# RESPECTABLE QUEERNESS

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*This Article proposes a new theoretical framework to understand public recognition of gay people and relationships. This framework—called "respectable queerness"—suggests that public recognition of gay people and relationships is contingent upon their acquiring a respectable social identity that is actually constituted by public performances of respectability and by privately queer practices. The challenges posed by such recognition include dissonance between one's public and private selves and fuelling moralism and entrenching divisions between different queer constituencies.*

## I. INTRODUCTION

In June 2011, as New York state legalized same-sex marriage, *The Guardian* reported on a celebration at the Stonewall Inn in New York City, the recognized birthplace of queer liberation. Alex Kelston, twenty-six, was quoted as saying: "This is the place where the movement started, and it's a way to close the loop and celebrate the full equality of gay people in New York."[1] Such remarks conflate queer liberation and marriage equality. Queer liberation is a movement for social justice that seeks to transform the fundamental institutions of society, such as gender and family. Marriage equality is a movement for gay civil rights that wants the benefits of marriage granted to same-sex couples.

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1.  David Batty, *Gay Marriage is Legalised in New York*, The Guardian, June 25, 2011, http://www.guardian.co.uk/world/2011/jun/25/gay-marriage-legalised-in-new-york/.

Since the late 1970s, there has been a paradigm shift within queer politics in which equality politics have eclipsed liberation politics. Legal recognition of same-sex relationships has become heralded as the final frontier of queer politics.[2] If the Stonewall riots marked a watershed for queer liberation, the Stonewall celebration perhaps signals a fundamental change in priorities. It affords an opportunity to ask some searching questions about the queer politics of recognition.

Recent changes to laws in the United States, the United Kingdom, Canada, and elsewhere appear to broaden[3] or create alternatives[4] to "traditional" heterosexual marriage, so as to recognize same-sex domestic relationships. Yet, recognition has been reserved for "marriage-like" relationships of same-sex couples that are "just like" heterosexual couples, but for their sexual orientation. The law has recognized same-sex unions that espouse the norms and values of heterosexuality as "good" gay relationships and couples. This Article proposes a theoretical framework to understand such recognition and its implications for queer politics. This framework—called "respectable queerness"—suggests that the newfound public recognition of gay people and relationships is contingent upon their acquiring a respectable social identity that is actually constituted by public performances of respectability and by privately queer practices. This phenomenon is not new, and nor is the tension between becoming respectable and being queer. Never before, however, has respectability been more salient in queer politics than at this moment of recognition.

The Article proceeds in two parts. Part II traces the contemporary rise of respectability, taking as its points of departure the onset of AIDS in the early 1980s and the advent of the gay market during the 1990s. It demonstrates how particular queer constituencies have long been invested and implicated in respectability and how earlier developments have set the stage for

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2.     In this Article, the term "queer" is used to describe identities and practices that do not conform to hetero-patriarchal notions of gender and sexuality; and "queer politics" is used to refer to political action that is aimed at promoting the interests of sexual and gender minorities.

3.     *See, e.g.*, Civil Marriage Act, S.C. 2005, c. 33 (Can.) (changing the legal definition of "marriage" to the lawful union of two people (as opposed to one man and one woman)).

4.     *See, e.g.*, Civil Partnership Act, 2004, c. 33 (Eng.) (creating the category of "civil partners" (as opposed to married spouses) for lesbian and gay couples who are given rights and responsibilities identical to civil marriage).

marriage equality. Part III then teases out some of the political implications of recognition that is based on respectability. The challenges posed by such recognition include dissonance between one's public and private selves, and fueling moralism and entrenching divisions between different queer constituencies.

The Article focuses on the queer politics of recognition, and therefore does not address other important questions raised by such recognition, such as whether the inclusion of lesbians and gays might change the institution of marriage. Nor does it question the benefits of marriage for lesbian and gay couples, or their availability as a matter of law. Indeed, it is difficult to see how a legal system that purports to take equality before law seriously can deny marriage equality. At the heart of this Article is the distinction between the right to marry on the one hand, and the different strategies for and implications of winning that right on the other, only the latter of which is placed under scrutiny.

Of course, many lesbian and gay couples want to get married for similar reasons as their heterosexual counterparts, for example, to celebrate their love and commitment for each other. The language of rights, love and commitment thus permeates the campaign for marriage. The discussion here attempts to deconstruct this discourse insofar as it is depoliticizing and individualizing. The vantage point afforded by looking beneath the discourse of marriage equality reveals certain hidden political aspects of the desire for recognition.

## II. BECOMING RESPECTABLE

*"Be as you wish to seem."* – Socrates

Part II argues that public recognition of gay people and relationships is contingent upon their acquiring a respectable social identity, and traces the contemporary rise of respectability that has created material conditions for such recognition. It is divided into four sections. Section A provides a brief conceptual overview of respectability: what it is, how it functions, how it is different from respect, and why it is relevant to a discussion on same-sex marriage. This is followed in Section B by a critical overview of the two main moral and political positions in queer politics: gay conservatism and queer liberation. Situating the politics of marriage within the politics of AIDS that preceded it, this discussion demonstrates how many lesbians and gays have long been invested in respectability and how,

for various reasons, the desire to become respectable has led them to marriage.

Section C continues by considering how many gays and lesbians have become implicated in respectability through their inclusion into capitalism. The discussion here reveals the market's influence on the campaign for marriage and some of the inherent limitations of using capitalist means to meet queer ends. Finally, having considered some of the key factors precipitating the rise of respectability, Section D locates legal recognition within the process of lesbians and gays becoming respectable, and underscores the law's differential treatment of queers who conform to the norm of marriage versus those who deviate from the norm.

A. Respectability

Respectability is, according to the *New Oxford American Dictionary*, "the state or quality of being proper, correct, and socially acceptable."[5] This is a strikingly different notion from *respect*, which is defined as "due regard for the feelings, wishes, rights, or traditions of others," and *self-respect*, which is "the feeling that one is behaving with honor and dignity."[6] Respect connotes acceptance of difference. To be respected is to be treated in a manner that affirms or gives positive deference to one's beliefs and practices, even where others do not share them. A respected person can thus feel a sense of personal and social worth from being her true-self in public. Respectability, on the other hand, connotes acceptance of the norm. To be respectable is to follow a normative standard of behavior in public, while being aware of continual evaluations against that standard. The onus here is not on others to accept difference (as is the case with respect), but rather on oneself to cease to be unacceptably different. Moreover, at the same time as identifying with the norm, respectability entails differentiating oneself from others who fall outside the norm. Mary Louise Fellows and Sherene Razack, speaking about women's struggle for justice, call this securing a "toehold of respectability"—a practice whereby "each woman tries to secure justice by making the dominant claim that she is not like other women."[7]

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5.     The New Oxford American Dictionary 1442 (2d ed. 2005)
6.     *Id*.
7.     Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations among Women*, 1 J. Gender Race & Just. 335, 336 (1997–1998).

Respectability is thus a system of hierarchy and domination grounded on distinctions between the respectable and the degenerate. Beverly Skeggs explains that it is one way in which "sexual practice is evaluated, distinctions drawn, legitimated and maintained between groups."[8] And it is through entwined processes of identification and differentiation, of hierarchization and domination, that claims to respectability are made.

Respectability is constituted by performative acts that align one's behaviors with social norms that are gendered, white, middle-class and heterosexual. A parallel may be drawn with Judith Butler's work in which she argues that gender is constructed by performative acts that must be repeated in order so as to form a "coherent" gender identity. In other words, gender is not being but *doing*. Moreover, the doing of gender is not voluntary, but secured via the imposition of regulatory discourses and practices that function to ensure conformity of behavior to an acceptable standard.[9] Respectability is achieved by the repetitive performance of social norms based on the behaviors society deems respectable. This performance does not end, and nor does its social- and self-evaluation. This means that a person neither *is* nor can *become* respectable, since this connotes a kind of stability and permanency that can only be illusory; rather, she is only ever in the process of *being* and *becoming* respectable by *doing* respectability.

There is a disjunct, however, between what a person *does* and who that person *is*, or between performance and the self, since the self is irreducible to a social category. To underscore this irreducibility, Adam Green deploys the idea of the "performative interval"—"the interval in the performance [which] marks the distance between doing and identity, whereby the doing (e.g., doing woman) represents practice and identity (e.g., female) an interior semblance of self."[10] Moreover, there is a disjunct between what a person does in *public* and what that person does in *private*, since there are different ways of living one's public and private selves. The disjuncts between *doing* and *being* oneself, and between doing one's

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8.     Beverly Skeggs, Formations of Class and Gender: Becoming Respectable 118 (1997).
9.     *See* Judith Butler, Gender Trouble 1–34 (1990). Butler borrows the concept of regulatory discourses from Michel Foucault. For Foucault's argument on control of sexuality, see *infra* Part I.B.
10.     Adam Isaiah Green, *Queer Theory and Sociology: Locating the Subject and the Self in Sexuality Studies*, 25 Soc. Theory 26, 32 (2007).

*public* and *private* selves, may sometimes allow resistance to social norms of respectability.

There is a classic philosophical debate concerning which of the selves, the public or the private, is the more "authentic." While Heidegger believed that an individual could be authentic only by fleeing public life,[11] Arendt argued that "to be" is to reveal oneself in the public sphere, or, as she put it, "Being and Appearing coincide."[12] She was concerned that a retreat into the inner self would lead to the loss of the public realm altogether, with ensuing losses of political speech and personal identity.[13] Our concern is not, however, with the public and private spheres *per se*, but with the operation of sexual practice and discourse within those spheres. Foucault said that sexuality is "not a problem of fantasy; it's a problem of verbalization" and that discourse on sexuality is the relationship between "what we do, what we are obliged to do, what we are allowed to do, what we are forbidden to do in the field of sexuality and what we are allowed, forbidden, or obliged to say about our sexual behaviour."[14] Our concern is, therefore, with how people live, think, and speak about sexuality, what kinds of actions can and cannot be done, and whether one can achieve authentic sexual expression within a respectable public sphere.

Let us assume for this purpose that actions are authentic if they reflect "the unobstructed operation of one's true- or core-self in one's daily enterprise."[15] In a public sphere imbued with respect, a person can feel a sense of social and personal worth from being her true-self. Her true-self therefore operates unobstructed and her

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11.     Martin Heidegger, Being and Time 156 (1927) ("Distantiality, averageness, and levelling down, as ways of Being for the 'they,' constitute what we know as 'publicness' [die Oeffentlichkeit.] … it is insensitive to every difference of level and of genuineness and thus never gets to the 'heart of the matter' … By publicness everything gets obscured.").

12.     Hannah Arendt, The Life of the Mind 22–24 (1978).

13.     *See* Lewis P. Hinchman & Sandra K. Hinchman, *In Heidegger's Shadow: Hannah Arendt's Phenomenological Humanism*, 46 Rev. Pol. 183, 202 (1984).

14.     Michel Foucault, Politics, Philosophy, Culture: Interviews and Other Writings, 1977–1984 8 (Lawrence D. Kritzman ed., 8th ed. 1988).

15.     Michael H. Kernis & Brian M. Goldman, *A Multicomponent Conceptualization of Authenticity: Theory and Research*, 38 Advances Experimental Soc. Psychol. 283, 294 (2006). This is not to suggest that a person has a true identity or essence that is independent of social context. But even within social context, a person often has a sense of who she is and who she wants to become—a sense of her true-self.

actions in public are authentic. In a respectable public sphere, on the other hand, she cannot feel the same sense of social worth insofar as being her true-self is incompatible with being respectable. Her true-self does not operate unobstructed because she must modulate her actions in order to become respectable. Consequently, unless her true-self coincides perfectly with social norms of respectability, her public self becomes constituted by both authentic and inauthentic action. Moreover, aspects of her true-self that are incompatible with being respectable become repressed or assigned to her private self.

Respectability is an indispensable concept to understand the queer politics of recognition. Too often in our social, economic, legal, and political worlds, lesbian, gay, bisexual, and transgendered people are denied even the most basic rights and recognitions.[16] Even where legal recognition has been afforded, for example, to same-sex relationships, it has tended to center on their normalcy rather than their diversity and inherent worth.[17] Stated another way, respectability—not respect—has characterized legal recognition of same-sex relationships. Much of the literature on lesbian and gay recognition uses the language of assimilation to explain such recognition.[18] Assimilation explains many of the pressures to integrate into the heterosexual mainstream, but it does not capture the various ways in which lesbians and gays constitute themselves as being *worthy* of recognition. Respectability, as a discursive concept expressing a normative ideal, provides a more comprehensive conceptual framework to understand such recognition.

Nowhere are the workings of respectability more evident than in efforts to achieve marriage equality. If respectability is measured by proximity to middle-class heterosexuality, same-sex marriage is a clear manifestation of this. But marriage itself is not the issue. The crucial issue for queer politics is the pursuit of respectability, of which marriage is a product and a catalyst. Significant though

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16.    Reports issued by such organizations as Human Rights Watch (http://www.hrw.org/), the International Gay & Lesbian Human Rights Commission (http://www.iglhrc.org/), and the International Lesbian and Gay Association (http://ilga.org/) document discrimination against lesbian, gay, bisexual, and transgendered (LGBT) people across the world. *See also* Council of Eur. Publ'g, *Discrimination on grounds of sexual orientation and gender identity in Europe* (2d ed., 2011), *available at* http://archive.equal-jus.eu/884/1/LGBTStudy2011_en.pdf.

17.    *See infra* Part II.D. (discussing how legal recognition emphasizes the normalcy of gay couples and relationships).

18.    *See generally* Kenji Yoshino, *Covering*, 111 Yale L.J. 769 (2006) (analyzing the kinds of assimilationist demands made on gay people).

marriage is, however, we should not overstate its contribution to the production of a respectable social identity. The discussion that follows considers some of the processes through which lesbians and gays have become socially and legally recognized. As that discussion makes clear, marriage is only one performance or process that can contribute to respectability, and all these processes involve some form of moral de-sexing and middle-classing of lesbians and gays. Indeed, prior constructions of gays and lesbians as asexual, apolitical, producing and consuming subjects have been instrumental in bringing about marriage equality.

