1997

Radical Plural Democracy and the Internet

Margaret Chon

RADICAL PLURAL DEMOCRACY AND THE INTERNET

MARGARET CHON*

> Democratic antagonism refers to resistance to subordination and inequality; democratic struggle is directed toward a wide democratization of social life. I am hinting here at the possibility that democratic antagonism can be articulated into different kinds of discourse, even into right-wing discourse, because antagonisms are polysemic. There is no one paradigmatic form in which resistance against domination is expressed.
>
> *Chantal Mouffe*[1]

The Internet is often celebrated as a new social space in which significant social attributes such as sex or race are muted or even non-existent. The lack of fixed social identities or political/juridical borders is often cited as evidence of a social freedom that is greater than that existing in "real" space. Yet, the economy of international dating, sexual, and marriage services on the Internet, for example, is undeniably linked to existing inequities by sex, race, and other material markers.[2]

Facilitated tremendously by networked digital technologies, these services give lie to the truism that "on the Internet, no one knows you're a dog."[3] By examining the consequences these particular social practices on the Internet have in physical space, this Essay attempts to re-pivot the democratic discourse of the Internet so as to include Chantal Mouffe's vision of a radical and plural democracy: one that accounts for missing material markers, one that encourages the proliferation of different democratic struggles, one that acknowledges that "[a]ll inequities existing in our society are now at issue."[4]

This Essay begins by relating a couple of "war stories" from the classroom. Typically, law professors bring "war stories" of law practice to rather than from the classroom, in order to demonstrate that they have had practical legal experience and to boost their credibility with their own students. By contrast, these war stories are of discursive reformations within

---

* Associate Professor, Seattle University School of Law. Thanks to Robert S. Chang, whose intellectual restlessness has often catalyzed mine, and to Khoa Nguyen, my research assistant.

1. Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy, in* MARXISM AND THE INTERPRETATION OF CULTURE 96 (Cary Nelson & Lawrence Grossberg eds., 1988).

2. Isla Godlovitch, *How Much is that Girl in the window?*, CYBERIA MAGAZINE <http://magazine.cyberiacafe.net/issue-1.1/features/features2.html> (on file with author); Jeff Liu, *Cyber-order Brides: Mail-order Services Making Their Way onto the Net,* AAJA VOICES, Aug. 17, 1996 <http://www.aaja.org/Voices96/sat/bride.html> (on file with author); Liz Hunt, *Brides and Prostitutes Sold on the Internet,* THE INDEPENDENT, July 3, 1996 (1996 WL 9936922); Betsy McKay, *E-Mail-Order Brides: Russian Ladies Seek Marriage by Modem,* WALL ST. J., Apr. 3, 1996 (1996 WL-WSJE 3339146).

3. This quotation is attributed to a cartoon published in The New Yorker.

4. Mouffe, *supra* note 1, at 100.

the classroom, in order to demonstrate how difficult it can be for professors and students alike to articulate the contested nature of what seem already to be "given" and "natural" features of the Internet.

Just a year ago, I attempted to teach a seminar class on gender and cyberspace. I had been teaching the group of eleven men and one woman for a semester and a half. The class chemistry had been excellent as I covered topics such as privacy, information access, and copyright on the Internet. This particular class erupted almost immediately into crisis. One male student, who happened to be a member of a racial minority group, insisted that there were always problems between men and women and that there always will be problems between men and women, so why study this subject? I calmly replied there have always been problems with territorial jurisdiction and there always will be problems with territorial jurisdiction, so why study it? The class was one of the most fractious of my entire teaching career, and we were all shaken by the raw emotion of it.

Another story unfolded this year. In my Internet Law class, we had been discussing the federal criminal prosecution of Jake Baker, the University of Michigan student who had sent E-mail messages of sexual fantasies involving the rape, torture, and murder of young girls over the Internet.[5] This time, knowing that my feminist instincts would make me unsympathetic to Baker, I went out of my way to create space for factual and legal arguments that would justify the district court's dismissal of the indictment for making interstate threats. The legal arguments, predictably enough, lay in the realm of freedom of expression, the factual arguments in the court's construction of the recipient's reaction to the alleged threats. In the next class, however, I began asking whether the utopian view of the Internet as a decentralized communication medium with revolutionary democratic potential is challenged by the snuff story posted by Baker to an Internet usenet newsgroup (a story that featured one of his classmates as the object-victim and triggered but did not form the basis for the federal prosecution).

