A White Wedding? The Racial Politics of Same-Sex Marriage in Canada

by

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Abstract

In *A White Wedding? The Racial Politics of Same-Sex Marriage*, I examine the inter-locking relations of power that constitute the lesbian/gay subject recognized by the Canadian nation-state as deserving of access to civil marriage. Through analysis of legal documents, Parliamentary and Senate debates, and interviews with lawyers, I argue that this lesbian/gay subject achieves intelligibility in the law by trading in on and shoring up the terms of racialized neo-liberal citizenship. I also argue that the victory of same-sex marriage is implicated in reproducing and securing a racialized Canadian national identity as well as a racialized civilizational logic, where “gay rights” are the newest manifestation of the modernity of the “West” in a post-9/11 historical context.

By centring a critical race/queer conceptual framework, this research project follows the discursive practices of respectability, freedom and civility that circulate both widely and deeply in this legal struggle. I contend that in order to successfully shed its historical markers of degeneracy, the lesbian/gay subject must be constituted not as a sexed citizen but rather as a neoliberal citizen, one who is intimately tied to notions of privacy, property, autonomy and freedom of choice, and hence one who is racialized as white. The critical race/queer analytic also attends to the temporal and spatial registers framing this legal struggle that re-install various troubling racial hierarchies in a “gay rights” project often lauded as progressive.

This analysis of the discursive terrain of same-sex marriage reveals the race
shadow that lies at the heart of this equality-rights struggle. The conclusion of this thesis provides reflections for developing an ethics of activism that dislodges and resists the (re)production of racialized relations of power in lesbian and gay equality rights activism. In so doing, I seek to provoke, question and re-draw the landscape of our thinking, not only about same-sex marriage but also about the terms with which we conceive, articulate and practice racial and sexual justice.
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fantastic skill at bringing people together, your perseverance in the face of adversity, your sense of the sacred, your healing energy, and your love for all living creatures: You inspire me!
For nothing is fixed, forever and forever, it is not fixed; the earth is always shifting, the light is always changing, the sea does not cease to grind down rock. Generations do not cease to be born, and we are responsible to them because we are the only witnesses they have. The sea rises, the light fails, lovers cling to each other, and children cling to us. The moment we cease to hold each other, the moment we break faith with one another, the sea engulfs us and the light goes out.

~James Baldwin, *Nothing Personal*
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INTRODUCTION

Time as Progress

Story One:

In 1966, Everett George Klippert was charged with four counts of “gross indecency” and pronounced a dangerous sexual offender for having admitted to engaging in private, consensual sexual acts with men. The Supreme Court of Canada upheld his various appeals to these charges with a majority decision virtually affirming all sexually active homosexuals “dangerous sexual offenders.” Klippert spent two years in prison, being released in 1969 subsequent to amendments in the interpretation of the dangerous offenders section of the Criminal Code.¹

Story Two:

The person who was at the counter spoke first, Harbinder, a wonderful Indo-Canadian woman. She could look us in the eye – everyone was staring at her. She asked, “What can I do for you gentlemen?” Antony replied, “We’re here to get a marriage license.” Then the computer form printed out and it had room for a bride and groom. We crossed it off and said, “Can we put what we want?” She said, “Yes, we’ll get that fixed later.” Then I said, “Harbinder, thank you very much for everything you’re doing for us.” The $100 fee was some of the nicest money we ever gave to the government. Then she said, “I hope you have a wonderful wedding and I hope you have a wonderful marriage.” She said it with such sincerity and she actually looked at us at that moment! The cameras swooped in on her because they could see the emotion in that. We were happy as larks! This must have seemed strange to her to see two guys getting married, and there she is, a person from a country that hasn’t even heard of this. She’s come to a liberated country. That was a rich, Canadian experience for both of us. I was really glad we didn’t have a blonde or a brunette. We had a nice Indo-Canadian woman.²

The over-arching explanatory narrative for the victory of same-sex marriage is framed in developmental terms, where the law has progressed into an enlightened era of tolerance and equality for lesbians and gay men. Here, a group of people once considered “dangerous offenders”, as the story about George Klippert indicates, are now welcomed

² “From Picasso to Armstrong: Tom Graff and Antony Porcino” in Kathleen A. Lahey and Kevin Alderson, Same-Sex Marriage: The Personal and the Political (Toronto: Insomniac Press, 2004), 192. Graff is recounting what happened upon their application for a marriage license in Vancouver.
as full citizens, with the legal capacity to enter a City Hall anywhere in Canada to apply for a marriage license. In this account of progress, lesbians and gay men finally achieve the ultimate form of state recognition (through the courts and Parliament) as citizens who pay taxes, who raise children, who contribute to their cities and communities as much as, and in a similar manner to, their heterosexual counterparts, and where the “freedom to marry” also includes the choice not to marry. Indeed, as the second opening story signals, Canadian lesbians and gay men live in a “liberated country”, where they are free to marry and live an “out” homosexual identity. Two white gay men receiving an application for a marriage license from a city clerk who is a woman of colour can only be understood as a “rich Canadian experience” when the victory of same-sex marriage is bound to a spatialization of time that situates Canada ahead of most other countries with respect to the issue of “gay rights.” The racial narrative underpinning this story is one where the modernity of Canada unfolds as exemplary, to both a woman of colour who presumptively views these two gay men as “strange” and to her country (and others like it) that (again presumptively) “hasn’t even heard” of same-sex marriage. Indeed, Harbinder has now stepped up to civilization.

There are two other narratives of linear time that circulate in the debates over same-sex marriage. Opposing conservative forces articulate an anxious, future time whereby extending civil marriage to same-sex conjugal couples represents an unknown future for society, for children and for civilization itself. Conversely, a queer politics opposed to same-sex marriage voices its concerns with reference to the loss of a past time

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of radical sexual politics and of thick accounts of stranger sociability, intimacy and desire.\(^4\)

These three temporal narratives – of the progress of law, of an anxious future, of loss of creative possibilities – together profoundly structure the debates over same-sex marriage and shape how we come to “know” the issue so that the most intelligible position, the one with the most “letter to the editor” or “around the dinner table” currency, is one that asks us to take a stand one way or the other.

There is another way of framing an understanding of what same-sex marriage signals, one that thinks of time outside its linear spatialization and the logic of progress:

**Time as Palimpsestic**

**Story Three:**

> Where will this country come to in twenty five years if we are going to grant divorces simply because some woman has been disappointed in regard to her husband, and comes here and asks for a dissolution of her marriage because she made a mistake when she married? The whole social fabric of the country would go to pieces.\(^5\)

**Story Four:**

> Let me talk about why this Bill is good public policy. It is good public policy because it recognizes gays and lesbians as people of the same-sex who are involved in a loving relationship. It is indeed good public policy. Any time there is stability in a loving relationship, it is good public policy. It helps people with their self-worth. We as a society very much have an interest in promoting stability among couples. It is in our interests to be inclusive. It is also in our interests to

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accept the children of those parents who are in same-sex relationships. That provides a great deal of stability.⁶

I foreground these statements made by two Parliamentarians almost one hundred years apart as a way to gesture to the idea of same-sex marriage as palimpsestic. A palimpsest is a parchment or a document that has been inscribed various times, the previous text having been imperfectly erased and thus remaining still partly visible. It is the idea of imperfect erasure, hence visibility.⁷ In terms of formal equality, the debates about “equal marriage” were over a piece of legislation, that is, the regulations governing who is able to marry in Canada.⁸ Marriage law has historically been a primary site for the production of normative citizenship and is a key mechanism by which nation-states

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⁶ House of Commons Debates, No. 061 (21 February, 2005), 3776 (Hon. Andrew Telegdi); in the context of debates over Bill C-38: The Civil Marriage Act.
⁸ Bill C-38: The Civil Marriage Act: “Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.” The Civil Marriage Act passed in the House of Commons by a vote of 158 to 133, and came into force July 20, 2005. Canada became the fourth country to legalize same-sex marriage, following Spain (June 2005), the Netherlands (2001) and Belgium (2003). Since this time, South Africa (2006) has also legalized same-sex marriage.

In Canada, marriage is governed both federally and provincially according to the Constitution Act, 1867. Section 91(26) of the constitution gives Parliament authority over rules respecting capacity to marry (that is, who can marry) while section 92(12) gives the provinces authority respecting the formalities of marriage (for example, the issuing of marriage licenses). Under this division, the definition of marriage comes within federal responsibility. Before the enactment of Bill C-38, the definition had never been legislated; rather it was governed by the common law (that is, judge made law) in an 1866 ruling concerning polygamy (Hyde v. Hyde and Woodmansee) which stated that, “marriage in Christendom is understood to be the lawful union of one man and one woman for life to the exclusion of all others.” On this common law definition, two previous same-sex marriage challenges, one in 1974 (Re North et al. and Matheson) and one in 1993 (Layland and Beaulne v. Ontario) were unsuccessful. Kathleen Lahey remarks that this last case was not appealed for fear that it would push the courts into negative rulings before cases involving cohabitation rights were pursued. The decision not to appeal thus was made not because of community opposition to marriage for lesbians/gay men but because of timing and strategic considerations. See Kathleen A. Lahey, Are We Persons Yet? Law and Sexuality in Canada (Toronto: University of Toronto Press, 1999), 258. For Charter and Constitutional issues regarding the most recent court cases, see R. Douglas Elliott, “The Canadian Earthquake: Same-Sex Marriage in Canada” (2004) 38:3 New England Law Review, 591-620; Peter Hogg, “Canada: The Constitution and Same-Sex Marriage” (2006) 4:3 International Journal of Constitutional Law, 712-721.
produce a properly heterosexual, gendered and racialized citizenry. Spanning one hundred years, the two above quotes indicate that marriage law is deeply invested in the biological, social and productive management of “life” for the well-being and future of the nation-state. A notion of time as palimpsestic necessitates a consideration of same-sex marriage as a continuation of this project of governance, not a rupture from it.

Viewing time as progress or as palimpsestic results in distinct accounts of the victory and implications of same-sex marriage. Collectively, though, these four opening “stories” gesture to themes pertinent to this research project: the politics of inclusion; the analytical and political tension(s) between progress and regulation; the state’s investment in the nation’s biological, symbolic and economic reproduction; ideas of freedom; and notions of modernity, respectability and civility. I now turn to introduce more fully the terrain of the dissertation.

Re-thinking the Terrain of Same-Sex Marriage

Same-sex marriage is often hailed as a victory not only for gay and lesbian Canadians but also for the progress of law, human rights, and for Canada as a nation. While the legal victory of same-sex marriage gave many lesbians and gays (and many straight people as well) reason to celebrate, for others it was also a moment of uneasy pause. It was this “pause” that propelled me to think more intently about the significance of this victory for a group of people historically classified as deviant, considered a threat to national security, and subject to criminalization. I wanted to examine more deeply

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what the victory of equal marriage required for its success. Determining whether it is “good” or “bad” did not seem to be a sufficient guideline of inquiry. Nitya Duclos affirms that, “we should resist our tendencies to pose questions in ways that accept the dominant framework as natural and inevitable.”¹⁰ Judith Butler, too, comments that the moment we take a stand on either side of these debates, we become defined by its terms and circumscribed in the ability “to change the terms by which such topics are rendered thinkable.”¹¹

To contribute to a shift in the terms through which the issue of same-sex marriage is conventionally understood, that is, as pro/con binaries, my research turns the analytic lens to ask, who is the subject-citizen recognized and embraced by the Canadian nation-state (via the courts and Parliament) as worthy and deserving of marriage? Specifically, this research project places race at the centre of inquiry to investigate the racial norms and exclusions that constitute its legal and social intelligibility. In so doing, I “queer” same-sex marriage by twisting the conventional lines through which it is understood. Given this, my account is not a re-telling or a linear reiteration of the legal/political “story” of the achievement of “equal marriage” in Canada under the guise of “identity politics” or “group rights.”¹² Instead, I reframe the analysis by centring the interlocking relations of power that gave sustenance to its success.

¹⁰ Nitya Duclos, “Some Complicating Thoughts on Same-Sex Marriage” (1991) 1:1 Law and Sexuality, 41.
¹² In the period of 2000 and 2001, various couples in British Columbia, Ontario and Quebec loosely coordinated Charter challenges to the common law rule that held marriage as being between one man and one woman (see footnote 8). They won two years later, in 2003, when judges in all three provincial Court of Appeals ruled that the common law definition of marriage violated gays’ and lesbians’ equality rights under section 15(1) of the Charter and could not be justified under section 1. Several other provinces and territories followed suit. In October 2004, the federal government referred draft legislation recognizing same-sex marriage for civil purposes to the Supreme Court of Canada in a constitutional reference. The government requested that the Court consider whether Parliament had the power to legalize same-sex
I contend that the legal struggle for same-sex marriage was successful in large part because its inter-related discursive practices of respectability, freedom and civility are embedded within and productive of racial relations of power that reconstitute and support the racial norm of whiteness alongside its interlocking class and heterosexual norms. As such, my research tracks three central manifestations of the racial politics of same-sex marriage. First, the lesbian/gay legal subject-citizen recognized as worthy of civil marriage becomes racialized as white through a complicity with discursive practices of respectability that require stepping out of degeneracy into the realm of what Lauren Berlant asserts to be the true practice of nationhood: property, privacy, individuality. Second, the white respectable subject-citizen so central to the success of this legal-political issue both requires and engenders displacements, exclusions and marginalizations of bodies of colour to the realms of the “unfree” and “pre-modern.” As marriage for civil purposes, in other words, whether the proposed Civil Marriage Act was constitutional. On December 9, 2004, the Supreme Court held that Parliament had the power to alter the definition of marriage for civil purposes, that the federal power over marriage does not extend to the creation of a civil-union alternative, and that the guarantee of freedom of religion in section 2(a) of the Charter means that religious communities could not be compelled to solemnize same-sex marriages contrary to their religious beliefs. In July 2005, after six months of debate, the Canadian Parliament enacted legislation legalizing civil same-sex marriage across Canada. For further details, see Peter Hogg, “Canada”; Kathleen A. Lahey and Kevin Alderson, Same-Sex Marriage; and especially Sylvain Larocque, Gay Marriage: The Story of a Canadian Revolution (Toronto: James Larimer and Company, 2006).

13 I want to note here that my use of the terms “lesbian” and “gay” as subject positions is intentional, and that I purposively do not employ the term “queer.” I do so because this is a legal struggle solidly based on essentialized identity categories that stand in opposition to and hence are “oppressed” by the power of heteronormative culture, a binary that queer theories/activisms seek to dismantle. The signifier “queer” suggests more nonnormative subjectivities and identifications. This is not to suggest, however, that the positionality of “queer” is not implicated in homonormative practices or that positions of “lesbian” and “gay” are always experienced as “essential.” I use the term “homosexual” when it is an appropriate differentiation of subject positioning from “heterosexual.” I use the phrase lesbian/gay/queer or LGBT (Lesbian, Gay, Bisexual, Transgender) in the concluding chapter when discussing larger implications beyond the issue of same-sex marriage.


15 I employ the term “subject-citizen” when I want to highlight not only subject positionality (e.g., “the legal subject”) but also the ways citizenship is both constitutive of this position and is part of its orientations.
such, dreams of the “freedom to marry” envisioned against segregated bodies of colour fosters enclosure and discursively re-draw the colour line.

Writing in the American context, Jasbir K. Puar remarks that the “terms of degeneracy have shifted such that homosexuality is no longer a priori excluded from nationalist formations.”16 In Canada, the legal victory and achievement of same-sex marriage is also a moment in which certain lesbians and gay men are no longer excluded from nationalist formations but rather are welcomed into the national fold as re/productive citizens (however contested and however contingent that welcome may be). Moreover, standing at an even further distance from the terms of degeneracy, this legal struggle was also a moment that symbolized and operated as a metonym for the nation itself. This leads to the third manifestation of racial politics: that the issue of same-sex marriage colludes with racialized national formations to shore up normative white racial national identity; and as a “gay rights” struggle par excellence, is complicit with marking transnational lines of civility and Otherness.

Thus although the desire for marriage is largely articulated as an “ordinary wish” and framed as a matter of extending equality rights and expanding individual choice, I argue that in fact the issue of same-sex marriage is deeply implicated in reproducing racialized relations of power.

“Between a Rock and A Hard Place”: The Promise and Limitations of Rights

The lesbian and gay movement in Canada has always contained a heterogeneity of strategies as part of its desire(s) to be identified as citizens, including a commitment to

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achieving social change through the legal arena. The enactment of the Canadian *Charter of Rights and Freedoms* in 1982 was a watershed moment in the evolution of lesbian and gay claims to equality. In particular, the equality provision, section 15(1), has had a profound effect on both the nature of legal challenges and on lesbian and gay organizing itself.17 Miriam Smith has argued, for example, that differences in the frame and strategies of the lesbian and gay rights movement before and after the *Charter* are not a question of the presence or absence of equality seeking through the law. Rather, it is a question of differences between types of equality seeking. She contends that equality seeking in the 1970s was pursued within the frame of “gay liberation”, using the structures of human rights codes and commissions in order to build a sense of political identity, to mobilize a gay/lesbian constituency and to develop networks and organizations. In contrast, the *Charter*’s enactment initiated a shift from the deployment of rights as a political resource to the pre-eminence of a discourse of individual rights and liberties, where lesbians and gay men seek to be treated as part of the mainstream of Canadian society with the same rights and obligations as other Canadians in respect of their families and relationships.18 In this equality paradigm, “sexual orientation” is considered a personal attribute that should not prevent lesbians and gay men enjoying the same privileges of citizenship as heterosexuals.


> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical ability.

18 For an analysis of the challenges this poses to lesbian/gay activist communities, see Michelle K. Owen, “*We are Family?*”: The Struggle for Same-Sex Spousal Recognition in Ontario and the Construction of “Family”” (PhD, University of Toronto, 1999) [unpublished].
During the 1990s and into the twenty-first century, lesbians and gay men have used the *Charter* with great success. Indeed, previous victories surrounding relationship recognition of same-sex couples, such as *Egan and Nesbit v. Canada*\(^{19}\) and *M v. H*\(^{20}\) have been instrumental to the ability to litigate for access to civil marriage. Not only did these two cases garner important legal transformations but they also set the stage for the emergence of the “familial” gay/lesbian legal subject, particularly the *M v. H* case.\(^{21}\) The respectable subject I track in this study has thus made its appearance in the legal arena before. This raised the question for me, why the persistent tactic of respectability to attain

\(^{19}\) *Egan and Nesbit v. Canada* (1995) was a challenge to the exclusion of same-sex couples from the definition of spouse in the *Old Age Security Act*. The Supreme Court of Canada unanimously held that sexual orientation was an analogous ground of discrimination for the purposes of the equality guarantees of s.15 of the *Charter*, and by a majority of 5 to 4 ruled that the OAS Act *did* constitute discrimination on the basis of sexual orientation. However, another 5 to 4 majority held that the differential treatment of same-sex and opposite-sex conjugal couples was *not* discriminatory (under s.1 of the *Charter*) because same-sex couples could not biologically procreate. Furthermore, it was held that lesbian/gay equality right claims were considered a “novel concept” and hence the government was not obliged to take immediate action to protect their rights. The net result was that Jim Egan and his partner of 42 years lost their case. See: Nicholas Bala, “Controversy over Couples in Canada: The Evolution of Marriage and other Adult Interdependent Relationships” (2003) 29 *Queen’s Law Journal*, 63; Donald Casswell, “Same-Sex Marriage: Equality for Lesbian and Gay People” (2004) 62:5 *The Advocate*, 709-722.

\(^{20}\) In *M v. H.* (1999), the Supreme Court of Canada granted a lesbian the ability to claim spousal support from her former partner by striking down as unconstitutional a definition of 'spouse' in an Ontario family law statute that had been limited to opposite sex cohabitants. As a result, the Ontario government added the term “same-sex partner” to the *Family Law Act*, preserving the word “spouse” for opposite sex partners who are married or in common law relationships. Additionally, in June 2000 Parliament adopted Bill C-23 (the *Modernization of Benefits and Obligations Act*) which amended 68 federal statutes by defining “common law partners” to include both same-sex and heterosexual unmarried couples, and by extending rights and responsibilities of married spouses to common law partners. Parliament added an interpretation (not legislative) clause to this Bill specifying that "for greater certainty, the amendments...do not affect the meaning of the word 'marriage', that is, the lawful union of one man and one woman to the exclusion of all others". Moreover, in March 2000, the Alberta Legislative Assembly adopted a private Member’s bill amending the provincial *Marriage Act* to define marriage as exclusively heterosexual and to insert a notwithstanding clause for purposes of overriding the *Charter*.

Two other important cases are *Vriend v. Alberta* (1998) in which the Supreme Court of Canada ordered Alberta to read ‘sexual orientation’ into its *Individual Rights Protection Act*, and *Rosenberg v. Canada* (1998) in which the Ontario Court of Appeal held that the words “or same-sex” should be read into the definition of spouse in the *Income Tax Act*, for the purpose of registration of pension plans. See Nicholas Bala, “Controversy over Couples”, 67; Susan Boyd and Claire F.L. Young, “From Same-Sex to No Sex?”, 762-763.

equality rights? I maintain that foregrounding a domestic/familial positioning is not sufficient for the attainment of respectability; rather, its pursuit also requires an investment in and alignment with white racial normativity. I do not mean to imply that respectability is once and forever secured. The fact that it emerges as a continual strategy of representation testifies both to its power and to ongoing heteronormative/homophobic stereotypes (and violence) that lesbians and gay men must continually struggle against.

What I want to highlight here, and what this thesis demonstrates, is that “whiteness” is an intrinsic component of constituting both the frames and the bodies that occupy “gay rights” and the possibilities of its success.

Framed by the structure and language of the Charter, the legal-political struggle for same-sex marriage represents an insistence upon gay men and lesbians as the bearers of rights (with its attendant presumption of citizenship) and as imbued with social (and economic) value. This is intimately tied up with asserting their value, utility, worth, dignity and “ordinary-ness” of their conjugal relationships. Indeed, one of the central equality-rights “harm” of this legal struggle is articulated as that of non-recognition; that is, same-sex conjugal relationships are not being recognized by the Canadian state (via the courts and Parliament) as providing the same functions as heterosexual conjugal relationships. Same-sex marriage is more often than not viewed as an antidote to counter heterosexism and societal homophobic prejudices. A promise of “rights” then is the possibility of social change it holds out. As Jonathan Goldberg-Hiller points out,

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22 The case for same-sex marriage was argued on the grounds of s.15 of the Charter, but not exclusively. Other sections invoked include s.2(a) Freedom of Conscience and Religion; s.2(b) Freedom of Expression; s.2(d) Freedom of Association; s.7 Right to Life, Liberty and Security of the Person; and s.28 Guarantee of Equal Application of the Charter. Nonetheless, both the Ontario and British Columbia Courts of Appeal based their decisions on an infringement of s.15.

however, it can be tricky to employ law as an independent variable against which to measure social change. This dichotomy between law and society can work to obscure the variegated economic, political, juridical and global contexts in which rights operate, and to miss the ways the pursuit of rights produces unexpected political subjectivities.  

Accompanying this dichotomy is that law and the legal arena are simultaneously understood to be the source of “oppression” as well as the means of “liberation”; that is, the proper remedy for the legal exclusion of lesbians and gay men from the right to civil marriage is to remove its heterosexist presumption and expand the legal definition of the capacity to marry to include same-sex conjugal couples. This in turn, it is argued, will send a strong signal to Canadian society as a whole that homophobic and prejudicial attitudes towards gay men and lesbians are unacceptable. The possibility offered by the “right” to marry is not only constituted through the hope of social change but also through transcending a prohibition, that which “constrains what a person can do in history.” As Shannon Winnubst argues, however, seeking liberation from constraint (for example, not having the choice to marry) only enmeshes us further in the very systems of domination we seek to resist. So while legal mobilization for attaining equality rights may seek possibilities of liberation, an interlocking analytic excavates some of the limitations, hierarchies and exclusions that are entrenched or masked by a legal victory.

Kimberlé Crenshaw offers a practical reading of this dynamic. Elucidating the implications of the “turn to law” for African American organizing and politics, Crenshaw argues that law has contributed to combating exclusion and oppression. Moreover, she

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insists that in the context of white supremacy, engaging in rights discourse should be seen as an act of self-defense. Thus in contrast to Critical Legal Studies’ theorizing of the law as a series of ideological constructs that operate to support existing social arrangements, Crenshaw argues that not engaging with law reform may have the consequence of leaving white supremacy untouched. At the same time, however, she maintains that wrestling concessions from the dominant order as a means of achieving legitimacy for a group forecloses greater possibilities. “The potential for change is both created and limited by legitimation.”

Crenshaw writes that, “it might just be the case that oppression means ‘being between a rock and a hard place’” where there are risks and dangers involved in both engaging dominant legal discourses and in failing to do so. The “turn to law” for lesbians and gay men has also proved to be a powerful strategy, particularly given the contemporary neoliberal economic, political and cultural era that fosters individual freedom.

My analytic entry point of centring race in a “gay rights” issue that takes itself as progressive foregrounds limitations more than it does possibilities, complicities more than innocence. M. Jacqui Alexander has remarked that attempts at self-reflexivity within historically marginalized communities run the risk of perverse appropriation and distortion by right-wing movements. This occurred in the context of the debates over same-sex marriage in Canada, where some conservative politicians drew upon queer critiques of its assimilatory nature as a way to bolster their own arguments and attempts to set limits to equality rights for lesbians and gay men. There is a consideration then of

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28 Ibid., 1368.
29 Ibid., 1370.
30 M. Jacqui Alexander, Pedagogies of Crossing, 69.
how one’s research/work travels. Allowing for limitations and complicities, however, can also be an enabling acknowledgement of other possibilities, desires, connectivities.

**Writing Against Progress: Reading Practices & Critique**

This research is a critical intervention into, and in many ways a critique of, the legal struggle for same-sex marriage. But it is a critique that at times inhabits a site of ambivalence as surely, in some ways, the material lives of those who marry benefit from the particular legal securities conferred solely through marriage; ambivalence because the wedding of my gay friends is, at one level, a public expression of desire that was once illegal, and why *isn’t* that a moment signaling resistance to deeply patriarchal, conservative rhetoric of the meaning of marriage? Yet….there is always that pause. (And thus the anxious hope that no one at my friend’s wedding would ask me about my thesis topic). Wendy Brown and Janet Halley comment that critique is often characterized by liberal and left activists as a negative practice and as an abandonment of politics. They suggest instead that critique be understood as a practice “that allows us to scrutinize the form, content, and possible reworking of our apparent political choices; we no longer have to take them as given.”

Critique is a risky endeavour, disrupting knowledge and truth claims made with the goal of social, political and legal legitimacy. It is also risky in the affirmative sense, where critique “opens up new modalities of thought and political possibility.” The critique this dissertation offers is not contained by the goal of ultimately taking a stand ‘against’ same-sex marriage (or even “for” it). Rather it offers a more complicated intervention.

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32 Ibid., 28.
To write “against” the hegemonic narrative of progress that frames this issue means that I centre a number of tactics. First, I pay attention to moments when both the “time” and “space” of progress are employed to secure or assist hierarchies of power relations. Second, I centre the discursive practices of respectability, freedom and civility as relational; that is, these are discourses that require bodies of colour in order to make a purchase to white respectability, but in a way that spirit them outside of both the space and time of “progress.” Finally, I read race “in” where it seems absent. As various critical race scholars have noted, concepts such as respectability, civility and respectability are profoundly racial ones. I thus look for the “racial resonances” where at first glance there do not seem to be any. In short, my reading practices and analysis draw attention to the racialized temporal and spatial registers of this issue.

This thesis is informed by a commitment to a progressive feminist politics, one that resists the (re)production of racialized relations of power. In commenting on the contentious politics of gay marriage, Judith Butler notes that “one must maintain a double edge in relation to this difficult terrain...it becomes increasingly important to keep the tension alive between maintaining a critical perspective and making a politically legible claim.” The questions posed in this dissertation, its analytic lens and its reading practices throw into relief the partial and exclusionary nature of emancipation narratives generated by the victory of “equal marriage”, all of which point more to complicity than to positions of innocence. In maintaining a critical perspective on the racialized relations of power that constitute the terrain of same-sex marriage, one may stumble into new

territory(ies). But as forbidding a terrain as they might appear initially, are not these territories worth exploring if only to deepen imagined possibilities?

**Chapter Outlines**

Chapter one reviews literature on same-sex marriage with a particular focus on lesbian/gay/queer scholarship, as my research project problematizes a moment of challenge to heteronormative definitions of marriage. A central discursive frame of this literature is the notion of citizenship, one that frames and gives meaning to both pro and con arguments. Part one delineates these terms of the debate as articulated in the literature while part two reviews the small body of literature that extends the analytic reach of critiques of same-sex marriage by foregrounding questions of race and racialized notions of citizenship. Part three concludes with the contributions my research project makes.

Chapter two maps out the conceptual framework and methodological directives. It first delineates two inter-related analytic frames. First, a critical race/queer interlocking analytic that brings critical race theorizing on racialization and whiteness together with a queer interpretive stance that expands the “normative” beyond the realm of sexuality; second, a feminist post-structural analytic that centres discourse, subjectivity and power. The chapter then discusses the parameters and rationales of the data collected, which include both documents and interviews.

The subsequent three chapters explicitly analyze the racialized terrain of the legal struggle for same-sex marriage and together trace the racialized relations of power embedded in this issue. Chapter three focuses on the representations of racialized respectability as articulated in the affidavits of the couples’ in the Ontario and British
Columbia cases, particularly through the discursive frame of the “ordinary.” The analysis reveals the ways in which sexual and class hierarchies interlock with racial hierarchies of exclusion and displacement to produce a lesbian/gay legal subject-citizen worthy of marriage. To make these arguments, the chapter begins by situating respectability in a historical context and also explains my method of analyzing the terrain of “experience.” Part two engages an examination of the discursive frame of the “ordinary” that structures the affidavits by probing the themes of reproduction, privacy and individuality as intrinsic elements of racialized and neo-liberal lines of citizenship.

Chapter four offers an analysis of the discourse of the “freedom to marry” particularly as it manifests through the deployment of racial analogies, where historically segregated, un-free African American bodies and lives are invoked to make a claim for the freedom of contemporary lesbian and gay conjugal couples. Racial analogies are a central, if not the predominant way bodies of colour explicitly appear in this gay rights struggle; and it is this presence that I take as my object of analysis in this chapter. I draw primarily (but not exclusively) upon the legal facta submitted to the Ontario and British Columbia court cases. The chapter is organized into two sections. Part one introduces and contextualizes the two predominant racial analogies employed within this legal struggle while part two analyzes racial analogies as a representational practice of the discourse of the “freedom to marry.” I contend that the discursive (and visual) representations of unfree and segregated bodies of colour operate as an investment in whiteness that maintains and shores up the respectability of the gay/lesbian subject seeking state recognition through marriage.
Chapter five analyzes the discursive terrain of nationhood and nationalism manifest in Parliamentary and Senate debates over Bill C-38. This chapter contends that the issue of same-sex marriage is complicit with racialized trans/national formations. That is, it is a key site for the racialized production of who “we” are as Canadians and who this “we” is; as a “gay rights” struggle *par excellence*, it is also a (new) measure of civilized modernity within a transnational sphere. Part one outlines the discourse of civility, highlighting the centrality of race to its meaning. Part two examines the temporal evocations of Canada’s history as a way to attach same-sex marriage to an ideal of national civility while part three traces how such an articulation enables the production of racialized national identity. Part four analyzes how same-sex marriage, and “gay rights” more generally, operate to secure the modernity of Canada within a transnational frame and is part of the civilizing discourse of “human rights.”

As the theoretical and political projects of feminism have taught us, political intentions are not irreproachable and political agency must be continually interrogated for its slippages and exclusions. While gay and lesbian equal rights discourse is often considered always already positive, it is also embedded in dense and asymmetrical racial relationships. Because of this, it is necessary that political struggles be an object of analysis as well as a tool for social change.
CHAPTER ONE:

Literature Review

The topic of same-sex marriage has generated a seemingly unending proliferation of publications and analysis, ranging from personal testimonies\(^{35}\) to cross-national comparative studies\(^{36}\) to those making a case to the general public for\(^{37}\) or against.\(^{38}\)

Overwhelmingly, this voluminous literature is structured along the lines of “pro” or “con”, whether emanating from mainstream socio-political discourse or from queer communities. Due to the vast nature of the literature, and because my research project problematizes a moment of resistance to heteronormative definitions of marriage (and family), the literature review offered here centres primarily on lesbian/gay/queer scholarship. While much of this literature comes primarily from the field of sexuality and the law, my reading was not limited to this as there are important texts to be found in fields of citizenship studies, political science, and cultural/queer studies. I reference literature opposing same-sex marriage into the body of the dissertation itself, where relevant.

In order to make the literature review manageable, I limited the scope of my reading primarily to North America. While the geographical locus of the research is


\(^{38}\) Daniel Cere and Douglas Farrow, eds., *Divorcing Marriage*. 
Canada, I include American literature because academic and activist dialogues and
debates over same-sex marriage cross national boundaries and inform each other. Indeed,
Miriam Smith argues that there are many similarities between Canada and the United
States on the issue of same-sex marriage.\footnote{Miriam Smith, “Framing Same-Sex Marriage in Canada and the United States” (2007) 16:1 Social and
Legal Studies, 5-26.} In her analysis of the \textit{Goodridge}\footnote{Goodridge \textit{v} Department of Public Health (2003) ruled in favour of same-sex marriage in
Massachusetts.} and \textit{Halpern}\footnote{Halpern (2003) was the Ontario Court of Appeal ruling that legalized same-sex marriage in Ontario.} cases, Smith contends that the process of political mobilization of the lesbian
and gay movement in the two jurisdictions was quite similar, in terms of the history of
litigation, social movement organizing and legal strategizing. She argues that “despite
differences in the legal toolkit available to lesbian and gay rights claimants in the two
countries, litigants made very similar claims and courts drew on many of the same
arguments in framing their decisions.”\footnote{Miriam Smith, “Framing Same-Sex Marriage”, 22.} Kathleen Lahey has remarked on the importance
of separating the American version of the same-sex marriage debate from the Canadian
version given the meaningful differences in the legal specificities of relationship laws.\footnote{Kathleen A. Lahey, \textit{Are We ‘Persons’ Yet?}, 254.}
She argues that while the United States does not recognize legal categories like
“cohabitation” in any systematic way, Canadian gay and lesbian couples have achieved a
degree of legal recognition that offers a concrete alternative to formal marriage for some
same-sex couples. These are important points and, where pertinent, I attend to national
differences in this literature review. There are, however, enough similarities and
crossovers in the literature to warrant an examination of overarching themes rather than
geographical delineations.
I have organized this literature review following the main lines of debate, one organized primarily along a pro/con binary. In so doing, there is a risk of reinforcing the terms through which “knowledge” of same-sex marriage is currently produced and understood. More importantly, though, I endeavor to engage with the “discursive frames” of this literature, which Jonathan Goldberg-Hiller defines as “dominant structures of argumentation, oriented around a binary tension of competing ideas, through which political and social action is constructed and made meaningful.” Specifically, the discursive frame of citizenship shapes arguments made by both advocates and critics: does same-sex marriage expand notions of citizenship to be more inclusive and egalitarian or does it produce new boundaries of hierarchy and exclusion? Does state recognition via marriage confer legitimacy on same-sex relationships or does it lead to the “domestication of deviant sexualities”? Broadly speaking, debates revolve around what access to civil marriage would accomplish with respect to challenging both the heterosexual “economy” of marriage and the presumption of heteronormativity as foundational to legal and cultural citizenship.

