.'"⁴⁵ As a virtue, courage therefore is beyond opprobrium and gains its recognition only in social and public life, that is, in arenas where nobility can be seen and witnessed: "[c]ourage, like all the virtues, involved acting in the right

42. See ARISTOTLE, *Nicomachean Ethics* bk. III, chs. 6–7 (Martin Ostwald trans., The Bobbs-Merrill Co. 1962) (c. 340 B.C.E.). For more on the articulation between courage, honor, and nobility in Aristotle's conception of courage, see Lee Ward, *Nobility and Necessity: The Problem of Courage in Aristotle's Nicomachean Ethics*, 95 *AM. POL. SCI. REV.* 71 (2001).

43. For example, the John F. Kennedy Profile in Courage Award serves as a quintessential illustration of state recognition of civil courage. See *The John F. Kennedy Profile in Courage Award*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, <http://www.jfklibrary.org/Events-and-Awards/Profile-in-Courage-Award.aspx> (last visited Feb. 13, 2016).

44. See HANNAH ARENDT, *BETWEEN PAST AND FUTURE* 156 (Penguin Books enlarged ed. 1977) (1961) ("It requires courage even to leave the protective security of our four walls and enter the public realm, not because of particular dangers which may lie in wait for us, but because we have arrived in a realm where the concern for life has lost its validity. Courage liberates men from their worry about life for the freedom of the world. Courage is indispensable because in politics not life but the world is at stake.")

45. Nancy L. Schwartz, "*Dreaded and Dared*": *Courage as a Virtue*, 36 *POLITY* 341, 342 (2004) (quoting HANNAH ARENDT, *THE HUMAN CONDITION* 33 (Doubleday Anchor Books 1959) (1958)).

way, at the right time, for the right reason.”⁴⁶ While the ancient Greek conception of courage distinguishes between gendered expressions of courage—women show courage by serving while men show courage by ruling—courage in queer times is about serving by ruling and ruling by serving.⁴⁷

By contrast, pride appeals more to the individual integrity and value of the subject who speaks. It is self-serving, so disturbingly “out there” that it is often perceived as morally questionable. For instance, pride is one of the seven deadly sins of the Roman Catholic Church.⁴⁸ As a virtue, courage facilitates the recirculation of the queer subject citizen who is at the heart of the ideal republic. Through courage, the queer subject becomes the flesh and blood of civic patriotism.⁴⁹ Yet, while courage allows the queer subject a new form of publicity and, by extension, of incorporation, one has to ask how the virtue of courage crafts a new mode of publicness and identity for the queer subject.

This question of incorporation and truthfulness to one’s self is also at the core of Foucault’s conceptualization of courage, or what he calls “parrhesia.” In *The Courage of Truth*, Foucault describes parrhesia in these terms:

Parrhēsia . . . involves a strong and constitutive bond between the person speaking and what he says, and, through the effect of the truth, of the injuries of truth, it opens up the possibility of the bond between the person

46. *Id.* at 344. Ironically, courage could be interpreted in that context as vanity.

47. In recent history, the case of the late Dutch politician Pim Fortuyn’s motto “At your service” illustrates perfectly the multiple ways that courage can be deployed both as moral and physical (virile) virtue. I examine these questions further in CHANTAL NADEAU, *Fortuyn’s Pride: A Queer Dutch Lesson*, in *QUEER COURAGE: THE BIRTH OF A NATION* (forthcoming 2016).

48. See Fr. William Saunders, *What Are Capital Sins?*, CATHOLIC EDUC. RESOURCE CENTER (2003), <http://www.catholiceducation.org/en/culture/catholic-contributions/what-are-capital-sins.html> (“Pride is ‘an inordinate desire for one’s own excellence.’ Pride is said to be ‘complete’ when a person is so filled with it that he refuses to subject his intellect and will to God, and to obey His commandments. Such a person has contempt for God and those who represent Him. In a sense, a person with complete pride makes himself a god. However, pride may also be incomplete: Here a person does not reject God or his superiors; rather, he simply thinks of himself too highly. . . . Pride is a very dangerous vice, as St. Thomas noted, because a person is so susceptible to it due to the woundedness of original sin. It can easily creep into our lives, grow quickly without recognition, and take hold, infecting all that we do. St. John Vianney taught, ‘Pride makes us hate our equals because they are our equals; our inferiors from the fear that they may equal us; our superiors because they are above us.’”).

