

ANALOGICAL REASONING AND THE REGULATION OF RACE AND SAME-SEX
SEXUALITIES IN CANADA, 1969–2005

AV VERHAEGHE

A DISSERTATION SUBMITTED TO THE FACULTY OF GRADUATE STUDIES IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR
OF PHILOSOPHY

GRADUATE PROGRAM IN GENDER, FEMINIST & WOMEN'S STUDIES
YORK UNIVERSITY
TORONTO, ONTARIO

SEPTEMBER 2022

©AV VERHAEGHE, 2022

Abstract

In this dissertation, I conceptualize the Canadian state's regulation of sexuality as a racial project. To do so, I trace the historical development of analogical reasoning as a mode of racial and sexual governance in Canada between 1969 and 2005. I take a case study approach and use critical discourse analysis to examine House of Commons transcripts and Supreme Court of Canada decisions from three moments that are frequently cited as turning points in Canadian LGBTQ2S history: Parliament's 1969 decision to decriminalize anal sex that occurred in private between two consenting adults over 21 years of age; the Supreme Court's 1995 ruling in *Egan v. Canada* in which the Court decided sexual orientation was analogous to the grounds of discrimination enumerated in the Canadian Charter of Rights and Freedoms, one of which is race; and Parliament's 2005 decision to legalize same-sex marriage. I analyze how prime ministers, members of parliament, and Supreme Court judges developed and mobilized the analogical logic that discrimination on the basis of sexual orientation is like racism. I argue that this use of analogical reasoning serves the Canadian state's interests in two ways. First, because state actors analogized contemporary discrimination on the basis of sexual orientation to examples of racism that were either based in the United States or in Canada's past, the analogies invisibilized the ongoing realities of racism and white settler colonialism in Canada, securing Canada's self-construction as "post-race" and delegitimizing critiques of Canadian racism. Second, I suggest that the construction of race and sexual orientation as analogical rather than intersecting phenomena has been part of an effort to diffuse more radical demands for justice by people working against multiple and intersecting forms of racial and sexual repression. Ultimately, I argue that the reforms I describe in this dissertation, which were supposedly aimed

at enhancing the inclusion of LGBTQ2S people in Canadian society, strengthened, rather than undermined, heteronormativity, racism, and white settler hegemony in Canada.

Acknowledgements

This dissertation would not have been possible without the incredible support of my supervisor, Amar Wahab, who I've learned so much from over the past eight years. I'm so grateful that Amar encouraged me to explore analogical reasoning as a mode of racial and sexual governance in Canada. Amar helped me to think through the diversification of whiteness, the complexities of racialized homophobia in Canada, and changing manifestations of racism in Canada, along with many other vital contributions over many years. I'm particularly grateful for the kindness, encouragement, and understanding Amar has shown me throughout the PhD process which sustained me and made this work possible.

I'm very grateful for my amazing committee members, Eve Haque and Enakshi Dua, for their ongoing support throughout the PhD process. Eve helped me think through the complexities of Orientalism, Islamophobia, and race in Canada. I'm also grateful to Eve for hiring me as an RA during my final unfunded year of the PhD. Ena pushed me to think about the complexities of intersectionality, citational politics, and the nuances of the history of the Canadian state's racism. Both Eve and Ena helped me to better identify the contribution of my work which has greatly strengthened my dissertation. I'm so glad to have had the opportunity to work with you both.

Thank you to my external examiner, Suzanne Lenon, for her careful and deep engagement with my work. I'm very grateful for the detailed feedback Suzanne provided, which will greatly strengthen this project moving forward. Thank you also to my examining committee members David Murray and Kathy Bischooping for their thoughtful and generous engagement with my dissertation. I'm very grateful for the generative conversation.

I'd like to thank Juanita DeBarros and Nadine Attewell, who supervised my BA and MA projects, for their support and insights while I was beginning to think through the relationship between race and sexuality.

I'm eternally grateful for the support and guidance Yemi Adebisi, Lindsay Gonder, and Sue Sbrizzi offered throughout the PhD process. I would not have been able to navigate York without you.

To my colleagues in the Gender, Feminist, and Women's Studies program at York, I so appreciate the care, advice, and brilliance you've shared with me through the process. I learned so much about embodiment, relationality, coloniality, and care while taking courses with Crystal Kotow, Sabina Chatterjee, and Harshita Yalamarty. I'm grateful for the incredible friendships I formed with Ela Przybylo, Ana Rekhviashvili, Heather Evans, and Jenna Danchuk while walking the picket lines. The sounding boards provided by Tobias Wiggins, Morgan Bimm, Stephanie Jonsson, Angela Stanley, and Hannah Maitland sustained me through the teaching process.

I'm so grateful for the friendships I made during my master's at McMaster. Sharifa Patel and Sandy Da Costa have been the source of so much support, laughter, and brilliance throughout the PhD process and I don't know how I would have done it without them.

Thank you to my good friends Rianka Singh and Jessica Lapp who have helped my figure out academia and post-PhD life.

Thank you to my good friends and climbing partners, Em Wong, Alex O'Neill, Morgan Bimm, Evan Vipond, Stephanie Jonsson, and Adanyi Phillip. You all helped me so much in getting through this process.

I'm so grateful for the critical academic community that I've been a part of at *Curriculum Inquiry*. Thank you to Rubén Gaztambide-Fernández, Neil Ramjewan, Lucy El-Sherif, James

Miles, Diana Barrero Jaramillo, Shashank Kumar, Preeti Nayak, Jaqueline Scott, Lindsay Cavanaugh, Cassie Brownell, Arlo Kempf, and Jennifer Brant for your kindness, support, and critical approach to academic publishing.

I'd like to thank everyone I worked with at LGBT Youth Line for the incredible sense of community I felt from you all. I learned so much about race and queerness during my time at Youth Line and I'm so grateful for the conversations, laughs, and friendship we've shared.

Finally, I would like to thank my family for their support throughout this long process. My father, Jozef Verhaeghe, has offered me unending support and love throughout this process and I would not have made it through without him. I'm also deeply grateful for the support of my sisters, Julia and Laura Verhaeghe, my nieces and nephews, Sylvio, Dalia, and Aiden, and my Aunt Lieve.

Table of Contents

Acknowledgements.....	iv
Table of Contents.....	vii
Introduction: Analogical Reasoning and the Canadian State’s Regulation of Race and Sexuality	1
White Supremacy on Twitter	5
Analogical Reasoning as Racial and Sexual Governance	11
Chapter Outline	24
Chapter 1: Theory and Methodology	31
Theoretical Framing	31
Analogical Reasoning and the Logics of Parallelism	31
Legal Studies: Intersectionality, Analogy, Discrimination, and “Immutability”	40
Critical Race Studies: On Canada and the Flexibility of Racism	44
Histories of Sexuality, Race, and Indigeneity in Canada	49
Methodology	54
Intersectional Methodology	54
Critical Discourse Analysis.....	57
Limitations	61
Chapter 2: Historical Context: Canadian State Regulation of Race and Sexuality, 1969-2005	63
Chapter 3: Non-Normative Sexualities and the Reconstruction of Canadian Whiteness, 1967-1969	94
Context: Immigration Reform and the White Paper	102
The White Paper	102
Immigration Reform	110
Behavioral Arguments: Conceptualizing Sex between Men as Vice	116
Anti-Muslim Discourses	119
White Settler Colonialism and Indigeneity	126
Towards an Essentialist Understanding of Homosexuality	130
The Emergence of Canadian Exceptionalism	134
Compassion, Tolerance, and Western Imaginaries	136
Conclusion	145
Chapter 4: Producing Race and Sexuality as Parallel Phenomena: The Role of Analogical Reasoning in Canadian Liberalism	148
Context: Race, Sexual Orientation, and Nation in Canada in the Early 1990s	155
<i>Egan v. Canada</i>	165
Canadian Liberalism	170
Liberal Analogies in <i>Egan</i>	175

<i>Egan</i> and the Canadian Welfare State	193
Conclusion	202
Chapter 5: Race Analogies, Multiculturalism, and the Parliamentary Debates about Same-Sex Marriage	205
Legal Landscape for the Legalization of Same-Sex Marriage	206
Canadian Multiculturalism after 9/11	210
Race Analogies in the Debates about Same-Sex Marriage	215
Multiculturalism and Same-Sex Marriage	239
Representations of Sikhism and Queerness in Canada	241
Critiques of Canadian Multiculturalism	243
Multiculturalism and Same-Sex Marriage in the Debates	246
Conclusion	259
Conclusion	261
Project Limitations	271
Concluding Thoughts	273
Bibliography	275
Archival Sources and Government Documents	275
Newspaper and Magazine Articles, Television, and Social Media	276
Secondary Sources	278

Introduction: Analogical Reasoning and the Canadian State's Regulation of Race and Sexuality

This dissertation analyzes changes to the Government of Canada's regulation of sexuality and "race" between 1969, when the federal government partially decriminalized anal sex, and 2005, when parliament passed the *Civil Marriage Act* and legalized same-sex marriage. Drawing on House of Commons and Supreme Court transcripts, I focus on the ways in which prime ministers, members of parliament (MPs), and Supreme Court judges implemented and advocated for "progressive" legislation concerning sexual orientation by drawing on ideas about race. In this project, I take up the following research questions: How has the Canadian state regulated race and sexuality in relation to one another since the late 1960s? What are the discursive and material effects of this relational mode of regulation? How does the relational regulation of race and sexuality relate to the maintenance of white settler hegemony in Canada? I show that over the course of this period, and particularly after the constitutional entrenchment of the Canadian Charter of Rights and Freedoms (the Charter) in 1982, political elites in Canada had come to espouse an understanding of sexual orientation based on analogies they drew between the contemporary legal discrimination to which gay and lesbian people were subjected and the historical treatment of people racialized as non-white.

By the time same-sex marriage was being debated in parliament, it was common for MPs to compare the inability of same-sex couples to have their relationships recognized as marriage by the state to Jim Crow segregation in the US south, US anti-miscegenation laws, and slavery in the US. I argue that this form of analogical reasoning mobilized by political leaders and judges discursively distanced Canada from racism by positioning racism in the United States and/or as a

historical, rather than contemporary, reality in Canada. This mode of reasoning also discursively diminished the violence and brutality of racial segregation and slavery, both in Canada and the US, in terms of their histories as well as the ways in which these systems continue, in reconfigured forms, in the contemporary period.¹ In addition to the racism that underwrote the use of these analogies, the government's analogical construction of race and sexual orientation invisibilized the lives of gay, lesbian, queer, and/or non-heterosexual Black people, Indigenous people, and people of colour (BIPOC)² and constructed racism and homophobia as parallel, rather than intersecting, systems of marginalization and exploitation.³ Analogical reasoning is one component of the state's management of race and sexuality but does not account for all aspects of the state's governance of race and sexuality. The white settler colonial regulation of Indigenous sexualities, in particular, are largely absent from this project because the analogies state actors use perpetuate the obfuscation of Indigenous life in Canada.

To examine how the Canadian state has reconfigured its relational regulation of race and sexual orientation, I draw on three case studies: House of Commons debates about the partial decriminalization of anal sex that took place between 1967 and 1969; the 1995 Supreme Court case *Egan v. Canada* in which the Court determined that sexual orientation is legally “analogous” to the delineated grounds⁴ protected under the equality rights section of the Charter; and the 2004-2005 parliamentary debates about same-sex marriage.

¹ Saidiya Hartman, *Lose Your Mother: A Journey along the Atlantic Slave Route* (New York: Farrer, Straus and Giroux, 2008); Christina Sharpe, *In the Wake: On Blackness and Being* (Durham: Duke University Press, 2016).

² As Jared Sexton argues, the term “people of color” “misunderstands the specificity of antiblackness and presumes or insists upon the monolithic character of victimization under white supremacy”; see: Jared Sexton, “People-of-Color-Blindness: Notes on the Afterlife of Slavery,” *Social Text* 28, no. 2 (2010): 48.

³ Anjali Arondekar, “Border/Line Sex,” *interventions* 7, no. 2 (2005): 240.

⁴ The “delineated grounds” (i.e., those that are explicitly named in the Charter) are: race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. See: *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1), <https://laws-lois.justice.gc.ca/eng/const/page-15.html>

Before exploring these cases in more detail, I begin this introduction by outlining GayTwitter's⁵ response to Donald Trump's instructions to the Proud Boys to "stand back and stand by." While a US presidential debate, the forum where Trump made these comments, may seem like a strange starting point for a historical analysis of race and sexuality in Canada, some of the social media responses to Trump's comment demonstrate how analogical reasoning operates in relation to race and sexuality in Canada as well as the dangers of mobilizing these analogies. Similarly to what I describe in chapters 4 and 5, this more recent case from Twitter shows how analogies between racism and homophobia that circulate in Canada can position racism in the US and thereby construct Canada as "post-race." As in the cases I describe in chapters 4 and 5, this example from Twitter shows how such analogies position racism in the US while constructing Canada as tolerant or accepting of sexual diversity, demonstrating how the invisibilization of Canadian racism can bolster celebratory discourses around Canadian respect for diversity in a context in which acceptable diversity is limited to white sexual diversity.

After Trump's comments in the debate, George Takei tweeted asking "gay guys" to take pictures of themselves kissing and doing "very gay things" with the hashtag #ProudBoys to "mess them [the Proud Boys] up real bad."⁶ The intention, according to *Bitch Media* reporter Rachel Charlene Lewis, was to "flood a tag meant to rally white supremacists with gay and queer men instead."⁷ In his initial tweet, Takei referenced the K-pop group BTS⁸; the group and K-pop

⁵ Ricardo Saucedo, "GayTwitter: An Investigation of Biases Toward Queer Users in AI and Natural Language Processing," *The Saint Louis University McNair Research Journal* 1 (2018): 60.

⁶ George Takei (@GeorgeTakei), Twitter, October 1, 2020, 6:14 p.m., <https://twitter.com/GeorgeTakei/status/1311791729767526400>

⁷ Rachel Charlene Lewis, "Denouncing White Supremacy Must Be a Movement, Not a Trend," *Bitch Media*, October 9, 2020, <https://www.bitchmedia.org/article/white-gay-men-cant-reclaim-proud-boys-queer-racism>.

⁸ BTS is an acronym for Bangtan Sonyeondan, the Romanized spelling of the hugely popular K-pop group 방탄소년단. K-pop scholars note the prevalence of gender non-conformity among K-pop stars and the commonality of gender and sexual exploration as part of fans' cosplay. See: Layoung Shin, "Queer Eye for K-Pop Fandom:

fans had been using social media over the summer to undermine the “White Lives Matter” movement and police targeting of Black Lives Matter protesters. For example, in late May 2020, K-pop fans flooded the Dallas Police Department app iWatch—on which the police requested the public upload videos of BLM protesters engaging in “illegal activity” —with fancams, which is the likely cause of the department taking down the app in less than 24 hours, though they simply cited “technical difficulties.”⁹ Then, in early June 2020, K-pop fans began tagging K-pop videos, gifs, and memes, as well as messages of support for the BLM movement, with #WhiteLivesMatter.¹⁰ In reference to these actions, *Rolling Stone* reporter Tim Chan concluded:

The united effort effectively drowned out the white-supremacist messaging that organizers of the hashtag were likely hoping to spread, with K-pop fans using the hashtag to promote their favorite groups instead, while also linking to anti-racist organizations and messaging.¹¹

Takei’s reference to BTS suggests that he would have liked to see a similar subversion of the Proud Boys by gay men on Twitter.

Among the many responses to Takei’s tweet, @CAFinUS, an account run by the Canadian Armed Forces in the US, posted an image of two people kissing,¹² one of whom was wearing a Canadian Armed Forces uniform. This attempt at subverting the powerful online presence of far-right white nationalists shifted the conversation about white supremacy in the US

Popular Culture, Cross-Gender Performance, and Queer Desire in South Korean Cosplay of K-Pop Stars,” *Korea Journal* 58, no. 4 (2018): 90.

⁹ Sara Delgado, “K-Pop Fancams Got Political to Protect Black Lives Matter Protesters From Dallas Police,” *Teen Vogue*, June 1, 2020. <https://www.teenvogue.com/story/k-pop-fancams-protect-black-lives-matter-protestors-dallas-police>; Julia Alexander, “K-Pop Stans Overwhelm App After Dallas Police ask for Videos of Protesters,” *The Verge*, June 1, 2020. <https://www.theverge.com/2020/6/1/21277423/k-pop-dallas-pd-iwatch-app-flood-review-bomb-surveillance-protests-george-floyd>.

¹⁰ Josh K. Elliott, “K-Pop Fans Take Over ‘White Lives Matter’ Hashtag to Drown Out Racism,” *Global News*, June 3, 2020. <https://globalnews.ca/news/7021392/k-pop-white-lives-matter-george-floyd/>; *BBC News*, “K-pop Fans Drown Out #WhiteLivesMatter Hashtag,” June 4, 2020, <https://www.bbc.com/news/technology-52922035>.

¹¹ Tim Chan, “K-Pop Power: Fandoms Unite to Take Over #WhiteLivesMatter Hashtag on Twitter,” *Rolling Stone*, June 3, 2020. <https://www.rollingstone.com/music/music-news/white-lives-matter-k-pop-1009581/>.

¹² There was no information about the people’s gender or racial identities, but they would likely both be read as white men by mainstream Canadian audiences.

to a celebration of mostly white gay men's expressions of love and sexuality. To make sense of the attempt at subversion in this imagery, the viewer needed to have some understanding of the analogical logic that racism is similar to homophobia; this analogy allowed for a reading of the attack on homophobia through celebratory portrayals of gay love and sexuality as a simultaneous attack on the white supremacist ideologies of the Proud Boys. In this way, the imagery used the analogy between racism and homophobia to replace attention to race with an embrace of gay love and sexuality. The @CAFinUS's image mobilized this analogy not only to replace a critique of racism with a celebration of gay sexuality but also to situate racism in the US (with the Proud Boys being over-simplistically understood as a US phenomenon) and gay inclusion in Canada and specifically within the Canadian military which has been and continues to be responsible for so much racist, colonial, and white settler colonial violence.

White Supremacy on Twitter

During the first US presidential debate between Trump and Joe Biden on September 29, 2020, the moderator, Chris Wallace of Fox News, asked Trump if he was willing "to condemn white supremacists and militia groups...and to say that they need to stand down and not add to the violence in a number of these cities as we saw in Kenosha and as we've seen in Portland."¹³

Trump responded "Sure I'm willing to do that" and, after further prompting from Wallace and Biden to specifically condemn the Proud Boys, Trump said "Proud boys, stand back and stand by. But I'll tell you what, I'll tell you what, somebody's gotta do something about antifa and the left because this is not a right wing problem."¹⁴

¹³ CNBC Television, "President Donald Trump: White supremacist group Proud Boys should 'stand back and stand by,'" September 30, 2020, video, 1:21, <https://www.youtube.com/watch?v=JZk6VzSLe4Y>.

¹⁴ CNBC Television, "President Donald Trump."

Trump’s statement that the Proud Boys should “stand back and stand by” was widely circulated both on social media and in the mainstream media. Two days later, on October 1, 2020, George Takei, a Japanese-American LGBTQ rights advocate,¹⁵ tweeted:

I wonder if the BTS and TikTok kids can help LGBTs with this. What if gay guys took pictures of themselves making out with each other or doing very gay things, then tagged themselves with #ProudBoys I bet it would mess them up real bad.
#ReclaimingMyShine¹⁶

At the beginning of 2021, the tweet had received about 54,800 likes and had been re-tweeted approximately 10,900 times. In Canada, one of the images that was most widely circulated in response was posted by @CAFinUS and depicted two people kissing, one of whom is wearing a Canadian Armed Forces uniform.¹⁷ Although the post contains no information about the people’s gender or racial identities, it is likely that they would both be read by mainstream audiences in Canada as white men.

The image was widely circulated online and celebrated as a subversive left-wing take down of the Proud Boys. Attempts to circulate this image as a form of resistance to the far-right’s celebration of white supremacy, however, demonstrate the discursive and material dangers of analogizing racism and homophobia. Before discussing how this image’s circulation reflects the logics of analogical reasoning, I will briefly discuss the relevance of the Proud Boys to Canada to contextualize this discussion.

Canadian Gavin McInnes founded the Proud Boys in the US in 2016. The Proud Boys self-identify as “Western chauvinists” and “Islamophobic” in clear alignment with white

¹⁵ George Takei, “George H. Takei,” georgetakei.com, Jul. 13, 2018, <https://www.georgetakei.com/george-h-takei-2591309480.html>; Rachel Charlene Lewis, “Denouncing White Supremacy Must be a Movement, Not a Trend,” *Bitch Media*, Oct. 9, 2020, <https://www.bitchmedia.org/article/white-gay-men-cant-reclaim-proud-boys-queer-racism>.

¹⁶ George Takei (@GeorgeTakei), Twitter, October 1, 2020, 6:14 p.m., <https://twitter.com/GeorgeTakei/status/1311791729767526400>

¹⁷ The image is available in: “Canadian Forces Push Back Against Proud Boys and Far Right Needs Action, Not Tweets, Critics Say,” *Ottawa Citizen*, October 6, 2020.

supremacist ideologies.¹⁸ The Southern Poverty Law Center categorizes the Proud Boys as a hate group and notes their close affiliation and co-organizing tactics with other far-right racist organizations including “Klansmen, antisemites, Southern racists, and militias.”¹⁹ The ideology the Proud Boys espouse is also extremely sexist and transphobic. The group only admits “men” (by which they mean cis men), believes feminism is waging a war on masculinity, and claims to “venerate the housewife” by celebrating the supposedly inherent differences between men and women and encouraging men to work for money and women to engage in unpaid domestic labour.²⁰ In addition to proclaiming a definition of manhood that excludes trans men, McInnes has publicly made a range of transphobic statements such as “Buying woman parts from a hospital and calling yourself a broad trivializes what it is to be a woman. Womanhood is not on a shelf next to wigs and makeup” and “Similarly, being a dude is quite involved...[transitioning] doesn’t mean you are going to start inventing shit and knowing how cement works.”²¹

While most active in the US, the Proud Boys also have chapters in the UK, Norway, Australia, and Canada.²² In 2017, CBC reported that the Facebook page of the Proud Boys Canadian Chapters (which has since been taken down) identifies the group as “a fraternal organization of Western Chauvinists who will no longer apologize for creating the modern

¹⁸ “Proud Boys,” Southern Poverty Law Center, accessed November 14, 2020, <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>

¹⁹ “Proud Boys,” Southern Poverty Law Center.

²⁰ Dean Cornish, “Meet the Proud Boys, A Group of Men Who Say There’s a War on Masculinity,” *Dateline*, July 4, 2018, <https://www.sbs.com.au/news/dateline/meet-the-proud-boys-a-group-of-men-who-say-there-s-a-war-on-masculinity>

²¹ Christianna Silva, “Gavin McInnes and the Proud Boys: An Extremist Far-Right Group, Explained,” *Teen Vogue*, October 18, 2018, <https://www.teenvogue.com/story/gavin-mcinnnes-proud-boys-extremist-far-right-group-explained>

²² “Proud Boys,” Anti-Defamation League, accessed November 14, 2020, <https://www.adl.org/proudboys>; Martin Belam and Adam Gabbatt, “Proud Boys: Who are the Far-Right Group that backs Donald Trump?” *The Guardian*, September 30, 2020, <https://www.theguardian.com/world/2020/sep/30/proud-boys-who-are-far-right-group-that-backs-donald-trump>

world.”²³ Prior to Trump’s statement in the debate, the most widely reported incidence of Proud Boys activity in Canada occurred on July 1, 2017 (Canada Day).²⁴ The Proud Boys received media coverage on this day because five of their members, all of whom were also members of the Canadian Armed Forces, disrupted a ceremony led by Chief Grizzly Mamma. Chief Grizzly Mamma is a member of the Gitksan First Nation who was residing in Mi’kma’ki and held the ceremony to resist to the existence of a statue celebrating Edward Cornwallis, whose violent role in imposing white settler colonialism in Mi’kma’ki she connected to the ongoing crisis of missing and murdered Indigenous women, girls, and Two-Spirit people.

Cornwallis was a British aristocratic who was appointed the first governor of Nova Scotia in 1749. The year he arrived in Mi’kma’ki, Cornwallis issued a “public scalping proclamation” in which he promised to pay settlers a “reward of 10 guineas for every Micmac Indian taken or killed” so long as evidence was provided in the form of the “Savage taken” or “his scalp” (despite Cornwallis’ use of this gendered pronoun, the proclamation applied to all Mi’kmaq, regardless of gender or age).²⁵

Chief Grizzly Mama drew attention to this history during the ceremony on July 1, 2017 by shaving her head.²⁶ In discussing her actions at the base of the Cornwallis statue, Chief

²³ CBC Radio, “Who are the Proud Boys who Disrupted an Indigenous Event on Canada Day?” July 4, 2017, <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.4189447/who-are-the-proud-boys-who-disrupted-an-indigenous-event-on-canada-day-1.4189450>

²⁴ G. P. Browne, “Introduction,” in *Documents on the Confederation of British North America*, ed. G. P. Browne (Montreal: McGill-Queen’s University Press, 2009), ix; “British North America Act,” *Encyclopaedia Britannica*, accessed November 14, 2020, <https://www.britannica.com/event/British-North-America-Act>

²⁵ John G. Reid, “The Three Lives of Edward Cornwallis,” *Journal of the Royal Nova Scotia Historical Society* 16 (2013): 20-21; Laura-Lee Kearns and Nancy Peters, “(Re)inscribing Mi’kmaq Presence through Public Petition, Performance and Art,” in *Diverse Spaces: Identity, Heritage and Community in Canadian Public Culture*, ed. Susan L.T. Ashley (Newcastle upon Tyne: Cambridge Scholars Publishing, 2013), 76; Ted Rutland, *Displacing Blackness: Planning, Power, and Race in Twentieth-Century Halifax* (Toronto: University of Toronto Press, 2018), 2.

²⁶ An image of the ceremony is available in: Anjuli Patil, “Cornwallis Protest Held amid Canada Day Celebrations,” CBC, July 5, 2017, <https://www.cbc.ca/news/canada/nova-scotia/cornwallis-protest-chief-grizzly-mama-canada-day-1.4187445>.

Grizzly Mamma stated “So when I was cutting my hair, I was cutting that genocide off of my people.”²⁷ While viscerally connected to the historical experiences of the Mi’kmaq on whose land she was living, Chief Grizzly Mamma also connected her actions to the ongoing genocide to which Indigenous peoples across Canada have been subjected by white settler colonial governments for centuries. Chief Grizzly Mamma’s daughter is one of the dozens of women, girls, and Two-Spirit people who have gone missing or been murdered on the portion of Highway 16 between Prince George and Prince Rupert known as the Highway of Tears.²⁸ Chief Grizzly Mamma stated that “For me to cut my hair is to finally let my daughter go on to the spirit world along with my brothers and sisters that were murdered...[The ceremony] wasn’t only for me, it was for my sisters and brothers in Winnipeg and Ontario and New Brunswick and Mi’kmaq territory.”²⁹

The five Proud Boys/members of the Canadian Armed Forces disrupted the ceremony, claiming that it was “disrespectful” to Cornwallis.³⁰ Holding a Red Ensign Flag, which he calls “the Confederate flag of Canada,” and in response to an activist who says “This is Mi’kmaq territory. This is not Canada,” one of the men affiliated with the Proud Boys states “This is Canada. It might have been Mi’kmaq.”³¹ The confrontation is reported to not have led to any physical violence and the Proud Boys left after about ten minutes.³² As Vanessa Watts points

²⁷ Trina Roache, “The Military Apologizes while a Grandmother Demands Action on ‘Proud Boys’ Behavior,” *APTN News*, July 5, 2017, <https://www.aptnnews.ca/national-news/the-military-apologizes-while-a-grandmother-demands-action-on-proud-boys-behavior/>

²⁸ Cassidy Johnson, “‘Willing Victims’: The Prevalence of Violence and Public Discourse against Indigenous Women and Girls,” *INvoke: Gender, Colonization, and Violence* 5 (2019): 29.

²⁹ Roache, “The Military Apologizes.”

³⁰ John Paul Tasker, “Head of Canada’s Indigenous Veterans Group Hopes Proud Boys Don’t Lose Their CAF Jobs,” *CBC News*, July 5, 2017, <https://www.cbc.ca/news/politics/indigenous-veterans-group-proud-boys-1.4191749>

³¹ CBC Nova Scotia, “Canadian Navy Members Involved in ‘Proud Boys’ Incident at Indigenous Ceremony,” July 4, 2017, https://www.youtube.com/watch?v=AOAgNxp2_7U

³² Tasker, “Head of Canada’s Indigenous Veterans.”

out, however, the Proud Boys' disruption of the ceremony demonstrates how the same logics that informed *The Indian Act*, including its ban on Indigenous ceremonies, persist in the present moment.³³

M. Gouldhawke, a Métis and Cree writer,³⁴ drew connections between the Proud Boys' disruption of the ceremony led by Chief Grizzly Mamma and the Canadian Armed Forces' circulation of the image of two people kissing.³⁵ Gouldhawke tweeted "Remember colonialism and imperialism or what?" followed by an image CBC published of the Proud Boys disrupting the ceremony in Mi'kma'ki beside the image of two people kissing circulated by the Canadian Armed Forces. The implication of Gouldhawke's tweet is that @CAFinUS's tweet reinforces rather than subverts the white supremacist ideologies espoused by the Proud Boys given the Canadian Armed Forces' participation in and support for the Proud Boys' activities in Canada.

I've provided this discussion of the Proud Boys in Canada to contextualize the social media circulation of #ProudBoys and @CAFinUS's photo following Trump's statement in September 2020. On October 5, 2020, Gary Kinsman provided a link to a *Toronto Star* article about attempts to use #ProudBoys subversively along with his tweet: "A useful subversion of the heterosexism and hetero-masculinity of the 'Proud Boys' but we also have to deal very centrally with their racism, fascism, and sexism."³⁶ In response, Beverly Bain tweeted "This form of attempted subversion is highly problematic since it subverts the issue of racism while privileging whiteness. It conflates racism with homophobia."³⁷ Through this conflation of racism and

³³ Vanessa Watts, "Our Home and Nativist Land?" in *We Resist: Defending the Common Good in Hostile Times*, ed. Cynthia Levine-Rasky and Lisa Kowalchuk (Montreal: McGill-Queen's University Press, 2020), 92.

³⁴ M. Gouldhawke, "About/My Writing," <https://mgouldhawke.wordpress.com/about/>

³⁵ M. Gouldhawke (@M_Gouldhawke), Twitter, October 5, 2020, 11:55 a.m.

³⁶ Gary Kinsman (@GaryWKinsman), Twitter, October 5, 2020, 12:21 a.m., <https://twitter.com/GaryWKinsman/status/1312971108795076608?s=19>.

³⁷ Beverly Bain (@BeverlyBain13), Twitter, October 5, 2020, 12:36 a.m., <https://twitter.com/BeverlyBain13/status/1312975012102639616?s=19>.

homophobia, the circulation of the @CAFinUS's photo with #ProudBoys invisibilizes racism in Canada and celebrates an inclusive image of the Canadian military, an institution responsible for much racist, colonial, and white settler colonial violence. The analogy upon which this hashtag and its accompanying images rely does not only produce racism and homophobia as distinct and non-intersecting phenomena, it also situates racism in the US (with both Trump and the Proud Boys being understood as products of the US) and gay inclusion in Canada.

Analogical Reasoning as Racial and Sexual Governance

In this section, I focus on how analogical reasoning has shaped the understandings and regulation of race and sexuality in what Rinaldo Walcott, drawing on Sylvia Wynter, calls the post-1492 period.³⁸ I begin by examining how Europeans who invaded territories outside Europe in the early colonial period deployed analogical reasoning in their explanations of the differences they saw between themselves and the people they encountered in ways that allowed them to construct non-Europeans as existing outside of humanity. I open this discussion with a description of the uses of analogy in European colonialism broadly, with a focus on European visual cultural representations of the Americas, and then discuss analogies in the Canadian context specifically by drawing on nineteenth-century Canadian political cartoons. Next, I describe how analogical reasoning became embedded in the Canadian common law system.

Feminist scholars who analyze the early colonial era describe how European men drew analogies between women's bodies and the land. For example, Anne McClintock discusses how

³⁸ Leanne Betasamosake Simpson, Rinaldo Walcott, and Glen Coulthard, "Idle No More and Black Lives Matter: An Exchange," *Studies in Social Justice* 12, no. 1 (2018): 85; Sylvia Wynter, "1492: A New World View," in *Race, Discourse, and the Origin of the Americas: A New World View*, ed. Vera Lawrence Hyatt and Rex Nettleford (Washington: Smithsonian Institution Press, 1995).