B. Gay Moralities

Respectability is a moral discourse: it characterizes a person in moral terms and accords moral authority to some but not others. Beverly Skeggs writes, "[r]espectability embodies moral authority: those who are respectable have it, those who are not do not. But only some groups were considered to be capable of being moral, others were seen to be in need of control."[19] Skeggs' claim, made in relation to the development of Englishness, echoes similar workings in other social categories such as sexuality. Foucault argues that modern control of sexuality takes place via the production of knowledge through discourse. This control is exercised not only through others' knowledge of individuals, but also through individuals' knowledge of themselves. By internalizing prevailing social norms of sexuality and monitoring their adherence to those norms, individuals are controlled both as objects of disciplines and as self-scrutinizing subjects.[20] These insights should motivate us to consider whether respectability, as a moral discourse, exercises control and places limits on sexuality.

Nothing is more respectable than—and grants moral authority more than—marriage. The norm of marriage prescribes lifelong commitment and sexual monogamy aimed at producing a nuclear family. Moreover, it constructs sexuality as a necessarily secretive and private aspect of identity. The state acts as moral custodian to ensure that relationships that mimic this heteronormative paradigm are privileged, while others receive less respect.[21] The newfound recognition of lesbian and gay relationships

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19.     Skeggs, *supra* note 8, at 3.
20.     *See, e.g.,* Michel Foucault, The History of Sexuality 53–73 (1978).
21.     In the United Kingdom, for example, cohabiting relationships, unlike marriages and civil partnerships, are denied many of the benefits and protections of the law. *See* Anne Barlow & Grace James, *Regulating Marriage and*

is not independent of, but contingent upon, filling this heterosexual mold (excepting the inevitable flaw of being homosexual). Thus, homosexual relations remain improper in the state's eyes unless they are conducted within "the right kind of privacy" provided by marriage.

The queer critique of marriage questions the norm of marriage and encourages deviance from the norm. Espousing what Michael Warner calls an "ethical vision of queer politics," it resists the notion that "the state should be allowed to grant legitimacy to some kinds of consensual sex but not others or to confer respectability on some people's sexuality but not others."[22] Accordingly, it is skeptical of "any institution, like marriage, that is designed both to reward those inside it and discipline those outside it."[23] For these reasons, queer liberationists reject the ascendency of marriage based on respectability. Paula Ettelbrick contends, "[m]arriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture; and the validation of many forms of relationships."[24] The right to marry is, she argues, essentially the right to be the same as heterosexuals, whereas the essence of liberation is not having to conform to a heterosexual mold: "As a lesbian, I am fundamentally different from non-lesbian women. That's the point. Marriage, as it exists today, is antithetical to my liberation as a lesbian and as a woman because it mainstreams my life and voice."[25]

At the other end of the queer political spectrum, gay conservatives do not only accept the norm of marriage, they also consider certain gay couples and relationships to be worthy of it. According to them, marriage is an institution without which lesbians

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*Cohabitation in 21st Century Britain*, 67 Mod. L. Rev. 143–151 (2004) (discussing how in different contexts, the law may treat cohabitants as (1) married, such as for income support purposes; (2) as similar but inferior to married couples, such as for protection from domestic violence under Family Law Act 1996; and (3) as legal strangers, such as for the purposes of financial or property division upon the breakdown of relationships).

    22.    Michael Warner, *Normal and Normaller: Beyond Gay Marriage*, 52 GLQ: A J. of Lesbian & Gay Stud. 119, 123 (1999).
    23.    *Id*.
    24.    Paula L. Ettelbrick, *Since When is Marriage a Path to Liberation?*, *in* We Are Everywhere: A Historical Sourcebook in Gay and Lesbian Politics 757, 758 (Mark Blasius & Shane Phelan eds., 1997).
    25.    *Id*.

and gays cannot achieve their full rights as citizens.[26] Rather than correcting this injustice by promoting legal alternatives to marriage that are open to all, they seek inclusion within marriage as it currently exists, believing that this will result in justice for all.[27] Functioning within a legal framework that does not recognize equality claims unless they are made with reference to the normative standard of heterosexuality,[28] gay conservatives present a twofold argument for marriage: (1) equality before the law, and (2) gay sameness to heterosexuality.

The claim of gay sameness to heterosexuality posits that gay couples and relationships are exactly like their heterosexual counterparts and therefore deserve the same recognition. The claim, however, is as much an aspiration as it is an assertion. William Eskridge expects that gradual recognition of same-sex relationships will normalize homosexuality and promote the social status of gay people.[29] While not framed in these terms, the invocation of normalization as a means to gain greater acceptance reads like an argument for respectability. Eskridge concedes that normalization would place limits on sexuality,[30] and even that the immediate consequence of marriage would not be social acceptance of gay people.[31] Nevertheless, he insists on marriage's potential to benefit all

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26.     *See, e.g.*, William N. Eskridge, Jr., The Case For Same-Sex Marriage: From Sexual Liberty To Civilized Commitment 62–63 (1996) ("Without the right to marry, gay Americans are second-class citizens. Stated another way, the United States will not be gay-civilized until its states include same-sex couples in the institution of marriage."); *see also*, Angela Bolte, *Do Wedding Dresses Come in Lavender? The Prospects and Implications of Same-Sex Marriage*, *in* The Gay & Lesbian Marriage & Family Reader: Analyses of Problems and Prospects for the 21st Century 25, 29 (Jennifer M. Lehmann ed., 2001). Bolte rejects domestic partnership as an alternative to marriage, arguing that only through marriage will lesbians and gays achieve their full rights as citizens. *Id*.

27.     *See, e.g.*, Eskridge, *supra* note 26, at 215 ("Once female-female and male-male couples can marry, the wife-housekeeper/husband-breadwinner model for the family would immediately become less normal, and perhaps even abnormal over time.").

28.     *See, e.g.*, Martha Minow, Making All the Difference: Inclusion, Exclusion and American Law 56 (1990).

29.     *See, e.g.*, Eskridge, *supra* note 26; William N. Eskridge Jr., Equality Practice: Civil Unions and the Future of Gay Rights 231–42 (2002).

30.     Eskridge, *supra* note 26, at 184 ("[S]ame-sex couples can often, though not always, live normal middle-class lives in small towns. The trade off is that the couple is expected not to flaunt their sexuality.").

31.     *Id*. at 81 ("The immediate consequence [of recognizing gay marriage] would not be social acceptance of homosexuals. The opposite is more likely: vociferous, even violent, resistance by homophobic heterosexuals.").

gay men, lesbians, and bisexuals by conferring upon them the rights and duties of marriage and a place within society.[32] Even more optimistically, Andrew Sullivan believes that marriage itself will precipitate a near perfect normalization of lesbians and gays that will end most discrimination against them.[33]

The contrast, then, is stark. If Ettelbrick espouses difference and deviance, Eskridge favors sameness and normalcy. If Warner celebrates the diversity of queer sex and intimacies, Sullivan envisages a different sort of celebration. He states that following legalization of same-sex marriage "and a couple of other things . . . I think we should have a party and close down the gay rights movement for good."[34] As a matter of politics, queer liberationists reject assimilation because of its normalizing costs, and gay conservatives embrace it despite those costs. Stated another way, queer liberationists consciously demand respect over respectability, and gay conservatives strive for respectability without noticing the difference.

Same-sex marriage has deepened this political rift, but it is not its source. To grasp the politics of marriage, it is important to understand its basis and genesis in the politics of AIDS. The AIDS epidemic generated both progressive and conservative responses. While progressives challenged anti-sexual, homophobic narratives of the epidemic that blamed gay and bisexual men's sexual recklessness for its spread, conservatives endorsed those narratives and adopted the epidemic as a catalyst for "civilizing" those men. This same civilizing ethos underpins how conservatives argue for marriage equality. Eskridge argues that AIDS was a wake-up call to gay and bisexual men that they are "in need of civilizing, [and] same-sex marriage could be a particularly useful commitment device for [them]."[35] He writes:

> Whatever gravity gay life may have lacked in the disco seventies it acquired in the health crises of the eighties. What it lost in youth and innocence it gained in dignity. Gay cruising and experimentation, . . . a

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32.      *Id*. at 82 ("[T]o the extent that same-sex marriage might embolden some couples to be open, the institution might help all gay men, lesbians, and bisexuals.").

33.      *See generally,* Andrew Sullivan, Virtually Normal: An Argument About Homosexuality 178–187 (1996).

34.      Out Facts: Just About Everything You Need To Know About Gay and Lesbian Life 21 (David Groff ed., 1997) (quoting Andrew Sullivan).

35.      Eskridge, *supra* note 26, at 9.

> permanent obstacle to gay marriage, gave way to a
> more lesbian-like interest in commitment. Since 1981
> and probably earlier, gays were civilizing themselves.
> Part of our self-civilization has been an insistence on
> the right to marry.[36]

Sullivan recounts, "[w]ith AIDS, responsibility became a central, imposing feature of gay life . . . Relationships that had no social support were found to be as strong as any heterosexual marriage."[37] AIDS "saved" gay men, suggest these authors.[38] It sobered them into abandoning sexual excess and juvenile rebellion in favor of responsible adulthood, and consequently, so the argument goes, they became accepted into the very society from which they had understandably been excluded. Marriage is expected to continue the civilizing work done by AIDS, thereby making gay people more normal and more accepted in society.

Suppose we accept for a moment that marriage might "civilize" gay men.[39] A question that remains unanswered is whether lesbians might have a different perspective on marriage than gay men; in other words, whether gender might not be a more important factor in the marriage debate than has been acknowledged thus far. Eskridge and Sullivan have little to say about lesbians;[40] as Suzanna

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36.     *Id*. at 58.
37.     Andrew Sullivan, *When Plagues End: Notes on the Twilight of an Epidemic*, N.Y. Times Mag., Nov. 10, 1996, at 61–62.
38.     *See* Douglas Crimp, Melancholia and Moralism: Essays on AIDS and Queer Politics (2002). Crimp set out the conservative narrative of AIDS:

> Prior to AIDS, gay men were frivolous pleasure-seekers who
> shirked the responsibility that comes with normal adulthood—
> settling down with a mate, raising children, being an
> upstanding member of society . . . Then came AIDS. AIDS made
> gay men grow up . . . And then everyone else accepted gay men.
> It turns out that the only reason gay men were shunned was
> that they were frivolous pleasure-seekers who shirked
> responsibility. Thank God for AIDS. AIDS saved gay men.

*Id*. at 5.
39.     Of course, this claim is not self-evident. For a discussion on whether or not marriage might "civilize" gay male couples, see *infra* Part II.B.
40.     Women's perspectives on same-sex marriage are predictably varied. While some of them align themselves, to greater or lesser extents, with various feminist and queer positions, others respond to and distinguish themselves from these positions. For feminist and queer critiques of same-sex marriage, *see generally,* Victoria Clarke, *Lesbian and Gay Marriage: Transformation or Normalization?* 13 Feminism & Psychol. 519 (2003); Ettelbrick, *supra* note 24; Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 Colum. J. Gender & L. 246 (2006); Nancy Polikoff, Beyond (Straight and Gay) Marriage:

Walters aptly asks, "and what of lesbians?"[41] Walters observes that their arguments for gay marriage are rooted in the "vaguely Victorian" notion of marriage as the force that "tames and civilizes the wild beast that is Man."[42] This is precisely what Eskridge and Sullivan appear to have in mind when Eskridge likens gay men to "Ulysses, who directed that he be bound to the ship's mast as it passed the Sirens, sea creatures whose seductive voices enticed men to their deaths,"[43] and when Sullivan seeks marriage as an "anchor . . . in the chaos of sex and relationships to which we are all prone."[44] Once marriage is taken to be a civilizing project,[45] and once a "lesbian-like interest in commitment" is taken for granted, marriage is thought no longer to concern lesbians, because "gay men need the discipline of marriage more than lesbians do."[46]

Queer liberationists reject this approach, countering that it is perilous to seek to escape discrimination by eliminating or downplaying the very difference that gives rise to it. As Ettelbrick explains:

> Justice for gay men and lesbians will be achieved only when we are accepted and supported in this society *despite* our differences from the dominant culture and the choices we make regarding our relationships . . . . The moment we argue . . . that we should be treated as equals because we are really just like married couples and hold the same values to be true, we undermine the very purpose of our movement and begin the dangerous process of silencing our different voices.[47]

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Valuing All Families Under the Law (2008); Valverde, *infra* note 116; Walters, *infra* note 41. For feminist, "post-feminist" and queer arguments in favor of same-sex marriage, *see generally*, Lee Badgett, When Gay People Get Married (2009); Bolte, *supra* note 26; Cheshire Calhoun: Feminism, the Family, and the Politics of the Closet: Lesbian and Gay Displacement (2000); Cooper, *infra* note 57.

    41.    Suzanna Danuta Walters, *Take My Domestic Partner, Please: Gay and Marriage in the Era of the Visible*, *in* Queer Families, Queer Politics: Challenging Culture and the State 338, 351 (Mary Bernstein & Renate Reimann eds., 2001).

    42.    *Id*. at 350.

    43.    Eskridge, *supra* note 26, at 83.

    44.    Andrew Sullivan, *Here Comes the Groom*, The New Republic, Aug. 28, 1989, at 20.

    45.    The question always remains as to whether marriage civilizes men at all, and specifically, whether it is marriage *per se* or marriage to *women* that civilizes men.