49. The courageous Republicans that New York Governor Cuomo saluted following the passage of the Marriage Equality Act in the state of New York were, in fact, true patriots. See NADEAU, *supra* note 47, ch. 3.

speaking and the person to whom he has spoken being broken. . . . The parrhesiast . . . is the courageous teller of a truth by which he puts himself and his relationship with the other at risk.⁵⁰

The relationship to truth in modes of governance is central to Foucault's conceptualization of parrhesia.⁵¹ Yet Foucault recognizes that the courage of truth is not one-dimensional, and as such, it carries a risk for the parrhesiast. In the introduction and layout of *The Courage of Truth*, Foucault distinguishes between two senses of the word parrhesia: a pejorative and a positive one. The first pejorative sense of parrhesia consists of "saying anything (anything that comes to mind, anything that serves the cause one is defending, anything that serves the passion or interest driving the person who is speaking."⁵² Foucault insists that this first sense becomes, in a way, self-instrumental and not worthy of trust as "[t]he parrhesiast then becomes and appears as the impenitent chatterbox, someone who cannot restrain himself or, at any rate, someone who cannot index-link his discourse to a principle of rationality and truth."⁵³ The second sense of parrhesia, the positive one, is about exposing a naked act of truth—and, by default, producing a speaker of truth—free from any concealed agenda or partisan rhetoric.⁵⁴ In that second sense of courage, the speaker of truth is inhabited by a sense of abnegation vis à vis his own interests. In other words, the speaker turns toward others and the public good. This is why, as Foucault notes, "[t]he parrhesiast is the person who tells all."⁵⁵ Yet, to tell all—which is akin to going public—is not without risk. Courage is a risk to life, and this is why it is celebrated as a virtue.

If one takes courage as a virtue, a virtue that calls for both physical and moral qualities, why then does courage have such a powerfully gendered and sexualized referent? As Wendy Brown puts it, most conceptions of courage are manly and masculinist (which does not mean

50. MICHEL FOUCAULT, First Hour of Lecture (Feb. 1, 1984), *THE COURAGE OF TRUTH (THE GOVERNMENT OF SELF AND OTHERS II): LECTURES AT THE COLLÈGE DE FRANCE 1983-1984* 1, 14 (Frédéric Gros et al. eds., Graham Burchell trans., Palgrave Macmillan 2011) (2008).

51. *Id.*

52. *Id.* at 9.

53. *Id.* at 9–10.

54. *See id.* at 10 ("*P*arrhêsia consists in telling the truth without concealment, reserve, empty manner of speech, or rhetorical ornament which might encode or hide it. 'Telling all' is then: telling the truth without hiding any part of it, without hiding it behind anything."); *see also* COHEN, *supra* note 25, at 36–37 (discussing the idea of truth in the context of metaphors).

55. FOUCAULT, *supra* note 32, at 9.

that they lack a homosocial quality). As she argues in *Manhood and Politics*,

The historical symbiosis of courage and manliness has affixed courage with a comparatively narrow meaning and content. In the tradition of manhood, courage has been the willingness to risk death for an abstract aim and the effort to defy mortality through placing the body in peril. In the terms of manliness, courage is overcoming bodily fears and overcoming concerns for life.⁵⁶

Taking on Brown's call to reorient courage, Holloway Sparks suggests in turn that

we need a more expansive conception of courage, one that encompasses all human activities that involve risk, uncertainty, and fear, not simply the ones that involve risk to our bodies, and not simply the ones that involve men. We also need a conception that recognizes the importance of courage for dealing with our allies and potential allies as we seek to build a collective existence.⁵⁷