Christopher Columbus, after landing in Guanahani³⁹ in 1492, “wrote home to say that the ancient mariners had erred in thinking the earth was round. Rather, he said, it was shaped like a woman’s breast, with a protuberance upon its summit in the unmistakable shape of a nipple.”⁴⁰ Ania Loomba traces how the work of the English poet John Doone (1572-1631) positioned sexual and colonial relationships as analogous. As Loomba argues, “the woman/land analogy...employs a reverse logic as the riches promised by the colonies signify both the joys of the female body as well as its status as a legitimate object for male possession.”⁴¹ These beliefs were mutually sustaining; the idea that women were inferior to men was used to justify the colonial invasion and occupation of Indigenous territories, and the conceptualization of land as property, or potential property, legitimized the idea that women, particularly women racialized as non-white, existed to be dominated and violated by men.

Western representations of women as land, territory, or nation predated the colonial era, for example with portrayals of Britain as Britannia⁴² and Europe as Europa.⁴³ This tradition of signifying land/territory/nation through images of women, however, was reconfigured through the racialization of ideas about gender and sexuality that accompanied colonization. Sandra Sáenz-López Pérez describes how European cartographers used the travel accounts of European men who went to the Americas, Africa, and Asia as part of their nations’ colonial endeavours to visualize the continents as women in images they produced in the marginalia of their maps.⁴⁴ For example, the title page of Abraham Ortelius’s *Theatrum Orbis Terrarum*, originally published in

³⁹ This is the Lukku-Cairi name for the island Columbus renamed San Salvador, which is now part of the Bahamas.

⁴⁰ Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995), 21.

⁴¹ Ania Loomba, *Colonialism/Postcolonialism* (New York: Routledge, 2015), 73.

⁴² A. S. Hargreaves, “Britannia,” in *The Oxford Companion to British History*, ed. John Cannon (Oxford: Oxford University Press, 2009).

⁴³ Britta Petersen, “The Abduction of Europa,” *Liberal Studies* 1, no. 2 (2016): 155-64.

⁴⁴ Sandra Sáenz-López Pérez, *Marginalia in cARTography* (Madison: Chazen Museum of Art, 2014), 11.

Antwerp in 1570 and “often...considered the first modern atlas,” depicts four women, representing Europe, Asia, Africa, and the Americas.⁴⁵ Sáenz-López Pérez points to Europe’s representation as imperial, Christian, and civilized in contrast to Africa’s depiction as a naked Black woman with stereotypical features, Asia’s representation as a woman “richly adorned with jewels and holding a censer,” and America, positioned farthest from Europe, depicted as “the stereotype of a savage American.”⁴⁶

These feminized and racialized personifications of the four continents were commonly drawn on not only in cartography, but also artwork and other forms of visual culture from the colonial era. For example, Charmaine Nelson described Jean-Baptistse Carpeaux’s (1874) bronze sculpture *Les quatre parties du monde soutenant la sphere celeste* (The Four Corners of the World Holding a Celestial Sphere), which sits in the middle of a foundation in Jardin du Luxembourg in Paris.⁴⁷ Nelson argues that “the allegorization of continents through the representation of female subjects became an ever more appealing and central mode of global representation as European nations increased their imperial possession through the violent acquisition of new territories.”⁴⁸ Within these visual representations of women as continents, Nelson describes how Europeans reified ideas of white superiority and the denigration of people racialized as non-white in aesthetic forms:

the beautiful was most often reserved for Europe as a white woman and sometimes for a sisterly America, if rendered as a woman of European descent. Asia and Africa were displaced from the white paradigm of beauty and civilization, and America, when depicted as a Native woman, also joined this marginalized sisterhood.⁴⁹

⁴⁵ Sáenz-López Pérez, *Marginalia in cARTography*, 11.

⁴⁶ Sáenz-López Pérez, *Marginalia in cARTography*, 12, 53.

⁴⁷ Charmaine A. Nelson, *Representing the Black Female Subject in Western Art* (New York: Routledge, 2010), 170-172.

⁴⁸ Nelson, *Representing the Black Female Subject in Western Art*, 170.

⁴⁹ Nelson, *Representing the Black Female Subject in Western Art*, 170.

By the 1800s, this visual representation of the continents personified as differently racialized women was common across European-produced visual forms, from architecture to print culture, and was readily understood as a symbol of European civilizational superiority. Nelson asserts that:

it functioned dominantly as a celebration of European imperial expansionism while affording the white viewer the pleasurable experience of seeing the colonized “other” and of seeing themselves as culturally and aesthetically superior to the populations they were colonizing.⁵⁰

As Nelson points out, there was a lack of uniformity in these feminized representations of the Americas, which were sometimes valorized as a space of white womanhood and naturalization of white colonial settlement and at other times denigrated as spaces of “uncivilized” Indigeneity.

Historian Carmen Nielson analyzes this tension in feminized personifications of Canada in British and Canadian political cartoons from the 1870s and 1880s. Nielson found that, within the British satirical periodical *Punch*, Canada was commonly depicted as an Indigenous woman, while the Canadian-produced *Grip*—which “has been widely recognized by historians as a barometer for Canada’s political and social climate in the 1870s and 1880s”⁵¹—depicted Canada as a white woman. *Grip*’s visual representations of Manitoba and the North-West Territories (NWT), however, were frequently depicted as Indigenous women. These representations of Manitoba and the NWT, Nielson argues, gave white Canadian viewers the impression that they had knowledge about and an understanding of Manitoba and the NWT, reassuring viewers by “drawing everything into the purview of the colonial gaze.”⁵² *Grip*’s visual representations of colonial space using images of white and Indigenous women drew on a common colonial

⁵⁰ Nielson, *Representing the Black Female Subject in Western Art*, 170.

⁵¹ Carmen J. Nielson, “Caricaturing Colonial Space: Indigenized, Feminized Bodies and Anglo-Canadian Identity, 1873–94,” *The Canadian Historical Review* 96, no. 4 (2015): 476.

⁵² Nielson, “Caricaturing Colonial Space,” 478.

knowledge of the visual representations of empire “while simultaneously repudiating the imperial visual regime’s portrayal of Canada as a colonized body.”⁵³ As such, the cartoons were used to: reassure white settlers that the space they inhabited was a white space, distinguish Canadian’s understanding of their place within the British empire from the understandings of Canada circulating within Britain, and repurpose colonial imagery to assert the superiority of the parts of Canada that had been subjected to more white colonial settlement.

Analogies, however, were not limited to white and European visual cultural productions and colonial travelogues; analogical reasoning was and continues to also be institutionalized within state power structures in Canada. One source of this institutionalization of analogical reasoning is the common law system, which is used throughout Canada with the exception of Quebec. The common law system began to be implemented in 13th century England to consolidate the system of local courts whose actions were not constrained by any national legal framework.⁵⁴ Written records of judgements were recorded in England and the doctrine of precedent was developed to ensure “consistency in decision-making.”⁵⁵ Conversely, in the civil law system that existed in much of continental Europe, including France, “the judge seeks to ground a decision in an authoritative, ultimately codified, text.”⁵⁶ French colonists arriving in what is now called Canada imposed the French civil law system beginning in the 17th century. Following the 1759 Battle of Quebec, the British colonists imposed the common law system throughout the territories they controlled in what is now Canada, with the exception of Quebec

⁵³ Nielson, “Caricaturing Colonial Space,” 479.

⁵⁴ L. Kinvin Wroth, “Common Law,” in *The Oxford International Encyclopedia of Legal History*, ed. Stanley N. Katz (Oxford: Oxford University Press, 2009).

⁵⁵ S. Roberts, “Common Law,” in *International Encyclopedia of the Social & Behavioral Sciences*, ed. Neil J. Smelser and Paul B. Baltes (Amsterdam: Elsevier, 2001), 2280.

⁵⁶ Roberts, “Common Law,” 2280.

which continues to use the civil law system.⁵⁷ The common law principle of *stare decisis*, which dictates that lower courts must follow the precedents set by higher courts, is intentionally conservative so that there is a level of stability and predictability in legal decision making, is meant to be “a check against arbitrary judicial decisions,” and is often considered to be progressive enough to “allow[] for the gradual evolution of the law.”⁵⁸ As such, it is unsurprising that the centrality of *stare decisis* to the Canadian common law system helps maintain the white supremacist settler colonial status quo.

The legal uses of analogical reasoning in the common law system, however, are not confined to the system of precedents. While precedents set by the higher courts are binding on the lower courts, legal decision-making processes can also include drawing analogies between the case under consideration and previous cases from other legal fields or jurisdictions, the decisions from which the courts are not obligated to follow but that they can use to help them decide the case.⁵⁹ Unlike binding precedents, the Canadian legal philosopher Graham Hudson argues that analogies “orient judges to the reasoning used by another, which the judge may take, leave, or use in part.”⁶⁰ In the context of the common law, judges assess the relationship between the facts of a case and the applicable law and compare that to the facts and applicable law of another case; if the judge determines that the facts are similar enough and that the decision made in the prior case was good, they can use this form of analogical reasoning to justify their

⁵⁷ Jaakko Husa, “Language of Law and Invasive Legal Species – Endemic Systems, Colonisation, and Viability of Mixed Law,” *Global Journal of Comparative Law* 9 (2020): 172.

⁵⁸ Paul Bartha, “Analogy and Analogical Reasoning,” in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, <https://plato.stanford.edu/entries/reasoning-analogy/>.

⁵⁹ Graham Hudson, “The (Mis-)Uses of Analogy: Constructing and Challenging Crimmigration in Canada,” in *The Criminalization of Migration*, ed. Idil Atak and James C. Simeon (Montreal: McGill-Queen’s University Press, 2018), 46.

⁶⁰ Hudson, “The (Mis-)Uses of Analogy,” 46.

judgement on a current case.⁶¹ As Hudson points out, legal analogical reasoning is dependent on “the willingness or capacity of decision makers to see similarities.”⁶² So the similarities judges identify between race and sexual orientation, for example, do not need to be inherent similarities between the phenomena for analogical reasoning to work; rather, those similarities only need to exist from the judge’s perspective. What is important to the legal operation of analogical reasoning in Canada is not so much how racism functions in the world or the relationship between racism and the legal system, but rather how judges understand these operations and relationships.

In addition to its uses in the Canadian legal system, analogical reasoning is embedded in the history of scientific knowledge production. Scientists employed analogical reasoning, though they did so in ways that differed from, but complemented, the uses of analogy in European colonial visual culture and the common law system. With the beginning of the so-called “Enlightenment,” European scholars came to associate metaphor and analogy with “the imagination, poetic fancy, subjective figures, and even untruthfulness” while positioning the scientific method as “truthful, unadorned, objective knowledge.”⁶³ Despite such assertions, historians of science now recognize metaphors and analogies as “essential to scientific thought itself.”⁶⁴ Nineteenth-century scientists used the analogical understandings of race, gender, and sexuality developed by earlier colonists to interpret the data they collected, allowing them to claim, for example, “that women’s low brain weights and deficient brain structures were analogous to those of lower races.”⁶⁵ The German zoologist Ernst Haeckel’s dictum that

⁶¹ Hudson, “The (Mis-)Uses of Analogy,” 46.

⁶² Hudson, “The (Mis-)Uses of Analogy,” 64.

⁶³ Nancy Leys Stephan, “Race and Gender: The Role of Analogy in Science,” *Isis*, 77, no. 2 (1986): 261.

⁶⁴ Stephan, “Race and Gender,” 262.

⁶⁵ Stephan, “Race and Gender,” 263.

“ontogeny recapitulates phylogeny” was particularly influential in this regard. Haeckel essentially meant that human development (i.e., ontogeny, an individual’s growth from the fertilization of the egg to adulthood) mirrored evolutionary changes in human history (i.e., phylogeny).⁶⁶ The implications of Haeckel’s thesis were that, as McClintock writes, “the ancestral lineage of the human species could be read off the stages of a child’s growth.”⁶⁷ This conception of human development gained popularity because:

it offered an apparently absolute biological criterion not only for racial but also for sexual and class ranking. If the white male child was an atavistic throwback to a more primitive adult ancestor, he could be scientifically compared with other living races and groups to rank their level of evolutionary inferiority.⁶⁸

Valerie Rohy argues that psychoanalysts like Karl Jung used these and related ideas derived from Charles Darwin’s articulation of evolutionary theory to assert that “homosexuality was a relic of past culture periods; just as our bodies retained reminders of old functions in old-fashioned organs, so did our minds show the marks of the evolution passed through.”⁶⁹

Reminiscent of this construction of people racialized as non-white as less evolved or childlike, Rinaldo Walcott describes how the dominant contemporary narrative of queerness in the west constructs a movement from repression, to rebellion, to rights, to becoming “free and full citizens.”⁷⁰ Walcott argues that:

such normative queer history posits gay liberation as infancy and rights talk as adulthood and maturity. In such a trajectory, people of color, Caribbean people, and people from the global south are, according to the Western historians, sociologists, political scientists,

⁶⁶ Robert J. Richards, *The Tragic Sense of Life: Ernst Haeckel and the Struggle over Evolutionary Thought* (Chicago: University of Chicago Press, 2008), 148.

⁶⁷ McClintock, *Imperial Leather*, 50.

⁶⁸ McClintock, *Imperial Leather*, 50.

⁶⁹ Valerie Rohy, *Anachronism and Its Others: Sexuality, Race, Temporality* (New York: State University of New York Press, 2010), ix.

⁷⁰ Rinaldo Walcott, *Queer Returns: Essays on Multiculturalism, Diaspora, and Black Studies* (London: Insomniac Press, 2016), 147.

cultural critics, literary critics, and so on, still at the sexual liberation stage (if even there)—at the childhood stage.⁷¹

So while it may no longer be considered acceptable in mainstream Canadian politics to compare Black, Indigenous, or other people racialized as non-white to children, remnants of this analogy continue to inform understandings of the relationship between race and non-normative sexualities in the Canadian context.

Siobhan Somerville traces how sexologists who developed the concept of “homosexuality” to describe what they considered to be a sexual pathology drew on the methods, assumptions, and conclusions of comparative anatomists in their research.⁷² It was not a coincidence, Somerville argues, that these sexological theories of homosexuality emerged in the immediate aftermath of the 1896 US Supreme Court case *Plessy v. Ferguson* in which the Court ruled that racial segregation did not violate Black people’s rights to “equal protection of the laws” guaranteed by the fourteenth amendment to the US constitution and, for that reason, upheld and sanctioned Jim Crow segregation.⁷³ Prior to the emergence of sexology, “comparative anatomists repeatedly located racial difference through the sexual characteristics of the female body,”⁷⁴ making the field of comparative anatomy a seemingly logical site from which sexologists could begin to theorize human sexuality. Sexologists drew parallels between their understandings of Black women and lesbians (categories they positioned as mutually exclusive) by perpetuating “the myth of an unusually large clitoris” that they believed both Black women and lesbians possessed.⁷⁵

⁷¹ Walcott, *Queer Returns*, 147.

⁷² Siobhan Somerville, *Queering the Color Line: Race and the Invention of Homosexuality in American Culture* (Durham: Duke University Press, 2000), 3.

⁷³ Somerville, *Queering the Color Line*, 16; William James Hull Hoffer, *PLESSY V. FERGUSON: Race and Inequality in Jim Crow America* (Lawrence: University Press of Kansas, 2012).

⁷⁴ Somerville, *Queering the Color Line*, 26.

⁷⁵ Somerville, *Queering the Color Line*, 27.

Feminists have mobilized analogies between race and sexuality to make a variety of legal claims. For example, Moira Ferguson describes how Mary Wollstonecraft analogized white women's subordination under patriarchy to Black people's subordination under slavery in *A Vindication of the Rights of Woman*, first published in 1792.⁷⁶ Wollstonecraft made this comparison not as a critique of the institution of slavery but rather to argue that white women, unlike enslaved people, were capable of rational thought and therefore should not be subjected to subordination.⁷⁷ A range of philosophers, political reformers, and cultural and legal theorists have debated the validity and utility of the so-called "woman-slave analogy" for centuries.⁷⁸

In the Canadian context, white feminists have often drawn on a different analogy, that between (white) women and Indigenous peoples or Canada's colonial relationship to Britain. For example, in the 1970s, Canadian feminist readers of Anna Brownell Jameson's *Winter Studies and Summer Rambles in Canada* (1838) analogized "Jameson's position as a married woman without property rights to the subjugated positions of the colony or of First Nations people," though Jennifer Henderson argues that the focus of Jameson's text was actually a critique of "the morally degenerate settler."⁷⁹ Henderson demonstrates how Canadian women fiction writers in the 1970s integrated this woman/colony analogy into their work, facilitating their comparisons between "woman's problems of identity and self-expression under patriarchy" and "the cultural dislocation experienced by British settlers transplanted to an alien environment."⁸⁰ Henderson

⁷⁶ Moira Ferguson, *Colonialism and Gender Relations from Mary Wollstonecraft to Jamaica Kincaid: East Caribbean Connections* (New York: Columbia University Press, 1993), 2.

⁷⁷ Joan DelPlato, *Multiple Wives, Multiple Pleasures: Representing the Harem, 1800-1875* (Cranbury: Fairleigh Dickinson University Press, 2002), 58.

⁷⁸ Ana Stevenson, *The Woman as Slave in Nineteenth-Century American Social Movements* (Cham: Springer International Publishing, 2019), 1.

⁷⁹ Jennifer Henderson, *Settler Feminism and Race Making in Canada* (Toronto: University of Toronto Press, 2003), 8.

⁸⁰ Henderson, *Settler Feminism and Race Making in Canada*, 215.

argues that the feminist use of this analogy allowed white settler women to misconstrue themselves “as a privileged signifier of *otherness*,” providing another example of how analogy can be used in the service of diversifying whiteness.⁸¹

More recently, white Canadian women authors have used other racialized analogies in their work. Reminiscent of the woman/land analogy that was so popular in the 1800s, Canadian novelist Aritha van Herk’s *Places Far from Ellesmere* (1990) feminizes Ellesmere Island, variously describing it as “‘a northern body’, ‘thinly naked’, ‘fat with the flesh of heated snow’, a body with head, ears, and palm” and in more explicitly gendered ways as a “‘female desert island with secret reasons and desires’, ‘the land-scape of a woman’, ‘no one’s mistress’, [and] ‘islanded woman.’”⁸² Gabriele Helms suggests that van Herk’s “revaluation of northern space as feminine” is an attempt to speak back to the way northern Canada has been constructed as a masculine space, for example through frequent references to European men’s expeditions in the north.⁸³

As the book’s cover makes clear, however, van Herk feminizes this space using the figure of a white woman.⁸⁴ Van Herk’s attempt at subversively feminizing Ellesmere Island when read with an attentiveness to the white settler colonial context—most of the population of Ellesmere Island are Inuit living in Ajuittuq (ᐱᐅᐅᐅᐅᐅᐅᐅᐅ) who the government forcibly removed from their traditional territories during the “high arctic relocation,” while the smaller settler population

⁸¹ Henderson, *Settler Feminism and Race Making in Canada*, 215.

⁸² Gabriele Helms, *Challenging Canada: Dialogism and Narrative Techniques in Canadian Novels* (Montreal: McGill-Queen’s University Press, 2003), 95.

⁸³ Helms, *Challenging Canada*, 95.

⁸⁴ An image of the cover of Aritha van Herk’s *Places Far From Ellesmere* is available at: “Places Far From Ellesmere: A Geofictionaire,” Aritha van Herk, <http://www.arithavanherk.com/books/fiction/places-far-from-ellesmere/>

are primarily members of the RCMP and Canadian Armed Forces⁸⁵—can perhaps be more appropriately read as naturalizing white presence and Canadian sovereignty in the north. In this way, van Herk’s land/woman analogy is inherently racialized and works to erase Indigenous presence from the land and naturalize white settler colonialism.

In the US context, not all feminists mobilized the woman/slave analogy to justify the continued legal sanctioning of slavery; some saw the use of this analogy as a way to “identify and then...eliminate all forms of oppression.”⁸⁶ As I discuss in more detail in Chapter 5, feminists’ uses of the analogy between white women’s subordination under patriarchy and Black people’s subordination under slavery re-emerged in the 1960s.⁸⁷ For example, Pauli Murray, an African American lawyer and women’s rights advocate, argued that analogizing sex and racial discrimination was a prudent legal strategy because the fourteenth amendment to the US constitution prohibited racial discrimination.⁸⁸ Despite the legal utility of such arguments because of analogical reasoning’s embeddedness in the common law system, other Black feminist scholars point to the ways in which these analogies impose limits on political thought. In 1981, for example, bell hooks exposed how analogizing racial and sexual discrimination reinforces associations between the category “woman” and white women and the category “Black people” and Black men, thus infusing such politics with “a sexist-racist attitude towards black women.”⁸⁹

⁸⁵ Royal Commission on Aboriginal Peoples, *The High Arctic Relocation: A Report on the 1953-55 Relocation* (Ottawa: Canada Communication Group, 1994).

⁸⁶ Stevenson, *The Woman as Slave*, 2.

⁸⁷ Serena Mayeri, “A Common Fate of Discrimination: Race-Gender Analogies in Legal and Historical Perspective,” *Yale Law Journal* 110, no. 6 (2001): 1055-1056.

⁸⁸ Mayeri, “A Common Fate of Discrimination,” 1056.

⁸⁹ bell hooks, *Ain’t I A Woman: Black Women and Feminism* (Boston: South End Press, 1981; New York: Routledge, 2015), 8.

In Canada, some of the most well-known uses of racial analogies in the 1960s were the analogies white Québécois nationalists drew between their oppression under Anglo-Canadian hegemony and the condition of Black people under slavery and other manifestations of white supremacy; as David Austin argues, the Québécois were “construct[ing] a Black racial persona.”⁹⁰ While this idea became more prominent in the 1960s, Austin notes that the allegorical use of Black identity to describe the realities of the Québécois dates back to at least Aubert de Gaspé’s *Les anciens Canadiens* (1863).⁹¹ Richard Almonte argues that, in *Les anciens Canadiens*, de Gaspé intends an “allegorical reading” of the Black woman character’s portrayal as co-operative and submissive to be representative of how “the French Canadians should be to their new British captors.”⁹² Pierre Vallières again popularized this analogy in the Quebec context with the publication of his 1968 *N*** blancs d’Amérique*. In the text, Vallières advocates building solidarity with Black nationalists in the US⁹³ while denying that Quebec has a “Black problem,”⁹⁴ reproducing the familiar positioning of racism in the US. Moreover, as Bruno Cornellier argues, Vallières’ construction of the Québécois also erases their complicity in white settler colonialism.⁹⁵ Cornellier asserts that Vallières’ use of the analogy between Black people and white Québécois:

has the effect of de-racializing colonial history, of turning race into a politically insignificant (and acquirable) category within the settler colony, and of obfuscating the

⁹⁰ David Austin, *Fear of a Black Nation: Race, Sex, and Security in Sixties Montreal* (Toronto: Between the Lines, 2013), 44.

⁹¹ Austin, *Fear of a Black Nation*, 54.

⁹² Richard Almonte, “‘Treason in the Fort’: Blackness and Canadian Literature,” in *Rude: Contemporary Black Canadian Cultural Criticism*, ed. Rinaldo Walcott (Toronto: Insomniac Press, 2000), 22.

⁹³ William M. Burton, “Translatibility and Queer Desire in *N*** blancs d’Amérique*: Three Theses + a Hypothesis,” *Québec Studies* 61, no. 1 (2016): 138.

⁹⁴ Austin, *Fear of a Black Nation*, 67.

⁹⁵ Bruno Cornellier, “The Struggle of Others: Pierre Vallières, Quebecois Settler Nationalism, and the N-Word Today,” *Discourse* 39, no. 1 (2017): 32.

fact that national liberation for Quebecers (Quebecois) is itself predicated on the pursuit of a peculiarly malleable project of native dispossession and political co-optation.⁹⁶

Austin claims that Vallières puts forth an argument that “the plight of French Canadians [was] not only comparable or synonymous with the plight of African Americans, but the two were essentially understood as one and the same thing,” for example by calling the British “overseers” of French agricultural workers after 1760.⁹⁷ Vallières’ work demonstrates how white people’s analogical use of racism to describe their own struggles functions to remove analyses of race from understandings of power structures.

This dissertation contributes to debates about analogical reasoning by examining how analogies between race and sexual orientation have been mobilized by the Canadian state, been integrated into legislative and judicial processes, and constrained political thought. The Canadian state uses this form of analogical reasoning to secure its power over the territories it considers to be “Canada” and the people who live on this land. Analogical reasoning has enabled the Canadian state to praise the incremental reforms it has implemented concerning multiculturalism and sexual orientation as “progress” while simultaneously diffusing coalitional politics. In the next section, I describe the context in which this dissertation’s case studies, and the race/sexual orientation analogies they included, emerged in Canada. Analogical logics were used to support some of the changes I describe and helped shore up neoliberal governmentality in Canada.

Chapter Outline

In Chapter 1, I outline the theoretical framing of this project and discuss my methodological approach. I begin by discussing how I use political philosophy and political science work on

⁹⁶ Cornellier, “The Struggle of Others,” 32.

⁹⁷ Austin, *Fear of a Black Nation*, 67.

analogical reasoning as well as queer and feminist scholarship on analogies in the dissertation. I describe how my work contributes to this scholarship, specifically by tracing how parallelism and analogy operated in the House of Commons and Supreme Court of Canada between 1969 and 2005. Next I outline how I draw on legal studies scholarship on intersectionality, analogy, and “immutability” and discuss how I contribute to this work by situating analogical reasoning in Canada between 1969 and 2005, adding an analysis of race to existing legal studies scholarship on Egan, and tracing and problematizing the use to “immutability” in Egan. The next body of scholarship I discuss in this chapter is critical race studies. I describe how I build on critical race studies that take up the Canadian context and the flexibility of racism. I discuss how I bring sexuality into these conversations and show that the analogical use of sexuality is increasingly being used to whiten diversity discourse. Finally, I describe the scholarship on histories of sexuality, race, and Indigeneity in Canada that I use in the dissertation. I state that I contribute to this scholarship by tracing one way in which the dynamics between sexuality, race, and Indigeneity have played out in the more recent period between 1969 and 2005, namely through analogy.

Next I discuss my methodological approach. I use an intersectional methodology focussing on systems of power and situate this approach within feminist scholarship on intersectionality as a methodology. Next, I discuss how I apply this intersectional approach using critical discourse analysis. I define critical discourse analysis and demonstrate its appropriateness for this project by drawing on Heiko Motschenbacher’s work on the suitability of critical discourse analysis for sexuality studies and Dianna Mullet’s work on how critical discourse analysis enables an analysis of how beliefs hidden in discourse appear as analogies. I conclude

the methodology section by outlining how I implemented critical discourse analysis to analyze the House of Commons transcripts and Supreme Court decision I focus on in the dissertation.

In Chapter 2, I provide an overview of the historical context in which the reforms I discuss in the dissertation took place. I trace the development of the Canadian welfare state, the White Paper, immigration reform, and the racist policing of Black students at Sir George Williams University, and situate the 1969 partial decriminalization of anal sex within this context. I discuss legislative decisions, such as the Parti Québécois's implementation of the *Charte des droits et libertés* prohibiting discrimination on the basis of sexual orientation, in light of police repression of gay and lesbian community spaces. Next I describe the impacts of HIV/AIDS on gay and lesbian communities and organizing efforts in Canada and discuss the racialized effects of HIV/AIDS. I take up Miriam Smith's work on gay and lesbian organizing and the Charter and situate this in relation to Sandra Lovelace's 1985 challenge to the patrilineal descent provisions of the Indian Act. Next I describe some key court cases in which gay and lesbian Canadians have used the Charter to assert their rights and situate this work in relation to the Mohawk resistance at Kanehsatà:ke in 1990 and the neoliberalization of Canada in the 1980s and 1990s. I conclude with a discussion of the changes in Canada's repression of racialized people in the post-9/11 period, focussing on Islamophobia and the ways in which representations of queerness informed Islamophobia in this period. I trace the legal landscape of same-sex marriage in Canada and situate the court cases that helped to enable the federal legalization of same-sex marriage in the context of heightened Islamophobia in the post-9/11 period. Next, I describe how what Sirma Bilge calls the "ascendancy of gender/sexuality" within discourses of diversity has informed Islamophobic policies in Canada, focussing on the discourse of gender equality in the 2007 Hérouxville municipal normes de vie, the 2011 Gatineau Statement of

Values, and the 2014 federal Zero Tolerance for Barbaric Cultural Practices Act; I then discuss how sexuality is increasingly being used in xenophobic and Islamophobic ways in Canada. This chapter provides the context within which I situate how race and racism have informed legislative debates and a judicial ruling that have been presented as enhancing the inclusion of gay and lesbian subjects within Canadian society.

In Chapter 3, “Non-Normative Sexualities and the Reconstruction of Canadian Whiteness, 1967-1969,” I analyze House of Commons debates on the decriminalization of anal sex between two consenting adults over twenty-one years of age in private. This legal change occurred in the context of the 1969 White Paper that proposed the abolition of the *Indian Act*, the Indian Affairs branch, and Indian Status as well as immigration policy changes that removed explicitly racist selection criteria from Canadian immigration law beginning in 1967. In this chapter, I trace the racial logics that underwrote the shift from understandings of sex between men as behaviour to the disease of “homosexuality.” MPs who understood sex between men as behaviour drew on white settler colonial and anti-Muslim logics to distance Canada from men who had sex with other men. MPs made these assertions of Canadian whiteness and heterosexuality, I argue, in response to anxieties brought about by non-white immigration and settlers’ inability to assimilate and/or eradicate Indigenous peoples.

Conversely, MPs who pathologized “homosexuality” as a disease understood tolerance as something “civilized” and “compassionate” people should extend towards “homosexuals.” In this context, MPs implicitly constructed men who had sex with other men as white and hence redeemable through the extension of compassion in the form of treatment or cure, while they produced people who were racialized as non-white and Indigenous people as “primitive” because their sexualities did not conform to European understandings of appropriate, civilized, and

healthy sexuality. MPs used this racialized understanding of sexuality to position BIPOC people outside of modern Canadian citizenship. In this way, a parallel logic emerged in the ways MPs mobilized the discourse of compassion to marginalize men who had sex with men, people racialized as non-white, and Indigenous people; this parallelism made it such that the sexual non-normativity of white men who had sex with men was treatable and so white men were redeemable, while the sexual non-normativity of racialized and Indigenous men was constructed as innate, “immutable,” and unchangeable. Compassion could and would be extended to racialized and Indigenous people as this propensity to extend compassion was part of the process of exalting white Canadian subjectivity, but racialized and Indigenous people could never be fully redeemed through the process.

In Chapter 4, “Producing Race and Sexuality as Parallel Phenomena: The Role of Analogical Reasoning in Canadian Liberalism,” I investigate Supreme Court transcripts from *Egan v. Canada*, the 1995 case described above in which Jack Nesbitt, Jim Egan’s partner, was denied access to benefits under the *Old Age Security Act* because he and his partner were both men. *Egan* is central to gay and lesbian histories in Canada because, in this case, the Court decided that “sexual orientation” was analogous to the grounds enumerated in the Charter. Because of this legal interpretation by the Court, after the ruling a person’s sexual orientation could no longer legally be a ground for denying that person equal protection before and under the law or equal benefit of the law, barring “reasonable limit” exclusions laid out in section 1 of the Charter.⁹⁸

I argue that the case is also significant because it embedded the analogy between race and sexual orientation in Canadian law. The Court justified embedding sexual orientation as an

⁹⁸ Miriam Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada* (New York: Routledge, 2008), 154.

analogous ground in the Charter by drawing analogies between Nesbitt being denied access to pension benefits because of his sexual orientation and Jim Crow segregation in the US south. In the context of heightened racism,⁹⁹ as well as the Oka standoff¹⁰⁰ and the Somalia affair,¹⁰¹ in the early 1990s, the analogy between race and sexual orientation that the Court institutionalized functioned to flatten the different histories and effects of racism and homophobia, discursively separate racism from homophobia such that their intersecting operations were elided, and position racism as a phenomenon that is historical, rather than a present reality, and located in the US rather than Canada. In these ways, the Court's analogy between race and sexual orientation worked to deny the existence of racism in Canada and thereby strengthen the image of Canada as a welcoming and multicultural country.

In Chapter 5, "Race Analogies, Multiculturalism, and the Parliamentary Debates about Same-Sex Marriage," I explore MPs' use of analogical reasoning in the House of Commons debates about same-sex marriage in relation to then Conservative Party opposition leader Stephen Harper's statement that legalizing same-sex marriage "is a threat to any Canadian who supports multiculturalism...It is a threat to a genuinely multicultural country."¹⁰² The analogies MPs drew between the inability of same-sex couples to have their relationships legally recognized as marriage and US slavery, Jim Crow segregation, and US anti-miscegenation laws minimized the horror of anti-Black racism in the US, and, again, rendered intersectionality

⁹⁹ Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada* (London: Routledge, 1999); Sherene Razack, "'Simple Logic': Race, the Identity Documents Rule and the Story of a Nation Besieged and Betrayed," *Journal of Law and Social Policy* 15 (2000).

¹⁰⁰ Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014).