This chapter is divided into three parts. Part one delineates the terms of the debate as articulated in the literature. Here I explore arguments for same-sex marriage, which include the achievement of legal equality, societal recognition of same-sex relationships, and its potential to transform the institution of marriage itself. It then turns to survey the central lesbian/gay/queer arguments opposing same-sex marriage. Here, critics argue that the quest for same-sex marriage represents an assimilatory politics and question the terms of assimilation itself. I survey these feminist critiques of marriage as well as literature

concerned with the various losses to queer lives and queer communities flowing from a lesbian/gay politics pursuing civil marriage. Part two appraises the ways in which issues of race, and in particular whiteness, are taken up in the same-sex marriage literature. I review the small body of literature that extends the analytic reach of critiques of same-sex marriage by centring race, and that attends to racialized notions of citizenship produced through the quest for same-sex marriage. Finally, Part three concludes with the contributions my research project makes.

**Terms of the Debate**

*“Will you marry me?”: Equality Rights and Transformative Potential*

Those advocating for same-sex marriage do so from a variety of perspectives with hopes that such legal recognition will confer citizenship on gay men and lesbians that goes beyond the domain of formal equality to comprise inclusion, throwing off the mantle of ‘outsider’ status. This section brings together liberal, feminist and gay conservative perspectives that argue for the right to marry.

**Equality**

Expanding the definition of civil marriage to include same-sex couples is, at a basic level, viewed as a matter of legal equality. In the Canadian and in particular American literatures, proponents argue that because lesbian and gay families face real,

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serious material harms due to the lack of access to a range of rights and benefits associated with marriage (such as immigration benefits, tax benefits and inheritance rights), access to civil marriage is a logical remedy to gay and lesbian inequality. The rationale for same-sex marriage is attached to a vision of legal progress where sexual orientation law has moved “out of an epoch of almost total repression into an ever more enlightened era”, an evolutionary narrative Mary Eaton terms the “progressive hypothesis.”

Along this line, arguments for same-sex marriage rest on a liberal notion of formal equality, that is, to be treated fairly and equally before the law. Claire Snyder, for example, argues that, “the fundamental principles of American democracy require that lesbian and gay citizens be accorded the same rights and responsibilities as any other American citizen, and this includes the right to marry and be treated with respect.”

Here, it is argued that the state ought to accord the same legal options for committed same-sex couples as different sex couples. In this view, lesbians and gay men are a minority group unfairly subject to prejudice and state discrimination. Indeed, it is asserted that “sexual minorities are good citizens who do not deserve this kind of disrespectful treatment.”

Such arguments implicitly link the right to marriage with “proper” citizenship practices. In the Canadian legal literature, the denial of marriage rights to same-sex couples represents a failure to respect the rights of a “discrete minority” so that

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51 William Eskridge and Darren Spedale, Gay Marriage, 16.
allowing lesbians and gay men to marry would be a form of “legal celebration of homosexuality.”

The legal recognition of same-sex couples via marriage is viewed as a prelude to, or realization of, citizenship for sexual minorities; that is, it is maintained that the inability to marry in the law is constitutive of lesbian and gay men’s unequal status as citizens, a denial which “keeps lesbians and gay men in the position of abject Other.” The bar to same-sex marriage is one that is seen to effectively encode and reinforce the view that gay men and lesbians are “second class citizens.” It is argued that “gay relationships will continue to be accorded a subsidiary status until the day that gay couples have exactly the same rights.” Granting civil marriage is thus a primary way of affirming the “legal personhood” of same-sex couples. Kathleen Lahey, for example, argues that legal personhood includes the right to enter into legally recognized relations sanctioned by property law, contract law and family law. The ban on civil marriage for same-sex couples is thus representative of a denial of legal capacity, denoting a lack of “legal personhood” and the inability to both pursue and secure the range of legal rights required to fully function and participate in civil society.

Achieving the “freedom to marry” (including the choice not to marry), it is maintained, will confer recognition on lesbians and gay men as viable members of the

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55 Kathleen A. Lahey, Are We ‘Persons’ Yet?, xv, xxiv.
nation, signaling one of the final moves towards equality.\textsuperscript{56} For this reason, several proponents contend that the legal struggle for same-sex marriage must be central to lesbian and gay politics. Cheshire Calhoun, for example, maintains that the bar to same-sex marriage plays a central role in lesbian and gay subordination because of the foundational status of marriage holds in civil society. She explains that because the idea that lesbians and gay men are unfit for marriage circulates so pervasively and insidiously, “same-sex marriage belongs at the centre of lesbian and gay politics.”\textsuperscript{57} Andrew Sullivan also argues that equal access to civil marriage should be “the centerpiece of a politics of homosexuality.”\textsuperscript{58} Like Calhoun, Sullivan maintains that the ban on same-sex marriage is “the most public affront possible” to the dignity of lesbians and gay men. As such, he maintains that “if nothing else were done at all, and gay marriage were legalized, ninety percent of the political work necessary to achieve gay and lesbian equality would have been achieved.”\textsuperscript{59} Ultimately, for Sullivan, access to civil marriage “is the only reform that truly matters.”\textsuperscript{60} Further to this, William Eskridge contends that admitting lesbian and gay couples into the “fundamental mainstream institution” of marriage would contribute to the denormalization of heterosexuality, not through displacing its power to organize social life and institutions but by contributing to greater social toleration and acceptance of lesbians and gays.\textsuperscript{61} Same-sex marriage is the political issue “that most fully tests the dedication of people who are not gay to full equality for gay people” and

\begin{itemize}
  \item \textsuperscript{57} Cheshire Calhoun, \textit{Feminism, the Family, and the Politics of the Closet: Lesbian and Gay Displacement} (Oxford: Oxford University Press, 2000), 1.
  \item \textsuperscript{58} Andrew Sullivan, \textit{Virtually Normal}, 178.
  \item \textsuperscript{59} Ibid., 185.
  \item \textsuperscript{60} Ibid., 185.
  \item \textsuperscript{61} William Eskridge, \textit{Equality Practice}, 209.
\end{itemize}
the one “most likely to lead ultimately to a world free from discrimination against
lesbians and gay men.”62 In these equality arguments, then, civil marriage is held as a
direct challenge to the heterosexist ideology sustaining gay and lesbian social and legal
inequality, and as that which has the potential to engender more inclusive and equitable
terms of citizenship. As such, these arguments centre access to marriage as that which
will bring lesbians and gay men more fully into society’s legal and cultural mainstream.

Symbolic Recognition

Mutually shaping arguments of legal equality is a focus on the symbolic value of
same-sex marriage. This is a theme especially prevalent in the Canadian literature. The
argument put forth is that extending the right to marry expands not only the range of
relationship choices available to gay men and lesbians but it also provides important
social validation of same-sex relationships.63 As such, marriage is held as “the signifier of
societal approval for a relationship. It is society’s way of celebrating – not just
recognizing – the union of two people” and hence is key to increased social acceptance.64

Civil marriage is viewed as a way of both rendering visible and validating same-sex
relationships in the eyes of family and friends. One of the lawyers in the Ontario case
writes, for example, that

Our fight was for marriage itself: the unique expressive resource, the public
commitment, the ritual that makes lovers into family members, the currency of the
word “marriage” in our everyday lives, the feeling of enhanced security for our

63 Nicholas Bala, “Controversy over Couples in Canada”; Maria Bevacqua, “Feminist Theory and the
Question of Lesbian and Gay Marriage” (2004) Feminism & Psychology 14:1, 36-40; Donald Casswell,
“Same-Sex Marriage”; Celia Kitzinger & Sue Wilkinson, “Re-branding of Marriage: Why We Got Married
instead of Registering Civil Partnership” (2004) Feminism & Psychology 14:1, 127-150; Bruce
64 Bruce MacDougall, “The Celebration of Same-Sex Marriage”, 252.
children, the culturally understood rite of passage that binds friends and families together.  

Similarly, the language of love and romance attached to cultural meanings of marriage is viewed as a means of raising awareness and visibility of lesbian and gay relationships within heterosexist society. Kevin Bourassa writes that his marriage to his partner Joe Varnell was “a simple and visible extension” of “the romantic ideal of marriage for love.”  

Similarly, in her study of the nexus between law and culture in marriage, Kathleen Hull found that the adoption of terminology, rituals and symbols of marriage by same-sex couples serves as a cultural resource to establish the reality, equality and permanence of same-sex commitments to family, friends and community at large. Hull’s research indicates that, as a powerful cultural model of relationship, the cultural language and meanings of marriage attracts same-sex couples even in the absence of legal rights and benefits, and outside the framework of official (state) law. Liddle and Liddle also observe that using widely understood terms such as “wedding” and “marriage” offers family and friends a familiar category in which to situate same-sex relationships thereby leading to a deeper understanding of them. The symbolic meaning of the word ‘marriage’ and its power to convey public legitimacy on same-sex relationships is central to these arguments. That “words are more than just labels” implies a meaning of citizenship beyond the bounds of legal status; obtaining the right to marry validates the worth and viability of same-sex relationships to organize kinship relations in this way.

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A corollary argument to the symbolic import of marriage is that its extension to include same-sex couples will reinforce its normative status in society at large. Same-sex marriage, for example, is viewed as a way “to shore up the key values and commitments on which couples and families and society depends.”70 In this line of argument, marriage is held as the normative ideal for how sexual relations, inter-personal commitment, personal economics and child rearing should be organized. It is that which promotes “healthy families by protecting the economic and emotional interdependence of family members and giving priority to their bonds.”71 The symbolic value of marriage is prominently framed in arguments opposing civil unions or registered domestic partnerships (RDPs), which Celia Kitzinger and Sue Wilkinson term the “re-branding” of marriage.72 Often proposed as an alternative to state recognition of same-sex relationships, such legal arrangements are viewed as “instruments in the institutionalization of heterosexual supremacy” that install a “separate-but-equal” scheme of relationships.73 For example, “When it comes to people’s understanding of what it means to be a couple – in love, committed, and responsible to each other, the words civil union just can’t compare.”74 It is thus maintained that equality cannot be provided through “another word” given the connotation of marriage with citizenship and its material benefits.

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72 Celia Kitzinger and Sue Wilkinson, “Re-branding of Marriage”, 133.
William Eskridge takes a slightly different stance on civil unions. They signify what he terms “equality practice”, that is, sequential, incremental, and orderly steps towards lesbian and gay (formal) equality. For Eskridge, gay marriage is a right whose denial cannot be justified but it is not a right, he argues, that should be immediately delivered if it would “unsettle the community”, that is, society at large. From this “don’t rock the boat” perspective, civil unions are not a negative or a loss but rather exemplify an “equality practice” that brings gay men and lesbians one step closer to fuller equality, i.e., marriage. Because of this, Eskridge argues that their significance as a step forward in the struggle for lesbian and gay rights should not be underestimated. Kathleen Hull, too, agrees that given the current political context in the United States, there needs to be a more diverse array of short-term policy steps sensitive to local conditions. She maintains that while same-sex marriage is the correct long-term policy position, “it seems wise to slow down the push for marriage itself in most parts of the country and instead focus their efforts on alternative vehicles of recognition such as domestic partnerships or civil unions.” For both Eskridge and Hull, civil unions or domestic partnership regimes represent the best short-term strategy for the long-term goal of obtaining full citizenship symbolized by equal rights to legal marriage. Rather than symbolizing a “separate but equal” status, such arguments ground civil unions and domestic partnerships in an evolutionary approach to equality rights for lesbians and gay men, constituting another example of the “progressive hypothesis.”

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75 William Eskridge, *Equality Practice*.  
76 Ibid., xiii.  
77 Kathleen Hull, *Same-Sex Marriage*, 205.  
Jonathan Goldberg-Hiller, in his extensive study of the struggles for same-sex marriage in Hawai‘i, offers an additional analytic to civil unions.\(^7\) In his analysis, the notions of contract (which interpellates an abstract, autonomous legal subject) and status (where subjects are constricted by their position within a social order) deeply structure the discourse of domestic partnerships on both sides of the debate. Goldberg-Hiller argues that, on the one hand, civil union enables social conservatives to be interpellated as tolerant of lesbians and gay couples: It recognizes same-sex relationships as something unique but lesser, entitled to fewer benefits than marriage. In this sense, civil union decreases the sphere in which citizenship is imagined by relying on a “separate-but-equal” social policy.\(^8\)

On the other hand, social conservatives oppose such relationship contracts because they are seen to confer the “moral equivalency” of marriage upon lesbians and gays, and because of the (political-economic) contractual obligations they require of corporate America.\(^9\) Similarly, for supporters of domestic partnerships, it is the possibility of contractual duty that becomes the marker of citizenship status.\(^10\) More significantly, Goldberg-Hiller’s analysis reveals that whether held as a status equivalent to marriage or as a stepping-stone to full participation in citizenship for gays and lesbians, relationship regimes such as civil unions maintain the centrality and conflation of heterosexuality to legal and social meanings of citizenship, remaining as it does on the

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\(^8\) Jonathan Goldberg-Hiller, *The Limits to Union*, 222.


\(^10\) Ibid., 119.
terrain of antimarriage activists.\textsuperscript{83} Imagining domestic partnerships and civil unions as either a remedy or as a limit to full equality for gays and lesbians, Goldberg-Hiller argues, re-inscribes “homosexuality” as inhabiting the perpetual ‘outside’ of heterosexuality, reinforcing its normative status. This point has relevance, again, for framing “symbolic” arguments for marriage as a whole, but what is further noteworthy is how his analysis here bridges the seemingly entrenched binary between the two sides to reveal a shared discursive terrain.

\textit{Transformative Potential}

A third argument figuring prominently in the literature is that extending civil marriage to same-sex couples holds the possibility of transforming the institution of marriage itself. The desirability of same-sex marriage is posited along the lines of its productive effects. Success in equal marriage litigation, for example, “represents a human rights achievement that promises to change individuals, families and communities, leading to a brighter future for us all.”\textsuperscript{84} Specifically, it is argued that same-sex marriage will have wide ranging transformative effects on gendered relations within marriage, divesting the institution of “the sexist trappings of the past” and thereby ending its history as a form of gender discrimination.\textsuperscript{85} This argument is most predominant among lesbian/feminists. Nan Hunter, for example, suggests that the legalization of lesbian and gay marriage poses a threat to overall unequal gender systems, not simply to homophobic bigotry, because it has the potential to disrupt and denaturalize the gender structure of

\textsuperscript{83} Ibid., 129.
\textsuperscript{84} Joanna L. Radbord, “A Wedding Story”, 17.
\textsuperscript{85} Tom Stoddard, “Why Gay People Should Seek the Right to Marry”, 757
marriage law for heterosexual couples. She argues that it would create a model in law for egalitarian interpersonal relations outside the gendered terms of power. As such, “…it is difficult to imagine any other change in the law of marriage that feminists could achieve today that would have even remotely as significant an effect.” Barbara Cox also maintains that same sex marriage is profoundly transformative for society: “I insist that the polity deal with me not as someone seeking assimilation by claiming the title of ‘wife’, but as someone seeking to transform society by claiming to be the ‘wife’ of another woman.” She asks, “What is more antipatriarchal and rejecting of an institution that carries the patriarchal power imbalance into most households than clearly stating that women can commit to one another with no man in sight?” Cox insists on the transformative potential to speak openly about lesbian love and commitment in a patriarchal society through the terms of marriage. Similarly, Joanna Radbord argues that, “lesbian marriage is not patriarchal. Our marriages necessarily subvert male and heterosexual dominance.” Same-sex marriage, thus, is advocated as an antidote to “compulsory heterosexuality.”

I want to briefly note here that the nature of the arguments supporting the transformative potential of same-sex marriage fall along gendered lines. It is invariably lesbian/feminists who centre a more political resistance to patriarchy and heterosexuality

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87 Ibid., 114.
90 Ibid., 112.
in their rationale for same-sex marriage. Gay (conservative) men, on the other hand, frame their arguments in terms of marriage’s “civilizing” imperative. Gay men are the particular targets and this line of argument often explicitly denigrates both gay male sexual culture and activism, both which must be transcended if gays are to fully enter into mainstream society. Rauch, for example, asserts that “marriage is the great civilizing institution.” He unabashedly states that, “Marriage…closes the book on gay liberation: it liberates us from liberation, if you will. And that is good.” Marriage, for Rauch, plainly helps stabilize gay men, keeping them off the streets and at home (it’s 1a.m.; do you know where your husband is? Chances are you do). Surely that is a very good thing, especially as compared to the closet-gay culture of furtive sex with innumerable partners in parks and bathhouses.

In this line of argument, access to marriage is advocated as that which will push gay men to move out of the “marginalization and infantalization” and into the full responsibilities of adulthood. Rauch maintains that garnering the right to marry will create a more “mature” gay culture since marriage leads to a fulfilled adult life that connects love, sex and responsibility. Moreover, marriage should become the norm for LGBT individuals once it becomes available: “It cannot be merely a ‘lifestyle option’. It must be privileged.” Andrew Sullivan also argues that access to civil marriage must be supported because it would have a civilizing influence on gay men. The reality of same-sex marriage would provide “role models for young gay people, who after the exhilaration of coming out, can easily lapse into short-term relationships and insecurity.

94 Ibid., 57.
with no tangible goal in sight.”

Like straight marriage, he argues, “it would foster social cohesion, emotional security and economic prudence…A law institutionalizing gay marriage would merely reinforce a healthy social trend. It would also, in the wake of AIDS, qualify as a genuine public health measure.”

As such, marriage “would be an unqualified social good for homosexuals.” Similarly, William Eskridge contends that, “to the extent that males in our culture have been more sexually venturesome (more in need of civilizing), same-sex marriage could be a particularly useful commitment device for gay and bisexual men.” Indeed marriage, he argues, will “civilize gay men by making them more like lesbians.”

Here, Eskridge draws upon stereotypes of lesbians as asexual (or less sexual than gay men), and of lesbian relationships as long-term and monogamous, both of which are rooted in to historical representations of female same-sex relationships as platonic “romantic friendships”;

this argument also hearkens to the ideology that upheld women as the bearers of civilization, within national bounds and within circuits of imperialism.

In a different vein, Eskridge also argues that same-sex marriage is a way to “civilize” the United States as a nation because it would end all vestiges of legal discrimination against lesbians and gay men. “Civilizing” America means taking homophobia off the national agenda because “a civilized polity assures equality for all its citizens. There can be no equality for lesbians and gays in the United States without

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99 Ibid., 256.
100 Ibid., 163.
102 Ibid., 83-84.
same-sex marriage.” That the word “civilizing” appears in literature in support of
same-sex marriage (albeit in a limited form and articulated only by conservative gay
men) is, I think, a clue indicating that the struggle for “gay marriage” can be mapped and
analyzed along lines other than heterosexuality. Subsequent chapters of this thesis, in
fact, examine the discourses of civility and civilization that structure and underpin
trans/national narrations of the “story” of same-sex marriage in Canada as one of
progress.

Equality, symbolic recognition and transformation are structures of argumentation
that frame support of same-sex marriage along the lines of citizenship. Not surprisingly,
many of these arguments appear in the data of this research project. Such themes, based
on lines of argumentation for the citizenship status that same-sex marriage will confer,
are garnered only through the terms of sexuality, or the harm of
homophobia/heterosexism. The chapter now turns to review the literature that highlights
some of the hierarchies implicit in and produced by this equality rights struggle.

“I’ll think about it…”: Feminist and Queer Critiques

Questioning its practices of conformity and normalization, critics of same-sex
marriage argue that it is highly limited as a transformative citizenship and equal rights
strategy. This section brings together feminist and queer literatures that critique the
political and legal turn towards same-sex marriage for its assimilationist tendencies and
for the various hierarchies it reproduces.

104 William Eskridge, *The Case for Same-Sex Marriage*, 10. I want to note here that while the word
“civilizing” is particular to the American literature on same-sex marriage, the concept as such is not. In
Canada, the reverse is held to be true: Canada is a “civilizing” force and example to other nations. This is
discussed further in chapter five.
Assimilation...and into what?

A deep-seated critique of the legal and political struggles to obtain same-sex marriage is the assimilatory nature of such struggles themselves. Such an argument stands in contrast to those, which celebrate marriage’s normalizing tendencies, discussed in the previous section. Nancy Polikoff asserts that the desire for same-sex marriage “is an attempt to mimic the worst of mainstream society, an effort to fit into an inherently problematic institution that betrays the promise of both lesbian and gay liberation and radical feminism.”

In contrast to Nan Hunter’s view discussed above that lesbian and gay marriage will transform the institution of marriage, Polikoff believes that it “would make a public critique of the institution of marriage impossible” because of the way it reinforces long term monogamy and marriage as the highest form of human relationship. She maintains that the rhetorical strategy of emphasizing similarities with heterosexual relationships and valuing long term monogamous coupling above all other relationships, “denies the potential of lesbian and gay marriage to transform the gendered nature of marriage”.

In her most recent book, Polikoff argues for a shift in family law reform and advocacy to an approach she terms “valuing all families”, which demands that there be “a good fit between a law’s purpose and the relationships subject to its reach.” Writing in the particular context of the United States, Polikoff contends that while the achievement of “gay rights” is a civil rights triumph, it in fact has unintended and unfortunate consequences for family policy as a whole because it diminishes efforts to

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106 Ibid., 1546.
107 Ibid., 1549.
win legal recognition of diverse family forms. Her book is a concrete and material examination of the ways law can (and should) change to value all families beyond those created by marriage, including same-sex and opposite-sex, married and unmarried. It thus represents a call to productively re-assess the energy and resources invested in the legal struggle for same-sex marriage, challenging activists to shift to a broader, more inclusive definition of “family” under the law.

Similarly, Paula Ettelbrick argues that gay and lesbian marriages may minimally transform the institution of marriage by diluting its traditional patriarchal dynamic but it will not transform society. The goal of same-sex marriage, she contends, undermines the differences and diversity queer people bring to society, such as the diversity of family form which early gay and lesbian liberation struggles fought for as a way of resisting compulsory heterosexuality. For Ettelbrick, marriage “is not a path to lesbian and gay liberation but is assimilatory, and “rips away at the very heart and soul of what I believe it is to be a lesbian in this world. It robs me of the opportunity to make a difference.”

Additio
arily, she asserts that same-sex marriage limits the vision(s) of possibilities for legitimizing diverse kinship/familial relations. Ettelbrick further contends that while an original goal of the gay liberation movement was to remove marriage as the sole entry point for family benefits, current marriage strategies narrow that door once again. Instead, she argues, laws and policies must reflect the real care-giving roles that exist between two adults or between a co-parent and a child. To tie rights available only in marriage to state promotion of one normative conception of marriage and family is, for Ettelbrick, to abandon the goal of critically rethinking which rights and benefits should be

distributed to whom. In this line of argument, for both Polikoff and Ettelbrick, a truly transformative – and not assimilationist – politics would advocate state support of all different kinds of families and de-link economic and legal protections from marriage.

An important corollary of this critique is what gay men and lesbians are being assimilated into. Marriage, it is argued, is not a neutral institution that can be easily or fundamentally transformed by the addition of same-sex couples. Rather, it has a history that is deeply interconnected with relations of oppression both within families and within society, as it has historically organized and institutionalized unequal divisions of gender, property and childcare, and remains a central site for the reproduction of gendered ideologies and behaviours. In the Canadian context, Susan Boyd and Claire Young argue that family law reforms of the past three decades are arguably stopgap measures that camouflage the continuing negative consequences of marriage for many women. A few feminist critiques point to the ways that marriage law has historically been implicated in ensuring a properly racialized nation and citizenry. Finally, feminist critiques of marriage point to the fact that women’s unpaid domestic work coupled with the assigning of responsibility for the costs of social reproduction to the family constitutes an intrinsic component of the capitalist mode of production. Critics thus argue that the gendered and privatized role of the family continues despite state recognition of lesbian and gay relationships.

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111 Susan Boyd & Claire F.L. Young, “From Same-Sex to No Sex?”; Carol Smart, The Ties that Bind.
112 Susan Boyd and Claire F.L. Young, “From Same-Sex to No Sex”, 758.
In these feminist assessments, same-sex marriage is about the acquisition of a limited set of legal rights that themselves rest on profoundly hierarchical social relations.\textsuperscript{115} The Canadian feminist legal literature in particular is concerned with the distributional and hierarchical effects of state recognition of same-sex spousal relationships. While spousal recognition, including marriage, may confer benefits to some lesbians and gay men, it is also accompanied by disadvantages and can work to reinforce class and gender hierarchical relations of power. Specifically, spousal recognition does not benefit all gay/lesbian/queer relationships equally, with low-income couples carrying a differential burden.\textsuperscript{116} Kathleen Lahey, for example, traces in great detail the “benefit conundrum” of both the costs of being excluded from relationship recognition as well as the “advantages” of this exclusion, depending on the make-up of family incomes, which are in turn mediated by questions of race, gender and ability. She argues that, “queers who experience the greatest disadvantages would be burdened most heavily by these forms of inclusion.”\textsuperscript{117} As Nitya Duclos remarks, what is often elided in the quest for same-sex marriage are questions of who is being ‘hurt’ by not being able to marry. Thus, she argues, what is conceptually offensive to liberal ideology should not be conflated with what is harmful to people.\textsuperscript{118}

These critiques raise important questions of how legal recognition of same-sex relationships reinforces the many hierarchies of privilege that exist, including within queer communities themselves. At the same time, though, they do acknowledge the

\textsuperscript{115} Susan Boyd and Claire F.L. Young, “From Same-Sex to No Sex”, 771.
\textsuperscript{117} Kathleen Lahey, \textit{Are We ‘Persons’ Yet?}, 244.
\textsuperscript{118} Nitya Duclos, “Some Complicating Thoughts”, 48.
material reasoning behind such recognition and take care to contextualize the political-economic-social contexts in which the struggle for same-sex marriage and spousal recognition in general are occurring. Davina Cooper, for example, asks why should lesbians and gay men accept less than others as a result of ignoring, or adopting an oppositionalist stance towards, the state?\(^{119}\) Kathleen Lahey contends that queer communities have reacted logically to the choices given to them by the state, and that full legal personhood will not be extended to LGBT communities without re-enacting at least some of the hierarchies of privilege so central to Canadian society.\(^{120}\) Claire Young and Susan Boyd suggest that the neo-liberal model of “choice” that enables arguments for same-sex marriage is preferable to a neo-conservative political terrain that would continue to endorse restrictive definitions of marriage and family.\(^{121}\) Nonetheless, the heart of these critiques contends that state recognition of same-sex spousal relationships, including marriage, ought not to be seen as sufficient to achieving equality and a broader social transformation; and that a politics of progressive citizenship requires re-orienting one’s gaze towards “dispossessed outsiders,”\(^{122}\) those who do not fit the mould of responsible citizens of neoliberalism.\(^{123}\) Overall, this critical body of literature contends that the same-sex marriage as a form of relationship recognition re-draws and reinforces normative gender and class lines of citizenship and, as such, remains limited as an emancipatory vision for lesbian/gay/queer politics.

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\(^{120}\) Kathleen Lahey, *Are We ‘Persons’ Yet?*, 266.

\(^{121}\) Claire Young and Susan Boyd, “Losing the Feminist Voice”, 236.

\(^{122}\) Davina Cooper, “Like Counting Stars?”, 95.

\(^{123}\) Claire Young and Susan Boyd, “Losing the Feminist Voice”, 236.
**Relationship hierarchies: Good Gays/Bad Gays**

An important parallel to critiques of assimilation are arguments that same-sex marriage will make manifest an undesirable link between a particular form of intimate association and citizenship. Equality arguments, emphasizing individual choice, fail to recognize why someone would want to marry. Here, individual “choice” to marry is understood as shaped by powerful familial ideologies that encourage dyadic adult commitments within nuclear family settings. It is argued that the struggles for same-sex marriage represent a limited challenge to heteronormative definitions of family and marriage, and in fact reinforce and legitimize a nuclear, monogamous normative ideal. Michael Warner, for example, contends that arguments for marriage based on expanding individual choice require a ‘forgetting’ that marriage “is a social system of both permission and restriction...It authorizes the state to make an already normative way of living even more privileged.” Conceptualizing marriage and the state as neutral “institutions”, and framing the quest for same-sex marriage as a matter of individual choice or working for as many relationship options as possible, says nothing about the ethics of what marrying does, or about the normativity of marriage. Warner argues that as long as people marry, the state will continue to regulate the sexual lives of those who do not marry; the idea that marriage is simply a choice, a right that can be exercised privately without cost to others, is too simple.

Warner’s essays are a trenchant, queer critique of same-sex marriage, centring primarily on delineating the forms of exclusion and hierarchies it may engender, as well

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124 Davina Cooper, “Like Counting Stars?”.
as lamenting the loss of vision for queer politics that the fight for same-sex marriage engenders. He writes that marriage “is the perfect issue for (a) de-queering agenda, because it privatizes our imagination of belonging.”¹²⁷ Central to his concerns is that “gay marriage” will further entrench a division between “good gays” and “bad queers”. For Warner, the validation, legitimacy and recognition sought by same-sex couples through civil marriage are achieved through the invalidation, delegitimizing and stigmatizing of other relations, needs and desires.¹²⁸ He is concerned that the achievement of civil marriage for same-sex couples will intensify state regulation over the sexual lives of those who do not marry. “Any argument for gay marriage requires an intensified concern for what is thrown into its shadow.”¹²⁹ Same-sex marriage, for Warner, is a question of ethics: it is a public institution not a private relation, and its meaning and consequences extend far beyond what a marrying couple could intend.

The cost to gay/lesbian/queer position(s) as “sexual outlaws” is of central concern in much of this side of the debate. Suzanna Danuta Walters, for example, argues that gay marriage might grant visibility and acceptance but it will not necessarily challenge homophobia itself; indeed it might simply demonize non-married gays as the “bad gays” (uncivilized, promiscuous, irresponsible) while it reluctantly embraces the “good gays” who settle down and get married.¹³⁰ In a similar vein, Katherine Franke outlines the sexual hierarchies being redrawn through the turn to same-sex marriage. Specifically, she argues that the “rights-bearing” subject of the LGBT movement has shifted from being

¹²⁸ Ibid., 133.
rooted in criminality and deviance to “the couple”, a domesticated “we.” Franke’s concern is that the turn to same-sex marriage represents a desire for governance by the state, one which eclipses other forms of desire historically present in LGBT communities and exacts a heavy price. She laments the loss of the political space to articulate other forms of sociality and intimacy, and the failure of leaders of the “gay community” to look at the possibilities a middle ground between criminalization and assimilation might have offered.\(^{131}\) I elaborate further on Franke’s arguments in chapter three.

Ruthann Robson also argues that marriage would “domesticate” and limit the specificities and complexities of lesbian relationships.\(^ {132}\) Monogamy, for example, becomes enforced since the laws of most states make adultery a crime or a suitable reason for divorce. For Robson, the issue is not one’s personal belief in monogamy but rather that, through ratifying marriage, the law makes and enforces that decision. Thus in contrast to lesbian/feminists such as Radbord and Cox (discussed in previous section) who contend that the very inclusion of lesbians holds transformative potential, Robson maintains that marriage will detrimentally transform lesbian relations themselves, and put in peril lesbian solidarity by marking out and elevating married lesbian couples over other forms of lesbian relationships. She writes that “Lesbian survival is not furthered by embracing the law’s rule of marriage”; instead, legal energy is better directed at abolishing marriage as a state institution and ‘spouse’ as a legal category.\(^ {133}\) In a somewhat different vein, Judith Butler also argues that same-sex marriage produces and


intensifies regions of illegitimacy. Sexual practices that fall outside of “the sanctifying law become illegible, or worse, untenable, and...new hierarchies emerge within public discourse” which produce tacit distinctions among forms of illegitimacy. Deeper than this critique, however, is Butler’s concern that we misunderstand the sexual field if we take notions of “legitimate” and “illegitimate” to encompass the totality of all its possibilities. Indeed, even a stance “against” same-sex marriage ratifies a dominant frame of thinking how sexual life and kinship relations ought to be organized which, similar to Franke’s arguments, entails a fundamental loss of forms of sexuality, kinship and community that then become “unthinkable.”

Finally, in critical analyses of victories for lesbian and gay rights in Canada, Brenda Cossman argues that the achievement of formal equality and ‘inclusion’ in the law is also at once a process of exclusion that operates to police and discipline the borders of ‘respectable’ sexuality. She notes, for example, that in the very same month that the Supreme Court of Canada handed down its historic decision in M. v. H., police raided a gay bar in Toronto, and 36 men were charged with criminal indecency and other criminal offenses. The inclusion of “legitimate” gay and lesbian subjects into the law is a process in which the margins of acceptability are being policed – quite literally. The (new) legal subject, Cossman argues, is not, “absolutely not, the erotically charged subject of the gay bar and bath houses who remain sexual outlaws”. Rather, the lesbian and gay legal subject that has emerged in the last decade or so is constituted through discourses of “good” sex - monogamous, private and marital - rather than through

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136 Brenda Cossman, “Canadian Same-Sex Relationship Struggles”, 54.
discourses of deviance and exclusion. Furthermore, the successful inclusion of a familial subject into the law requires the exclusion of the eroticized and sexualized body. Cossman argues that this legal subject is one that both subverts the heteronormativity of ideologically dominant discourses of family at the same time that it normalizes these discourses.¹³⁷

The hesitancy and/or outright rejection of same-sex marriage these feminist and queer critiques offer draw attention to the sorts of “imaginings” central to a particular notion of citizenship achieved through marriage, and to the maintenance and (re)creation of boundaries, hierarchies and exclusions its achievement entails. Both feminist and queer interventions provide thoughtful reflections and arguments about the implications of turning to the (neoliberal) state for recognition. Further, such critiques point to the achievement of equality rights on the basis of similarity to heterosexuals, a strategy furthers the assimilatory and (de)legitimizing nature of a (heteronormative) politics centred on access to civil marriage. What I want to mark here are two key points. First, what binds these various feminist and queer critiques of same-sex marriage together are, in many ways, the socio-political contexts that shape how claims to the right to marry are made. Many writers have pointed to the disciplinary function of progressive law reform and how sexuality is governed within a climate of neo-liberalism.¹³⁸ This is a central point of analysis to this dissertation and is discussed in subsequent chapters. Second, explicit references to race are, for the most part, absent in the literature pertaining to same-sex marriage as a whole. The literature in support of same-sex marriage elides any

question of race in its framing of marriage as a marker of equal citizenship and as a matter of individual choice. Queer critiques such as those offered by Warner and Cossman speak to the “shadow” that is the sexual “other”, the non-conforming queer; feminist critiques, for the most part, point to the hierarchical class relations re-secured through same-sex relationship recognition (including marriage), with unequal implications for low-income lesbians and gay men. While committed to a seemingly more radical politics of citizenship, this particular literature too elides any significant racial analysis. What, for example, are other lines of “illegitimacy” that are drawn by the attainment of same-sex marriage? Absent from critiques of the heteronormative politics that same-sex marriage may engender is analysis of the racial norms intersecting, intertwining and underpinning the emergence of a respectable lesbian/gay legal subject. What this research project seeks to draw attention to is the race shadow that underpins and gives coherency to this “gay rights” legal struggle.