While more strategic than Foucault's, Sparks's conception of courage retains virtue as an intrinsic quality. For her, courage should be seen as virtuous when it is used to mobilize all against injuries towards sexual minorities. Whether we talk about Private Chelsea, formerly Bradley, Manning leaking codified information to protect the nation; politicians who vote against their party line or suspend their religious allegiance to support the equal entry of gays and lesbians into civil society; or activist groups that mobilize against discrimination or homophobia, all are people of courage because they are, in Foucault's terms, "inhabited by a sense of abnegation vis à vis their own interests." In the aforementioned cases, mobilizing support as an act of courage is more compelling and publicly more productive than any other rhetorical moralism or ideological strategy. Courage does not condemn, chastise, or shame: it makes one bigger than oneself. More: it banalizes

56. WENDY BROWN, *MANHOOD AND POLITICS: A FEMINIST READING IN POLITICAL THEORY* 206 (1988).

57. Holloway Sparks, *Dissident Citizenship: Democratic Theory, Political Courage, and Activist Women*, *HYPATIA*, Nov. 1997, at 74, 97.

queerness.

CONCLUSION: QUEER COURAGE

The shift from the language of pride to the language of courage in recent legal battles facilitates the production of a citizen who is marked less by communal injury—which is intrinsic to the language of pride—than by the impetus of being constituted as a subject who serves and saves the nation. What I call *queer courage* has emerged in recent gay and lesbian legal and political rights discourses not as a typical form of dissent or exclusion, but as a mode of social adherence to a political virtue of civil service⁵⁸ and as a desire to inoculate queers into the national body. In fact, it is because queer courage emerges in and through civil service that it undoes queerness and renders queer subjects LGBT citizens. In that sense, I use the concept of *queer courage* to mark the vanishing of queerness as we have historically defined it.

The shift from pride to courage redefines the queer body as a public body that has been inoculated and incorporated into the social tissue. While pride—as the language of the cultural wars of the 1980s—exacerbated the polarization of queer and nonqueer, the language of courage promotes a more innocuous, yet patriotic community. Within the discourse of courage, American cultural values of military service, family, and liberal economy are served by the contribution of nonhetero citizens. It is no coincidence that most of the legal battles for rights granted to LGBTs recently—from the repeal of “Don’t Ask, Don’t Tell” to the legalization of same-sex marriage—are rights that fall under the rubric of good civil service. Rights of LGBTs are more than civil rights—they are about a legal status: the status of being fit to serve. Service can be service to the nation, or it can be manifested by acceding to the norms of civility or civil conduct in public and private spaces. Indeed, there are multiple ways in which LGBTs are at the service of the state, performing good civility and good citizenship. One could think here of military service but also of marriage as the service of raising a family. One could also invoke taxation and succession—which are about serving and protecting private property. The entire economy is being served not only by those enrolled in the workforce but also by the hordes of customers who buy wedding cakes and solicit photographic services. The moment in which *queer courage* is given expression could translate as: “Can we please serve and be properly served?”

Claims that same-sex marriage functions as a service to the nation and an example of good citizenship can be traced at the present juncture

58. See *id.* at 74-75.

to efforts to legalize liberal subjects and by extension criminalize illiberal subjects. Chandan Reddy, for instance, argues that “the current demand for gay and lesbian marriage rights as a means of gaining formal equality before the law has intersected with broad demands by undocumented immigrants who critique the law, the warrant of national sovereignty, as productive of illegitimate force and arbitrary violence.”⁵⁹ By some maleficent twist of rhetoric, those who display courage in support of the inclusion of LGBTs contribute to the exposure of the illegal channels by which other wounded subjects seek protection.