¹⁰¹ Sherene Razack, *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism* (Toronto: University of Toronto Press, 2004).

¹⁰² Brian Laghi, "Tories Blast Harper for Same-Sex Warning," *Globe and Mail*, February 8, 2005, <https://www.theglobeandmail.com/news/national/tories-blast-harper-for-same-sex-warning/article4115327/>

unintelligible. Moreover, by historicizing and geographically displacing racism, the analogies constructed homophobia as the “new racism,” thereby invisibilizing and denying the ongoing brutality of racism in Canada. Liberal MPs responded to Harper’s statement that same-sex marriage posed a threat to multiculturalism by arguing that although people of colour were opposed to same-sex marriage, they advocated its legalization because they understood their own rights to be protected by any extension of minority rights. Both the Conservative and Liberal positions drew on the logic of parallelism that constructed people of colour as straight and homophobic and queer people as white.

Chapter 1: Theory and Methodology

Theoretical Framing

In this dissertation, I build on scholarship on analogical reasoning and parallelism, legal studies, critical race studies, and scholarship on the history of race and non-normative sexualities to explicate the analogical construction of race and sexuality during three legislative and legal moments that have been heralded as transformative to the queer legal landscape in Canada. I work with theorizations of analogy and analogical reasoning from primarily US-based studies of the intersecting operations of race and queerness, build on legal studies scholarship on intersectionality, analogy, discrimination, and “immutability,” and draw on Canadian critical race studies and scholarship on race, Indigeneity, and sexuality in Canada to draw conclusions about the effects of the Canadian state’s use of race/sexuality analogies.

Analogical Reasoning and the Logics of Parallelism

I draw on two bodies of work to theorize how analogies between race and sexuality have operated in the Canadian context. The first type of scholarship I draw on comes from political philosophy and political science scholars like Davida Panagia, Hilliard Aronovitch, and Cass Sunstein. Panagia argues that studying analogical reasoning can clarify how ideologies operate, and I use this argument to justify focusing on analogical argumentation to investigate white settler heterosexism in Canada. I also draw on Aronovitch’s and Sunstein’s contentions that the more similar the phenomena being considered are,¹⁰³ the better the analogical argument will be to consider how analogical reasoning flattens the differences between race and sexuality in ways

¹⁰³ Hilliard Aronovitch, “The Political Importance of Analogical Argument,” *Political Studies* 45 (1997): 81; Cass R. Sunstein, “On Analogical Reasoning,” *Harvard Law Review* 106, no. 3 (1993): 744.

that support the perpetuation of Canadian white settler heterosexism. Additionally, Aronovitch praises analogical reasoning for modelling a “measured approach” that avoids the “extremes” of “a conservatism that ties us irretrievably to the past or the present and a utopianism that plunges us recklessly into the future.”¹⁰⁴ This analysis of analogical reasoning informs my argument that the analogies MPs and judges draw between race and sexuality facilitate reforms that fail to shift the white settler heterosexist foundations of Canada.

In addition to this scholarship from political philosophy and political science, in the dissertation I draw more extensively on feminist and queer scholarship on analogies. Analyses of analogical reasoning in scholarship on race and queerness build on earlier feminist scholarship that takes up the gendered meanings of feminized metaphors for land in colonial writing that I discuss in the introduction as well as work that analyzes analogies between women and Black people.

Serena Mayeri describes the emergence of analogies between racial and sexual discrimination in the United States that first emerged in the antebellum era women’s movement, with feminist arguments frequently contending that women’s subordination in marriage was akin to slavery.¹⁰⁵ These arguments waned and then resurfaced in the 1960s following President Kennedy’s 1961 creation of the President’s Commission on the Status of Women to “study the position of women in American society.”¹⁰⁶ Commission member and African American lawyer Pauli Murray advocated analogizing sex discrimination to racial discrimination prohibited under the Fourteenth Amendment.¹⁰⁷ Because she considered both race and sex to be inherent

¹⁰⁴ Aronovitch, “The Political Importance of Analogical Argument,” 92.

¹⁰⁵ Serena Mayeri, “A Common Fate of Discrimination: Race-Gender Analogies in Legal and Historical Perspective,” *Yale Law Journal* 110, no. 6 (2001): 1052.

¹⁰⁶ Mayeri, “A Common Fate of Discrimination,” 1055-1056.

¹⁰⁷ Mayeri, “A Common Fate of Discrimination,” 1056.

characteristics, Murray understood analogizing racial and sexual discrimination to be a prudent legal strategy. Like people who are marginalized by racism, Murray contended that women were constructed as socially visible, intellectually inferior, emotionally volatile, and content with their subordination.¹⁰⁸ Similarly, Simone de Beauvoir, who Murray cited, analogized racial and sexual discrimination, arguing that Western societies' subordination of women was similar to its subordination of Black people.¹⁰⁹ In her discussion of the white women's movement's use of analogies between women and Black people, bell hooks argues that:

Since analogies derive their power, their appeal, and their very reason for being from the sense of two disparate phenomena having been brought closer together, for white women to acknowledge the overlap between the terms "blacks" and "women" (that is the existence of black women) would render this analogy unnecessary. By continuously making this analogy, they unwittingly suggest that to them the term "woman" is synonymous with "white women" and the term "blacks" is synonymous with "black men." What this indicates is that there exists in the language of the very movement that is supposedly concerned with eliminating sexist oppression, a sexist-racist attitude toward black women.¹¹⁰

While the workings of the legal system make the use of analogies between race and gender an effective strategy for advancing gender equality as a single issue, these analogies obfuscate the experiences of Black women, which propelled Kimberlé Crenshaw's conceptualization of intersectionality in 1989.¹¹¹

¹⁰⁸ Mayeri, "A Common Fate of Discrimination," 1058.

¹⁰⁹ Mayeri, "A Common Fate of Discrimination," 1059.

¹¹⁰ bell hooks, *Ain't I A Woman: Black Women and Feminism* (Boston: South End Press, 1981; New York: Routledge, 2015), 8.

¹¹¹ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*, no. 1 (1989): 139-67. As Keeanga-Yamahtta Taylor points out, Crenshaw's development of intersectionality theory built on the analysis of the Combahee River Collective that "multiple oppressions reinforce each other to create new categories of suffering." Keeanga-Yamahtta Taylor, "Introduction," in *How We Get Free: Black Feminism and the Combahee River Collective*, ed. Keeanga-Yamahtta Taylor (Chicago: Haymarket Books, 2017), 4.

Siobhan Somerville and Valerie Rohy build on this work on gender/race analogies to theorize sexuality, analyzing the analogical co-constitution of sexuality and race in sexology and evolutionary science. Somerville demonstrates that, in these scientific discourses:

adult African Americans and white women were at the same stage as white male children and therefore represented an ancestral stage in the evolution of adult white males. These types of analogies had already been mobilized earlier in the nineteenth century by comparative anatomists such as Carl Vogt, who in his study of brains argued that “the grown-up Negro partakes, as regards his intellectual faculties, of the nature of the child, the female, and the senile white.”... The powerful analogies that structured the theory of recapitulation...became crucial for later characterizations of homosexuality.¹¹²

The analogies drawn between Black people and people categorized as homosexual were bolstered by theories that, as Valerie Rohy explains, positioned both Black people and “homosexuals” as occupants of a more primitive evolutionary stage than that of straight, white men. Rohy argues:

Adopting concepts from evolutionary science, such theories...constructed same-sex desire as a regression both in individual development (to immature stages of life) and in human history (to primitive societies or vanished cultures)... Joining homosexuality, blackness, and atavism, late-nineteenth-century sexological theory elaborated *as an analogy* relations that had long obtained among them....As a crucial hinge between the temporal structures of scientific racism and sexology, this theory allowed scientists to compare the supposed arrested development of homosexuals to the imagined primitivism of African Americans. Modern notions of race and sexuality are thus conjoined by a fragment of evolutionary theory, an analogy between two developmental time lines.¹¹³

Rinaldo Walcott clarifies one way in which the analogical reasoning from evolutionary theory and sexology remains in place in his assertion that queer progress narratives position people in the Global South in the “childhood” stage of development,¹¹⁴ a positioning that reproduces the earlier discursive uses of sexuality to infantilize racialized people.

¹¹² Siobhan Somerville, *Queering the Color Line: Race and the Invention of Homosexuality in American Culture* (Durham: Duke University Press, 2000), 24-5

¹¹³ Valerie Rohy, *Anachronism and Its Others: Sexuality, Race, Temporality* (Albany: State University of New York Press, 2009), ix-x.

¹¹⁴ Rinaldo Walcott, *Queer Returns: Essays on Multiculturalism, Diaspora, and Black Studies* (London: Insomniac Press, 2016), 147.

Theorizing the contemporary use of analogies between race and queer sexuality, Anjali Arondekar argues that analogical reasoning not only flattens the differences between histories of racialization and sexualization, but also obfuscates the ways in which these histories are mutually constitutive and intersecting.¹¹⁵ Arondekar asserts that:

Buried, in such “linkages”, is the very mathematical paradox of parallelism that forecloses any true intersection, even as it invites lines of common origin and travel. Hence, we are often left with a language of analogy and repetition where race as sex and sex as race become parallel political formations only through a constant reminder of their irreconcilable separation.¹¹⁶

Similarly, Jasbir Puar argues that the use of analogies between civil rights and gay and lesbian politics constructs the civil rights movement as having resolved racial inequalities in the US, constructs queer people as white and racialized people as straight, and helps white gay and lesbian communities avoid accounting for racism within their movements.¹¹⁷ Moreover, Puar asserts that the analogy between the decriminalization of interracial marriage and the legalization of same-sex marriage erases the intertwined histories of race and sexuality in the United States.¹¹⁸

The logics of parallelism that are propelled by analogical reasoning undermine intersectional analysis. Conceptualizing racist and heterosexist/homophobic structures as analogous makes it more difficult to trace how these structures are mutually sustaining and co-constitutive; that is, analogizing these structures erases both how sexism and heteronormativity structure racism and how racism structures sexism and heteronormativity. Conversely, intersectional analyses centre the convergences of these histories, their institutionalizations, and their many contemporary imbricated manifestations. In this way, intersectional analysis allows

¹¹⁵ Arondekar, “Border/Line Sex,” 240.

¹¹⁶ Arondekar, “Border/Line Sex,” 240.

¹¹⁷ Puar, *Terrorist Assemblages*, 118.

¹¹⁸ Puar, *Terrorist Assemblages*, 118.

for a more complex understanding of how and why racism and homophobia became so embedded in Canadian society and remain so intertwined. Moreover, intersectional analysis can inform efforts to resist both racism and homophobia that are attentive to the multiple and complex lived experiences of these repressive systems.

Puar also argues that analogies between race and sexuality have “rendered sexuality a form of minorization parallel to ethnicity.”¹¹⁹ Catherine Nash demonstrates that this “ethnic politics” approach to sexual equality work also emerged in the Canadian context in her analysis of sexual politics in 1970s Toronto.¹²⁰ As I discuss in more detail in Chapter 4 on *Egan*, white gay and lesbian communities’ use of this approach led to a competitive relationship with racialized communities fighting for racial justice in Toronto and facilitated white gay and lesbian activists’ invisibilization of race in their efforts to position the police killing of Jamaican-born Toronto resident Albert Johnson as “discrimination” rather than racism.¹²¹

In her discussion of analogies between gay and lesbian rights and the US civil rights movement, Puar argues that these analogies position “gays and lesbians [as] the last recipients of civil rights that have already been bestowed on racial minorities.”¹²² David Eng expands on this, arguing that in the US context, analogies between same-sex marriage and interracial marriage situate racial justice as a historical project and sexual rights as relevant to the contemporary moment.¹²³ By positioning racial justice projects as having been completed, analogies between

¹¹⁹ Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007), 118.

¹²⁰ Catherine Jean Nash, “Toronto’s Gay Village (1969–1982): Plotting the Politics of Gay Identity,” *The Canadian Geographer / Le Géographe canadien* 50, no. 1 (2006): 4; Catherine Jean Nash, “Contesting Identity: Politics of Gays and Lesbians in Toronto in the 1970s,” *Gender, Place and Culture* 12, no. 1 (2005): 122.

¹²¹ Nash, “Contesting Identity,” 126-7.

¹²² Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007), 118.

¹²³ David Eng, *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy* (Durham: Duke University Press, 2010), 38.

racism and homophobia situate contemporary homophobia in a post-racial period. As such, analogies are crucial to the ways in which contemporary Canada is constructed as “post-race.”

Amar Wahab traces this use of sexual orientation in Canada in his analysis of the Stop Murder Music (Canada) campaign.¹²⁴ Wahab argues that the analogization of racial oppression and homophobia facilitates constructions of homophobia as the “new racism.”¹²⁵ Wahab asserts:

The additive model of state multiculturalism—which has involved the culturalization of racialized communities as “ethnic groups”—has precipitated a scenario where matters of race and racism are assumed to belong to a prior moment in the nation’s history, while sexual liberation has become the new site through which the nation-state is pluralized and projected as exceptionally tolerant... Within this temporality of difference—nationalization in which queerness (as the new marker of otherness) has subsumed race (now disciplined as culture), homophobia (in a categorical sense) is analogized with racial oppression as the “new racism”, prioritizing gays and lesbians for state protection and rights entitlement—a discursive manoeuvre that is at the heart of homonationalist politics.¹²⁶

Similarly, during the parliamentary debates and Supreme Court proceedings I analyzed, I found analogical reasoning to be a primary method MPs and Supreme Court judges used to remove analyses of race from discussions of antidiscrimination. In this way, state representatives’ analogization of discrimination based on race to that based on sexual orientation helped them to both maintain and obfuscate white settler hegemony in Canada.

In the dissertation, I draw on these insights about parallelism and analogical reasoning to trace the discursive and material effects of this mode of reasoning in legislative debates on and legal analysis of sexual orientation. In Chapter 3, I show how parallel logics informed by Orientalism enabled MPs to construct the “improper” sexualities of Muslim men as culturally determined while positioning the white “homosexual” subject as redeemable through treatment, a process that invisibilized the historical co-constitution of race and sexuality in white settler

¹²⁴ Amar Wahab, “Calling ‘Homophobia’ into Place (Jamaica): Homo/trans/nationalism in the Stop Murder Music (Canada) Campaign,” *interventions* 18, no. 6 (2016): 921.

¹²⁵ Wahab, “Calling ‘Homophobia’ into Place (Jamaica),” 921.

¹²⁶ Wahab, “Calling ‘Homophobia’ into Place (Jamaica),” 921.

colonial policies, racialized restrictions on freedom of movement and association, and exclusionary immigration selection criteria aimed at ensuring white settler reproductive futurity. In Chapter 4, I analyze how analogical reasoning constructed a parallel relationship between white gay subjects and racialized subjects that naturalized their parallel and unequal exclusions from receiving old age security benefits. Finally, in Chapter 5, I explore the ways in which analogical reasoning secured the parallel construction of gay subjects as white, straight white subjects as tolerant of homonormative configurations of gay and lesbian life, and racialized subjects as straight and homophobic. Each of these manifestations of parallel logics confined racial justice to, as Puar asserts, a “resolved” history, thereby obfuscating not only the ongoing operations of racism but also the historical and contemporary imbrications of racial and sexual regulation.

The contribution of the dissertation to this scholarship on analogies between race and queerness comes from my analysis of how Canadian state actors have mobilized discourses of race and queerness, using the logics of parallelism and analogical reasoning, to secure white settler hegemony in Canada over a nearly fifty year period. Existing scholarship had not yet taken up questions of how state actors use analogies between race and sexuality in Canada throughout this period, the historically contextualized effects of these uses of analogical reasoning, and how this use of analogical reasoning developed in legislative debates and judicial rulings concerned with sexual orientation in Canada between the late 1960s and mid-2000s. I show how state actors have used analogical reasoning to stabilize Canadian white settler hegemony both by positioning racism in the past or in the US, thereby constructing Canada as “post-race,” and by positioning white gay, lesbian, and queer subjects as the legitimate recipients of current state protection.

Moreover, I contribute to this scholarship by showing how these analogies can be used both to divorce racism and sexual orientation discrimination from their systemic underpinnings and to obfuscate the imbrications of these systemic injustices. This process has involved analogizing sexual orientation discrimination to either historical examples of racism in Canada, such as the Canadian state's refusal to let passengers of the Komagata Maru enter Canada,¹²⁷ Japanese internment during the second world war,¹²⁸ or the Chinese Head Tax,¹²⁹ or anti-Black racism in the US, including slavery, Jim Crow segregation, and anti-miscegenation laws. MPs' and judges' analyses of these examples, however, didn't account for how the racist laws that enabled these practices worked in the service of a broader project of white supremacy, which has itself been propped up by heteronormativity. As such, the understanding of racism to which sexual orientation discrimination was analogized in the legislative debates and the judicial ruling was divorced from the broader project of white supremacy such that analyses of sexual orientation discrimination similarly failed to account for the systemic nature of heteronormativity in Canada. I show how failing to account for the broader projects of white supremacy in analyses of racism and heteronormativity in analyses of sexual orientation discrimination reinforces the logics underlying analogical reasoning. This is because the co-constitutive nature of white

¹²⁷ Rita Dhamoon, Davina Bhandar, Renisa Mawani, and Satwinder Kaur Bains, Eds *Unmooring the Komagata Maru: Charting Colonial Trajectories* (Vancouver: UBC Press, 2019); Anjali Gera Roy, *Imperialism and Sikh Migration: The Komagata Maru Incident* (Abingdon: Routledge, 2018); Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Durham: Duke University Press, 2018).

¹²⁸ Iyko Day, "Alien Intimacies: The Coloniality of Japanese Internment in Australia, Canada, and the U.S.," *Amerasia Journal* 36, no. 2 (2010): 107-124; Iyko Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (Durham: Duke University Press, 2016); Namiko Kunimoto, "Intimate Archives: Japanese-Canadian family photography, 1939-1949," *Art History* 27, no. 1 (2004): 129-55; Pamela Sugiman, "Memories of Internment: Narrating Japanese-Canadian Women's Life Stories," in *Diaspora, Memory, and Identity: A Search for Home*, ed. Vijay Agnew (Toronto: University of Toronto Press, 2005).

¹²⁹ Lily M. Cho, "Mass Capture Against Memory: Chinese Head Tax Certificates and the Making of Noncitizens," *Citizenship Studies* 22, no. 4 (2018): 381-400; Renisa Mawani, "'Cleansing the Conscience of the People': Reading Head Tax Redress in Multicultural Canada," *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 19, no. 2 (2004): 127-51; Constance Backhouse, "Legal Discrimination Against the Chinese in Canada: The Historical Framework," in *Calling Power to Account*, ed. David Dyzenhaus and Mayo Moran (Toronto: University of Toronto Press, 2005).

supremacy and heteronormativity is elided when racism and heterosexism are positioned as resulting from individual unjust laws rather than the broader project of white supremacist heteronormativity that has directed Canadian state actions since confederation as well as those of the British and French colonial powers that preceded it.

Additionally, I contribute to this scholarship on race/sexuality analogies by arguing that this limited understanding of racism that has been mobilized in the type of analogical reasoning I examine in the dissertation places limits on how sexual freedom can be intelligibly conceptualized in mainstream politics, rendering equality with heterosexuals *within a heteronormative framework* as the only legitimate goal available. Moreover, I assert that because this heteronormative framework is premised on white supremacy, and white supremacy is enacted through heteronormativity, this mode of analogical reasoning undermines projects that imagine sexual freedom and racial justice together. Such projects threaten the integrity of the white supremacist, heteronormative foundations of the Canadian state which, I suggest, is why Canadian state actors are so invested in rendering sexual and racial oppression as non-intersecting phenomena that result from individual unjust laws such that legal reform, without addressing the white supremacist and heterosexist nature of the Canadian state, can be positioned as a reasonable solution to the societal problems of racism and heterosexism.

Legal Studies: Intersectionality, Analogy, Discrimination, and “Immutability”

My use of intersectionality as a framework for understanding difference without collapsing differences through analogical reasoning comes from the legal scholarship of Kimberlé Crenshaw in her seminal “Demarginalizing the Intersection of Race and Sex: A Black

Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.”¹³⁰ In this article, Crenshaw demonstrated how single-issue discrimination doctrine erased and invalidated the experiences of Black women by focussing only on sex discrimination or only on racial discrimination. I build on Crenshaw’s work to show how, in Canada, not only is there a single-issue focus in discrimination cases, but the courts have also analogized racial and sexual orientation discrimination. The limitations of this use of analogy, I argue, point to the need for intersectional analysis that not only accounts for multiple dimensions of human experience (e.g., race, gender, sexual orientation) but that also does not reduce these dimensions to one another, allowing for a more complex and realistic understanding of lived experience. I also draw on Mari Matsuda’s methodological approach to intersectionality in legal analysis as I outline my own methodological approach in the dissertation, which I discuss in more detail in the methodology section of this chapter.

Furthermore, I take up legal scholarship on analogy. For example, because this work has not yet been done in the Canadian context over the period I take up in this dissertation, I draw on Serena Mayeri’s work on the emergence of race/sex analogies in the United States to contextualize my analysis. Mayeri reflects on both the limitations and advantages of analogical legal reasoning and traces how Black women have used analogies strategically to assert their rights.¹³¹ Also writing on the US context, Sharon Elizabeth Rush points to the limitations of analogical argument, but ultimately finds analogical reasoning to be a useful legal strategy for making sex and sexual orientation more palatable to the courts by clarifying meanings and

¹³⁰ Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum*, no. 1 (1989): 139-67.

¹³¹ Serena Mayeri, “A Common Fate of Discrimination: Race-Gender Analogies in Legal and Historical Perspective,” *Yale Law Journal* 110, no. 6 (2001): 1052-6.

reducing discomfort.¹³² These advantages of analogical legal reasoning informed and complicated my argument in the dissertation as I acknowledge the practical use of and partial gains made possible by analogical reasoning. I argue, however, that the advantages of analogical reasoning are only advantageous from a reformist perspective; despite minor gains, analogical reasoning ultimately erases racism from legal understandings of contemporary Canada and undermines intersectional approaches to theorizing the complex lived experiences of race and sexuality in Canada.

My analysis has also been influenced by Didi Herman's work on how antidiscrimination law stifles radical resistance.¹³³ Herman asserts that antidiscrimination law and the "self-policing identities" it produces direct activist energies towards legal reform and away from shifting the balance of power in more transformative ways. I add to this assertion by evaluating the effects of analogical reasoning in antidiscrimination law. I expand on Herman's work by demonstrating the specific ways in which analogies in particular thwart radical activism not only by directing activism towards the limited gains that can be made through the courts, but also by undermining coalition building between groups working towards racial and sexuality justice.

Furthermore, I use Canadian gay and lesbian legal studies scholarship to situate my analysis of Egan within the context of Canadian legal rulings on sexual orientation.¹³⁴ Brenda Cossman's contention that Egan was "a groundbreaking victory within a defeat"¹³⁵ shaped my analysis in chapter 4 as I considered the limitations of this "victory" and added an analysis of

¹³² Sharon Elizabeth Rush, "Equal Protection Analogies—Identity and 'Passing': Race and Sexual Orientation," *Harvard BlackLetter Law Journal* 13, no. 65 (1997): 67, 72.

¹³³ Didi Herman, *Rights of Passage: Struggles for Lesbian and Gay Legal Equality* (Toronto: University of Toronto Press, 1994), 45.

¹³⁴ Brenda Cossman, "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*," *Osgoode Hall Law Journal* 40, no. 3 (2002); Kathleen A. Lahey, *Are We "Persons" Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999).

¹³⁵ Cossman, "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*," 229.

race to the existing gay and lesbian legal scholarship on *Egan*, suggesting the case was a defeat not only because the court upheld the legal right to discriminate against gay and lesbian subjects, but also because its analogization of race and sexual orientation flattened differences between the two and erased the ongoing realities of racism in Canada. Lahey similarly traced the gains brought about by and limitations of the Supreme Court's ruling in *Egan*, but does not account for race in her analysis. My exploration of race/sexual orientation analogies in *Egan* brings a critical race studies analysis to this existing gay and lesbian legal studies work on *Egan* and in this way expands upon scholarship on the limitations of the court's ruling in *Egan*.

Finally, I used legal scholarship on "immutability" to critique the use of this concept in Canadian law. Jessica Clarke's work on "immutability" traces shifts in US legal understandings of this concept¹³⁶ which I suggest are applicable to Canada because of the transnational colonial circulation of ideas about the "immutability of race."¹³⁷ I also draw on Nicole LaViolette, who argues that the Supreme Court's 1993 ruling in *Canada (A.G.) v Ward*, which stated refugees should be able to use sexual orientation in their claims because it is an unchangeable personal characteristic, "suggests that lesbians and gay men are deserving of international protection only because they cannot change the personal attribute for which they are persecuted."¹³⁸ I expand on LaViolette's assertion that lack of choice should not be the only reason gay, lesbian, and queer refugees should be offered protection by discussing the racist legacy and present reality of the concept of "immutability." I also add to this scholarship by discussing how "immutability" permeates some justices' reasoning in *Egan* and discuss the specific problems that arise when sexual orientation is analogized to a conception of race as "immutable."

¹³⁶ Jessica A. Clarke, "Against Immutability," *Yale Law Journal* 125, no. 2 (2015): 4, 9.

¹³⁷ Thobani, *Exalted Subjects*, 38.

¹³⁸ LaViolette, "The Immutable Refugees," 1.

Critical Race Studies: On Canada and the Flexibility of Racism

In the dissertation, I also build on Canadian critical race studies scholarship on state policies including immigration, multiculturalism, and welfare by examining how queerness plays a role in these dynamics. Additionally, I expand on critical race scholarship that theorizes racism as flexible and adaptable by considering how queerness is increasingly being integrated into how racist structures adapt to maintain their power.

I draw significantly on the work of Sunera Thobani and her theorization of exalted Canadian subjectivity, put her work into conversation with other scholars who use race as an analytic in their studies of Canada, and extend this scholarship to consider how Canadian self-exaltation has been reconstructed in relation to sexuality politics. Thobani argues that understandings of Canadian government policies like welfare and multiculturalism have functioned to exalt white settler Canadian subjectivity while denigrating Indigenous and other racialized people.¹³⁹ Thobani traces how these policies position compassion as a characteristic possessed by white settler Canadians but not by racialized and Indigenous people, making it “key in organizing the social solidarity of nationals and the expulsion of strangers in the post-war period.”¹⁴⁰ Thobani also documents how this enabled multiculturalism, through its reconstitution of whiteness as tolerant, to “stabilize white supremacy by transforming its mode of articulation in a decolonizing era.”¹⁴¹

In the post-9/11 period, Canadian critical race theorists have described a shift in the operation of multiculturalism. Sedef Arat-Koç argues that Canada’s move to align with western civilization after 9/11 led to a “re-whitening” of Canadian identity and intensified forms of

¹³⁹ Sunera Thoabni, *Exalted Subjects*.

¹⁴⁰ Thobani, *Exalted Subjects*, 107.

¹⁴¹ Thoabni, *Exalted Subjects*, 146, 148.

marginalization for racialized people.¹⁴² Like the re-whitening Arat-Koç discusses, Thobani asserts there was a “racial bonding” between Canada and the US in this period.¹⁴³ Similarly, Sherene Razack critically engages calls to end multiculturalism after 9/11, arguing that the rights of racialized people were eroded and state surveillance targeting racialized people intensified.¹⁴⁴ Thobani asserts that before 9/11 immigrants were primarily portrayed as a drain on society whereas after 9/11 Muslim immigrants and refugees were increasingly seen as a threat to western civilization itself.¹⁴⁵ As these scholars show, the meaning of multiculturalism shifted in this period but continued to uphold white settler hegemony in Canada. In Chapter 5 I argue that despite these changes to its meaning, multiculturalism continued to be used politically to convey Canadian tolerance even as the rights of Muslim people were being eroded by the Canadian state.

Other scholars who take up race as a central analytic in both Canada and other contexts have demonstrated how racism, white supremacy, and whiteness adapt and reconstitute themselves in ways that secure their perpetuation. For example, Sandy Hudson asserts that “the climate of white supremacy is a hegemonic system that is, much like capitalism, adaptable.”¹⁴⁶

Also pointing to the ways in which whiteness morphs to secure its power, Zeus Leonardo asserts:

In order to maintain its racial hegemony, whiteness has always had to maintain some sense of flexibility...It must accommodate subjects previously marked as Other in order to preserve its group power. In other words, for it to remain dominant, whiteness has to seduce allies, convince them of the advantages of such an alliance, and sometimes be able to forsake immediate advantages for long-term goals of domination.¹⁴⁷

¹⁴² Sedef Arat-Koç, “The Disciplinary Boundaries of Canadian Identity after September 11: Civilizational Identity, Multiculturalism, and the Challenge of Anti-Imperialism,” *Social Justice* 32, no. 4 (2005): 32.

¹⁴³ Thobani, *Exalted Subjects*, 230.

¹⁴⁴ Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law & Politics* (Toronto: University of Toronto Press, 2008), 4.

¹⁴⁵ Thobani, *Exalted Subjects*, 27-28.

¹⁴⁶ Sandra Hudson, “In Search of a Black, Indigenous Future: Awakening De/Anti-Colonization,” (master’s thesis, Ontario Institute for Studies in Education, 2018), 44, https://tspace.library.utoronto.ca/bitstream/1807/101596/3/Hudson_Sandra_M_201806_MA_thesis.pdf

¹⁴⁷ Zeus Leonardo, “The Souls of White Folk: Critical Pedagogy, Whiteness Studies, and Globalization Discourse,” *Race Ethnicity and Education* 5, no. 1 (2002): 41.

Raka Shome extends these insights and contests the prevalent idea in whiteness studies that whiteness always maintains its power through its self-construction as invisible and normal.

Shome argues:

when the normalcy of whiteness gets contested (even if it constitutes a very small challenge to its power), when whiteness begins to feel insecure about its power and future, different strategies of self-naming emerge. Instead of positioning itself as the “norm,” it begins to mark itself as the “other,” as “different,” as an identity in crisis and therefore having a particular location that, like minority locations, needs to be defended, salvaged, and protected. Instead of being an “empty,” “nameless,” and definition-less category (Frankenberg, 1993) whiteness in such moments becomes a rather “full” category. It is in such visible markings of itself that whiteness often promotes a rhetoric where it begins to construct itself as “not the norm,” as something particular, full of unique challenges and struggles that need attention.¹⁴⁸

While whiteness’ proclivity for flexibility has taken many forms, in this dissertation I focus on how the Canadian state has used the “diversification of whiteness”¹⁴⁹ through the incorporation of sexual orientation to secure and reconstitute white supremacy. This use of sexual orientation has enabled the Canadian state to mark white gay-lesbian-queer subjects as “diverse others” who can be incorporated into the nation; the state then uses its ability to include particular forms of sexual non-normativity as evidence that it values and supports diversity without needing to address racial injustices.

Malinda Smith theorizes how diversity initiatives in academia have privileged gender over race in similar ways, such that “‘woman’ is constructed as *the Other*, and has come to

¹⁴⁸ Raka Shome, “Outing Whiteness,” *Critical Studies in Media Communication* 17, no. 3 (2000): 368.

¹⁴⁹ Amar Wahab, “Affective Mobilizations: Pinkwashing and Racialized Homophobia in *Out There*,” *Journal of Homosexuality* 68, no. 5 (2021): 868; Malinda Smith, “Diversity in Theory and Practice: Dividends, Downsides, and Dead-Ends,” in *Contemporary Inequalities and Social Justice in Canada*, ed. Janine Brodie (Toronto: University of Toronto Press, 2018), 63.

signify the difference that makes a difference to institutional transformation.”¹⁵⁰ Smith argues that this prioritization enables hiring and promotion practices that benefit white women and:

further marginalize non-whites (visible minorities), Aboriginal peoples, and persons with disabilities as the undifferentiated “other Others”...this dividing practice produces “other Others” as a second order category for whom justice can be deferred into the future.¹⁵¹

Smith describes a similar trend within the Canadian judiciary where diversity initiatives have involved “inviting to the bench white women, but rarely visible minority or Indigenous lawyers.”¹⁵² Sara Ahmed asserts that:

Woman as a generic term is predicated on violent exclusions...The violence of such othering demonstrates *what is at stake* in the assumption that woman has an essential and stable meaning. Such an assumption conceals the very borders that mark out the meaning of woman (whereby woman comes to stand for white woman). To assume the stability of woman is to conceal the borders that police what is inside and outside the meaning of “woman.” As such the stability of woman is an effect of power relations: that is, an effect of those who have the power to define or authorise the criteria for what constitutes woman. Such criteria are not only racialized; other women such as lesbian women, disabled women and working-class women have also become the other through which norms of “woman” are policed.¹⁵³

Ahmed wrote this in the late 1990s. Analyzing this idea thirty years later, Smith suggests that this racist use of gender analysis is being extended to sexual diversity such that white gay and lesbian people are being offered a similar mode of institutional inclusion at the expense of people racialized as non-white, Indigenous people, and disabled people.¹⁵⁴ Milena Doytcheva discusses a similar trend in anti-discrimination legislation produced by France and the European Union where the “‘legal universality’ of non-discrimination” has produced “white-centered diversity

¹⁵⁰ Malinda Smith, “Gender, Whiteness, and ‘other Others’ in the Academy,” in *States of Race: Critical Race Feminism for the 21st Century*, ed. Sunera Thobani, Sherene Razack, and Malinda Smith (Toronto: Between the Lines, 2010).