After a short silence, a female student stated that she had concluded after the last class discussion that the government should never have brought the case against Baker. But on her way home from school that same day, her car had broken down. She had called the Automobile Association of America (AAA). A few minutes later, a tow truck driver came along, and said that she needed to go with him to the home office. She had felt that his request was out of the ordinary, and refused to go with him. As they were debating with each other, a second tow truck driver came by. The first driver got very nervous and drove off. It turns out that AAA was posting directions to cars on the Internet, and that the first truck driver was not associated with the AAA. He had been monitoring the Internet site and preying on women whose cars had broken down. At least two rapes were

5. U.S. v. Baker, 890 F. Supp. 1375 (E.D. Mi. 1995), *aff'd*, U.S. v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997).

allegedly attributable to him. My student stated that after this had happened to her, she reacted very differently to the question of whether Baker's stories were harmless. Afterwards, one of my male students, one who could be a student of color but who eschews any specific racial identity, came to my office and expressed being perplexed in his reactions to the class. He dislikes regulation, but his classmate's story had made him rethink the need for legal norms governing the Internet.

These classroom dynamics reflect Chantal Mouffe's description of the potential (but not the inevitability) of democratic antagonisms to lead to democratic struggles, as articulated in the opening epigraph.[6] We usually accurately recognize the impulse toward greater freedom. However, democratic impulses can be expressed and deployed in various, not necessarily freeing, ways.

One prevailing discourse of the Internet centers and celebrates the fluidity of social identity. This is a type of resistance to subordination and inequality—a yearning toward greater autonomy if not power—a type of democratic antagonism toward the stickiness of actual social relations. (Indeed, the person to whom Jake Baker addressed his sexual fantasies was never actually found, and his actual gender, race or class was assumed rather than known by the federal judge who ruled on whether Baker's E-mail messages would have been perceived as threatening to the recipient.) However, this impulse toward freedom may or may not be transformed into democratic—or what is referred to here as anti-subordination—struggles. Democratic struggles differ from democratic antagonisms in that the former represents actual or incipient "new social movements": movements that are "the extensions of the democratic revolution to new forms of subordination."[7] The seductiveness of the Internet to many (its fluidity, its decentralizing tendency, its ability to rupture assumptions we make about others) appeals to those vibrating around very different points of the ideological spectrum. For example, the yearning toward freedom can be stitched within an ideology that glorifies individualist transactions in apparently unregulated markets—what I call the liber-contractarian approach to legal regulation. My argument here is directed against this ideological focus by many of the emerging legal theorists of cyberspace:[8] this approach completely ignores the

6. Mouffe, *supra* note 1.

7. *Id.*

8. *See generally* David R. Johnson & David Post, *Law and Borders-The Rise of Law in Cyberspace,* 48 STAN. L. REV. 1367 (1996); David Post, *Anarchy and State on the Internet: An Essay on law-Making in Cyberspace,* 1995 J. ONLINE L. art. 3 <http://www.wm.edu-/law/publications/jol>; Robert L. Dunne, *Deterring Unauthorized Access to Computers: Controlling Behavior in Cyberspace through a Contract Law Paradigm,* 35 JURIMETRICS J. 1 (1994); I. Trotter Hardy, *The Proper Legal Regime for Cyberspace,* 55 U. PITT. L. REV. 993 (1994); *but see* Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship,* 48 STAN. L. REV. 1293 (1996); Julie Cohen, *A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace,* 28 CONN. L. REV. 981 (1996); Dan L. Burk, *Federalism in Cyberspace,* 28 CONN. L. REV. 1095 (1996); Lawrence Lessig, *The Zones of Cyberspace,* 48 STAN. L. REV. 1403 (1996); Margaret Jane Radin,

social conditions of vast groups of people in the world whose lives are affected directly or indirectly by digital network technologies. And that is partly because these theorists are insufficiently attentive to the difference that Mouffe articulates between democratic antagonisms and democratic struggles. Their undue focus on freedom is at the expense of the different democratic value of equality.