After the recent ruling of the U.S. Supreme Court in *Obergefell v. Hodges*, which affirmed that “same-sex couples may exercise the fundamental right to marry,” most of the queer critiques of gay marriage were formulated under this claim.⁶⁰ Because the ruling validated the institution of marriage as the primary mode of assessing a couple’s symbolic and material capital, thousands of gay couples who have enjoyed various domestic partner benefits over the years were suddenly faced with the brutal reality that, in order to maintain such benefits, they had to enter into a marital agreement.⁶¹

As LGBTs are granted the right to serve or give back to the community in ways previously denied them, in ways that make them bona fide citizens, the figural inoculation has taken hold. The language of courage signals a new form of inclusion, one that is not tied to identity. The moment after immunity, what I call *postimmunity*, allows those who have been queer subjects to live fully within the nation. Subjects designated as queer become absorbed, incorporated, no longer other—simply LGBT citizens. Once LGBT citizens are part of the community, we witness the death of the queer subject as sexual

59. Chandan Reddy, *Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice*, 76 *FORDHAM L. REV.* 2849, 2853 (2008). According to Reddy, the emergence of gay marriage as a central issue in electoral politics and judicial culture at both the state and national levels has created a perverse competition over the interpretation of rights as goods—can we be served?—and the determination of who deserves to be seen as a good citizen. See *id.* He questions, “[h]ow have gay marriage rights advocates engaged this demand, one that interrogates the ‘moral’ basis of citizenship exclusion, at the very moment that gays and lesbians seek inclusion in the moral universalism promoted by the law—the law’s supposed foundation on the ‘fundamental right of marriage?’” *Id.*

60. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015). See Part IV, *infra*. For a comprehensive and intersectional analysis of the recurrence of the racialization of marriage under same-sex marriage, see KATHERINE FRANKE, *WEDLOCKED: THE PERILS OF MARRIAGE EQUALITY* (2015) and Siobhan B. Somerville, *Queer Loving*, 11 *GLQ* 335 (2005).

61. See generally Nan D. Hunter, *The Undetermined Legacy of ‘Obergefell v. Hodges’*, *NATION* (June 29, 2015), <http://www.thenation.com/article/the-undetermined-legacy-of-obergefell-v-hodges/> (analyzing Justice Kennedy’s ruling and his evocation of dignity to support the SCOTUS decision).

deviant.⁶²

Yet this “death” does not mean that sexuality becomes defunct as an organizing political category. In fact, within the postimmunity politics outlined here, we see a divergence in the political and legal dynamics of immunity. While the legal dynamic no longer immunizes the state against queerness,⁶³ concerns about contagion previously contained by the exclusionary inclusion of queers are now managed via a more-generalized rhetoric of courage. Courage in its postimmunity form gives birth to a new breed of citizens: the people of courage. People of courage emerge as a disparate coalition of citizens who defy the traditional spectrum of identity politics and political alliances. For example, politicians who speak up to sacrifice their religious beliefs for their gay constituencies are people of courage.⁶⁴ The anonymous and

62. See DAVID L. ENG, *THE FEELING OF KINSHIP: QUEER LIBERALISM AND THE RACIALIZATION OF INTIMACY* 2–3 (2010). Eng uses the notion of *queer liberalism* to trace “a contemporary confluence of the political and economic spheres that forms the basis for the liberal inclusion of particular gay and lesbian U.S. citizen-subjects petitioning for rights and recognition before the law.” *Id.* at 3. Queer liberalism calls for an extended politics and economy where sexuality operates as the only legible marker of difference. *See id.* at 4. As Eng notes:

[Q]ueer liberalism does not resist, but abets, the forgetting of race and the denial of racial difference. That is, the logic of queer liberalism in our colorblind moment works to oppose a politics of intersectionality, resisting any acknowledgement of the ways in which sexuality and race are constituted in relation to one another, each often serving to articulate, subsume, and frame the other’s legibility in the social domain. In short, queer liberalism is predicated on the systematic dissociation of (homo)sexuality from race as coeval and intersecting phenomena.

Id.