¹⁵¹ Smith, “Gender, Whiteness, and ‘other Others’ in the Academy.”

¹⁵² Smith, “Diversity in Theory and Practice,” 63.

¹⁵³ Sara Ahmed, *Differences that Matter: Feminist Theory and Postmodernism* (Cambridge: Cambridge University Press, 1998), 89-90.

¹⁵⁴ Smith, “Diversity in Theory and Practice,” 63.

conceptions.”¹⁵⁵ Like Smith, Doytcheva traces how sexual orientation is increasingly being used in this way to “deracialize antidiscrimination.”¹⁵⁶

Analogies enable this deracialization of diversity discourse by constructing gay, lesbian, and queer subjects as white and as the contemporary group of people the state should concern itself with including. Moreover, analogies facilitate shifts in diversity discourse towards promoting protections for white people while invisibilizing the ongoing realities of racism that need to be addressed to build a more just future. This limits the effectiveness of diversity work by reducing attention to a central way in which inequality is structured in Canada: racism.

In the dissertation, I build on this critical race scholarship and show that sexual orientation has increasingly been used to whiten approaches to diversity through analogical reasoning. In Chapter 3, I describe MPs’ construction of white men who have sex with men as redeemable through treatment and contrast this to their construction of Muslim men’s “improper” sexualities as culturally determined and therefore unchangeable. This redeemability of white men who have sex with men, I argue, constituted an early example of the diversification of whiteness in which straight white Canadians could be constructed as tolerant of diversity because of their limited tolerance of gay or “homosexual” white men in the same debates in which MPs used non-normative sexualities to construct Muslim men as an external threat to Canada. In Chapter 4 I discuss how, by reading sexual orientation into the Charter in *Egan*, a case concerned with white gay men, the Supreme Court was able to present itself as respectful of diversity while it continually disavowed the ongoing nature of racism in Canada by using analogies to position racism as historical or based in the US. Here again white gay men were

¹⁵⁵ Milena Doytcheva, “‘White Diversity’: Paradoxes of Deracializing Antidiscrimination,” *Social Sciences* 9, no. 50 (2020): 1, 13.

¹⁵⁶ Doytcheva, “‘White Diversity,’” 1.

included in the groups of people straight white Canadians tolerated through analogies that positioned racism as external to contemporary Canada. In Chapter 5, I draw on Suzanne Lenon's assertion that the affidavits same-sex couples presented to the Supreme Court relied on "whiteness as its unspoken yet aspirational ideal"¹⁵⁷ to suggest that the legalization of same-sex marriage constituted another example of the diversification of whiteness. MPs who supported the proposed legislation used same-sex marriage, understood, as Lenon demonstrates, as normatively white, to construct straight white Canadians as accepting of diversity while using analogical reasoning to position racism as historical or US-based. In these ways, I show how using white sexual diversity to constitute straight white Canadians as respectful of diversity while disavowing the ongoing nature of racism in Canada is one way in which sexual orientation has been used to construct racism as unimportant or not an urgent priority for Canada.

Histories of Sexuality, Race, and Indigeneity in Canada

The final body of work I draw on is the emerging field that examines histories of race, Indigeneity, and same-sex sexualities in Canada. This area is most developed in Indigenous studies, where scholars including Martin Cannon, Bonita Lawrence, and Kim Anderson have documented how early missionaries and colonial officials imposed heteropatriarchy on Indigenous peoples through missionary work and colonial legislation like the *Indian Act*.¹⁵⁸ These scholars have clarified the centrality of settler colonial control of Indigenous genders and sexual practices to the establishment of Canada as a white settler colony. Leanne Betasamosake Simpson argues that knowledges and practices embodied by Two Spirit and queer Indigenous

¹⁵⁷ Lenon, "Why is Our Love an Issue?" 353.

¹⁵⁸ Martin Cannon, "The Regulation of First Nations Sexuality," *Canadian Journal of Native Studies* 18, no. 1 (1998); Bonita Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," *Hypatia* 18, no. 2 (2003); Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood*, 2nd ed. (Toronto: Women's Press, 2016).

people posed a threat to the white settler state, which is why early colonial actions aimed to eliminate gender and sexual diversity from Indigenous societies.¹⁵⁹

Building on this work, Sarah Carter documents the imposition of monogamous, life-long, heterosexual marriage on Indigenous peoples, showing how this form of relationality not only enforced heteropatriarchal gender relations, but also encouraged white settlers to maintain “social and sexual distance” between themselves and Indigenous people.¹⁶⁰ Carter points out that the existence of same-sex marriage within Indigenous societies prompted this imposition of heteropatriarchal monogamy.¹⁶¹ Carter also describes how Islamophobic ideas about non-monogamy informed the colonial imposition of heteropatriarchal monogamy throughout what became Canada.¹⁶² Moreover, Carter argues that representations of Indigenous women as promiscuous were used to justify colonial policies like the pass system.¹⁶³ Carter’s work demonstrates how central sexuality has been to the white settler colonial project of Canada, as colonial officials used the diverse sexual practices and gendered embodiments of Indigenous people to justify colonial policies and help establish Canada as a white settler state.

Outside of Indigenous studies, Nayan Shah’s work documents how accusations of sodomy and sexual immorality were used to restrict the movement of racialized labourers across the US-Canada border.¹⁶⁴ Moreover, Shah argues that when South Asian men were allowed to immigrate to Canada, they were prevented from bringing their wives and families, which again positioned them as sexually deviant and was used to justify “their exclusion from political and

¹⁵⁹ Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017), 126.

¹⁶⁰ Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: University of Alberta Press, 2008), 6.

¹⁶¹ Carter, *The Importance of Being Monogamous*, 30-1.

¹⁶² Carter, *The Importance of Being Monogamous*, 44.

¹⁶³ Carter, *The Importance of Being Monogamous*, 11.

¹⁶⁴ Nayan Shah, *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West* (Berkeley: University of California Press, 2011), 208.

social life in Canada.”¹⁶⁵ Shah’s work clarifies the centrality of sexuality to early Canadian modes of racialization, the control of racialized people’s movement across borders, and the exclusion of racialized people from Canadian social and political institutions.

Enakshi Dua has also shown how central ideas about sexuality were to anti-Asian xenophobic policies targeting immigrants from China, Japan, and India in the late 1800s and early 1900s. Dua documents how Canadian concerns about Chinese, Japanese, and Indian women’s sexuality, such as supposedly having “too many” children or working as sex workers, were used to dissuade politicians from allowing East and South Asian women to immigrate to Canada with their husbands.¹⁶⁶ Canadians on the other side of the debate who supported East and South Asian women’s immigration to Canada similarly mobilized ideas about sexuality, arguing that allowing these women to immigrate would discourage sexual relationships between East and South Asian men and white women.¹⁶⁷ Dua’s work demonstrates the centrality of discourses about sexuality to debates about racialized immigration to Canada.

In the dissertation, I build on this work to consider how the dynamics between race and sexuality have shifted in a more recent historical period, from 1967 to 2005. My work helps to fill the gap between scholarship on race and sexuality in Canada between the 1700s and early 1900s and more recent work on race and sexuality in Canada after 2000.¹⁶⁸ While existing work strongly suggested that race and sexuality continued to be co-constitutive during the period I consider, which guided my inquiry in the dissertation, the scholarship had not delved deeply into

¹⁶⁵ Shah, *Stranger Intimacy*, 208-9.

¹⁶⁶ Enakshi Dua, “Exclusion through Inclusion: Female Asian Migration in the Making of Canada as a White Settler Nation,” *Gender, Place, & Culture* 14, no. 4 (2007): 451.

¹⁶⁷ Dua, “Exclusion through Inclusion,” 451, 464.

¹⁶⁸ See, for example: Suzanne Lenon, “What’s So Civil About Marriage? The Racial Pedagogy of Same-Sex Marriage in Canada,” *Darkmatter* 3 (2008): 26-36; Amar Wahab, “Unveiling Fetishnationalism: Bidding for Citizenship in Queer Times,” in *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*, ed. OmiSoore Dryden and Suzanne Lenon (Vancouver: UBC Press, 2015); Rinaldo Walcott, *Queer Returns: Essays on Multiculturalism, Diaspora, and Black Studies* (London: Insomniac Press, 2016).

the specific ways in which the relationship between race and sexuality developed during the 1967-2005 period.

As such, this dissertation contributes to existing scholarship on the histories of race and sexuality in Canada by explicating how race and sexuality operated relationally between 1967 and 2005. I trace the emergence of parallelism between Orientalized representations of Muslim men's non-normative sexualities, understood as culturally determined, and white men's pathologized homosexuality in the late 1960s. This positioning enabled white men who had sex with other men to be constructed as redeemable through treatment while Muslim men were essentialized as sexually deviant, facilitating xenophobic representations of Muslim people that positioned them as external to Canada. In this way, my dissertation began this work of examining how race and sexuality operated relationally in the late 1960s.

I also outline the relational operation of race and sexuality during the 1995 Supreme Court case *Egan v. Canada*. Existing scholarship on queer Canadian history had highlighted the importance of this case to sexual "progress" in Canada without considering the role of race in this progress narrative,¹⁶⁹ while scholarship on race in Canada in the 1990s hasn't extensively engaged with the role of sexuality.¹⁷⁰ In the chapter on *Egan*, I explicate how Supreme Court judges drew analogies between racial discrimination and discrimination on the basis of sexual

¹⁶⁹ See, for example: Thomas Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), 26; Donald W. McLeod, "Jim Egan: Gay Warrior," in *Any Other Way: How Toronto Got Queer*, ed. Stephanie Chambers, Jane Farrow, Maureen FitzGerald, Ed Jackson, John Lorinc, Tim McCaskell, Rebecca Sheffield, Tatum Taylor, and Rahim Thawer (Toronto: Couch House Books, 2017), 136; Tim McCaskell, *Queer Progress: From Homophobia to Homonationalism* (Toronto: Between the Lines, 2016), 332; Kathleen A. Lahey, *Are We "Persons" Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999), 66-7.

¹⁷⁰ See, for example, Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 150-76; Sherene Razack, *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism* (Toronto: University of Toronto Press, 2004); Sherene Razack, "'Simple Logic': Race, the Identity Documents Rule and the Story of a Nation Besieged and Betrayed," *Journal of Law and Social Policy* 15 (2000): 184; Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada* (London: Routledge, 1999), 33.

orientation in developing legal arguments about the nature of sexuality and the appropriate role for the state in regulating sexuality. I show how the analogical reasoning in this case positioned racial discrimination as either historical or based in the US, thereby constructing contemporary Canada as free from racism. In this way I contribute to scholarship on the histories of race and sexuality in Canada by building on the largely unconnected bodies of scholarship on sexuality and race in 1990s Canada to demonstrate the analogical operation of race and sexuality during this period.

In my discussion of the parliamentary debates about the legalization of same-sex marriage, I outline how MPs used analogical reasoning to again position racism as either historical or US-based, thereby constructing contemporary Canada as “post-race.” I also show how these dynamics enabled MPs to construct homophobia as the “new racism” in this supposedly post-race Canada.¹⁷¹ Some existing scholarship had taken up the relationship between race, sexuality, and same-sex marriage—such as Carter’s work on monogamy¹⁷² and Lenon’s work on the role of whiteness in legitimizing same-sex marriage¹⁷³—and I build on this work by tracing how race and sexuality functioned analogically during the period when the legalization of same-sex marriage was being considered.

Overall, my contribution to the scholarship I have outlined in this chapter comes from my explication of the ways in which analogies and parallelism between race and sexuality operated in Canada between 1967 and 2005. I build on US-based scholarship on analogical reasoning,

¹⁷¹ Wahab, “Calling ‘Homophobia’ into Place (Jamaica),” 921; Amy L. Stone and Jane Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black’: Mapping White uses of Blackness in Modern Gay Rights Campaigns in the United States,” *Social Identities: Journal for the Study of Race, Nation and Culture* 17, no. 5 (2011): 606.

¹⁷² Sarah Carter, *The Importance of Being Monogamous*.

¹⁷³ Suzanne Lenon, “‘Why is Our Love an Issue?’: Same-Sex Marriage and the Racial Politics of the Ordinary,” *Social Identities* 17, no. 3 (2011): 353; Suzanne Lenon, “What’s So Civil About Marriage? The Racial Pedagogy of Same-Sex Marriage in Canada,” *Darkmatter* 3 (2008): 27.

show how analogical logics have enabled the diversification of whiteness through sexuality, and develop an analysis that forges connections between scholarship on sexuality in Canada that is not attentive to race and scholarship on race in Canada that doesn't account for sexuality.

Methodology

I began this project with a desire to explore how white queers, like myself, not only become complicit in existing systems of racist and white settler colonial governance in Canada, but also how white people, queer and straight, use queerness to re-entrench, deepen, and justify the maintenance of Canada's racist and white settler colonial foundations. While this work had begun in the US context, I wanted to understand what made this possible in Canada specifically. I'm guided in this project by my commitment to intersectionality, which has informed my resistance to the idea that racial and sexual justice projects need to be at odds.

Intersectional Methodology

Methodologically, I approached this work intersectionally. While Kimberlé Crenshaw coined the term intersectionality in 1989,¹⁷⁴ her theorization of the concept built on earlier Black feminist analyses of the co-constitutive nature of race and gender. These ideas were present in early Black feminist work, including that of Sojourner Truth and Ida B. Wells, as well as the writings of Audre Lorde, Angela Davis, bell hooks, and the Combahee River Collective from the 1970s and 1980s.¹⁷⁵

¹⁷⁴ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*, no. 1 (1989).

¹⁷⁵ Chaylo Haynes, Nicole M. Joseph, Lori D. Patton, Saran Stewart, and Evette L. Allen, "Toward an Understanding of Intersectionality Methodology: A 30-Year Literature Synthesis of Black Women's Experiences in

Nira Yuval-Davis argues “The point of intersectional analysis...is to analyse the differential ways in which different social divisions are concretely enmeshed and constructed by each other and how they relate to political and subjective constructions of identities.”¹⁷⁶ Other scholars, including Rekia Jibrin and Sara Salem, have critiqued the way some intersectionality scholars focus on identity at the expense of an analysis of structural power.¹⁷⁷ Similarly, Crenshaw argues that “intersectionality is not just about identities but about the institutions that use identity to exclude and privilege” and that “we need to examine the structures of power that so successfully resist change.”¹⁷⁸ This is the approach I take in the dissertation, analyzing structures of power rather than theorizing from the experiences of multiply marginalized subjects.

There has been resistance, however, to de-centering marginalized subjects from the analysis. Sirma Bilge, for example, asserts that “the whitening of intersectionality is achieved in part by excluding from debate or overlooking the contributions of those who have multiple minority identities and are marginalized social actors—women of color and queers of color.”¹⁷⁹ Alexie Labelle also raises concerns about the “erasure of black women scholars in intersectionality scholarship.”¹⁸⁰ While I draw extensively on scholars of colour in the dissertation, my lack of focus on the experiential knowledge of racialized queer subjects may

Higher Education,” *Review of Educational Research* 90, no. 6 (2020): 753, 755; Combahee River Collective, “The Combahee River Collective Statement,” in *How We Get Free: Black Feminism and the Combahee River Collective*, ed. Keeanga-Yamahtta Taylor, 15-27 (Chicago: Haymarket Books, 2017).

¹⁷⁶ Nira Yuval-Davis, “Intersectionality and Feminist Politics,” *European Journal of Women’s Studies* 13, no. 3 (2006): 205.

¹⁷⁷ Rekia Jibrin and Sara Salem, “Revisiting Intersectionality: Reflections on Theory and Praxis,” *Trans-Scripts* 5 (2015): 12.

¹⁷⁸ Kimberlé Crenshaw, “Opinion: Why Intersectionality Can’t Wait,” *The Washington Post*, September 24, 2015. <https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait/>.

¹⁷⁹ Sirma Bilge, “Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies,” *Du Bois Review: Social Science Research on Race* 10, no. 2 (2013): 412.

¹⁸⁰ Alexie Labelle, “Bringing Epistemology into Intersectional Methodology,” *European Journal of Politics and Gender* 3, no. 3 (2020): 409.

raise questions about the applicability of intersectionality to this project. Following Crenshaw, however, I contend that theorizing intersecting power structures, racism and heterosexism in the case of this dissertation, is intersectional research. This is not to devalue the important theoretical contributions of the experiential knowledge of queers of colour. Instead, I made this methodological decision to focus on power structures rather than lived experience to avoid speaking for or interpreting the experiences of racialized queer people as a white researcher. Focusing on power structures enabled me to think through whiteness and white complicity or culpability in racist heterosexism without speaking for differently positioned subjects.

While a precise methodology for intersectionality is still being developed,¹⁸¹ scholars have begun to outline some parameters for intersectional methodology. Mari Matsuda referred to this method “to understand[ing] the interconnection of all forms of subordination” as “asking the other question.” Matsuda describes this process:

When I see something that looks racist, I ask, “Where is the patriarchy in this?” When I see something that looks sexist, I ask, “Where is the heterosexism in this?” When I see something that looks homophobic, I ask, “Where are the class interests in this?”¹⁸²

Instead of framing this project around instances of homophobia and questioning how racism is involved, I selected instances in which the state implemented reforms or made judicial decisions that it presents as queer inclusive and ask how state actors used race in their arguments. I selected cases of queer inclusion, rather than, for example, looking at immigration reform and asking how sexuality was involved, because of my commitment to queer community building and my concern with the ways in which racism and white settler logics can inform the discourses that circulate in these queer spaces differently than in mainstream discourses. I selected these

¹⁸¹ Leslie McCall, “The Complexity of Intersectionality.” *Signs* 30, no. 3 (2005): 1772; Patricia Hill Collins and Sirma Bilge, *Intersectionality* (2nd ed.) (Cambridge: Polity Press, 2020), 47.

¹⁸² Mari Matsuda, “Beside My Sister, Facing the Enemy: Legal Theory out of Coalition,” *Stanford Law Review* 43, no. 6 (1991): 1189.

particular cases of state inclusion because Canadian LGBTQ history texts have often positioned them as transformative moments in LGBTQ history in Canada.¹⁸³

Kathy Davis situates asking the other question as the beginning of the analysis, arguing that the challenge is what to do next, how to make “sense of the connections between categories of difference and interpret[] them in terms of power.”¹⁸⁴ To undertake this work, I used critical discourse analysis, which I discuss in more detail in the next section.

Critical Discourse Analysis

Critical discourse analysis emerged from linguistics and has been significantly influenced by poststructuralist feminism and Foucault’s theories of discourse.¹⁸⁵ Dianna Mullet describes critical discourse analysis as “a qualitative analytical approach for critically describing, interpreting, and explaining the ways in which discourses construct, maintain, and legitimize social inequalities.”¹⁸⁶ Mullet argues that critical discourse analysis “deals primarily with discourses of power abuse, injustice, and inequality and attempts to uncover implicit or concealed power relations.”¹⁸⁷ Terry Locke emphasizes that critical discourse analysis “views a

¹⁸³ Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), 44-45; David Rayside, “Queer Advocacy in Ontario,” in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Tremblay (Vancouver: UBC Press, 2015), 96; Miriam Smith, “LGBTQ Activism: The Pan-Canadian Political Space,” in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Tremblay (Vancouver: UBC Press, 2015), 45. Recent scholarship, particularly on the 1969 reforms, has challenged the celebratory discourse surrounding these reforms. See, for example, Tom Hooper’s “‘The State’s Key to the Bedroom Door’: Queer Perspectives on Pierre Elliot Trudeau’s ‘Just Society’ in an Era of Bathroom Raids,” Karen Pearlston’s “‘Something More’: The State’s Place in the Bedrooms of Lesbian Nation,” and Gary Kinsman’s “Not a Gift from Above: The Mythology of Homosexual Law Reform and the Making of Neoliberal Queer Histories” in *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, ed. Christopher Dummitt and Christabelle Sethna (Vancouver: UBC Press, 2020).

¹⁸⁴ Kathy Davis, “Intersectionality as Critical Methodology,” in *Writing Academic Texts Differently: Intersectional Feminist Methodologies and the Playful Art of Writing*, ed. Nina Lykke (New York: Routledge, 2014), 20.

¹⁸⁵ Bernhard Forchtner, “Critical Discourse Studies and Social Theory,” in *The Routledge Handbook of Critical Discourse Studies*, ed. John Flowerdew and John E. Richardson (London: Routledge, 2018), 259-60.

¹⁸⁶ Dianna R. Mullet, “A General Critical Discourse Analysis Framework for Educational Research,” *Journal of Advanced Academics* 29, no. 2 (2018): 116.

¹⁸⁷ Mullet, “A General Critical Discourse Analysis Framework,” 117.

prevailing social order as historically situated and therefore relative, socially constructed and changeable” and “views a prevailing social order and social processes as constituted and sustained less by the will of individuals than by the pervasiveness of particular constructions or versions of reality – often referred to as discourses.”¹⁸⁸ Locke argues that critical discourse analysis helps uncover the way in which power operates through discourses.¹⁸⁹

Heiko Motschenbacher suggests that critical discourse analysis is well-suited to sexuality studies because “they share...a focus on issues of power, a critical look at dominant discourses that is ultimately meant to induce social change, and a tendency of researchers to overtly acknowledge the political motivations on which their work is based.”¹⁹⁰ Motschenbacher asserts that “a central aim of sexuality-related CDS is the questioning of hegemonic, stereotypical or essentialising identity discourses,” which I take up in the dissertation around questions of culturalist racism and “immutability.” In addition to its compatibility with sexuality studies, critical discourse analysis is well suited to my project because, as Mullet asserts, critical discourse analysis enables the “discovery of latent or hidden beliefs that appear in language disguised as analogies, metaphors, or other conceptual expressions.”¹⁹¹ In my analysis of analogical reasoning, I use critical discourse analysis to investigate the ideologies that informed MPs’ and judges’ uses of analogies between race and sexuality.

Mullet situates selecting the discourse as the first step in critical discourse analysis.¹⁹² In this dissertation, I look at how racism has informed state discourses on the inclusion of sexual

¹⁸⁸ Terry Locke, *Critical Discourse Analysis* (London: Continuum, 2004), 1.

¹⁸⁹ Locke, *Critical Discourse Analysis*, 2.

¹⁹⁰ Heiko Motschenbacher, “Sexuality in Critical Discourse Studies,” In *The Routledge Handbook of Critical Discourse Studies*, ed. John Flowerdew and John E. Richardson (London: Routledge, 2018), 388.

¹⁹¹ Mullet, “A General Critical Discourse Analysis Framework,” 120.

¹⁹² Mullet, “A General Critical Discourse Analysis Framework,” 123.

diversity. The next step Mullet outlines is locating and preparing data sources.¹⁹³ For Chapter 3, I began by locating each House of Commons transcript from June 6, 1967 to December 19, 1969 on the Canadian Parliamentary Historical Resources website. I searched through the transcripts for references to “the homosexual,” “homosexuals,” “homosexuality,” “Bill C-195,” and “Bill C-150.” I copied the full passages of MPs’ comments with any of these key terms into a word document, including the name of the MP, the date, session and volume number, and page number. For Chapter 4, I used the full transcript of the Supreme Court decision in *Egan v Canada* as the text. For Chapter 5, I began by locating all the references to same-sex marriage or bill C-38 in House of Commons transcripts during the 38th Parliament. I copied the full comments from each MP that included any reference to same-sex marriage into a word document, including the name of the MP and the location of the passage in the debates.

Next, Mullet recommends examining:

the social and historical context and producers of the texts. Factors considered in this stage may include characteristics of the genre, historical context, production context, overall slant or style, intended audience, intended purpose of the text, publisher characteristics, and author characteristics.¹⁹⁴

This process of contextualization is particularly important because, as Patricia Hill Collins points out, “Decontextualization and abstraction are the hallmarks of how Western epistemologies exercise epistemic power.”¹⁹⁵ As such, placing these sexuality-themed texts in their racialized contexts can help work against the separation of race and sexuality that is central to how white supremacist and heterosexist power operates. I focussed primarily on the historical and production contexts of the texts. In Chapter 3, I place the parliamentary debates about the partial decriminalization of anal sex within the context of immigration reforms and the White Paper. I

¹⁹³ Mullet, “A General Critical Discourse Analysis Framework,” 123.

¹⁹⁴ Mullet, “A General Critical Discourse Analysis Framework,” 123.

¹⁹⁵ Patricia Hill Collins, *Intersectionality as Critical Social Theory* (Durham: Duke University Press, 2019), 249.

contextualize *Egan v Canada* in Chapter 4 in relation to the “crisis” in Canadian whiteness, the conflict between the Mohawks and the SQ, RCMP, and Canadian Armed Forces at Kanehsatà:ke, the racism of Canadian peacekeeping troops in Somalia, and racist changes to immigration policies in the 1990s. I situate Chapter 5, on same-sex marriage, in the context of the post-9/11 period, defined by the intensified Islamophobia that has permeated the Canadian political landscape since 2001, as well as the accompanying challenges to Canada’s multiculturalism policy.

The next stage of critical discourse analysis Mullett describes involves identifying overarching themes using qualitative coding methods.¹⁹⁶ I conducted manual coding on each set of texts I used in the dissertation.¹⁹⁷ During the first round of coding,¹⁹⁸ I highlighted key terms or phrases that explicitly referenced race or that expressed the MP’s or judge’s understanding of sexuality and created codes in the margins to mark these references. Next I arranged the codes into categories and, for those categories that didn’t explicitly name race, considered how understandings of race could have informed the comments that made up that category.

Stage 5, which Mullet labels interdiscursivity, involves identifying the interactions between discourses within the text and how “social practices inform the arguments in the text.”¹⁹⁹ In this stage, I used the thematic categories I coded to identify the range of discursive positions evident in the texts. I considered how normative understandings of race, racism, and sexuality informed the differing positions taken up by MPs and judges.

In the next stage of critical discourse analysis, Mullett states that “the texts are examined for internal relations, or patterns, words, and linguistic devices that represent power relations,

¹⁹⁶ Mullett, “A General Critical Discourse Analysis Framework,” 123.

¹⁹⁷ Johnny Saldaña, *Coding Manual for Qualitative Researchers* (London: Sage, 2009), 32.

¹⁹⁸ Johnny Saldaña, *Coding Manual for Qualitative Researchers* (London: Sage, 2009), 32.

¹⁹⁹ Mullett, “A General Critical Discourse Analysis Framework,” 123.

social context (e.g., events, actors, or locations), or speakers' positionalities."²⁰⁰ In Chapter 3, I identified repeated references to the sexualities of Muslim men and the medicalization of homosexuality and reflected on how these references related to the power relations of white settler supremacy. In my analysis of primary documents for Chapters 4 and 5, I noticed the prevalence of analogies between race and sexuality in how MPs and Supreme Court judges interpreted sexual orientation.

Mullet identifies interpreting the data as the final stage of critical discourse analysis. In this stage of analysis, I considered the themes and patterns I identified in the texts in relation to the broader white settler project of Canada, questioning how these positions might help secure or resist the structure of white settler hegemony in Canada. In this consideration, I paid particular attention to how MPs and judges constructed the relationship between race and sexuality and how this relationship might relate to white settler hegemony in Canada. In Chapters 4 and 5, MPs and judges constructed this relationship between race and sexuality as analogical, and I analyze the implications of this analogical mode of reasoning. I argue that these analogies oversimplify the histories and current realities of the Canadian state's regulation of race and sexuality, obfuscate the imbrications of race and sexuality in Canada, and mask the white settler supremacist structuring of the Canadian state while simultaneously constructing it as queer inclusive.

Limitations

My conclusions are limited by my focus on state archives, which not only conceptualize race in relation to sexuality, but are also designed to erase Indigenous presence through their

²⁰⁰ Mullet, "A General Critical Discourse Analysis Framework," 124.

construction of race, for example by positioning Indigenous peoples as “immigrants”²⁰¹ or homogenizing and reducing Indigenous peoples to one culture within Canadian multiculturalism.²⁰² Because Canadian state practices both discursively and materially undermine Indigenous existence, my focus on state archives limits the theorizations of white settler colonialism I’ve been able to offer in relation to the race/sexuality nexus that is the focus of this project. J. Kēhaulani Kauanui describes how queerness in settler states relies on “the imagined disappearance of indigeneity” to “ensure[] a progressive future for white settlers.”²⁰³ This observation seems equally applicable to Canada’s racialized construction of sexuality, through which “race” comes to stand in for non-white, non-Indigenous people in Canada. In the texts I analyze, references to race and racism elide Indigenous presence in every example I found. So while racism against non-white, non-Indigenous people was brought up in the documents only to be denied, the racism and colonialism to which Indigenous people are subjected was completely absent, perpetuating the erasure of Indigenous peoples that is so foundational to the white settler colonial project of Canada. More fully accounting for the ways in which white settler colonialism undergirds the Canadian state’s racist use of queer inclusion, and possibly race/sexuality analogies as well, would, I think, require analyzing a different set of sources.

²⁰¹ Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too,’” 435.

²⁰² Thobani, *Exalted Subjects*, 173.

²⁰³ J. Kēhaulani Kauanui, *Paradoxes of Hawaiian Sovereignty: Land, Sex, and the Colonial Politics of State Nationalism* (Durham: Duke University Press, 2018), 34.

Chapter 2: Historical Context: Canadian State Regulation of Race and Sexuality, 1969-2005

In this chapter, I provide an overview of the historical context in which the reforms I focus on in this dissertation took place. I describe how, in the late 1960s, the government's partial decriminalization of anal sex was part of a larger project of social and economic reform aimed at transforming Canada into a "just society";²⁰⁴ part of the impetus for these efforts to make Canada appear to be more just and equitable came from a desire to delegitimize Indigenous sovereignty and Québécois nationalist movements.²⁰⁵ As the state instituted reforms that, at least on the surface, made life in Canada less repressive for some gay and lesbian people, gay and lesbian activist demands became less radical and more focussed on inclusion in existing racist and colonial institutions.²⁰⁶ After the implementation of the Charter, gay and lesbian activists as well as judges and MPs articulated these demands using analogical reasoning that positioned homophobia as the "new racism."²⁰⁷ This positioning helped diversify whiteness in ways that helped sustain white settler supremacy in Canada.

²⁰⁴ Isabella Bakker and Katherine Scott, "From the Postwar to the Post-Liberal Keynesian Welfare States," in *Understanding Canada: Building on the New Canadian Political Economy*, ed. Wallach Clement (Montreal: McGill-Queen's University Press, 1997), 286.

²⁰⁵ Gary Kinsman, "Not a Gift from Above: The Mythology of Homosexual Law Reform and the Making of Neoliberal Queer Histories," in *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, ed. Christopher Dummitt and Christabelle Sethna (Vancouver: UBC Press, 2020), 83, 94.

²⁰⁶ Manon Trembley, "Introduction," in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Trembley (Vancouver: UBC Press, 2015), 17; Miriam Smith, "Nationalism and Social Movement Politics: Gay and Lesbian Rights and the Effect of the Charter of Rights and Freedoms in Quebec," in *Contemporary Quebec: Selected Readings and Commentaries*, ed. Michael Behiels and Matthew Hayday (Montreal: McGill-Queen's University Press, 2011), 365.

²⁰⁷ Wahab, "Calling 'Homophobia' into Place (Jamaica)," 921; Amy L. Stone and Jane Ward, "From 'Black People are not a Homosexual Act' to 'Gay is the New Black': Mapping White uses of Blackness in Modern Gay Rights Campaigns in the United States," *Social Identities: Journal for the Study of Race, Nation and Culture* 17, no. 5 (2011): 606.

Following the end of the second world war, several significant changes occurred in Canada. Wealth, though unevenly distributed, increased. The population of Canada almost doubled in the thirty years after 1945 because of both the “baby boom” and increased immigration, which had been significantly reduced during the second world war.²⁰⁸ Urbanization and suburbanization accelerated, creating many new jobs for the people involved in planning, building, and funding residential and commercial developments. This was also a period in which the government began providing more social services to Canadian citizens than it had in the past, including “unemployment insurance, family allowances, veterans’ benefits, and more generous old-age pensions.”²⁰⁹ As Sunera Thobani argues, the introduction of the Canadian welfare state in the postwar period was introduced to “contain the political challenges presented to the status quo by labour and women’s movements,” and successfully “increased the legitimacy of the state, stabilized the capitalist system, and weakened class solidarity among the proletariat.”²¹⁰

Pierre Trudeau termed these and other social and economic reforms he proposed part of a “just society” he worked towards creating in the late 1960s and 1970s.²¹¹ This “just society” also included the partial decriminalization of anal sex. By working towards the creation of the “just society,” Trudeau hoped to secure Canadian unity and quell calls for Indigenous sovereignty and Québécois nationalism such that, according to Gary Kinsman, the “Just Society was...directed against the self-determination and anti-colonial struggles of Indigenous peoples and the growing

²⁰⁸ “150 Years of Immigration in Canada,” Statistics Canada, last modified May 17, 2018, <https://www150.statcan.gc.ca/n1/pub/11-630-x/11-630-x2016006-eng.htm>.