    46.    Eskridge, *supra* note 26, at 83.

    47.    Ettelbrick, *supra* note 24, at 758 (emphasis in original).

Warner emphasizes that, contrary to the alleged demise of radical queer sexuality, lesbians and gays continue to maintain personal and intimate relations that often bear little resemblance to marriage.[48] He observes that many lesbians "were at [the time before marriage] fighting the feminist sex wars and are even now developing a lesbian culture of experimentation."[49] Moreover, plenty of gay men coping with AIDS stigma have "developed their own sense of what 'civilizing themselves' means" and "nonmarital sex and nonmarital intimacies have been crucial parts of their alternatives."[50] Warner cautions that "[i]f the campaign for marriage requires wholesale repudiation of queer culture's best insights on intimate relations, sex, and the politics of stigma, then it is doing more harm than marriage could ever be worth."[51]

The need for civilizing resonates with gay men who are preoccupied with distancing themselves from the "promiscuity" of gay life.[52] Having sought the promised safety of monogamous heterosexuality "during" AIDS, they seek "post-AIDS" to secure the imagined utopia of heterosexual marriage. Patrick Moore explains that the U.S. gay male "community" is produced by shame regarding its now seemingly self-destructive sexual past. "Shame is," in his words, "what keeps us in line and what prevents us from discovering not so much who we are, but what we might become."[53] It motivates gay people to disregard the revolutionary nature of their pasts and instead to engage in a system of dissociated assimilation. But such assimilation is antithetical to self-respect. As Warner points out: "[T]he need for official validation, not to mention the conformity that official validation rewards, is the opposite of self-esteem."[54]

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48.    Warner, *supra* note 22, at 126. To this effect, Jeffrey Ringer's study exploring relational ideologies in gay men's relationships found that not only are many gay male couples not monogamous but also they are non-monogamous in a variety of ways. The ways in which gay men are non-monogamous reflects different views on the role of sex in relationships, which in turn reflect developments in queer politics. *See* R. Jeffrey Ringer, *Constituting Nonmonogamies*, *in* Queer Families, Queer Politics: Challenging Culture and the State 137, 145 (Mary Bernstein & Renate Reimann eds., 2001).

49.    *Id.*

50.    *Id.*

51.    *Id.* at 122.

52.    *See, e.g.*, Andrew Sullivan, *The Marriage Moment*, The Advocate, Jan. 20, 1998, at 59, 61–63 (condemning "promiscuity" as "a rejection of all that our society values and offers").

53.    Patrick Moore, Beyond Shame: Reclaiming the Abandoned History of Radical Gay Sexuality xvi (2004).

54.    Warner, *supra* note 22, at 151–52.

Respectability seems an antidote to shame when it really is its byproduct.

Not everyone, however, is invested in respectability for the same reasons. Although there is no direct evidence to rely on, it seems unlikely that lesbians see long term, monogamous relationships as respectable in the same sense as gay men struggling with AIDS stigma. Skeggs writes, for example, "[f]or working-class women invested in respectability, it is very hard for them to take on a sexed identity (either lesbian or hetero) because it is precisely being sexed which they have been trying to avoid in their claims for respectability."[55] Underlying their pursuit of respectability are "refusals to be rendered powerless in sexualized encounters (be they educational, social or intimate), when historically positioned as sexualized beings, circumscribed by limited position in discourse and being aware of continual evaluations and distinctions produced through speaking or displaying sexuality."[56] Lesbians and gays may produce performances of respectability as defensive strategies against being sexualized. Respectability may be a means of stopping their sexuality from becoming a barrier to their success and happiness or a safe space away from the pain and suffering of homophobia. For some, their motivation in seeking marriage and monogamy (or at least the appearance of monogamy) may be shaped by their desire for children and by society's desire to see gay parents as respectable and therefore not dangerous to their own or other children. For others, becoming respectable and downplaying their sexuality may seem the only viable escape from oppressive social and personal situations.

The queer debate has tended to neglect the various and complex forces at work in producing the desire for recognition. The oppositional nature of the debate, moreover, has limitations. Several commentators in the debate fail to concede that between lesbians and gays who long for marriage at the one end and feminist and queer dissenters at the other, there stands a large constituency of queers that might not buy into the same kind of vision of marital bliss. While speaking as a "community" can establish authority by giving the impression of group consensus, Davina Cooper cautions against framing equality claims on the basis of group identity, since this "suggests that lesbians and gay men have shared interests and needs, and that as a class equality means access to the benefits possessed by

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55.    Skeggs, *supra* note 8, at 135–36.
56.    *Id*. at 136.

groups more privileged than they."[57] This approach undercuts the divergence and heterogeneity within lesbian and gay constituencies, disguising that "[t]he 'lesbian and gay community' is not a singular entity with a singular ambition for relationship recognition."[58] Carol Smart questions a political oppositional approach because "there may be other voices and other concerns which are less vocal, which are not part of an already established political or academic community, and which may present a slightly different or more nuanced view."[59]

That lesbian and gay perspectives on marriage are neither as polarized nor as clearly defined as the queer debate suggests is shown by research data. For example, one recent U.K. study found that while eighty percent of the lesbian and gay respondents welcomed the 2004 Civil Partnership Act, only fifty percent wanted marriage to include same-sex couples. Although legal recognition was extremely important to several respondents in the study, some of them did not want the state to intervene in their relationships.[60] In a different U.K. study, some participants supported civil partnership or marriage for pragmatic reasons but resisted state recognition "becoming the pinnacle and norm for same-sex relationships."[61] These results are consonant with a U.S. study. While participants in that study supported recognition as a matter of legal equality, this was only an "external veneer" for deeper tensions in the perceived effects of marriage on same-sex relationships.[62] These sentiments suggest that, contrary to conservative expectations and liberationist fears, not every lesbian and gay couple is running to the altar, and marriage might not look the same for every couple. This may be seen as casting doubt on the overall transformative potential of marriage and some of the sweeping changes envisioned at either end of the queer political spectrum.

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57.     Davina Cooper, Challenging Diversity: Rethinking Equality and the Value of Difference 102 (2004).
58.     Craig Lind, *Sexuality and Same-Sex Relationships in Law*, *in* Sexuality Repositioned 109, 124 (Brookes-Gordon et al. eds., 2004).
59.     Carol Smart, *Same-sex couples and marriage: negotiating relational landscapes with families and friends*, 55 Soc. Rev. 671, 672 (2007).
60.     Carol Smart et al., Morgan Ctr. for the Study of Relationships and Personal Life, Gay and Lesbian 'Marriage' 2 (2006).
61.     Victoria Clarke et al., *Just a Piece of Paper? A Qualitative Exploration of Same-Sex Couples' Multiple Conceptions of Civil Partnership and Marriage*, 7 Lesbian & Gay Psychol. Rev. 141, 156 (2006).
62.     Pamela J. Lannutti, *For Better or Worse: Exploring the Meanings of Same-Sex Marriage Within the Lesbian, Gay, Bisexual and Transgendered Community*, 22 J. Soc. & Pers. Relationships 5, 10 (2005).

C. Gay Capital

In the troubled history of the relationship between capitalism and queer politics, capitalism has both enabled and constrained gay identity. As John D'Emilio argues:

> [I]t has been the historical development of capitalism—more specifically, its free labor system—that has allowed large numbers of men and women in the late twentieth century to call themselves gay, to see themselves as part of a community of similar men and women, and to organize politically on the basis of that identity.[63]

He explains that under the family-based modes of production that preceded capitalism, sex was primarily a means to produce labor that would make families self-sufficient. The advent of industrial capitalism led to the separation of sex from procreation and allowed the concept of "sexual identity" as defined by one's sexual desires to flourish. By the end of the nineteenth century, men and women had started to form communities around homosexual desire and to occupy physical spaces that would become sites of political organization and cultural production. Capitalism thus created material conditions for the expression of gay identity and politics.[64]

Conspicuous consumption has been crucial to the construction of gay men and, to a lesser extent, lesbians as respectable citizen-consumers. Katherine Sender argues that today's gay and lesbian identities are constituted less by sexual practice and rather more by consumption.[65] There is a complex and symbiotic relationship between "the gay community"[66] and "the gay market"[67] and, that being the case, one cannot meaningfully separate the politics of being

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63.     John D'Emelio, *Capitalism and Gay Identity, in* The Lesbian and Gay Studies Reader 467, 468 (Henry Abelove et al. eds., 1993).

64.     *Id.*

65.     *See* Katherine Sender, Business, Not Politics: The Making of the Gay Market 227, 240 (2004) ("[G]ayness had become more a consumer lifestyle than a sexual identity" and "given how far consumption is involved in the production and articulation of identity, GLBT people's most intimate identifications . . . cannot help but be imbricated with the world of business.").

66.     *See id.* at 5 (noting marketing has been instrumental to the construction of "the gay community").

67.     *See id.* at 10–11 (noting that marketers' terminology refers to "the gay market").

gay from the business of buying and selling gay.[68] Additionally, Alexandra Chasin points out that political citizenship is now more tied to class and consumer status than ever before.[69] Thus, who is viewed as a gay consumer bears on who is imaginable as a gay citizen and, crucially, who is deemed suitable for the sexual citizenship that is attended with marriage.

Long ignored by most advertisers and corporations, the gay market surfaced during the 90s as the niche market of choice. Narratives about its greater wealth and buying power, fuelled by the myth of gay male couples as white, bourgeois, free-spending DINKs (Double Income, No Kids), brought greater attention to this "untapped" market.[70] Corporate interest in the gay market has been a means to gain greater visibility for particular gay people and causes, like marriage equality. Yet, despite having made gay consumers more visible, the market has limited queer politics by fostering self and community identification via consumption. Advertising has allowed lesbians and gays to imagine themselves, and urged them to implicate themselves, within capitalism. Consumption has allowed them to be gay by virtue of buying gay, without ever needing to have homosexual sex or even express homosexual desire. In the process, gay and lesbian identities have become codified and managed through the workings of capitalism.

The gay market is not a pre-existing entity, but an active production, one that overwhelmingly gay male (as opposed to LGBT) professionals have worked to produce.[71] Openly LGBT people working in professional-managerial status occupations range from those whose sexual identity constitutes part of their professional expertise ("professional homosexuals") to those whose sexual identity plays little to no part in their professional life ("homosexual professionals").[72]

Inclusion within the professional class brings certain benefits, but this inclusion comes at a cost. Most professional contexts, even those touted as being "gay friendly," maintain heteronormative ideas of gender and sexuality, adherence to which remains a precondition of

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68.     *See id.* at 240–42 ("Gay marketing is a matter of business *and* politics, and is sometimes too the business *of* politics.")(emphasis in original).

69.     *See* Alexandra Chasin, Selling Out: The Gay and Lesbian Movement Goes to the Market xvi (2000).

70.     Sender, *supra* note 65, at 140, 145–146.

71.     Suzanna Danuta Walters, All The Rage: The Story of Gay Visibility In America 275–276 (2001).

72.     Sender, *supra* note 65, at 64.

institutional citizenship. LGBT professionals must tread carefully, and refrain from expressing their personal identities in personal and political ways that might be deemed "unprofessional."[73] As Dean Spade observes, "It is ironic that the more privileged and secure I get in terms of class and profession, the more I am encouraged not to take risks and to tread the most conservative path possible."[74] Kenji Yoshino calls this "covering"—a form of assimilation in which:

> [A] lesbian might be comfortable being gay and saying she is gay, but might nonetheless modulate her identity to permit others to ignore her orientation. She might, for example, (1) not engage in public displays of same-sex affection; (2) not engage in gender-atypical activity that could code as gay; or (3) not engage in gay activism.[75]

Inclusion demands covering—for her to conceal and compromise her lesbian identity, despite being able to identify as lesbian. While covering her lesbian identity may allow her to become respectable by, for example, achieving professional success without the distraction of her sexual orientation, it also stifles some of the characteristics that make her lesbian.[76]

Besides covering, inclusion demands performance. Respectability in the corporate world, as elsewhere, is measured by proximity to white, male, middle-class heterosexuality. LGBT employees who "fit in" tend to be those who most closely resemble their predominantly white, male, middle-class, heterosexual colleagues. This performance, however, is more difficult for those who are unable or unwilling to fit the corporate mold.[77] Sender observes

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73.     *Id.* at 64.
74.     Dean Spade, *Be Professional!*, 33 Harv. J.L. & Gender 71, 77 (2010).
75.     Kenji Yoshino, *Covering*, 111 Yale L.J. 769, 772 (2002).
76.     *See, e.g.*, Tara Chittenden, Law Soc'y of England and Wales, *Career experiences of gay and lesbian solicitors* 38 (2006), *available at* http://www.lawsociety.org.uk/secure/file/180121/e:/teamsitedeployed/documents/te mplatedata/Publications/Research%20Publications/Documents/careergaystudy53v 1.pdf ("Solicitors are faced with the decision whether to be themselves, go against expected firm 'type' and see if any consequences emerge, or to conceal aspects of their lives in order to conform and therefore place themselves in the position of maintaining a double life.").
77.     *See, e.g.,* Spade, *supra* note 74, at 76 ("The pressure to assert a very one-dimensional, traditionally masculine exterior does not fit with my self-understanding as a radical queer person nor match my internal understandings . . . . The queer fashion sense I wear outside of work . . . clashes with the pressure to

that "in an employment culture increasingly negotiated through networking, lesbians and bisexual women may be at a significant disadvantage, with less to gain from professional organizations where the 'old boys' club' has been replaced by the 'gay boys' club.'"[78] Alex Aldridge, noting that just thirty percent of the U.K.'s Lesbian and Gay Lawyers Associations' members are women, highlights "the frequently bemoaned dominance of legal LGBT groups by a certain type of confident gay man" and an exclusionary attitude that "has led to suggestions that LGBT groups have lost some of their original spirit of mutual support."[79]

As respectable professionals produce the market, the market produces respectable consumers. Walters argues that advertisements targeting lesbian and gay consumers "speak not to some perceived gay difference but rather to gay *sameness* with straights,"[80] adding that "[i]n this advertisers' world, gays are affluent, white, and always coupled, thus removing the visual threat of wanton single gays searching for sex in all the wrong places."[81] So the old advertising adage "sex sells" really means that *heterosexual* sex sells, since mainstream advertising renders queers sexless. In contrast, Sender argues that "marketers are invested in producing and maintaining gay *difference*" but takes issue with how they produce this difference—"limiting what is imaginable as a recognizably gay citizen: usually white, male, affluent, discreetly sexual, apolitical, gay subjects."[82] In either case, the market aids the formation of respectable citizen-consumers whose sexual citizenship hinges on their status as conspicuous consumers.