63. See generally DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* (rev. & expanded ed. 2015) (2009) (discussing trans politics as a vehicle that is moving leftward toward challenging and transforming the structures of society, rather than merely seeking inclusion in them); Lee M. Caplan, *State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory*, 97 AM. J. INT’L L. 741 (2003) (discussing immunity in the context of international law).

64. The New York Senate June 24, 2011 decision to legalize same-sex marriage is relatively recent, yet it has already been hailed both as a landmark for marriage equality, and a touchstone moment for gay rights activists and their supporters across the United States. New York was, after all, the first large state to pull the vote after the more demographically and economically lightweight states of Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and Washington, D.C. For advocates and opponents alike, the ‘expectations’ were high, even higher since the stormy adoption of Proposition 8 in California two years prior to the New York vote, a decision that was after all a brutal reminder that the opponents to gay marriage were still on a vigilante path and would use any means necessary to deflate the growing “gay” legal agenda to which same-sex marriage came to stand for in the popular discourse.

The NY senate decision received extensive media coverage the days prior to the vote, as well as in its aftermath. Next to cosmopolitan-centric rhetorical gems such as “NY leads

public people who support the Courage Campaign, the U.S.-based online campaign for marriage equality, are people of courage.⁶⁵ The conservative gay political leaders who are advocating for tougher immigration policies and assimilation practices are people of courage as well. Even President Barack Obama, in his press conference following the *Obergefell* ruling, made explicit the synergic courage at work in the unprecedented decision when he saluted the decision as a

consequence of the countless small acts of courage of millions of people across decades who stood up, who came out, talked to parents--parents who loved their children no matter what. Folks who were willing to endure bullying and taunts, and stayed strong, and

again," uttered by overly enthusiast supporters in the heat of the night following the victory of the pros, there was an effusion of triumph over political adversity that defined the debate: it was all about how the noble institution of marriage made democracy speak by bridging political and ideological trenches. Many factors made this decision the perfect fairy tale on the eve of Gay Pride NYC Weekend: it was the first time that such law was passed in a senate controlled by a Republican majority, four Republican senators went against the GOP line and said yes to a new altered and revised proposition in favor of the "Marriage Equality Act relating to ability of individuals to marry," and at last an Italian Roman Catholic governor (Cuomo), who was not married but who had been cohabiting with the same woman for ten years at the time, had made it his personal political crusade to succeed in passing the act. In light of such scenario, it should come to no surprise that the day following this spectacular victory, it was not the so-called gay community that was the true heroes of the battle and made the headlines, but the very selected and powerful group of Republicans and conservative Democrats that allegedly mastered an effective lobby campaign to make the moment history. Before a horde of media representatives, an effusive Cuomo depicted the success story of the vote as, and I quote him, the deeds of "people of courage," namely the bi-partisan same-sex coalition and the four republican senators who, after a transformative personal journey, reverted their previous vote and opted to side with their fellow democrats (minus one—Ruben Diaz, Bronx) to allow the bill to pass. Left to vote according to his or her conscience as instructed by the majority leader Dean G. Skelos (R), democrats Carl Kruger (Brooklyn), Shirley L. Huntley (Queens), and Joseph P. Addabbo Jr. (Queens) and four members of the Republicans majority who voted yes: James S. Alesi (Rochester), Mark J. Grisanti (Buffalo), Stephen M. Saland (Hudson Valley) and Roy J. McDonald (Albany) casted their historical yes vote. See Michael Barbaro, *Behind Gay Marriage, an Unlikely Mix of Forces*, N.Y. TIMES, 1, 19. (June 26, 2011).