²⁰⁹ Magda Fahrni and Robert Rutherford, “Introduction,” in *Creating Postwar Canada: Community, Diversity, and Dissent, 1945-75*, ed. Magda Fahrni and Robert Rutherford (Vancouver: UBC Press, 2008), 4.

²¹⁰ Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007), 106.

²¹¹ Isabella Bakker and Katherine Scott, “From the Postwar to the Post-Liberal Keynesian Welfare States,” in *Understanding Canada: Building on the New Canadian Political Economy*, ed. Wallach Clement (Montreal: McGill-Queen’s University Press, 1997), 286.

Quebec sovereignty movement.”²¹² As such, the partial decriminalization of anal sex was part of a package of social and economic reforms that were intended to make Canada appear to be a fair, just, and equitable society so that it could avoid addressing the white settler colonial nature of Canada.

Parliament held its first debates about changing the way in which the federal government criminalized anal sex in 1967. At the time, Canada, like most other current or former British colonies, had laws criminalizing what the state called “gross indecency” and “buggery” that were first introduced in the Criminal Code of 1892.²¹³ As Kyle Kirkup argues, these laws “played an important role in constituting queer people in terms of promiscuity, deviance, and pathology.”²¹⁴ These laws were also integral to the colonial construction of Indigenous people and other people racialized as non-white as less “civilized” than white people, facilitating Europeans’ positioning of non-Europeans as outside of humanity.²¹⁵ Trudeau’s Liberal government’s decriminalization of anal sex carried out in private between two consenting adults over twenty-one years of age in 1969 was one of the first instances in which the Canadian state undertook actions with the stated aim of reducing the persecution to which men who had sex with other men were subjected in Canada. While at the time the government allowed medical practitioners to attempt to “cure” or “treat” same-sex desires and behaviours—including, for example, by allowing the use of Lysergic acid diethylamide (LSD) to “treat” homosexuality at the Hollywood Hospital in New

²¹² Gary Kinsman, “Not a Gift from Above: The Mythology of Homosexual Law Reform and the Making of Neoliberal Queer Histories,” in *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, ed. Christopher Dummitt and Christabelle Sethna (Vancouver: UBC Press, 2020), 83, 94.

²¹³ Kyle Kirkup, “The Gross Indecency of Criminalizing HIV Non-Disclosure,” *University of Toronto Law Journal* 70, no. 3 (2020): 264.

²¹⁴ Kirkup, “The Gross Indecency,” 266.

²¹⁵ Martin Cannon, “The Regulation of First Nations Sexuality,” *Canadian Journal of Native Studies* 18, no. 1 (1998): 2.

Westminster, BC and at Toronto's Forensic Clinic²¹⁶—the 1969 Criminal Code reforms marked the first time the Canadian government presented itself as helping men who have sex with men by reducing the legal persecution to which they could be subjected.

As I discuss in more detail in Chapter 3, the parliamentary debates over partially decriminalizing anal sex deployed highly racialized language to construct anal sex between men as something that happened “elsewhere,” particularly in reference to Muslim men though the location of this “elsewhere” was obscured by MPs’ decontextualized usage of terms like “harems,” “Moslem attitude,” and “Arabian army.”²¹⁷ Other MPs drew on ideas about Canada’s “wide open spaces” as a defense against same-sex desires, bolstering white settler colonial ideas of Indigenous absence from their land and using this construction to naturalize Canadian heterosexuality.²¹⁸ Conversely, MPs who supported the partial decriminalization of anal sex constructed men with same-sex desires as white and, therefore, redeemable through treatment.

The Canadian government’s 1969 decriminalization of private acts of anal sex between two people over twenty-one years of age have been mythologized in both popular and scholarly literature.²¹⁹ Since the fiftieth anniversary of the reforms in 2019, the Anti-69 Network—organized by Tom Hooper, Lara Karaian, Gary Kinsman, Suzanne Lenon, Cassandra Lord, Danielle Normandeau, and Karen Pearlston—has developed conferences, film screenings, press releases, and academic publications to complicate the celebratory discourse through which the Canadian

²¹⁶ Andrea Ens, “Wish I would be normal”: LSD and Homosexuality at Hollywood Hospital, 1955-1973 (master’s thesis, University of Saskatchewan, 2019), <https://harvest.usask.ca/bitstream/handle/10388/11775/ENS-THESIS-2019.pdf?sequence=1&isAllowed=y>; Elise Chenier, *Strangers in Our Midst: Sexual Deviance in Postwar Ontario* (Toronto: University of Toronto Press, 2008), 134.

²¹⁷ *House of Commons Debates*, 028 (17 April 1969) at 7644 (Frederick Bigg); *House of Commons Debates*, 028 (18 April 1969) at 5482-5483 (Roland Godin); *House of Commons Debates*, 028 (17 April 1969) at 7639 (Walter Dinsdale).

²¹⁸ *House of Commons Debates*, 028 (17 April 1969) at 7644 (Frederick Bigg).

²¹⁹ Tom Hooper, “‘The State’s Key to the Bedroom Door’: Queer Perspectives on Pierre Elliot Trudeau’s ‘Just Society’ in an Era of Bathroom Raids,” in *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, ed. Christopher Dummitt and Christabelle Sethna (Vancouver: UBC Press, 2020), 101.

government attempted to position the 1969 reforms.²²⁰ Tom Hooper, for example, demonstrates that the reforms did “not represent a decriminalization, but rather a recriminalization of homosexuality” since the number of people who “faced criminal prosecution did not decrease after 1969, it increased.”²²¹

In the dissertation, I suggest that MPs’ thinking around the partial decriminalization of anal sex was informed by their anxieties about changes to Canada’s immigration system and Indigenous refusal to allow the government to implement the assimilationist White Paper. In the debates about the partial decriminalization of anal sex, some MPs positioned anal sex between men as resulting from perversely sexualized Muslim cultures. These MPs combined Islamophobic, xenophobic, and homophobic discourses to construct both men’s same-sex sexual activities and Muslim people as external to Canada such that the Canadian legal system didn’t need to accommodate anal sex between men through decriminalization. Other MPs understood same-sex desires and practices as a disease afflicting white men that could be cured through treatment. This inability to acknowledge the presence of racialized people in Canada again points to anxieties about how changing immigration laws would shift the demographics of Canada. Moreover, this construction of white men who have sex with men as redeemable through treatment, in contrast to constructions of Muslim men’s same-sex desires and practices as culturally determined and unchangeable, facilitated the construction of Canadians as compassionate because of their limited tolerance of white men’s same-sex practices. In these ways, the anxieties about changes to Canada’s immigration system informed MPs’ thinking about the partial decriminalization of anal sex.

²²⁰ Anti-69 Network, “Against the Mythologies of the 1969 Criminal Code Reform,” accessed April 21, 2021, <https://anti-69.ca/>

²²¹ Hooper, ““The State’s Key to the Bedroom Door,”” 102.

In 1967, the year the parliamentary debates about partially decriminalizing anal sex began, the Canadian government also removed explicitly racist selection criteria from the immigration system. This culminated a gradual move away from exclusion criteria like “nationality, citizenship, ethnic group, occupation, class or geographical area of origin” and possessing “peculiar customs, habits, modes of life or methods of holding property,”²²² among other explicitly racist criteria, that began in 1962 when Conservative Prime Minister John Diefenbaker implemented the first Canadian immigration policy that did not explicitly favour white people.²²³ The policy allowed unsponsored immigration applicants to be offered admission to Canada if “by reason of his education, training, skills or other special qualifications [the applicant] is likely to be able to establish himself successfully in Canada.”²²⁴ In 1966, Prime Minister Lester B. Pearson’s Liberal government issued a White Paper on immigration. This policy document stated that Canada should accept as many immigrants as could be “absorbed” and advocated that, in response to the question of who should be admitted to Canada, ““the answers must involve no discrimination by reason of race, colour or religion, and consequently must be universally applicable.””²²⁵ In 1967, new immigration regulations, enacted through Orders-in-Council because the 1952 *Immigration Act* was still in effect, were instituted based on the recommendations of the White Paper, including the exclusion of criteria based on race or nationality and the introduction of the points system, which was further entrenched in the 1976 *Immigration Act*.²²⁶

²²² Canada Year Book 1957-8, cited in Abu-Laban, “Keeping ‘Em Out,” 72-73.

²²³ Yasmeen Abu-Laban, “Keeping ‘Em Out: Gender, Race, and Class Biases in Canadian Immigration Policy,” in *Painting the Maple: Essays on Race, Gender, and the Construction of Canada*, ed. Veronica Strong-Boag, Sherrill Grace, Avigail Eisenberg, and Joan Anderson (Vancouver: UBC Press, 1998), 74.

²²⁴ Abu-Laban, “Keeping ‘Em Out,” 73-74.

²²⁵ Canada, Manpower and Immigration 1966, 5, cited in Abu-Laban, “Keeping ‘Em Out,” 74.

²²⁶ Abu-Laban, “Keeping ‘Em Out,” 75.

While the removal of explicitly racist selection criteria and the introduction of the points system gradually changed the demographics of immigrants to Canada after 1967, population growth (as a percentage of the total population) has been much lower in the post-1967 period than it was in earlier periods. The number of immigrants admitted annually to Canada peaked in the first decade of the twentieth century with a high of around 400,000 people per year. The number of immigrants admitted to Canada annually since 1967 has never come close to that number and was around 250,000 people per year in 2006.²²⁷ While there are more Black people, people of colour, and Indigenous people in Canada today than there were in 1871 (both by total numbers and as a percentage of the total population), immigration regulations and white settler colonial policies have ensured that the vast majority of the Canadian population remains white (about 80% in 2006).

The Canadian government also attempted to restructure its relationships with Indigenous peoples in 1969. After carrying out extensive consultations with Indigenous peoples across Canada, Minister of Indian Affairs and Northern Development Jean Chrétien, under the leadership of Pierre Trudeau, wrote the *Statement of the Government of Canada on Indian Policy* (commonly referred to as the White Paper), which excluded the recommendations that came out of the consultation process.²²⁸ Instead, the policy proposed the abolition of the *Indian Act*, Indian status, and the Indian Affairs branch. As Dale Turner argues, “the main idea of the paper was that the assimilation of Indians into mainstream Canadian society—by force if necessary—was the right approach to solving Canada’s century-long ‘Indian problem.’”²²⁹ The policy faced

²²⁷ “150 Years of Immigration in Canada,” Statistics Canada.

²²⁸ Dale Turner, *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (Toronto: University of Toronto Press, 2006), 16; Eve Haque, *Multiculturalism within a Bilingual Framework: Language, Race, and Belonging in Canada* (Toronto: University of Toronto Press, 2012), 40.

²²⁹ Turner, *Not a Peace Pipe*, 16.

immediate and intense criticism from Indigenous people, many of whom saw the policy as an attempt at forced assimilation and removal of Indigenous people's legal rights to land.²³⁰

In addition to the 1969 reforms' recriminalization of anal sex, 1969 marked a moment of intensely racist police and administrative violence against Black Caribbean students at Sir George Williams University in Montreal.²³¹ In April 1968, five Black students at the university—Kennedy Frederick, Allan Brown, Wendell K. Goodin, Douglas Mossop, and Terrence Ballantyne—filed a complaint with the university administration because a professor, Perry Anderson, was “deliberatively failing or consistently awarding low grades to his Black students from the Caribbean.”²³² The university asked Anderson if he was doing this, Anderson denied it, and the university didn't appear to take further action.²³³ In response, on January 29, 1969 two hundred students occupied a computer lab on campus; for two weeks, the protestors negotiated with the administration and once it appeared they had come to an agreement, many protestors began to leave while some remained to clean up.²³⁴ Then, police dressed in riot gear breached the barricade and broke the lock and glass on the lab's door; in the ensuing chaos, a fire broke out.²³⁵ Ninety-seven people were arrested, and, after being arrested, many were beaten and some were hospitalized as a result of the beatings.²³⁶ Some of the violence police committed against Black participants targeted women or was sexual, demonstrating the gendered and sexualized nature of anti-Black racism in Canada.²³⁷

²³⁰ Turner, *Not a Peace Pipe*, 18.

²³¹ Austin, *Fear of a Black Nation*, 131.

²³² Austin, *Fear of a Black Nation*, 131.

²³³ Austin, *Fear of a Black Nation*, 131.

²³⁴ Austin, *Fear of a Black Nation*, 133.

²³⁵ Austin, *Fear of a Black Nation*, 134-5.

²³⁶ Austin, *Fear of a Black Nation*, 135.

²³⁷ David Austin provides a detailed account of this violence on p. 129 of *Fear of a Black Nation*.

The 1969 partial decriminalization of anal sex was part of this broader government project of implementing reforms to make Canada appear to be more just without shifting the racist, white settler colonial, or heterosexist foundations of Canadian society. For example, removing the explicitly racist sections of Canada's immigration policies helped create a less racist image of Canada and propagated the idea that everyone in Canada is treated equally regardless of race. When the police perpetrated sexualized racist violence against Black students at Sir George Williams University, this image of a less racist Canada provided them with cover and allowed them to present their actions not as racist but as a just response to unlawful behaviour. The partial decriminalization/recriminalization of anal sex provided cover in a similar way as it allowed police to present their arrests of men for having sex with other men in "public" spaces as just law enforcement rather than as the homophobic targeting of gay men.

In addition to legitimizing and intensifying the criminalization of public sex, the partial decriminalization of anal sex contributed to the (homo)normalization of gay and lesbian identities, communities, and politics. Partial decriminalization, however, also made certain forms of gay and lesbian activism less risky since the police were no longer empowered to arrest people and imprison them for life for simply admitting that they had had sex with someone of the same sex and may do so again. For example, in August 1971, approximately two hundred predominantly white settler lesbian, gay, and allied activists held demonstrations against the federal government and demanded equality in immigration, employment, housing, ability to serve in the military and RCMP, criminal law, and family law (specifically in relation to marriage and divorce).²³⁸ While there were other activists who challenged the heterosexist foundations of many Canadian

²³⁸ Trembley, "Introduction," 17; "'We Demand': The Birth of Queer Liberation in Canada," The Village Legacy Project/Le projet de legs du village, video, 4:06, accessed July 2, 2021, <https://www.villagelegacy.ca/items/show/8?tour=1&index=44>.

institutions and worked to make space for non-normative sexual, romantic, community, and familial relationships, as well as activists who believed that “civil rights were merely the first step towards liberation,”²³⁹ the approach to gay and lesbian activism that prioritized inclusion in existing institutions has dominated mainstream gay and lesbian organizing in Canada since the 1970s.

In 1977, the newly elected Parti Québécois (PQ) government passed the *Charte des droits et libertés*, which included a provision banning discrimination on the basis of sexual orientation, making it the first North American jurisdiction to enact such a provision.²⁴⁰ The PQ government added the provision following massive protests against the 1977 militarized police raid of two Montreal gay bars, Truax and Le Mystique, a continuation of the police “clean up” of the city that targeted sex workers and gay people as part of the city’s preparation for the 1976 Olympics.²⁴¹ Miriam Smith discusses the early ineffectiveness of the provision, given that the *Charte des droits et libertés* included religious and education exemptions that allowed organizations to continue to explicitly discriminate against gay and lesbian people.²⁴² Despite the limited material benefits offered by the provision, as Carl Stychin argues:

the amendment of human rights law to include sexual orientation became one of many sites for the expression of a new [Québécois] nationalist founding myth—based on inclusion, openness, and a modernist discourse of progress.²⁴³

²³⁹ Smith, “Nationalism and Social Movement Politics,” 365.

²⁴⁰ Carl F. Stychin, “Queer Nations: Nationalism, Sexuality and the Discourse of Rights in Quebec,” *Feminist Legal Studies* 5, no. 1 (1997): 4.

²⁴¹ Alexie Labelle, “Intersectional Praxis from Within and Without: Challenging Whiteness in Québec’s LGBTQ Movement,” in *Intersectionality in Feminist and Queer Movements: Confronting Privileges*, ed. Elizabeth Evans and Éléonore Lépinard (Abingdon: Routledge, 2020), 203; Julie Podmore, “From Contestation to Incorporation: LGBT Activism and Urban Politics in Montreal,” in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Tremblay (Vancouver: UBC Press, 2015), 189-190; Linda Renaud, “Montreal Gay Community gets Organized,” CBC Archives, City at Six, October 1, 1978, <https://www.cbc.ca/archives/entry/the-montreal-gay-community-gets-organized>

²⁴² Smith, “Nationalism and Social Movement Politics,” 367.

²⁴³ Stychin, “Queer Nations,” 6.

In this way, legislation concerning sexual orientation became integrated into the discourse of the Québécois sovereignty movement. As previously discussed, some ideologies that underwrote the Québécois sovereignty struggle equated white Québécois oppression under Anglo-Canadian hegemony with Black people's subjection to anti-Black racism. As such, this move by the PQ government could be read as an attempt to diversify whiteness by incorporating sexual diversity while simultaneously refusing to recognize anti-Black racism and other forms of racism in Quebec, as well as white settler Québécois complicity in Indigenous dispossession and colonial settlement.

In addition to the police raids on gay spaces in Montreal in 1977, police in other jurisdictions carried out similar raids targeting gay people and others who participated in same-sex activities. In 1981, Toronto police launched "operation soap" during which they carried out large-scale raids on four gay bathhouses in the city. The operation enabled police to arrest 286 men for being in a "bawdy house" and another twenty men for "keeping a common bawdy house."²⁴⁴ Toronto police also targeted other gay businesses in the 1980s, including *The Body Politic* and Glad Day Bookshop, in these cases arresting people on "obscenity" charges.²⁴⁵ Though they are invested in positioning these actions in their past, police continue to target gay, lesbian, queer, and trans spaces. In 2000, Toronto police raided the Pussy Palace, a bathhouse event restricted to cis women and trans people of all genders. The five cis male police officers spent an hour looking around and questioning attendees and ultimately charged two members of the organizing committee with liquor licence violations, charges the court later dismissed

²⁴⁴ Tom Hooper, "'Enough is Enough': The Right to Privacy Committee and Bathhouse Raids in Toronto, 1978-83," (PhD diss., York University, 2016), ii, <https://yorkspace.library.yorku.ca/xmlui/handle/10315/33501>

²⁴⁵ Rayside, "Queer Advocacy in Ontario," 88.

because it determined police conduct during the search violated attendees' Charter rights.²⁴⁶

Again, in 2016, Toronto police targeted men who have sex with men in a cruising area in Marie Curtis Park in Etobicoke.²⁴⁷ During the operation, police went undercover, propositioned men for sex, and then ticketed them for "nuisance," trespassing, and other bylaw infractions and provincial offences; seventy-two people were charged in the operation.

In addition to police persecution, gay life in the 1980s was significantly marked by the emergence of HIV/AIDS. The first cases of what would come to be known as AIDS were identified in Canada in 1981.²⁴⁸ By 1983, about half of the people who had contracted HIV were men who had sex with men and approximately one quarter were people of Haitian descent in Montreal.²⁴⁹ Governments in Canada did little to intervene during the early years of the outbreak, but once the media began to report on heterosexual transmission, and especially after the highly publicized death of Rock Hudson in the US from complications due to AIDS, governments increased funding to HIV/AIDS research and programming.²⁵⁰ In Canada, government funding increased from \$1.3 million in the 1984-1985 fiscal year to \$43 million in the 1987-1988 fiscal year, a substantial increase, but one that was significantly lower than per capita spending on the response to HIV/AIDS in either Reagan's US or Thatcher's UK.²⁵¹ Researchers in the US developed the first antiretroviral treatment, Retrovir, in 1985, which substantially prolonged the lives of and reduced the rates of HIV transmission for HIV-positive people with access to this

²⁴⁶ Sarah Lamble, "Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women's Bathhouse Raid," *Social & Legal Studies* 18, no. 1 (2009): 113.

²⁴⁷ Marcus McCann, "This Toronto Undercover Police Operation was Reminiscent of the Bathhouse Raids," *Xtra*, July 24, 2019, <https://xtramagazine.com/power/this-toronto-undercover-police-operation-was-reminiscent-of-the-bathhouse-raids-157363>

²⁴⁸ David Rayside and Evert Lindquist, "AIDS Activism and the State in Canada," *Studies in Political Economy: A Socialist Review* 39, no. 1 (1992): 39.

²⁴⁹ Rayside and Lindquist, "AIDS Activism and the State in Canada," 39.

²⁵⁰ Rayside and Lindquist, "AIDS Activism and the State in Canada," 39-40.

²⁵¹ Rayside and Lindquist, "AIDS Activism and the State in Canada," 40.

drug therapy.²⁵² Despite the effectiveness of antiretrovirals, HIV continues to be transmitted and complications related to AIDS continue to kill people. The World Health Organization reported that, at the end of 2019, there were approximately 38 million people living with HIV, about two-thirds of whom were living in the African continent.²⁵³ There were also over 62,000 people living with HIV in Canada in 2018; just over half of these people are men who have sex with men, 16.8% of them were people who had used injection drugs, 33.4% contracted HIV through heterosexual sex, and 10% of people living with HIV in Canada were Indigenous.²⁵⁴ More recently, the Canadian government has implemented regulations and laws that discriminate against people living with HIV, such as laws prohibiting some HIV-positive people from immigrating to Canada if the government decides that they will place an “excessive demand” on health or social services²⁵⁵ and laws criminalizing people for not disclosing their HIV-positive status to sexual partners, which can result in years of imprisonment even in cases where there is virtually no risk of transmission because of undetectable viral loads or condom use.²⁵⁶

Miriam Smith argues that HIV/AIDS and police repression dominated gay and lesbian organizing in the early 1980s, such that “gay and lesbian communities did not participate in the

²⁵² Samuel Broder, “The Development of Antiretroviral Therapy and its Impact on the HIV-1/AIDS Pandemic,” *Antiviral Research* 85, no. 1 (2010): 1.

²⁵³ “HIV/AIDS,” World Health Organization, November 30, 2020, <https://www.who.int/news-room/fact-sheets/detail/hiv-aids>.

²⁵⁴ L. Challacombe, “The Epidemiology of HIV in Canada,” CATIE: Canada’s Source for HIV and Hepatitis C Information, 2020, <https://www.catie.ca/en/fact-sheets/epidemiology/epidemiology-hiv-canada>.

²⁵⁵ Alan Li, “Managing Your Health: A Guide for People Living with HIV,” CATIE: Canada’s Source for HIV and Hepatitis C Information, <https://www.catie.ca/en/practical-guides/managing-your-health/17#:~:text=inadmissible%20to%20Canada,-.HIV%20is%20not%20considered%20to%20be%20a%20danger%20to%20public,compared%20to%20the%20average%20Canadian>.

²⁵⁶ Note: Canadian courts have determined that HIV nondisclosure is not a criminal offense if the HIV-positive person has both an undetectable viral load *and* uses a condom. Canadian HIV/AIDS Legal Network, *The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change*, April 2019, 3.

debate over the proposed Charter of Rights in 1980-1.”²⁵⁷ Gay and lesbian groups, however, submitted briefs to the parliamentary committee responsible for drafting the equality rights provision (section 15) of the Charter, which was implemented in 1985.²⁵⁸ While sexual orientation was not included as a protected ground in section 15 of the Charter, gay and lesbian groups have used section 15 to fight for legal equality with heterosexual people. As Smith argues, the Charter has shaped gay and lesbian political organizing since its implementation.

Smith states that:

these effects can be divided into several broad categories: the establishment of new organizations at both the federal and provincial levels that were devoted to equality-seeking for lesbians and gay men; the drawing in of pre-existing lesbian and gay organizations to the ambit of a Charter-based meaning frame of rights talk; and a substantial increase in litigation in a range of legal and administrative venues by lesbians and gay men in defense of their rights.²⁵⁹

Additionally, Smith points out that the Charter “encouraged the shift from gay liberation to rights talk as forms of equality seeking within the lesbian and gay rights movement.”²⁶⁰

In 1985, the same year the Charter was implemented, Sandra Lovelace challenged the *Indian Act* provisions that “imposed patriarchal definitions of ‘Indian’ by...emphasizing patrilineal descent” and “‘naturalized’ the heterosexual nuclear family within First Nations communities.”²⁶¹ Lovelace took her challenge to the UN because the Canadian government had refused to address the sexist and colonial law and, in response to pressure from the UN, the Canadian government passed Bill C-31, *An Act to Amend the Indian Act*. The passage of this

²⁵⁷ Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995* (Toronto: University of Toronto Press, 1999), 73.

²⁵⁸ Smith, *Lesbian and Gay Rights in Canada*, 74.

²⁵⁹ Smith, *Lesbian and Gay Rights in Canada*, 73-74.

²⁶⁰ Smith, *Lesbian and Gay Rights in Canada*, 74.

²⁶¹ Cannon, “The Regulation of First Nations Sexuality,” 10.

1985 law allowed 100,000 people to regain status over the next decade, but, as Bonita Lawrence argues:

the damage caused, demographically and culturally, by the loss of status of so many Native women for a century prior to 1985, whose grandchildren and great-grandchildren are now no longer recognized—and in many cases no longer identify—as Indian, remain incalculable.²⁶²

In this case, the UN had to exert pressure on the Canadian government for it to amend the patrilineal descent rules in the *Indian Act* which were aimed at both imposing heteronormative family life on Indigenous people and reducing the number of people who were eligible for Indian Status. This again points to the mutually sustaining nature of white settler colonialism and heteropatriarchy in Canada.

After the Charter was implemented, gay men and lesbians began using the legislation to assert their rights to legal equality. The first legal challenge gay men and/or lesbians issued using the Charter occurred in 1988 when Karen Andrews challenged the constitutionality of excluding same-sex couples and their children from the Ontario Health Insurance Program (OHIP). This exclusion meant that Andrews and her partner had to pay higher premiums for their employer-funded healthcare benefits than they would have if OHIP considered them to be spouses.²⁶³ Andrews stated that ““My benefits package is 17 per cent of my wage. In essence, I’m not getting the same salary because I’m gay.””²⁶⁴ The court ruled that since same-sex couples could not marry or procreate, they were “biologically different” and therefore not entitled to the same rights as heterosexual couples.²⁶⁵ While it is of course impossible to know what actions Andrews

²⁶² Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 9.

²⁶³ Brenda Cossman, “Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*,” *Osgoode Hall Law Journal* 40, no. 3 (2002): 225; Didi Herman, “Are We Family?: Lesbian Rights and Women’s Liberation,” *Osgoode Hall Law Journal* 28, no. 4 (1990): 789.

²⁶⁴ Smith, *Lesbian and Gay Rights in Canada*, 123.

²⁶⁵ Cossman, “Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*,” 226.

might have taken if the Charter had not been implemented, this case clarifies how the Charter worked to direct activist energies towards gaining equal legal rights for gay men and lesbians instead of working towards more substantive equity for people in Canada, regardless of sexual orientation, relationship status, or type of employment. For example, removing the need for employer-funded health insurance by expanding publically funded healthcare so that everyone in Canada could access adequate healthcare also would have provided Andrews with the same health coverage as heterosexuals, but such an approach was not possible using the Charter. Even this broader approach, however, would be inadequate at addressing the healthcare discrimination to which Indigenous²⁶⁶ and other racialized people are subjected in Canada.²⁶⁷

Moreover, despite the introduction of the welfare state, the decades following the end of the second world war were marked by increasing economic inequality, particularly after the neoliberal reforms of the 1980s and 1990s. At that time, wages began to stagnate and interest rates increased dramatically, intensifying the transfer of wealth from workers and the poor to the wealthy.²⁶⁸ As Lars Osberg argues, “all the gains of growth [in wealth, rather than employment income] have been received by the top 10%.”²⁶⁹ Moreover, because statistical analyses typically fail to capture the experiences of the most economically marginalized people in the country (e.g., homeless people and undocumented migrants) and billionaires tend to refuse to participate in these analyses, reported levels of inequality are almost certainly underestimations.²⁷⁰ Between

²⁶⁶ George Tjensvoll Kitching, Michelle Firestone, Berit Schei, Sara Wolfe, Cherylee Bourgeois, Patricia O’Campo, Michael Rotondi, Rosane Nisenbaum, Raglan Maddox, and Janet Smylie, “Unmet Health Needs and Discrimination by Healthcare Providers among an Indigenous Population in Toronto, Canada,” *Canadian Journal of Public Health* 111 (2020): 40-9.

²⁶⁷ Chinenye Nmanma Nwoke and Brenda M. Y. Leung, “Historical Antecedents and Challenges of Racialized Immigrant Women in Access to Healthcare Services in Canada: An Exploratory Review of the Literature,” *Journal of Racial and Ethnic Health Disparities* 8, no. 2 (2021).

²⁶⁸ Lars Osberg, “A Quarter Century of Economic Inequality in Canada: 1981-2006,” *Canadian Centre for Policy Alternatives* (2008): 22.

²⁶⁹ Osberg, “A Quarter Century of Economic Inequality in Canada,” 23.

²⁷⁰ Osberg, “A Quarter Century of Economic Inequality in Canada,” 23

1990 and 2005, taxes on the wealthiest 1% of Canadians decreased by 4% and taxes on the wealthiest 0.1% of Canadians decreased by 25%.²⁷¹

In addition to taxation policies designed to increase the wealth of the rich, the increasing precarity of employment during this period intensified inequality. In the early 1970s, a normative model of employment, the “standard employment relationship,” emerged in which employers provided their employees with full-time work, pensions, and benefits. Although this employment model was always more of an ideal or aspiration than a reality for the majority of people in Canada given that it was only ever available to a small portion of white male workers in the period between the end of the second world war and the early 1970s, there has been a decisive shift away from this form of employment towards “nonstandard” or “flexible” labour arrangements in which workers have less employment security, are often employed by more than one employer, can be fired easily and with little notice, and are almost universally denied access to collective bargaining rights and the protections of unionization.²⁷² By the 1980s, young people entering the workforce in Canada could expect to earn less in real wages than their parents’ generation.²⁷³

In the 1990s, the Brian Mulroney’s Progressive Conservative government, in close collaboration with Bank of Canada governor John Crow, developed an approach to fiscal policy that aimed to ensure “that 8 per cent of Canadians were both unemployed and recipients of minimal government funding through either unemployment insurance or social assistance” regardless of the strength of the economy to “moderate the demands for wage improvements”

²⁷¹ Osberg, “A Quarter Century of Economic Inequality in Canada,” 30.

²⁷² Leah Vosko, *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000), 28, 30.

²⁷³ Osberg, “A Quarter Century of Economic Inequality in Canada,” 34.

and prevent inflation.²⁷⁴ The purpose of this policy was to “moderate the demands for wage improvements on the part of the employed, and allow business profits to rise to levels that had been reduced over a generation because of a combination of inflation and worker militancy.”²⁷⁵

Increasing economic inequality and labour deregulation impacted differently racialized groups in different ways. Despite changes in immigration regulations, the majority of people immigrating to Canada came from European countries until the 1990s.²⁷⁶ The impacts of the expanding wealth divide were somewhat mitigated for white Canadians because some benefitted from the inheritance of wealth and property their ancestors possessed because of racist and white settler colonial government policies (e.g., providing free land for white settlers to establish farms on stolen Indigenous land through the *Dominion Lands Act* [1872]²⁷⁷).

In this context of heightened inequality, the so-called “Oka crisis” broke out, again demonstrating both the imbrications of sexualized and racialized injustices in Canada and the inadequacies of non-intersectional approaches to sexual justice. In 1990 the town of Oka attempted to extend a golf course onto Kanehsatà:ke, prompting months of peaceful protest by the Mohawk followed by a seventy-eight day armed standoff between fifty-five Mohawk Warriors and thousands of Sûreté du Québec, RCMP, and Canadian Armed Forces personnel.²⁷⁸

Audra Simpson argues:

it was a spectacular event that pronounced the structure of settler colonialism in Canada, illuminating its desire for land, its propensity to consume, and its indifference to life, to will, to what is considered sacred, binding, and fair.²⁷⁹

²⁷⁴ Alvin Finkel, *Social Policy and Practice in Canada: A History* (Waterloo: Wilfred Laurier University Press, 2006), 291.

²⁷⁵ Finkel, *Social Policy and Practice in Canada*, 291

²⁷⁶ “150 Years of Immigration in Canada,” Statistics Canada.

²⁷⁷ “Homesteads,” Library and Archives Canada, accessed April 20, 2021, https://www.collectionscanada.gc.ca/canadian-west/052902/05290204_e.html.

²⁷⁸ Simpson, *Mohawk Interruptus*, 151-2.

²⁷⁹ Simpson, *Mohawk Interruptus*, 147.