Significantly, Mouffe acknowledges those state interventions either on behalf of or against the interests of capital, "because of their bureaucratic character, may produce new forms of subordination."[9] New social movements that form the basis of her radical plural democracy may also include movements that are catalyzed initially by an antagonism against interventions of state bureaucracy. Mouffe's acknowledgment is important because perhaps the dominant democratic movements on the Internet so far are libertarian or even anarchic in nature. Internet libertarians, like other libertarians, defend the sphere of individual liberty against incursions by the state. On the "infobahn," this defense of democracy occurs most vividly with respect to the First Amendment's free speech guarantee. Expressive activities fall into this endangered realm range from speech that educates the public about prison rape[10] to fantasies about raping and killing young women[11] to computer code that represents textually the process of encryption.[12] To the extent that one does not agree with or want exposure to these types of expressive activities, one's main recourse is to "opt out" of the discourse. Cyberlibertarians thus depend quite heavily, if implicitly, on the contractual legal paradigm, in which parties can choose to deal or not to deal with each other in expression (or information) markets.[13] Many of the "new" legal paradigms being bandied about for the Internet are in fact reformulations of familiar liber-contractarian models.

The quite powerful ideology of liber-contractarianism ignores at least two salient facts, the recognition of which can create what Mouffe calls "antagonisms."[14] The first fact is that unregulated markets do not exist *a*

Property Evolving in Cyberspace, 15 J. L. COMM. 509 (1996).

9. Mouffe, *supra* note 1, at 93.

10. *See* ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996), juris. noted, 117 S. Ct. 554 (1996).

11. U.S. v. Baker, 890 F. Supp. 1375 (E.D. Mi. 1995), *aff'd*, U.S. v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997).

12. Bernstein v. U.S., 945 F. Supp. 1279 (N.D. Cal. 1996).

13. Jesse Drew, *Who Owns the Internet? An Investigation into the Privatization and Corporate Control of the National Information Infrastructure,* 53 GUILD PRAC. 189, 199-200 (1996) ("The commercial laissez-faire model stresses the concept of 'consumer sovereignty,' a position put forward by many of today's media industries. . . [, but a]ccording to theorist Raymond Williams, media conglomerates rely on well known narrative and pleasure devices that work by incorporation rather than imposition.").

14. Mouffe, *supra* note 1, at 94 ("An antagonism can emerge when a collective subject-of course, here I am interested in political antagonism at the level of the collective subject-that has been constructed in a specific way, to certain existing discourses, finds its subjectivity negated by other discourses or practices.").

priori of some set of initial rules, so that even a "pristine" market free of "corrupting" legal rules is constructed by legal (as well as social, economic, cultural, etc.) default paradigms. Technology itself is a type of social structure that contributes to the delimitation of legal choices.[15] The second, a corollary of the first, is that some are more free to contract than others, just as (despite our equality principles) some are still much more equal than others. That is, even digital networks are not gridded homogeneously with freedom or equality, but rather, in Keith Aoki's words, are "notable for their lumpiness, their unevenness."[16] Globalization in areas other than digital technology does not obviate borders; "Instead, religious, familial, hetero-sexist and racial borders are called forth to renegotiate globalized spaces."[17] Both facts are illustrated by my female student's desire to participate as an equal player in the proliferation of Internet expression, a desire which is then sharply problematized for her and her sympathetic classmates by the material consequences of being a female object of male aggression. These cultural contradictions thus have the potential to interrupt the liber-contractarian ideology's preference for freedom over equality.

Sexual, dating, and marriage services over the Internet interrupt the ideological power of the liber-contractarians with almost embarrassing bluntness. Even the most casual observers frame their initial reactions in post-colonial vocabulary. Lesley Stahl on Sixty Minutes recently stated,

> The reason [for these services] is not only the irresistible charm of American men, it's that marriage is an escape route from poverty. Mired in the Third World, the Philippines relies heavily on exports to the First World, and one of its most valuable exports is its women. Each year close to a half a million Filipinas go to foreign countries, . . . And they send millions of dollars a year back home. There's an unwritten law that daughters sacrifice for the rest of the family.[18]

While another observer states bluntly that "only losers" find women this way,[19] men who seek compliant, less powerful women within a racialized other are arguably following a simple logic of American masculinity.[20] Each of these observations exposes the poverty of the cyberlibertarian assumption that meaningful choices guide these transactions.