65. Launched in 2011, the non-profit organization defines itself as "an online organizing network that empowers more than 700,000 grassroots and netroots activists to push for progressive change and full equality in California and across the country." COURAGE CAMPAIGN, <https://www.couragecampaign.org/> (last visited April 16, 2016). Through internet and email campaigns (including YouTube), petitions and various pre-packaged training sessions, the Courage campaign is a true lobby group and as such is holding politicians accountable to progressive values, working to bring fundamental reform to California's broken government, and training and organizing activists to change their communities. See *id.*

came to believe in themselves and who they were, and slowly made an entire country realize that love is love.⁶⁶

As exemplified in Obama's remarks, in this postimmunity scene, a courageous relation to sexuality becomes the mode of defining the character and identity of the nation. Rather than being a mechanism for immunity, sexuality (as in, the reproduction of life and the management of death) is still very much the foundation of how the nation prevails as a sovereign body.

Courage has quasilegal force,⁶⁷ for it can only be witnessed and recognized when applied and enforced. As such, its attraction resides in its ability to provide a form of redemptive public action that escapes definite political belonging. This is why, for instance, courage could be seen as a mode of engaging with the most recent legal and political demands, even if it means assuming a tacit form of amnesia vis à vis a repressive past. For politicians, courage might mean having a change of heart in adversity (Republican governors who support marriage equality); for a soldier, it might mean obeying an authority higher than the army (Pvt. Manning);⁶⁸ for an academic, it might mean passing on

66. President Barack Obama, Remarks by the President on the Supreme Court Decision on Marriage Equality (June 26, 2015) (transcript available at <https://www.whitehouse.gov/the-press-office/2015/06/26/remarks-president-supreme-court-decision-marriage-equality>).

67. See generally Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority"*, 11 CARDOZO L. REV. 920 (Mary Quaintance trans., 1989-1990) (discussing justice and the deconstruction of the law, including the concept of enforceability). See especially his discussion of *appliquer la loi* as enforcing the law. *Id.* at 925. He explains: "The word 'enforceability' reminds us that there is no such thing as law (*droit*) that doesn't imply in itself, a priori, in the analytic structure of its concept, the possibility of being 'enforced,' applied by force." *Id.* Derrida then pursues the ramifications of enforceability: There are, to be sure, laws that are not enforced, but there is no law without enforceability, and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative, and so forth. *Id.* at 925, 927.

68. In 2013, a military judge sentenced then-Pfc. then-Bradley Manning to thirty-five years in prison for providing more than 700,000 government files to Wikileaks on U.S. diplomatic and military activities around the globe. Manning's defense was straightforward: he did not betray the nation. His decision to leak information was guided by the will to protect the American people from wrongdoing. Manning argues that he was everything but self-serving. On the contrary, he sacrificed his career for the sake of protecting the nation. At the heart of his defense strategy was the argument that, not wanting to damage the military, Manning nonetheless shared top-secret information in the hope that the leaks would eventually protect the nation's highest interests. See Manning's full statement at Bradley Manning, *Bradley Manning's Statement Taking Responsibility for Releasing Documents to WikiLeaks*, CHELSEAMANNING.ORG, <http://www.privatemanning.org/news/bradley-mannings-statement-taking-responsibility->

an award in honor of those who appear to be the real shakers behind social change (Judith Butler).⁶⁹ Courage reorients the rhetoric of LGBT rights in public spaces as it depletes queer movements of their queerness and indeed dissipates the oppositional traction of queerness. The discourse of courage as it emerges in a postimmunity moment troubles the relationship of queerness to the human by making queers “human.”

In this sense, courage gives shape to the complex and vexed articulation of queerness to the community—domestic and global. On the domestic front, what the *Obergefell* ruling highlights is that the right to marry is guided not only by liberal values such as “dignity” or “equality” but also by a belief that the petitioners should be more fully