In the documentary *Kanehsatake: 270 Years of Resistance*, Mohawk people involved in the standoff describe being forced to completely strip in the street before being allowed to cross a police barricade, being kicked in the testicles by police while in police custody, and members of the military punching women and removing their clothing during a skirmish.²⁸⁰ This state violence again demonstrates the importance of gendered and sexual violence to the state's efforts to further the white settler colonial project of Canada and points to the need for intersectional approaches to justice.

Shortly after the police and military violence in Kanehsatà:ke, in *Haig and Birch v Canada* (1992), Canadian Armed Forces service member Joshua Birch challenged the ability of the military to deny him “promotions, postings, or further military career training” because of his sexual orientation.²⁸¹ After the military released Birch on “medical grounds,” Birch filed a Charter challenge about the exclusion of sexual orientation from the Canadian Human Rights Act.²⁸² The Ontario Court General Division ruled in favour of Birch, the Ontario government appealed the decision, and the subsequent ruling by the Ontario Court of Appeal agreed with the lower court's finding but decided that sexual orientation should be read into the Charter, situating sexual orientation as an “analogous ground” under section 15 of the Charter.²⁸³ Subsequently, also in 1992, Michelle Douglas launched a Charter challenge at an administrative tribunal because she was denied security clearance and expelled from the military because of her sexual orientation.²⁸⁴ The adjudicator agreed with Douglas' argument and ordered the military to grant Douglas top secret security clearance and reinstate her in her former position, but the

²⁸⁰ Alanis Obomsawin, *Kanehsatake: 270 Years of Resistance* (National Film Board of Canada, 1993), 119 minutes, https://www.nfb.ca/film/kanehsatake_270_years_of_resistance/.

²⁸¹ Lahey, *Are We “Persons” Yet?* 49.

²⁸² Lahey, *Are We “Persons” Yet?* 49.

²⁸³ Lahey, *Are We “Persons” Yet?* 49.

²⁸⁴ Warner, *Never Going Back*, 196.

military refused to comply with the order.²⁸⁵ The military challenged the ruling and the Supreme Court agreed that the ruling of an administrative tribunal was not binding on the government.²⁸⁶ Douglas then filed a lawsuit at the Federal Court of Canada asking that the court rule that the military had violated the Charter. Before the case was heard, the military changed its policy and began allowing gay and lesbian people to serve openly in the military.²⁸⁷ While direct causality between the military changing its policy and the military's actions at Oka has not been established, it's plausible that part of the reason the military changed its policy was to help its image and make it appear more in line with what were constructed as "Canadian values" in light of the bad publicity the military had received because of its violent actions at Oka. If this is the case, it would constitute another example of the diversification of whiteness through which the military could present itself as respectful of (sexual) diversity to deflect attention from the racist and sexualized violence it had just carried out.

In 1995, Jim Egan and Norris Nesbit issued a Charter challenge against Nesbit's denial of access to the *Old Age Security Act* because he and Egan were not spouses according to how this term was defined in Canadian law.²⁸⁸ This was the first case in which the Supreme Court of Canada found that sexual orientation was a ground that was analogous to those listed in the Charter. The Court also found that the "opposite sex" definition of spouse in the *Old Age Security Act* was discriminatory on the basis of sexual orientation.²⁸⁹ The Court ruled, however, that the discriminatory elements of the Act constituted a "reasonable limit" under section 1 of the Charter, thereby legitimizing and permitting the continuation of the discrimination.²⁹⁰ Brenda

²⁸⁵ Warner, *Never Going Back*, 196.

²⁸⁶ Warner, *Never Going Back*, 196.

²⁸⁷ Warner, *Never Going Back*, 196.

²⁸⁸ Cossman, "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*," 229.

²⁸⁹ Cossman, "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*," 229.

²⁹⁰ Cossman, "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*," 229.

Cossman calls *Egan* “a groundbreaking victory within a defeat” because the Court recognized sexual orientation as an analogous ground under section 15 of the Charter while at the same time legitimizing discrimination against people on the basis of their sexual orientation.²⁹¹ As I discuss in more depth in Chapter 4, the Supreme Court decision relied on analogical reasoning, drawing analogies between *Egan* and *Brown v. Board of Education* and other legal aspects of racial segregation in the US, thus positioning racism as both historical and located in the US. In this way, the court positioned Canada as respecting diversity by reading discrimination on the basis of sexual orientation into the Charter while simultaneously obfuscating the ongoing operations of racism in Canada, thus constituting another example of the diversification of whiteness.

Following 9/11, the Canadian state’s regulation of race in Canada shifted but retained, in reconfigured forms, the gendered and sexualized aspects of the racialization of Muslims. Sunera Thobani argues that constructions of Muslim women were more frequently deployed in the Canadian media after 9/11 because “rallying western populations around fantasies of saving Muslim women would be more effective than rallying them around the overtly imperialist policies of securing U.S. control over oil and natural gas supplies.”²⁹² The Liberal government at the time quickly sent Canadian military personnel to join the US-led war in Afghanistan and Stephan Harper expanded the Canadian military presence in Afghanistan after he was elected in 2006.²⁹³ Thobani discusses Canada’s self-construction as a defender of freedom and peacekeeper in the war, arguing that:

such self-exaltations are deeply reshaping the national imaginary so that assuming a more militaristic presence in the world is deemed as a reflection of the nation’s innate masculine nobility, its virile “goodness.”²⁹⁴

²⁹¹ Cossman, “Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*,” 229.

²⁹² Thobani, *Exalted Subjects*, 218.

²⁹³ Thobani, *Exalted Subjects*, 219.

²⁹⁴ Thobani, *Exalted Subjects*, 219.

Thobani asserts that casting the invasion of Afghanistan as aligned with feminist values “drastically curtailed public space for opposition to the war.”²⁹⁵

The public discourse that emerged in Canada after 9/11 “cast[] the nation as primarily western in nature” in opposition to constructions of “the deadly and fanatic Muslim... with his/her immutable civilizational inferiority as the threat that demands neutralization.”²⁹⁶ This notion of “immutability” points to a resuscitation of biological understandings of race that had been used to justify and naturalize earlier colonial invasion and white settlement.²⁹⁷ Thobani describes how this re-emergence of western civilizational narratives enabled “racial bonding” between Canada and the US, diverting attention from US imperialism in the Middle East as an impetus for 9/11.²⁹⁸ This racial bonding became so intense that Harper was able to position the 9/11 attacks as attacks on Canada to justify the Canadian invasion of Afghanistan.²⁹⁹

The construction of the oppressed Muslim woman that circulated in the media was accompanied by complex juxtapositions of queerness and Islam. Jasbir Puar describes US representations of Islam as inherently homophobic,³⁰⁰ coupled with depictions of Osama bin Laden and Saddam Hussein as queer (e.g., with Hussein sometimes being referred to as “Sodom Hussein”), and imagery of the US military dominating and anally raping these men.³⁰¹ Some conservative commentators in the US blamed “gays and lesbians, feminists, [and] abortionists” for the 9/11 attacks, suggesting the attacks were an “act of God” for the US’s supposed tolerance of these groups.³⁰² Other US commentators used queerness to explain the actions of Mohamed

²⁹⁵ Thobani, *Exalted Subjects*, 229.

²⁹⁶ Thobani, *Exalted Subjects*, 221.

²⁹⁷ Thobani, *Exalted Subjects*, 38.

²⁹⁸ Thobani, *Exalted Subjects*, 230.

²⁹⁹ Thobani, *Exalted Subjects*, 232.

³⁰⁰ Puar, *Terrorist Assemblages*, 13.

³⁰¹ Puar, *Terrorist Assemblages*, 38.

³⁰² Karma R. Chávez, “The Precariousness of Homonationalism: The Queer Agency of Terrorism in Post-9/11

Atta, one of the hijackers, suggesting “his apparent struggles with and views on gender and sexuality, including his possible homosexuality” prompted his participation.³⁰³ Thus, the construction of Muslims as antithetical to western civilization comes from the left and the right, with Muslims being constructed as both too homophobic to live in the west and improperly queer in ways that threaten the existence of the west.

As Puar asserts, redeployments of queerness in the post-9/11 period also implicated Sikh Americans who were increasingly the targets of hate crimes involving the emasculation of the removal of the turban and sometimes hair cutting.³⁰⁴ Puar argues turbans function as the “masculine counterparts to veils” and have emerged “as a signal of an ‘other masculinity.’”³⁰⁵ Puar points to a heteronormative framing of Sikh masculinity in which “the turbaned man is the warrior leader of the community, the violent patriarch, and at the same time, the long-haired, feminized sissy, a figure of failed masculinity in contrast to (white) hegemonic masculinities.”³⁰⁶ These representations of Sikh men present them as improperly sexual and gendered, as both too patriarchal and too feminine. This sexualization and gendering is part of a broader process Puar identifies in which communities of colour are constructed as heterosexual and homophobic, but not normatively so in terms of familial arrangements and consumption practices. This, Puar argues, “open[s] up greater liberatory possibilities for white queer liberal and homonormative subjects.”³⁰⁷ Thus, while white community and state practices mobilized ideas about sexuality in their targeting of Muslim subjects, Other racialized subjects, including Sikhs, were also impacted by the racialized sexualization of the post-9/11 period. While Puar takes up this sexualization of

Rhetoric,” *QED: A Journal of GLBTQ Worldmaking* 2, no. 3 (2015): 33

³⁰³ Chávez, “The Precariousness of Homonationalism,” 34.

³⁰⁴ Puar, *Terrorist Assemblages*, 179-80.

³⁰⁵ Puar, *Terrorist Assemblages*, 181.

³⁰⁶ Puar, *Terrorist Assemblages*, 181.

³⁰⁷ Puar, *Terrorist Assemblages*, 183.

Sikh identity in the US context, I explicate the imbrications of queerness and Sikh communities in the Canadian context in Chapter 5.

Constructions of homophobic and improperly queer Muslims circulated in Canada as well, but to different effects than in the US. Amar Wahab describes how “queernationalism” emerged in relation to the figure of the veiled Muslim woman in fetish activists’ resistance to the Church-Wellesley Village Business Improvement Area’s attempts to sanitize the Church Street Fetish Fair in Toronto and make the event respectable and “family friendly.”³⁰⁸ Wahab argues that the blog posts by these activists produce Canadian multiculturalism:

as a failed project whereby supposedly homo- and queerphobic communities of colour represent a vile “culturalized” intolerance of queerness through the rigid demands of their culture for heteronormativity, domesticity, and kinship...In this queer inflection of the state’s counterterrorist discourse of “terror by culture,” the veiled Muslim woman as the improperly multiculturalized other is constructed as incompatible with and undeserving of tolerance in a queernational future.³⁰⁹

This discourse positions Muslims as undeserving of Canadian citizenship and simultaneously constructs the Canadian state as accepting not only of normative gay and lesbian subjectivities but also of queerness.³¹⁰ Extending national inclusion or tolerance to queer and/or fetish subjects constitutes an expansion of the diversification of whiteness wherein more and more white subjects become representative of Canadian diversity in ways that facilitate the perpetuation and intensification of racism. Sirma Bilge also describes an “ascendancy of gender/sexuality” within this Canadian commitment to diversity, frequently espoused in relation to the “rhetorics and politics of ‘clash of civilizations.’”³¹¹

³⁰⁸ Wahab, “Unveiling Fetishnationalism,” 36-37.

³⁰⁹ Wahab, “Unveiling Fetishnationalism,” 44.

³¹⁰ Wahab, “Unveiling Fetishnationalism,” 48.

³¹¹ Sirma Bilge, “Mapping Québécois Sexual Nationalism in Times of ‘Crisis of Reasonable Accommodations,” *Journal of Intercultural Studies* 33, no. 3 (2012): 305.

Additionally, Thobani argues that the post-9/11 circulation of descriptions of Muslim people as either terrorists or “good Muslims” redeploys colonial tropes about Indigenous people.³¹² Thobani asserts:

A strategy of dividing the good natives from the bad has a long history in Canada, being rooted in the foundational moment of nationhood when “noble savages” were distinguished from the “barbaric savages” among Native people. The construct of the barbaric savage was used then, as it is now, to justify the genocidal violence unleashed against them. The construct of the noble savage was used to make a case for their assimilation and cultural extinction. In a gesture reminiscent of this history, the constructions of good and bad Muslims enable nationals to remember (and re-enact) the pleasures of carrying their white (wo)man’s burden in a new historical moment.³¹³

Lindsay Balfour and Craig Proulx describe how the discourse of terrorism and apparatuses of counterterrorism are also being mobilized against Indigenous people who are constructed as “domestic extremists.”³¹⁴ After it was discovered that members of the Proud Boys participated in the January 6, 2021 invasion of the US Capitol in an attempt to overturn the results of the 2020 US election, New Democratic Party leader Jagmeet Singh began organizing a petition calling on Justin Trudeau’s Liberal government to designate the Proud Boys a terrorist organization.³¹⁵ Soon after, Singh introduced a motion in parliament calling on the government to designate the Proud Boys, along with twelve other organizations, “terrorist entities.” The motion passed with unanimous consent from all parties.³¹⁶ In response, the *Journal de Montreal* published a column by Norman Lester questioning why the Mohawk Warriors weren’t included in the new list of

³¹² Thobani, *Exalted Subjects*, 235.

³¹³ Thobani, *Exalted Subjects*, 238.

³¹⁴ Lindsay Balfour, “Reframing Redress after 9/11: Protest, Reconciliation and Canada’s War on Terror against Indigenous Peoples,” *The Canadian Journal of Native Studies* 34, no. 1 (2014): 26; Craig Proulx, “Colonizing Surveillance: Canada Constructs an Indigenous Terror Threat,” *Anthropologica* 56, no. 1 (2014): 88.

³¹⁵ New Democratic Party, “SIGN HERE: Ban and Designate the Proud Boys as a Terrorist Organization,” accessed April 21, 2021, <https://www.ndp.ca/ban-the-proud-boys>.

³¹⁶ Hannah Jackson, “MPs Unanimously Agree to Urge Feds to Designate Proud Boys a Terrorist Entity,” *Global News*, January 25, 2021, <https://globalnews.ca/news/7598355/motion-passes-proud-boys-terrorists/>.

terrorist entities.³¹⁷ These parallels point to the prevalence of analogical reasoning in Canadian politics and also serve to naturalize the construction of Muslim and Indigenous people as terrorists (despite claiming to be targeting white supremacists, nine of the thirteen groups Singh's motion added were Muslim organizations).³¹⁸

Shortly after 9/11, calls for legalizing same-sex marriage gained momentum. By 2002, the PQ government, under Bernard Landry's leadership, had conferred all of the benefits of marriage to same-sex couples in Quebec.³¹⁹ In September 2002, the Quebec Superior Court ruled in *Hendricks and Leboeuf v. Quebec* that Parliament's prohibition on same-sex marriage was discriminatory under the Charter and, as such, the prohibition would become inoperative in Quebec in two years.³²⁰ Upon the couple's appeal, the Quebec Court of Appeal struck down the two year waiting period because same-sex marriage had already been legalized in Ontario and BC.³²¹ By 2005, court cases in Manitoba, the Yukon, Nova Scotia, Saskatchewan, Newfoundland and Labrador, and New Brunswick had legalized same-sex marriage in those provinces and territories.³²² At this point it was possible for same-sex couples to get married anywhere in Canada other than in Alberta, Prince Edward Island, Nunavut, and the Northwest Territories. In July 2003, Jean Chrétien's Liberal government asked the Supreme Court to issue a reference

³¹⁷ Greg Horn, "Editorial: French Media Steps Up Attack on Kahnawake," *Iori:Wase: News from the Kanien'kehá:ka Nation*, February 19, 2021, <https://kahnawakenews.com/editorial-french-media-steps-up-attack-on-kahnawake-p3313-131.htm>.

³¹⁸ Jackson, "MPs Unanimously Agree to Urge Feds to Designate Proud Boys a Terrorist Entity."

³¹⁹ Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*, 154.

³²⁰ Jennifer Drouin, *Shakespeare in Québec: Nation, Gender, and Adaptation* (Toronto: University of Toronto Press, 2014), 33.

³²¹ Drouin, *Shakespeare in Québec*, 33.

³²² David Rayside, Jerald Sabin, and Paul E. J. Thomas, *Religion and Canadian Party Politics* (Vancouver: UBC Press, 2017), 321; Campbell D. Barrett, "The Present Status of the Law of Marriage in the United States and Abroad," in *Same-Sex Marriage: The Legal and Psychological Evolution in America*, ed. Donald J. Cantor, Elizabeth Cantor, James C. Black, and Campbell D. Barrett (Middletown: Wesleyan University Press, 2006), 132; Joanna Everitt, "Mobilization on the Periphery: LGBT Activism and Success in Atlantic Canada," in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Tremblay (Vancouver: UBC Press, 2015), 132.

decision on the constitutionality of legalizing same-sex marriage in Canada. The Court released its decision in 2004, in which it confirmed that the legalization of same-sex marriage would be consistent with the equality rights guaranteed in section 15 of the Charter and would not impinge upon freedom of religion guaranteed in section 2 of the Charter.³²³ In July 2005, Paul Martin's Liberal government passed the *Civil Marriage Act*, which redefined civil marriage as "the lawful union of two persons to the exclusion of all others" and allowed same-sex couples to have their relationships legally recognized as marriages across Canada.³²⁴

In Chapter 5, I describe MPs' use of analogical reasoning in the House of Commons debates about same-sex marriage. During the debates, MPs compared the state's lack of recognition of same-sex marriage to US slavery, Jim Crow segregation, and anti-miscegenation laws in the US. I argue that these analogies overstate the emancipatory potential of legalizing same-sex marriage, downplay the brutality of racism in the US, and situate racism in the US rather than Canada in the context of intensified Canadian Islamophobia. The examples of Canadian racism MPs brought up, such as the Chinese Head Tax and the government's refusal to allow passengers of the Komagata Maru to enter Canada, constructed racism as a shameful part of Canada's history that has no bearing on life in contemporary Canada. The ways in which MPs used analogies to describe the relationship between race and sexual orientation in the debates allowed them to construct homophobia as "the new racism" because they could position racism in Canada as a historical aberration.

The "ascendancy of gender/sexuality" within discourses of diversity and multiculturalism in Canada that Bilge describes has persisted in the period following the legalization of same-sex

³²³ Reference re Same-Sex Marriage, Supreme Court Judgments, 2004 SCC 79, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do>.

³²⁴ *Civil Marriage Act*, S.C. 2005, c. 33, <https://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html>

marriage in 2005.³²⁵ In 2007, the town council in the small town of Hérouxville, Quebec passed the municipal *normes de vie* (code of conduct) prohibiting practices like stoning women, burning women alive, and genital cutting.³²⁶ The town foregrounded notions of gender equality in their rationale for implementing the code,³²⁷ demonstrating how supposedly feminist values can be used to entrench Islamophobic laws and policies. Afterwards, other small towns close to Hérouxville passed similar codes.³²⁸ Then, in 2011, the City of Gatineau, Quebec created a guide for immigrants, called the “Statement of Values,” with instructions for immigrants ranging from “refraining from bribing officials and killing people for honour, to limiting the preparation of smelly foods and maintaining one’s personal hygiene.”³²⁹ Like the Hérouxville code, the Gatineau Statement of Values stressed that there is equality between men and women and also emphasized that freedom of religion “only protects religion that is confined to private and personal matters,” implicitly disciplining religious minority groups like Muslims.³³⁰ A few years later, under the Conservative leadership of Stephan Harper, the federal government reproduced this dynamic in 2014 through its introduction of Bill S-7, “the Zero Tolerance for Barbaric Cultural Practices Act.”³³¹ This act prohibited marriages of people under 16 years of age, forced marriage, polygamy, and “honor” killings and enhanced the state’s power of deportation in these

³²⁵ Bilge, “Mapping Québécois Sexual Nationalism in Times of ‘Crisis of Reasonable Accommodations,” 305.

³²⁶ Darryl Leroux, “Quebec Nationalism and the Production of Difference: The Bouchard-Taylor Commission, the Hérouxville Code of Conduct, and Quebec’s Immigrant Integration Policy,” *Quebec Studies* 49 (Spring-Summer 2010); Megan Gaucher, “Monogamous Canadian Citizenship, Constructing Foreignness and the Limits of Harm Discourse,” *Canadian Journal of Political Science / Revue canadienne de science politique* 49, no. 3 (September 2016): 519.

³²⁷ Leroux, “Quebec Nationalism and the Production of Difference.”

³²⁸ Daiva Stasiulis, “Worrier Nation: Quebec’s Value Codes for Immigrants,” *Politikon* 40, no. 1 (2013): 187.

³²⁹ Stasiulis, “Worrier Nation,” 198; Darryl Leroux, “Entrenching Euro-Settlerism: Multiculturalism and the Politics of Nationalism in Québec,” *Canadian Ethnic Studies* 46, no. 2 (2014): 134-5.

³³⁰ Stasiulis, “Worrier Nation,” 198.

³³¹ Deepa Mattoo and Sydele E. Merrigan, “‘Barbaric’ Cultural Practices: Culturalizing Violence and the Failure to Protect Women in Canada,” *International Journal of Child, Youth and Family Studies* 12, no. 1 (2021): 125.

cases.³³² Like the Hérouxville code of conduct and Gatineau Statement of Values, Bill S-7 was promoted as protecting women but had the effect of reducing the likelihood women in violent situations would seek help because they feared criminal prosecution or deportation for their family and community members.³³³ In 2019, when the Quebec government passed Bill 21, which banned public sector workers from wearing religious items, proponents similarly suggested the bill advanced gender equality.³³⁴ These examples demonstrate how the idea that Canadian and Quebec societies uphold gender equality (despite the many ways in which sexism and heteropatriarchy structure Quebec and Canada) has been used to construct Muslim immigrants as “barbaric,” premodern, and unsuited to life in Canada and foster a dangerously Islamophobic atmosphere.³³⁵

Sexuality is also increasingly being brought into these arguments. For example, then Conservative leadership contender Kellie Leitch suggested that intolerance towards sexual minorities should be one of the “anti-Canadian values” immigrants should be screened for before being admitted to Canada.³³⁶ Also pointing to the use of sexuality politics to re-entrench state

³³² Mattoo and Merrigan, “‘Barbaric’ Cultural Practices,” 125; Yasmeen Abu-Laban and Nisha Nath, “Citizenship, Multiculturalism, and Immigration: Mapping the Complexities of Inclusion and Exclusion Through Intersectionality,” in *The Palgrave Handbook of Gender, Sexuality, and Canadian Politics*, ed. Manon Tremblay and Joanna Everitt (Cham: Palgrave Macmillan), 519.

³³³ Mattoo and Merrigan, “‘Barbaric’ Cultural Practices,” 125.

³³⁴ Jonathan Montpetit, “Religious Symbols Ban Pits Quebec Feminists Against Each Other,” *CBC News*, May 16, 2019, <https://www.cbc.ca/news/canada/montreal/bill-21-quebec-feminists-on-opposite-sides-of-religious-symbols-ban-1.5139422>.

³³⁵ The dangers of normalizing Islamophobia in Canada have been most obvious in recent years in the actions of Alexandre Bissonnette, who shot and killed six Muslim men, Ibrahima Barry, Mamadou Tanou Barry, Khaled Belkacemi, Abdelkrim Hassane, Azzeddine Soufiane, and Aboubaker Thabti, at the Islamic Cultural Centre in Quebec City in 2017 and Nathaniel Veltman, who intentionally ran his car in a Muslim family in London, Ontario, killing Salman, Madiha, Yumnah, and Talat Afzaal, and seriously injuring a 9-year-old boy in 2021.

³³⁶ Malcolm Johnston, “Q&A: Kellie Leitch, the Potential Future Prime Minister who Wants to Bring President-Elect Trump’s Message to Canada,” *Toronto Life*, November 9, 2016, <https://torontolife.com/city/qa-kellie-leitch-potential-future-prime-minister-wants-bring-president-elect-trumps-message-canada/>; Anne Kingston, “How Kellie Leitch Accidentally Revealed Canadian Values,” *Maclean’s*, May 26, 2017, https://www.macleans.ca/politics/how-kellie-leitch-accidentally-revealed-canadian-values/?utm_source=macleans&utm_medium=organic&utm_campaign=recire&utm_content=tag_list.

Islamophobia, Suzanne Lenon juxtaposes Canada Post's 2017 commemorative "marriage equality" stamp with the Supreme Court's ruling in the 2011 Polygamy Reference, which upheld the criminalization of polygamy in Canada, and the prohibition on polygamy outlined in the "Zero Tolerance for Barbaric Cultural Practices Act," arguing that the stamp:

captures, in its negative space, the penalization and subjugation of difference and the suppression of resistance that have made monogamy the only "lawful" union and form of conjugal relations worthy of recognition by the state.³³⁷

As such, the state contributed to a discursive terrain in which state recognition of same-sex marriage reified the constructed superiority of monogamy and vilification of Islam through its association with non-monogamous practices. Since before confederation, governments in what is now Canada have used polygamy to justify racial regulations, including the attempted destruction of Indigenous kinship practices³³⁸ and efforts to prevent Indian women from immigrating to Canada out of fear they would participate in polygamous unions,³³⁹ as well as the sustained historical use of polygamy to restrict Muslim immigration to Canada. The remainder of this dissertation takes up this usage of sexuality and traces how sexuality has come to be used in xenophobic, Islamophobic, and other racist ways.

In this chapter, I juxtapose instances of racist-heterosexist violence perpetrated by the state with legislative reforms and judicial rulings concerning sexual orientation to highlight the limitations of single-issue, reformist activism in addressing the interconnected operations of racism and heterosexism that structure the Canadian state. These examples show how, despite the singular focus on sexuality in these legislative and judicial actions, racism structures

³³⁷ Suzanne Lenon, "Polygamy, State Racism, and the Return of Barbarism: The Coloniality of Evolutionary Psychology," *Studies in Social Justice* 16, no. 1 (2022): 144.

³³⁸ Suzanne Lenon, "Monogamy, Marriage, and the Making of Nation," in *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging* (Vancouver: UBC Press, 2015), 82.

³³⁹ Enakshi Dua, "When Home and Harem Collide: The 'Hindu Women's Question': A Mass Spectacle of the Canadian Nation, Family, and Modernity," in *Unmooring the Komagata Maru: Charting Colonial Trajectories*, ed. Satwinder Kaur Bains, Renisa Mawani, Davina Bhandar, and Rita Dhamoon (Vancouver: UBC Press, 2019), 217.

heterosexism and homophobia in Canada. With this context in mind, in the chapters that follow I uncover how race and racism informed legislative reforms and judicial rulings that were intended to address sexual orientation as a standalone issue. The work of the following chapters shows how state activities directed towards addressing homophobia non-intersectionally relied upon racist logics and are part of this larger story of racist-heterosexist state actions I take up in my description of the historical context in this chapter.

Chapter 3: Non-Normative Sexualities and the Reconstruction of Canadian Whiteness, 1967-1969

Mainstream gay and lesbian histories in Canada frequently construct Pierre Trudeau's 1967 proclamation that "the state has no place in the bedrooms of the nation" as a watershed moment in Canadian history and the beginning of the Canadian government's gradual implementation of legal equality for non-heterosexual citizens.³⁴⁰ Trudeau made this famous statement in reference to his introduction of Bill C-195 to the House of Commons. The bill was subsequently re-introduced as Bill C-150 by the new justice minister, John Turner, following Trudeau's election as prime minister in 1968. Bill C-150 was an omnibus bill that included a range of reforms to the *Criminal Code*, the *Parole Act*, the *Penitentiary Act*, the *Prisons and Reformatories Act*, the *Combines Investigation Act*, the *Customs Tariff*, and the *National Defence Act*, most famously including the decriminalization of anal sex between two consenting adults over the age of 21 in private. After several years of debate, the bill was approved by parliament and senate, and received royal assent in 1969.

I begin this chapter by mapping out the context for this reform. Specifically, I explore the White Paper and immigration reforms that occurred just before and during the debates. Next, I analyze some of the arguments MPs put forth to argue against passing the omnibus bill. These MPs argued that sex between men was not the symptom of a disease; rather they suggested that sex between men was behaviour that could be prevented in a variety of ways, the most commonly suggested one being criminalization. MPs who constructed sex between men in these ways sometimes did so in racialized terms that associated anal sex with the constructed sexual

³⁴⁰ Warner, *Never Going Back*, 44-45; David Rayside, *On the Fringe: Gays and Lesbians in Politics* (Ithaca: Cornell University Press, 1998), 108; Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*, 56.

excesses of Indigenous and Muslim men. MPs evoked racialized imagery around anal sex in ways that constructed both the practice of anal sex and non-white racialization as outside the boundaries of the Canadian nation. In so doing, they drew on racialized queer imagery to construct Canada as a white, heterosexual space. The repetition of these racialized tropes throughout the debates points to the existence of anxieties about the stability and security of white settler hegemony in Canada in the late 1960s in the context of changing patterns of immigration and the desire to reconstitute Canada's relationships to Indigenous peoples. By focussing on same-sex practices as "behaviour," these MPs drew on culturalist logics that presuppose the cultural fixity and homogeneity of people racialized as non-white. In this way, MPs avoided basing their arguments on biological understandings of race that had been vilified and de-popularized in the aftermath of the Holocaust and instead drew on an older culturalist racism in their explanations of human difference.³⁴¹

Next, I describe how the debates mark a point in time during the transition from understanding sex between men as criminal behaviour to understanding it as a symptom of a disease. Those MPs who conceived of men who had sex with other men as sick relied on the latest scientific knowledge on the subject and discursively transformed anal sex between men from criminal behavior requiring punishment to biologically determined behavior requiring treatment. The MPs who constructed sex between men as disease did not do so in explicitly racialized terms, but implicitly constructed the pathologized figure of the homosexual as white. The whiteness of the pathologized homosexual facilitated MPs' expressions of compassion and tolerance towards him. Nancy Heitzeg describes the medicalization of "deviant" criminalized

³⁴¹ Alana Lentin, "'Race', Racism and Anti-Racism: Challenging Contemporary Classifications," *Social Identities* 6, no. 1 (2000): 97; Tariq Modood, "'Difference,' Cultural Racism and Anti-Racism," in *Debating Cultural Hybridity: Multicultural Identities and the Politics of Anti-Racism*, ed. Pnina Werbner and Tariq Modood (London, UK: Zed Books, 2015), 155; Thobani, *Exalted Subjects*, 111.

behaviour and argues that understanding such behaviour as biologically determined allows more privileged people, particularly white, middle- or upper-class men, to be constructed as redeemable through treatment.³⁴²

The culturalist understandings of anal sex Conservative and Ralliement Cr ditiste MPs drew on co-existed with these understandings of having or wanting to have anal sex as pathological behaviours and/or desires. As such, the debates constructed Muslim men’s desire for anal sex as culturally determined while constructing white men’s desire for anal sex as treatable behaviour. This positioning of white men who have sex with men as redeemable, because their sexual behaviours were understood to be treatable, enabled a diversification of whiteness wherein new white subjectivities come to be understood as tolerable. This expansion of the white subjectivities considered to be tolerable bolstered the construction of white Canadian compassion which in turn helped secure ideas about white superiority. Assertions of white superiority emerged in relation to constructions of Muslim sexual depravity and Indigenous non-existence. In this way, MPs mobilized white same-sex practices in the debates to excise Muslim and Indigenous people from Canadian nationhood and citizenship by drawing on Orientalist constructions of Muslim sexuality and white settler colonial projections of Indigenous absence.

Moreover, MPs’ pathologization of white same-sex practices occurred on an individual basis wherein individual white men were diagnosed as homosexual. Conversely, MPs constructed all Muslim people and societies as improperly sexual and perverse, vilifying a homogenized notion of “Muslim culture” for deviating from heteronormativity. The individualization of white men’s same-sex practices, however, enabled white settler Canadian

³⁴² Nancy Heitzeg, “‘Whiteness,’ Criminology, and the Double Standards of Deviance/Social Control,” *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 18, no. 2 (2015): 199.

culture to escape scrutiny and differentiated Canadian culture, in which some white men were inflicted with the disease of homosexuality, from Muslim societies, in which “Muslim culture,” rather than individual practices, was pathologized. So while the biologization of white men’s same-sex practices enabled their construction as redeemable through treatment, MPs’ conjoining of biological and culturalist racism in their representations of Muslims positioned Muslim same-sex practices as culturally determined and, therefore, incurable. In this way, MPs’ constructions of Muslim non-heteronormative³⁴³ sexual practices pathologized all Muslim people and societies in a way that was permanent and unchangeable, bolstering the vilification of Muslim presence in and immigration to Canada.

This positioning facilitated the construction of white settler Canadian society as tolerant and compassionate for wanting to partially decriminalize anal sex and offer treatment to men who wanted to or did engage in it. That this construction of white Canadian benevolence emerged in relation to concurrent culturalist explanations of non-heteronormative sexual practices in Muslim societies suggests an effort to diversify whiteness through sexuality to reify and reconfigure Canada’s social and legal exclusion of people racialized as non-white.