Besides reconfiguring lesbians and gays as respectable consumers, the market perpetuates respectability by supporting mainstream-friendly "gay" causes. In the campaign to overturn California's Proposition 8,[83] for example, companies like Apple and

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bring a particular kind of legibility to my body and gender in the professional world.").

78.     Sender, *supra* note 65, at 86.

79.     Alex Aldridge, *Unfairly judged: gay lawyers say judiciary still plagued by homophobia*, The Guardian, Oct. 6, 2011, at 2.

80.     Walters, *supra* note 41, at 266 (emphasis added).

81.     *Id.* at 266–67.

82.     Sender, *supra* note 65, at 23 (emphasis in original).

83.     Passed in the November 2008 California state elections, Proposition 8 (ballot title: Eliminates Rights of Same-Sex Couples to Marry) added Section 7.5 of the Declaration of Rights to the California Constitution, which provides that "only marriage between a man and a woman is valid or recognized in California." *See* Cal. Const. art. 1, § 7.5.

Google donated large sums and issued public statements underlining their own "gay-friendly" employment policies. Their support, however, follows from a straightforward cost-benefit analysis. Recent years have witnessed an increased public acceptance of same-sex marriage, with some opinion polls indicating that most Americans now support marriage equality.[84] This makes marriage the perfect "gay" issue for brands whose support for it might strengthen the loyalty of gay consumers without being offensive to the heterosexual mainstream.[85]

Corporate involvement, though, is not just business strategy disguised as politics; increasingly, it helps to shape the queer political landscape. New York's campaign for marriage equality is a case in point. As the *New York Times* reports: "Some of those involved have made what might be termed the pro-business argument for same-sex marriage, arguing that the legalization of same-sex marriage would help keep New York economically competitive."[86] Sender observes that "[a]s civil rights groups such as the Human Rights Campaign have become increasingly successful at courting large corporate sponsors, so have their political agendas focused on the most

84. *See, e.g.,* Joel Benenson & Jan van Lohuizen, *The Rapid Increase in Support for Marriage Changes Political Equation: Emerging Majority Supports the Freedom to Marry* (July 27, 2011), http://freemarry.3cdn.net/5ae85613318ade1b2e_8dm6bnq72.pdf; *Support For Same-Sex Marriage Edges Upward*, Pew Research Ctr. (Oct. 6, 2010), http://www.people-press.org/2010/10/06/support-for-same-sex-marriage-edges-upward/.

85. The amount of corporate support for "gay" causes will depend on the degree of visibility that support generates. Though corporations want their endorsements to be noticed, there may well be such a thing as "too much" gay visibility, as Google's decision to hide its Gay Pride "doodle" illustrates. *See* John D. Sutter, *Critics: Google hides Gay Pride feature*, CNN (June 24, 2011), http://edition.cnn.com/2011/TECH/web/06/23/google.gay.pride/.

86. Nicholas Confessore & Michael Barbaro, *Donors to G.O.P. Are Backing Gay Marriage Push*, N. Y. Times, May 13, 2011, http://www.nytimes.com/2011/05/14/nyregion/donors-to-gop-are-backing-gay-marriage-push.html/; *see also* Angie Chung, *Gay Marriage Could Be Economic Boon for New York*, Wall St. J., July 22, 2011, http://www.marketwatch.com/story/gay-marriage-could-be-economic-boon-for-new-york-2011-07-22 (reporting that New York's decision to recognize same-sex marriage will create more than $391 million in revenue for the state from 2011–2014); Esmé E. Deprez, *A Gay Wedding Windfall for New York: Same-Sex Nuptials Are Boosting Sales for Companies across the State*, Bloomberg Businessweek, Oct. 20, 2011, http://www.businessweek.com/magazine/a-gay-wedding-windfall-for-new-york-10202011.html ("New York may reap $310 million over the next three years from license fees, taxes, and tourism related to same-sex weddings.").

'acceptable' issues in queer politics, such as gays in the military and gay marriage."[87] The incentives to promote "acceptable" issues increase as influential public figures begin to support, even take ownership of, one of those issues. As *The Guardian* reports: "Pressure to back the [New York] legislation came from celebrities, athletes and New York City Mayor Michael Bloomberg, who has long used his own fortune to help bankroll Republican campaigns and personally lobbied some undecided representatives."[88] Hearing that the marriage bill had passed, Lady Gaga, who has supported Human Rights Campaign's efforts, tweeted: "*We* did it kids. The revolution is *ours* to fight for love. . . . *We* did it!!!"[89]

The gay lobby, traditionally under-resourced and relegated to the fringes of the human rights movement,[90] negotiates the privileges of corporate funding and media exposure with more mainstream agendas. Prioritizing mainstream agendas does not necessarily drive other issues into oblivion, but it cannot help but align the catalogue of LGBT causes with the flow of capital and headlines. One might expect that there is value in addressing the most acceptable issues first—that these are a starting point rather than an end point. This raises the obvious concern that less acceptable issues might never be addressed. For organizations that strive to promote social justice for all but are forced to make strategic choices because of limited resources, their decisions should not be reduced to crude pragmatism. For example, it may be strategically unrealistic and incoherent to seek to adopt a mixture of more and less acceptable causes.

To illustrate this point, we need only consider the tension that would arise in arguing that gay couples deserve marriage and adoption rights because they are respectable, and at the same time,

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87.      Sender, *supra* note 65, at 230.

88.      Batty, *supra* note 1.

89.      *Id*. (emphasis added). Compare this triumphant rhetoric of love and equality with the message of embracing difference in Lady Gaga's song, "Born This Way." Reporting on the gay backlash to that song, Dan Martin writes in *The Guardian*: "[M]ost gay people don't consider themselves to be freaks and outsiders, as is suggested in the lyrics, but perfectly normal people whose sexual orientation just happens to be wired a certain way." *See* Dan Martin, *The Lady Gaga backlash begins*, The Guardian, Apr. 20, 2011, http://www.guardian.co.uk/music/musicblog/2011/apr/20/lady-gaga-backlash-begins/.

90.      *See* H.R.C. Res. 17, 17th Sess., U.N. Doc. A/HRC/17/L.9/Rev.1 (June 15, 2011). In June 2011, the United Nations Human Rights Council issued, for the first time, a resolution condemning discrimination and violence against LGBT people.

making the case for public sex rights. The same organization is very unlikely to make both arguments, and even if it did, its approach would appear ideologically incoherent because of the obvious tension between them. With growing pressures on LGBT organizations to prioritize mainstream causes, what is needed is a more principled pragmatism on advocacy that rejects or evades the use of respectability to advance a particular cause where its use might compromise other important interests. The greater an organization and its members' stake in respectability, the more difficult this task becomes.

While marketing to the most affluent gay people perhaps makes good business sense, predicating the queer movement upon the market makes poor political sense. A politics that privileges consumption over political activism and sexual practice is inherently limited with respect to for whom it can speak (consumers, not queers), and what it is allowed to claim (respectability, not respect).

One striking aspect of respectability that has emerged thus far is the set of personal and social negotiations involved. The respectability bargain begins with the negotiation between the perceived gains of becoming respectable and its normalizing costs, which in turn feeds into the negotiation between being respectable and being one's true-self. The catalogue of potential gains is immense—including rights and recognitions, financial benefits, even social legitimacy and influence—so long as one is willing to downplay aspects of one's personal identity. Nor is the catalogue available equally to all. Gaining the symbolic capital of respectability entails drawing on existing economic, social, and cultural capital that is accessible to relatively few queers.[91] Skeggs explains that the total amount of capital will depend on the combination of other positions, such as class, gender, and race.[92] Privilege begets privilege and respectability can confer privilege only alongside other relations of

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    91.    Bourdieu and Wacquant identify four different types of capital that are context specific. Economic capital is financial and includes income, wealth, inheritance, and assets. Social capital is "the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition." Cultural capital refers to the knowledge, skills, education, and other advantages that give a person a higher status in society. Symbolic capital is the form these types of capital take after being recognized as legitimate. *See* Pierre Bourdieu & Loïc J. D. Wacquant, An Invitation to Reflexive Sociology 119 (1992).
    92.    Skeggs, *supra* note 8, at 120.

inequality. This suggests that lesbians and gays who stand to gain most from marriage may be precisely those who are already relatively privileged and long invested in respectability. The trouble with a politics of inclusion is that by including the privileged, and privileging the included, it carries the inherent risk of widening the gap between the privileged and the underprivileged, and between the included and the excluded.

D. Law's Homosexuals

For many lesbian and gay couples, marriage is a culmination and a continuation of becoming respectable. It is a culmination because a legal right to marry represents the ultimate vindication of normalcy, particularly to a class of couples to which it has historically been denied. This is anything but surprising, given the import attached in law and society to traditional marriage. As Chief Judge Vaughn R. Walker found in *Perry v. Schwarzenegger*: "Domestic partnerships lack the social meaning associated with marriage, and marriage is widely regarded as the definitive expression of love and commitment in the United States."[93] Compare this with *Wilkinson* v. *Kitzinger,*[94] a case in which a lesbian couple sought recognition in the United Kingdom of a marriage they entered into in Canada. The President of the Family Division rejected the argument that the right to same-sex marriage was found in Article 8 (right to respect for private and family life) or Article 12 (right to marriage) of the European Convention of Human Rights. Even if there had been an interference with Convention rights, that discrimination would be justified in furtherance of marriage:

> [A]n age-old institution, valued and valuable, *respectable* and respected, as a means not only of encouraging monogamy but also the procreation of children and their development and nurture in a family unit (or 'nuclear family') in which both maternal and paternal influences are available in respect of their nurture and upbringing.[95]

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93.    Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 970 (N.D. Cal. 2010).
94.    Wilkinson v. Kitzinger & Ors [2006] EWHC 2022 (Fam) (appeal taken from Eng.).
95.    *Id.* at ¶ 118 (emphasis added); *see also* Hernandez v. Robles, 855 N.E.2d 1 (N.Y. 2006) ("The legislative policy rationale is that society and government have a strong interest in fostering heterosexual marriage as the social institution that best forges a linkage between sex, procreation and child rearing.")

He described the Civil Partnership Act as recognition that same-sex relationships are not inferior to heterosexual relationships but that they are *different*, although he did not explain *how* they are different. The legalization of same-sex marriage would appear to recognize that same-sex relationships are the *same* as (meaning just as good and thus worthy of the same name as) heterosexual relationships. For lesbians and gays invested in respectability, there is perhaps no greater prize.

But lesbian and gay couples do not simply become respectable through marriage, but must also bring respectability to marriage. The Ontario Court of Appeal decision in *Halpern* v. *Canada*[96] recognized that seven lesbian and gay couples' reasons for wanting to engage in civil marriage—"to celebrate their love and commitment to each other"—were the same as those of heterosexual couples.[97] In reaching this conclusion, the court cited the affidavits of three of the lesbians and gays who sought to be married, each of whom attested to the normalcy of his or her relationship. These statements recount perfect couples and relationships whose respectability renders them ripe for recognition. For example, one stated: "I want the family that Dawn and I have created to be understood by all of the people in our lives and by society."[98]

Katherine Franke explains that such narratives depict "couples who have performed an idealized form of self-governance extra-legally that, so the claim goes, entitles them to the rights of respect and recognition that legal marriage confers."[99] In the eyes of the law, their relationships embody the same love and commitment that it takes for granted in the case of heterosexual couples. Love is, however, in Arendt's words, "not only apolitical but antipolitical, perhaps the most powerful of all antipolitical forces."[100] The overarching theme of love and commitment conceals essentially political claims and aspirations of sameness to heterosexuality, including a marriage ceremony, child rearing and familial continuity.

These lesbian and gay applicants defined and valued "marriage" in the most traditional and heterosexual sense of that

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96.     Halpern et al. v. Att'y Gen. of Canada et al. [2003] 225 D.L.R. 4th 529 (Can. Ont. C.A.).

97.     *Id.* ¶ 9.

98.     *Id.*

99.     Franke, *supra* note 40, at 246 (discussing marriage equality's "perfect plaintiffs"); *see also* Melissa Murray, *Marriage as Punishment*, 112 Colum. L. Rev. 1, 4 (2012) (discussing the *Perry* plaintiffs' account of marriage).

100.     Hannah Arendt, The Human Condition 242 (1958).

word: "I ask only to be allowed the right to be joined together by marriage the same as my parents and my heterosexual friends."[101] They sought inclusion within marriage to gain "the public recognition of [their] union as a 'valid' relationship,"[102] illustrating Walters' claim that "many gays who desire marriage ceremonies are precisely those who are . . . anxious to assert the absolute validity of long-term commitments over other forms of loving."[103] This exemplifies the trend that Jason Farago observes in the marriage equality movement: "That gay and straight couples might love differently, and that such a difference might still be worthy of legal protection, goes unspoken. And even more distressingly, unconsidered."[104] One applicant seemed optimistic that from the respectability of having her relationship recognized, a greater respect for that relationship would follow: "If we had the freedom to marry, society would grow to understand our commitment and love for each other."[105] Yet, it is not always simple to differentiate between respectability and respect. Respectability may be mistaken for respect, just as internalizing social norms may result in those norms feeling like they really reflect one's true-self.

The law's call for respectability is at odds with respecting lesbian and gay couples, at least insofar as it risks erasing their sexuality. Under a heterosexual marriage model, sexuality is pervasively coded under the rubric of love, consummation, procreation, and adultery. By contrast, legal recognition appears to take the sex out of same-sex relationships, leaving intact only their sameness to heterosexuality.