---

15. RICHARD SCLOVE, DEMOCRACY AND TECHNOLOGY 15 (1995).

16. Aoki, *supra* note 8, at 1305; *see generally* JAMES BOYLE, SHAMANS, SOFTWARE AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY (1996); Rosemary Coombe, *Left Out on the Information Highway,* 75 OR. L. REV. 237 (Spring 1996).

17. Zillah Eisenstein, *Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatization of the Globe,* 4 IND. J. GLOB. L. ST. (1997) <www.law.indiana.edu/glsj/vol4/no1-/eispgp.html>.

18. *Sixty Minutes: Here Come the Brides* (CBS, Inc. television broadcast, Jan. 12, 1997).

19. Basu Rekha, *Mail-order brides exploited,* THE DES MOINES REGISTER, June 3, 1996 (1996 WL 6241009).

20. I am indebted to Lisa Ikemoto for this observation, made in the context of her research on personal ads.

Within this post-colonial technological framework, law operates in multiple ways. For example, these services can be rationalized quite respectably within the liber-contractarian construct that dominates Internet culture. Operators and users of these services claim that the women who marry this way are making rational choices, given their options. They also claim that men who marry this way are making a rational choice to marry someone with more traditional feminine values, albeit outside of their own cultural "tradition." The contractual exchange or consideration is American citizenship and economic privilege for the woman; for the man, it is access to quintessentially feminized domestic and sexual services. This transaction, like Alfred Hitchcock's movie *Vertigo*, interrogates rather than affirms the very idea of romantic love. Instead of the erotic bonding signified by romance, both parties to the transaction desire greater autonomy from economic, social, and cultural strictures. In these transactions, the man wants to retain certain masculinized prerogatives that might be threatened in domestic culture by the gains of the feminist movement. From a more sympathetic perspective that considers men to be as trapped in patriarchy as women, perhaps these men do not want to be forced to assume certain masculine qualities that signal desirability or eligibility in a purely domestic marriage market.[21] The women in these transactions want more social and economic privilege (or perhaps, these women do not want to be forced to assume certain feminine traits that signals eligibility in the domestic marriage market of their patriarchal cultures of origin). Thus, the liber-contractarian vocabulary provides arguments that this transaction is a type of resistance to subordination and inequality.

Arguments in support of these transactions can even be framed in a way that makes the man seem to be taken advantage of—he is viewed primarily for his ability to be a conduit for immigration of his wife's relatives, or for his ability to be able to send payments back to her home, rather than for his sex appeal. As the undercover male journalist in the same *Sixty Minutes* segment stated on the fifth day of his bride-shopping tour in the Philippines, "And it seemed like it was a two-way street. The men were there for something and the women were there for something. One party gets something, and the other party gets something in return."[22] There is a certain wistfulness about the existence of these transactions at all, even on the part of their supporters. This may stem from Mouffe's observation that some democratic antagonism is in part a response to the pervasive commercialization and commodification of all aspects of social life, including love.[23] Under this view, the woman's limited expression of agency is at

21. *Cf.* Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1054-1072 (1996) (discussing how gender roles disadvantage men as well as women).

22. *Sixty Minutes*, *supra* note 18.

23. Mouffe, *supra* note 1, at 92.

odds with the assumption underlying romantic love that money ought not to matter.[24]

The liber-contractarian ideology glorifies not only individual choice but also individual privacy. Thus it also depends in large part on a preexisting legal framework that firmly separates the realm of private decisionmaking from public (or governmental) intrusion. Other ideological perspectives might also locate a privacy interest that attaches to these transactions. For example, privacy of individuals and/or family relations is a basis for arguing that women who want to leave these relationships before the two-year conditional status time frame has passed should not be interrogated by the INS about the nature of their relationships.[25] But most critical ideological perspectives would not automatically assume that individual privacy is largely divorced from legal rules; rather they would assume that privacy is constructed by legal rules that liber-contractarians supposedly eschew.