Finally, I discuss the emergence of Canadian exceptionalism through the discourse of compassion to demonstrate that the partial decriminalization of anal sex emerged as a terrain on which hegemonic conceptions of Canada could be re-imagined. As part of Trudeau’s project to create a “just society,” MPs reconstructed Canada, and more specifically Canadian whiteness, as exceptional through modern, white Canada’s exceptionally compassionate treatment of men who

³⁴³ While I focus on same-sex sexualities, I use the term non-heteronormative here to highlight how same-sex sexualities have been positioned as one of many ways in which Muslim people’s sexual practices are constructed as non-normative. In addition to same-sex practices, these representations of non-heteronormative sexualities include non-monogamy, as is alluded to by Roland Godin’s reference to harems, as well as what Said refers to as “a ‘bad’ sexuality” involving only “foreplay, masturbation, coitus interruptus” (Said, *Orientalism*, 190).

had sex with other men through partially decriminalizing anal sex. This was part of a broader project of modernizing Canada and creating a specifically Canadian identity that was different than that of Britain and the US.

The partial decriminalization of anal sex facilitated the incorporation of “compassion” into dominant ideas of what it meant to be a good (white) Canadian. Thus the partial decriminalization of anal sex shifted the ways in which whiteness functioned in relation to sexuality. Civility required that men who had sex with other men be tolerated, treated with compassion, or pitied, thus shifting the hegemonic discourse around men who had sex with other men away from criminal punishment. Following Sunera Thobani, this compassion restructured the ways in which Indigenous people and other people racialized as non-white were excluded from exalted Canadian subjectivity. Compassion became constructed as something white, straight Canadians extended in different ways to men who had sex with other men, Indigenous people, and other people racialized as non-white. In this way, the discourse of compassion was reconfigured through sexuality to secure the whiteness and straightness of exalted Canadians who were good because they extended compassion to those who were only ever constructed as the recipients of compassion: men who had sex with other men, Indigenous people, and other people racialized as non-white. This discourse of compassion was bolstered by the concomitant diversification of whiteness. In this context, the diversification of whiteness involved the incorporation of white men who had sex with men—who were tolerated as long as they received treatment—into the Canadian nation, a process that constructed Canada as tolerant of diversity just as the expansion of immigration from non-white majority countries was fuelling white racial anxieties in Canada.

The discourse of compassion worked to create a parallelism between “homosexuals,” Indigenous people, and other people racialized as non-white. MPs denigrated men who had sex with other men, Indigenous people, and other people racialized as non-white as the recipients of different forms of compassion and categorized them separately. In other words, there were specific ways in which MPs extended compassion towards men who had sex with other men, Indigenous people, and other people racialized as non-white. For example, the suggestion that men who had sex with other men should be hospitalized or receive other forms of “treatment” was part of the way in which MPs extended compassion towards men who had sex with other men, but compassion towards Indigenous people and other people racialized as non-white would take different forms. For example, the creation of residential schools for Indigenous children and allowing more people racialized as non-white to legally reside in Canada and gain Canadian citizenship were constructed as acts of white Canadian compassion.³⁴⁴

In the next chapters, I discuss how the biologized/pathologized understanding of men’s desire to have sex with other men allowed sexual orientation, when this desire was later conceptualized as such, to be constructed as an “immutable” trait analogous to race. “Immutability” facilitated Supreme Court justices’ conclusion that sexual orientation and race were analogous for the purposes of interpreting the Canadian Charter of Rights and Freedoms, which, in turn, created the illusion that Canadian racism was not as severe and sustained as it in fact is.

In this chapter, I document MPs’ parallel construction of Muslim and white men who have sex with men. I argue that this parallel construction was a necessary precondition for later interpretations of race and sexuality as analogous because the construction of men who have sex

³⁴⁴ Thobani, *Exalted Subjects*, 119.

with men as white, which was gaining prominence in the 1967-69 debates, was necessary before analogies could be drawn between racism and homophobia. The analogies MPs and Supreme Court justices used in *Egan* and the debates about same-sex marriage relied on non-intersectional constructions of identity in which men who have sex with men were understood to be white and racialized people were understood to be straight. The forms of analogical reasoning MPs and Supreme Court justices used in *Egan* and the debates about same-sex marriage were dependent on these non-intersectional constructions of individuals in which individuals are understood to be capable of experiencing only one form of marginalization (i.e., racism *or* homophobia). More complex and accurate understandings of identity undermine the logics of analogical reasoning. As such, the construction of men who have sex with men as white, which emerged as the dominant understanding in the 1967-69 debates, was a necessary precondition for later analogies between race and sexuality.

Importantly, the perverse non-heteronormativity ascribed to Muslim men co-existed with later constructions of men who have sex with men as white and racialized people as straight. This was possible because homonormativity, including life-long, monogamous sexual and romantic same-sex relationships between white people, was emerging in Canada. This homonormative relationship structure came to stand in for sexuality that was outside the parameters of heteronormativity such that non-normative same-sex sexual and romantic relationships were further otherized. Moreover, as tolerance for people who engage in homonormative sexual and romantic practices became more mainstream in Canada, vilifying racialized people as queer became a less effective strategy for securing the racist structuring of Canada and so political actors began positioning racialized people as straight, patriarchal, and homophobic to justify the violence and discrimination to which they are subjected as well as the

ways in which they are excluded from full participation in Canadian society and equal access to citizenship rights.

Drawing on Puar, however, I am suggesting that this construction of racialized people as hyperpatriarchal and homophobic is connected to and coexists with their construction as non-normatively sexual such that racialized people are constructed as both too homophobic and too queer (as in sexual in non-homonormative and non-heteronormative ways).³⁴⁵ Puar focusses on the ways in which Muslim and Sikh communities are constructed as patriarchal and queer, but the way MPs mobilized the discourse of multiculturalism in the debates about same-sex marriage generated a homogenized notion of “multicultural communities” that have similar views on sexuality. I’m using the term “racialized people” in this discussion because I am speaking to the homogenized construction of racialized people that emerged through the discourse of multiculturalism in the debates.

Racialized people have been constructed as homophobic in different ways than white Canadians have been, and the homophobia of white Canadians has often been justified in mainstream discourse while the homophobia of racialized people is condemned and used to vilify all racialized people. For example, explanations that position the homophobia of racialized people as a result of their hyperpatriarchal cultures and non-Western gender norms further vilify racialized people while the mainstream media positions white people’s concerns about protecting children’s innocence or protecting the blood supply as reasonable and justifiable concerns that should be considered for the public interest; these concerns, which demonize non-normative sexualities, are not always even constructed as homophobic. The homophobia some racialized people express, conversely, is constructed as culturally determined as is racialized people’s

³⁴⁵ Puar, *Terrorist Assemblages*, 25, 37-38.

construction as queer, perverse, and improperly sexual. These constructions of racialized people as both too homophobic and too queer can co-exist because they are based on the same homogenized, static, and racist constructions of culture.

Context: Immigration Reform and the White Paper

In this section, I map out two significant shifts in Canada's regulation of people racialized as non-white—the White Paper and the removal of explicitly racist exclusion criteria from immigration legislation—and suggest that this context helps explain the government's willingness to partially decriminalize anal sex in 1969. The Canadian government's failed attempt to restructure Canada's relationships with Indigenous peoples through the White Paper and the changing demographics of the Canadian population that accompanied the new immigration legislation exacerbated white racial anxieties and fuelled concern about the preservation of white settler hegemony in Canada. Partially decriminalizing anal sex in this period allowed the Canadian government to diversify whiteness, creating the illusion that Canadian society was accepting or tolerant of diversity because it changed the way it criminalized anal sex without addressing the white supremacist settler colonial foundations of Canada.

The White Paper

Following the second world war, Canada continued to assert independence from Britain, as is evidenced, for example, by the *Canadian Citizenship Act, 1946*, even as Canada retained strong social, cultural, economic, and political ties to the UK. Prior to the second world war, the British parliament controlled the nationality of British subjects in British colonies, while colonies such as

Canada controlled their own naturalization schemes.³⁴⁶ Since the passage of the British North America Act in 1867, Indigenous peoples were “relegated to an infantilized status as wards of the state under the Indian Act” while other people living in Canada were British subjects with domicile in Canada.³⁴⁷ This changed with the Canadian parliament’s passage of the *Canadian Citizenship Act, 1946*, which was enacted in 1946 and came into force on January 1, 1947.³⁴⁸ This act created the category of Canadian citizenship as a status that overrode British subjecthood, making, as Kathleen Paul asserts, “Canadian citizenship the primary nationality and making British subjecthood a secondary status, almost a fringe benefit.”³⁴⁹ The act challenged Britain’s attempts to preserve imperial governance in a period of decolonization. During this period, the British parliament recognized the legal equality of British subjects throughout the empire and granted them the right to live and work in Britain in an attempt to stifle resistance to British imperial rule.³⁵⁰ In this context, the *Canadian Citizenship Act, 1946* signaled a rejection of Canada’s colonial status and was an assertion of Canadian independence from Britain. Through distancing Canada from its colonial status, the act was also part of a modernizing project. As Sunera Thobani argues, the institution of citizenship “is universally accepted as reflecting the height of the evolution of the human being as a modern political subject, with clearly delineated rights and entitlements.”³⁵¹ In this way, the *Canadian Citizenship Act, 1946* modernized Canadian subjectivity as well as Canada’s relationship to Britain.

³⁴⁶ J. Donald Galloway, “The Dilemmas of Canadian Citizenship Law,” *Georgetown Immigration Law Journal* (1999): 211.

³⁴⁷ Thobani, *Exalted Subjects*, 81.

³⁴⁸ Galloway, “Dilemmas of Canadian Citizenship Law,” 201.

³⁴⁹ Kathleen Paul, *Whitewashing Britain: Race and Citizenship in the Postwar Era* (Ithaca: Cornell University Press, 1997), 14.

³⁵⁰ Paul, *Whitewashing Britain*, 14.

³⁵¹ Thobani, *Exalted Subjects*, 69.

In his analysis of white settler colonial rule in Northern Ireland and Zimbabwe, which, as Eve Haque points out, is also applicable to other settler colonies like Canada,³⁵² Ronald Weitzer asserts that achieving “autonomy from the metropole in the exercise of political authority and coercive power” is an imperative of stable settler rule.³⁵³ As such, the *Canadian Citizenship Act, 1946* also strengthens Canada’s white settler colonial apparatus by shifting political control from London to Ottawa. More importantly, the creation of Canadian citizenship constitutes “the legal negation of Aboriginal sovereignty.”³⁵⁴ While British and Canadian governments collaborated in the design and execution of the genocide of Indigenous peoples, their forceful removal from their land onto reservations, and the creation of policies and practices aimed at destroying Indigenous languages, cultures, governance structures, and beliefs systems, the *Canadian Citizenship Act, 1946* created a new regime to secure white settler supremacy. As Thobani argues:

citizenship emerged as integral to the very processes that transformed insiders (Aboriginal peoples) into aliens in their own territories, while simultaneously transforming outsiders (colonizers, settlers, migrants) into exalted insiders (Canadian citizens). The category citizen, born from the genocidal violence of colonization, exists in a dialectical relation with its Other, the Indian, for whom the emergence of this citizenship was deadly, not emancipatory.³⁵⁵

Three years after the *Canadian Citizenship Act* came into effect, Louis St Laurent’s Liberal government combined the Canadian Citizenship Branch with the Indian Affairs Branch to form the new Department of Citizenship and Immigration as:

part of a deliberate policy to deal with two populations perceived by the federal government to be potentially threatening: Ottawa viewed immigrants and status Indians (especially those living on reserves) as marginal and foreign groups who had to be brought into the Canadian mainstream.³⁵⁶

³⁵² Haque, *Multiculturalism within a Bilingual Framework*, 19.

³⁵³ Ronald Weitzer, *Transforming Settler States: Communal Conflict and Internal Security in Northern Ireland and Zimbabwe* (Berkeley: University of California Press, 1990), 26.

³⁵⁴ Thobani, *Exalted Subjects*, 73.

³⁵⁵ Thobani, *Exalted Subjects*, 74.

³⁵⁶ Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too,’” 430.

Government officials understood the ongoing presence of Indigenous peoples in Canada to be particularly threatening during this period because earlier expectations that Indigenous people constituted a “vanishing race” had proven to be erroneous, as the population of “Status Indians” had increased by 18 percent between 1900 and 1939.³⁵⁷ The Department of Citizenship and Immigration reproduced and circulated the idea that Canada was a nation of immigrants, positioning Indigenous people as immigrants through both their migration from reserves to urban centres and reproducing the Bering Strait theory to equate Indigenous peoples with immigrants.³⁵⁸ As an assimilationist tool aimed at integrating Indigenous peoples into the Canadian mainstream through the extension of citizenship, the *Canadian Citizenship Act, 1946* furthered the white settler colonial project of Canada by enabling the assimilationist policies of the Department of Citizenship and Immigration.

Between the fall of 1968 and the spring of 1969, the Government of Canada carried out extensive consultations with Indigenous people across the country on revising the *Indian Act*. Following these consultations, the federal government issued the *Statement of the Government of Canada on Indian Policy* (commonly referred to as the White Paper), written by Minister of Indian Affairs and Northern Development Jean Chrétien under the leadership of Trudeau.³⁵⁹ The White Paper excluded recommendations from the consultation process and instead proposed the abolition of the *Indian Act*, Indian status, and the Indian Affairs branch. As Dale Turner argues, “[t]he main idea of the paper was that the assimilation of Indians into mainstream Canadian society—by force if necessary—was the right approach to solving Canada’s century-long ‘Indian problem.’”³⁶⁰ Turner summarizes the intended outcome of the *White Paper* as such: “Once Indians were

³⁵⁷ Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too,’” 434.

³⁵⁸ Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too,’” 435.

³⁵⁹ Turner, *This is Not a Peace Pipe*, 16. Haque, *Multiculturalism within a Bilingual Framework*, 40.

³⁶⁰ Turner, *This is Not a Peace Pipe*, 16.

‘welcomed’ into mainstream society, they would finally leave their primitive ways behind; more importantly, they would give up their indigenous connections to their homelands.”³⁶¹ Conversely, he asserts that “[t]he Indian Act, while clearly a colonial policy, also prevents the federal government from stealing Indian lands.”³⁶² As such, in addition to attempting to assimilate all Indigenous people into the mainstream Canadian population, through the policies contained within the White Paper, the government intended to eliminate Indigenous claims to their land and convert reservation and treaty lands into individually owned private property.

There have been prolific scholarly critiques of white settler colonial attempts to destroy myriad ways of doing gender and sexuality that existed in Indigenous societies before European invasion. The imposition of the institution of heteropatriarchy has been central to Canada’s white settler colonial project since before Canada existed. As Martin Cannon asserts, the earliest missionaries on the land that is now known as Canada tried to “civilize” Indigenous people by attempting “to indoctrinate [them with] a Christian ethos and patriarchal familial structure.”³⁶³ In this period, the existence of non-heterosexual sexual practices and non-binary embodiments of gender among Indigenous populations were used as evidence that Indigenous people were uncivilized, a belief which was in turn used to justify white colonial settlement.

Central to this work of assimilating Indigenous peoples into the white settler population was restricting Indigenous people’s contact with racialized non-Indigenous people in Canada. Renisa Mawani traces how missionaries and colonial authorities imposed laws and policies aimed at reducing social contact between Indigenous and Chinese people in British Columbia, for

³⁶¹ Turner, *This is Not a Peace Pipe*, 23.

³⁶² Turner, *This is Not a Peace Pipe*, 18.

³⁶³ Cannon, “The Regulation of First Nations Sexuality,” 2.

example through laws banning interracial drinking.³⁶⁴ These were put in place because of fear about the “degenerating effects” that Chinese migrants would have on Indigenous people, which colonial authorities believed “would not only hinder colonial efforts to civilize the Native populace residing along the West Coast but would ultimately jeopardize colonial triumph.”³⁶⁵ As such, the project of white settlement in Canada was shaped by non-white immigration as well as white settler-Indigenous relations.

The assimilationism of the White Paper conformed to government policy since at least 1763. Bonita Lawrence argues that the roots of the *Indian Act* lie in the Royal Proclamation of 1763, issued by King George III at the conclusion of the Seven Years War/La guerre de la Conquête between Britain and France. The Royal Proclamation “recognized Aboriginal title to all lands not ceded and acknowledged a nation-to-nation relationship with the Indigenous Nations.”³⁶⁶ Between 1763 and 1860, agents of the British Imperial Indian Department used “the diplomatic tools of cajolery, coercion (where possible) and bribery” instead of military force and deliberately introduced diseases and the use of alcohol to Indigenous populations, leading to the decimation of Indigenous populations during a period when the white settler population “multiplied a hundredfold.”³⁶⁷ When the Province of Canada was unified, one of its first actions was the 1850 introduction of the reservation system which was “designed to reinforce the rights of settlers to the entire land base by restricting ‘Indians’ to specific territories within it.”³⁶⁸ Cannon argues that reservation system policy also imposed patriarchal gender roles on the Indigenous societies subjected to it. For example, the reservation system had an agricultural component in which the

³⁶⁴ Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921* (Vancouver: UBC Press, 2009), 15.

³⁶⁵ Mawani, *Colonial Proximities*, 13.

³⁶⁶ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 6.

³⁶⁷ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 7.

³⁶⁸ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 7.

people the colonial government interpreted as men were taught how to labour in the fields while those people the colonial government interpreted as women were taught domestic skills. As such, Cannon argues that “the reserve system policy thus represented a further endeavor toward the reconstruction of gender relations among Aboriginal populations.”³⁶⁹ Cannon argues that “Had systems that recognized and affirmed an engagement in cross-gendered occupations existed prior to European contact, they would not have been possible during the 1830s.”³⁷⁰

Lawrence argues that the most significant implication of this legislation was that a “European settler government, an agency with no legislative authority over Indigenous nations, at this point claimed the authority to define who was or was not a member of an Indigenous nation—designated in generic terms as ‘Indian.’”³⁷¹ The rapidity with which the government introduced the reservation system clarifies the degree to which the ability to control Indigenous land and peoples is foundational to assertions of Canadian sovereignty. The fact that the imposition of heteropatriarchy on Indigenous societies was a central method by which the colonial government asserted control over Indigenous societies also demonstrates the centrality of gender and sexuality to the white settler colonial project of Canada.

In 1857, the government passed the *Gradual Civilization Act*, which aimed to assimilate Indigenous peoples into the settler population by allowing Indigenous men to become enfranchised, at which point they would lose their Indian status and entitlement to reservation land and gain the right to own private property.³⁷² Then in 1869, only two years after confederation, the Canadian government passed the *Gradual Enfranchisement Act*, which stripped Indigenous women of their Indian status if they married non-Indigenous or non-status men, as well as granting

³⁶⁹ Cannon, “The Regulation of First Nations Sexuality,” 9.

³⁷⁰ Cannon, “The Regulation of First Nations Sexuality,” 9.

³⁷¹ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 7.

³⁷² Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 7.

white women Indian status if they married “status Indian” men. This legislation, as Lawrence argues, codified “Indianness” as a “category that could be granted or withheld, according to the needs of the settler society.”³⁷³ Cannon argues that the purpose of this legislation “was to institutionalize a system of patrilineal descent and heterosexual marriage” and demonstrates that the policy produced heterosexual marriage as the only avenue to pass on Indian status and the accompanying rights.³⁷⁴ The *Gradual Enfranchisement Act* institutionalized the imposition of binary gender categories, colonial conceptions of masculinity and femininity, and patriarchy on Indigenous people. As Leanne Betasamosake Simpson argues:

2SQ bodies and the knowledge and practices those bodies house as Indigenous political orders were seen as an extreme threat to settler society, sovereignty, dispossession, and the project of colonization, colonialism, and assimilation. The powerful relationships queer bodies house—consent, diversity, variance, spiritual power, community, respect, reciprocity, love, attachment—were the very first thing colonizers sought to eliminate.³⁷⁵

The destruction of Indigenous ways of being and relating has been a primary objective of the colonial project of Canada, and the forceful imposition of colonial conceptions of gender and sexuality has been central to this project from its inception. The 1869 Act also included a blood quantum requirement for the first time, which dictated that only those with at least “one-quarter Indian blood” would be eligible for Indian status.³⁷⁶ By imposing a blood quantum requirement and specifying that Indian status could only be passed down through heterosexual marriage, the 1869 Act racialized Indigenous identity through institutionalized heteropatriarchy.

In 1876, the *Indian Act*, which consolidated previous colonial legislation governing Indigenous people, was passed. Similar to previous legislation, the *Indian Act* “imposed patriarchal definitions of ‘Indian’ by again emphasizing patrilineal descent” and “‘naturalized’ the

³⁷³ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 7.

³⁷⁴ Cannon, “The Regulation of First Nations Sexuality,” 9, 10.

³⁷⁵ Simpson, *As We Have Always Done*, 126.

³⁷⁶ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 9.

heterosexual nuclear family within First Nations communities.”³⁷⁷ The heteropatriarchal requirements for conferring Indian status remained in the *Indian Act* until 1985 after Sandra Lovelace (Maliseet) successfully challenged the sections of the Indian Act that were discriminatory based on gender at the United Nations Human Rights Committee.³⁷⁸ The UN ruling pressured the Canadian government to pass Bill C-31, *An Act to Amend the Indian Act*, in 1985. As Lawrence asserts, because of the gender discrimination in the *Indian Act*:

by 1985 there were twice as many nonstatus Indians and Metis as status Indians in Canada. In essence, by 1985, legislation enshrined in the Indian Act had rendered two-thirds of all Native people in Canada landless.³⁷⁹

The *Indian Act* facilitated colonial settlement by using racialized heteropatriarchy to create Indian status, deny Indian status to two-thirds of Indigenous people, and remove two-thirds of Indigenous people from those who can make legal claims to reservation and treaty lands.

Immigration Reform

Parliamentary debates about homosexuality also coincided with the state’s reconfiguration of its citizenship and immigration regimes in the period following the second world war. During the second world war, Canada permitted very little immigration and abolished the Department of Immigration and Colonization which had been responsible for overseeing immigration.³⁸⁰ The Canadian government reemphasized immigration in the postwar period to meet the labour needs of the recovering economy and continued to select immigrants based on racial criteria.³⁸¹ In 1947, Prime Minister MacKenzie King gave a speech from the throne emphasizing that immigration

³⁷⁷ Cannon, “The Regulation of First Nations Sexuality,” 10.

³⁷⁸ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 13.

³⁷⁹ Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States,” 6.

³⁸⁰ Abu-Laban, “Keeping ‘Em Out,” 72.

³⁸¹ Abu-Laban, “Keeping ‘Em Out,” 72.

from “the orient,” referring to the entire Eastern hemisphere outside of Europe, would not be permitted in order to preserve “the character of the population.”³⁸² This emphasis on European immigration was reproduced in subsequent orders-of-council and informed the first postwar immigration legislation, the *Immigration Act, 1952*. Through this act, the Canadian government legislated its right to restrict immigration on the following bases:

- (i) nationality, citizenship, ethnic group, occupation, class or geographical area of origin
- (ii) peculiar customs, habits, modes of life or methods of holding property
- (iii) unsuitability having regard to the climatic, economic, social, industrial, educational, labour, health, or other requirements existing, temporarily or otherwise
- (iv) probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after admission.³⁸³

The act also barred “homosexuals” from admission to Canada, while the 1910 Immigration Act had denied people entry who had been convicted of “moral turpitude,” which included people who had a documented history of “gross indecency and buggery.”³⁸⁴ As Kinsman argues, this was the first time that an act of Parliament referred to “homosexuals” as a type of person, as the previous legislation only referred to acts such as “buggery” and “gross indecency.”³⁸⁵ In the context of the cold war, Gary Kinsman argues that men who had sex with other men were seen to violate not only sexual and gender norms but also “class and political boundaries,”³⁸⁶ were constructed as communists, and were understood as threats to national security.³⁸⁷ John Diefenbaker, the Progressive Conservative MP for Prince Albert, made this clear through his statement that:

³⁸² Abu-Laban, “Keeping ‘Em Out,” 72.

³⁸³ Canada Year Book 1957-8, cited in Abu-Laban, “Keeping ‘Em Out,” 72-73.

³⁸⁴ Gary Kinsman, *The Regulation of Desire: Sexuality in Canada* (Montreal: Black Rose Books, 1987), 123.

³⁸⁵ Kinsman, *The Regulation of Desire*, 123.

³⁸⁶ Kinsman, *The Regulation of Desire*, 121.

³⁸⁷ Gary Kinsman and Patrizia Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010), 74.

I know there is no individual more subject to intimidation and threat by the U.S.S.R. as it endeavours to obtain information detrimental to the security of Canada than those who are believed to be homosexuals.³⁸⁸

Moreover, this change in the way in which men who had sex with other men were excluded from Canada reflects the creation of a new class of people, “homosexuals,” while previous legislation had criminalized the act of sex between men.³⁸⁹

Sexuality had in fact long been used to justify barring non-white immigration to Canada. As Enakshi Dua shows, debates about allowing East and South Asian women to immigrate to Canada between 1867 and 1920 centred on sexuality, with most people arguing that allowing East and South Asian women to immigrate would encourage the permanent settlement of East and South Asian communities and disrupt attempts to make East and South Asian men a temporary labour force in Canada.³⁹⁰ Others, however, argued that allowing East and South Asian women to immigrate to Canada would be beneficial because it would discourage interracial sexuality as well as same-sex intimacies in the “bachelor societies” of East and South Asian workers.³⁹¹ As such, ideas about racialized sexuality informed both sides of the debate and each was invested in “the same white nationalist discourse.”³⁹²

Dua documents how, during the 1885 Royal Commission on Chinese Immigration, arguments emerged about Chinese women’s sexuality, including the assertion from those who opposed Chinese women’s immigration to Canada that Chinese women would engage in sex work.³⁹³ During the commission, others pointed to the fact that most Chinese men did not

³⁸⁸ *House of Commons Debates*, 028 (27 January 1969) at 4838 (John Diefenbaker).

³⁸⁹ Jeffery Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (2nd ed.) (London: Longman, 1989), 7.

³⁹⁰ Dua, “Exclusion through Inclusion,” 445.

³⁹¹ Dua, “Exclusion through Inclusion,” 446, 464.

³⁹² Dua, “Exclusion through Inclusion,” 446.

³⁹³ Dua, “Exclusion through Inclusion,” 451.

immigrate with their wives as evidence of their immorality.³⁹⁴ The findings of this commission then informed the 1885 *Act to Restrict and Regulate Chinese Immigration*, which included the introduction of a \$50 head tax on Chinese immigrants other than merchants, who were exempt from the tax. Moreover, one of the justifications for trying to reduce Chinese immigration through the head tax was a fear of creating a “mongrel race” if Chinese people were assimilated into the white settler population.³⁹⁵ Like the head tax on Chinese immigrants, the Continuous Journey Provision was implemented to prevent Indian men from bringing their wives to Canada.³⁹⁶ These laws and regulations demonstrate the centrality of sexuality to the history of non-white immigration in Canada.

The explicit racial exclusion criteria outlined above remained in place until 1962 when John Diefenbaker’s Conservative government introduced a regulation stipulating that applicants for immigration to Canada be admitted if ““by reason of his education, training, skills or other special qualifications [the applicant] is likely to be able to establish himself successfully in Canada.””³⁹⁷ Abu-Laban argues that this regulation was introduced to expand the workforce in an attempt to recuperate the strong 1950s economy, which had begun to stagnate by the early 1960s.³⁹⁸ This regulation also brought immigration policy into alignment with the *Canadian Bill of Rights*, which was brought into effect by John Diefenbaker’s Progressive Conservative government in 1960. The *Canadian Bill of Rights* guaranteed “the right of the individual to equality before the law and the protection of the law”³⁹⁹ and was introduced, as Peter Russell argues, in order to ensure federal law conformed to Canada’s obligations under the United Nations

³⁹⁴ Dua, “Exclusion through Inclusion,” 451.

³⁹⁵ Dua, “Exclusion through Inclusion,” 451.

³⁹⁶ Dua, “Exclusion through Inclusion,” 454.

³⁹⁷ Abu-Laban, “Keeping ‘Em Out,” 73-4.

³⁹⁸ Abu-Laban, “Keeping ‘Em Out,” 74.

³⁹⁹ *Canadian Bill of Rights*, S.C. 1960, c. 44.

Declaration of Human Rights, to recuperate Canada's image after interning people of Japanese descent during the second world war and the widely publicized denial of legal rights following the Gouzenko disclosure in 1946.⁴⁰⁰ The *Canadian Bill of Rights* was also introduced in response to human rights violations at the provincial level, including Quebec Premier Maurice Duplessis's persecution of Jehovah's Witnesses, the Canadian government's forced detention and schooling of Doukhobors and the RCMP's formation of the counter-terrorism Special Depredation Squad which targeted Doukhobors in British Columbia,⁴⁰¹ and the repression of labour unions in Newfoundland.⁴⁰² Finally, the bill was intended to train new immigrants who had "no education or experience in liberal democratic values" and aid in their assimilation into the Canadian population.⁴⁰³ Although the *Canadian Bill of Rights* had limited effectiveness, as it only impacted the federal government and was not applicable to provincial legislatures, the bill's passage signals the federal government's attempt to construct itself as a modern liberal nation-state offering equal protection to its citizens in response to Canada's negative public image resulting from the government's repression of racialized and non-normative (e.g., white religious minority groups like the Doukhobors and Quakers) people as well as the threat to white hegemony supposedly posed by increased immigration.

In 1963, Lester B. Pearson's Liberal government established the Royal Commission on Bilingualism and Biculturalism (1963-70) in response to an increase in Québécois nationalism.⁴⁰⁴

⁴⁰⁰ Peter Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *Canadian Bar Review* 61 (1983): 33.

⁴⁰¹ Kathleen Rodgers and Darcy Ingram, "Ideological Migration and War Resistance in British Columbia's West Kootena's: An Analysis of Counterculture Politics and Community Networks among Doukhobor, Quaker, and American Migrants during the Vietnam War Era," *American Review of Canadian Studies* 44, no. 1 (2014): 102.

⁴⁰² Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," 33.

⁴⁰³ Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," 33.

⁴⁰⁴ Haque, *Multiculturalism within a Bilingual Framework*, 5.

Eve Haque asserts that the Commission was an apparatus for addressing contemporary challenges to the “Anglo-Celtic dominant narrative of belonging” and argues that:

at this particular historical juncture, the need to rearticulate the formulation for nation-building and national belonging meant a decisive shift onto the terrain of language and culture for organizing and maintaining white-settler hegemony while also disavowing racial and ethnic exclusions.⁴⁰⁵

This shift away from explicitly racist government policy was evident in the 1966 White Paper on immigration issued by Pearson’s government. The White Paper stated that Canada should accept as many immigrants as could be “absorbed” and advocated that, in response to the question of who should be admitted to Canada, “the answers must involve no discrimination by reason of race, colour or religion, and consequently must be universally applicable.”⁴⁰⁶ In 1967, new immigration regulations, enacted through Orders-in-Council as the 1952 *Immigration Act* was still in effect, were instituted based on the recommendations of the White Paper, including the exclusion of criteria based on race or nationality and the introduction of the points system, which was further entrenched in the 1976 Immigration Act.⁴⁰⁷

Immigration in the 1960s also had gendered dynamics. Married women were not allowed to apply as independent immigrants until 1974, but, even with this change, they continue to be overrepresented in the family class immigration scheme.⁴⁰⁸ While the federal government encouraged the immigration of white, especially British, women because they were understood to be the “mothers of the nation” who would transmit British culture to the next generation, the government tolerated the immigration of women of colour because of fears that men of colour

⁴⁰⁵ Haque, *Multiculturalism within a Bilingual Framework*, 5.

⁴⁰⁶ Canada, *Manpower and Immigration 1966*, 5, cited in Abu-Laban, “Keeping ‘Em Out,” 74.

⁴⁰⁷ Abu-Laban, “Keeping ‘Em Out,” 75.

⁴⁰⁸ Sedef Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” in *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, ed. Enakshi Dua and Angela Robinson (Toronto: Women’s Press, 1999), 210.

would otherwise interact socially, sexually, and romantically with white women.⁴⁰⁹ Family class immigration requires a ten-year sponsorship from a close family member living in Canada.⁴¹⁰ As

Sedef Arat-Koç argues:

the definition of family used for immigration purposes is an ethnocentric and heterosexist one, focusing on members of the nuclear family and not considering how family and significant others may be defined by other cultures, sub-cultures, or by individuals themselves.⁴¹¹

Moreover, the government institutionalized conditions of dependency for sponsored family-class immigrants, the majority of whom are women.⁴¹² Women in these situations need to fulfill the requirements of their sponsorship agreements to stay in Canada and, as such, the agreements increase the likelihood that women will stay in abusive relationships.⁴¹³

It is within the context of the heightened white racial anxieties that came about with these changes that MPs began debating whether the Canadian government should partially decriminalize anal sex. When the government did eventually implement this partial decriminalization, it helped the government to construct Canada as modern and respectful of individual rights, detracting attention from the heightened surveillance of and animosity towards Indigenous people and other people racialized as non-white.

