

*A New Entity
in the History
of Sexuality:
The Respectable
Same-Sex Couple*

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In *The History of Sexuality: Volume I*, Michel Foucault argued that “homosexuality” is a relatively recent invention, distinct from earlier forms of same-sex love and lust. “Homosexuality” could only emerge when European scientific knowledges began to peer into—and construct—an inner “self,” a personal identity that the nineteenth century saw as a matter of physiology and that the twentieth century regarded as fundamentally psychological. Sexuality—in the West but not in the East—came to be regarded as that which is most secret and therefore most authentic about “the self,” the key, in other words, to personal identity.

Before the rise of modern scientific knowledges, law governed sexuality as a set of acts, mainly distinguishing “unnatural” from “natural” acts. Many law codes still contain prohibitions against sodomy and other “unnatural” acts. And, exceptionally among advanced industrial democracies, the United States criminalized sodomy in many states until the very late date of 2003, when such laws were declared unconstitutional by the Supreme Court. Nevertheless, the persistence of “sodomy” in legal codes owes more to the difficulties involved in changing and modernizing law than to any real belief that “sodomy” is a useful category: it is highly doubtful that any of the men charged under sodomy laws in the waning

years of U.S. sodomy statutes thought of themselves as "sodomites." Of course some people, especially men, have sex with people of the same sex without thinking of themselves as gay. But it is not inappropriate, when making a large-scale generalization, to say, in line with Foucault's famous thesis, that the regulation of the self has been increasingly dominated by the notion of "identity." What you did with various body parts came to be regarded, throughout the course of the twentieth century, mainly as a clue about what kind of person you were. And "the homosexual" was probably the most successful of all deviant identities. It was invented at the same time as the hysteric, the nymphomaniac, and the kleptomaniac, but unlike these marginal entities/identities, it ended up occupying a very central place in the constitution of twentieth-century human beings and social groups. Although subsequent research has shown that Foucault's contrast is far too sharp, the point about the shift from governing sexuality through acts to governing through identities has been generally accepted by historians and social scientists.

But what has happened since the 1970s, when Foucault was writing about sexuality? Let me suggest, half jokingly but half seriously, that we have been witnesses to a historic event. This is the emergence, in the space occupied by "homosexuality," of a new sexual object/subject: the respectable same-sex couple. If the medieval soldier charged with sodomy was not "a homosexual," as Foucault argued, so too, we can argue, the respectable same-sex couple (to which I am assigning the acronym "RSSC") is not two homosexuals added together. Let me explain.

Almost twenty years ago, Jean Baudrillard wrote a little book, *Forget Foucault*, which, amidst much envy, contained a prescient passage:

And what if Foucault spoke to us so well of sexuality . . . only because its form, this great production . . . of our culture was, like that of power, in the process of disappearing? Sex, like man, or the category of the social, may only last for a while. And what if sex's reality effect, which is at the horizon of the discourse on sexuality, also started to fade away radically. . . ? Foucault's hypothesis itself suggests how mortal sex is, sooner or later.¹

It certainly seems true that the particular form of the inner self that is "sexuality"—the object of inquiries from 1890s sexology to sex-change clinics—may indeed be now fading.

Young people who would rather be “queer” than “gay” are leading the way. The term “queer” blurs the boundaries of the homosexual self of tormented 1950s autobiographies and medico-legal inquiries. Queer is a purposefully vague name for a nonconformist lifestyle that is “post-homosexual,” historically if not biographically. And AIDS discourse has also given rise to a new, post-homosexual object: the man who has sex with men. Contrary to Foucault’s discussion of the disciplinary gaze, AIDS experts don’t care one bit whether this personage is gay.

But the queer youth and the “man who has sex with men” are marginal by comparison with the legally and culturally prominent figure of the RSSC. This is likely more apparent in Canada, where gay/lesbian marriage began to be legalized as early as 2003, than south of the forty-ninth parallel; but given the speed with which U.S. Americans rushed to San Francisco city hall during February of 2004, when gay/lesbian marriage was for a time provided in a more or less legal manner, perhaps the Canadian situation is relevant elsewhere, even in Bush’s America.