Indeed, the obvious power imbalances between the marriage partners almost demand a standard feminist deconstruction of the public/private distinction.[26] Under this view, the law's refusal to intervene affirmatively in private acts of oppression is pathological. What the male journalist does not analyze in his "freedom of contract" sequence is that the ratio of women to men in the room is 11:1. How is it that these women, including educated, middle-class women, feel that it is a rational choice to marry outside of their culture, often to men whom they barely know? Why would women leave their homes and families, to live without even the most basic social support networks, to be utterly dependent on their sponsoring spouse, to fulfill what might be rigidly and stereotypically feminized or sexualized expectations on the part of that spouse, or to be forced into sex before marriage?[27] How could they consent to be picked out of a digital catalogue, sometimes without demanding or receiving in return significant information about their prospective spouse? A sense of adventure surely cannot be the sole explanation.

Given what many American feminists suspect of the probable power imbalance in such transactions, an anti-subordination response would be to prohibit legally these acts. What kind of man marries like this? A perpetrator—and the law should reflect that. What kind of woman is involved in

---

24. *Cf.* Gary Clark, Things to be Careful About in Looking for a Foreign Wife (1995) <http://www.upbeat.com/wtwpubs/caveats.htm> (on file with author); Greg Myre, *U.S. Bachelors Take their Hopes, Dreams to Russia,* THE SEATTLE TIMES, April 27, 1997, at A18; *cf.* John Winzenburg, *The Geopolitics of Desire: What's the real cost of free sex in Asia?,* UTNE ONLINE <www.utne.com/lens/cs/20csfreesex.html> (on file with author).

25. Eddie Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response,* 28 U. MICH. J. L. REF. 197, 235-37 (1994); Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacy of Coverture, in* CRITICAL RACE FEMINISM: A READER 385 (Adrien K. Wing ed., 1996).

26. Susan H. Williams, *Globalization, Privatization and a Feminist Public,* 4 IND. J. GLOB. L. ST. (1997) (www.law.indiana.edu/glsj/vol4/no1/wilpgp.html).

27. Meng, *supra* note 25, at 209; *cf.* Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzy Wong, in* CRITICAL RACE FEMINISM: A READER 203, 204-05 (Adrien K. Wing ed., 1996).

these transactions? A victim—and the law should reflect that. A feminist legal critique would then focus on the lack of intervention of the law in these "private" practices of subordination. Indeed, proposals have been made for additional legal regulation, for example through international law categories that articulate these practices as analogous to slavery or other human rights violations.[28] Here, the yearning for autonomy or freedom then turns into what might be termed anti-subordination struggle. The exercise of male prerogative, while an expression of a desire for freedom, is not part of this democratic struggle, for instead of striving to reduce all inequalities, it tends to "widen an already deep social split between the privileged and non-privileged."[29]

Yet feminist critiques are not the only possible anti-subordination responses. A racial critique of these practices, while overlapping with the feminist critique in its focus on the equity imbalance, might focus on a different set of concerns. Instead of a primary focus on "private" acts of oppression of men against women, the subordination of concern is of White over non-White. Framed in this way, a racial critique of the law might begin with United States immigration and naturalization laws, which have long operated to inscribe in a very public manner a racialized foreignness upon Asian women, and which currently, through the Immigration Marriage Fraud Amendments of 1988 (IMFA), continues that legally imposed racialization. Thus, the problem with the law is not its apparent lack of intervention in the market or its structuring of the realm of the private, but rather its meta-presence:

> the requirements for converting from conditional to permanent resident status indicate that consummation of marriage, having children, using birth control, or performing domestic services (evidence of doing housework) can be sufficient to show a viable marriage. But these standards actually prescribe what immigrant women must do to fulfill their two-year warranty: offer sexual services . . . offer domestic labor . . . , or void the warranty by being abused. In other words, the viability standard used by the INS not only create obstacles for mail-order brides to leave their consumer-husbands, but also tells them that they may be deported unless they give their consumer-husbands their money's worth.[30]

From this perspective, the law polices the boundaries of race by making the non-White woman even more vulnerable to the racialized expectations of their spouses. They are required by law to be even more compliant, more feminized, and ultimately more expendable than a White partner from the domestic marriage market might be.

---

28. *See* Norma V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L. L.J. 163 (1994).