A closer look at the Civil Partnership Act is revealing. A civil partnership is a relationship that is formed when two people of the same sex register their partnership in accordance with the Act.[106] As a form of non-marriage, civil partnership sits beneath the pinnacle of respectability that is marriage, and yet, respectability is woven into its very fabric. Baroness Hale in *Secretary of State for Work and Pensions* v. *M* stated that civil partnership has "virtually identical

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101.     *Halpern,* 225 D.L.R. ¶ 9.
102.     *Id.*
103.     Walters, *supra* note 41, at 349.
104.     Jason Farago, *Don't ask, don't tell: freedom to serve is not freedom to love*, The Guardian, Sep. 20, 2011, *available at* http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/20/dont-ask-dont-tell.
105.     *Halpern* 225 D.L.R. ¶ 9.
106.     Civil Partnership Act, 2004, c. 33, § 1(1) (Eng.).

legal consequences to marriage"[107] and, writing extra-judicially, described it as "marriage in all but name."[108] But although legal marriage presumes and requires sexual practice and sexual fidelity, civil partnership does neither. Any same-sex couple can register, so long as they satisfy certain other marriage-like requirements, meaning that it is not their sexual partnership but their commitment to each other that they register.[109] Additionally, the non-consummation and venereal disease grounds of voidability are not present in civil partnership as they are in marriage; and unlike divorce, adultery is not a ground to petition for dissolution of a civil partnership.[110] The government's explanation, that it was not possible to produce a same-sex equivalent to consummation and adultery, suggests "a distaste in making visible and examining same-sex sexual practices"[111] and "a reluctance to accept same-sex relationships at full value."[112] This does not mean, however, that a civil partnership cannot be dissolved if one party is "unfaithful." In those circumstances, the extramarital relationship would be deemed an "inappropriate" relationship with another person and form part of a petition based on unreasonable behavior. The Civil Partnership Act therefore manages to regulate sexuality without any mention of it. Carl Stychin identifies within the Act a message that the encouragement of civil partnership will discourage "irresponsible" behaviors, like "promiscuous" sex.[113] He concludes that the Act "attempts to flatten out" the diversity of lesbian and gay relationships into a "recognisable and disciplinable legal guise."[114]

Legal recognition does not only privatize and suppress homosexuality, it also facilitates the discursive production of a respectable homosexual identity. What promise, though, does

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107.    Sec'y of State for Work and Pensions v. M, [2006] UKHL 11 [99] (Eng.).

108.    Brenda Hale, *Unmarried couples in family law, in* 34 Fam. L. 419, 424 (Elizabeth Walsh eds. 2004).

109.    Anne Bottomley & Simone Wong, *Shared Households: A New Paradigm for Thinking About the Reform of Domestic Property Relations*, *in* Feminist Perspectives on Family Law 39, 44 (Alison Diduck & Katherine O'Donovan eds., 2006).

110.    Jonathan J.W. Herring, Family Law 70 (4th ed. 2009).

111.    Bottomley & Wong, *supra* note 109, at 44.

112.    Herring, *supra* note 110, at 70.

113.    Carl Stychin, *Family Friendly? Rights, Responsibilities and Relationship Recognition*, *in* Feminist Perspectives on Family Law 21, 30 (Alison Diduck & Katherine O'Donovan eds. 2006).

114*.      Id.* at 31.

respectability hold for law's homosexuals? Mariana Valverde, highlighting the mundane description of facts in the Supreme Court of Canada decision in *M and H*,[115] in which a lesbian couple was held to have the same support obligations as a heterosexual common-law couple, comments: "Amidst the property relations, sex is nowhere to be found; neither is homosexuality. Nobody even inquires whether they sleep together, much less what they do in bed: *the famous disciplinary gaze has vanished*."[116]

Perhaps the disciplinary gaze had vanished in the context of property relations, but had it vanished from the marital context altogether? Of course, the gaze has always been selective in relation to the domestic sphere. This has been a particular problem for women who experience domestic violence, since this has traditionally been deemed a private matter in which the police should not involve themselves.

The legal and popular discourse of marriage obscures its disciplinary character. As Melissa Murray argues, "marriage has been used—and, importantly, continues to be used—as state-imposed sexual discipline."[117] She explains that under seduction statutes enacted in a majority of U.S. jurisdictions in the nineteenth century,[118] "marriage was not only a bar to prosecution for seduction; it served as a punishment for the crime."[119] Part of the punishment was the imposition of sexual discipline, and marriage's legal and social obligations imposed upon the married "a new disciplined identity, transforming them from sexual outlaws into in-laws."[120] The history of "marriage as punishment" remains relevant because "modern marriage retains elements of its punitive past in that it continues to be a vehicle of state-sanctioned discipline."[121] The disciplinary character of marriage has implications for married lesbians and gays, for "expanding marriage to new constituencies does little to undermine its disciplinary force; it merely expands the

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115.     Ontario (Att'y Gen.) v. M and H [1999] 2 S.C.R. 3, para. 9–13 (Can.).
116.     Mariana Valverde, *A New Entity in the History of Sexuality: The Respectable Same-Sex Couple*, 32 Feminist Stud. 155, 162 (2006) (emphasis added).
117.     Murray, *supra* note 99, at 1.
118.     *Id.* at 5 (citing N.Y. Penal Code § 330 (Albany, Weed, Parsons & Co., 1865)) ("Seduction statutes made it a crime to 'seduc[e] and have illicit connection with an unmarried female of previously chaste character' under a 'promise of marriage.'").
119.     *Id.* at 23.
120.     *Id.* at 2.
121.     *Id.* at 40.

state's disciplinary reach to include new subjects."[122] In other words, marriage equality brings lesbians and gays within the state's disciplinary reach and confers protection upon them at the expense of their sexual liberty.

Less obviously, but no less importantly, the disciplinary character of marriage has implications for unmarried queers. Consider the House of Lords decision in *R* v. *Brown*,[123] in which a group of men were convicted for engaging in consensual homosexual sadomasochistic activities. In stark contrast with cases involving relationship recognition, sexuality here is not invisible but *hyper* visible. The majority judgments frame the appellants' conduct in explicit detail and within an emotive and moralizing discourse. Lord Templeman describes sadomasochism as "uncivilised," "a cult of violence," and "an evil thing."[124] Lord Mustill, in his dissenting judgment, comments: "[W]hatever the outsider might feel about the subject matter of the prosecutions—perhaps horror, amazement or incomprehension, perhaps sadness—very few could read even a summary of the other activities without disgust."[125]

The heteronormative dimension of *Brown* was brought out in the case of *R* v. *Wilson* that followed, in which a man "branded" his female partner.[126] The court read this as a token of his love and affection rather than unruly violence. The disciplinary gaze was found to have no relevance in consensual heterosexual marriage: "Consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution."[127] Skeggs' reflection—that "[h]eterosexuality is an authorizing discourse, it gives validity to 'correct forms of sexuality'"[128]—seems to best reconcile the decisions in *Brown* and *Wilson*.

These decisions remain the law and should serve as vivid reminders of the disciplinary gaze that pervades outside of the heteronormativity of marriage. Their legacy is not diminished by recognition of legal alternatives to heterosexual marriage, since those alternatives are cast from the same heteronormative mold. For the

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122.     *Id*. at 7.
123.     R v. Brown [1994] 1 A.C. 212 (appeal taken from Eng.).
124.     *Id.* at 237.
125.     *Id.* at 257.
126.     R v. Wilson [1996] 3 W.L.R. 125 (appeal taken from Eng.).
127.     *Id.*
128.     Skeggs, *supra* note 8, at 120 (internal quotations omitted).

reasons outlined here, it appears implausible that the law, once it has recognized same-sex marriage, will develop a more nuanced understanding of sexuality that undercuts its heteronormative assumptions. It seems far more likely that the behavior of queer outsiders will become measured against both heteronormativity and respectability—compared not only to straights but also to respectable lesbians and gays. The state might, for example, point to married lesbians and gays as exemplary minorities whose integration into society should be commended, and censure non-married queers as failed minorities whose deviance from the norm should be condemned.

Legal equality tends not to end discrimination against protected groups, and marriage equality is no exception. Boris Dittrich at Human Rights Watch observes that "while the right to same-sex marriage may be viewed as the last step in ending discrimination on grounds of sexual orientation, legalization does not end discrimination, either by officials or other people."[129] In fact, discrimination not only persists after legal equality, it may even become more insidious.[130] As Katie Eyer explains:

> [W]hile some discrimination disappears when discrimination becomes formally unlawful, much of what would previously have been expressed as overt bias simply becomes covert. Moreover, even those people who believe themselves to be nondiscriminatory may act out of unconscious biases, and/or make decisions that systematically disadvantage the protected class. The standards for proving discrimination that have been crafted by conservative federal judges are poorly situated to detect and address covert, unconscious, and structural biases. And, even if the legal standards were more adequate, the legal decision makers themselves—from the predominantly conservative judges to the jurors—

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129.     Boris O. Dittrich, *A Decade on, Progress on Same-Sex Marriages*, Human Rights Watch (March 14, 2011), http://www.hrw.org/news/2011/03/14/decade-progress-same-sex-marriages.

130.     As scholars of race and gender have long recognized. *See, e.g.,* Hillary Charlesworth et al., *Feminist Approaches to International Law*, 85 Am. J. Int'l L. 613, 634 (1991) ("Feminist scholars have argued that, although the search for formal legal equality through the formulation of rights may have been politically appropriate in the early stages of the feminist movement, continuing to focus on the acquisition of rights may not be beneficial to women.").

are weary of identity politics and skeptical of the existence of discrimination.[131]

That marriage equality might function as an ideological smoke screen for masking discrimination is not difficult to fathom. ("We are not homophobic; see, we have this law.") The deeper issue is that queers outside of the gilded cage of marriage may actually be more susceptible to discrimination. The shift towards formal equality is a shift towards covert or structural discrimination only for those individuals who are protected by it. While marriage equality confers protection upon married lesbians and gays, it might do little to protect unmarried queers from discrimination (either overt or covert). Less obviously but equally so, formal equality defines which interests need and deserve the law's protection and which remain outside the scope of protection, either because they are deviant or altogether unintelligible. By readjusting the parameters of unlawful (and lawful) discrimination, marriage equality may render discrimination claims by unmarried queers less legally cognizable, and even implicitly sanction discrimination against them. ("If you wanted equal rights, you should've gotten married.") These are reasons to question recognition that confers protection upon respectable lesbians and gays at the expense of their sexual liberty, and exclusion from which leaves other queers vulnerable to disciplining and discrimination.

The claim to relationship recognition is "a demand by lesbians and gay men that . . . they be brought into being as respectable citizens of the local, national and global polity."[132] The claim, however, is contingent upon a performance of respectability that does not end with the signing of the register. Lesbian and gay couples take a vow of respectability upon marriage on which they must not renege after marriage. It is no coincidence that marriage equality has generated lifestyle publications not only on gay weddings,[133] but also on gay and lesbian "manners."[134] This should motivate us to consider anew what it means to be queer at a time when lesbians and gays are being called upon to become respectable. The remainder of our discussion is devoted to this question.

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131.    Katie Eyer, *Have We Arrived Yet? LGBT Rights and the Limits of Formal Equality*, 19 J.L. & Sexuality 159, 161 (2010).
132.    Cooper, *supra* note 57, at 113–114.
133*.    See, e.g., Equally Wed,* http://equallywed.com/ (last visited Mar. 27, 2012) ("The Nation's Premier Online Gay Wedding Magainze").
134*.    See, e.g.,* Steven Petrow's Gay and Lesbian Manners, http://gaymanners.com/ (last visited Mar. 26, 2012) ("The Definitive Site for LGBT Life").

### III. AFTER MARRIAGE

*"Until we are all free, we are none of us free."* – Emma Lazarus

Part II argued that public recognition of gay people and relationships is contingent upon their being respectable. Part III proposes a theoretical framework to understand such recognition. This framework—called "respectable queerness"—suggests that recognition that is predicated upon acquiring a respectable social identity is actually constituted by public performances of respectability and by privately queer practices. This Part is divided into four sections. After Section A provides a brief conceptual overview of respectable queerness, Section B illustrates its operation by examining same-sex marriage and the various ways in which it produces respectability in public while privatizing queerness. Section C then considers some of the political implications of such recognition, suggesting that marriage might function to privilege certain queers while further marginalizing others, and fueling divisions and moralizing between different queer constituencies. Finally, Section D identifies a shift within the queer movement from a politics of solidarity towards one of respectability and considers the course of queer politics after same-sex marriage.

### A. Respectable Queerness

Both ends of the queer political spectrum, for all their differences, share a belief in the transformative power of recognition. It is the belief that public recognition of gay people and relationships can dramatically change how they are queer, and even what it means to be queer. This change involves, in one form or another, the normalization of lesbians and gays. The similarities end there, however. While this is the very kind of transformation that gay conservatives have longed for these many years, queer liberationists are much more skeptical. They consider state recognition a new form of regulation of sexuality that might radically reconfigure gay people and relationships. The hallmark of their reconfiguration seems to be that lesbians and gays are called upon to be performers in everyday life. But marriage is believed to change not only the expression of queer identity, but the underlying substance of it.