If and when a discussion of race does appear in the literature, it is through references to racial analogies, and in a small body of literature that, while not always exclusively focused on the issue of same-sex marriage, extends the reach of queer and feminist critiques to include a racial analytic. It is to this that the chapter now turns.

**Situating Race: Re-thinking the Politics of Normalization**

In reviewing the lesbian/gay/queer literature on same-sex marriage I read with an eye on how questions of race and/or whiteness\(^{139}\) were taken up, with particular attention paid to the production of racialized subjectivity in this legal struggle. Given that whiteness “represents itself as the universal and unmarked standard, a ubiquitous

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\(^{139}\) This concept is discussed further in the next chapter.
norm, it is unsurprising that little reference is made to it in the literature on same-sex marriage. The predominant and most visible way race is invoked is by reference to analogies to historical racial discrimination in the United States. Here, same-sex marriage is rendered analogous to the historical ban on inter-racial marriage and/or to racial segregation, which is deployed as a means to contest “alternative” forms of relationship recognition such as domestic partnerships or civil unions. I analyze the deployment of racial analogies in the struggle for same-sex marriage in greater detail in chapter four. In this chapter section, I specifically review the (small) body of literature that asks a different set of questions about the normalizing politics of same-sex marriage than those offered by the feminist and queer critiques discussed above. It inquires into the racial norms underpinning this political quest and attends to its racialized notions of citizenship.

Darren Hutchinson is one of the few scholars to trace a white-normative construction of gay men and lesbians in the campaign for same-sex marriage, although this is not his sole site of analysis. He argues that the identity essentialism (that is, being “just gay”) required by formal legal equality to present an intelligible lesbian/gay legal subject fails to account for any other oppression other than heterosexism, thereby exacerbating the invisibility of people of colour as well as legitimizing a conservative discourse that seeks to deny civil rights protections to all LGBT people. Hutchinson further maintains that both sides of the assimilation debate – those seeking access to marriage and its legal/social benefits as well as those decrying its “domesticating” effects – obscure the extent, to which many gays and lesbians, due to race, class and gender

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privilege, are already closely linked to and ‘assimilated’ within mainstream social power structures. He argues that because most lesbians and gay men of colour remain invisible and marginalized within larger gay and lesbian mainstream organizations, it is unlikely that a marriage license will “close much of the gulf between them and the centre of a heterosexual society that is stratified by race, class, gender and sexuality.” Instead, many (or most) of the benefits from same-sex marriage will accrue to white and upper class individuals. For Hutchinson, the right to marry will generate greater social benefits for race and class privileged members of LGBT communities. In contrast to Andrew Sullivan and Cheshire Calhoun, Hutchinson thus asks after who has the ability to assert that “gay marriage” should be the centrepiece of LGBT struggles? The issue, he contends, is not whether gays and lesbians necessarily desire marriage; rather, given the interlocking (he employs the term “multidimensional”) nature of oppressions, scholars and activists need to continually problematize claims that same-sex marriage will undermine homophobia and place lesbians and gays into society’s mainstream. While recognizing that gay and lesbian inequality ultimately turns on a host of social, legal, political and ideological variables, Hutchinson maintains that the success or failure of efforts to achieve legal equality for gays, lesbians, bisexuals and transgendered individuals, including same-sex marriage, will depend largely on how scholars and activists address questions of racial identity and racial subjugation as part of a comprehensive analysis of heterosexist oppression.

143 Ibid., 591.
144 Darren L. Hutchinson, “‘Gay Rights’ for ‘Gay Whites’”, 1370.
Shannon Winnubst also challenges the extraordinary prominence given to marriage within gay and lesbian mainstream politics. She asks:

Why are the national lesbian and gay organizations not fighting for universal health care, rather than for participation in an elitist health care system that increasingly insures and hospitalizes only the richest and most secure? Why not fight for a living wage and broad socio-economic justice, rather than for tax breaks and inheritance laws that benefit only the richest and most secure? Why not fight against the Patriot Act, rather than for the rights of those few immigrants who are actually welcomed into the U.S. as healthy economic participants?\textsuperscript{145}

Winnubst contends that marriage will not solve the fundamental economic inequalities that exist between white people and communities of colour in the United States. Moreover, the same-sex marriage debate, in its focus on representations of respectability, undervalues nonwhite kinship systems, and thus threatens to flatten and erase any broad coalitional resistance to the “traditional” family and its patriarchal, white, bourgeois roots.\textsuperscript{146} Similar to Hutchinson, Winnubst insists that an understanding of the implications of same-sex marriage for sexual justice \textit{must} move away from an analysis based on essentialist identity politics to one starting from these interlocking systems of domination. Her critique of same-sex marriage as a political goal is grounded in her broader attempts to problematize the notion of freedom in lesbian/gay politics as transgression of boundaries and liberation from constraint. To “queer freedom” (and thus the types of freedom circulating in the politics of same-sex marriage) and to craft an entirely different politics of resistance, Winnubst argues for an interlocking analytic of how identity categories (race, gender, religion, class, sexuality) interact to perpetuate systems of domination in which we find ourselves, one that begins with sexuality as the

\textsuperscript{145} Shannon Winnubst, \textit{Queering Freedom}, 207.
\textsuperscript{146} Ibid., 205.
most effective site of intervention.\textsuperscript{147} She writes, “Let’s not fool ourselves: being queer is about sexuality.”\textsuperscript{148} As a result, in an otherwise sophisticated analysis, Winnubst continues to hold sexuality as a separate vector of power from race and class that thickly intersect but nonetheless remain separate strands.

Kenyon Farrow explicitly points to the racial politics of gay marriage rights. He argues that the debate over same-sex marriage has placed black people “in the middle of essentially two white groups of people who are trying to manipulate us one way or the other.”\textsuperscript{149} He contends that the longstanding racist images of black people – namely, either as hyper-sexualized and savage, or as asexual and the saviours of whites – have been reinvigorated in the debates over same-sex marriage and its racialized discourses: on the one hand, the Christian Right has created a false alliance between themselves and black people through religion in order to push through a homophobic agenda. On the other hand, Farrow argues, white gay civil rights groups presumably frightened of the “hyper-sexualized savage” and its counterpart the dysfunctional family have marketed gay and lesbian life to the American mainstream as upper class, white and respectable. Moreover, gay rights groups have appropriated civil rights language and deploy racial analogies in a way that disregards the “histories of terror imposed upon generations of all black people in this country.” He writes that gay marriage

in and of itself is not a move towards real, and systemic liberation. It does not address my most critical need as a black gay man to be able to walk down the streets of my community with my lover, spouse or trick, and not be subjected to ridicule, assault or even murder.

Like Hutchinson, Farrow argues that same-sex marriage will privilege white people more

\textsuperscript{147} Ibid., 17-19.
\textsuperscript{148} Ibid., 18.
than black people, and as such is a fight between middle- and upper-class people for a piece of the same pie. Thus because it is a politics primarily catered to the needs of white people, Farrow believes that support of same-sex marriage is in fact, anti-black.

There are a few authors who address the racialized notions of citizenship inherent to same-sex marriage. Amy Brandzel, for example, offers a critical reading of the quest for same-sex marriage through an analysis of the Massachusetts *Goodridge* case. She argues that the terrain of same-sex marriage is one of the primary sites on which anxieties over America's citizenry and sexual, gender, and racial boundaries play out. Thus the proper context for the debate over same-sex marriage, she maintains, is not only gay rights but also the history of marriage law and citizenship, both of which are a key mechanism through which the American nation-state produces a properly heterosexual, gendered and racialized citizenry. Brandzel argues that the *Goodridge* court decision exposes the state’s interest in promoting the reproduction of certain kinds of citizens. She notes that in its ruling, the court suggests that extending same-sex marriage rights is a way to incorporate and assimilate gays and lesbians into the norms of the national polity, making gay men and lesbians intelligible and acceptable to the state as citizens.

Brandzel asserts that rather than being concerned with whether gays should have the right to marry, “we might consider instead how exactly we want GLBT people and queer others to align themselves with citizenship.” More critically, she contends that as a site of citizenship production, the struggle for and over “gay marriage” is inextricably linked to negotiations over terrorism, immigration, welfare reform, and abortion rights.

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150 Amy Brandzel, “Queering Citizenship?”, 172.
151 Ibid., 194.
152 Ibid., 172.
Similarly, Jasbir Puar insists on situating gains for lesbian/gay/queer subjects (including gay marriage, but also adoption, mainstream cultural visibility, and gay/lesbian tourism) within the context of war on terror, the Patriot Act, the 1996 Welfare Reform Act, and American imperialism.\textsuperscript{153} Drawing on the Foucauldian notion of biopolitics, she argues that the emergence of queer subjecthood “is a historical shift condoned only through a parallel process of demarcation from populations targeted for segregation, disposal, or death, a reintensification of racialization through queerness.”\textsuperscript{154} Forms of LGBT inclusion into the national American imaginary, for example, rest upon specific performances of American sexual exceptionalism vis-à-vis perverse, improperly hetero- and homo-Muslim sexualities. Thus rather than emphasizing the resistant or oppositional facets of lesbian/gay/queer politics, she examines the “\textit{convivial} relations between queernesses and militarism, securitization, globalization, fundamentalism, secularism, incarceration, detention, deportation, and neoliberalism: the tactics, strategies and logistics of our contemporary war machines.”\textsuperscript{155} She seeks to expand the class, race and gender specific dimensions of heteronormativity theorized by queer scholars as a prerequisite for citizenship in the American nation-state. In Puar’s sophisticated analysis, she centres racism and imperialism as enabling factors for gay citizenship.

Jonathan Goldberg-Hiller also situates debates over same-sex marriage in the broader political economy of the United States. In his book that maps the political aftermath of the 1993 Hawaiian Supreme Court case, Goldberg-Hiller closely examines the “limits to union” advocates of same-sex marriage encountered and came up against,

\textsuperscript{154} Jasbir K. Puar, \textit{Terrorist Assemblages}, xii.
\textsuperscript{155} Jasbir K. Puar, \textit{Terrorist Assemblages}, xiv.
offering insights into how rights are resisted and how broad structural changes in social and political context transform the meaning of rights.\textsuperscript{156} Specifically, he examines how political majorities were formed to mobilize against the legal recognition of same-sex marriage, and which successfully transformed discourses about civil rights into exclusionary limits. Opposed political majorities deployed a neoliberal economic discourse of scarcity to frame a constitutional limit to rights seen as excessive, costly and inefficient, and to invert majority and minority positions. He argues that they turned the tables, so to speak, so that it was an aggrieved majority, as guardians of economic and moral security, that deserved protection by the courts from a minority portrayed on the one hand as economically privileged and autonomous, whose need of ‘rights’ is thereby false and duplicitous; and on the other constituted as immature where same-sex marriage would only result in a form of economic and political perversion.\textsuperscript{157} While supporters articulated a concept of political space that was pluralist, flexible and accommodating of differences, political majorities articulated a new idea of political space, one where differences crowd out the legitimate interests of the majority. Goldberg-Hiller also traces how neoliberal and neo-colonial discourses were deployed to impede political association among lesbians and gays, labour, indigenous, and corporate groups by weakening the appeal of civil rights and social justice. He insists that debates over same-sex marriage expose the privilege of citizenship it extends to be as much about “civil rights” as it is about economic surplus, national security, values of civilization, and the construction of temporality (tradition) and of space (the nation).\textsuperscript{158}

\textsuperscript{156} Jonathan Goldberg-Hiller, \textit{The Limits to Union}.  
\textsuperscript{157} Ibid., 241.  
\textsuperscript{158} Ibid., 221.
These varied contributions and racial critiques reveal the ways in which same-sex marriage encompasses much more than equality rights for lesbians and gay men; it is also a site for anxieties and reflections of what constitutes “proper” citizenship practices; for the collusion of “gay rights” with the racial and class norms inherent in citizenship; and for re-thinking the politics of transgression and normalization. It is within this small body of literature that explores the connections between racial and national norms to same-sex marriage and the contours of subjectivity of the deserving citizen worthy of marriage that I situate my own study. The chapter now turns to outline the contributions my research seeks to make.

(Un)Tying the Knot(s): Research Contributions

As this literature review has detailed, with the exception of these last contributions, lesbian/gay/queer scholarship for the most part elides any substantial analysis of its racial underpinnings and racializing effects. This dissertation thus fills a significant gap in its endeavour to demonstrate the centrality of race in an issue that appears to be solely a matter of sexual politics. Specifically, this study makes four central scholarly contributions. First, it steps outside a pro/con binary to examine the productive effects of this legal-liberal equality rights project. That is, similar to turning a kaleidoscope, I wish to markedly shift the lens through which same-sex marriage is commonly understood, that is, through the terms of individual and/or group rights, celebratory progress, or even the lesbian/feminist terms of same-sex marriage as situated on the “outside” of patriarchal heteronormativity. Where Michael Warner is concerned about the sexual “shadow” of state recognition of same-sex conjugal relationships, my concern is with the racial shadow, or rather, the racial presence inhabiting the discursive
terrain of same-sex marriage. The concern is not so much with the effects of the shifting lines of (sexual) legitimacy but with the racial hierarchies produced (although they are intertwined). As such, this research contributes to the small body of literature reviewed above, excavating racialized dynamics and effects where they seem to be absent.

Second, and linked to this, this study contributes to theorizations of race/sexuality as interlocking, rather than as analogous, parallel categories that intersect. It foregrounds a critical race/queer interlocking analytic that brings critical race theorizing on racialization and whiteness together with a queer interpretive stance that expands meanings of the “normative” beyond the realm of sexuality. Third, it seeks to intervene in and expand upon the Canadian feminist legal scholarship that, while carefully attentive to the terms on which recent same-sex legal struggles have been won and nodding to the class inequities they produce, is nonetheless silent regarding the racialized contours of respectability. This research aims to delineate the specificities of this. Because “we stand on the bedrock of earlier forms of racial consciousness and practices of racial exclusion and inclusion”¹⁵⁹ questions of racialization and the re-installment of dominant racial norms are part of political projects, even seemingly progressive ones like those for lesbian and gay equality. As such, this research project also contributes an analysis of the role same-sex marriage plays in the (re)production of white racial Canadian nationalist formations, a topic completely absent from the literature. In so doing, it asks us to pause over the victory and instead consider its complicity with racialized notions of modernity and (trans)national lines of civility and racial Otherness in the post-9/11 context.

This research project, then, writes “against” the narrative of the progress of law, interrupting celebratory accounts of victory. As such it seeks to challenge, unsettle, provoke, question, and re-draw the landscape of our thinking, not only about same-sex marriage but also about the terms with which we conceive, articulate and practice racial and sexual justice.
CHAPTER TWO:

Excavating the Racial Politics of Same-Sex Marriage:
Conceptual Framework & Methodologies

In this chapter, I wish to elaborate a conceptual framework that allows me to centre race in an equality-rights legal struggle that at first glance appears to be solely about a politics of sexuality. A fundamental contention of this research is that same-sex marriage is much more than this, that it encompasses symbolism, meanings, desires and arrangements that reach beyond the bounds of the sexual to include questions of racialization, whiteness, and nation-making through spatial and temporal registers. This research project steps outside dominant narratives of progress, of individual choice and private relations, and of a pro/con binary in order to provide a complex account of the racial relations of power inherent in the legal struggle for “equal marriage.”

Following Sara Ahmed’s exploration of “orientations” which asks, “what does it mean for sexuality to be lived as orientated?”160 I suggest that we think of the quest for same-sex marriage as a line of direction, a line of desire that is organized rather than casual.160 More specifically, I contend that it while it is orientated toward equality rights, namely a particular form of state recognition, it is also organized – orientated around – relations of heteronormativity and whiteness, and in turn linked to relations of neoliberalism. I take as a theoretical point of departure that these systems of power are “interlocking” to stress their simultaneity and the ways they sustain and secure one another to produce not only historically regulated and marginalized sexual subjects but

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also contemporary respectable citizens. As various scholars have noted, more often than not, race and sexuality come together in a model that renders them analogous. Such a model “seeks to compare and equate non-congruent orders of identity and oppression”, where sexuality and race work along separate but parallel logics of identity and power.

The conceptual framework offered here follows a different line than that of analogy. Because my research is an inquiry into racialized lines of subjectivity, I do not mobilize an analogous framework but rather examine the relationship between race and sexuality as mutually constitutive. To do so, this chapter delineates two inter-related analytic frames. First, it outlines a critical race/queer interlocking analytic that brings critical race theorizing on racialization and whiteness together with a queer interpretive stance that expands the “normative” beyond the realm of sexuality. To queer, as a critical activity, is to attend to the (white) racial subjectivity and unequal racial relations of power that are embedded in this legal struggle. Second, it outlines a feminist post-structural analytic that centres discourse, subjectivity and power. I bring these two frames together to discuss my methodologies and reading practices. Finally, part three discusses the parameters and rationales of the data collected, which include both documents and interviews. As a whole this chapter outlines the methodologies I have employed to analyze the deeply racialized discursive terrain that is same-sex marriage. It matters how

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we arrive at the places we do and thus how we theorize matters concerning “the political.”¹⁶⁴ The conceptual frameworks and methodologies outlined in this chapter provide the scaffolding for subsequent data analysis chapters, which together seek to shift the terrain through which same-sex marriage and “gay rights” more generally are understood, not for a “better truth” but for more complicated ones.

**Critical Race/Queer Interlocking Analytic**

*Racialization and “Whiteness” as a Normative Position*

The genealogy of “whiteness studies” as a political project begins with the long-standing Black and Black feminist critiques delineating whiteness a form of racial privilege and the effects of that privilege – white supremacy - on non-white bodies.¹⁶⁵ This diverse body of scholarship, essays and poetry also names the always already visibility of the structural conditions of white supremacy, and includes reflections and insights into its implications and repercussions for white people. Remarking on the distance between white America and black America, for example, James Baldwin writes, “One only has to ask oneself who established this distance, who is this distance designed to protect, and from what is this distance designed to offer protection?”¹⁶⁶ The more recent field of “critical whiteness studies” (CWS) endeavours to continue these critiques

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of the “mythical norm” of whiteness and to further deconstruct “white” as a racialized identity, situating it as historically contingent rather than ‘natural’ and essentialized.\textsuperscript{167}

Central to these endeavours, the field of CWS contends that relations of power circulate in and through whiteness via the intertwined dynamics of universalism and disembodiment.\textsuperscript{168} Universality works to render whiteness as that which signifies the unseen, the unmarked, and the absent presence. Indeed, a central insight of CWS is that whiteness remains unquestioned as the arbiter of value, the norm of acceptability, and quality and standard of merit. This “invisibility” of whiteness as a universal unmarked signifier is at once achieved and operative through its disavowal of embodiment, or more specifically, its transcendence of embodiment. Here, the work of Richard Dyer is instructive. He argues that the notion of embodiment that underpins whiteness is something that is \textit{in} the body but not \textit{of} the body. “To be seen as white”, he argues, “is to have one’s corporeality registered, yet true whiteness resides in the non-corporeal.”\textsuperscript{169}

Dyer traces the non-corporeality of whiteness manifest in three constitutive elements: first, the cosmology of Christianity that highly values the transcendence of the body, exemplified by the figure of Christ and the spirit of mastery over the body, so that the motif of embodiment is “spirit-in-the-body”\textsuperscript{170}; second, biological concepts of race emerging out of the eighteenth and nineteenth century science which were fundamentally concepts about different kinds of bodies and which, Dyer argues, locate historical, social


\textsuperscript{168} Shannon Winnubst, \textit{Queering Freedom}, 15-17.

\textsuperscript{169} Richard Dyer, \textit{White}, 45.

\textsuperscript{170} Ibid., 6-7.
and cultural differences in the body, reinforcing the inescapable corporeality of non-white peoples at the same time as it places white bodies beyond the corporeal or racial. Finally, the third element constituting the non-corporeality of whiteness is that of the spirit of enterprise, one associated with control of the self and control of others. Dyer contends that imperialism is the key historical form in which the spirit of enterprise and progress is associated with white bodies. Examining various imperial narratives, he maintains that what is crucial to the structure of enterprise and imperialism is the attainment (made available only to white men) of a position of disinterest, a “position of being without properties, unmarked, universal, just human”, and one that creates a public sphere that is the mark of civilization itself. This point of the non-corporeality of whiteness is further elaborated in chapter three which examines the dynamics of respectability and degeneracy that centrally constitute the figure of the lesbian/gay legal subject worthy of marriage.

Together these elements deeply shape the historical sedimentation of the intertwined dynamics of whiteness as universal and as embodied through corporeal transcendence, rendering it both “invisible” and ubiquitous. These dynamics inform each other: the more “invisible” whiteness becomes, the more normalized and omnipresent it becomes. A primary task of the field of CWS, then, is to render transparent “white” as a racial category and the various ways it structures, maintains and reinforces racial understandings and racial orderings of society. It is concerned with problematizing the status of whiteness as an unmarked norm and with “unveiling” the privileges concealed

171 Ibid., 24, 30.
172 Ibid., 38-39.
173 Shannon Winnubst, *Queering Freedom*. 
by the universality of being “just human”, a privilege where “(o)ther people are raced, we are just people.”  

As a political project, CWS is seen as a way to “do” anti-racism, particularly through its emphasis on white privilege, that is, the idea of unearned benefits or assets that unwittingly flow to whites.  

The field of critical whiteness studies, however, is also filled with both anxiety and critique, where the risks of studying and critically examining whiteness run high. First, as Sara Ahmed writes, the project of making whiteness visible only makes sense from the point of view of those for whom it is invisible. Underpinning CWS is the assumption that whiteness is unseen in the first place. It is thus “an exercise in white seeing” that can exercise rather than challenge white privilege.  

Implied in this critique is, I think, the matter of “citationality”, where “citation of a prior, authoritative set of practices” or discourse gives “binding power” to a performative speech act, which accumulates the force of authority. Referring back to the phrase in the introduction to this chapter that it matters how we arrive at the places we do, I think that for white scholars in particular, it matters whose critical race-thinking work we “cite” – what are our citational practices? What theoretical and epistemological “routes” do we choose in order to “make visible” the specificities of the operations of whiteness as dominant racial norm? A related, second critique is that by focusing solely on white people, the field of  

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CWS eclipses the study of racial power and processes of racial subordination.\textsuperscript{178} Analyses of “whiteness” in the absence of the experiences and its effects on people of colour risks reinvigorating the hegemony of whiteness rather than working to de-centre and destabilize it. In this sense, CWS is critiqued for its narcissistic gaze. In a thoughtful and provocative critique, Sara Ahmed argues that CWS should not be seen as even providing the conditions for anti-racism given that declarations of whiteness – even critical ones – may repeat and intensify white racism and positions of privilege. A way out of this, she suggests, involves (at least) a double turn for white subjects: staying implicated in what one critiques and one’s own role and responsibility in histories of racism, but to turn away from oneself and towards others.\textsuperscript{179}

There is also an important and sustained critique of the ubiquitous notion of “white privilege.” Zeus Leonardo, writing in the context of education, argues that this discourse imagines the problem of racism as one without agents. That is, it obfuscates who is doing what to whom. Instead of engaging racial domination, the notion of white privilege personalizes racism as an effect of psychology. Leonardo maintains that examinations of white privilege must be complemented by an analysis of the conditions of white supremacy that make white privilege possible in the first place. A discourse of supremacy, rather than privilege, would acknowledge white privilege but only as a function of whites’ actions toward minority subjects and not as mysterious accumulations of “unearned” advantages.\textsuperscript{180} Ladelle McWhorter also offers a critique of this concept,

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\textsuperscript{179} Sara Ahmed, “Declarations of Whiteness”, point 59.

\end{small}
arguing that white privilege is understood and employed through the metaphor of possession, where anti-racist work becomes a project of divesting oneself of “unearned assets” as a way to eliminate racist exercises of power. She writes that an analytical focus on the divestiture of white privilege, however, can never lead to an account of the production and maintenance of white subjectivities within racist regimes of power.\textsuperscript{181} Furthermore, she argues that the analytical work of whiteness studies would be strengthened if it considered more carefully how whiteness functions as a racial norm instead of simply reiterating it as an observation. McWhorter contends that Whiteness Studies works within an understanding of power as the possession and property of a pre-constituted subjectivity, what Foucault calls a juridical conception of power. While scholars in this field attempt to develop an analysis of subject formation within networks of power, the notion of power is understood as a metaphor of possession that can be used or put aside, something under subjective control.\textsuperscript{182} McWhorter maintains that such attempts are limited because they remain within a conception of power as a given subjectivity’s capacity to set a limit, to prohibit an action, or to (re)distribute power.\textsuperscript{183} Instead, she argues, the formation of white racial subject positions within racialized systems of power and racism all need to be situated within the framework of biopower articulated by Foucault that functioned within colonial scientific, psychological and anthropological developmental discourses of civilization and savagery that posited whiteness as the norm of health and functionality.\textsuperscript{184} If Whiteness Studies is going to

\textsuperscript{182} Ibid., 548.
\textsuperscript{183} Ibid., 538
\textsuperscript{184} Ibid., 543.
make any analytic progress, McWhorter argues, it needs to centre Foucault’s analytics of power as non-subjective and as productive of subjectivity more readily.

The project of critically examining whiteness, then, is a fraught one and these critiques ask one to consider whether it is a risk worth under taking. A premise of this research project is that whiteness does operate as a norm and is productive of respectable subjectivity in the legal struggle for same-sex marriage, with implications for social, political and cultural understandings of what it means to inhabit the categories of “gay” and “lesbian” in Canada in the early twenty-first century. My concern is not so much about making whiteness “visible” as revealing the specificities of its operations (manifest, for example, in the discursive practices of respectability, freedom, and civility), its manifestation in strategies of representation, and of how it produces particular subject-citizens worthy of marriage; in short, I seek to demonstrate its centrality to and complicity with the successful articulation of “gay rights” and thus the racial hierarchies, displacements and exclusions such a politics engenders.

Most people inquiring after my research topic express surprise at my centring of race as an analytic entry point for thinking about same-sex marriage. There are a few who have said to me, “well it’s obvious whiteness is at play, same-sex marriage is about white gay people anyways.” Others make the addition of “and white” when drawing attention to the middle-class contours of this legal struggle. What I want to accomplish through my use of the term(s) “white/whiteness”, given the assumption of its absence for some while for others the assumption of its existence, is to denaturalize its operations and make specific the claims of “it’s obvious” or “and white.” In her study of whiteness and the literary imagination, Toni Morrison remarks that in a wholly racialized society, there is
no escape from racially inflected language.\textsuperscript{185} Richard Dyer, too, maintains that whiteness reproduces itself in all texts all of the time. Therefore one can examine the specificity of whiteness, even when a text (or image) itself does not even know that it is there to be shown.\textsuperscript{186} I investigate the “how” of both the (in)visibility and normalizing functions of whiteness, being guided by a concern with the racialized and racist effects and implications of same-sex marriage as an articulation of an ostensibly progressive “gay rights” politics. My “turn” to denaturalizing the operations of whiteness is thus also accompanied by the intellectual/political concern of what happens to bodies of colour in this legal struggle. In thinking about the racial politics of same-sex marriage over the last four years, I have come to realize the applicability of Toni Morrison’s comment about the white literary imagination: that the subject of the dream is the dreamer.\textsuperscript{187} The presence of bodies of colour in this legal-political struggle is central to the making of a white respectable gay/lesbian subject worthy of marriage. The respectability of this same-sex marriage requires whiteness for its success and as such requires the displacement and marginalization of bodies of colour into the realms of degeneracy and pre-modernity. Thus while I am mindful of Robyn Wiegman’s reminder that simply rendering “whiteness” particular does not necessarily divest it of its universal epistemological power,\textsuperscript{188} I do think that making specific its operations in this legal struggle is a necessary step towards articulating an anti-racist ethics and politics of “gay rights.”

\textsuperscript{186} Richard Dyer, White, 13-14.
\textsuperscript{187} Toni Morrison, Playing in the Dark, 17.
\textsuperscript{188} Robin Wiegman, “Whiteness Studies and the Paradox of Particularity” (1999) 26:3 Boundary, 150.
In this thesis, then, I use the term(s) “white/whiteness” to signify a structural condition,\(^{189}\) that is, a position within a racialized social system that emerges as an effect of historically specific cultural practices and discourses that confer disproportionate and often abusive power on specific, persons and bodies.\(^{190}\) Moreover, whiteness does not refer only to skin colour (although as Ghassan Hage points out, this is valuable capital in claiming national “belonging”\(^{191}\)) but, following David Theo Goldberg, is a state of being, desirable habits and customs, projected patterns of thinking and living, governance and self-governance.\(^{192}\) Whiteness can thus effectively unify diverse groups of people under its banner, operating more as an aspiration that one accumulates various capitals to try to be – a “symbolic field of accumulation” rather than an essential or fixed racial category.\(^{193}\) Along these lines, Sara Ahmed theorizes whiteness as an orientation that puts certain things - styles, capacities, aspirations, techniques, and even worlds - in reach, giving bodies and things “affect” and “value.”\(^{194}\)

I want here to interlock “whiteness” with class, and specifically neoliberalism. Marriage, as various feminist scholars point out, has historically served to protect private property, not only in terms of land and inheritance but also by sanctioning the privatization of the production of labour power, namely women’s unpaid household labour.\(^{195}\) Carole Pateman points out that men’s citizenship and participation in the public sphere depended on the assumption that they would have a wife and children enjoying

\(^{194}\) Sara Ahmed, *Queer Phenomenology*, 121, 125.
\(^{195}\) Rosemary Hennessy, *Profit and Pleasure*, 63-64.
their nominal citizenship in the domestic, private sphere. As such, in her analysis, the social contract was founded on “the sexual contract.”\textsuperscript{196} Marriage thus is deeply rooted not only in patriarchal gender relations but also in capitalist relations.

In the early twenty-first century, the predominant shape of capitalism is that of neoliberalism, “a world historic organization of economy, governance, and biological and social life”\textsuperscript{197} along lines of transnational corporate power and privatization. Rosemary Hennessy has argued at length that capitalism in our current historical era does not necessarily require heteronormative families or even a gendered division of labour; what it \textit{does} require is an unequal division of labour. She maintains that if “gay or queer identified people are willing to shore up that unequal division – whether that means running corporations or feeding families, raising children or caring for the elderly – capital will accept us.”\textsuperscript{198} Lisa Duggan has coined the term homonormativity to describe a particular formation of (gay) sexual politics under neoliberalism. A homonormative politics is one that “does not contest dominant heteronormative assumptions and institutions but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption.”\textsuperscript{199} Similar to Hennessy’s arguments, a homonormative politics is one that aids the project and power of both heteronormativity and

\textsuperscript{198} Rosemary Hennessy, \textit{Profit and Pleasure}, 105-108.
neoliberalism through its adherence to normative class structures and privatized relations of care and politics.

Further to this, M. Jacqui Alexander has shown how this homonormative gay subject is also a consumer produced by both heterosexual and gay capital as predominantly white and male. She argues that heterosexual capital’s gesture of rolling out the “welcome mat” has less to do with hospitality than with the creation of a new consumer and new market niches, given its aggressive global expansions. Alexander contends that both forms of capital are invested in imagining a white, affluent male as the quintessential “gay consumer” within the contemporary racialized and gendered political economy of the U.S., erasing other sexual identities and hiding capitalist relations of exploitation. Same-sex marriage itself constitutes another niche-market and growth for the wedding industry. Advertisements for wedding planners, gay cruises for honeymoons, jewelers for rings, and real estate agents appear alongside articles on same-sex marriage featured in queer newspapers; all which rely on the labour of invisible others: those who sew the wedding garments, grow and harvest the flowers, produce the items listed in the gift registry. White racial normativity as a structural position interlocks with these neoliberal citizenship practices of privacy, choice and consumption, a dynamic that I trace more closely in chapter three.

In making explicit how whiteness operates as a system of power in this legal struggle, I further draw upon the work of Canadian critical race and anti-racist feminist scholarship. Such scholarship examines the multitude of ways race strategically defines, implicitly and explicitly, “the hierarchies of preference that underpin and reinforce

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200 M. Jacqui Alexander, Pedagogies of Crossing, 66-88.
structures of domination”, and is concerned with processes of racialization, both of bodies and of space. Here, a central concept is that of racialization, which refers to historical discursive and material processes rather than to fixed transhistorical or biological characteristics. It signals the historic and contemporary creation of racial categories, which become imbued with unequal and hierarchical valuations: valuations designed to “inferiorize and marginalize groups and individuals who are different from the ideal type or norm.”  

In this sense, implicit in the concept of racialization is the idea of the relational terms through which both racial subjects and racial national formations are conceived. Racialization occurs both explicitly and implicitly in that it is not necessarily articulated in clear terms of “race” but can also be hidden behind other concepts such as respectability, nation and civility. The Canadian feminist critical race scholarship in fact points to the hierarchical racialized nature of contemporary Canadian society – and its “stupefying innocence” when confronted with this reality - based on whiteness as a hegemonic racial norm.

The concept of racialization employed in this thesis is understood to interlock with sexuality, nation and class to produce contemporary subject-citizens worthy of marriage. Subsequent chapters carefully consider, for example, how the discursive

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practices of respectability and freedom racialize this lesbian/gay legal subject as white; and how the discourse of civility reproduces racialized trans/national formations that reconstitute the whiteness of Canadian national identity along Western “civilizational” lines in the post-9/11 context. Having conceptualized the terms of a critical race analytic into same-sex marriage, the chapter now turns to delineate its link with a queer analytic.

**Re-Thinking Queer Beyond Sexuality**

It is now close to two decades that “queer” appeared as a language for and style of political and intellectual engagement. As an activist politics, it can describe the response forged by alliances of gay men and lesbians to counter right-wing, homophobic medical and government indifference to the ravages of AIDS through associating homosexuality with disease, degeneration and death.\(^{205}\) It can signify a valuable unhinging of the sex/gender/desire nexus from the clasps of “compulsory heterosexuality,”\(^{206}\) challenging the relationship between identification and desire so as to imagine a wide continuum of sexual and gendered possibilities.\(^{207}\) Queer can also reflect a distancing from or a rejection of mainstream lesbian and gay identifications, community, and politics, where this turn away challenges sexual norms condensed in the categories of “lesbian” and “gay.”