The pictures that were used in the media are of particular importance for understanding how the RSSC is something new, rather than the addition of two homosexuals. 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, usually shown in the full glare of sunlight, a lighting convention at odds with representations of the classic homosexu-



Figure 1

al. A look at the photographs that are still available, somewhat after the fact, proves enlightening. The first lesson in social semiotics is provided by an analysis focusing on that most important of all signs of marriage, notably, the wedding dress. A number of the lesbian couples who got married at the San Francisco city hall wore

wedding dresses, as seen in one of the photos (fig. 1). And I can also attest to the presence of wedding dresses from personal experience. I happened

to be in San Francisco in mid-February 2004 (where my partner and I were constantly asked if we had come to get married by well-meaning U.S. Americans not aware of the fact we could have gotten married in Toronto quite easily, if that was our desire). My partner and I, used to the idea of gay/lesbian marriage but not to the flashier styles of U.S. lesbians, were quite struck by seeing young lesbians in full wedding white waiting for the subway in the Berkeley mass transit station. It was very difficult to tell whether the wedding dresses were being worn in straight-up imitation of marriage or in playful parody. It is quite possible, given the mixed feelings gays and lesbians have about marriage, that the wearers were not themselves very clear about their intentions. By contrast, the available photos of Canadian lesbian couples (fig. 2) did not reveal a single wedding dress.



Figure 2

All the couples depicted looked earnest and serious, sort of butch, and dressed in office attire: no wedding dresses; no playfulness; no parody—but also, no imitation of marriage. Perhaps Canada really is a more boring and earnest country; the lesbians do seem just to be wanting to get married, as opposed to wanting to dress up and have a really good time.

But what about the male couples? The first thing that one notices is that none of the men in U.S. or Canadian pictures (fig. 3) of gay male weddings wear white dresses. Drag queens seem to have vanished from view. Nearly all of the men featured in the newspaper photographs wore shirts and ties; nearly all were middle-class, middle-aged, and white. They looked either like soft-spoken librarians or like beefy stockbrokers—not like we expect homosexuals to look.



Figure 3

But perhaps pictures of actual weddings, or rather of that small sample of weddings that happened to be covered by the media, are not representative. I thus turned to another source, the *Toronto Star's* Pride Day special section, published June 19, 2004. Toronto Pride Day is a significant event

because it draws around three-quarters of a million people, many of them U.S. gays and lesbians. The local press now covers this event in a boosterish manner, just like any other event that contributes to the local economy and to the local myth that Toronto is the mecca of multiculturalism and tolerance. This special section of Canada's largest circulation daily had two main articles. One featured the 73-year-old homosexual activist, George Hislop, wistfully reminiscing about the days of illegality. This story was obviously meant to represent the ghost of gay lives past. The community's future, by contrast, was embodied not in a young queer person or a transsexual activist, but, predictably, in images of a RSSC. Equally predictable, the couple in question was made up of two middle-class men. The couple is portrayed as totally immersed in the financial and logistical challenges of their upcoming wedding. In what can best be described as a feminist nightmare vision, both are obsessing about the color scheme, the food, the entertainment, and the guest list.

I looked in vain for something that the RSSC might have had in common with Hislop. Sex, perhaps? Foucault would have said that in the end it is sex that holds the RSSC together and links it to both the homosexual of the 1960s and the eighteenth-century sodomite. But nothing about sex was said or even faintly implied in the article about this gay male couple. The two men who were about to tie the knot seemed to be far too engrossed in the details of their wedding to even think about sex. The travel of relatives from Brazil to Toronto was one key logistical challenge discussed at length. Other practices of consumerism were also discussed in fine-grained voyeuristic detail. The readers aren't given even a distant hint that these two men might sometimes have sex with one another. Instead, the readership is excitedly told how much the flower arrangements and the rental of a pleasure boat on Lake Ontario are going to cost. The frisson experienced by the reader clearly has nothing to do with any sex that might be going on (indeed, one suspects little time or energy will in fact be available for sex, at least, for the marrying couple). Other than the RSSC itself, the only people cited in the article are wedding professionals. These entrepreneurs offer up-to-date information about the new consumer niche and advise readers who operate small businesses not to neglect the gay marriage market (the gay male marriage market at any rate; lesbian

weddings aren't mentioned). Readers (including business people) thus learn from authoritative sources that gay and lesbian couples always pay for their own wedding, with no parental involvement, which is apparently a key marketing point.

The *Star's* coverage of Pride Day certainly supports Baudrillard's claim that if homosexuality did not die with Foucault in 1984, it is dying or dead now. Hislop, who despite his advanced age likes to shock people by saying he likes boys, probably knows many florists; but he is otherwise wholly unconcerned with weddings and, indeed, with consumption. In the days of homosexuality, activism meant poverty. Hislop, who is still fighting in the courts to get the Canadian government to retroactively include him in the same-sex pension arrangements that have been made available in recent years (his partner died a few years before the cut-off date for same-sex pensions), does not come across as a consumer at all.