A fundamental question arising out of relationship recognition is whether queerness itself is changing, and if so, what is the trajectory of that shift. Franke writes that "[w]hat we are witnessing in the gay community . . . is a radical substitution or

transformation of the nature of homosexual desire. Into the psychic space created by decriminalization has rushed a desire for governance, a desire for recognition—recognition by legal and state authority."[135] She cautions against the perils of recognition as a "governance project" for lesbians and gays to be governed by the state "not as abject criminals, but as citizen-subjects."[136] Writing in a similar vein, Valverde draws links between marriage and the "emergence, in the space occupied by 'homosexuality,' of a new sexual object/subject: the respectable same-sex couple."[137] In her view, the emergence of respectability signals the terminal decline of homosexuality: "the particular form of the inner self that is 'sexuality' . . . may indeed be now fading,"[138] and "reminiscences of homosexuality and its pleasures and dangers are precisely that— reminiscences."[139]

Although it is difficult to find queerness in this age of recognition, the reason is not so much the decline of queer desire as its re-privatization. As lesbians and gays are called upon to justify their place within the public sphere, they must repress or hide aspects of their queer selves that are incompatible with being respectable. Because sexuality is constructed as a necessarily secretive and private aspect of identity that has no place within a respectable public sphere, queer sexuality becomes further embedded into the private sphere. Thus, even as more gay people "come out" into the public world, aspects of their sexual identities remain hanging like skeletons in their closets.[140]

This state of affairs is reminiscent, at first glance, of a period before queer liberation. Then, as now, being respectable involved

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135.    Franke, *supra* note 40, at 240.
136.    *Id.* at 246.
137.    Valverde, *supra* note 116, at 156.
138.    *Id*.
139.    *Id.* at 162.
140.    It is interesting to think about whether such repression is only true for gay respectability, or does it follow for straight people too? While demands to become respectable are by no means imposed exclusively on homosexuals, these may be different from demands imposed on heterosexuals, and they may also be experienced differently. Typically, the assimilationist demands on lesbians and gays will be greater, and depending on the context, so too might their desire to become respectable. These differences may well engender different responses. But since respectability is about more than just sexuality, it cannot fully or even meaningfully be understood without being located within particular and broader contexts, taking into account the influence of gender, race, class, and other social categories of exclusion.

being "straight acting" or asexual in public, while privately engaging in queer sexual practices. That was during the era of anti-sodomy laws, when failing to be respectable carried greater risk and fear of state coercion. Even then, however, many resisted the lure of respectability. As Gene Burkard of the *International Male* catalogue recalls, "we were somewhat closeted. (But) I had an internal slogan and it was, 'Never get respectable.'"[141] What is remarkable about respectability today—and what renders it potent for control of sexuality—is that many lesbians and gays adopt it of their own accord.

The quest for respectability does not mean, however, that queer desire is transformed into the desire for recognition; rather, the desire itself is split into two parts, and each constituent desire put into its proper place—publicly respectable and privately queer. These constituent desires do not sit comfortably together. In this contradictory relationship, public and private expressions of queerness are rendered more difficult by public recognition of gay people and relationships that is predicated upon their being respectable. Correspondingly, public recognition is always threatened by practices of queerness that may be deemed not to be respectable.

This paradoxical paradigm is liable to engender dissonance between one's public and private selves, leading to what Frantz Fanon calls "dual consciousness."[142] Fanon's work deals with issues of colonialism and how colonized subjects are forced publicly to assume foreign cultural norms, while privately maintaining their own cultural identity.[143] Respectable queerness manifests in the adoption of socially acceptable norms of behavior in public, alongside privately queer desires.[144] It can be understood in a functional sense as a kind of coping mechanism for lesbians and gays confronted with the demands of respectability; it enables them to cultivate a publicly respectable social identity, while privately maintaining their queer identity. As public spaces for sexual experimentation, which during the 1960s and 70s were sites of queer liberation, are disappearing and

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141.     Pat Sherman, *Moments in Time: 'Never Get Respectable,'* Gay San Diego   (Jan. 11, 2011), *available at* http://www.gay-sd.com/moments-in-time-never-get-respectable/ (quoting Gene Burkard).
142.     *See* Frantz Fanon, Black Skin, White Masks 110, 138 (Grove Press 1967) (1952).
143.     *See id*. at 83–108.
144.     Of course, there are important differences between the workings of colonialism and the control of sexuality that should be borne in mind, especially where lesbians and gays are not coerced but rather "opt" into such control.

being replaced with newly respectable homosexual spaces,[145] newly
re-privatized queer desires reveal themselves within other spatial
realms.

The proliferation of online social networks has an important
role to play here. Such networks facilitate dual consciousness by
allowing people to lead disparate public and private lives. For
example, *Jake*,[146] marketed as the world's largest gay professional
networking website, attempts to maintain a desexualized stance—
and distance itself from the so-called *Gaydar*[147] approach—by denying
full membership to users posting partially undressed photographs.[148]
Yet, even a cursory glance at both websites reveals that they draw
many, if not most, of the same members, only in different guises for
different websites. Thus, a gay professional may create a *LinkedIn*[149]
profile to highlight his involvement in his company's LGBT group; a
*Jake* profile for "networking" with other gay professionals—broadly
construed to include "cruising in suits"; and a *Gaydar* profile in which
his suit disappears and his privately queer desires are revealed.[150]
These differential articulations are shaped by perceived notions of
what is public and what is private, and with an acute consciousness
of what is and is not respectable.[151] Such attempts at self-modulation
may appear inconsequential at first, but closer inspection through the
lens of respectable queerness reveals their significance for queer
identity and politics.

## B. Gay Marriage

Respectable queerness can help to circumvent or ameliorate
incongruities between becoming respectable and being queer.

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145.     Crimp, *supra* note 38, at 298.
146.     JakeTm, http://www.jaketm.com (last visited Mar. 27, 2012).
147.     Gaydar, http://www.gaydar.co.uk/ (last visited Mar. 27, 2012).
148.     Though gay social networks typically target gay and bisexual men, the
*Gaydar* franchise includes a website for women. *See* Gaydar Girls,
http://www.gaydargirls.com (last visited Mar. 27, 2012); Gaydar Women,
http://www.gaydarwomen.com/ (last visited Mar. 27, 2012). *Jake* has recently
developed a new website for both men and women, though its membership is
likely to remain largely male.
149.     LinkedIn, http://www.linkedin.com/ (last visited Mar. 27, 2012);
Gaydar, http://www.gaydar.co.uk/ (last visited Mar. 27, 2012).
150.     As one profile puts it: "'Respectable professional'—who likes to get
quite a bit of casual sex."
151.     Even within *Gaydar* there are degrees of disclosure based on notions
of privacy and respectability: public and private pictures, "cruising" and regular
chat rooms, etc. *See* Gaydar, http://www.gaydar.co.uk/ (last visited Mar. 27, 2012).

Moreover, this phenomenon is not new. Even before marriage equality, many lesbians and gays were passing for heterosexual or covering their homosexual selves in public, while privately engaging in queer sexual practices. What is arguably new in this age of recognition, however, are the changing means and meanings of becoming respectable and being queer. Marriage is the quintessence of recognition that fosters respectability. But there is another side of the coin, and that other side is queerness. It is therefore important to examine same-sex marriage and the various ways in which it produces respectability in public while privatizing queerness.

Franke is concerned about the influence of marriage, burdened as it is with respectability, on the diversity of queer sex and intimacies:

> What will happen to homo desire and homo sex when they run through the particular circuitry of fantasy sutured to marriage? What kinds of fantasmatic curiosities will become foreclosed or will wither— particularly as our curiosity get [*sic*] channeled, indeed, tamed, in the direction of the familiar, the safe, and the respectable—the nuclear family?[152]

To the extent that legal recognition entails an avowal of respectability and a disavowal of sexual desire, it carries the imperative to close one's eyes and, ultimately, one's mind to certain kinds of sexual pleasures. The law's discursive power might thus function to render sexual practices that are unrespectable today unfathomable in the future.

Of course, the state's ability to regulate sexuality through law has limits. As Stychin writes: "While law may seek to close off possibilities—to discipline and to domesticate—we also have come to recognize the limits of law's discursive power. The power of law, after all, is always open to resistance . . . ."[153] Equally important, yet often overlooked, however, is the need not to take resistance for granted.

Pierre Bourdieu's work deals with how systems of domination persist without generating strong resistance, even conscious recognition, from those who are dominated. He argues that because marginalized individuals and groups are subjected to systems that function to legitimize inequalities of power based on differential understandings of value and worth, their ability to resist the forces

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152.     Franke, *supra* note 40, at 245.
153.     Stychin, *supra* note 113, at 34.

that discriminate against them is limited.[154] Warner further cautions against the tendency to assume the subversiveness of queer sexuality because "no theory that takes queerness as inevitable in principle, or normalization as impossible in principle, can be of much use in making the world-historical judgment of the politics of gay marriage."[155]

Even where resistance to the norm of marriage is possible, it does not come without costs. Consider non-monogamy. *Wilkinson* describes marriage as "respectable and respected, as a means . . . of encouraging monogamy."[156] Yet, Ringer's study exploring relational ideologies in gay men's relationships reveals that many gay male couples are not in monogamous relationships.[157] To what extent might marriage function to discipline or, to revive Eskridge's phrase, "civilize" gay couples that are not monogamous prior to marriage? In a recent U.K. study about the meaning and significance of relationship recognition among ninety-one lesbians and gays (thirty-seven couples and seventeen individuals), the participants denied that marriage would change their values, including, for some, their beliefs about non-monogamy. As one respondent said:

> We do not have a monogamous relationship and now, when we tell [people] that we are engaged, it is a bit strange. "Oh, so you are going to become monogamous then?" "No, why?" "But you are getting married—you should be." "No, why should I change?" And that is where gay people seem to be a bit confused, why should I change?[158]

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154.     Bourdieu argues that cultural meanings and practices function to enhance distinctions and legitimize inequalities among individuals and groups. Through a process that he calls "symbolic violence," symbolic systems of words, images, and practices promote the interests of dominant groups as well as distinctions and hierarchies between groups, while convincing the dominated to accept existing hierarchies through processes of "hegemony." Hegemony is achieved via a complex interlocking of political, social, and cultural forces which organize dominant meaning and values across a social field in order to legitimize the structures of social inequality, even to those who are the objects of domination. *See, e.g.,* Pierre Bourdieu & Jean-Claude Passeron, Reproduction In Education, Society and Culture 8, 13 (1970); Pierre Bourdieu, Distinction: A Social Critique of the Judgment of Taste (1984).

155.     Warner, *supra* note 22, at 157.

156.     Wilkinson v. Kitzinger & Ors [2006] EWHC 2022 (Fam.) (appeal taken from Eng.).

157.     Ringer, *supra* note 48, at 145.

158.     Smart et al., *supra* note 60, at 4.

This suggests that, despite societal expectations of monogamy, marriage may not automatically convert non-monogamous couples into monogamous ones, although it may well attract couples that already are monogamous. In either case, marriage's impact on sexual practice might be less than transformative.

What might be significant for certain couples, though, is the dissonance between the appearance of monogamy in public and their privately non-monogamous existence. For example, a married couple that attends a corporate event as seemingly monogamous "partners" might be found cruising on *Grindr*[159] as "boyfriends." Even as their sexual practices resist the heteronormativity of marriage, this resistance comes at the expense of narrative and personal continuity, since their relationship with their environment is not continuous but changes from one moment to the next.

Moreover, because actions are always scrutinized against the norm of respectability, deviance from the norm carries potential political costs. Cooper cautions that "a danger in attempting to disrupt the creation of a proper, legitimate space is that it risks trivialising and ridiculing lesbian and gay relationships while leaving other 'marital' relationships unblemished."[160] Perhaps more clearly than a danger of resistance, the risk of ridicule captures the very precariousness of recognition that is based on respectability.

One might even argue that resistance in private by itself is neither radical nor subversive if it does not result in social and political change. This reflects Arendt's concern about the disintegration of political speech—that by retreating into their inner selves and thus abandoning the public realm, individuals risk losing their political speech and personal identity.[161] Even as respectable queers resist the norm of respectability, their resistance to the norm in private does not supersede their adherence to the norm in public. Their resistance is not transformative insofar as their cumulative actions (and inactions) maintain the norm and leave it intact. Indeed, their actions may even amount to hypocrisy where they claim to have moral standards or beliefs against which they assess others, but to which their own behavior does not conform.

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159.    *See* Grindr, http://grindr.com/ (last visited Mar. 27, 2012). *Grindr* is a geo-social networking application for smart phones that allows users to access men who have sex with men within close proximity.

160.    Cooper, *supra* note 57, at 106.

161.    *See* Arendt, *supra* note 12, at 32–33; Hinchman & Hinchman, *supra* note 13, at 202.

Same-sex marriage secures a place in the public sphere for married lesbians and gays. Valverde recalls:

> As marriage for gays and lesbians approached legality, around 2003, Canadians were treated to an unprecedented visual display of respectable homosexuality: an extended series of photos displaying not the ashamed and effeminate homosexuals that used to be posed in dark corners in 1960s reportage of seamy gay life, but rather an array of perfect "same-sex" couples . . . .[162]

Similarly, Franke observes that:

> [T]he citizen-subjects who have signed up for this form of enfranchisement are called upon to enact a peculiar set of public performances: lining up in pairs outside of City Hall the moment the Mayor deems the marriage registry open to homo business; placing your wedding announcement in the New York Times; posing model homo families—our perfect plaintiffs—before the media.[163]

Media representations of married lesbians and gays appear perfect, pristine, and palatable—the kind of visibility that magazines can feature and corporations can endorse. Espousing the politics of the status quo, this visibility asserts sameness to heterosexuality, demands inclusion within marriage and capitalism, and claims a place within the public sphere. For those invested in respectability, it is a powerful apparatus to reconstitute lesbians and gays as "normal." Predictably, however, queer sexuality does not belong to this branding exercise. Thus, against the tradition of hypersexuality in mainstream representations of gay men, an article about a middle-class gay male couple focuses entirely on the financial and logistical details of their upcoming wedding, saying or implying nothing about their sexual lives.[164] When read through the respectable queerness lens, this newly respectable visibility appears reductive and carefully calibrated. This may be seen as casting doubt on the belief that same-sex marriage will substantially broaden the definition of what is acceptable, and thus make other forms of difference more acceptable. For, as mainstream depictions of same-sex marriage make clear, lesbians and gays are not being seen and understood as their queer

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162.    Valverde, *supra* note 116, at 157.
163.    Franke, *supra* note 40, at 239.
164.    Valverde, *supra* note 116, at 159.

selves, but rather seen only in part so as to be made respectable, and only to that extent, acceptable.[165]

As lesbians and gays become included within privileged private monogamous unions protected by law, marriage might also privatize a queer sense of identification and belonging. Franke argues that marriage encourages "an identification with a form of normative kinship and more importantly an identification with the state."[166] Paradoxically, marriage for lesbians and gays involves identifying as citizen-subjects of the very state that until recently criminalized their sexualities, and thus abandon a history of resistance against the state. Warner describes marriage as the perfect "dequeering" issue because it produces lesbians and gays with "no politics, no public, no history of activism or resistance, no inclination to deviate from the norm, and no form of collective life distinct in any way from that of 'society.'"[167] As if to illustrate this point, a recent cover story in *The Times Magazine* featured a series of "gay couples defying convention by marrying young–and in style . . . ."[168]

These concerns may not resonate with many lesbians and gays who consider marriage the final frontier for queer politics—not always because they are taken by respectability's allure, but often because they are oblivious to the promise of liberation. What is difficult to explain is what the queer movement stands to lose if it loses its liberationist ethos. Among the core values of queer liberation are solidarity among different queer constituencies and fighting together for justice despite their differences—both from straight people and from one another. The pursuit of respectability, however appealing, is perilous insofar as it distances lesbians and gays from these values. A queer movement must strive to maintain these values if it is to challenge the homophobia and heterosexism that pervade

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165.    There are parallels with other respectable issues here. For example, a poll about the repeal of "Don't Ask, Don't Tell" found that 58% of Americans thought "'gay men and lesbians' should be allowed to serve openly," but only 44% thought that "'homosexuals' should have the same rights." Farago, *supra* note 104. As Jason Farago writes in *The Guardian*: "Allow for confusion or ignorance among some of the respondents, and the sheer size of the drop still implies something disturbing: gays only find acceptance when they sound like an undifferentiated group. When reminded of the sex at the core of homosexuality, Americans seize up." *Id*.