29. Mouffe, *supra* note 1, at 100.

30. Meng, *supra* note 25, at 224-25.

The feminist and racial perspectives of law can be mined for further insights, but the main goal here is to try (if possible) to move toward constructing an equivalence between the liber-contractarian approach to freedom (a dominant type of democratic antagonism in the nineties) and these other critical approaches (democratic or anti-subordination struggles). What do we make of the concept of "choice" that infuses the liber-contractarian model, which has such a powerful hold on our collective imagination, and yet that is challenged so clearly by the undeniable power differentials operating within international Internet marriage markets? Is it possible to link the principle of freedom in the expressive domain to the other democratic project of extending the equality principle to all possible forms of social relations? Or are these different "freedom" projects incommensurable?

Not all choosers are equal, illustrated simplistically by the fact that not all choosers are citizens of the same political states. The transition from one political zone to another through these brokering services is a border-crossing that produces a crisis in meaning about the supposedly borderless environment created by the Internet. (My own sense is that such border-crossings would become more of a crisis if they typically involved White American women being forced by economic circumstances to marry non-White non-American men.) Freedom of choice only makes sense if the context for exercising choice is relatively the same for the choosing players, or if there is commensurability among different contexts. Both Keith Aoki and Rosemary Coombe have explored how actual if invisible borders constrain some peoples' democratic choices vis-a-vis others'.[31] The Internet slogans of identity-shifting and borderlessness only obscure the identity-defined and border-constrained choices that take place (just as racial ideology of color blindness can obscure the race-defined choices that take place). Thus the rhetoric of borderlessness disables us from examining the stages at which meaningful choice may become possible.

This leads us to another point about choice: Is there a point at which meaningful choice does become possible? Perhaps citizenship—a key term of art in democratic discourse—is an imperfect proxy for a kind of equality of bargaining power that makes us more comfortable with freedom of contract. As Mouffe declares, "[d]emocratic discourse extends its field of influence from a starting point, the equality of citizens in a political democracy, to socialism, which extends equality to the level of the economy and then into other social relations, such as sexual, racial, generational, and regional."[32] The crisis provoked by the international marriage markets is precisely that "citizenship" is not the starting point, and thus democratic discourse begins

31. *See generally* Aoki, *supra* note 8; Rosemary Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L. L & POL'Y 791, 798 (1995); *see also* Eisenstein, *supra* note 17.

32. Mouffe, *supra* note 1, at 96.

at a point that is so far from our national community that little equality can be presumed.[33]

If there is an extension of the concept of "choice" to players outside national or cultural borders, but within the "borders" of the Internet, then how would it be deployed? Perhaps extraterritorial expansion of contractual first principles will lead eventually to greater demands for equality within those other communities: an exporting of American democratic freedoms. But of course, that is an extreme universalist and optimistic view. Freedom of contract makes no sense in local communities in which there is literally no economic choice but to marry up and out. "People struggle for equality not because of some ontological postulate but because they have been constructed as subjects in a democratic tradition that puts those values at the center of social life."[34] Within the U.S., "the location of Asian women's work—at the intersection of processes of immigration, racialization, labor exploitation, and patriarchal gender relations—marks that work as irreducible to the concept of 'abstract labor,' and distinguishes the subjectivity it constitutes as unassimilable to an abstract political identity . . . ."[35] In these women's countries of origin, moral and political values (not to mention social, cultural and religious contexts) are constructed very differently from western liberal political frameworks, so that, for example, individual autonomy may be less meaningful than familial security as a first principle.[36] Moreover, if women in the Philippines or other Asian countries are focussed on "bread" issues, chances are quite good that they and the people around them are not putting their need for autonomy or equality at the top of their priority lists. The desperation of these women is attributable to colonialist and neo-colonialist structures that systematically overfeed the developed nations at the expense of the lesser developed. Yet, in our critique of their "choice," we ought not to deny the agency (however limited) that these women may have and exercise, even in the face of daunting structural inequities. What post-colonial theory can add to colonialism theories, according to Eric Yamamoto, is "a limited or constrained form of agency [in which t]he subordinated can 'speak' for themselves, and thereby at least partially define themselves in relation to dominant powers and other

33. Of course, the boundaries of and privileges accruing to citizenship are contested, but that debate is too complex to address here.

34. Mouffe, *supra* note 1, at 95.

35. Lisa Lowe, *Work, Immigration, Gender: Asian 'American' Women in* IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 158 (1996).