“Queer” in common academic usage signifies not so much a personal identity as an interpretive stance.²⁰⁸ The term remains useful precisely to the extent that it cannot be made to render any single consistent meaning; it cherishes ambiguity, becoming that which, in Lee Edelman’s words, “refuses itself, resists itself, perceives that it is always somewhere else.”²⁰⁹ At the same time, two decades of theoretical production has condensed the term with meaning; perhaps its most widespread meaning can be understood as “antinormative.” As an interpretive, analytic frame “queer” could be understood as elucidating the production, construction, and investments in what Deborah Britzman terms “exorbitant normality”, often understood as heteronormativity.²¹⁰ Lauren Berlant and Michael Warner define heteronormativity in the following way. It is more than ideology, or prejudice, or phobia against gays and lesbians; it is produced in almost every aspect of the forms and arrangements of social life: nationality, the state, and the law; commerce; medicine; and education; as well as in the conventions and affects of narrativity, romance, and other protected spaces of culture. It is hard to see these fields as heteronormative because the sexual culture straight people inhabit is so diffuse, a mix of languages they are just developing with pre-modern notions of sexuality so ancient that their material conditions feel hardwired into personhood.²¹¹

What is important to highlight here is that it is the normative rather than heterosexuality per se that becomes the target of queer interventions, that is those localized practices and centralized institutions that legitimize heterosexuality as “normal” and “natural.”²¹²

Because of its focus on the normative and “exorbitant normality”, “queer” is also that which could be understood to call racial and class norms into question. Almost from

its inception, queer theory has been subject to numerous expositions of its own normalizing tendencies, its status as a field “where a scholar of color can easily be lost in an immersion of vanilla while her or his critical faculties can be frozen by an avalanche of snow.” Queer theory, it is argued, is very particular about the kinds of “trouble” it concerns itself with, where race in particular presents queer theory with dilemmas over which it actively untroubles itself. Several scholars have pointed to the ways a queer theoretical paradigm more often than not elides issues of race and class so that heteronormativity is as much about (white) racial and (middle to upper) class privilege as it is about sexual identities, identifications and acts. In other words, by privileging sexuality as the central category of analysis and subject formation, what constitutes the “regimes of the normal” is a site of overlooked complexity.

David Eng, for example, suggests that the focus on (hetero)sexual difference and heteronormativity as the central “regimes of the normal” to be queered is in part due to the deployment of psychoanalytic theory within (some) queer theory, which operates out

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of the very assumption that sexual difference is *the difference* that marks the subject.\(^{216}\)

Eng argues that for queer theory to generate its powerful contestations of the permeability of sexual borders, it requires conceptualizing normative heterosexuality as the primary regime of power producing the contours of bodily intelligibility. This results in the articulation of a ‘colourless’ sexuality, implying that sexual difference is in effect "*white* sexual difference, and that whiteness is not a form of racial difference."\(^{217}\) Eng contends that to deconstruct normative heterosexuality without examining processes of racialization leaves intact the universalizing and hegemonic structure/norm of whiteness.

The work of Jasbir K. Puar is also particularly instructive as it fully pushes queer as a critical activity beyond the terrain of sexuality.\(^{218}\) As outlined in the literature review, Puar argues that the inclusion of particular gay/queer/homosexual bodies into the (American) national imaginary at this particular historical moment depends upon a performance of normativity vis-a-vis perverse Muslim sexualities, where the sexually exceptional gay/queer subject (and US nation-state) is produced against a racialized queerness. She centres this as *queerness as a process of racialization*,\(^{219}\) where the folding of (particular) homosexual populations into the nation-state and capitalist markets is simultaneously accompanied by a “folding out of life, toward death, of queerly racialized ‘terrorist populations.’”\(^{220}\) The implications of her analysis for my framework is that gay/lesbian politics which seek to counter and stand against heteronormativity (for example, exclusionary definitions of marriage) need to be further understood as both

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\(^{216}\) David Eng, *Racial Castration*, 103. As Eng notes, there is nonetheless a racial logic underpinning psychoanalysis, in Freud’s oeuvre, for example (particularly *Totem & Taboo* and *On Narcissism*), which couple European racial progress with the advancement of normative (read heterosexual) sexual practices.

\(^{217}\) Ibid., 138.

\(^{218}\) Jasbir K. Puar, *Terrorist Assemblages*.

\(^{219}\) Ibid., xi.

\(^{220}\) Ibid., xii.
shoring up and complicit with racial, class and citizenship norms. Her analysis encourages attention to “where” and “how” bodies and communities of colour are displaced and abjected alongside and within the garnering of “gay rights.”

These critical expositions are challenges to extend the analytic range of queering the “normal” beyond sexuality. Such a queer analytic takes the “normative”, imbricated alongside the above theorizations of racialization and whiteness, as a relation of power through which not only sexual subject positions are conceived and conferred but also class and racialized ones as well.

**Discourse, Subjectivity, Power**

**Discourse and Subjectivity**

As part of a commitment to a critical race/queer interlocking analytic, my research project takes who the legal marrying subject is as a “political problematic.”

To assist this, I draw upon a feminist post-structuralist framework of subjectivity. The work of Michel Foucault is particularly central here, as he sought to make sense of how “human beings are made subjects.” Foucault theorized that relations of power are productive of subjectivity through a whole range of discursive practices, including (but not limited to) economic, political, legal, sexual, medical, and religious. How we live our lives as conscious subjects and how we give meaning to the material social relations which structure our lives depends on the range and power of existing discourses.

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essay “The Order of Discourse”, Foucault maintains that discourse (or, a discursive field constituted by various contradictory and conflicting discourses) can be considered a regulated set of statements, of ideas, that structures the way we perceive reality, the conceptual terrain in which knowledge is formed and produced. In the History of Sexuality, for example, Foucault offers an account of the emergence of “the homosexual” in modernity through converging scientific and medical discourses. He writes, for example, that where “(t)he sodomite had been a temporary aberration; the homosexual was now a species.” Sexuality and sexual desire(s), then, are not a natural given in Foucault’s analysis but rather come to be held as “inner truths” of individuals through various medical, psychiatric, pedagogical, religious discourses. In this sense, then, discourse signifies an impersonal system that exceeds the individual, with the effect to make it virtually impossible to think “outside” its terms. A discursive formation governs beliefs and practices, “words and things”, in such a way as to produce a certain network of material relations, relations that located in institutions and practices that shape the material world, including bodies.

Drawing on this, feminist post-structural work theorizes subjectivity as dynamic, contradictory, in process, heterogeneous and constantly being remade within a historically specific range of discourses. In contrast to a humanist model of the subject as disembodied, unified and rational, a feminist post-structural analytic focuses on

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process rather than essence, a process of coming into being. As such, the self, as a subject, is “a permanent possibility” that is never fully and finally constituted but is produced time and again.\textsuperscript{228} A feminist post-structural analytic insists that subjectivity is produced historically and shifts with the wide range of discursive fields that constitute it. It is a process of subjectification where there is a tension between simultaneously becoming a speaking, agentic subject and being subjected to the meanings inherent in the various discourses that constitute us.\textsuperscript{229} Meyda Yegenoglu argues that what is at stake in a post-structural posture towards subjectivity is not only an unveiling of the subject’s universal (e.g. Western, male) pretensions but also a demonstration that its self-production requires relationality, complexity and dependence on the “other.” In her words, “The aim of shaking the structure itself is possible only when the other and otherness is located in the heart of the subject.”\textsuperscript{230} Relationality, then, is a constitutive moment of subjectivity.

Throughout the thesis, I employ these understandings of discourse and subjectivity. I locate the various discourses circulating and underpinning this legal struggle (for example, respectability, freedom, civility) in historical, political and social contexts in order to draw attention to the interlocking systems of power informing them, and to ask after what racialized subject positions are made possible by them.

\textit{Zones of Power: BioPower and Governmentality}

\textsuperscript{228} Judith Butler, “Contingent Foundations”, 13.
\textsuperscript{229} Bronwyn Davies, \textit{A Body of Writing 1990-1999} (Walnut Creek, CA: Altamira Press, 2000), 27.
I situate the concepts of race and racialization within the framework of power as delineated by Foucault.\textsuperscript{231} He proposes that instead of viewing power as repressive and a negative limit, we think of bodies as shaped, disciplined and governed through the exercise of power which “reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives.”\textsuperscript{232} Power, then, for Foucault is in action, happening at innumerable points. It is not a “thing” or possession that one person or group owns that can then be redistributed (or not). In this sense, for Foucault, resistance is not on the “outside” of power but is constitutive of it. Employed and exercised through a net-like organization, Foucault understands power as underlying all social relations from the institutional to the inter-subjective, and as a fundamentally enabling force.\textsuperscript{233} Power is tolerable, Foucault insists, “only on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms.”\textsuperscript{234} In other words, relations of power are at their most effective when we do not think that we are in their grasp.

Foucault conceptualizes multiple zones of power relations that interconnect and traverse each other.\textsuperscript{235} Two such formations that I want to outline here are Foucault’s theorizing of biopower and governmentality. Foucault theorizes biopower as that which “takes life into, under its care.”\textsuperscript{236} It is a relation of power organized around the management of life, one that intervenes in the making of life, in the manner of “how” to

\textsuperscript{232} Michel Foucault, *The History of Sexuality*, 39.
\textsuperscript{233} Michel Foucault, “Two Lectures”, 98.
\textsuperscript{234} Michel Foucault, *The History of Sexuality*, 86.
live. Biopower joins two technologies of power operating at different levels, one addressing the disciplining of individual bodies (the “anatomo-politics” of the human body), the other addressing the regulation of the biological processes of human beings (the “biopolitics” of the human race). Foucault suggests that the element that circulates between the disciplinary and the regulatory is the norm; the norm is something that can be applied to both a body one wishes to discipline and a population one wishes to regularize. For Foucault, the normalizing society is a society in which the norm of discipline and the norm of regulation intersect so that sexuality, for instance, in both the body as individual and the body as social are constituted along lines of national policy, and in this sense involved in the process of nation making. As Foucault writes, through the biopolitical management of life, “sex not only stamped individuality; it emerged as "the theme of political operations" and as an "index of society's strength, revealing of both its political energy and biological vigor." Foucault’s notion of governmentality extends the theme of biopower. Lois McNay posits this as a shift from conceptualizing power as a process that involves the disciplining and regulating of individuals and bodies – an “objectivizing” force - to a view of power that is a “subjectivizing” force, that is, a relation of power whereby a human turns herself into a subject. Here, Foucault conceives of the exercise of governmental power as the “conduct of conduct”, a term designating the ways the conduct of individuals or of groups might be directed, ranging from a “governing the

237 Michel Foucault, *Society Must be Defended*, 244.
238 Michel Foucault, *History of Sexuality*, 146.
self” to the “governing others”\textsuperscript{240}. As a noun, conduct indicates behaviour, action, comportment; as a verb, to conduct means to lead, to guide, to direct. As a concept, it is given “the very broad definition of shaping the way we act.”\textsuperscript{241} It is concerned with harnessing, ordering and managing energies, needs, capacities and desires to orchestrate the conduct of the body individual, the body social and the body politic.\textsuperscript{242} As a governing of conduct, “practices of government…are multifarious and concern many kinds of people.”\textsuperscript{243} In this way, governmentality has multiple points of operation and applications, from individuals to populations, to work and citizenship practices. Governmentality, then, is a form of power that produces and organizes subjects, and is used by subjects to govern themselves. Practices and models of self-governing are, in Foucault’s words, “not something invented by the individual himself. They are models that he finds in his culture and are proposed, suggested, imposed upon him by his culture, his society, and his social group.”\textsuperscript{244} It is an exercise of power that constitutes “responsible” subjects who govern their own behaviour. Through the notion of governmentality, Foucault encouraged a way of thinking about the “interiorization” of surveillance and discipline by subjects themselves.

Mitchell Dean suggests that as contemporary formations of power, biopolitics and governmentality need to be conceptualized as acting with and in relation to one another

\begin{itemize}
  \item Michel Foucault, “The Subject and Power”, 138; also Thomas Lemke, “The Birth of Bio-Politics: Michel Foucault’s Lectures at the Collège de France on Neo-Liberal Governmentality” (2001) 30:2 Economy and Society, 190-207.
  \item Mitchell Dean, “Powers of Life and Death”, 119.
\end{itemize}
rather than understanding them as bounded zones of power with no cross over.\textsuperscript{245} The exercise of power through “governing”, he argues, is multiform and arises as much from powers of life and death as it does from direction of conduct.\textsuperscript{246} I gesture to biopolitics/biopower as a way to conceptualize the “folding into life”\textsuperscript{247} of certain lesbian and gay bodies through same-sex marriage, and particularly as a way to think about the racialized discursive practices of respectability discussed in more detail in chapter three. I gesture to the concept of governmentality because same-sex marriage can be conceptualized as a mode of governance, tied up as it is with neoliberal citizenship practices. Extending legal rights to sexual minorities is a way of ruling through inclusion and recognition; conversely, to be socially included is to agree to manage oneself and to enter voluntarily into a field of surveillance, as a socially included subject. Following Mitchell’s methodological suggestion, I keep these two formations of power in relation to one another, as both are constitutive of racialized lesbian/gay subjectivity in this legal struggle.

**Summary: Methodological Directives and Reading Practices**

In tracing differences between feminist standpoint theory and feminist post-structural thought (what she calls interpretation and genealogy, respectively), Kathy Ferguson posits feminist post-structuralism as more of an *activity* than a theory in its posture of subversion toward fixed meaning claims.\textsuperscript{248} She contends that both interpretation and genealogy are strategies, practices and ways of understanding the

\textsuperscript{245} Mitchell Dean, “Powers of Life and Death”, 125.  
\textsuperscript{246} Ibid., 123, 127.  
\textsuperscript{247} Jasbir K. Puar, *Terrorist Assemblages*, xii.  
\textsuperscript{248} Kathy Ferguson, “Interpretation and Genealogy in Feminism” (1991) 16:2 *Signs*, 322-339.
world; the difference is *what to make* of claims about reality. While interpretation takes the subject as a source of privileged accounts of the world and focuses on the liberatory potential of language, genealogy takes the subject as something to be accounted for, asking after its emergence through discourse. Both are disruptive of established power relations but in different ways: interpretation subverts the status quo in order to make room for a vision of a better alternative; genealogy aims to shake up the orderedness of things, insisting that those structures and processes that we take to be liberating will also be constraining. Ferguson writes, “The interpretivist holds up for us a powerful vision of how things should be, while the genealogist more cautiously reminds us that things could be other than they are.”

I raise this as a way to signal a feminist post-structural analytic that takes itself as a “posture” towards the texts and truth-claims advanced to achieve the legal right to marry for same-sex couples, a posture that pays attention to the racialized subject positions such truth-claims make possible. It holds that what is put forth as “truth” in the documents under study is an effect of (racialized) discourses. I draw here on Derek Hook’s theorizing of discourse as *an event*, an “occurring”, that both implements power and is power. Discourse “is the thing that is done.”

As such, I conceive of respectability, freedom and civility as *discursive practices* grounded in governmental and biopolitical operations of power that constitute racialized subjectivity and racialized transnational formations.

My examination of these racialized discursive practices is further enabled by a critical race/queer analytic, whose terms I delineated earlier. Based on the theorizations of whiteness and racialization, it is one that attends to the formations and effects of

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249 Ibid., 333.
racialized power within a lesbian-gay equality rights project. Specifically, such an interlocking analytic is a critical activity that elucidates configurations of sexuality, race, nation and class that constitute a particular (and contingent) gay/lesbian legal subject recognized by the Canadian nation-state as worthy of access to civil marriage.

My primary methodological directive was to follow both racial absence and presence. In the first instance, I read race “in” to the discursive practice of respectability, drawing upon the insights of critical race scholars who track its historical relation to sexual and racial degeneracy, and its requirement of “unmarking” the corporeal. Bodies of colour “appear” in two key ways in this legal struggle: through racial analogies and through trans/national constructs of past racial injustices and the “pre-modern.” Here, I follow the functions of this racial presence, that is, what it does to enable the (successful) articulation of the right to marry, and what it gives rise to. I begin from the premise that these racial “Others” are not only what the (white) gay/lesbian and/or national subject-citizen must distinguish itself from to achieve respectability and to know itself as free, but that they are also a “necessary possibility.” In other words, the respectability, freedom and civility find greater purchase and resonance because of the presence of these bodies.

This method of following both absence and presence is a way to make specific the operations of whiteness and racialized power firmly underpinning this legal struggle. My method then does not constitute a mobilization of analogy between race and (homo)sexuality; rather I aim to trace their relationship as mutually constitutive, that is,

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251 Meyda Yegenoglu, Colonial Fantasies, 9.
how relations of dominance interlock to produce contemporary subject-citizens worthy of marriage.

**Data Sources: Documents & Interviews**

**Documents**

Marriage in Canada is governed both federally and provincially. The federal government has jurisdiction over the definition of marriage (that is, who can marry) while the solemnization of marriage is a provincial responsibility (for example, the issuing of marriage licenses and who performs the civil ceremony). Thus to study the racial politics of same-sex marriage I collected documents on these two fronts.

Provincially, I focused primarily on the British Columbia (BC) and Ontario cases, as these were the two provinces in which the legal proceedings for same-sex marriage began. Initially, I had thought to gather documents related to the Quebec case as it started roughly around the same time but in the end I limited my focus to British Columbia and Ontario, as I needed to put parameters around the quantity of data I was amassing, in order to make it manageable for analysis. Furthermore, the BC and Ontario cases involved a wider and more numerous range of people and sites of origin, thereby offering greater insights to consider representational practices and arguments.

I collected the affidavits of the individual appellants; the written submissions *(facta)* to the provincial courts made by those seeking access to civil marriage, by the Attorney General of Canada (representing the federal government) who was opposed, as well as the submission written by interveners for both “sides”; and the provincial court rulings at both the Supreme/Superior Court level as well as the Courts of Appeal. I did gather provincial court rulings for all of the provinces that legalized same-sex marriage in
order to get a broad sense of the terms of legal recognition, but these relied heavily on the precedents set by the British Columbia and Ontario rulings.252

At the federal level, I collected various documents pertaining to the passage of the federal legislation defining civil marriage to include same-sex couples, Bill C-38. In the first instance, this includes documents pertaining to the Supreme Court of Canada Reference Hearing on Bill C-38. Here, because of the large number of parties intervening, I limited the documents to the affidavits of the Ontario and British Columbia couples; the written submissions by their lawyers; and the facta of the Attorney General of Canada. In the second instance, I collected the Parliamentary and Senate Debates over Bill C-38 that occurred between February and July 2005. I chose to include these because such debates encapsulate state perspectives (however contested) and because they constitute a rich site for analysis of racialized trans/nationalist formations. Originally, I had thought to include the hearings of the House of Commons Standing Committee on Justice and Human Rights, which traveled the country between November 2002 and April 2003 on behest of the Minister of Justice, who asked it to consider whether, in the context of Canada’s constitutional framework, Parliament should take steps to recognize same-sex unions and if so, how.253 The Committee’s final report was never completed because of the Ontario Court of Appeal ruling (June 2003) giving immediate effect to same-sex marriage in Ontario, and for which the Committee adopted a motion in support of this ruling.254 In the end, I did not include transcripts of these hearings because I felt I

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252 Alberta, North West Territories, Nunavut and Prince Edward Island did not legalize same-sex marriage at the provincial/territorial level. It became legal only with the passage of the federal legislation, Bill C-38.

253 Department of Justice Canada, *Marriage and Legal Recognition of Same-Sex Unions: A Discussion Paper* (Ottawa, November 2002). This discussion paper provided the basis for the hearings.

254 This Committee held 27 public meetings, hearing from 467 witnesses. For a feminist analysis of these hearings, see Claire Young and Susan Boyd, “Losing the Feminist Voice?”
already had an overwhelming amount of data and, more precisely, in the larger scheme of the provincial legal struggles for same-sex marriage, these hearings did not play a central role. Finally, as a supplement, I also collected newspaper articles and images from both the mainstream media and the queer media as this was a highly public debate.

In this dissertation, I have conceptualized the data as a “whole” rather than as specific cases (for example, British Columbia versus Ontario; or provincial versus federal). I have done so for two main reasons. First, there is a cross over of actors; so for example Egale, Canada’s national lesbian/gay/bisexual/transgender advocacy and lobby organization, was one of the main parties in the British Columbia case and also acted as an intervener in the Ontario case. Second, there is also a large thematic overlap, not only between the provincial cases but also between these and the federal debates. Such divisions would thus be cumbersome, repetitive and somewhat of an artificial divide. I have, however, generally assigned particular data sources to each chapter, as this helped to focus the analysis. Chapter three focuses primarily on the affidavits to trace the discursive dynamics of racialized respectability; chapter four draws upon the legal facta to analyze the discourse of freedom mobilized through the use of racial analogies; and chapter five centres the House of Commons and Senate debates to investigate the discursive practice civility and its relation to trans/national racial formations. It should be noted, however, that this division of data does not hermetically seal the chapters; there is slippage of the data sources between them as the discourses of respectability, freedom and civility that circulate are so ubiquitous. A listing of all the documents analyzed can be found in sub-sections of the Bibliography at the end of the dissertation.
This research project does not offer a detailed analysis or explanation of the legal and political processes and I would refer the reader to other sources for this. Finally, as it investigates the racialized relations of power underpinning and circulating within a “gay rights” legal project, this research steers away from analysis of conservative opposition. I did, however, read their submissions in order to obtain a better context for the arguments made in support of same-sex marriage as well as to investigate a shared racial terrain between the two sides, one which is most apparent when it comes to racialized nationalist formations, discussed further in chapter five. Frankly, their written submissions to the courts and political expressions in the Parliamentary/Senate debates are a fascinating source of data, particularly with respect to links between reproduction, race and civilization. Such interlocking discourses arising out of their contestation of same-sex marriage could provide the grounds for a paper written outside the bounds of this thesis.

**Interviews**

I also conducted six in-person interviews with lawyers directly involved in litigating the provincial cases, between March and May of 2006. Initially, I had thought to undertake only a document analysis but upon starting to read the data, I felt that by interviewing the lawyers involved, my knowledge of the issue and of the arguments would be strengthened. The purpose of these interviews was to gain insight and a deeper understanding of the choices and strategies undertaken that shape the texts I am analyzing. The interviews complement the document analysis by providing a more

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255 See Kathleen Lahey and Kevin Alderson, *Same-Sex Marriage*; and in particular Sylvain Larocque, *Gay Marriage*. 
textured framing of these legal efforts. I did not interview the couples involved. The affidavits, many of which go into great detail, coupled with the interviews, gave me a sense of their story/motivations,\textsuperscript{256} and my research concern was not so much on the experiential as it was about examining the racialized discursive practices that shaped the victory.

I found the names of the lawyers on the written legal submissions as well as by following the reports of the cases on the main website in Canada on this issue (www.samesexmarriag.ca).\textsuperscript{257} I emailed each of them an invitation (see Appendix A) and received positive responses to participate, and emails were exchanged to arrange dates and times. I did also attempt on three occasions to conduct an interview with someone from Egale, as this organization really was at the forefront in advocating for the legalization of same-sex marriage. The first attempt involved an email invitation sent to the (then) Director of Advocacy for which I received no response. I followed up with a telephone call to this person, in which two things occurred. First the person was quite suspicious and hostile towards me, a dynamic that was complicated by a poor and very static connection thereby making communication difficult. The person claimed not to have received the original email, so I re-sent it to another address given to me but received no response. I later then learned that this person had left the position and so thus re-contacted Egale. I received an email in return declining participation because of “too many student requests” of this sort. I can only surmise that my research focus was

\textsuperscript{256} A number of them were also interviewed by Dr. Kevin Alderson (University of Calgary) and published in the co-authored book with Kathleen A. Lahey, *Same-Sex Marriage: The Personal and the Political*. I read these interviews as background information.

\textsuperscript{257} This website was created and is maintained by two of the participants in MCCT’s court challenge, Kevin Bourassa and Joe Varnell.
perhaps considered too disruptive and that Egale (its staff) must have been very deeply invested in this issue to not want to speak to me.

The face-to-face interviews were conducted in Toronto, Montreal\(^{258}\) and Kingston, and lasted anywhere from 60-120 minutes. Four of them occurred in the offices of the participants, one in a home, and the other in a café. Five out of the six lawyers were white; five out of the six were women. Some of them had dived into the legal struggle for same-sex marriage with no hesitation while others expressed ambivalence and spoke about what made their perspectives shift. There were several dynamics at play during the interviews. In some instances, there was definitely a hierarchical lawyer/student dynamic; there was definitely a sense of personal and political investment in having done a “good” thing that imbued many of the interviews; two of them I found to be particularly engaged with my questions, another I found fairly resistant.

The interviews followed a structured set of questions (see Appendix B) but allowed room for contribution of ideas or thoughts the participants felt would be relevant. In discussing the degree of confidentiality I could offer them, I informed them that their identification would be kept confidential if they so chose but that I could not guarantee complete confidentiality, due to the public nature of the legal struggle and the small number of lawyers heavily involved; none chose anonymity (see Appendix C). The interviews were audio taped and then transcribed. Transcripts were sent to the participants for comments, clarifications and to fill in any gaps; three of them did this.

\(^{258}\) I did interview the two lawyers involved in the Quebec case because at the time of the interviews (Spring 2006) I was still collecting documents. I want to note that, as I discovered in the interviews and in my secondary source readings, there was a disjuncture between the Quebec case and the BC and Ontario cases. Where there was a fair amount of crossover between these two latter provinces, the Quebec case followed its own trajectory. The lawyers, for example, did not come from the LGBT community, as they did in the BC and Ontario cases; this case was somewhat disconnected from what was happening in BC and Ontario.
After the interviews were transcribed and the documents gathered, I read all the data for content and thematic analysis in two “streams.” The reading process itself took a substantial amount of time, as I had a large number of documents. First, I read with a focus on the over-arching structural argumentation within the framework of the Charter and with an eye on repeated themes that emerged such as progress of the law, equality, harms, choice, meanings of marriage, role of the state, etc. Second, my reading practice involved “reading for race”, in both its explicit and implicit manifestations. Here I outlined my notes to indicate references to racial analogies, personhood/citizenship, multiculturalism, nationalist narratives, modernity, family/children, narratives of “sameness” and “normality.” Out of these readings emerged the three over-arching discursive practices I consider central to this equality rights struggle: respectability, freedom and civility. They are inter-connected and all three circulate to some extent in all of the data gathered, although more strongly in some than others. The discourse of freedom, for example, as manifest through racial analogies, is particularly ubiquitous. Respectability is particularly manifest in the affidavits as well as in the terms of state recognition of these couples and the value of marriage. Originally, I had listed the discourse of modernity but shifted this to one of civility: the idea of modernity and modernist notions underpin all three of the discursive practices I examine; and “civility” seemed a more apt to capture the racial resonances of the nationalist formations produced by the debates over same-sex marriage, as will be discussed further in chapter five.

The conceptual frameworks and methodologies I have outlined here enable the issue of same-sex marriage to be understood as a politics of race as much as it is one of
(homo)sexuality. As the following chapters will demonstrate, the discursive terrain of the legal struggle for same-sex marriage is a highly racialized one
CHAPTER THREE:
Recognition, Respectability and Representational Practices
(or, “Why is Our Love an Issue?”)

I believe equality is powerful. It gives each individual the opportunity to feel like they belong in all aspects of life. I am no different than anyone else. I have a right to be here, to live, to explore, to learn, to love, to cherish and to participate in life fully. I ask myself, why does the fact that I am in love with a woman make me unequal?

- Gail Donnelly, Affidavit, 2000

We cannot deny the rights of people who are part of our society. They are not to be ignored or made to feel invisible. Some may be our friends or our neighbours. Some may be our sons or our daughters. They live, work and contribute in our communities. They too pay taxes. They are in long-term relationships and in some cases raise children. Their relationships deserve to be fully recognized too.

- Martin Cauchon, Liberal MP, 2003

On February 14, 2004, “in the spirit of celebration and romance”, a small group of people assembled to skate along the Rideau Canal in Ottawa to honour same-sex couples who had married and, in anticipation of forthcoming federal legislation, to send a message to Members of Parliament that “true love does not discriminate.”

This action was one of several held in cities across Canada that year and in years following. I raise this point because it seems an apt way to signal the lines along which the “story” of same-sex marriage was publicly articulated, attaching itself to personal stories and narratives of ordinary love, romance and a particular “intimacy grid” of everyday domesticity. These narratives appear widely in the affidavits of the individual’s formally seeking civil marriage, in the written legal facta submitted to the courts, in court rulings legalizing same-sex marriage, and within Parliamentary debates. They also form a constitutive element of the discourse of respectability that is foundational to

260 These Valentine’s Day “actions” started in 2002; February 14th is now dedicated as “International Freedom to Marry Day”, a day of activism for an “international call for action in countries that live without equal marriage.” See www.samesexmarriage.ca/advocacy
contemporary nation-states recognition of formal equality rights for lesbians and gay men and to their incorporation into capitalist circuits of consumption. \footnote{262 See M. Jacqui Alexander, \textit{Pedagogies of Crossing}, 66-88; Suzanna Danuta Walters, \textit{All the Rage: The Story of Gay Visibility in America} (Chicago and London: The University of Chicago Press, 2001), 253-289.}

This chapter analyzes the representations of racialized respectability that underpin and give strength to claims for “equal marriage” as articulated in the affidavits of the couples’ in the Ontario and British Columbia cases. I take as my entry point the discursive frame of “the ordinary”, not only because of its ubiquity but also because it deeply informs what Katherine Franke has termed the “harm of non-recognition” so central to this legal equality-seeking project. \footnote{263 Katherine M. Franke, “The Politics of Same-Sex Marriage Politics”, 240.} Writing in the American context, Franke suggests that the civil rights injury articulated by the “gay community” has shifted from one of mis-recognition, that is, the legal regulation and categorization of same-sex sex as criminal to one of seeking legal redress based on non-recognition. In other words, the harm of injury is articulated not through the terms of criminality or deviance but rather as the failure of the nation-state to recognize lesbians and gay men as valuable and re/productive citizens-subjects, legible by and through a particular form of intimate kinship that sutures them to collective national belonging. \footnote{264 Ibid., 239.} I contend that this dynamic of non-recognition has resonance in the Canadian context. While legal arguments emphasize that the ban on same-sex marriage has its root in mis-recognition via historical homophobic stereotypes (and hence constitutes a violation of equality rights guaranteed by the \textit{Charter}), it is more cogently argued that this ban indicates that the Canadian state (via the Courts, Parliament) is not recognizing same-sex conjugal relationships as
fulfilling similar social, economic and familial functions as heterosexual conjugal relationships.

Implicit in the harm of non-recognition, as this chapter will show, is a presumption of citizenship whereby the lesbian/gay subject of this legal struggle is represented as a citizen who is not being recognized for his/her value, worth and re/productive contributions to Canadian society. The analysis of the affidavits in this chapter is guided by the question: what kind of lesbian/gay citizen is being constituted as worthy and deserving of civil marriage? My purpose is to excavate the interlocking sexual, class and racial hierarchies condensed in the discursive frame of “the ordinary” which engender respectability as a relation of power. Importantly, there are no explicit racial references or signifiers marking respectability’s terrain of “the ordinary” in the affidavits under study here. In this instance, my reading practice was to be alert to the inextricable racial resonances of its manifestation. As Ann Laura Stoler has remarked, race is often located in “invisible ties”, unspoken assumptions about morality and character, and in hidden truths that are invoked as common-sense knowledge.265 I argue that the discourse of the “ordinary” is power-evasive; that is, its neutral, non-particular and even positive connotations mask its collusion with (and hence support of) normative lines of racialized neoliberal citizenship. As such, it functions as a “technology of assimilation” into what Lauren Berlant asserts to be the true practice of nationhood: property, privacy and individuality.266 It is thus through the discursive efforts to be recognized as “ordinary” citizens that the glimmerings of racialized respectability shine through.

266 Lauren Berlant, The Queen of America, 200, 202.
I begin the chapter by introducing the concept of respectability as a relation of power, especially in its relation to degeneracy. Their dynamic has a particular history with respect to racial and class formations of sexuality that have bearings upon the contemporary issue of same-sex marriage. This first part of the chapter also links respectability to the strategies thought out and made by lawyers when the marriage cases commenced in order to delineate my method of analyzing the terrain of “experience” manifest in the affidavits. Part two engages an examination of the discursive frame of the “ordinary” that structures the affidavits by probing the themes of reproduction, privacy and individuality as intrinsic elements of racialized and neo-liberal lines of citizenship. The analysis reveals the ways in which sexual and class hierarchies interlock with racial hierarchies of exclusion and displacement to produce a lesbian/gay legal subject-citizen worthy of marriage. In paying attention to the racial resonances that shape it, this chapter foregrounds the operations of racialized relations of power necessary for the success of “equal marriage.”

**Historical Formations & Contemporary Strategies of Respectable Sexuality**

Several scholars have traced the myriad of historical inter-connections between respectability and its racial, gendered and class formations of sexuality, particularly with respect to the rise in power and legitimacy of the middle-class in modern liberal democratic states. The work of George Mosse provides a useful analytic entry point into this.\(^267\) Writing about Western Europe in the eighteenth and nineteenth centuries, Mosse

contends that capital accumulation and economic activity only partially defined the middle-class. He states,

…it was above all the ideal of respectability which came to characterize their style of life. Through respectability, they sought to maintain their status and self-respect against both the lower classes and the aristocracy. They perceived their way of life, based as it was upon frugality, devotion to duty, and restraint of the passions, as superior to that of the “lazy” lower classes and the profligate aristocracy.\(^{268}\)

According to Mosse, the notion of respectability deeply informed new ways of regarding the human body and sexuality that triumphed in the nineteenth century, becoming intrinsically tied to manners, morals, and civility, control over sexual passions, sexual purity, individual and national physical and moral health, and to the “civilizing” process itself.\(^{269}\) Respectability thus signaled the ordered and self-disciplined state of bourgeois persons and homes, and importantly, the proper attitude toward sexuality.

Inherent to the workings of respectability were distinctions drawn between “normal” and “abnormal” that found their greatest expression in the concept of degeneracy. In Mosse’s analysis, degeneracy was employed as a way to sharpen the distinction between those bourgeois virtues that led to individual and national progress, and those vices and deviations cast as dangerous to the vitality and well-being of the individual, the family and the nation. Accordingly, and in tandem with both nationalism and racist stereotypes, the ideals of respectability cast all who stood outside the respectable norms of bourgeois society as degenerate. The “degenerate classes” - the insane, homosexuals, criminals, prostitutes, Jews, the militant working class - were

\(^{268}\) Ibid., 4-5.
collectively figured as transgressing the proper distributions of money, sexuality and property. Mosse argues that the distinction between normality and abnormality had particular resonance in the figure of the homosexual, whose “abnormality” was not only confined to individual sexual acts but also registered in psychological makeup, looks and bodily structure. Homosexuals were thought to symbolize not only the confusion of the sexes but also sexual excess, darkness, ill health and a threat to nation building.