166.    Franke, *supra* note 40, at 245.

167.    Warner, *supra* note 22, at 152.

168.    Louise Carpenter, *Young, Gay and Married: The changing face of modern matrimony*, The Times Magazine (London), Nov. 5, 2011, at 28.

the public world. Kinship alone is not a rich enough political value to dismantle these systems of discrimination.[169]

## C. Queer Divisions and Moralisms

While queer dissenters consider relationship recognition a disciplinary project set up by the state to govern lesbians and gays, mainstream opinion considers it an equality measure for same-sex couples. These two understandings of recognition—as a disciplinary project and an equality measure—are not mutually incompatible but actually work in tandem. The state seeks through marriage (1) to discipline and domesticate gays and lesbians, and (2) to confer upon respectable same-sex couples their place within the public sphere, alongside heterosexual couples.

Even as recognition closes the gap between heterosexuals and respectable queers, however, it may widen the divide between respectable and non-respectable queers, leading to what Ayelet Shachar calls the "paradox of multicultural vulnerability."[170] This paradox arises where "state accommodation policies intended to mitigate the power differential between groups end up reinforcing power hierarchies within them."[171] The state accommodates same-sex couples by giving them the legal option to conform to the heteronormative structure of marriage. But while marriage equality accords public recognition to same-sex couples in long-term, monogamous unions, it omits from the public sphere those queers who do not conform to the heteronormativity of marriage.

One of the most difficult political questions arising out of marriage equality is whether marriage might privilege certain queers while further marginalizing others. As lesbians and gays become included within the public sphere, those who resist inclusion may become less imaginable as gay citizens.

Ettelbrick, writing in 1989, cautioned that recognizing same-sex marriage would further marginalize lesbians and gays who choose not to marry, particularly women, people of color, and poor and working-class people.[172] Eskridge questions this assertion, arguing that there is no empirical basis for accepting or rejecting it. He

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169.    Franke, *supra* note 40, at 245–46.
170.    Ayelet Shachar, *On Citizenship and Multicultural Vulnerability*, 28 Pol. Theory 64, 65 (2000).
171.    *Id.*
172.    Ettelbrick, *supra* note 24, at 8–9, 82.

suggests, for example, that lesbians show greater satisfaction in committed relationships than gay men (hence the need to "civilize" gay men).[173] This argument really only makes sense if one believes marriage to be the only context in which authentic commitment and intimacy are possible. Although they might garner mainstream support for marriage equality, such beliefs are antithetical to respecting sexual diversity.

Eskridge predicts that each stage of recognition will educate heterosexuals and prepare them for the next stage of greater recognition, and eventually greater acceptance, of all lesbians, gays and bisexuals.[174] In contrast, Angela Bolte accepts that lesbians and gays who choose not to marry will be discriminated against "at times," but believes that the long-term effect of same-sex marriage will be liberalizing.[175] These arguments too are really only convincing if one believes in a trickle-down model—that greater recognition for married lesbians and gays will translate into progress for the remainder of the LGBT "community."

What these authors fail convincingly to explain is precisely how the invisible hand of recognition would benefit those LGBT people who cannot or choose not to marry. It seems either false, or at best overly optimistic, to suggest that marriage will diminish social prejudice against them. Cooper looks at this from another perspective. She considers recognition an opportunity for lesbians and gays to come into the public sphere via obligations placed upon third parties, "[f]or it is these entities whose power to bestow or recognise inheritance rights, pension entitlements, insurance benefits, property assets and medical decision-making is at stake."[176] It is difficult, however, to look at this catalogue of predominantly financial benefits and not query which lesbians and gays stand to gain from it (white, professional, wealthy?) and who might be left out (women, people of color, poor and working-class people?). Nor can one help but question the conditions attached to recognition in the first place (asexuality, status quo politics?).

Who actually benefits from marriage equality? Do all beneficiaries benefit equally? And if not, who stands to gain the most and who the least (if at all)? Answering these questions is key to evaluating claims at either end of the queer political spectrum.

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173.     Eskridge, *supra* note 26, at 82–83.
174*.     See id*.
175.     Bolte, *supra* note 26, at 38.
176.     Cooper, *supra* note 57, at 113.

Empirical evidence has, until recently, been sparse, although a growing body of research on the personal and social benefits of relationship recognition is now emerging. This research appears to further erode the already tenuous link that some commentators draw between marriage equality and benefits for all queers.

In two studies that drew on qualitative data from nineteen same-sex couples in the Netherlands and 556 people married to same-sex partners in Massachusetts, M. V. Lee Badgett found, as one would expect, that "the right to marry and exercising the right to marry were associated with greater feelings of social inclusion among people in same-sex couples."[177] A more striking aspect of Badgett's research is what she calls the "privilege hypothesis"—that "marriage equality might generate greater feelings of inclusiveness for individuals in relatively privileged groups, namely men, White people, and higher-income people."[178] As she explains, "[T]he right to marry moves [high-income White] gay men much closer to full privileged status than marriage would for people of color, women, or lower-income people, so marriage-induced feelings of inclusion might be greater for high-income White gay men."[179] The Massachusetts data found that white, male, high-income respondents were nine to thirteen percent more likely to report feelings of social inclusion related to marriage than other groups, with race being the main driver of the privilege effect.[180] Badgett reasons that these findings might relate to "different norms of marriage behavior across race and class," or they might have "psychological roots in individuals' valuing of their privileged positions in those other domains."[181] It seems plausible, however, that these differential feelings of inclusion might have to do with different living standards and degrees of actual inclusion in society.

Implicit in the privilege hypothesis is an *under*privilege hypothesis—that marriage equality might generate lesser feelings of inclusiveness for individuals in relatively underprivileged groups, particularly women, people of color, and poor and working-class people. This should not be surprising, given the complex vulnerabilities that stem from the combination of race, gender, and class with sexual orientation and gender identity. As a recent report

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    177.    M.V. Lee Badgett, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*, 67 J. Soc. Issues 316, 316 (2011).
    178.    *Id.* at 319.
    179.    *Id.*
    180.    *Id.* at 329.
    181.    *Id.* at 332.

by the Center for American Progress highlights, "families headed by black same-sex couples are more likely to raise their children in poverty, black lesbians are more likely to suffer from chronic diseases, and black gay and transgender youth are more likely to end up homeless and living on the streets."[182] A remarkable finding is that "the quality of life of many black gay and transgender people remained relatively unchanged over the last decade despite the significant gains the gay and transgender movement achieved."[183] This suggests that "some of the gay headline policy priorities that garnered the most research, analysis, and advocacy—such as marriage equality—under-serve this population when taken alone, even though they are important for overall progress."[184]

The picture that emerges is that while marriage equality might lead to greater social inclusion for married couples, especially if they are white, male, and middle-class, it might do relatively little to address the needs of underprivileged groups, like women, people of color, and poor and working-class people. If marriage equality does not confer benefits equally, how much can it benefit those who are not married in the first place?

Another important political question arising out of marriage equality is whether marriage might contribute to the disintegration of the queer political movement. As marriage functions to widen the gap between the queer aristocracy and the queer underclass, it might deepen the fault lines between respectable and non-respectable queers.

Walters cautions that marriage might reinforce distinctions and entrench hierarchies between different queer constituencies:

> Gay marriage might grant visibility and acceptance to gay marrieds, but it will not necessarily challenge homophobia (or the nuclear family) itself; indeed, it might simply demonize nonmarried gays as the 'bad gays' (uncivilized, promiscuous, irresponsible) while it reluctantly embraces the 'good gays' who settle down and get married.[185]

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182. Aisha C. Moodie-Mills, Ctr. for Am. Progress, Jumping Beyond the Broom: Why Black Gay and Transgender Americans Need More Than Marriage Equality 1 (Jan. 2012), *available at* http://www.americanprogress.org/issues/2012/01/pdf/black_lgbt.pdf.
183. *Id*.
184. *Id*. at 1–2.
185. Walters, *supra* note 41, at 349.

Warner explains, "the image of the good gay is never invoked without its shadow in mind—the bad queer, the kind who has sex, who talks about it, and who builds with other queers a way of life that ordinary folk do not understand or control."[186] These moralistic hierarchies, rooted in conservative responses to AIDS, have found new life in the campaign for marriage.

One of the consequences of the entrenching of moralistic hierarchies, one that can be expected to intensify after same-sex marriage, is the fueling of moralizing discourses. There are, on the one hand, respectable queers who consider other queers morally reprehensible and denounce them for "giving us all a bad name." Sullivan condemns "quick and easy sex" among gay men as "a desperate and failed search for some kind of intimacy, a pale imitation of a deeper longing that most of us inwardly aspire to and deserve."[187] There are, on the other hand, queers dissenters who rebuke respectable queers for "selling out" by deciding to get married. In Smart's study on the impact of same-sex marriage on personal relationships, couples entering into same-sex marriages reported that sometimes "outright rejection was typically expressed in overtly political terms with friends questioning why a couple would adopt straight values, or would wish to conform to the standards of the dominant heterosexual system."[188] As one civilly partnered respondent noted:

> And another friend made a slightly pointed remark. But a remark as in a little 'Oh, what are you taking heterosexual values for?' . . . [T]hat was his professed reason why he would have made a stand against it. It was buying into heteronormativities—that system—which I appreciate and respect, and think he is wrong.[189]

Smart reasons that despite there being very few reported instances of such reaction, it was "highly likely that amongst their friends [of those interviewed] there would be dissenters."[190] She concludes that "it is possible that decisions to get married may put strains on some

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186.    Warner, *supra* note 22, at 131.
187.    Sullivan, *supra* note 52, at 61.
188.    Carol Smart, *Same-Sex Couples and Marriage: Negotiating Relational Landscapes with Families and Friends,* 55 Socio. Rev. 671, 682 (2007).
189*.    Id.* at 682–683.
190*.    Id.* at 683.

friendships where people find that they have rather different political perspectives or values."[191]

Even if moralizing is mutual, it is by no means equal, since respectable queers have the force of heteronormative hegemony behind their moral judgments. And while moralizing of any sort is divisive, the kind of moralizing that aligns itself with the status quo has more profound implications for and beyond queer politics. As Nancy Polikoff observes:

> While advocates for lesbian and gay parents once saw themselves as part of a larger movement to promote respect, nondiscrimination, and recognition of diverse family forms, some now appear to embrace a privileged position for marriage. They thus abandon a longstanding commitment to defining and evaluating families based on function rather than form, distancing themselves from single-parent and divorced families, extended families, and other stigmatized childrearing units.[192]

Walters criticizes certain pro-family arguments made by proponents of same-sex marriage that reaffirm the assumption of two-parent stability, "join[ing] in the chorus of single-mother bashing that has characterized the family values debate."[193] Respectability can thus act as a catalyst for political disintegration; respectability fuels moralism, moralism entrenches divisions, and divisions undercut solidarity, which is the basis of struggles for social justice. As Fellows and Razack explain, "a claim for justice cannot be transformative if it depends for its success on the marking the distinction between ourselves and other women who can then be labeled degenerate."[194]

## D. A Gay Agenda

It is not inconsequential that the distinctions between "good" gays and "bad" queers have pervaded calls for marriage equality. One of the consequences of this way of seeing the world is a queer political

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191.    *Id.*
192.    Nancy D. Polikoff, *For the Sake of All Children: Opponents and Supporters of Same-Sex Marriage Both Miss the Mark*, 8 N.Y. City L. Rev. 573, 590 (2005).
193.    Walters, *supra* note 41, at 351; *see, e.g.*, Eskridge, *supra* note 26, at 13 ("[C]hildren of lesbian couples are better adjusted than children of single heterosexual mothers, presumably because there are two parents in the household.").
194.    Fellows & Razack, *supra* note 7, at 350.

movement that is grounded on respectability rather than solidarity. In such a movement, the views of respectable queers are taken to represent the interests and politics of all queers. Warner laments "the newfound ability of respectable gay people to project themselves as the true lesbian and gay movement, and thus to trump those queers who do not share their own sense of the world."[195]

A case in point was the U.K.'s first national debate to pitch for gay votes hosted by *Jake*, a social network for gay men.[196] Their polling base is reported to represent affluent, largely male, mainly successful business and professional people: 29% are business owners or senior executives, and a further 35% are in consulting, management, legal and medical professions. Half earn more than £50,000 a year.[197] This seems less a cross-section of LGBT votes than an influential sub-group whose interests are likely to differ from those of less privileged queer constituents.