36. Saskia Sassen, *Toward a Feminist Analytics of the Global Economy*, 4 IND. J. GLOB. L. ST. (1997) <www.law.indiana.edu/glsj/vol4/no1/saspgp.html>; Gracia Clark, *Implications of Global Polarization for Feminist Work*, 4 IND. J. GLOB. L. ST. (1997) (www.law.indiana.-edu/glsj/vol4/no1/clapgp.html); Eisenstein, *supra* note 17; Williams, *supra* note 26.

groups, even if only in fractured ways."[37] A post-colonial gloss on "choice" would be to recognize that shutting these markets down completely may be a paternalistic and imperialistic response to the problem, not to mention an improbable one given how much cultural leeway we give to the private realm of choice of a marriage partner.

What might emerge as a possible link in the chain of democratic equivalences here? Zones of choice could be defined more explicitly by law. Rather than treating the Internet as borderless and ergo lawless, lawmakers (whether through state intervention, multistate agreements, or the creation of private civil remedies) could begin to construct boundaries that encompass "free choice" zones—ones that redress, albeit imperfectly, the lack of equality of bargaining power between the parties. The goal would be to equalize the playing field so that women entering the U.S. can claim simultaneously freedom and equality. Legal rules that constrain choice are not per se anti-democratic, and in some cases are necessary in order to extend equality to people other than economically privileged first world White males. "Choice" might be meaningful for women of the third world under certain circumstances. Indeed, in some cultures, brokered marriages are still common especially among the educated, middle-class.[38]

I will end as I have started: with a "war story." A few years ago, I was confronted by a young man who had a computer science undergraduate degree from Princeton, and who was taking my Computers and the Law class because he was convinced that the Robert Morris conviction had been a great injustice. Morris was the hacker at Cornell University who had introduced a "worm" into the Internet, purportedly to demonstrate the insecure nature of defense department computer networks, and resulting in massive shutdowns of Internet-linked computers. He was convicted under a federal statute prohibiting unauthorized access to federal government computers.[39] I responded to this student's sense of injustice with surprise, because at that point in my thinking about the Internet, I had not yet deconstructed the "bad

37. Eric Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice,* 3 UCLA ASIAN PAC. AM. L.J. 33, 58 (1995); *cf.* Satoko Watenabe, Women's Struggles and Female Migration Into Japan in the 1980s-1990s, dissertation proposal <http://www.eco.utexas.edu/Homepages/faculty/Cleaver/satprop.html>. ("The overall objective of this dissertation is to investigate the degree to which those female immigrant workers are not merely passive victims of unequal development but are autonomous subjects who use international mobility to improve their lives . . . .").

38. *See, e.g.,* Sheryl WuDunn, *Journal: In Korea, Dating Services Take Over from Arranged Marriages,* N.Y. TIMES, Apr. 17, 1997; *see also* <http://www.ozemail.com.au-/~indoaust/> (website for Indians living overseas in Australia that accepts matrimonial ads). In these, the expectations of the parties are not shaped by extreme economic differentials or racialized notions of the "other"-although they might be characterized by specific and perhaps patriarchal gender expectations. These cultural practices are not abnormal or dysfunctional, except perhaps by reference to other cultures' norms. Some of these traditional brokering services are taking place over the Internet, and might provide a comparative frame of reference for drafting legal rules defining the boundaries of these transactions.

39. U.S. v. Morris, 928 F.2d 504 (2d Cir. 1991) (affirming conviction under 18 U.S.C. § 1030(a)(5)), *cert. denied,* 502 U.S. 817 (1991).

boy" image of the computer hacker. It had not yet occurred to me that hackers had been culturally constructed as "deviants" in an unjust and unfair way.[40] One interesting thing about this exchange is that my student was in every other way apparently quite conservative, down to his closely cropped hair, and my identity is very much grounded in being part of the counterculture.

His sense of injustice about Morris was as profound as my sense of injustice about other Asian women who do not have the choices I have. The project of constructing a chain of democratic equivalences—of constructing solidarity—between his sense of injustice and mine forms one strand of Mouffe's radical plural democracy.

40. Andrew Ross, *Hacking Away at Counterculture, in* TECHNOCULTURE 107 (Constance Penley and Andrew Ross eds., 1991).