From another angle, Mosse observes that prevailing social attitudes of the “degeneracy” of homosexuals were such an integral part of the fabric of society that homosexuals and lesbians themselves sought to transcend these stereotypes in a bid for “normalcy” and respectability. In its alliance with nationalism, the idea(l) of respectability had, in fact, become so closely associated with the coherence of society and any departure from its norms with chaos, solitude and even death that “what began as bourgeois morality in the eighteenth century in the end became everyone’s morality.” Mosse’s delineations of the dynamics between respectability and degeneracy, and their link to nationalism, draw important attention to the hierarchical arrangements that underpin the discourse of respectability and its ideal embodiments, revealing its continuing role in the twentieth century in marking rightful claims to membership and belonging in the body politic.

Michel Foucault’s groundbreaking History of Sexuality (Volume I) also elaborates on the formation of Western sexuality along the lines of bourgeois health and respectability. Through nineteenth century figures of the hysterical woman, the

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271 George Mosse, Nationalism and Sexuality, 25.
272 Ibid., 191.
masturbating child, the perverse adult, and the Malthusian couple whose task in life is to reproduce healthy offspring and strengthen the nation-state, Foucault suggests the notion that sexuality in the Victorian era was not repressed but rather proliferated in discourses and definitions of self-hood, operating as a technology of self-affirmation of the middle-class.273 Where blood and lineage were of import to the aristocracy (what Foucault terms a “deployment of alliance”), the bourgeoisie redefined the character of its sexuality through an emphasis on the body and its health within reproduction. As a “deployment of sexuality”, Foucault states that this emphasis should undoubtedly be linked to the process of growth and establishment of bourgeois hegemony: not, however, because of the market value assumed by labor capacity, but because of what the “cultivation” of its own body could represent politically, economically, and historically for the present and the future of the bourgeoisie.274

To this extent, the deployment of sexuality engenders control and regulation of populations whereby those deemed “degenerate” become “othered” through the nation-state’s requirement for healthy citizens. Sexuality, for Foucault, is enmeshed within a grid of power relations and is the site where dense transfers of power occur.

In Race and the Education of Desire, Ann Laura Stoler extends Mosse’s exploration of the relationships between nationalism, sexuality and embodiment, and also critically locates Foucault’s work on the history of Western sexuality within circuits of nineteenth century colonialism and imperialism. In so doing, she also traces the hierarchical arrangements of bourgeois respectability with respect to sexuality. Stoler argues that the formation of the middle class and its values and distinctions was made possible through racialized notions of civility that brought class and racial membership

273 Michel Foucault, The History of Sexuality, 36-49.
274 Ibid., 123, 106-107.
into sharp relief. In Stoler’s analysis, European men and women won respectability by steering their desires towards familial and conjugal love. To be considered truly European meant cultivating a bourgeois self in which familial and national obligations held priority, and sex was held in check “by parceling out demonstrations of excess to different social groups” in order to exorcise its proximal effects.275 As such, Stoler demonstrates the relational terms of the affirmation and cultivation of bourgeois selves and sensibilities.

As the historical excavations of Mosse, Foucault and Stoler’s scholarship reveal, the lines drawn between respectability on the one hand, and sexual deviance and degeneracy on the other, resulted in the projection of “perverse” and “unnatural” desires onto non-white bodies and non-reproductive sexualities, marking them as immoral and unpatriotic. Stereotypes of same-sex sexuality as threatening and “degenerate” for the future of family, society and even “civilization” itself continue to circulate in contemporary times evidenced in social conservative opposition to same-sex marriage. Securing what Mary Louise Fellows and Sherene Razack term a “toehold on respectability”276 becomes, then, an essential feature of the representational practices to achieve this legal victory. Given its historical trajectory, however, Fellows and Razack argue that respectability must be understood as that which sustains hierarchical relations. The equality achieved by a subordinate group through reliance on respectability is an equality that leaves intact and ignores the interlocking relationships between hierarchical systems such as capitalism, patriarchy, racism and heterosexism.277 As a critical

275 Ann Laura Stoler, Race and the Education of Desire, 182.
277 Ibid., 335-336.
reflection on projects of feminist political solidarity, their analysis reveals the ongoing yet deeply problematic and troublesome appeal of respectability in making claims for justice. It certainly figures in the legal struggle for same-sex marriage, particularly in the affidavits of those seeking the right to marry. I turn now to contextualize these documents.

**Strategies of Representation: The Frame of Experience**

In order to contextualize and give texture to the discursive practices of respectability that circulate in this legal struggle, I want to consider here the strategies of representation both thought about and employed to present the couples’ to the courts. The quest for same-sex marriage arose out of people’s individual desires to be married at the same time that it was spearheaded by lawyers and by Egale, Canada’s national LGBT advocacy organization. The two Ontario cases (Halpern and MCCT) were primarily lawyer driven (the lawyers for the Halpern case, for example, had been receiving telephone calls from same-sex couples wanting to pursue marriage following the victory of *M v. H*); in British Columbia, one case (the BC Couples) was initiated by Egale while the other (Barbeau) arose out of a previous complaint three couples issued to that province’s human rights commission for being refused a marriage license. Because this issue was such a public one with much media attention, I was interested to glean from the interviews an understanding of the strategies, if any, deployed to assemble the various couples before the courts.

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278 See Sylvain Larocque, *Gay Marriage*, for more detailed discussion on how the cases came to be formulated, particularly pages 33-52.
The interviews indicate that, for various reasons, the legal proceedings in the cases moved very quickly, running away from the planned control of the lawyers and Egale. This was seen to impinge upon attempts to cast for a widely diverse range of people. So, for example, in the Halpern case, Joanna Radbord commented that,

We wanted to avoid the usual dominance of white gay men but we were not going to pick and choose the Applicants based on whether they would be good-looking or socially palatable…There was also a conscious attempt to avoid the “selection process” that many advocated as necessary and desirable. We are lawyers, not public relations people. We took the case of the people who came to us. We hoped to have a diverse group of litigants, but we were not going to reject people seeking our help because some others worried these people might offend someone somewhere because they had a piercing. We had more women than men, different class backgrounds, but they were white and able-bodied except for one person of colour with a disability. Part of it was a result of the way the case started without our control…Once it started, it was really like time pressure and you couldn’t sit around and pick the people you wanted, you just had to take whoever was asking, come on in quick because we needed a decent number of people. So there wasn’t all that much time to be able to pick and choose. But yeah, there was some thought to that it would be good to have some diversity in the group but we just did what we could in the time we had and whom ever happened to come.

In a similar explanation, Douglas Elliott, lawyer for the MCCT asserted that,

We had to do a hasty last minute substitution. The only thing we did is that we were very clear that we wanted to have a male couple and a female couple…We had been told by Evan\(^\text{279}\) that there was this debate that it was white, male, middle class, and because we were in a hurry I didn’t have the chance to address the white or the middle class part…As it turns out, I would say that the male couple was definitely middle class. The female couple, debatable whether they are middle class…But they are both white couples and unfortunately that is just the way it shook out.

In a somewhat different vein, Kathleen Lahey (co-counsel for Barbeau) remarked that

\(^{279}\) Evan Wolfson is an American civil rights lawyer who was co-counsel in the Hawai’i marriage case, and is founder and Executive Director of “Freedom to Marry”, an advocacy group established to achieve same-sex marriage nation-wide in the US. See www.freedomtomarry.org for more information. The interviews and secondary sources reveal that, following an international conference on lesbian and gay rights at Queen’s University (Kingston ON), Wolfson was part of the initial dialogue between the Halpern and MCCT lawyers that hatched the plan to begin the provincial legal challenge in Ontario. See Sylvain Larocque, Gay Marriage, 42.
these couples represented quite a diverse sort of collection of people who immediately made it really clear to us, their lawyers, that they had absolutely no interest in trying to replicate the sort of heterosexual norms of marriage, the culture of whiteness in the litigation, but that they wanted to state what was true for them even if it didn’t fit with the kind of dominant norms of heterocity or other cultural norms; that they insisted on going into the litigation saying exactly what was real for them.

What is striking about these reflections is how strongly they indicate what is at stake in the representational strategies of this legal struggle. There is an evident desire to consciously attend to the dominant gender, class and racial features commonly perceived to define this “gay rights” issue. A feeling of regret permeates the first two quotes in particular, but one that is scrambled by the realities of unfolding of legal events, leading to an implied affect of distance and un-culpability.

As Lahey’s comment implies, the affidavits were employed as a way to give voice and to further an understanding of the lived experiences of the couples formally demanding civil marriage. They were, according to Radbord, a way “to speak to how denial of equal marriage discriminates in a substantive sense by denying equal respect and recognition…We emphasized the importance of hearing the voices, walking a mile in the shoes of the Applicants.” Historian Joan W. Scott has remarked that experiential evidence is seen “as a corrective to oversights resulting from inaccurate or incomplete vision and it has rested its claim to legitimacy on the authority of experience.”

Certainly, the “voices” of the Couples expressed via the affidavits sought to provide a “corrective” in and before the law regarding the lived experiences of those lesbians and gays seeking civil marriage. What I want to highlight here is this notion of “experience.”

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Although the documents under analysis arise out of specific people’s legal pursuit, my concern is more with the codified “story” these documents tell and with the racialized discursive practices implicated in this legal equality rights project. I focus on what the representations of respectability rely on and their *productive effects* rather than taking personal stories and experiences of love, of struggles to forge family in the face of heterosexist adversity, or of desires for wanting to marry as essential truths.

Scott contends that when experience of the individual subject becomes the bedrock of evidence, questions about how “experience” comes to be understood are left aside. She suggests that we need to attend to the historical processes, discourses and operations of power that position subjects and produce their experiences.\(^{281}\) In this definition, experience becomes not the authoritative evidence that grounds what is known but rather that which is in need of explanation.\(^{282}\) Scott maintains that such an approach does not undercut politics by denying the existence of subjects; rather it is one that interrogates the processes of their creation.\(^{283}\) In my reading of the affidavits, I follow this method and separate the experiences of individuals from the discursive practices of racialized respectability in order to attend to the ways in which they produce particular lesbian/gay subjects worthy of marriage.

**Ordinary Lives - Deserving Citizens: The Lines of Racialized Respectability**

Sifting through the pages of the affidavits, one feature that appears over and over again is a presentation of the “ordinary-ness” of the couples and of their lives. It was hoped, for example, that a favourable resolution of the issue “be decided not just on the

\(^{281}\) Ibid., 25.  
\(^{282}\) Ibid., 26.  
\(^{283}\) Ibid., 38.
basis of abstract laws, but in the context of our actual ordinary lives.” The repetition of “ordinariness” in the affidavits serves as testimony to counter negative societal stereotypes and beliefs where “(i)instead of being recognized as an equal family, we are considered to have an ‘alternative lifestyle’. We’re not very alternative. We’re very ordinary.” Two more examples read as follows:

I believe that there is nothing exceptional or necessarily outstanding about our romance and our relationship. It seems odd to me that our love is an “issue.” To me we are a couple in love, and we both just happen to be women…We want the right to be an ordinary, unremarkable married couple with children.

And,

Our lesbian lives are unique and wonderful to us, but to anyone else looking in I’m certain they would just seem ordinary and conservative. We spend our weeks as any couple does: working, eating, attending classes, sleeping. We garden together. We pay our bills. We fret about being able to afford needed house repairs. We develop common goals. We take vacations. Every so often we have “relationship meetings” where we hash out problems and assure the continuing health of our union. We celebrate holidays and special occasions together.

The tangible presentation of un-exceptionality is striking in these excerpts, where a “right” to be ordinary is tied to expressions of marital love that seek to convey the “normality” of same-sex relationships. The “realness” of lesbian love and lesbian lives before a court of law within a heteronormative society is asserted by challenging its negative framing as “an issue” and an “alternative lifestyle.” These appeals to the “ordinary” work to re-cast lesbian love as intelligible and legitimate for the courts within and along the spatial lines of heteronormative domesticity and family.

285 Alison Kemper, Affidavit, 2000, para 18
287 Jane Hamilton, Affidavit, Affidavit, 2000, para 32.
One common theme, in fact, is a focus on parenting and children, particularly (but not exclusively) in the affidavits written by lesbians. Many of the couples present themselves as adoptive or bio-parents, or as desiring to have children in the future. Descriptions of their familial lives, specifically with regard to children, serve to delineate harms of non-recognition. So, for example, one woman writes,

Some people in society think of lesbian, gay and bisexual people as “anti-family”, and many assume that queer people do not have children, do not care for children, or are dangerous to children. The reality is that same-sex couples have kids, love them, and want more than anything, the best possible lives for our children. Marriage allows parents to enjoy a measure of safety for their children. It would allow same-sex parents to consider parenting with security – it would not only secure legal status but also limit discrimination against the children of lesbian and gay parents.288

And in another statement,

I am engaged in this struggle to achieve the freedom to marry as part of our continuing effort to keep our kids safe – not just our kids, but all kids. The denial of the freedom to marry…makes the world less safe and less welcoming of the children of same-sex parents.289

The “figure” of the child suggests health, vitality, capacity, fertility, an orientation to the future. Its presence is representative of “reproductive futurism”, a term coined by Lee Edelman to indicate a platform of politics centred on a notion of futurity particularly as expressed through fixation on the figure of “the Child” and the political order it enforces.290 As indicative of a politics of futurity, the discursive presence of the figural Child in same-sex nuclear, monogamous domestic arrangements situates the lesbian/gay legal subject as approximating affectionate, familial, reproductive (hetero)sexuality.

More precisely, “homosexuality” as a non-(racially) reproductive form of sexuality is

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288 Alison Kemper, Affidavit, 2000, para 15.
290 Lee Edelman, No Future: Queer Theory and the Death Drive (Durham and London: Duke University Press, 2004), 3, 30. Edelman calls for an end to futurity as the platform of queer politics by reclaiming and embracing the idea of “no future” that he argues is always already attached to gay bodies.
brought into the privileged moments (weddings, marriage) of heterosexuality, that is, racial (and national) reproduction. Julian Carter has noted that the seemingly benign signifier of “normalcy” proffered by reproductive heterosexuality belies its investment in racially loaded dreams for the reproduction of white civilization, which collapse into marriage and the language of marital love.  

By approximating reproduction (through a capitalist reproductive economy), the political platform of same-sex marriage becomes closely tethered to upholding the project of whiteness.

The re/productive familial spatial paradigm represented in the affidavits refracted through the time of progress and futurity appears in other ways as well. A reading of the affidavits reveals common themes of consumption practices and (private) property relations (home ownership & joint tenancy agreements, joint finances, reciprocal wills, life insurance policies); this financial entwinement combines with highlighting the longevity and stability of relationships and their subject positions as individuals who travel, play sports, engage in their communities, pay taxes, obey the law, and are gainfully employed. While the affidavits do not explicitly state that the couples were the “same as” heterosexual couples, the discursive frame of the “ordinary”, with its corollary of “normality”, certainly crystallize this point through narrations of their daily lives.

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292 Jasbir K. Puar, *Terrorist Assemblages*, 30-32. While an extensive detailed analysis of the terms of debate regarding “procreation” is beyond the scope of this thesis, I do want to highlight that, not surprisingly, anxieties about the future of the “human race” and “civilization” are expressed most specifically in conservative opposition to same-sex marriage, also sedimented in the figure of “the Child.” In the Canadian context, this appeared most prevalently in Parliamentary and Senate debates over Bill C-38. It is also expressed in the conservative literature more generally. For the Canadian context see Daniel Cere and Douglas Farrows, eds., *Divorcing Marriage: In the American context, Maggie Gallagher (President, Institute for Marriage and Public Policy in the United States) articulates a racist argument over the declining birthrates of European nations thereby implying that heterosexual marriage is necessary to encourage white people to have children; otherwise, white people will become extinct. Maggie Gallagher, “Normal Marriage: Two views” in Lynne Wardle et al., eds., *Marriage and Same-Sex Unions: A Debate* (Westport, Connecticut: Praeger, 2003), 18-19.
construct one’s subject position through expressions of domestic, familial and economic intimacies gestures to the operation of power through the heterogeneous but related zones of neoliberal governance and biopower.

Various scholars of sexuality studies have argued that the emphasis on the rights of recognition in the struggle for same-sex “presupposes the internalization of a set of norms of self-governance.” Neoliberal governance is concerned with the regulation, disciplining and cultivation of individual subjects’ conduct that is congruent with neoliberal trends of autonomy, flexibility, choice and privacy/privatization. It involves a “remoralization of the individual as a prudent, self-responsible actor, who rationally plans his or her own life.” As such, neo-liberal governance works through and shapes the choices capacities and aspirations of individuals, cultivating self-surveillance and a self-regulating subject-citizen who is at once a responsible individual and an economic-rational actor. As an exercise of power, it governs through discourses of freedom and choice, responding to demands for increased scope of self-determination and autonomy, and where free will is constituted on the basis of self-determined, rational decisions. The “internalization” of self-governance along and within the discourses of neoliberalism speaks to one of Foucault’s key insights about power: its success is proportionate to its ability to hide its own mechanisms. The discursive frame of the “ordinary” can be situated within this frame and form of neoliberal governance. The discursive narrations of

295 Ibid., 5; Thomas Lemke, “The Birth of Bio-Politics”, 201.
297 Michel Foucault, The History of Sexuality, 86.
“ordinariness” are representative of such governance as “the conduct of conduct.”

They not only indicate an “internalization” of particular class and racial lines of heteronormativity, they also presuppose that desiring the “choice” (the freedom) to marry is about being “conducted” or governed by the social symbolism and import that marriage represents in society. The affidavits repeatedly state that it is marriage, ultimately, that will confer legitimacy and value upon lesbian and gay conjugal relationships in the eyes of society, and thus that the capacity to marry for all gay men and lesbians is a powerful antidote to homophobic attitudes, prejudices and exclusions.

Furthermore, as opposed to entering the national register through stereotypes of degeneracy the narrative themes of the affidavits articulate an insistence on “positive life”, one imbued with ordinary, future oriented expectations. The discursive frame of the “ordinary” can be understood not only as a means of gaining respectability through adherence to heteronormative domesticity but also as a way to garner value and worth as re/productive citizens. Here, the exercise of governance and “conduct” through “choice” can be thought to traverse the terrain of biopolitics. The narratives of the affidavits represent a saying “yes” to “life”; they articulate and posit a commitment to reproducing life, both in biological and social-economic terms. On this basis, the “security” offered by the marriage contract is sought. This is further evident in Court rulings, for example, when it is stated:

While it is true that, due to biological realities, only opposite-sex couples can “naturally” procreate, same-sex couples can choose to have children by other means, such as adoption, surrogacy and donor insemination…In our view, same-

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299 Michel Foucault, “The Subject and Power”, 138.
300 Lauren Berlant, The Queen of America, 179-80.
sex couples and their children should be able to benefit from the same stabilizing institution as their opposite-sex counterparts. 302

Both desiring and being granted the “choice” (the freedom) to marry thus also contain biopolitical concerns with the ability to foster and manage life. The discursive frame of “ordinariness” is enabled by these two formations of power. I turn now to examine more closely the racialized lines that inform the positionality of being legible as “ordinary.”

Neoliberal lines of citizenship (property, privacy, individuality, autonomy) are central to constituting a respectable, ordinary lesbian/gay legal subject-citizen racialized as white. Citizenship closely accompanies the discursive presentation of “ordinariness” in the affidavits. It is asserted, for example, that, “I am a contributing citizen. Marriage is public affirmation and celebration, and I deserve to be able to partake.” 303 Moreover,

We believe that we should have the right, as should any other Canadian citizen, to choose, from those options available, how to formalize our relationship…We deeply hope that our nation, with its rights and protections, will prove to be a country that stands for all Canadians, and will provide full and equal rights to marriage regardless of sex or sexual orientation. 304

As a compelling signifier of national belonging, it is not surprising that the trope of citizenship figures so prominently in legal-political arguments for same-sex marriage.

While support for same-sex marriage is generally argued on the basis that it will grant and confer citizenship upon lesbians and gay men (as discussed in chapter one), I want to attend here to it being already inhabited, as these excerpts suggest. By not recognizing this inhabited position of citizenry and national belonging, the affidavits suggest that the nation-state’s denial of “equal marriage” sets lesbians and gay men “outside the pale of

303 Jane Hamilton, Affidavit, 2000, para 42.
304 Kevin Bourassa and Joe Varnell, Affidavit, 2001, para 8, 14.
civilization” and thus also denies freedom of choice, a key marker of (neoliberal) citizenship. Instead, it is stated that,

As citizens in a democratic society we believe we should have the right to have our relationship recognized through the state of matrimony. As long as we are denied that right, we will always be “less than” in the eyes of the law and of society.  

The lines of negative value – being “outside the pale” and “less than” – hearkens a past time of social and legal illegitimacy and deviance as well as contemporary voices of religious and socially conservative opposition. Such lines are also significant, however, for their positive valuations; that is who “we” are not is also a register for who “we” are: citizens who inhabit the modernity of a Western democracy (and hence who are “of civilization”), who face the affront of limits set upon individual autonomy and choice, and who are free to fight to attain this legal right within an established system and process of law. The “presumption” of national belonging and hence of entitlement suggests an already existing alignment or association with mainstream social power structures. Furthermore, as critical race/feminist anti-racist scholarship repeatedly points out, citizenship is always already racialized in its construction of “the real national subject.” In the Canadian context, the category of citizen and the multi-tiered structure of citizenship remain profoundly and obstinately racialized so that it refers not simply to

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305 Mary Theresa Healy, Affidavit, 2000, para 24.
a political identity but are also symbolically associated with the racial norm of whiteness and its attendant privileges.

Occupying the nexus of citizenship and national belonging, same-sex marriage holds out, I believe, a reinstatement of the privilege of privacy lost with the taking on of a non-normative sexual identity. I ground this analytic point in the trope of the white picket fence, which, although appearing in only two of the affidavits, stands as a powerful signifier of enclosure, namely private property and private intimacy. The two passages read as follows:

Essentially I am just an old-fashioned small town girl who would love nothing more than to marry the woman I love in my little hometown church. I want to have a family, a dog, a couple of cats and a picket fence surrounding our home.

And,

Elizabeth and I are a deeply devoted, loving couple. We are monogamous. We own a house together with a picket fence. We drive a Volvo sedan. We like to go canoeing together. We have a variety of friends...Some of our friends have children and we are often asked to baby sit for them. We play soccer and have coached together at a preschool soccer league at the local community centre. We both work and volunteer at non-profit societies. We are members of our Block Watch community. We pay taxes. We shop at local produce stores. We are planning to raise a family together.

I add the adjective “white” to the descriptive trope of “picket fence” not only because it is a cultural symbol par excellence of “ordinariness”, unexceptionality, and domestic heteronormativity, but also because I want to signal the space of privacy as property and intimacy as entrenched in racialized relations of power, that is, as indicative of white racial normativity.

310 Tanya Chambers, Affidavit, 2000, para 16.
Coming into the legal and political arena self-constituted as citizens and with affect of national belonging implies both an entitlement and a yearning for the legal regulations of the marriage contract, which in Canada govern ownership and division of matrimonial property, and inheritance.\textsuperscript{312} In his theorizations of modern racial states, David Theo Goldberg maintains that the commitment to the right to private property is a key marker of modernity. The right to property (along with the right to free expression), he argues, has historically served to inscribe the borderlines between civilization and savagery, where it furnishes “conditions and markers of ways of world-making and being at different moments in time.”\textsuperscript{313} In marking the constitution of modernity, private property rights become a sign of incapacity or an historical human lack, and hence are productive of racist social formations. As such, Goldberg contends, the lack of the right to private property has served as a measure of racial inability.\textsuperscript{314} We can surmise the opposite from this point as well, that the ownership of private property serves as a measure of racial ability and capacity, where whiteness stands economically for privilege and property.\textsuperscript{315} This bears out in queer of colour critiques of same-sex marriage which insist that its benefits will accrue to the same people that heterosexual marriage benefits: those with property to protect and economic entitlements to share, that is, white and

\textsuperscript{312} Distinctions between the rights and obligations of married couples and couples who cohabit in a conjugal relationship (including same-sex partners) have become increasingly blurred in Canadian law over the last decades. Distinctions remain, however, with respect to matrimonial property and inheritance (e.g. presumptive 50 percent interest in the matrimonial home and in the remainder of the matrimonial estate; a surviving spouse’s right to apply for dependant’s relief against the estate of the deceased spouse), as well as different types of income tax exemptions (e.g., exemptions from land transfer taxes). For a more detailed and extensive list of the special rights reserved for married people in Canadian law, see Kathleen A. Lahey, \textit{The Impact of Relationship Recognition}, 23-24; and Irene Demczuk et al., \textit{Recognition of Lesbian Couples: An Inalienable Right} (Ottawa: Status of Women Canada, 2002), 35-38.

\textsuperscript{313} David Theo Goldberg, \textit{The Racial State}, 144.

\textsuperscript{314} Ibid., 144.

\textsuperscript{315} Ibid., 196.
upper-class individuals. The assertion of a lesbian/gay subjectivity as already
constituted as citizens of the national, from which flows the right to recognition, the right
to choice, the right to legal entitlements, can be read as desire for (further) entitlement of
racial privileges, that is, private property. Following Goldberg’s line of thought, such
desired entitlement also constitutes both the lesbian/gay subject and the Canadian nation-
state (via the provincial court rulings and its legislation of Bill C-38) within the time and
space of modernity, a point further discussed in chapter five.

The trope of the white picket fence also demarcates the space of private intimacy.
To be constituted as “ordinary” involves the privilege of access to the private. It is an
indicator of a private life, one not regulated or policed by the state nor bound by the
dictates of culture or community. One telling indicator of this is the following excerpt:

To me the denial of the right to marry means that the state is still intruding in my
bedroom, despite Pierre Trudeau’s efforts of so long ago. I do not hear, nor do I
wish to hear, what others are doing in their bedrooms. Why should others wish to
know what we are doing in ours? Why do they not acknowledge that we are just
as loving, caring, honest, sensitive, intelligent, moral, ethical and hard working as
they are and deserve the same legal rights?

The bedroom is perhaps the “zone of privacy” par excellence, enclosed as it is in the
matrimonial home (property), which is further enclosed by the white picket fence. In the
above excerpt, the private is relegated as a privileged void from state intervention. The
right to private intimacy (including the right to privacy around sex), filtered through
descriptive indicators of “character”, becomes a way of constituting the value, worth,
merit, self-autonomy, and bodily integrity of the lesbian/gay legal subject and hence its

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Whites’?”, 1370-1372; Kenyon Farrow, “Is Gay Marriage Anti Black???”; Roderick A. Ferguson, “Race-
ing Hononormativity”, 61-62.
318 Lauren Berlant, The Queen of America, 59.
respectability. As Lauren Berlant states, the private is vital to the imagination of what counts as legitimate citizenship.\(^{319}\)

The private, however, is not merely normative in kinship and sexual terms. It is also a form of class, racial and citizenship privilege that constitutes “a boundary between proper and improper bodies”, between proper and nonnormative sexual, class, national and raced subjects.\(^{320}\) Who, it must be asked, can constitute their lives as private? Who has the privilege to take it for granted? Jasbir Puar insists that, given the current context of the “war on terror”, there are many sectors of society for whom privacy is not on the radar screen and is unfathomable when being surveilled is a way of life.\(^{321}\) Communities of colour are constantly and persistently subjected to surveillance and racial profiling as well as incarceration, interrogation, detention and deportation, one of the more egregious examples in the Canadian context found in the targeting of Arab and Muslim men via Security certificates.\(^{322}\) The welfare poor are also not afforded privacy, even within their own homes, as one must open up his/her life income verification, live with a high level of monitoring and scrutiny, and be constantly required to justify the validity of needs to a whole range of professionals. Policing and control is often so prohibitive and violent that death can become a viable alternative.\(^{323}\) As Puar remarks, the private is a racialized,

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\(^{319}\) Ibid., 58.

\(^{320}\) Ibid., 58.


\(^{322}\) Security certificates permit the detention of non-citizens without charge or trial indefinitely and under the threat of deportation. A long-standing part of the Canadian immigration system, they have more recently become a key “tool” used by the Canadian state to fight terrorism in the interests of national security, with their usage primarily directed at Arabs and Muslims. For detailed background information and analysis of the racial thinking underpinning their use see Sherene H. Razack, *Casting Out*, 25-58.

\(^{323}\) Kimberley Rogers, for example, was an Ontario woman who committed suicide in her apartment in 2001 after while eight months pregnant. She was serving a six-month house arrest after pleading guilty to a charge of “welfare fraud” for receiving income assistance while also receiving student loans to cover her studies at a local college. She was literally imprisoned in her home with only $18 per month for food and
nationalized (and classed) construct, insofar as it is granted to certain citizens and withheld from many others and from non-citizens.\textsuperscript{324}

The discursive frame of the “ordinary” as examined through the spatial encasement of the white picket fence signals that the struggle for same-sex marriage is formed along particular lines and kind of citizenship, one condensed with sexual, racial and class hierarchies. It gains its normalizing power by drawing upon the intertwined fields of heteronormative domestic and familial arrangements, and particular terms of neoliberal citizenship. The “blocks” of reproduction, property, privacy, and citizenship that have been examined thus far together comprise the making of an “ordinary” lesbian/gay legal subject-citizen worthy of marriage that can be understood to be racialized as white. The chapter now turns to discuss in more detail another example of how this is achieved, namely the “unmarking” of sexual specificity as a way to constitute the autonomous, choosing individual.

\textit{Abjected Bodies, Racial Others}

To be successful, discursive claims to the “ordinary” as a strategy of racialized respectability require shedding the mark of \textit{sexual} orientation as a sign of “difference” that should not matter or at least should be considered contingent. In formal terms, the legal struggle for same-sex marriage is to gain equality rights for a protected ground of discrimination under the \textit{Charter}. At one level, then, the discourse of the “ordinary” that so broadly circulates in the affidavits (under the guise of heteronormative domestic arrangements and “proper” neoliberal citizenship practices of privacy) is representative of

\textsuperscript{324} Jasbir K. Puar, \textit{Terrorist Assemblages}, 124-125.
modern legal logic, which, according to David Theo Goldberg, creates the very likenesses across difference that modern law claims to treat alike. Modern (liberal) law opposes particularity and proceeds instead from a site of anonymity and abstract personhood.\footnote{David Theo Goldberg, \textit{The Racial State}, 140-141.} What I want to delineate here is how the “unmarking” of sexual specificity and particularity is another piece in constituting the lines of the “ordinary” and of situating “proper” citizenship (and hence “proper” practices of nationhood) in the creation of the abstract individual.

This is achieved in large part by channeling references to same-sex “sex” into articulations of love and its corollary of commitment. In other words, to distance same-sex sex and desire from their long-standing associations as immoral, unpatriotic sites of “degeneracy”, that is, to re-route them into the realm of the “ordinary” and the “normal”, requires the respectability offered by the discursive frame of love. Similar to the concept of “freedom” discussed next chapter, “love” functions as an “ethical value and space that no one can disavow”\footnote{Shannon Winnubst, \textit{Queering Freedom}, 2.}: how can you say “no” to love? How can you not say “yes”?

Evidence of its expressions is ubiquitous; the affidavits, for example, convey that,

Marriage is a bond between two people who love each other and accept both the benefits and the responsibilities that marriage implies. Does it really matter who the partner is, if there is love and commitment?\footnote{Colleen Rogers, Affidavit, 2000, para 10.}

In a similar vein,

I want people to stop thinking of the gender of the person I sleep with, and to concentrate on who I am – a person capable of giving and receiving love who is making a difference to the people who are my family. That is what matters.\footnote{Hedy Halpern, Affidavit, 2000, para 18.}
Further,

Many see same-sex relationships as merely physical, and do not realize that same-
sex couples experience the same range of romantic, spiritual and emotional
feelings as any heterosexual married couple. 329

As a central feature of the presentation of “ordinariness”, the deployment of “love” serves
to rid sex as the primary marker of a “homosexual” subject position. Together with the
erlier statement of a lesbian couple who “just happen to be women” (pg. 108), the pleas
to disregard and to “stop thinking” about who is having sex with whom, and the
instruction to move beyond (historical) stereotypes of same-sex relationships as “merely
physical” endeavour to expunge the lesbian/gay legal subject of its unruly sexual
specificity and embodiment.

Sex and sexual desire, the matter par excellence that is wholly of the body is that
which is abjected to garner the contours of racialized respectability. Such expulsion,
produced through the discourse of love, can be understood not only as a means of
“unmarking” the lesbian/gay body from its sexual specificity but also through the terms
of abjection. A psychoanalytic concept closely associated with the work of French
philosopher and psychoanalyst Julia Kristeva, abjection means to expel, to cast out or
away. 330 In Anne McClintock’s reading, Kristeva theorizes the abject as everything the
subject must expunge in order to become a social being 331; it is that which must remain
on the outside of representation. 332 For Kristeva, that which is abject serves to mark the

329 Shane McCloskey, Affidavit, 2000, para 21.
330 See Jan Campbell, Arguing with the Phallus: Feminist, Queer and Postcolonial Theory – A
331 Anne McClintock, Imperial Leather, 71-72. McClintock states that Freud (Totem and Taboo;
Civilization and its Discontents) was the first to suggest that civilization is founded on the repudiation of
certain pre-oedipal pleasures and incestuous attachments.
332 Tina Chanter, “Abjection and the Constitutive Nature of Difference: Class Mourning
borders of the self and threatens the self with perpetual danger because it is never fully obliterated; in other words, the abject is “something rejected from which one does not part.” It continues to be part of the subject even though it is expelled. At the heart of abjection, then, is ambiguity. Thinking in the context of the marriage affidavits, the implication here is not to deny the existence of sexual desires and practices but rather, discursively speaking, that same-sex sex and bodily desires become constituted as objects of abjection in order to facilitate the move out of a (persistent) historical social location rooted in sexual excess, degeneracy and illegitimacy, as Mosse noted, to inhabiting a contemporary socio-legal domain of respectability.

The “dirt” and excess of sex is that which must be expunged to create space for the virtue of (same-sex) love and “ordinariness.” The discursive frame of the “ordinary” is one that seeks liberation from identities that constrain what a person can do given contingencies of history. In other words, it seeks to rid the marker of sexual specificity that has for so long marked the gay/lesbian body as a site of degeneracy (particularly the gay male body), resulting in limited citizenship rights. While “sex” cannot be fully made to be on the outside, given that “sexual difference” is the legal terrain on which this equality rights struggle is grounded, same-sex sexual specificity and particularity are filtered through the clean, sanitized and respectable discourse of love and commitment.