Nor is it coincidental that marriage has emerged as the highest of priorities within the queer movement with the increased stake and influence of respectable actors. In a queer movement grounded on respectability, the "good" gays set a "gay" agenda that coincides with their own (powerful) political and economic interests. This agenda finds support among the conservative and capitalist ruling elite because it is congruous with both systems. Gays and conservatives no longer make strange bedfellows; they are bound by marriage. British Prime Minister David Cameron captured this relationship perfectly when he declared: "I don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative."[198]

Additionally, Jonathan Chait argues that because wealthy Americans who donate to both major political parties tend to be both more socially liberal and more economically conservative than the parties' voters, it is easier for politicians of either party to garner these donors' support for causes that can be interpreted as socially

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195.    Michael Warner, The Trouble With Normal: Sex, Politics and the Ethics of Queer Life 68 (1999).

196.    Tony Grew, *Gay politicians pitch for your votes*, Pink News (July 3, 2009), http://www.pinknews.co.uk/news/articles/2005-13080.html.

197.    *See* Yuvraj Joshi, *Gay marriage? It's not the final frontier*, The Guardian (July 18, 2010), http://www.guardian.co.uk/commentisfree/libertycentral/2010/jul/18/gay-marriage-human-rights-diversity.

198.    David Cameron, British Prime Minister, Leadership for a Better Britain (Oct. 5, 2011), http://www.conservatives.com/News/Speeches/2011/10/David_Cameron_Leadership_for_a_better_Britain.aspx.

libertarian, like the right to marry.[199] This might account, for example, for the New York marriage equality bill being passed by a Republican Senate, with two-thirds of the donations in support of the bill coming from conservative financiers and wealthy donors to the Republican Party, as of May 2011.[200]

Why should this matter, so long as lesbians and gays continue to gain rights and recognitions? So what if respectable gays are taken to speak for all queers? And so what if gay people must become respectable in order to be heard? Surely, that is more empowering than not being heard at all?

Douglas NeJaime, writing in the context of legal reform, suggests:

> At times, lawyers must construct identities in order to achieve legal reform. For instance, if the judiciary proves sympathetic to a particular gay identity—e.g., homosexual as respectable family member—advocates will use such identity to obtain desirable results and to meet client needs. Accordingly, although cause lawyers should be aware (and wary) of their use of constitutive power, they are not necessarily acting wrongly or in bad faith when they do so. Moreover, the fact that the identities of GLBT clients are being produced by members of the GLBT community itself (or by straight allies working in the movement) makes the representation less harmful and more empowering. That is, at least GLBT constituents are being defined by similarly marginalized individuals rather than by the institutionalized ruling elite.[201]

NeJaime appears to propose a queer movement that is constituted, simultaneously, by respectability and solidarity. In such a movement, LGBT lawyers strategically produce and deploy respectable identities in order to achieve legal reform, without their strategies privileging certain queers at the expense of others. On the contrary, such constructions are thought inherently to be more empowering than those defined by the "institutionalized ruling elite," because "similarly marginalized individuals" produce them.

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    199.    Jonathan Chait, *The Gay Marriage Vote and the Power of Money*, The New Republic (June 27, 2011), http://www.tnr.com/blog/jonathan-chait/90801/the-gay-marriage-vote-and-the-power-money.
    200.    Confessore & Barbaro, *supra* note 86.
    201.    Douglas NeJaime, *Marriage, Cruising, and Life in Between: Clarifying Organizational Positionalities in Pursuit of Polyvocal Gay-Based Advocacy*, 38 Harv. C.R.-C.L. L. Rev. 511, 519 (2003).

It is a fallacy to think, however, that just because all queers are marginalized on the grounds of their sexuality, that they are "similarly marginalized." The experiences and interests of, for example, lesbian and gay professionals will vary greatly from those struggling to make ends meet. And, with some lesbians and gays occupying powerful positions within the state and the market, no longer is it simple to distinguish them from the "institutionalized ruling elite." Moreover, respectability is not simply a performance, but a system of hierarchy and domination that confers privilege only alongside other relations of inequality. Relatively privileged queers typically have a greater stake in respectability and a greater say in defining the queer political agenda. So it may be little consolation that respectable queers, and not straights, set the agenda, because it is unlikely to diverge so far from the status quo to reflect the interests of other queers. As Fellows and Razack explain, "[o]ur own claim for justice is likely to be undermined if we acknowledge the claims of Others—competing claims that would position us as dominant."[202]

One might expect the sheer breadth of queer causes and organizations to secure protection for marginalized interests. But some will find it more difficult to have their voices heard than others. NeJaime proposes a "polyvocal gay-based movement" in which "gays living across a broad range of political contexts will find access to representation, organizations equipped with the discursive tools necessary to effectively advocate on their behalf, and unlikely coalitions capable of producing varied and surprising results."[203] Despite its prescriptive appeal, the language of pluralism disguises privilege. As LGBT organizations compete for finite attention and resources, there are powerful incentives to prioritize mainstream causes, not because they are more pressing, but precisely because they are more privileged. When the *New York Times* features one "gay" story, or when Google sponsors one "gay" cause, it is typically something respectable that appeals to and, at the very least, does not alienate the liberal mainstream. Consequently, when large organizations pick one cause to prominently support, it is increasingly more likely to be something favored by key stakeholders in the LGBT movement, including media, donors, celebrities, and politicians. In such a context, plurality of LGBT activism alone cannot protect marginalized interests, particularly where those interests come into direct conflict with more privileged interests.

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202.    Fellows & Razack, *supra* note 7, at 340.
203.    NeJaime, *supra* note 201, at 561–562.

To some organizations, even marriage seems a radical prospect, thus rendering a great deal of less respectable causes unfathomable. In the United Kingdom, for example, Stonewall did not campaign for marriage after having helped pass the Civil Partnership Act due to concerns about "tactics."[204] The group wanted to ensure that any legislation would have cross-party political support and pass in the House of Lords. This is "equality practice"—an incremental approach to recognition whereby marriage should not immediately be recognized if it would "unsettle the community."[205] Going further, Stonewall independently calculated and stressed the financial burden of making both civil partnership and marriage available, irrespective of sexual orientation. One commentator aptly compared this with the disability lobby deliberating over the cost of wheelchair ramps.[206] When challenged on this position, chief executive Ben Summerskill countered: "Stonewall has never pretended to be a democratic member organisation. We have never said we speak for all lesbian, gay and bisexual people."[207] Even if Stonewall does not pretend to be democratic, as the U.K.'s largest and most influential LGB organization, it does speak for all lesbian, gay and bisexual people in the popular and political imaginations. Recently, Stonewall has changed its position to "securing equal legal treatment in areas where it doesn't already exist such as the legal form of marriage to same-sex couples."[208]

All of this is symptomatic of a shift within the queer movement from a politics of solidarity towards one of respectability.

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204.    Jessica Geen, *Stonewall chief executive won't be 'jumped into' gay marriage position*, Pink News (Sep. 27, 2010), http://www.pinknews.co.uk/2010/09/27/stonewall-chief-executive-wont-be-jumped-into-gay-marriage-position/.

205.    Eskridge, *supra* note 26, at xiii.

206.    Geen, *supra* note 204, at 2 ("Referring to Stonewall's estimated £5 billion cost over ten years for allowing straight couples to have civil partnerships, [journalist Johann Hari] argued that the disability lobby would not deliberate over the cost of wheelchair ramps.").

207.    *Id.* Indeed, Stonewall does not claim to speak at all for transsexual, transgendered, and intersex people, identifying itself as a "lesbian, gay and bisexual charity." Stonewall, http://www.stonewall.org.uk (last visited Mar. 27, 2012). The exclusion of other sexual and gender minorities from its mandate has been criticized. *See, e.g.*, Natacha Kennedy, *Stonewall Is Holding Back Transgender Equality*, The Guardian (Oct. 20, 2010), http://www.guardian.co.uk/commentisfree/2010/oct/20/stonewall-holding-back-transgender-equality (criticizing the exclusion of transgender individuals from Stonewall's membership and political objectives).

208.    *Stonewall's key Priorities 2011/12*, Stonewall, http://www.stonewall.org.uk/about_us/2534.asp (last visited Mar. 27, 2012).

Under this shift, rather than seeing themselves as part of a larger movement to promote respect for difference, gay people gain rights and recognitions by differentiating themselves from other marginalized people. This trend is not limited to marriage and encompasses other issues of queer politics. The argument in each case is, however, the same—"we" are not like "them." Take gay adoption: married gay couples should be allowed to adopt because they make better parents than single mothers who are allowed to raise children.[209] Or gays in the military: openly gay soldiers should be allowed to serve because they are more suitable than ex-criminals who are granted "moral waivers" in order to serve.[210] Uncover their analytical guise, and these are essentially claims to moral superiority. Legal victories for lesbians and gays have come about, at least in part, by undermining the rights and interests of other marginalized people, not least other queers.

The respectable turn in gay advocacy has implications for a queer politics of representation. Greater representation of minority individuals within societal institutions does not necessarily promote marginalized interests, particularly if the minority individuals who are most likely to gain representation are those who are most respectable. Too often, it makes little substantive difference that minority individuals in positions of influence are minorities at all, since their actions reinforce the beliefs and interests of the majority. Indeed, they may even withhold the "minority seat" from marginalized individuals who might actually meet the needs of the minority groups to which they belong. If respectable queers at the helm of the movement cannot be relied on to promote the interests of other queers, then representation by itself cannot secure justice for all. To redress the inherent limits of representation, limits that are exacerbated by the workings of respectability, what is needed is greater and more active participation of different queer constituents (respectable and otherwise) in setting the course for political activism and legal reform. This means, for example, that while initiatives like the Gay & Lesbian Victory Fund,[211] which seeks to increase the

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209.    *See, e.g.,* Eskridge, *supra* note 26, at 13 ("[C]hildren of lesbian couples are better adjusted than children of single heterosexual mothers, presumably because there are two parents in the household.").

210.    *See e.g.,* Aaron Belkin, *Felons, But Not Gays*, Huffington Post (Feb. 14, 2007),                    http://www.huffingtonpost.com/aaron-belkin/felons-but-not-gays_b_41207.html.

211.    *See    generally*    The    Gay    &    Lesbian    Victory    Fund, http://www.victoryfund.org (last visited Mar. 27, 2012) (aiming to "achieve

number of LGBT officials in U.S. politics, remain crucial, they cannot be a substitute for political participation of all queers. After all, what matters most is not that certain queers are allowed to speak, but that different queer perspectives are heard.

The respectable turn that gay advocacy has taken has been made possible, in no small part, by the work of lawyers. It is important to consider the role that LGBT lawyers have played in the production of respectability, enabling their LGBT clients to secure legal victories. NeJaime observes that "advocates will use [a respectable] identity to obtain desirable results and to meet client needs."[212] He does not find fault with this strategy, however, because "although cause lawyers should be aware (and wary) of their use of constitutive power, they are not necessarily acting wrongly or in bad faith when they do so."[213] Besides the legal professional ethics by which every lawyer is bound, this statement captures the relentless pragmatism of those committed to achieving social justice through law. Yet, pragmatism that is incognizant of the limits of the legal framework or unfettered by strong normative principles can be counterproductive. The kind of pragmatism that sees legal equality as something to be achieved at all costs may be guilty on both counts.

Allowing for their ethical duties to their clients, it would still be disingenuous to deny the vested interests that many lawyers have in the success of legal strategies. Eyer is self-reflective to recognize that "moving away from an identity politics model (a model focused specifically on group-based non-discrimination claims) towards a more broad-based approach . . . may evoke strong (negative) reactions from those of us who have built our professional identities around civil rights advocacy and scholarship, as it seems at first glance to advocate the abandonment of decades of hard work in the identity politics vein."[214] Nor does effective and ethical representation of their clients relieve lawyers of responsibility for the harmful effects on others of legal strategies that privilege respectability. Fellows and Razack summarize this problem as "competing marginalities" and note that it centers around the "deeply felt belief that each of us, as women, is not implicated in the subordination of other women."[215] Cooper cautions that "[i]f demands for spousal recognition are not to

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equality for LGBT Americans by increasing the number of openly LGBT officials at all levels of government").

212.    NeJaime, *supra* note 201, at 519.
213.    *Id.*
214.    Eyer, *supra* note 131, at 163–64.
215.    Fellows & Razack, *supra* note 7, at 335.

reinscribe gay relationships according to conventional hierarchies of the proper, advocacy needs to affirm other kinds of relationships or personal statuses too, articulating proper place to norms of diversity, consent and equality."[216] That respectability is liable to entrench conventional hierarchies and secure social justice for some at the expense of others cannot be ignored.

## IV. CONCLUSION

Political debates on inclusion can be reduced to a few fundamental questions: what acceptance, at what cost, for whom, and at whose expense? This Article has posed these questions in relation to the newfound public recognition of gay people and relationships and explored its implications for queer politics. Lesbians and gays are increasingly included within the social and legal status quo, but this inclusion is contingent upon their being respectable. As such, it is secured at the normalizing costs of conformity and to the exclusion and even at the expense of other queers. Of course, not all lesbians and gays are interested in securing privilege at the expense of other queers. Respectability may be bestowed upon those who are deemed worthy of it, for example, by reaching the heights of professional success or getting married. Such individuals, by virtue of their relatively privileged social standing, may be suitably positioned to promote greater acceptance for particular LGBT causes. Respectability can thus appear to be a means to entrench hierarchies and inequalities or, alternatively, to disrupt them.

There are, however, inherent and serious difficulties in relying on respectability as a means to achieve social justice for all. The nature of respectability is such that, although substantive political outcomes will sometimes depend on the motives of the respectable agent, even well meaning "good" gays can do wrong by other queers. When striving to become respectable so as to feel the law's embrace, one ought seriously to question the overall emancipatory potential of a paradigm through which "sexual practice is evaluated, distinctions drawn, legitimated and maintained . . . ."[217]

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216.     Cooper, *supra* note 57, at 105.
217.     Skeggs, *supra* note 8, at 118.