for-releasing-documents-to-wikileaks. Manning’s desire to be seen as serving the nation reached a new plateau when she received the 2013 Sean McBride Peace Award. In her absence, Ann Wright (a retired colonel in the army) accepted the award in her behalf. See Press Release, IBS Awards MacBride Peace Prize 2013 to U.S. Whistleblower Bradley Manning, International Peace Bureau (July 19, 2013), available at http://www.ipb.org/web/index.php?mostra=news&menu=News&id_nom=IPB+awards+MacBride+Peace+Prize+2013+to+US+whistleblower+Bradley+Manning. A few weeks later, Manning (now known publicly as Chelsea after her coming out in August 2013, the day after she was sentenced) issued a statement to The Guardian to “correct” the perception that she was a pacifist, as suggested by Wright in her acceptance speech. As Manning stated: “I don’t consider myself a ‘pacifist,’ ‘anti-war,’ or (especially) a ‘conscientious objector . . .’” See Chelsea Manning, Statement for Public Release: Concerns Regarding 2013 Sean McBride Peace Award, THE GUARDIAN (Oct. 9, 2013), <http://www.theguardian.com/world/interactive/2013/oct/09/chelsea-manning-statement-full-document>.

69. See Judith Butler, *I Must Distance Myself from This Complicity with Racism*, (June 19, 2010) (transcript available at <http://criticaltheorylibrary.blogspot.com/2011/06/judith-butler-i-must-distance-myself.html>). On June 19, 2010, Butler was to be awarded the Civil Courage Prize by Berlin CSD, the group responsible for Berlin’s annual pride parade. See *id.* Having at first agreed to accept the communal—that is, civil—recognition, Butler decided on June 19 to decline it. See *id.* In a laconic and controversial speech at the award ceremony, Butler justified her refusal of this special recognition on the moral and political principle that she—most of all—ought to distance herself from the racist queer politics of the CSD. See *id.* In a dramatic scene, Butler, speaking in German, said, “I must distance myself from this complicity with racism, including anti-Muslim racism.” *Id.* Butler turned the moment of acceptance into one of refusal, distancing, and even outright denunciation, castigating the homonationalist culture that had become integral to the CSD. Before a stunned crowd, Butler thundered,

We all have noticed that gay, bisexual, lesbian, trans and queer people can be instrumentalized by those who want to wage wars, i.e. cultural wars against migrants by means of forced islamophobia and military wars against Iraq and Afghanistan. In these times and by these means, we are recruited for nationalism and militarism. Currently, many European governments claim that our gay, lesbian, queer rights must be protected and we are made to believe that the new hatred of immigrants is necessary to protect us. Therefore we must say no to such a deal. To be able to say *no* under these circumstances is what I call courage.

Id. (emphasis added).

incorporated for their own protection as well as that of the nation. Writing for the majority, Justice Kennedy invokes the courage necessary to open the great institution of marriage to gays and lesbians.⁷⁰ In turn, we are all familiar with the queer critiques of marriage that focus on the fact that gender, race, and class injustice and inequality are endemic to the institution. How can we reconcile the principled political arguments that have been made by queer theorists with the practical, pragmatic question of how queers might access protections that they quite clearly need in their daily lives? Can a model of queer theory still oriented around questions of norms and normativity help us understand the ramifications of marriage equality?

The national materialization of the queer subject has led to the reimagination of what is at stake in the instrumentalization of the global gay. As with the rhetoric of courage in domestic U.S. politics, the global gay destabilizes the status of queers as outsiders within. In the current context, not only is it the case that queers can no longer claim the exclusionary inclusion as a mode of legal legibility, but also the global gay dissipates the oppositional traction of queerness by making queer a feature of the revamped liberal order. Queers used to be outlaws; under the postimmunitary logic they are so no longer. The redefinition of queer subjects as subjects affects domestic politics and legal battles, and, at the same time, gives traction to the ways that international and cultural exchanges are negotiated and conducted.

In the face of this profound transformation of the status of queer subjects, a question emerges for queer theorists: what do queer theorists do when the state recognizes queers as human before queers do? What analytically and politically generative questions could be opened up by a theoretical shift toward thinking about queerness and ~~queerness~~ in terms of the human and the law, through questions about bodily integrity, privacy, health, citizenship—about social dynamics that transit between legal and political immunity and legal and political postimmunity?

70. See generally *Obergefell*, 135 S. Ct. 2584.