Such a filtering produces the lesbian/gay subject of this legal struggle as one who is not of the body, but one rationally capable of demonstrating capacity to both choose and assume the responsibilities of marriage. In her analyses of the privileged status of rationality in the Cartesian/Enlightenment mind/body duality (one that still predominates

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in Western culture), Radhika Mohanram argues that the non-corporeal functions as a signifier of racial, gender and class normative power. In other words, the racial norm of whiteness, as a system of power that interlocks with gender and class, resides in the space of the non-corporeal; that is, the rational, the abstract, the “unmarked.” Visible or “marked” corporeality, in Mohanram’s analysis, comes to be located “as bestial, perverted, black or feminine, all whom cannot transcend their materiality”, and which functions as the inferior term. It comes to occupy the site of degeneracy. To be constituted as “unmarked” – normatively, the white, heterosexual, propertied male – is to inhabit the condition of universality and to be located in the “time” of progress, of utility, of development. By de-privileging the body, that is, unmarking it as placed, particular and material, the subject more closely approximates the status of the autonomous individual and thus more fully inhabit the nexus of civil rights and citizenship.

The abjection of sex through love becomes a way to mark distance from the particular, from culture or community, and to inhabit a position of an autonomous individual, one able to “flexibly craft relationships for the purposes of production, consumption, reproduction and affection” where to shop, where to take vacations, how to make financial plans, whether to have children, whether to marry. The shift from “same-sex to no sex” accomplished through the invocations of “love” allows claims to the “ordinary” and “unremarkable”, and hence the “normal”, to be made. Canadian feminist legal scholars have remarked that the lesbian/gay legal subject represented and

337 Radhika Mohanram, *Imperial White*, 68-69; see also Meyda Yegenoglu, *Colonial Fantasies*.
339 I take this phrase from Susan Boyd and Claire F. L. Young’s article of the same title.
recognized in law, particularly since the victory of *M v. H*, is an increasingly de-sexualized one, defined more by heteronormative registers of middle-class domesticity than by norms of sexual “difference.” Queer scholars have remarked that the eclipse of sexuality by the assimilatory discourse of love creates new objects and zones of abjection, gathering into their fold the myriad of intimacies and affective collectivities that bypass the couple and the life narrative it generates (first comes love, then…). I contend that the move to “desexualize” the lesbian/gay subject is one that also deeply requires whiteness for its coherency. As a bid for respectability, the abjection of sex is an exemplary disavowal of embodiment itself, and as Mohanram’s analysis implies, whiteness is constituted by a fundamental disembodiment. Casting away the particular of perverse “sex” relies on and colludes with the representational power of white that constitutes the position of “ordinary” and “human.” Through the erasure of the corporeal, the discursive frame of the ordinary (as well as that of love) offers the possibility of white racial normativity, and hence the attainment of respectability.

If “sex” and the corporeal must be abjected to achieve the position of the rational, autonomous (white) subject, then where does it go? Ann Laura Stoler’s analysis discussed earlier suggests that degeneracy and the excess of the perverse must be parcelled out “in order to exorcise its proximal effects.” As the earlier, brief review tracing the historical dynamics of respectability indicates, respectability must always be thought of as a relation. To constitute its whiteness, perversity is abjected or displaced.

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elsewhere and specifically, onto (queerly) racialized bodies. The work of Jasbir Puar assists in elaborating this argument. Puar suggests that the growing visibility and inclusion of lesbian/gay/queer subjects into the domains of social recognition such as consumer markets and the law is enabled only through a parallel process of targeting queerly raced bodies for dying; in her words, “There is a very specific production of terrorist bodies against properly queer subjects.”\(^\text{344}\) Clearly situated within the exercises of biopolitical power, Puar argues that the folding of some homosexualities into the biopolitical management of life is accompanied by the simultaneous “folding out of life, out toward death, of queerly racialized ‘terrorist populations.’”\(^\text{345}\)

Her analysis foregrounds the figure of the queer as terrorist, that is as a non-national, perversely racialized Other against whom white gay sexualities have been able to vacate the realm of the “perverted” and gain entry into the national fold. U.S. patriotism, she argues, momentarily sanctions some homosexualities (through gendered, racial and class sanitizing) in order to produce “monster-terrorist-fags.”\(^\text{346}\) This figure emerges as improperly racialized (that is, outside the terms of multiculturalism) and perversely sexualized; and this figure also labours in the service of domesticating lesbian/gay/queer bodies into mandatory terms of patriotism. While aspects of homosexuality may be incorporated into the body of the nation (for example, through consumption practices), she writes, “monster-terrorist-fags” emerge and are quarantined through equating them with the bodies and practices of failed heterosexuality, emasculation and queered others. In Puar’s assessment, the terrorist and the newly


\(^{345}\) Ibid, xii.

\(^{346}\) Ibid., 46. Puar gives the example of Osama bin Laden who in the immediate aftermath of 9/11 was portrayed in popular culture as monstrous by association with sexual and bodily perversity.
domesticated gay/lesbian/queer are not distant oppositional entities but “close cousins.”

Along a somewhat different line, Joseph Massad’s incisive critique of what he terms the “Gay International” also offers a way to think through respectability as relational, and the ways whiteness circulates in “gay rights” struggles more generally. In Massad’s analysis, the Gay International is constituted through a form of transnational gay activism that is dominated by efforts to “liberate” non-Western gays and lesbians from the oppressive conditions under which they live, with a particular focus on Arab and Muslim sexualities. Such activism is grounded in the universalism of human rights, where “gay rights are human rights.” Massad argues that this universalizing project is an imperialist one, whose discourses and representational practices both produce identity categories of homosexuals/gays/lesbians where they do not exist, and repress same-sex desires and practices that refuse to be assimilated into its sexual epistemology and liberatory telos. I discuss Massad’s work further in chapter five as it relates to the alignment of “gay rights” with civilizational discourses. For this context, Massad’s assessment of the Gay International gestures to the ways that the idea of “sexual freedom” is located in the realm of the morally superior and the liberated West while “perversity” is located in sites of oppression, where already pre-constituted “gays” and “lesbians” cannot live “out” lives for fear of persecution and death. The implication of his analysis concerns how the practices of “assimilation” and integration into the nation,

347 Ibid, 38, 47.
349 Ibid., 363, 365.
through same-sex marriage for example, are crucially enabled by a definition of the West as sexually progressive against oppressed “gay” others.

Puar’s and Massad’s delineations of the function of bodies of colour in “gay rights” struggles are central to an understanding of the discursive practices of racialized respectability. Whiteness appears, circulates and is buttressed at the moment of invoking the frame of the “ordinary” and its concomitant lines of neoliberal citizenship. The abjection of a perversely sexed corporeal, too, must also occur to leave the site of degeneracy. Given that this legal-political struggle for same-sex marriage depends so heavily on the whiteness of respectability, what happens to bodies of colour? Puar and Massad’s analysis suggests that they become displaced and marginalized into realms of degeneracy (the monster-terrorist-fag) or pre-modernity (the “third world” sexual other). Respectability, then, is a strategy whose routes/roots lead directly to the “heart of whiteness” as a means of overcoming the harm of non-recognition, and fortifies existing racial hierarchies and exclusions along the way.

The following chapter continues this thread of inquiry with a particular focus on the one central site where bodies of colour do discursively appear in this legal struggle, namely racial analogies.
CHAPTER FOUR:
The Race to Freedom: 
The Reflexive Properties of Racial Analogies

To repeat, it is my view that any “alternative status” that nonetheless provides for the same financial benefits as marriage in and of itself amounts to segregation. This case is about access to a deeply meaningful institution – it is about equal participation in the activity, expression, security, and integrity of marriage. Any “alternative” to marriage, in my opinion simply offers the insult of formal equivalency without the Charter promise of substantive equality. Again, an “alternative” I find will only provide a demonstration of society’s intolerance – it will not amount to a recognized acceptance of equality.

-Laforme, J., Ruling, Ontario Superior Court of Justice, July 2002

Separate water fountains, separate sections on the bus, separate beaches, none of these are acceptable in societies that value the full equality of their people.

-Bill Siksay, NDP MP, February 2005

This chapter extends the examination of the displacement of bodies of colour necessary to establish a respectable lesbian/gay subject-citizen worthy of marriage. As discussed in the preceding chapter, this subject-citizen is constituted as an autonomous individual who suffers injury in part because of the infringement on personal choice over how to structure and govern his/her personal conjugal relationships. I explore this in more detail through analysis of the discourse of the “freedom to marry” particularly as it manifests through the deployment of racial analogies, where historically segregated, un-free African American bodies and lives are invoked to make a claim for the freedom of contemporary lesbian and gay conjugal couples.

Given their ubiquitous presence in court documents, in Parliamentary and Senate debates, and in mainstream and queer media alike, racial analogies are a central, if not the predominant way bodies of colour explicitly appear in this “gay rights” struggle; and it is this presence that I take as my object of analysis in this chapter. Specifically, I argue that
the discursive (and visual) representations of unfree and segregated bodies of colour operate as an investment in whiteness that maintains and secures the respectability of the gay/lesbian subject-citizen seeking state recognition through marriage. As a way of drawing emotive connections and commonalities between forms of oppression, “race” in fact disappears in their deployment so that these analogies both engender and enable what Trina Grillo and Stephanie Wildman term the “privilege of forgetting” race. Furthermore, racial analogies offer reflexive properties for imagining the marrying subject that not only racialize the lesbian/gay legal subject as white but also discursively re-draw the colour line. To make these arguments, I draw primarily upon the legal facta submitted to the Ontario and British Columbia court cases.

The chapter is organized into two sections. Part one introduces and contextualizes the two predominant racial analogies employed within this legal struggle, namely reference to legal precedents of inter-racial marriage and “separate but equal” segregationist doctrine. I also outline three inter-related critiques leveled at the deployment of racial analogies as a representational practice in lesbian/gay equality rights struggles. Part two more closely examines racial analogies as the site where bodies of colour are abjected to, and the reflexive functions they engender that further sediment the white respectability of the subject position and politics of same-sex marriage.

**Loving Freedom, Resisting Segregation**

Analogies to historical instances of racial oppression of African Americans in the United States are a powerful, evocative discursive and visual representational practice to frame the denial of civil marriage to same-sex couples as a moral, legal and social

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injustice. Two such analogies circulate in this legal struggle. The first is the 1967 United States Supreme Court decision of Loving v. Virginia that granted the right to interracial marriage.\textsuperscript{351} This landmark decision struck down the state of Virginia’s laws prohibiting inter-racial marriage between whites and people of colour. The U.S. Supreme Court ruled that these laws violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment because they relied on racial classifications used to maintain white supremacy. The decision recognized the freedom to marry as “one of the vital personal rights essential to the orderly pursuit of happiness by free men” and that “the freedom of choice to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.”\textsuperscript{352} With respect to the contemporary struggle for same-sex marriage, the analogy to Loving is employed as a way to establish the precedent for the “freedom to marry.”

Specifically, it is invoked to challenge an exclusively heterosexual definition of marriage justified through privileging heterosexual procreation. This definition formed the cornerstone of the federal government’s (the Attorney General of Canada, AGC) arguments, as well as those of conservative interveners, which all maintained that the essence of marriage is its opposite-sex nature.\textsuperscript{353} Specifically, the AGC argued that because

\begin{footnotes}
\item[351] Loving v. Virginia, 388 U.S. 1 (1967). This case originated in 1958, when Mildred Jeter, an African American woman, and Richard Loving, a white man, were married in the District of Columbia. After their wedding, they moved to Virginia, where both had been raised but where marriage between African Americans and whites was prohibited. The Loving’s were arrested in their home and indicted by a grand jury in October 1958 for violating the 1924 “Act to Preserve Racial Integrity” which made it interracial marriage a felony. After a series of appeals, in 1967 the case reached the Supreme Court. See Siobhan Somerville, “Queer Loving” (2005) 11:3 GLQ, 340-341.
\item[352] Loving v. Virginia, 388 U.S. 1 (1967).
\end{footnotes}
two persons of the same sex cannot obtain the label of “married” [this] does not constitute a distinction based on a personal characteristic. Rather, it relates to the incapacity of their unique relationship to meet the core, opposite-sex, definitional requirements of marriage…(M)arriage brings together the two human sexes in a manner that reflects their complementary natures, and it is the institution within which procreation is a possibility and within which procreation generally occurs.354

As a way to counter this argument, the analogy to Loving is employed to draw comparisons between two types of marriage where heterosexist exclusions of lesbians and gay men now are like racist exclusions of inter-racial couples then.355 It is argued, for example, that the AGC’s notion of two “complementary sexes” raises the implication that there is something “unnatural” about same sex unions. In that regard, their arguments are reminiscent of the racist justifications advanced by proponents of miscegenation statutes in the United States, who argued that races were separate by “nature” – the obvious implication being that there is something “unnatural” about interracial unions.356

As such, it is asserted that, “as much as the white supremacist defense of anti-miscegenation law was bigotry, the core of the AGC’s case is equally discriminatory.”357

354 The Attorney General of Canada, Factum of the Respondent (2001), para 127, 217. This was also the position of the trial judge in the Supreme Court of British Columbia (Pitfield J.) who ruled that while the ban on civil marriage violated the equality rights of lesbians and gay men under s.15 of the Charter, it was justified on the basis of procreation. See Egale Canada Inc & Barbeau et al v. Canada (Attorney General), 2001 BCSC 1365. To note, the federal government did not appeal the June 2003 Ontario Court of Appeal ruling which upheld the 2002 Ontario Superior Court decision in favour of same-sex marriage, and which granted immediate issuance of marriage licenses; thus by the time of the Supreme Court Reference Hearings, the federal government was arguing in support of same-sex marriage.

355 The historical trajectory of inter-racial marriage is different in Canada than in the United States. Canada had no formal laws against inter-racial marriage as in the United States. Federal and provincial levels of government did, however, regulate and attempt to prohibit inter-racial marriages through legal mechanisms ranging from charges of seduction to the denial of access to marriage rites to deportation. Moreover, the Canadian state sought to prohibit marriage between First Nations women and Euro-Canadian men through statues of the Indian Act; various provincial governments also sought to prevent marriages between Chinese men and white women by making it illegal to hire white women in Chinese-owned laundries and restaurants. For further information, see: Katherine Arnup, Close Personal Relationships; and Constance Backhouse, Colour-Coded: A Legal History of Racism in Canada, 1900-1950 (Toronto: University of Toronto Press, 1999), especially 132-172. In outlining the legal historical relationship between religion, marriage and the law, the MCCT refers to the historical regulation of Aboriginal marriages under English law. See MCCT, Factum of the Applicant (2001), para 64.


357 Halpern et al(b), Factum of the Applicant Couples (2003), para 56.
The “true” underlying purpose of the bar against same-sex marriage, it is argued, “is simply to endorse the discriminatory belief that heterosexual relationships are superior to same sex relationships” and to “entrench and preserve the exclusive privileged status of heterosexual conjugal relationships in society. A parallel is thus drawn between white supremacist and heterosexual systems of oppression, both of which generate legal regulations of sex as a “kind”, inter-racial and homosexual.

As such, the analogy to *Loving* seeks to draw comparisons between the harmful effects of a lack of the freedom to marry. It is stated, for example, that

Denying same-sex partners the freedom to marry demeans the dignity of all lesbians, gays and bisexuals – regardless of whether we are single or in a conjugal relationship, and irrespective of our own personal views on marriage – just as the miscegenation statues that were once in force in the United States constituted an affront to the dignity of all Black people (not just those who were in interracial relationships or who wished to marry a person of a different race).358

Throughout the facta and numerous affidavits, the denial of the ability and freedom to make a personal choice regarding how to formalize one’s conjugal relationship is framed as an affront to the dignity of gay men and lesbians, one that promotes and perpetuates negative societal stereotypes of same-sex relationships and the belief that they are not valuable members of Canadian society. Hence, it is argued, “the denial of the freedom to marry represents one more indignity visited upon us in a history of persecution, exclusion and non-recognition.”359 The underlying narrative of progress to this analogy suggests that obtaining the “freedom to marry”, that is, the ability to walk into a city hall and apply for a marriage license, will eradicate a formal legal distinction thereby contributing to greater substantive equality for lesbians and gay men.

359 Ibid., para 46.
Employing the analogy to the *Loving* case as a precedent to establish the “freedom to marry” bolsters the argument of an evolution in the definition of the meaning of capacity to marry; that is, as the legal system eventually recognized the unconstitutionality of the prohibition on interracial marriage, by the same logic so, too, should the courts recognize the unconstitutionality of prohibiting same-sex marriage. In this regard, both advocates and those opposing cast their gaze to the realm of the international “community of nations.” Arguments made by the AGC, for example, rejected the analogy on the basis that no state in the United States has provided recognition of same-sex unions as marriages in the years following the *Loving* case.\(^{360}\) The comparison here is to demonstrate that marriage represents “an incontrovertible limit to the recognition of lesbian and gay rights” given the lack of recognition of same-sex marriage in the United States.\(^{361}\) Those arguing for “equal marriage” focused not only on this American case to establish precedent but also international law, particularly various United Nations treaties.\(^{362}\) In this way, they joined developments in sexual orientation jurisprudence in Canada with other authorities to make their claim for the “freedom to marry.” As will be discussed further next chapter, this view to the international is also attached to national narratives of Canada as a leader in global human rights, for which same-sex marriage is held as exemplary.

\(^{360}\) See, for example: The Attorney General of Canada, *Factum of the Respondent* (2001), para 198. This obviously was before the *Goodridge* decision in Massachusetts that legalized same-sex marriage in that state. Conservative interveners rebuffed the use of *Loving* to exemplify the changing nature of marriage law, and rejected the implication supporting a heterosexual definition of marriage meant they were “racist.” They also sought to re-frame the aspects of suffering away from the harm to same-sex couples to the (potential) harm done to the “family” and ultimately children.

\(^{361}\) Jonathan Goldberg-Hiller, *The Limits to Union*, 207.

The second form of analogy is that made to past instances of racial segregation within the U.S. education system and public spaces, including buses, park benches and water fountains. As outlined in the literature review, analogies to segregation are overwhelmingly and ubiquitously deployed as a way to argue against proposed alternatives to marriage such as civil unions or domestic partnerships. In response to the AGC’s position that “(e)quality does not necessarily require identical treatment,” it is argued that

(whatever the ‘alternative options’ might be, these will necessarily amount to segregation...A denial of marriage, drawn on the basis of sexual orientation, cannot be justified on the basis that same-sex spouses are relevantly ‘different’ from heterosexuals and should therefore have a separate institution. Such a ‘separate but equal’ analysis represents the same formalistic approach to equality adopted in Plessy v. Ferguson."

Additionally, it is believed that civil unions or registered domestic partnerships “would leave us with second class status; like putting us at the back of the bus. It would not be acceptable.”

Douglas Elliott (lawyer representing the Metropolitan Community Church of Toronto), for instance, remarked that,

You know some of these ideas: “Well you should settle for less, sit at the back of the bus, what are you complaining about?” Why is Rosa Parks sitting at the back of the bus? It’s not because people who sit at the front get there faster or the seats are more comfortable. It’s because it’s a visible outward symbol of her visible second-class status in that society. That’s why she had to sit at the back of the bus.

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364 Halpern et al(a), Reply Factum of the Applicant Couples (2001), para 48. Plessy v. Ferguson, 163 U.S. 537 (1896) was a decision holding that separate railways for whites and blacks met the requirements of formal equality. Its “separate but equal” pronouncement formally and explicitly hardened racialized boundaries in new ways, ushering in a nation wide racial logic that sought to isolate blacks spatially. Jim Crow laws required separate spaces in almost all aspects of daily life, including separate drinking fountains, toilets, entrances, exits, and stairways. It was overturned by the U.S. Supreme Court decision in Brown et al v. Board of Education, 347, U.S. 483 (1954). See Devon Carbado, “Black Rights, Gay Rights, Civil Rights” (2000) 47:6 UCLA Law Review, 1480, 1493. There are no references to histories of racial segregation in Canada in these arguments. See Constant Backhouse, Colour-Coded, 226-271. References to past racial injustices appear en masse in the House of Commons debates, discussed more fully in the following chapter.
365 Wendy Ann Young, Affidavit, 2000, para 17.
and that is why she refused. It’s about not accepting that public demeaning of her status as a human being, and that’s why civil unions are not acceptable to me because it is branding us as second-class citizens and that’s not acceptable.\textsuperscript{366}

A central feature to the analogies of segregation concerns the power of words and language to confer social approbation on same-sex relationships. Elliott continues,

They had said, “Well, you know, look at the history of African Americans. You know they have changed the word from coloured to black to African American, and it hasn’t improved equality in the end.” So, I stood up and said, “Well you know there is one word she left off the list and that’s the word “nigger”\textsuperscript{367} and if my friend is to suggest that the word “nigger” doesn’t make any difference, I think it’s obvious she’s wrong. Words are very powerful. They convey meaning. They can hurt people and they can at the same time elevate people.” And so the word does matter.

Similar to that of the analogy to Loving reference to historical instances of segregation are employed to invoke the harms of not having the “freedom to marry.” Access to civil marriage is desired not only for its material benefits but, more importantly, for the social recognition and social value it confers on gay and lesbian conjugal relationships.

Analogies to segregation are the most widely invoked outside the legal arena. The visual representation of segregated park benches and water coolers marked with a sign “No Gays” appeared in various queer newspapers, Additionally, the notion of the “gay underground railroad” that American gays and lesbians could follow in search of the “freedom to marry” emerged as a site of gay activism as well as in mainstream newspapers such as the Toronto Star and the New York Times.\textsuperscript{368} The circulation of this

\textsuperscript{366} Italicized words represent emphasis of tone.
\textsuperscript{367} I have been very uneasy to repeat this word in this dissertation; I have decided to use it in full because to do so conveys the powerful effect the word evokes; again italicized words represent emphasis of tone.
\textsuperscript{368} “A wedding in Canada: Gay couples follow a trail north blazed by slaves and war resisters” New York Times (23 November 2003), 7; and “The gay underground railroad” Toronto Star (10 April 2005), H6. A “Civil Marriage Trail” was organized as an action over the 2004 Valentine’s weekend where couples from New York State made the journey to Toronto to marry. The “spirit” of the action was along the lines of the underground railway used by slaves in the U.S. to come to Canada where “they found freedom and equality denied in the U.S.” (See www.civilmarriagetrail.org).
racial analogy in mainstream newspapers, and in public discourse generally, functions to bring heterosexual-identified people into a position of support for same-sex marriage, particularly in the appellation of “as Canadians.” Indeed, the invocation of the analogy to segregation and “separate but equal” doctrine appeared widely in Parliamentary and Senate debates, to counter the proposal of civil unions, which are not seen to cohere to Canadian national self-identity. These resonances between (white) national formations and same-sex marriage are discussed further in the next chapter.

The analogies to inter-racial marriage and racial segregation both draw parallels between racial and sexual identities, and racism and heterosexism as systems of oppression. In so doing, they are a constitutive part of the discourse of the “freedom to marry”, where historically segregated, un-free African American bodies and lives are invoked to make a claim for the freedom of contemporary lesbian and gay conjugal couples. Where the analogy to Loving is invoked to articulate the possibilities of a future time of equality for lesbian and gay couples, the analogy to segregation is deployed to underscore a past time that should not be regressed back to. It has been suggested that analogies can facilitate a common, more universal understanding of the harms of oppression. Elizabeth Spelman examines the comparisons to slavery used as a trope in the campaigns for women’s suffrage in the United States of the nineteenth century. She draws careful attention to the paradoxical relation engendered, namely that white women’s comparison of themselves as slaves could both subvert and sustain the institutions of white supremacy in the context of which the comparisons were made. Such comparisons sought to connect two groups of women that white supremacy sought to keep apart but they also erased white women’s own complicities as well as erased and
marginalized the experiences of black female subjectivities. Spelman contends that while the possibility of shared experience seems in some circumstances to be part of an expression of shared humanity, it also is a tactic that obfuscates the relations of power that engender such experiences in the first place.\(^{369}\)

Given the broad appeal of shared experiences as a strategy to elucidate harms of suffering, it is not surprising to see this idea indicated by the lawyers’, who spoke to the possibilities of analogy to support a current “sexual orientation” equality rights struggle. Analogies were seen to exemplify the value of precedent set by judges where there might not be strong societal support for the issue under consideration. Cynthia Petersen (co-counsel for the Egale Couples in BC and for Egale as intervener in Ontario) suggests that they are a way to say to the judge,

> look it is not about a popularity contest, you know…Sometimes minorities are just too marginalized and you need the courts to actually enforce their rights…You know, there was a lot of debate in Canada that is still on going, but that was even more intense at the time, around activist judges. And I wanted them to sort of see an example of a Court that had done something that is so clearly the right thing to do in retrospect but would have required considerable courage at the time. And you know we would refer to things like *Brown and Board of Education*, and segregation decisions, which also the public was not ready for and wouldn’t have endorsed it and yet the courts did it, right? Sort of trying to give the court the courage to do the right thing.

Additionally, for Kathleen Lahey (co-counsel for the *Barreau* couples in BC) denying gay men and lesbians the capacity to marry constitutes a denial of their personhood in law. In her view, the analogy to *Loving v. Virginia* should not be simply understood as a racial analogy. Rather, its purpose is to highlight the original point of constitutional protection:

It is to protect people from arbitrary classifications, which in the States always predominantly were framed around racism. But this is where the answer gets way too long. There is a lot more to it than that…If you looked at the legal structures that have been the most effective in the history of recorded law, wherever you look you are going to see that same status for the ten to twelve different rules being deployed whether it was by the Visigoths as they attempted to force Jewish people to convert voluntarily to Christianity; whether it was during the Third Reich with the Nuremberg laws that were designed to go even further in the regulating of Jewish people; whether it is the Indian Act; whether it is apartheid laws of South Africa; whether it is the slave codes that were in enacted throughout the United States.

For Lahey, the use of racial analogy in the equal marriage case is a way to focus on the notion of “legal personhood” which the state has used to regulate “a group of people that are unpopular, who are defined by excess and disenfranchised.” It is a way, in her words, “to show the court the sort of pervasive impact of denial of the right to marry does in terms of commonly recognized constitutional values.”

Analogies, however, can also “repress and flatten out the messy spaces in between.” While they stress similarity by positing identity and systems of oppression as alike, analogies also presuppose a measure of dissimilarity. Analogical reasoning inserts a “space” between the things analogized, a space that ultimately remains unbridgeable and maintains discrete notions of identity and oppression within law, culture and society. Again, some of the lawyers raised these problematics when discussing their use. For example, Douglas Elliott remarked that,

it is perfectly legitimate to compare or to draw analogies so long as you don’t say, well, I draw the line in saying, “I’m just like an aboriginal person”, or “I’m just like an African American” because their experience of oppression and the manner in which they have been oppressed is so different from what I’ve experienced as a

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white gay man. I have a strange dichotomy in my life in that part of me gets privileged and part of me experiences discrimination.

With recognition of the interconnectedness of social relations of power, Elliott suggests that the use of analogies be contained. His reflection suggests the value of drawing analogies based on systems of oppression rather than on identity categories per se that would engender an articulation of “just like.” As will be discussed below, there is some slippage between these two, however, as the power of the analogy to segregation necessarily entails the presence of bodies, whether or not they are “visible” in the discursive or visual image. Additionally, Cynthia Petersen remarked that with regards to the *Loving* analogy,

(Y)ou have to be very careful with those analogies because on the one hand, I do think there is some real validity to the analogy. But on the other hand, anti-miscegenation statutes were criminal statutes, like people went to jail, right? It’s not the same to say we don’t have the freedom to marry. And yes, it is presented as an issue of inequality but it’s not as if people are being thrown into jail for being in same-sex relationships whereas the whole era of black men were incarcerated for marrying white women…So it is a delicate analogy.

I foreground these reflections on the use of analogies in this legal struggle not only to exemplify the complexities of their deployment but also as a way to highlight their appeal. As Janet Halley remarks, “asking the advocates of gay, women’s, or disabled peoples’ rights to give up ‘like race’ similes would be like asking them to write their speeches and briefs without using the word ‘the’.”\(^{372}\) As appealing as they are, particularly as a means to invoke harms of non-recognition in this legal struggle for same-sex marriage, racial analogies have several troubling effects, to which I now turn to discuss.

Critical race scholars have raised several important critiques of the use of racial analogies as a representational practice in gay/lesbian equality rights struggles that coalesce around three key inter-related themes. First, it is argued that analogies to past instances of racial oppression foster an anti inter-sectional analysis that essentializes identity categories. Devon Carbado, for example, examines gay rights activists’ deployment of race/sexual orientation analogies in the context of debates over the U.S. military’s “Don’t Ask, Don’t Tell” policy. He maintains that activists’ strategy to compare the politics of racial segregation in the armed forces with its contemporary politics of “the closet” is one that disaggregates race and sexuality from each other. Such disaggregation normalizes white gay and black heterosexual identities, and entrenches the perception that they are mutually exclusive categories. As a result, he contends, the lesbian/gay subject produced through the analogies is either someone who does not experience racism or, alternatively, as one who experiences discrimination only through sexual orientation. The implication of categorizing gay as white and heterosexual as black is to politically authenticate and thus privilege certain identities and to inauthenticate and thus marginalize others. Similarly, Darren Hutchinson argues that this essentialism erases and marginalizes gays and lesbians of colour, leading to a narrow construction of the gay and lesbian community as largely upper class and white. One pernicious effect of this, he maintains, is that it legitimizes a conservative racial discourse that seeks to deny the protections of civil rights structures to all GLBT. Thus he traces a

374 Devon Carbado, “Black Rights”, 1498
congruence of pro-gay and anti-gay discourses, which both marginalize people of colour and the poor, and depict a gay and lesbian community privileged by race and class.\textsuperscript{376}

Second, as Trina Grillo and Stephanie Wildman contend, that racial analogies operate as an appropriation of experience without accountability.\textsuperscript{377} Positioning lesbians and gay men as the last constituency to obtain equality rights, for example, as the \textit{Loving} analogy does, presumes that the project of equality rights/civil rights for communities of colour has been achieved. That an “earlier” politics of race sets a precedent for a later politics of sexual identity implies that racism is a thing of the past from which “we” can now invoke for a contemporary gay rights struggle. Racism and the black experience of prejudice thus appear, in Patricia Williams’ words, as “temporal shell game.”\textsuperscript{378} As Grillo and Wildman suggest, the impetus for the turn to analogy is part of a desire to receive recognition. But by emphasizing similarity and obscuring difference, analogies situate white people on the “outside” of race, exempt from having to fully comprehend the experience of racism/white supremacy.\textsuperscript{379} Wearing the mantle of “civil rights” without accountability to \textit{current} forms of racism and current struggles for \textit{racial} justice allows for a “forgetting” of race. As Devon Carbado argues, appropriation of experience via racial analogies obfuscates the racial privileges conferred upon white lesbians and gays from a wide range of political, economic, and social institutions.\textsuperscript{380} Such obfuscation relieves lesbians/gays from accountability to antiracist agendas.

\textsuperscript{376} Ibid., 1390.
\textsuperscript{377} Grillo and Wildman, “Obscuring the Importance of Race”, 405-410.
\textsuperscript{379} Grillo and Wildman, “Obscuring the Importance of Race”, 409.
\textsuperscript{380} Carbado, “Black Rights”, 1488.
Finally, and closely intertwined with the dynamic of appropriation, racial analogies re-centre whiteness, what Grillo and Wildman call “taking back the centre.” Here, the harms of racism/white supremacy invoked by analogies disappear because it is often white people’s experiences that become the subject of inquiry. Furthermore, as Devon Carbado argues, racial analogies presuppose a (gay) white racial identity otherwise they are not meaningful; “blackness”, he maintains, is relevant only to the extent that is supports a narrow conception of gay rights. The implication of this dynamic of “taking back the centre” suggests the reflexive properties of racial analogies. The chapter now turns to examine this more closely, within the context of same-sex marriage and the discourse of the freedom to marry.

**The Colour Line of Respectability**

Shannon Winnubst remarks that the language of freedom functions as an ethical value and space that no one can disavow. Linked as it is to neoliberal governmentality whose power is enfolded through the expansion of rights and choices, the discourse of freedom offers a resonant manner in which to frame an equality claim. Securing freedom of choice is pivotal to this legal struggle, rooted as it is in notions of privacy, autonomy and the individual. It is argued, for example, that marriage

...is a choice that “belongs” with the individual and to deny lesbians, gays and bisexuals the freedom of making that choice is to deny us much more than a choice about whether we wish to assume certain legal responsibilities or acquire legal benefits available to married spouses. It denies us autonomy in respect of a matter that has profound effects on our personal lives.

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381 Grillo and Wildman, “Obscuring the Importance of Race”, 401-402.
382 Carbado, “Black Rights”, 1480.
The emphasis on choice was also a thought out strategy on behalf of the lawyers’ as a way to frame their arguments. Joanna Radbord, for example, said that

We always emphasized the choice aspect of marriage. And it wasn’t about all of the couples necessarily wanting to participate in the institution of marriage; the offence to dignity and people’s right to choice. So it was an argument about choice, an argument about dignity.

Implied in these statements is that a lack of choice over when and how one’s sexual orientation matters signifies a lack of individualism and hence a lack of power. Choice is akin to a private possession or property that one owns and must not face constraint in being able to act upon.\(^{385}\) To be constituted as free is to have autonomy in one’s personal decisions unfettered by culture or community. It is to be constituted as a responsible actor at the source of her/his actions, one who finds full meaning in the assumption of autonomy.\(^{386}\)

In this way, the discursive frames of choice and freedom are not only about expanding relationship options but also constitutive of respectable subjectivity. What is signaled through freedom and choice is a move out of degeneracy, where the gay/lesbian subject is no longer reduced to a “kind” but rather inhabits a space liberated from constraints and limits imposed on actions.\(^{387}\) Given that white respectability is at the heart of constituting a lesbian/gay legal subject-citizen worthy of marriage, it is crucial to inquire into what happens to bodies of colour. It is significant that a centrally explicit site of their discursive appearance in this legal struggle takes the form as unfree, as segregated. I suggest that the making of a white respectable gay/lesbian subject is contingent upon this. As Meyda Yegenoglu argues, autonomy is relational, where its

\(^{385}\) Shannon Winnubst, *Queering Freedom*, 42.

\(^{386}\) Meyda Yegenoglu, *Colonial Fantasies*, 5.

\(^{387}\) Lauren Berlant, *The Queen of America*, 4.
assumption “requires another term or condition from which the subject distinguishes itself.”

Not only is the corporeal abjected to attain the positionality of an individual autonomous subject but its whiteness requires the abjection of bodies of colour, on the “outside” of representation but also that from which one cannot part.