But what about law? Putting away the newspaper, I turned to the relevant decisions of the Supreme Court of Canada, the decisions that were key in paving the way for gay/lesbian weddings, in pursuit of the vanishing homosexual. Instead of sexuality, homo or otherwise, I found two non-sexual themes. The two themes that run throughout the decisions are (1) family and (2) finance/consumption. Conjugalinity, family, and impoverishment were the sole themes of the Court's descriptions of the retirement struggles of James Egan and his partner in the 1995 case *Egan v. Canada*, a landmark decision that first declared that discrimination against gays and lesbians was in Canada just as illegal as discrimination on the basis of race or religion. Neither sex nor sexuality are mentioned in either the majority or the minority *Egan* decision. "Sexual orientation" is the only sex-like term in the Court's text—but this is not a *sexual* identity. As I have argued elsewhere with much more evidence than can be presented here, sexual orientation in Canadian law actually refers not so much to homosexuality as a sexual identity, but to an urban lifestyle, partly political and partly consumerist. Particularly in cases involving mayoral declarations about Pride Day, the "gay community" is constructed as a quasi-ethnic group, a group that is entitled to rights because it has cultural and social solidarity: it organizes bowling leagues, AIDS support groups, and all the other sort of community organizations that ethnic groups in Canada have

long had. The Pride Day cases too are remarkably silent about sex; they are all about "culture" and "community," the sort of entities that official Canadian multiculturalism can easily accommodate. But perhaps the desexualization of gay rights in this decision is due to the fact that the *Egan* case was about pension benefits. A couple that has been together forty years is unlikely to have a sexy aura. Perhaps the Egan's are not sexual, and hence not homosexuals, by virtue of the fact that they were challenging pension regulations.

So what about the other famous RSSC of Canadian law, then? Another notable Canadian legal case involved a lesbian couple known as "M and H" (to preserve their privacy). A 2001 Supreme Court decision, which stopped short of actually legalizing gay marriage, extended exactly the same recognition of heterosexual common-law couples to lesbian and gay couples, a recognition that involves compulsory support obligations after living together for two years. M and H are two women. They are not elderly. They weren't trying to get their pension. And they were undoubtedly presenting themselves as lesbians when they went to court. They could thus be sexual/homosexual. But their sexuality too is completely erased. Their issue was divorce, or rather, alimony. In a nutshell, M was unemployed or precariously employed, while H owned considerable property. When they split up, M claimed a right to alimony. The Supreme Court eventually ruled that H and others in similar positions did indeed have an obligation to support their ex-partners.

Not infrequently, people divorce for reasons related to sexuality; but this is not contemplated anywhere in the legal texts. The Court's recounting of their relationship is wholly devoted to financial matters. Of course, a claim for alimony is all about money; but nevertheless, some reference to the initial romance might have been found relevant, if only to explain the somewhat careless joining of finances that later caused discord. Let us turn to the Supreme Court text to see if there are any homosexuals.

M and H are women who met while on vacation in 1980. It is agreed that in 1982 they started living together in a same-sex relationship that continued for at least five years. . . . During that time they occupied a home which H had owned since 1974. H paid for the upkeep of the home. . . . In 1983, M and H purchased a business property together. In 1986, they purchased as joint tenants a vacation prop-

erty in the country. They later sold the business property and used the proceeds to finance the construction of a home on the country property.

As a result of a dramatic downturn in the advertising business in the late 1980s, the parties' debt increased significantly. H took a job outside the firm and placed a mortgage on her home to pay for her expenses and those of M. M also tried to find employment but was unsuccessful. . . .

By September of 1992, M and H's relationship had deteriorated.²

The sheer ordinariness of the details given here is no doubt intended: writing up "the facts" in this dreary-details-of-domestic-life manner furthers the justices' project to normalize same-sex marriage. 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.

The RSSC of the *Toronto Star* pre-wedding photos and the RSSC of M and H occupy opposite ends of the marital happiness spectrum. But neither entity is made up of two homosexuals. Nobody cares about their sexuality—including, apparently, the parties involved. The nonsexual transactions that make up the everyday fabric of coupledness are what the texts find worth recounting. In the *Star*, one finds that the narrative of the happy Toronto couple is wholly made up of florists' bills and plane tickets for relatives. The narrative of the divorcing couple of the M and H Supreme Court decision, for its part, is made up of joint tenancy agreements and bank loan documents.

The RSSC is still a very new object in the legal (and economic) horizon. It would thus be premature to make any grand claims about its "essence." But it is clear that Hislop's reminiscences of homosexuality and its pleasures and dangers are precisely that—reminiscences. Bank loans, florists' bills, joint bank accounts, renovated gentrified downtown homes, and worries about the relatives are the pieces that make up the new, post-homosexual entity that Canadian jurisprudence has helped to fabricate: the respectable "same-sex" couple. Like other proper homosexuals, Foucault is no doubt turning over in his grave.

Notes

1. Jean Baudrillard, *Forget Foucault* (New York: Semiotexte, 1987), 13.
2. Attorney General for *Ontario v. M and H*, par. 9-13.

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