To echo the critiques delineated above, racial analogies appropriate experiences of “unfreedom” as a way to give contour to the harm of non-recognition, and in so doing “take back the centre” where the analogies function as a reflection on the white self. Anthony Farley writes that whites repeatedly return to “the image of the black” in order to satisfy the urge to be white; and that this “will to whiteness” is a form of pleasure in and about one’s body. The production, circulation and consumption of images of the not-white, he elaborates, is a way whiteness composes and satisfies itself; the pleasure of race, he contends, is the pleasure of comparison. Thinking through this, we can posit racial analogies as an expression of race pleasure: that is, their deployment asserts the freedom, autonomy and individuality of the gay/lesbian legal subject, and more specifically of who they are not. The pleasure of racial analogies can also be understood as the pleasure in constituting the “goodness” of whiteness: “we” will not treat “our” gays like that as “we” have learned from lessons of the past (a theme taken up more fully next chapter). The evocation of racial analogies by judges, parliamentarians and in mainstream newspapers enables whiteness to disaffiliate and constitute itself outside the political register of white supremacist practices and discourses, what Robyn Wiegman terms a

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388 Meyda Yegenoglu, Colonial Fantasies, 5.
390 Ibid., 464.
“counterwhiteness.” Such expressions of pleasure, following Farley’s analysis exemplify the expression of the colour line in a project of “gay rights.”

Toni Morrison’s inquiry into the functions of an Africanist presence within the white literary imagination is also helpful to elaborate the reflexive properties of racial analogies. Morrison suggests that a racial presence is an extraordinary enabler for contemplation of the white self. She writes,

there is quite a lot of juice to be extracted from plummy reminiscences of “individualism” and “freedom” if the tree upon which such fruit hangs is a black population forced to serve as freedom’s polar opposite: individualism is foregrounded (and believed in) when its background is stereotyped, enforced dependency.

To draw comparisons between the lack of the freedom to marry and segregationist policies, for example, is a way of imagining and constituting the lesbian/gay subject-citizen as autonomous, as an individual. More precisely, racial analogies offer a means for imagining what/who is not the (gay/lesbian) subject: someone who experiences segregation, who rides the back of the bus. Indeed, to be white is to sit at the front of the bus. Such analogies are implicated with entitlement, and with claims to what should be “ours” by virtue of being white: being “gay” gets in the way of the privilege(s) accorded to whites.

The autonomy of the lesbian/gay legal subject-citizen purchased through the discourse of the freedom to marry is contingent upon the presence (however absent) of bodies of colour. Securing the positionality of autonomy and individual choice, that is, having the freedom to marry, is part of a bid for respectability; as a representational

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392 Toni Morrison, Playing in the Dark, 17, 51.
393 Ibid., 64.
practice, racial analogies lead to the terrain of its whiteness. Based as they are on legal precedent, racial analogies perniciously draw the colour line: by requiring a disaggregation of identity categories which privileges a white “gay” identity, by obfuscating contemporary racial politics, and thus by maintaining “(homo)sexuality” as the proper object of lesbian/gay equality rights struggles.

Thus far the thesis has delineated the racial politics of same-sex marriage as constitutive of racialized subjectivity. It now turns to examine the racial politics of same-sex marriage on a different register, that of the trans/national. The discursive threads of respectability and freedom do not disappear but overlap with the racialized discourse of civility.
CHAPTER FIVE:

Ascendant Civility: The Trans/National Racialized Terrain of Same-Sex Marriage

Our deliberations will not be merely about a piece of legislation or sections of legal text. More deeply, they will be about the kind of nation we are today and the nation we want to be.

-Paul Martin, Prime Minister, February 2005

When we pass this Bill, we will be sending a message to the world that Canada is ahead of where modern society is going.

-Bill Graham, Liberal MP, February 2005

Equal marriage is fully part of modern consciousness.394

On April 9, 2005 thousands of people opposed to same-sex marriage rallied on Parliament Hill to “Defend Marriage.” Held at the time of Parliamentary debates on Bill C-38, the majority of protestors were white (but not exclusively) and, judging by the overwhelmingly mass-produced signs they wielded, predominantly Christian/Catholic. While the estimated number of protestors varies from 8,000 to 15,000, a small but vocal group of about one hundred “equal marriage” supporters waving rainbow flags staked out a small space of resistance.395 There was one moment, however, that united both groups: the singing of the national anthem.

I begin with this small anecdote as a way to signal the ubiquitous circulation of national ideals, symbols and mythologies within public debates over same-sex marriage. Alongside the two above statements by Liberal politicians, the harmonious umbrella offered by the national anthem indicates that the issue became a productive site for

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imagining and articulating what “Canada” as a nation stands for and what it means to be “Canadian.”

This chapter analyzes the discursive terrain of nationhood and nationalism manifest in Parliamentary and Senate debates over Bill C-38 that occurred in September 2003, and between February and July 2005. This terrain of nation and nationalism appears in other data sources under study, albeit less intensely; I give consideration to these particular debates because they offer a rich elaboration of the connections between (homo)sexuality and racialized national formations. While these political debates do not represent the sum of official discourse on same-sex marriage, they do encapsulate one genre of state perspectives and offer an important condensation of viewpoints. Moreover, in reading the Parliamentary and Senate Hansards, what is quickly apparent is that the political pronouncements form a discursive field that has more to do with asserting the modernity and civility of Canada than it does with same-sex marriage per se. Within the debates, same-sex marriage emerges as a contemporary example of Canada’s (historical) project to establish itself as a (neo)liberal, modern, and civil nation. Miriam Smith observes that while the regulation of the patriarchal heterosexual nuclear family is bitterly contested in the United States, the debate(s) over same-sex marriage in Canada became intertwined with national self-definition. This chapter extends this claim by arguing that the issue of same-sex marriage is complicit with racialized trans/national formations. That is, it functions as a discursive practice of civility implicated in reproducing and

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396 While not technically about Bill C-38 (introduced into Parliament on February 1, 2005), this September 2003 Parliamentary debate was the result of a motion by Stephen Harper (then leader of the Opposition, Canadian Alliance Party) to ask Parliament to reaffirm an exclusively heterosexual definition of marriage in light of court decisions in Ontario and British Columbia legalizing same-sex marriage in those jurisdictions. The motion was narrowly defeated by a vote of 137 to 132 (House of Commons Debates, No. 120, 16 September 2003).

397 Miriam Smith, “Framing Same-Sex Marriage”, 7.
securing not only the whiteness that underpins Canadian national identity but also the racist civilizational logic of “Western” superiority and progress so deeply part of the post 9/11 landscape. Same-sex marriage is a key site for the racialized production of who “we” are as Canadians and who this “we” is; as a “gay rights” struggle par excellence, it is also a (new) measure of civilized modernity within a transnational sphere. Similar to the discourses of respectability and freedom, the presence of bodies of colour is central to the making of a white civility of “gay rights.”

The first part of the chapter outlines the discourse of civility, highlighting the centrality of race to its meaning. As a discourse that bridges the pro/con divide, making possible a shared terrain, civility produces particular national “knowledges” as well as racialized trans/national subject positions along civilizational lines. Part two examines the temporal evocations of Canada’s past, present and future as a means to suture an ideal of national civility to “gay rights” while Part three traces how such a manifestation enables the production of racialized national identity. Part four analyzes how “same-sex marriage” operates to secure the modernity of Canada within a transnational frame and assists the reconfiguring of Canadian national identity along (Western) civilizational lines. I argue that, in this context, same-sex marriage has little to do with the nation-state’s benevolence towards gay men and lesbians or a sign of “gay friendliness”; rather, similar to the terms of feminism398, “gay rights” is complicit and co-opted to mark and signify (trans)national lines of civility and Otherness.

Re-thinking “Civil” Marriage

British cultural studies scholar Raymond Williams has traced the etymological connections between civility and civilization to the seventeenth century showing that the two words were used interchangeably to describe a state of social order and refinement, particularly in cultural contrast with “barbarism.”\(^{399}\) By the eighteenth century, the word “civilization” became associated with Enlightenment ideas of secularism, progressive human self-development, modernity, and with refinement of manners. Williams remarks that in modern English, its sense of “an achieved state” remains sufficiently strong for the word to retain a normative quality.\(^{400}\) As such, terms like “civilization”, “a civilized way of life” or “the conditions of civilized society” may be seen as capable of being lost as well as gained.\(^{401}\) In this sense, civilization denotes not only an achieved state but also a process.

Similarly, David Theo Goldberg connects civility to the rhetorics of civilization. Civility, he argues, is inseparable from eighteenth century societal shifts in morals and manners, sensitivities and sensibilities, where “refinement, urbanity, sociability and courtesy – in short, civility – became standards of civil behaviour” in modern European states.\(^{402}\) Goldberg maintains that the emergence of modern forms of civility (and civilization) alongside and within discourses on “national character”, are more than casually inflected with racial (meaning also class and gendered) hues. Rather, race (class and gender) have been “a primary ingredient in the making, molding and manifesting of

\(^{399}\) Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (New York: Oxford University Press, 1985), 57-58.

\(^{400}\) Ibid., 59.

\(^{401}\) Ibid., 60.

\(^{402}\) David Theo Goldberg, “‘Killing Me Softly’: Civility/Race/Violence”, 346.
modern civility”, determining presumptively who is within and outside its “circle of confinements or web of worldly connections.”

It is “the overarching sensibility of the prevailing social...what we might say gives the society its ‘personality’, its ‘character’, even its ‘color.’” With the post 9/11 revival of Samuel Huntington’s thesis of a violent “clash of civilizations” between Islam and the West, Goldberg argues that those falling outside the shifting demarcations of civility and civilization are invariably marked “as aliens, strangers without and within, exploitable labour, criminals, infidels, enemies as such and enemies of freedom, destroyers of democracy or more recently and assertively as terrorists.”

Gail Bederman has also theorized how the boundaries of civility and civilization, as historical and contemporary features of modernity, are conjured through racial demarcation. She examines the racial gender and class components of the discourse of civilization, demonstrating that it provided a shared vocabulary for Americans at every point of the political spectrum in the period of the late nineteenth/early twentieth centuries. Similar to Williams’ textual excavation above, Bederman remarks that “civilization” denoted evolution and progress from the more “primitive stages of ‘savagery’ and ‘barbarism.’” She argues that as an explicitly racial discourse, “civilization” linked together male dominance and white supremacy to ensure the advancement of white civilization; as a contested discourse, American women and men also utilized it as a means of resisting this ideology of white male power.

In the Canadian context, Daniel Coleman has delineated the dynamics of civility in

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403 Ibid., 357.
404 Ibid., 349.
405 Ibid., 347.
407 Ibid., 42.
the Canadian context. Through a detailed examination of late nineteenth and early twentieth century Canadian literatures, he traces a particular Canadian genealogy of civility that has consistently been (and continues to be) drawn along lines of whiteness and masculinity. Emerging in the nineteenth century, this white civility is exemplified by four key figures: the “loyal brother” who continues to negotiate a nervous relationship with the United States; the “enterprising Scottish orphan” whose prudent, good character produces his economic success; the “muscular Christian” who metes out justice on behalf of oppressed people; and the “maturing colonial son” who demonstrates his independence from Britain and America by altruism towards his minority beneficiaries. Coleman argues that these figures present a continuing normative ideal for national “belonging” and have had enormous influence in popular understandings of Canadian national identity across the political spectrum. Drawing upon the work of feminist anti-racist scholars, Coleman theorizes that through its conflation with civility, whiteness has become naturalized as the racial norm for English Canadian cultural identity. Because of its normalizing functions, Coleman contends that the idea of Canadian civility organizes a diverse population around standardizing ideals of whiteness, where various racialized, classed and gendered bodies gain or lose social status on the basis of how well they can approximate this norm.

In Coleman’s framing, then, civility combines a moral-ethical element with a temporal (and hence spatial) notion of progress so that, similar to Goldberg and Bederman, civility becomes the means through which race is attached not just to bodies

408 Daniel Coleman, White Civility: The Literary Project of English Canada (Toronto: University of Toronto Press, 2006).
409 Ibid., 239.
410 Coleman, White Civility, 27.
but also to forms of conduct. More than something a person or culture simply “has”,
civility is an act, a mode of self-definition – specifically, a white cultural practice that
must be learned and performed. It is in this sense that Coleman distinguishes civility
from tolerance. Referring to the work of Eva Mackey, Coleman notes that tolerance is
often marked as central (and institutionalized) to the cultural politics of national identity
in Canada. Insistence upon the nation’s internal pluralism instead of a national image of
homogeneity is a sign of morally enlightened tolerance. Coleman reads tolerance as a
passive endurance of difference. By employing the analytic concept of civility, he seeks
to both highlight its connections to the discourses of progressive civilization and
modernity, and to emphasize its productive implications, that is, civility as a white
cultural practice.

Writing in the Australian context, however, Ghassan Hage conceptualizes
tolerance as an active practice more than an attitude of passive endurance. He argues that
as a nationalist practice, tolerance emanates from the same position of power as acts
dubbed “racist violence”, that is, both are practices of spatial power aimed at the white
management of racial “others” in national space. Similarly, Wendy Brown situates
tolerance as a moral-political practice of governmentality that contributes to political and
civic subject formation. Like Hage, Brown argues that the discourse of tolerance
always carries within it a certain expression of domination even as it seeks to offer
protection or incorporation to the less powerful and as such, is a normative discourse that

411 Ibid., 12, 21.
412 Eva Mackey, The House of Difference: Cultural Politics and National Identity in Canada (London and
413 Ghassan Hage, White Nation, 94.
414 Wendy Brown, Regulating Aversion, 11.
reinforces effects of hierarchical stratification and inequality. I do not think these three readings are contradictory but rather inform each other. As this chapter will argue, I centre civility as a discursive practice that traverses support for and opposition to same-sex marriage as both “sides” are invested in elaborating similar notions of racialized national belonging. Furthermore, these Parliamentary and Senate debates represent a site of governmental power inculcated through the lines of “meaning” of Canadian national identity and the interpellation of “as Canadians.”

The discourse of tolerance circulates widely in the Parliamentary and Senate debates over same-sex marriage, very much in line with Mackey’s analysis that is a constitutive element of national mythologies of respecting and valuing pluralism and diversity. I choose to employ the discourse of civility, however, because it is an analytic concept that is more closely aligned to the temporal frameworks that I have tried to elucidate throughout this thesis (particularly to that of futurity and progress); it captures more fully the links that bind together the assertion of modernity in a national and transnational sphere; and, because of its affinities with the discourse of respectability, it is a way to bridge the racialized spatial registers of this legal struggle, namely the (private) “individual” gay/lesbian subject-citizen and the “trans/national”, and it imbricates their shared temporal registers of progress/degeneracy, modern/premodern.

**The Time of Civility: Securing a Civil Present through the Past**

The quest to extend civil marriage to gay and lesbian couples is tied to an ordering of Canada that weaves together the past and a not quite secure future into a multi-temporal present. In the words of then Prime Minister Paul Martin, “If we do not

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415 Ibid., p. 178.
step forward, then we will step back. If we do not protect a right, then we deny it.
Together as a nation, together as Canadians, let us step forward." The advancement
contained within the “step forward” has the “community of nations” in its view and will
be discussed further below. Here, I want to probe where “we” would “step back” to and
argue that civility, as exemplifying progress and hence futurity, is achieved in
considerable part through persistent references to past racial and gendered injustices
perpetrated by the Canadian state, ranging from the denial of women’s right to vote to the
Chinese head tax to cultural genocide against First Nations peoples. Take, for example,
this speech by one Liberal MP:

We had the Asian exclusion act. We had the Chinese head tax. We had internment
of Ukrainians and others from Austro-Hungary. We had internment of Italians and
Germans. We had internment of Japanese Canadians. We had the almost forceful
repatriation of Japanese Canadians after the Second World War…We know that
we had a policy of “none is too many” for the Jews. We know that a colour barrier
existed on immigration until 1977. We know that there was cultural genocide
against our First Nations. We know what happened with the residential schools.
We know about the ban on potlatches and that big houses were outlawed. We
know that women were not given the right to vote until 1917, and it was not until
1929 that the English Privy Council recognized women as persons…The reason
our Charter of Rights and Freedoms was enacted on April 17, 1982 is that it dealt
with the recognition of the evolution of this country. It dealt with the recognition
of how minorities had not been treated very well. It dealt with making sure that
we learned from the lessons of the past.

While perhaps not the speech’s intended meaning, it does reveal the deeply implanted
tenets of racist ideology, practice and exploitation central to the establishment of Canada
as a white racial state. What we all “know” - and as this long quote strongly denotes,
there is a great deal to know - is employed to signal awareness of these events but not
what purpose they served, namely to establish the parameters of racist structures of

417 House of Commons Debates, No. 060 (21 February 2005), 3776 (Hon. Andrew Telegdi).
citizenship. Despite the naming of violence such as genocidal colonization and racist immigration policies, this knowledge of the past is presented in such a way that obfuscates the racial divisions and hierarchies such acts produced, which remain significant to this day. Instead, it is deployed to signal an imagined present space and present time where Canada’s pernicious racist history has been progressively overcome and where the rights of “minorities” are now respected. Granting equality rights to lesbians and gay men through the extension of civil marriage signals Canada’s story of the “now.”

The discourse of Canada as a “nation of minorities” is key to imagining this civil present versus an uncivil past, and ties directly into a particular rationale for supporting Bill C-38. Amending the definition of civil marriage to include same-sex couples, for example, is a recognition that, in the words of one Liberal MP, “Everyone of us belongs to minority groups.”\footnote{House of Commons Debates, No. 120 (16 September 2003), 7385 (Hon. Hedy Fry).} Similarly, another Liberal MP states that,

> Canada is a nation of minorities. We are all part of some minority. If we do not protect all minorities, we cannot protect any minority. If we do not protect all minorities, we cannot protect people of colour, Anglicans, Catholics, Muslims, people of different genders, and people of different races or nationalities. We could not protect any Canadians because each and every one of us is part of some minority.\footnote{House of Commons Debates, No. 124 (28 June 2005), 7910 (Hon. Larry Bagnell).}

This discourse has several effects. In one way, it works to restrict “the recognizability of heterogeneity”;\footnote{David Goldberg, The Racial State, 16.} that is, while particular racial, national, religious and gendered bodies are called upon to point to the tangible heterogeneity of Canadian society, the idea that we are all minorities entails a vacuous homogenizing logic. The subtext of “everyone of us belongs to minority groups” draws lines of horizontal similarity in oppression and
discrimination. To draw upon Robyn Wiegman, it represents a minoritizing move of whiteness. To cast “white” as a minority identity, which is implied in the discourse of “we are all minorities” is, Wiegman suggests, a way whiteness protects itself in the face of racial heterogeneity and racial civil rights claims, imbuing itself, too, as injured.\(^{421}\)

Conversely, however, heterogeneity is being recognized and held as something to strive for. So, for example, according to (then) Prime Minister Paul Martin, “When we as a nation protect minority rights, we are protecting our multicultural nature. We are reinforcing the Canada we cherish.”\(^{422}\) As Mackey has argued, the cultural politics of Canadian national identity focus on pluralism rather than homogeneity.\(^{423}\) In the above proclamations, lesbians and gay men are understood to be part of the multicultural fabric of Canada, a group whose “difference” from the dominant (heterosexual) norm rests on sexual preference and thus requires protection. It is thus argued that Bill C-38 “is about restoring the dignity of some human beings that we, as a country, as a government, have chased, humiliated, destroyed their lives and, in some cases, have pushed to suicide.”\(^{424}\) The successful passage of the legislation is viewed here as a means of rectifying this “uncivil” past by enfolding gay men and lesbians into the “multicultural fabric” of Canada. Given, as this thesis has argued, that the lesbian/gay subject of this legal struggle is racialized as white, this enfoldment can be read, to reiterate Wiegman’s analysis, as whiteness protecting itself through the extension of “gay rights.”

\(^{422}\) *House of Commons Debates*, No. 058 (16 February 2005), 3577 (Hon. Paul Martin).
\(^{423}\) Eva Mackey, *The House of Difference*.
\(^{424}\) *Debates of the Senate*, No. 84 (19 July 2005), 1540 (Hon. Serge Joyal).
The idea that “we” must “protect all minorities” signals anxiousness about the presumptive “horizontal comradeship” envisioned in the discourse of a “nation of minorities.” The debates over same-sex marriage provide a moment to transcend this anxiety and move “forward” thus further contributing to consolidating the present - yet fictive - civility of Canada. It is fictive because the idea of a “nation of minorities” is void of any actual social signifiers, gesturing to a national heterogeneity empty of the historical and contemporary power relations that have been and continue to be central to the making of Canada as a modern, capitalist, racial nation-state. Following Himani Bannerji’s analysis and critique of the discourse of “diversity” in the Canadian context that engenders a reading of social differences as neutral so, too, the discourse of “nation of minorities” works in a similar fashion. It allows for a reading of social differences as neutral whereby the relations of power that create “each and everyone of us” as minorities drop out of sight; indeed, there is no “majority.” As such, there is both an evacuation and an equalizing of the historical and contemporary effects produced by a racist/racial, neo-liberal state and its institutions. The seeming neutrality, uniformity and impartiality this discourse produces glosses over deep divisions across space, place and people. That “we” are all part of “some minority” is a white-washing of various economic, political and social conditions which continually produce racially predicated exclusions and hierarchies, and as such, is an assertion of what David Theo Goldberg terms a “raced racelessness.” Goldberg argues that the modern state’s insistence upon

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426 Constance Backhouse, *Colour-Coded*; Ena Dua and Angela Robertson, *Scratching the Surface*.
428 David Goldberg, *The Racial State*.
429 Ibid., 201.
rendering invisible the racial sinews of the body politic represent its capacity to promote
claims to modernization and (racial) progress, and its attempt to go beyond – without
(fully) coming to terms with – racial histories and racist inequities.\textsuperscript{430}

This “racelessness” represents Canadian state rationality regarding race.\textsuperscript{431} Yet in
these narratives of past racial and gendered injustices there is an explicit naming of race. I
want to suggest that attaching these evocations to a discourse of a “nation of minorities”
is a determined making of a national self as innocent, outside the legacies of its own past
and present histories of violence to bodies of colour.\textsuperscript{432} For example, it is maintained that
Canada’s “story” contains many markers of injustice and inequality “but what is
important now is that they are part of our past, not our present.”\textsuperscript{433} That “we” have
“learned from the lessons of the past” normalizes a national narrative of Canada as a
“good” and civil space and place. Indeed, Canada “has come a long way in its
growth…We choose many examples of a way of thinking of the past we would sooner
forget. That is not the nation we are now proud of and take pride in.”\textsuperscript{434} Additionally, it is
unequivocally asserted that, “There is no question that we have evolved toward a more
civilized, more compassionate and more just concept of the rights of people in our
society.”\textsuperscript{435} Although conjured up to secure a present “time”, these statements are also at
once a determination to forget. The logic of progress inherent to the discourse of civility
is reflected in state articulations of the unacceptability of discrimination and the rejection
of continued exclusions. “We” know where we have been and what has been done but

\textsuperscript{430} Ibid., 203, 221.
\textsuperscript{431} Ibid., 203.
\textsuperscript{432} Sherene H. Razack, \textit{Dark Threats and White Knights}.
\textsuperscript{433} \textit{House of Commons Debates}, No. 058 (16 February 2005), 3577 (Hon. Paul Martin).
\textsuperscript{434} \textit{House of Commons Debates}, No. 074 (24 March 2005), 4558 (Hon. Tony Ianno).
\textsuperscript{435} \textit{House of Commons Debates}, No. 124 (28 June 2005), 7905-06 (Hon. Alexa McDonough).
this is not “our” present nor can it be “our” future. Voting for Bill C-38 – supporting equality rights for lesbians and gays – is sutured to a past “we would sooner forget” in order to mark a progressive, proud national present and hopeful future.

The determination to forget and hence the need to repeatedly make references to past injustices - the repetition - is striking and worthy of scrutiny. They exemplify “the past we would sooner forget”, but “we” don’t. What work does this temporal avowal of “wrongs” do? It provides a springboard to (re)secure the civility of this is not who we are today. This avowal is an elegiac discourse, a way of both managing traumatic histories of exploitative, colonial nation building and securing a civil present.436 The naming of the racial violence and hierarchies so central to the making of Canada as a white racial state is one that veils ongoing violence and exclusions by sanctioning them to a past time.

Civility, as Goldberg writes, is a process invested in more than the ending of violence; it is also committed to its veiling.437 Declarations of “wrongfulness” of the past and the exposure of the failure of Canada to live up to its ideals exist alongside, rather than undoing, national pride. As Sara Ahmed suggests, bearing witness to past national shame and injustices enables a nation to live up to the ideals that secure its identity in the present.438 Moreover, it functions as another example of “counterwhiteness”, a reformation of white racial power along “liberal” lines.”439 These avowals of racial injustices serve, then, as a critical element to formulations of white national identity, one that stands at a distance from participation in contemporary reconfigurations of white

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436 Daniel Coleman, White Civility, 8.
power and privileges⁴⁴⁰: racial injustices are part of our past and we have learned our lessons. In this way, the temporal containment - then, not now - provides a minimum amount of disruption to mythologies of innocence and to the ideology of racelessness that is a hallmark of the Canadian historical tradition.⁴⁴¹ An emphasis on the progress and evolution of rights is a temporal strategy necessary to “manage” the continuous and contemporaneous effects of racist histories. The time of same-sex marriage in these debates, though, is better understood as palimpsestic where, as argued in chapter three, the inclusion (however limited the grounds) of gay men and lesbians through the terms of marriage is grafted onto the nation-state’s historical and continuous production of racialized structures of citizenship.

The Pedagogy of a National “We”

Interwoven with civility’s temporal notion of progress that establishes the time and space of Canada is a moral-ethical element, which travels in and through assertions of “who” Canadians are. Bill C-38, for example, represents “all that we believe in as Canadians...It is a strong symbol of the core values that many Canadians hold dear: equality, dignity, tolerance and respect for others.”⁴⁴² It goes to “the very soul of what it means to be a Canadian”⁴⁴³ and serves as “a reminder to all Canadians that it is not acceptable to discriminate.”⁴⁴⁴ It is further claimed that for lesbian and gay Canadians, Bill C-38 represents the ability to “enjoy equal status. That goes to the core of the values

⁴⁴⁰ Ibid., 120.
⁴⁴¹ Constance Backhouse, Colour-Coded.
⁴⁴² House of Commons Debates, No. 124 (28 June 2005), 7938 (Hon. Paddy Torsney).
⁴⁴⁴ House of Commons Debates, No. 120 (16 September 2003), 7424 (Hon. Sarmite Bulte).
which I believe we should be fighting for as Canadians.” Additionally, it is asserted that “our Canadian values of humanity, tolerance of diversity, opportunity, compassion and decency are a way of life.” As this sampling suggests, in the Parliamentary debates (and within both queer and mainstream media), same-sex marriage is an issue that interpellates ideal visions of national identity and belonging. The moral-ethical element of civility is particularly salient through invocations of the Charter as “the codification of the best of Canadian values and aspirations”, defining “who we are as a people and what we aspire to be.” The diffusion of a legal instrument such as the Charter into national consciousness – as representing that which Canada stands for and who Canadians are – acts as a form of “uniting” otherwise anonymous national subjects into the moral-ethical subject position of “as Canadians.”

Two telling examples of this can be found in excerpts from affidavits submitted to the Supreme Court of Canada for its Reference Hearing, and whose ruling helped precipitate the Parliamentary debates. It is written,

On the positive side of the public reactions to our right to marry, we have been overwhelmed by the level of public support for the Barbeau; Egale and Halpern decisions. At a recent community meeting there was literally a sea of supporters, all cheering and applauding this new development in human rights for Canadians. We were incredibly proud.

And

At a wedding November 1, 2003, Joy and I were introduced as special guests by one of the bride’s fathers. He said we had brought the case before the courts; there was an audible gasp from the crowd, then applause began, and then, with the 100-strong crowd still applauding, we were given a standing ovation. We had a sense that the crowd was clapping not so much for us, but for the marrying couple who

445 House of Commons Debates, No. 120 (16 September 2003), 7395 (Hon. Svend Robinson).
446 House of Commons Debates, No. 074 (24 March 2005), 4558 (Hon. Tony Ianno).
447 House of Commons Debates, No. 124 (28 June 2005), 7894 (Hon. Irwin Cotler).
had been together 15 years and had raised three children together, and in celebration of Canada, the country that had honoured that relationship.\footnote{Jane Hamilton and Joy Masuhara, Affidavit 2003, para 26.}

Support for same-sex marriage, then, provides an opportunity for all of “us”—gay and straight—to uphold Canadian “core values” and “a way of life”, and to affirm who we “as Canadians” think we are. Although vigorously contested by a vocal and organized opposition, same-sex marriage represents an acceptable national and even patriotic value.

It is also a moment par excellence where gays and lesbians themselves uphold what Canada stands for and who Canadians (apparently) are. Far from being (sexual) strangers to the nation,\footnote{Shane Phelan, Sexual Strangers: Gays, Lesbians and Dilemmas of Citizenship (Philadelphia: Temple University Press, 2001).} lesbian and gay couples seeking to marry “have had the courage to call society out of its intolerance and prejudice.”\footnote{House of Commons Debates, No. 058 (16 February 2005), 3589 (Hon. Bill Siksay).} In another example, appreciation is expressed

for those who have been the trailblazers in putting themselves on the front lines of this battle…I think we owe them a special vote of thanks. We owe our heartfelt appreciation. However we also understand that they fought the battle not just for their own benefit but because they know that gays and lesbians in our society would enjoy the benefits of equal treatment and that the whole of society would benefit from our being a more tolerant, more inclusive society.\footnote{House of Commons Debates, No. 074 (24 March 2005), 4548 (Hon. Alexa McDonough).}

In these statements, lesbians and gays are posited as leaders showing their country and its citizens the way towards greater justice and equality. A more “micro” example from an affidavit to the Supreme Court reads,

We’ve attended many same-sex weddings and have been moved by the outpouring and love by family and friends both gay and straight towards the marrying couples. One wedding, which took place in a small town in the east Kootenays, brought gays and heterosexuals together in that community for the first time. The gays said they had never felt safe proclaiming their relationships and dancing in the presence of straights. A gay-straight alliance was forged.

Witnessing the vows and the obvious love and respect between the brides was life
changing for the crowd. Even very socially conservative people at this wedding described how gays and lesbians need marriage and how important it is. One man said he is now a vocal advocate with what he called his “redneck” friends. The photographer gave the brides a card in which she admitted she had been uncertain of working at this wedding, that she hadn’t been sure whether she approved, but after being present and seeing the brides’ love and delight, she had completely changed her opinion.\footnote{Jane Hamilton and Joy Masuhara, Affidavit 2003, para 23.}

Remembering Joan W. Scott’s method of analyzing “experience”, my point here is not to judge the claims made in this passage but rather to draw attention to the collective work done by such statements declaring gay men and lesbians as “trailblazers” or as contributing to the eradication of “intolerance”, as exemplified in this account. Such examples work in tandem and perhaps even enable the gay/lesbian subject position of “already inhabited” citizenship discussed in chapter three. The lesbian/gay subject, real or imagined, by those supporting same-sex marriage is constituted as one who personifies national values, ethics and civilizational mores, what Sunera Thobani terms an exalted national subject.\footnote{Sunera Thobani, \textit{Exalted Subjects}, 3-4.} Jasbir Puar calls this “homonationalism”, to signal conviviality between a gay political project and the reinforcement of nationalist formations.\footnote{Jasbir K. Puar, \textit{Terrorist Assemblages}, 39.} Once considered deviant and a threat to national security, (certain) lesbians and gay men are now constituted as new figures of civility, both in terms of the time of progress and the space of national identity.\footnote{While the state seems to embrace marrying gays, it also continues its policing and regulation of other queer communities, exemplified by police raids on a lesbian bathhouse in Toronto and a gay bathhouse in Calgary in the past few years, and its long-standing seizing and censorship of materials at the US/Canada border destined for a queer bookstore in Vancouver.}

Conservative opposition contested the tying together of national identity and self-definition with same-sex marriage. One Conservative MP, for example, states that, “They say we are \textit{un-Canadian} because we wish to uphold the traditional definition of
marriage…and *un-Canadian* because we understand the ramifications attached to the passing of Bill C-38.”

In addition, it is claimed that, “We are a fair people. We support equality for all Canadians”, but this cannot be extended to the realm of re-defining marriage. In another example, the Interfaith Coalition for Marriage, in its status as intervener in the British Columbia and Ontario court cases, contends that

There are risks to genuine pluralism, tolerance, diversity and liberty before the court in this case and it is no exaggeration to say that part of what is at issue is whether claims that our country stands for pluralism, tolerance and diversity are true.

Speaking specifically to the issue of religious tolerance, the Coalition argues that an expanded definition of civil marriage to include same-sex couples will alienate religious communities from the Canadian cultural and legal matrix. For conservative opposition to Bill C-38, then, “the real Canadian way” is to take the middle ground of maintaining the traditional definition of marriage as exclusively heterosexual while extending equality rights to lesbians and gay men through civil unions or domestic partnerships. For conservative opposition, same-sex marriage is rejected but through a guise of equality and tolerance. Equality and state recognition can still be granted to same-sex couples; alternatives to marriage are not a betrayal of Canadian civility but exemplify another form of it.

Both “sides” share the terrain of progress and of a moral-ethics imperative to the discursive practice of civility. As such, the issue of same-sex marriage orientates national subjects toward the practice of civility, regardless of whether one is “for” or “against” it.

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457 *House of Commons Debates*, No. 089 (2 May 2005), 5495 (Hon. Garry Breitkreuz).
458 *House of Commons Debates*, No. 089 (2 May 2005), 5494 (Hon. Rob Moore).
459 InterFaith Coalition for Marriage (2001), *Submission of the Intervener*, para 60. It represents conservative elements of Christian (Catholic, Evangelical), Jewish and Muslim faiths.
The various and diverse narratives shown here as circulating in the Parliamentary debates exemplify instruction into what it means to be Canadian. In this way, these debates over same-sex marriage are enmeshed in the field of governmental power. The discourse of civility establishes a bridge between opposing positions; the debates offer a moment for shaping the contours of acceptable modes of national being, belonging and possibility, and conducting “proper” social relations.\textsuperscript{461}

As much as assertions of the “time” of Canada as civil and progressive require both avowal and obfuscation of racial injustices so, too, do assertions of a civil and modern national “we” require its racial “pre-modern” Others. As with the deployment of “bound” and “unfree” black bodies to assert the freedom of the respectable white gay/lesbian subject, the “multicultural/third world” Other functions to make prominent the white racial norm of Canadian national identity. The Parliamentary debates are rife with assertions by those opposed to Bill C-38 that same-sex marriage is a threat to the multicultural fabric of Canada. This stands in contrast with the discourse of the “nation of minorities” in which gay men and lesbians are understood as an integral part of this fabric. As a strategic political maneuver, the Conservative party sought to align “multicultural” communities as opposing same-sex marriage. It launched a series of advertisements in several “ethnic” newspapers under the guise that communities’ religious and cultural values were under threat by the passage of Bill C-38. In one telling statement, Stephen Harper, then Leader of the Opposition, states that political support for same-sex marriage

has been unforgivably insensitive with regard to all cultural communities in this country for which marriage is a most deeply rooted value…Many new Canadians

\textsuperscript{461} David Goldberg, \textit{The Racial State}. 
chose this country, fleeing regimes that did and do persecute religious, ethnic and political minorities. They know what real human rights abuses are. They know that recognizing traditional marriage in law while granting equal benefits to same-sex couples is not a human rights abuse akin to what they may have seen in Rwanda or China or Iran. New Canadians know that their cultural values are likely to come under attack if this law is passed…and know that these legal fights will limit and restrict their freedom to honour their faith and their cultural practices.⁴⁶²

In this quote, “culture” and “religion” are posited as both possessive and expressive, and as objects free from contradictions and differences.⁴⁶³ Canadian critical race scholars have demonstrated that multicultural discourse “minoritizes” racialized communities as cultural entities rather than as communities formed through state measures. In this way, racial differences become encoded as cultural differences, where race itself becomes culturalized.⁴⁶⁴ The “difference” this passage establishes is carefully managed as containing sameness: multiculturalism becomes inextricably linked to heteronormativity, where racialized communities are monochromatically constructed as conservative and traditional, in other words, not modern.

The sense of difference and distance established through these invocations of “culture” in conservative opposition to same-sex marriage are also (and not ironically) evident in various articles appearing in the queer news media in support of same-sex marriage. Here evocations of difference are also indebted to the understanding of racialized communities as more homophobic than the white mainstream. For example, in an article about a protest organized by Chinese Canadians, the author reports, “Next to the religious right, ethnic minorities are the most opposed to the advent of this

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⁴⁶⁴ Himani Bannerji, The Dark Side of the Nation; Sherene H. Razack, Looking White People in the Eye; Sunera Thobani, Exalted Subjects.
legislation…(M)ore than religion, Chinese cultural doctrine is what brought these people to Ottawa.” Lamenting “the busloads of Chinese people” that descended on Parliament Hill, the author goes on to delineate the terms of “gay life” in China (from her time living in Korea), asserting “today’s lesbians and gays lack the very words to describe themselves.” Indeed, Chinese culture is portrayed as unequivocally patriarchal and so homophobic that the “word lesbian does not exist in Chinese.” As a result, according to the author, lesbians and gays “live in the shadows” and “live underground, often in isolation, leading a double life.”

In her analysis of a number of articles written on same-sex marriage in Canadian queer newspapers, Jocelyn Thorpe also finds representations of non-western countries as backwards, by virtue of their alleged ignorance of sexual orientation issues or as places lacking freedom and choice, where “brutal” practices against women and gays occur. Such representations, she argues, serve to construct and foster the egalitarianism and exceptionalism of Canada against the “backwardness” of the “third world.”

In the article under discussion, the implication is that Canada is the benchmark of “gay rights” towards which “Chinese” lesbians and gay men can work towards. Additionally, I would suggest that together these articles signal “unconscious allegiances to predigested narratives that are part of the legacy of colonialism.”

In other words, “homosexuality” is used to mark a space of radical cultural difference between sexual repression and sexual freedom as distinct realities outside the discourses of modernity that produce them as such. These discursive media

467 Neville Hoad, Arrested Development or the Queerness of Savages: Resisting Evolutionary Narratives of Difference” (2000) 3:2 *Postcolonial Studies*, 147.
representations follow the terms of the colonial Western gaze which produces homosexuality as “taboo”, posits (homo)sexuality a registerable trans-cultural category and constructs the West (in this case, Canada) as a privileged space of celebrated out queer identity.

I raise this example alongside conservative deployments of multiculturalism because both examples evoke a clear sense of difference, where divergent histories and experiences collapse into irreconcilable binaries of tradition and modernity. The “cultural” labels attached to racialized communities are not neutral but carry Orientalist and racially inscribed connotations of inferiority, positioned as they are in opposition to the progressive and emancipatory realization of same-sex marriage. The implied geographical delineations of being from elsewhere with “different” cultural practices, which are posited either as under threat (through the guise of heteronormative sameness) or as a threat to the liberty of “Canadian” gays and lesbians, serve to incorporate racialized people into the debates over same-sex marriage through terms of difference. A “difference” framework, however, is always hierarchical and embedded in unequal binaries; and in the Canadian context at least, implies an underlying racial hierarchy and racial logic in which Canadians of European origin are positioned as superior to people of colour.468 Through support of same-sex marriage, “we” come to know ourselves as civil and moral national subjects. Racial “others” embody distance from this: in queer discourse, because “they” do not (apparently) uphold “Canadian” values of inclusivity, tolerance, equality and respect; in Conservative discourse, because racialized communities are set up as already distant, and thus in need of protection under the terms

468 Sherene H. Razack, Dark Threats and White Knights.
of religion. It is this “distance” that makes prominent the white racial norm of Canadian national identity. In both instances, it is the positionality of pre-modern “Other” that gives coherency to the civility of white Canadian national formations.

A number of individuals and organizations from communities of colour spoke out against racist and neo-colonial assertions of “cultural difference” and the lines of distance this draws from inclusion in a national “we.” So, for example, there is a perception “that all racial minorities and immigrants are opposed to same sex marriage. This cannot be further from the truth…”\textsuperscript{469} and, “Stephen Harper’s dire warnings have been outright offensive to me. Being Chinese Canadian means being able to celebrate our cultural heritage while embracing Canadian values of diversity and inclusiveness.”\textsuperscript{470}

Aside from the important discursive political intervention made to public discourse, these comments also signify same-sex marriage as an ideal of white civility able to organize a varied population around its terms.

As exemplifying a practice of Canadian civility, same-sex marriage is implicated in and complicit with reproducing racialized national formations, specifically re-securing the white racial norm that underpins Canadian national identity. Bodies of colour, be they discursively obfuscated to a past time of racial injustice or marginalized as truly “of” the present modernity of Canada, are key to accomplishing this. The chapter now turns to examine the itinerary of racialized civility as it travels through transnational lines.

\textsuperscript{469} Avvy Go, “Minorities and same-sex marriage” Toronto Star (22 September 2004), A21.

\textsuperscript{470} Felix Ng, “I’m queer, I’m Chinese and my parents love me” Capital Xtra! (18 April 2005), online: Xtra <http://www.xtra.ca> Accessed May 2006.
Transnational Lines of Civility and Civilization

“Imagining” the nation always necessitates and even pre-supposes the imagining of a “community of nations.”471 Not surprising, then, the civility constituted within and by support for same-sex marriage garners tremendous purchase when jettisoned into the transnational sphere, whereby Canada exemplifies a particular (sexual) exceptionalism. In the words of one Liberal Senator, for example, the successful passage of Bill C-38 ensures that Canada “will lead by example as a modern, welcoming nation where tolerance, diversity and compassion define who we are and what we will yet become.”472 Moreover, to vote for Bill C-38 means that Canada is “leading, not following, the movement toward equality for gays and lesbians everywhere.”473 What is particular about Canada becomes transfigured into exemplarity and the hope of future progress in the universal space of “everywhere.”

Those opposing the legislation also compose their arguments within the gaze of a “community of nations.” In arguing for civil unions or domestic partnerships as a viable means of recognizing the equality rights of lesbians and gays, comparisons are made to various European countries. One Conservative MP states that, “In the entire industrialized world, this is the approach that modern countries are taking… I do not believe that most Canadians are looking to be more radical than some of the most left leaning governments in the world.”474 Similarly, it was also asserted that “other nations, and more important, other Western democratic and constitutional nations, have found

472 Debates of the Senate, No. 82 (6 July 2005), 1731 (Hon. Marilyn Trenholme Counsell).
474 House of Commons Debates, No. 089, (2 May 2005), 5495 (Hon. Rob Moore).
ways to deal with this issue.” For those unwilling to accept a change to the definition of civil marriage, the point of international comparison is to argue that marriage poses an incontrovertible limit to the recognition of lesbian and gay rights. Thus, according to Stephen Harper, then Conservative Leader of the Opposition, “If same-sex marriage were a fundamental human right, then countries as diverse as the United Kingdom, France, Denmark and Sweden are human rights violators.” Of course, the implication here is that we know them not to be, because they are Western, white, and hence civilized.

If the Conservative position has other Western democratic nations in its comparative sights, the ‘pro’ side contains a broader universal dimension in its articulations of a civil sexual modernity and exceptionalism. Peter Fitzpatrick argues that the notion of universalism is often accompanied by the assumption of a burden to extend its qualities beyond the bounds of a particular nation. A nation achieves its universality, he contends, through defining itself as exemplary (for example, through the discourse of human rights) and in relation to that which lies outside of its bounds. In other words, a nation’s universality is achieved in being set against other nations who are constituted as fixed, irredeemably particular and heterogeneous. Qualities of the universal and legal, the ordered, the dynamic and progressive are all set against the particular and lawless, the chaotic, static and backward. Drawing upon this analytic point, support for same-sex marriage, as articulated in these political debates, becomes implicated in and

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475 House of Commons Debates, No. 061 (21 February 2005), 3737 (Hon. Rona Ambrose).
478 Peter Fitzpatrick, Modernism and the Grounds of Law, 120.
479 Ibid., 125, 128.
sutured to a universalizing discourse of human rights that contains within it the racial
logics of modernity.

The successful passage of Bill C-38, it is maintained, allows the Canadian state to
“send a statement to the world that in Canada gays and lesbians will not be considered
second class citizens.” In the words of one Liberal Senator, “across the face of Europe
and Asia…human and minority groups struggle daily to climb up their individual slippery
slopes to the fertile fields of equality, with which we are blessed.” As such, “all gaze a
watchful eye for sustenance for emerging rights from Canada as an exemplar for
leadership and a template of equality in the twenty-first century.” The leadership
offered by Canada on this equality rights issue, it is argued, “will help make for a better
world”, where in some parts “gays and lesbians are executed for no other reason than
because they are gays and lesbians.” Additionally, it is maintained that in

many parts of the world, gays and lesbians have to contend with repressive
measures that range from mild to the most extreme [but] we are a nation of people
who can demonstrate to the world that we can shine as the example of tolerance
and compassion.

Thus Canadian laws, and specifically Bill C-38 and the legalization of same-sex
marriage, are taken to reflect equality and respect for minorities, and are held up as “a
vital aspect of the values we hold dear and strive to pass on to others in the world who are
embattled, who endure tyranny, whose freedoms are curtailed and whose rights are
violated.” The racialized nationalist formations engendered through the debates over
same-sex marriage become further strengthened when situated in a transnational sphere,

481 Debates of the Senate, No. 84, (19 July 2005), 1825 (Hon. Jerahmiel Grafstein).
482 House of Commons Debates, No. 061 (21 February 2005), 3776 (Hon. Andrew Telegdi).
483 House of Commons Debates, No. 071 (21 March 2005), 4354 (Hon. Mario Silva).
hailing both the space and identity of Canada as inhabiting an ordered Western democracy, and thus as also civilized. I want to present one final example of this, taken from an affidavit:

At work, I was also very aware of how much gay and lesbian students had to lie and hide in the presence of their fellow students in the context of conversations on the topics of dating, relationships and marriage, and how I perpetuated this lying by not being open and out myself. However, being out felt dangerous to me. For example, a Libyan student once said very forcefully about homosexuals, “We KILL people like that in our country, you know!” Similarly, referring to a 1994 MacLean’s statistic that a large majority of persons in Quebec would think it fine if their son announced he was gay, a Mexican student responded, “I’d kill my son if he were gay!” I feel that if Canada recognized same-sex and heterosexual marriages as equal, we would set an example of tolerance and respect for the rest of the world. Why would anybody want to kill people for loving each other or undermine relationships which set an example of how to love, to communicate, to nurture children, and to handle life in a loving and productive way?485

Here, the modern civility/civilization of Canada is tightly woven in with the discourse of respectability. The legal-political project of same-sex marriage is that which resides in respectability and evokes progress (of family, of nation), not degeneracy or civilizational decline. Further, the respectable “reproductive futurism”486 of the lesbian/gay subject-citizen is under threat from racialized Others, but is also projected outward as a civilizing pedagogy.

I offer all these examples to provide an indication of the ubiquitous presentation of national mythologies of Canada, one that attaches itself to a civilizational frame of Western superiority, particularly through the discourse of human rights. Even the interventions by those opposing same-sex marriage situate their arguments under the rubric of the Canadian value of protecting “equality rights” and “minority rights”; their scope of comparison to advance their reasoning (other Western nations) firmly sits within

486 Lee Edelman, No Future, 3.
the “community” of modern, Western nations. This attachment, as Sedef Arat-Koc points out, is part of an attempt to reconfigure Canadian national identity as unquestionably “Western”, one oriented towards the “clash of civilizations” paradigm of the post-9/11 environment.\textsuperscript{487} Arat-Koc argues that such a redefinition implies a re-whitening of Canadian national identity, where whiteness once again structures and imbues cultural definitions of who represents “real Canadians” and that again makes precarious the national belonging and political citizenship of Canadians of colour.\textsuperscript{488}

Overlapping this, I also present these examples to point out a broader phenomenon whereby “gay rights” (of which the achievement of same-sex marriage is exemplary) is increasingly attached to Western civilizing discourses of “human rights.” To elaborate this, I draw again on Joseph Massad’s critique of the “Gay International” introduced in chapter three. Massad is critical of the universalizing of “gay rights”, whose call to action by transnational lesbian and gay activists and organizations is based on assimilating the myriad of sexual desires and practices into its own norms of liberation and progress.\textsuperscript{489} He points to some of Judith Butler’s work, for example, that situates the call for the internationalization of sexual rights as a moment of possibility to reconstitute what counts as “human” and a “livable life.” Massad argues that Butler’s articulations of a Western ontology of human subjectivity, as constituted through the logic of the repudiation of homosexuality, have no bearing in contexts and cultural formations “whose ontological structure is not based on the hetero-homo binary.”\textsuperscript{490} In Massad’s


\textsuperscript{488} Sedef Arat-Koc, “The Disciplinary Boundaries”, 34, 40.

\textsuperscript{489} Joseph A. Massad, Desiring Arabs (Chicago: The University of Chicago Press, 2007), 42.

assessment, the proselytizing of a universal “gay” or “lesbian” subjectivity undertaken by international human rights advocates does not serve to include the “homosexual” but rather institutes the very binary that excludes the homosexual that it created in the first place, all of which is carried out in the name of “liberation” from oppressive cultures and laws. Such a telos of universalizing a superior notion of human subjectivity, Massad contends, does so by forcibly including those non-Europeans who are not gays or lesbians while excluding them as unfit to define themselves and by destroying the existence of subjectivities organized around other sets of binaries.491

One of the important implications of Massad’s analysis for my study is the shared terrain he delineates between the Gay International and Islamist religious and secular conservative discourses. For both, “sex” and its various categories directly confer the mark of civilization: For the Gay International, transforming sexual practices into identities through the universalizing of gayness and “gay rights” becomes the mark of an “ascending civilization” just as repressing those rights and restricting the circulation of gayness is a mark of backwardness and barbarism. In the Islamist discourses (as well as for evangelical Christian and social conservatives in the West), it is the spread and tolerance of sexual deviances that mark the decline of civilization, just as repressing it will ensure civilization’s ascendance.492 Massad writes,

It is not sexual liberation or repression as such that are at stake in these raging debates, however, but rather the epistemology and taxonomies of sex, sexual practices, sexual identity, and the scope of sexual desires in relation to national, cultural, and religious identities – in short, to civilization tout court.493

491 Joseph A. Massad, Desiring Arabs, 41-42.
492 Ibid., 195.
493 Ibid., 194.
In Massad’s analysis, both adhere to the very same epistemology of “progress” and backwardness” that belies civilizational thinking.

Massad’s work speaks to the place of human rights discourses, and that of “gay rights” in particular, as a “civilizing” endeavour. Same-sex marriage, as the pinnacle of (gay) sexual freedom, becomes articulated to the nation and used as markers of secularism and Western “civilizational” superiority. “Gay rights” are now understood to be in the realm of the morally superior, not the perverse, and function as a central ingredient of Canadian/Western exceptionalism. They are increasingly being mobilized in post-9/11 anti-immigration discourses, particularly in European nations such as the Netherlands and Germany, as a way to enforce the moral and material disciplining, regulation and exclusion of immigrant and racialized communities displaced by global capitalism and histories of colonialism. Defining “the West”, and in this particular case Canada, as sexually progressive allows us to imagine ourselves as morally superior. But, as Sherene Razack writes, we stake out the colour line when we produce ourselves as a nation (and as national citizens) on the civilized side of things. The inclusion and assimilation of (particular) lesbians and gay men into both legislative and consumer market registers is not only occurring in relation to this pernicious racist/racial politics, it is also contingent upon it. “Gay rights” victories such as same-sex marriage, then, are deeply implicated in the nation-state’s work of drawing (trans)national lines of civility and racial Otherness. Is this an inclusion we should celebrate? Is it one that we can trust?

Debates over same-sex marriage invite Canadians to know their nation and themselves as a just, fair, tolerant, equality-seeking people. The lessons in white civility

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494 Sherene H. Razack, *Dark Threats and White Knights*, 27.
that same-sex marriage engenders are dependent on the presence of (trans)national racial Others, taken to embody difference and distance. Furthermore, be it referencing other Western nations or casting the gaze more “globally”, same-sex marriage secures a place (“ahead of where modern society is going”) for Canada within a very concretely racially ordered community of civilized nations. Whether one is “for” or “against” (or even without opinion), we are implicated in the racial politics and racist effects of the deployment of same-sex marriage to garner such a trans/national civilizational identity. I am not sure there is a way out of this, as declarations of innocence only serve to veil hierarchical relations of power more thoroughly. We might begin, as a first step, with this recognition of complicity in order to develop an anti-racist ethics and politics that dislodges the racial hierarchies and articulations of modernity, civility and civilization that are increasingly woven into the terrain of “gay rights.” It is to this that the thesis now turns to conclude.
CONCLUSION

A Hopeful Moment

In December 2007, the *Vancouver Sun* published an article that begins with a quote from a Sikh religious leader stating, “I hate homosexuality.” The article’s framework of analysis, including its headline, is clearly racist, premised as it is on the notion that immigrant and racialized communities are eroding “Canadian values.” What is noteworthy are the responses this article elicited from various interfaces of LGBT and South Asian communities (which eventually forced the Sikh leader to publicly apologize). An open letter written by a broad coalition of community organizations, for example, expresses an anti-racist response to the harm of homophobia, one that refuses to re-inscribe racialized communities and individuals as “backward” or “lacking” Canadian values. As a type of “not in our name” response, the statement rejects the appropriation of “gay rights” as a tool to further discipline and marginalize immigrant and racialized communities.

This piece of activism proffers a hopeful counter-narrative to a number of troubling themes my research has traced: the utility of gay rights discourses to racist/racialized nationalist formations; the pernicious binary that cultivates the myth of gay as white, racial other as straight, one achieved through racialized representational practices; and the foreclosing of complexities of race, class, citizenship, nation that


occurs in a single-axis identity politics. It is hopeful because it gestures to a transformative politic, one that fosters connections rather than enclosing and cordoning off.

**A Politics of Enclosure, A Politics of Embodiment**

Same-sex marriage can be understood as generative of a politics of enclosure, not only in its desires (private property, state recognition based on a single-axis identity) but also in its effects (a place where “gay stays white”, re-drawing lines of racial hierarchies). A central analytic goal of this research project has been to excavate the racialized (and hence national, heteronormative and class) lines that coalesce to secure the victory of same-sex marriage. In so doing, I have paid attention to intertwining racialized discursive and representational practices that underpin and give intelligibility to this legal struggle. My research has been guided more by a keen interest in the productive effects of this “gay rights” struggle than in following the line of one “side” or the other. Such a perspective necessarily destabilizes the narrative of progress on which it has advanced and been celebrated. Rather, it is a critical intervention into the terms and the grounds on which its success occurred, offering a specific account of the racialized relations of power underpinning the legal-political struggle for same-sex marriage.

These terms are complex and hold some parameters for analysis. This is an equality rights issue that by its nature found itself in the legal arena, and thus was constrained in particular ways. The invocation of the equality rights section (s.15) of the *Charter*, for example, entails that litigants demonstrate that they have been discriminated against on the basis of sexual orientation. As a result, they must compare themselves to others in a relevant category (in this case, heterosexual conjugal couples) in a way that
tends to suppress differences and emphasize similarities, and to coalesce around the most normative construction of that identity. Further to this, governmentalized discourses of neoliberal citizenship are dominant political and legal resources of our contemporary era, and are productive of subjectivity, identifications and desires. Gay men and lesbians are not situated on the “outside” of powerful societal discourses of marriage and the nuclear family. Indeed, the emphasis placed on the legitimacy and the social status that marriage confers runs deep in all the data examined. In a related manner, the homophobic, neo-conservative views of marriage articulated by social and religious conservative groups (as well as the AGC in the provincial cases) worked to compound and sediment arguments of similarity, ordinariness and normalcy.

These are important factors I have had to negotiate in my reading and interpretation of the data. My analysis has revealed that operations of power through race/whiteness, constituted in and alongside heteronormativity, neoliberalism and ideas of nation, deeply organize the content, shape and form of the legal-political arguments that in turn were generative of success. Because marriage finds itself at the nexus of re/production, family and nation, the legal/political victory of same-sex marriage is fundamentally contingent upon discursive representations of white respectability. It is a relation of power central to the making of a contemporary lesbian/gay subjectivity, facilitating as it does its move out of perceived degeneracy. As a “gay rights” struggle, same-sex marriage belies a form of inclusion into legislative, national and social registers that is narrow and tenuous, and sediments racialized binaries and hierarchies.

Given that the key entry point of my analysis is the discursive production in law of a white racial lesbian/gay legal subject-citizen, I have often been asked (and ask
myself too) about embodiment, particularly as it relates to implications of my research. It is reflected back to me (in casual conversations, at conferences, in the interviews) that it is not just “white middle class people” who are getting married. Further to this, that there are those for whom having the security offered by the legal entitlements of marriage is necessary; and others for whom a celebration of marriage has proven transformative in their familial relationships. I think this speaks to a division of time and space between the “aftermath” of this achievement in law and an analysis of the discursive terms on which it was won. That being said, both “law” and “society” are traversed by embodiment.

Certainly, as discussed in chapter three, the lawyers were aware of the politics of embodiment central to same-sex marriage, given their desire to cast a wide net in terms of who the couples would be to carry the cases forward. The affidavits of the couples, too, can be read as evidence and testimony to embodied lives. In addition, a discursive strategy of respectability is particular about the types of bodies it embraces. Thus an important point of connection between embodiment and implications of this research project consists of representational praxis; or, as Sara Ahmed writes, “It matters how we arrive at the places we do.”

As this thesis has argued, the representational practices to secure a “toehold on respectability” and the deployment of racial analogies both lead to the heart of whiteness and “the place where gay stays white.” For this reason alone, their seemingly persistent use in equality rights struggles for lesbians/gays (and more broadly speaking) must be re-considered, as lesbian/gay/queers of colour/legal scholars have been

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articulating for decades. Both generate narrow, monochromatic views of gay/lesbian/queer communities that do not reflect reality. More pernicious are the ways bodies of colour become relevant only to the extent that they function to constitute a white respectable subject. The assimilatory nature of same-sex marriage not only constitutes a sexual Other but a racial Other as well. As strategies to represent the “ordinariness” of lesbian/gay lives or the harm of suffering, purchasing a “toehold on respectability” and the use of racial analogies are problematic for what becomes sedimented in the process and the politics of enclosure and dis-connectivity they generate.

One effect of this is that struggles for gay rights and anti-racism are often kept at bay from each other, demarcated as separate locations from which to build a ground of analysis and politics. The deployment of racial analogies particularly gives rise to this, as a sole focus on sexual orientation roots out racial formation from sexuality and marginalizes those interpellated both by racial and sexual othering. Moreover, it obfuscates contemporary racial politics through which the inclusion and visibility of lesbian/gay/queer subjects as “proper” citizens and as consumers occur; achieving the freedom to marry of the sexual other comes at the expense of detention of racial others. As such, the deployment of racial analogies as representational praxis in “gay rights” struggles must be accompanied by accountability and connection to contemporary movements for racial justice.

I think it is stickier to disengage from the discursive frames of respectability/degeneracy. Its narratives of the “ordinary”, of love, of citizenship, of family have powerful effects, particularly bound up as they are with operations of
neoliberal governance. Moreover, the conundrum in legal interventions is the frame of law, which necessarily routes argumentations and representations in a manner that is directed towards similarity and likeness. The persistent turn to respectability as a representational practice in equality rights struggles for lesbians and gays also speaks to the contingency of “inclusion”, and to the ongoing power of white (capitalist) heteronormativity that redraws anew the lines of normality. These reasons, however, do not preclude scrutiny of the praxis of respectability to achieve equality rights.

Equality rights struggles such as same-sex marriage generate troublesome enclosures and limited forms of discursive embodiment because such struggles require the body of the racial Other to give them coherence. Thinking back the opening story of the application for a wedding license, the meaning in that moment is beyond the actual formality, groundbreaking as it was; the city clerk, Harbinder, was absolutely crucial to fortifying the achievement of same-sex marriage, posited as she was as a “pre-modern Other.” Indeed, as the narrative account states: “I was really glad we didn’t have a blonde or a brunette”; namely, a white Canadian. White respectability, the freedom to marry, and the civility of Canada are all bound up in that one statement. These discourses that circulate within the terrain of same-sex marriage are all deeply relational, requiring the presence (however abjected or marginalized) of a racial Other for their effectiveness.

Given this relationality, how might lesbian/gay/queer activism and/or theory come to articulate its social justice goals without reinforcing racial/racist hierarchies and exclusions? One way is to closely consider what are its “proper objects” objects of analysis, struggle and politics.
Proper Objects and Connectivities

As this thesis has delineated, lesbian/gay sexualities/rights themselves become mobilized as a “strategy” in the post-9/11 context to assert Western superiority and exceptionalism. The various social, legal and political struggles waged either in the name of liberation or assimilation that have given rise to laws protecting lesbian/gay/queer communities and to a myriad of cultural visibilities are now marshaled to draw lines between the civilized and uncivilized, and serve as tools for the surveillance and disciplining of immigrant populations, particularly Muslim communities. Considered alongside the racial hierarchies, marginalizations and obfuscations generated by the heart of white respectability, one important implication my research suggests is a re-consideration of what constitutes a legitimate reference for lesbian/gay/queer theory, analysis, and activism. In other words, what is its “proper object”? Must it always be the terrain of sexuality? Of homophobia? A sole focus on sexuality (or “gay rights”) keeps the analytics in the troublesome realm of analogy thus circumventing productive responses like the example outlined at the beginning of this chapter. Considering the co-optation of “gay rights” as a tool to racially demarcate populations/nations, the legitimate “object” or referent for lesbian/gay/queer praxis and analysis cannot be solely the terrain of homophobia/heteronormativity. Such a single-lens shuts down consideration of the effects of racial profiling, for example, on queer communities of colour.

Given that contemporary inclusion and assimilation of lesbian/gay communities occurs not only alongside racial politics but is contingent upon them, it is crucial that the interlocking nature of such inclusions (such as the victory of same-sex marriage) also shape and inform our politics and analytics. Theoretical and activist articulations of
equality and justice for LGBT communities still need to be formulated; the question is how to do this in a way that does not re-instate racial (and sexual, class) hierarchies; in short, to articulate an account of “gay rights” from an anti-racist perspective, such as the opening example so brilliantly demonstrates. One practice is to keep an eye on the normativizing violence of heterosexuality in all its various material and discursive manifestations without losing sight of the way that the terms of liberation require other forms of oppression, exclusions and displacements. This means attending to those moments where homophobia, for example, may not be the privileged entry point into a site that ostensibly seems to be about “gay rights.” Again, this is what the opening example so clearly illustrates.

Such an endeavour foregrounds complicity rather than a celebratory account of transgression or lament for a de-privileging of radical queer sociabilities as grounds for political organizing. This is an enabling acknowledgement because it asks to complicate the proper objects of our theories, analytics and politics. To do so is to follow a line towards connectivities, that we are “of the connections, not outside and beyond them.”

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APPENDICES

APPENDIX A: Interview Recruitment Letter

Dear ________________,

I am a PhD student in the Department of Sociology and Equity Studies at the Ontario Institute for Studies in Education of the University of Toronto (OISE/UT). I am currently working on my PhD thesis entitled “A White Wedding? The Racial Politics of Same-Sex Marriage in Canada”, under the supervision of Dr. Sherene Razack.

The focus of my research is to critically examine the discourses and practices informing the legal efforts to achieve same-sex marriage in Canada. The goal is not to determine whether same-sex marriage is ‘good’ or ‘bad’ but rather to investigate the ways this particular engagement with the law constructs a lesbian/gay legal subject racialized as white. My research asks critical questions as a way of opening up a space for reflecting upon the paradoxes, possibilities and limits of this equality-seeking legal ‘project’.

My primary source of data will be legal documents from the various provincial cases (in particular, British Columbia, Ontario and Quebec) as well as those documents pertaining to the passage of Bill C-38, federally. I also wish to conduct key informant interviews with people involved in shepherding the cases through the legal system, provincially and federally. I am thus writing to invite you to participate in a semi-structured interview of one to one and a half hour duration.

The purpose of the interviews is to gain insight into how you perceived your efforts as well as to gain a deeper understanding of the choices and strategies undertaken that shape the documents I will examine. I believe your participation in an interview will provide a more textured analysis and as such will significantly strengthen the research project.

Your name and other identifying characteristics will be kept confidential for the purposes of this research if that is your stated preference. Despite this, there are limits to the degree of confidentiality that will be provided. It is important that you consider carefully the fact that since there are only a handful of lawyers involved in these cases, it is possible that your concealed identity might still be recognizable to some.

Please let me know if you are willing to participate in an interview, and if so, what your availability is. I can be reached by email at slenon@oise.utoronto.ca or by telephone at (613) 567-9964. I hope you will consider this request.

Sincerely,
Suzanne Lenon, Ph.D. Candidate
Department of Sociology and Equity Studies, OISE/UT
APPENDIX B: Interview Questionnaire

The interviews will be one to one and a half hours in length and will proceed with the following structure and proposed questions:

**Background:**

- What was the impetus for you to become involved in the legal struggle to achieve equal marriage?
- What was your involvement, specifically?
- What has influenced your thinking around the issue of same-sex marriage?

**Content of Litigation and Arguments:**

- What do you see as the central arguments informing the goal of achieving equal marriage?
- How did the particular cases you were involved with come to be decided upon as the ones that would move forward? (For example, how were the couples chosen?)
- Were there any consciously thought-out strategies of representation(s) employed in developing the legal submissions, e.g., the affidavits, facta, etc? If so, what informed these strategies? For example, were there any considerations of race or class? What about considerations of presenting a clearly defined sexual orientation?

**Implications:**

- What were the constraints which shaped the arguments made? What obstacles did you face?
- It has been suggested that the issue of same-sex marriage is primarily about white, middle-class gay men and lesbians. What are your thoughts on this?
- What has been gained through the passage of Bill C-38?
- Has anything been lost?
- Is there anything else you would like to add?
APPENDIX C: Letter of Informed Consent and Consent Form

Dear ____________________,

I am a doctoral student in the Department of Sociology and Equity Studies in Education at the Ontario Institute for Studies in Education of the University of Toronto. I am conducting research that examines the legal efforts to achieve same-sex marriage in Canada. My research focus is to investigate the ways this particular equality-seeking engagement with the law constructs a lesbian/gay legal subject racialized as white. The title of my study is: *A White Wedding? The Racial Politics of Same-Sex Marriage in Canada*.

My research is motivated by the following over-arching questions:

1. In what ways do norms of whiteness interlock with (hetero)sexual norms to produce lesbian/gay citizen-subjects worthy of marriage?

2. What are the opportunities and the limits of a lesbian/gay equality-seeking strategy that centres on marriage?

3. How are the Canadian nation-state and its citizen-subjects produced through this legal struggle?

I will be interviewing you in your professional capacity as someone directly involved in the successful legal efforts to achieve same-sex marriage. You have been invited to participate in this research because of your participation in the (name(s) of province) case(s) and/or the (name(s) of federal-level involvement) OR as someone acting as an intervener in the (name of province) case(s), and the (name(s) of federal-level involvement). If requested, your name and other identifying characteristics will be kept confidential for the purposes of this research. To facilitate this, you will be given a transcript of the interview and asked to check which details may not be revealed without disguising their origins; you will be asked to suggest ways in which confidential data can be successfully disguised. You will also be offered to preview how sensitive details are discussed in ways that maintain your confidentiality. Despite this, there are limits to the degree of confidentiality that will be provided. It is important that you consider carefully the fact that since there are only a handful of lawyers involved in these cases, it is possible that your concealed identity might still be recognizable to some. *Participation in this study is completely voluntary and you should only participate if you want to. You will not be compensated for participation in this study.* The interview may last anywhere from 60-120 minutes. You may decline to answer any questions during the interview.

With your permission, the interview will be taped and transcribed. I will turn off the recorder at your request at any time during the interview and I will not turn it on again until you suggest that I do so. After I have transcribed the interview I will send you a copy of the transcription and you will have the opportunity to review the transcript of
your interview and provide me with feedback. *I plan to keep the data from the interviews secure by storing it at my place of residence. The only person who will have access to the data is my supervisor Professor Sherene Razack (OISE, University of Toronto). The Research Ethics and Review Board at the University of Toronto will also have access to the data should they request to verify research procedures and/or data. These requests will be done in such a way as to maintain your confidentiality and only to the extent permitted by laws and regulations.*

After completing this study, I intend to publish and make public presentations pertaining to this research. To include you in this study, I will need your permission. Attached to this letter is the consent form that, when signed, allows you to be part of this research. If you have any questions regarding this project or the request for permission, please contact me for further information by email at slenon@oise.utoronto.ca

Sincerely,

______________________________
Suzanne Lenon, Ph.D. Candidate
Department of Sociology and Equity Studies
OISE, University of Toronto
**Consent Form**

I __________________________ have read the attached letter describing the research project you plan to undertake, and I agree to be interviewed for this study.

I understand that the interview time will take place at a mutually convenient location for a period of approximately 60-120 minutes. I also understand that our conversation will be tape recorded with my consent, and that I may request that the tape recorder be turned off at any time during the interview until I indicate that it may be turned on again.

I understand that I may decline to answer any questions during the interview.

*I understand that participation in this study is completely voluntary and that I will not be compensated for participation in this study.*

*I understand that the only persons who will have access to the data are Suzanne Lenon and her supervisor Professor Sherene Razack (OISE, University of Toronto). I also understand that the Research Ethics and Review Board at the University of Toronto will also have access to the data should they request to verify research procedures and/or data. These requests will be done in such a way as to maintain my confidentiality and only to the extent permitted by laws and regulations.*

Check which one is applicable:

- [ ] I would like to remain anonymous and understand that my name and identifying characteristics will be concealed for the purposes of this study.
- [ ] I would like to be publicly identified in this study

Date:________________________

Signature of Participant