Behavioral Arguments: Conceptualizing Sex between Men as Vice

Many politicians refuted the argument that all men who had sex with other men were sick. Some MPs who did not understand homosexuality as a disease understood sex between men as the

⁴⁰⁹ Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” 208.

⁴¹⁰ Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” 210.

⁴¹¹ Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” 210.

⁴¹² Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” 210.

⁴¹³ Arat-Koç, “Gender and Race in ‘Non-Discriminatory’ Immigration Policies in Canada,” 214.

result of uncontrolled sexuality. For example, Walter Dinsdale, the Progressive Conservative MP for Brandon—Souris, stated:

It is abnormal social behavior, because homosexuals are predators. Anybody who has been engaged in social work knows that the homosexual is a predator in respect of matters of sex. Homosexuals prey on juveniles. It is something that spreads like a plague, for there is no more destructive drive than the sexual impulse running wild.⁴¹⁴

Here, Dinsdale constructs men who have sex with other men as people who cannot or do not control their sex drives, who have sexual impulses that are “running wild.” This generates a conceptual overlap with constructions of racialized sexualities as sexually excessive, uncontrolled, untamed, and uncivilized. Canada has an extensive history of justifying racist and white settler colonial structures and practices by constructing Indigenous people and other people racialized as non-white as improperly sexual through their participation in same-sex practices and their supposedly uncontrolled sexualities.⁴¹⁵

As Jasbir Puar argues, “sodomy is and has always been perceived as a ‘racialized act.’”⁴¹⁶ She clarifies that by racialized act she means “that the act itself is already read through the raciality of the actors even as it accords raciality to those actors.”⁴¹⁷ While Puar discusses the racialization of sodomy to make an argument about the racialized adjudication of sodomy in the

⁴¹⁴ *House of Commons Debates*, 028 (17 April 1969) at 7639 (Walter Dinsdale).

⁴¹⁵ For example: Sunera Thobani discusses how immigrant women’s fertility was understood as “a danger to preserving the whiteness of the nation” (*Exalted Subjects*, 131) and Indigenous women were constructed as “sexually promiscuous” and “sexual ‘savages’” (*Exalted Subjects*, 123, 120); Sarah Carter argues that “Aboriginal women’s alleged promiscuity, their supposed luring of white men to depravity, and their presence in the settlements” were used to justify policies like the pass system and “Indian removal” (*The Importance of Being Monogamous*, 11); Carter also discusses how the existence of same-sex marriages in Indigenous societies fuelled the imposition of patriarchal and heteronormative British marriage customs on Indigenous peoples (*The Importance of Being Monogamous*, 30-1) and how concerns about depopulation and the threat to heterosexuality posed by white settler bachelor homesteaders led to a “bachelor tax” in the Canadian west (*The Importance of Being Monogamous*, 83); Nayan Shah describes how twentieth-century Canadian police and immigration officials used accusations of “sodomy” and “sexual immorality” to restrict South Asian men’s ability to migrate to Canada and, when they were permitted entry, they were not allowed to bring their wives or families and were therefore seen as lacking virtue, which was used to “justif[y] their exclusion from political and social life in Canada” (*Stranger Intimacy*, 208-9).

⁴¹⁶ Puar, *Terrorist Assemblages*, 132.

⁴¹⁷ Puar, *Terrorist Assemblages*, 132.

US context, her broader claim that sodomy is a racialized act deserves consideration in other contexts as well. Puar's idea about the racialization of sodomy is pertinent to the Canadian case given that sodomy has long been associated with Indigenous and other racialized actors in Canada. This assertion is exemplified in Nayan Shah's study of race, sexuality, and the law in the North American west, which reveals that racialized labourers were targeted by anti-sodomy and gross indecency laws, which were in turn used to limit their abilities to cross borders.⁴¹⁸ Moreover, Ann Laura Stoler demonstrates that imperial powers discursively legitimized the violence they committed in the process of establishing and expanding their empires by constructing the people and places they subjected to colonization as primitive and exotic, in part, because of the colonial administration's construction of their acceptance of and participation in sexual and romantic practices that fell outside the parameters of heteronormativity, including anal sex.⁴¹⁹ While only Shah's writing included the Canadian context, Stoler's arguments about the circulation of people, texts, and ideas throughout imperial spaces suggests that her assertions can be useful in studying Canada as well.

Indigenous scholars including Leanne Simpson, Joanne Barker, Kim Anderson, Chris Finley, and Martin Cannon show this to be the case in Canada through their documentation of the imposition of heteropatriarchy and binary gender roles on Indigenous societies, which was central to the establishment and maintenance of white settler colonialism in North America.⁴²⁰

⁴¹⁸ Shah, *Stranger Intimacy*, 208.

⁴¹⁹ Ann Laura Stoler, "Educating Desire in Colonial Southeast Asia: Foucault, Freud, and Imperial Sexualities," in *Sites of Desire, Economies of Pleasure: Sexualities in Asia and the Pacific*, ed. Lenore Manderson and Margaret Jolly (Chicago: University of Chicago Press, 1997), 32.

⁴²⁰ Simpson, *As We Have Always Done*; Joanne Barker, "Critically Sovereign" in *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies*, ed. Joanne Barker (Durham: Duke University Press, 2017); Anderson, *A Recognition of Being*; Chris Finley, "Decolonizing the Queer Native Body (and Recovering the Native Bull-Dyke): Bringing 'Sexy Back' and Out of the Native Studies' Closet" in *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*, ed. Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen (Tucson: University of Arizona Press, 2011); Cannon, "The Regulation of First Nations Sexuality."

Colonial constructions of peoples subjected to colonization as accepting of same-sex desires and sexual practices including anal sex was central to colonial processes of racialization and were used to justify colonial settlement and the colonial administration of non-settler colonies.

Greta LaFleur argues “reading sodomy as a racialized formation sheds new light on the history of its codification into law and subsequent criminalization” and asserts that “Coaxing out the racial politics of sodomy demonstrates the investment of anti-sodomy laws in creating and maintaining racial order.”⁴²¹ LaFleur is discussing the US context, but the work of Indigenous sexuality scholars in Canada such as Cannon, Lawrence, and Simpson, as well as work on race and sexuality by Carter, Dua, and Shah, for example, point to the centrality of race to sexuality in Canada, suggesting that analyses of the criminalization of sodomy in Canada can also be strengthened by considering sodomy as a “racialized formation” and investigating its role in “maintaining racial order.” In this chapter, I show how the historical construction of sodomy and anal sex as racialized and racializing acts, and the use of anti-sodomy laws to regulate and marginalize Indigenous peoples and people of colour, facilitated MPs’ discursive mobilization of anal sex to express anxieties about the future of whiteness in Canada. Specifically, MPs expressed anxieties about the presence of Muslim people and Indigenous people in Canada. I am suggesting that these anxieties arose as a response to the increased presence of people of colour in Canada as a result of the removal of explicitly racist criteria from the immigration regime.

Anti-Muslim Discourses

MPs who argued against partially decriminalizing anal sex and did not understand homosexuality as a disease drew on racialized, anti-Muslim discourses to support their claims that homosexuality

⁴²¹ Greta LaFleur, *The Natural History of Sexuality in Early America* (Baltimore: John Hopkins University Press, 2018), 7-8.

should not be tolerated in Canada. The anti-Muslim discourses these MPs used were steeped in Orientalist thought, reproducing “the association...between the Orient and the freedom of licentious sex.”⁴²² Edward Said describes how the “embourgeoisement” of Europe in the nineteenth century institutionalized sex, making “the Orient...a place where one could look for experiences unobtainable in Europe.”⁴²³ According to Said, Orientalist sexual fantasies about “the Orient” coexisted with the European construction of Arabs as incapable of rational thought through their construction as improperly sexual or possessing “a ‘bad’ sexuality” involving only “foreplay, masturbation, coitus interruptus.”⁴²⁴ Positioning Muslim sexuality as perverse and failed heteronormative sex is therefore foundational to how Orientalist thinkers have positioned Muslims as embodying an inferior form of humanity.

MPs could not tolerate men’s same-sex intimacies when they associated these practices with Muslim men, whose supposed acceptance of same-sex practices was understood to be a sign that their cultures were inferior because of their non-conformity with British/Canadian codes of civility. MPs used anti-Muslim and Orientalist imagery not only to demonstrate that men who had sex with other men did not belong in Canada, but also that Muslim people did not belong in Canada. MPs conflated the practice of Islam with same-sex intimacies such that Islam and non-heteronormativity were understood to be outside Canada through their association with one another. To excise Muslim people from the Canadian nation, MPs relied on culturalist racism that reified an Orientalist understanding of Islam and homogenized Muslim people and societies.

Alana Lentin describes how contemporary “racist movements no longer promote discrimination on the grounds of a belief in biological differences but espouse a ‘differentialist’

⁴²² Edward Said, *Orientalism*, 25th Anniversary ed. (New York: Vintage Books, 1979; repr., Toronto: Random House of Canada, 2003), 190.

⁴²³ Said, *Orientalism*, 190.

⁴²⁴ Said, *Orientalism*, 315-6.

racism based on a conviction in the fixity of culture.”⁴²⁵ While this culturalist racism is sometimes understood as a new form of racism, Tariq Modood argues that it is actually the biological racism of the nineteenth century that is the historical aberration because culturalist racism, including Islamophobia and anti-Semitism, emerged as explanations for human difference long before biological understandings of race emerged.⁴²⁶ Modood details the re-emergence of culturalist racism in Britain following the second world war, asserting that:

cultural racism builds on biological racism a further discourse which evokes cultural differences from an alleged British or “civilised” norm to vilify, marginalise or demand cultural assimilation from groups who also suffer from biological racism.⁴²⁷

As such, contemporary culturalist racism has not replaced biological racism, but rather has integrated the ideology of biological racism into newer racist discourses about culture.

Paul Gilroy suggests that culturalist racism integrates “a reductive conception of culture” that foregrounds identity and disregards politics and history.⁴²⁸ Building on Gilroy, Lentin describes how multiculturalism emerged as a way to resolve racism and has emphasized “culture as a means of bringing about a state of ‘racelessness.’”⁴²⁹ Lentin argues that the culturalist approach was used to demonstrate the invalidity of scientific racism, but it:

did not address the political implications of racism in the history of the West. It failed to deal with the important fact that, while race-thinking may have had its beginnings in the scientific or philosophical domain, it was through the medium of politics that it had been propelled to significance.⁴³⁰

Lentin contends that while “cultural characteristics” are not typically understood as genetically determined, “there is a tendency to talk in stereotypes about ‘Muslim values’, ‘black attitudes’ or

⁴²⁵ Lentin, “‘Race’, Racism and Anti-Racism,” 91.

⁴²⁶ Modood, “‘Difference,’ Cultural Racism and Anti-Racism,” 155.

⁴²⁷ Modood, “‘Difference,’ Cultural Racism and Anti-Racism,” 155.

⁴²⁸ Paul Gilroy, “The End of Antiracism,” *Journal of Ethnic and Migration Studies* 17, no. 1 (1990): 72.

⁴²⁹ Alana Lentin, “Replacing ‘Race,’ Historicizing ‘Culture’ in Multiculturalism,” *Patterns of Prejudice* 39, no. 4 (2005): 382.

⁴³⁰ Lentin, “Replacing ‘Race,’ Historicizing ‘Culture’ in Multiculturalism,” 385.

‘Asian work ethics.’”⁴³¹ These stereotypes discursively reify and homogenize Muslim, Black, and Asian people and reinforce the hierarchical ordering of human difference based on racialized understandings of humanity. During the debates, MPs drew on Muslim “cultural characteristics” to vilify Muslims and define Canada and Canadian sexuality in opposition to Islam and Orientalist conceptions of Muslim sexualities.

For example, Frederick Bigg, the Progressive Conservative representative for Pembina, asserted that “[w]e all appear to agree that homosexuality is repugnant to the average Canadian, regardless of what Kinsey says about it or what is done in Sweden or in England or in the House of Lords or in the Arabian army or anywhere else.”⁴³² Another MP, Roland Godin, the Ralliement Cr ditiste representative for Portneuf, stated: “And what good is it to send a homosexual to jail? Is it not like sentencing a ‘wolf’ to a few years in a harem?”⁴³³ Walter Dinsdale, the Progressive Conservative MP for Brandon—Souris, stated:

Actually what we are embracing is the Mohammedan philosophy of hedonism. That is where the phrase, “The state has no business in the bedrooms of the nation”, originated. The Arab attitude or the Moslem attitude is that as long as public decency is not debauched everything is all right.⁴³⁴

Bigg’s reference to homosexuality in “the Arabian army,” Godin’s reference to harems, and Dinsdale’s discussion of Arab and Muslim attitudes towards sexuality draw on Orientalist constructions of “sexual excess, perversity, and pedophilia” in the Arab world.⁴³⁵ As Joseph Massad argues, “Christian portrayals of the Muslim world as immoral and sexually licentious have been around for centuries.”⁴³⁶ For example, Richard Francis Burton once claimed that “sodomy

⁴³¹ Lentin, “Replacing ‘Race,’ Historicizing ‘Culture’ in Multiculturalism,” 389.

⁴³² *House of Commons Debates*, 028 (17 April 1969) at 7644 (Frederick Bigg).

⁴³³ *House of Commons Debates*, 028 (18 April 1969) at 5482-5483 (Roland Godin).

⁴³⁴ *House of Commons Debates*, 028 (17 April 1969) at 7639 (Walter Dinsdale).

⁴³⁵ Puar, *Terrorist Assemblages*, 14.

⁴³⁶ Joseph Massad, “Re-Orienting Desire: The Gay International and the Arab World,” *Public Culture* 14, no. 2 (2002): 363.

was one among many ‘vices specific to Muslims.’”⁴³⁷ Reinscribing these tropes about the sexual perversity of Muslim and Arab people builds on Orientalist traditions in which constructions of sexuality in the Orient become the constitutive outside of the Occident. As such, these MPs operationalize Orientalism to distance Canada from non-heteronormative and same-sex sexualities in order to justify their opposition to the partial decriminalization of anal sex. These Orientalist constructions of Muslim sexualities reaffirmed white settler heteropatriarchal hegemony during a time of heightened anxieties about non-white immigration and denaturalized the existence of Muslim people in Canada.

Furthermore, as Yasmin Jiwani argues, Orientalism racializes religious difference.⁴³⁸ As such, these constructions of non-heteronormative sexuality in Muslim societies do not only reproduce difference between Muslims and Christians, they reinscribe *racial* difference. As the constitutive outside of the west, these Orientalist portrayals of Muslim sexual perversity reify white Canadian heterosexuality and their repetition in the debates demonstrates the existence of anxieties about this whiteness.

The fear that Islamic philosophies would be “embraced” in Canada through the partial decriminalization of anal sex (“what we are embracing is the Mohammedan philosophy of hedonism”) speaks to the ways in which Islamophobia informs Canadian anti-immigrant discourse. The reification and homogenization of what Dinsdale called “the Mohammedan philosophy” exemplifies the culturalist racism that dominated discourses of race as biological racism was losing traction in this period. While Muslim people first settled in Canada in the mid-

⁴³⁷ Kate Imy, “Kidnapping and a ‘Confirmed Sodomite’: An Intimate Enemy on the Northwest Frontier of India, 1915-1925,” *Twentieth Century British History* 28, no. 1 (2017): 40.

⁴³⁸ Yasmin Jiwani, *Discourses of Denial: Mediations of Race, Gender, and Violence* (Vancouver: UBC Press, 2006), 178.

1800s,⁴³⁹ they began immigrating to Canada in increasing numbers following the introduction of the points system in the 1960s.⁴⁴⁰ By referencing sexuality in the Muslim world as a site of non-heteronormativity and non-whiteness external to Canada, Bigg, Dumont, and Dinsdale not only foreclose the possibility of Muslim Canadians just after explicit racial exclusion criteria were removed from Canadian immigration law beginning in 1962, but also construct Islamic thought as a threat to Canada. In so doing, these MPs mobilize homophobic discourse to lend support to arguments that Muslim people should not be allowed to enter or remain in Canada because Islamic thought was constructed as an inherent threat to Canada. This construction of Muslims as an external threat to the white settler heteronormative order of Canada worked to create the conditions of Muslim non-citizenship in Canada.

Moreover, the MPs' statements re-entrenched the constructed attachment of non-heteronormative sexualities to Muslim-ness, such that their externalizations of Muslim people from Canada simultaneously heterosexualized the Canadian population. By situating same-sex intimacies in the Muslim world, these MPs constructed Canada as white and heterosexual. Moreover, they expressed their xenophobic fears about Muslim immigration through their revulsion to homosexuality, a move that was facilitated by the racialized histories of anal sex. In these ways, MPs' references to the Muslim world reinscribed Canada with whiteness and heterosexuality, while also demonstrating how anxieties about whiteness emerged and were contained through Islamophobia in the debates.

⁴³⁹ Jasmine Zine, "Introduction: Muslim Cultural Politics in the Canadian Hinterlands," in *Islam in the Hinterlands: Muslim Cultural Politics in Canada*, ed. Jasmine Zine (Vancouver: UBC Press, 2012), 4.

⁴⁴⁰ Abdolmohammad Kazemipur, "Religion in Canadian Ethnic Landscape: The Muslim Factor," in *Immigration, Racial and Ethnic Studies in 150 Years of Canada*, ed. Shibao Guo and Lloyd Wong (Leiden: Brill Sense, 2018), 261.

Furthermore, Godin's reference to harems drew on discourses of polygamy that construct monogamous marriage as civilizationally superior to polygamous relationships. Nathan Rambukkana demonstrates that discursive renderings of monogamy adhere to a civilizational narrative in which "monogamy is often figured as natural, civilized, and moral, whereas nonmonogamy is figured as unnatural, barbaric, and immoral."⁴⁴¹ Harems, as non-monogamous spaces, are cast as uncivilized. As Suzanne Lenon argues, Canadian laws criminalizing polygamy were put in place in 1892 to disrupt Niitsitapi kinship practices and impose monogamous marriage on the Niitsitapi people.⁴⁴² Sarah Carter demonstrates that Islamophobia also informed the debates about anti-polygamy legislation in the 1890s and that MPs expressed anxieties about Muslim immigration in the context of the legislation.⁴⁴³ Additionally, Enakshi Dua shows that fears about polygamy in Canada were also used in arguments against Indian women's immigration to Canada in the early 1900s.⁴⁴⁴ While Canadian anti-polygamy laws were created and continue to exist to repress Indigenous kinship structures, the laws simultaneously render non-white people, particularly Muslim and South Asian people, who practice polygamy as less civilized and out of place in Canada. The law dictates the parameters of national belonging, in this case casting non-monogamous Indigenous and Muslim people outside the boundaries of the Canadian nation. In so doing, this law renders Indigenous and Muslim people as less civilized than white Canadians, thereby justifying practices of repression, expulsion, and exclusion.

Finally, Dinsdale's statement that "what we are embracing is the Mohammedan philosophy of hedonism" demonstrates that he understood men's desire to have sex with other men not as

⁴⁴¹ Nathan Rambukkana, *Fraught Intimacies: Non/Monogamy in the Public Sphere* (Vancouver: UBC Press, 2015), 100.

⁴⁴² Lenon, "Monogamy, Marriage, and the Making of Nation," 82.

⁴⁴³ Carter, *The Importance of Being Monogamous*, 44.

⁴⁴⁴ Dua, "When Home and Harem Collide," 217.

biological, but as cultural, which was part of the culturalist discourse of racism popular at the time. Dinsdale reified and homogenized divergent Islamic epistemologies as advocating the pursuit of pleasure, including same-sex intimacies, which he constructs as culturally “primitive,” in opposition to his implicit construction of Canada as civilized because of its advocacy of sexual restraint and heteronormative respectability. In this way, “philosophy” acts as a placeholder for culturalist notions of racial primitivity. While Dinsdale understood Muslim engagements with non-heteronormative sexualities as an outcome of a hedonistic philosophy, not a biologically driven desire, the association between Muslim people and sexual licentiousness he reproduced is no less fixed than if it were understood as biological. As I will discuss in more depth in the following sections, it was only when men who had sex with other men were constructed as white and their desires to do so were discursively transformed into a biological essence through pathologization that MPs could begin considering treating those afflicted with this “disease” with tolerance.

White Settler Colonialism and Indigeneity

MPs who did not understand men’s same-sex intimacies as arising from a disease also reasserted the whiteness of Canada in the debates through the erasure of Indigenous peoples. The repetition with which MPs asserted Canadian whiteness in the debates suggests the MPs had anxieties about whiteness and its ongoing hegemony in Canada. For example, in his discussion of the Canadian landscape, Frederick Bigg worked to secure Canadian whiteness by describing nature in Canada as a defense against homosexuality. Bigg asserted that “the same need [to partially decriminalize anal sex] does not arise in Canada with its fresh air and wide open spaces...We live a normal, outdoor life.”⁴⁴⁵ Bigg’s assertion draws on white settler colonial constructions of the land; to

⁴⁴⁵ *House of Commons Debates*, 028 (17 April 1969) at 7644 (Frederick Bigg).

unpack these constructions, I briefly review the historical construction of the gender, sexuality, and the land in what is now called Canada.

As I have discussed, early colonists, missionaries, and other white settlers interpreted Indigenous peoples' acceptance of same-sex sexual practices and gender non-conformity as evidence that they were less civilized than the British and French. Monogamous, heterosexual marriage, embodiments of gender in which the gender assigned at birth was a person's gender throughout their lifetime, and gender relations structured by male dominance were all markers of civility during this period of colonialism. Additionally, white settlers drew on the idea of *terra nullis*, a legal concept deployed by the French and British colonists to construct the land as unoccupied and therefore colonisable, "even in cases where lands were clearly not unoccupied."⁴⁴⁶

Subsequently, colonists began to interpret their occupation of Indigenous land as demonstrative of their manly prowess. For example, as Mishuana Goeman argues, "The trading post, or companies such as the Hudson Bay, were pivotal to 'civilizing' spaces of the frontier and were known for rugged individualism and making way for 'a new man.'"⁴⁴⁷ That is, the Canadian man, as a discursive formation, was constructed in relation to the land, emptied of Indigenous presence. Goeman argues that the trading post is "a space where boys become men, masculinities are mapped, and settler nations form."⁴⁴⁸ Goeman highlights the interconnected formation of hegemonic masculinity, settler fantasies of the land, and Canada as a political entity.

Mark Rifkin defines settler common sense as "the ways the legal and political structures that enable non-natives access to indigenous territories come to be lived as given, as simply the

⁴⁴⁶ Alex Zukas, "Terra Incognita/Terra Nullius: Modern Imperialism, Maps, and Deception," in *Lived Topographies and the Mediatl Forces*, ed. Gary Backhaus and John Murungi (Lanham: Lexington Books, 2005), 49.

⁴⁴⁷ Mishuana Goeman, *Mark My Words: Native Women Mapping Our Nations* (Minneapolis: University of Minnesota Press, 2013), 53.

⁴⁴⁸ Goeman, *Mark My Words*, 56.

unmarked, generic conditions of possibility for occupancy, association, history, and personhood.”⁴⁴⁹ The white settler colonial governance that allows Bigg access to Indigenous lands naturalizes not only physical but also ideological access such that Bigg can incorporate “wide open spaces” into his imagination of what Canada is. White settler colonial structures invisibilize Indigenous entitlement to their land in order to undermine Indigenous claims to their land and to encourage a sense of white settler entitlement to the land.

Scholars of Canadian geographies document the racialization of nature in Canada, highlighting the ways in which nature is constructed as a white space. For example, Andrew Baldwin, Laura Cameron, and Audrey Kobayashi argue that the “great white north” is:

a national imaginary that invokes a metaphor of nature’s purity to reinforce norms of racial purity. The double meaning of the word “white” parallels a double movement in our social and cultural history both to assert the dominance of whiteness as a cultural norm and to build a sense of national identity linked closely to nature and wilderness. Non-whites and Indigenous peoples have been excluded from that norm to one degree or another since the nation’s inception.⁴⁵⁰

Additionally, Bruce Erikson argues that “pristine nature takes on the fetishized properties of a commodity in the service of a national discourse that imagines Canada to be first and foremost a white nation.”⁴⁵¹ As Erikson and Baldwin, Cameron, and Kobayashi demonstrate, Canadian whiteness is constituted through its connection to a wilderness that is discursively emptied of Indigenous peoples and other people racialized as non-white. Bigg’s construction of Canada’s “wide open spaces” as a defense against homosexuality reproduces the erasure of Indigenous

⁴⁴⁹ Mark Rifkin, *Settler Common Sense: Queerness and Everyday Colonialism in the American Renaissance* (Minneapolis: University of Minnesota Press, 2014), xvi.

⁴⁵⁰ Andrew Baldwin, Laura Cameron, and Audrey Kobayashi, “Introduction: Where is the Great White North? Spatializing History, Historicizing Whiteness,” in *Rethinking the Great White North: Race, Nature, and the Historical Geographies of Whiteness in Canada*, ed. Andrew Baldwin, Laura Cameron, and Audrey Kobayashi (Vancouver: UBC Press, 2011), 1.

⁴⁵¹ Bruce Erikson, *Canoe Nation: Nature, Race, and the Making of a Canadian Icon* (Vancouver: UBC Press, 2013), 123.

peoples because of their association with same-sex intimacies, reinforces the construction of white heteropatriarchal Canadian entitlement to Indigenous land, and reifies the production of Canada as a white settler nation.

Furthermore, Bigg's comment clarifies that he understands men's desire to have sex with other men as cultural rather than biological. Following Bigg's logic, Canadian culture's connection to the wilderness protects Canadians from becoming homosexuals. Within the debates, this construction of Canadian culture's imperviousness to the "threat" of same-sex sexualities is situated oppositionally to Orientalist constructions of "Muslim culture" as inherently sexually licentious and therefore open to non-heteronormative sexuality. As such, through the process of discursively emptying the land of Indigenous presence, Bigg is able to construct Canadian culture as white and heterosexual in opposition to constructions of "Muslim culture" as fixed in non-heteronormativity.

In this section, I have shown that MPs who opposed the partial decriminalization of anal sex understood men's desire to have sex with other men in non-biological ways. These MPs understood men having sex with other men as a form of vice, which suggests an element of choice in sexual practice. These MPs rejected the pathologizing discourse put forth by MPs who supported the partial decriminalization of anal sex, suggested that men's desire to have sex with other men was not biologically determined, and stated that the act of men having sex with other men was a choice the men made. MPs who opposed the partial decriminalization of anal sex on these grounds suggested men who had sex with other men made "bad choices" and were therefore unfit for citizenship; the conditions of non-citizenship, however, were racially determined, with imprisonment being positioned as the proper solution for white men who had sex with other men while Muslim men were constructed as outside the nation.

MPs infused these non-biological interpretations of same-sex practices with derision because of the racialization of anal sex. This happened specifically through the use of anti-Muslim and white settler colonial discourses. MPs drew on anti-Muslim discourse which attached same-sex practices to Muslim men such that the rejection of Islam in Canada justified the rejection of same-sex intimacies and vice versa. In this way, MPs ideologically connected Islamophobic anti-immigrant discourse to anti-queerness in such a way that MPs could idealize Canada as free of Muslim and queer presence. Other MPs discursively erased Indigenous presence from their land, instead constructing the land itself, emptied of Indigenous presence, as emblematic of Canadian identity. By mobilizing the discourse of *terra nullius* in an effort to shore up Canadian heteronormativity, these MPs' comments in Parliament demonstrate the foundational centrality of white settler colonialism to Canadian heteropatriarchy.

Towards an Essentialist Understanding of Homosexuality

As is evident from the fact that the legislation passed, most MPs supported the partial decriminalization of anal sex. These MPs generally pathologized same-sex practices, accepting that men who had sex with other men were afflicted with the disease of homosexuality. With this shift, MPs ceased to associate same-sex practices with racialized men and no longer explained the existence of same-sex desires through a culturalist lens. Instead, MPs who supported the partial decriminalization of anal sex implicitly constructed men who have sex with other men as white Canadian settlers and explained the existence of their desires as a symptom of the disease of homosexuality rather than an inherent feature of white settler culture in Canada.

This shift from a culturalist understanding of men's same-sex desires to the pathologization of these desires was a response to the growing fears and anxieties about non-white immigration that accompanied the immigration reforms the Government of Canada was

implementing during this period. Pathologization individualized the “problem” of men’s same-sex desires and transformed white men with these desires into people who could be redeemed as Canadian subjects through treatment. This redemption, however, was provisional and dependent on the privatization of same-sex sexualities as public expressions of sexualities continued to be criminalized and people lost their jobs and experienced discrimination in public spaces because of their sexualities.⁴⁵² Positioning white men who had sex with other men as redeemable also enabled a diversification of Canadian whiteness by constructing Canada as an enlightened liberal state that is tolerant of same-sex sexual practices and compassionate in its response to them. As MPs who supported the partial decriminalization of anal sex were conceptualizing white men who had sex with other men as redeemable through treatment, MPs who opposed the reforms constructed racialized men’s same-sex desires as culturally determined and therefore untreatable. As such, as white men with same-sex desires were becoming increasingly tolerated by the Canadian state, MPs’ conceptualizations of racialized men with same-sex desires entrapped these men in culturalist explanations for their non-normative sexual practices.

MPs who supported the partial decriminalization of anal sex frequently drew on medical evidence to support their claims that homosexuality was a disease, as is evidenced in this parliamentary exchange between Steven Otto, the Liberal MP for York East, Eldon Woolliams, the Progressive Conservative MP for Calgary North, and Walter Dinsdale, the Progressive Conservative MP for Brandon—Souris:

Mr. Otto: Members of the medical profession tell us that homosexuality is a sickness and that with present day knowledge there is no remedy for it.

Mr. Woolliams: That is only one opinion.

Mr. Otto: That is not only one opinion, that is the consensus of many opinions as a result of studies by psychiatrists and others. There is apparently no cure.

Mr. Dinsdale: Perhaps they should see a psychiatrist.

⁴⁵² Kinsman and Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010), 3.

Mr. Otto: The journals of the American Psychiatric Association are in the library. They contain report after report by psychiatrists which indicate that homosexuality is an illness and that it cannot be cured. In any event, this is recognized as an illness. Hon. gentlemen opposite do not believe this, but there is evidence to support the argument that homosexuality is not a criminal matter. These people should not be treated as criminals. This definition has nothing to do with the old concept of morality. History indicates that morality has been tied closely to legislation. We must recognize the facts as they exist. No one opposite has explained what benefits there might be in continuing to take criminal action against these people who are sick, and no one has denied that they are sick.⁴⁵³

Despite the opposition of Woolliams and Dinsdale, Otto draws on psychiatric and other medical evidence to support his claim that there is a sickness called homosexuality with which men who have sex with other men are afflicted. In this way, Otto biologized this desire, such that he constructed it as an essentialized trait of men who wanted to have sex with other men. Because Otto constructs homosexuality as a disease for which there is “no remedy,” he discursively transforms it into a biologized, inherent part of who men who have sex with other men are.

Other MPs who supported partial decriminalization also generally labelled men who had sex with other men with the disease of homosexuality. For example, Douglas Aird Hogarth, the Liberal MP for New Westminster, stated:

Although the homosexual’s affliction is not the same as the alcoholics in kind, it is in substance. The homosexual has no control over his behaviour. He is either born that way or develops his sickness at an early age. He cannot change apparently; so why put him in jail.⁴⁵⁴

Hogarth interprets men’s desire to have sex with other men as indicative of sickness rather than as simply a form of behavior. In this way, he biologizes men’s desire to have sex with other men.

Not every MP who accepted homosexuality was a disease believed that anal sex should be partially decriminalized. For example, John Patrick Nowlan, the Progressive Conservative MP for Annapolis Valley, suggested:

⁴⁵³ *House of Commons Debates*, 028 (15 April 1969) at 7616-17 (Steven Otto, Eldon Woolliams, and Walter Dinsdale).

⁴⁵⁴ *House of Commons Debates*, 028 (27 January 1969) at 4866 (Douglas Aird Hogarth).

Perhaps we should amend the bill to provide that anybody so found guilty should be given psychiatric treatment. Let the problem be investigated so we can ascertain what is involved. Hon. members have mentioned many aspects of this problem. Unless something is substituted for the removal of the legal sanction, you cannot help but lessen the moral stigma. I have not heard one member say that this conduct is moral. I would vote against this homosexuality clause because it does not go to the root of the problem while at the same time it removes the legal sanction against offences with respect to which there have been no prosecutions. This amendment will make for misinterpretation and, as I said, will certainly lessen the moral stigma.⁴⁵⁵

Roland Godin, the Ralliement des créditistes MP for Portneuf, agreed that partially decriminalizing anal sex without putting alternative measures in place would make “things... worse.” Godin stated:

In this country, we heard men and women say on the air – on CBC – that they favour the legislation because they themselves indulge in that kind of perversion; they are sick, but they do not know it. Doctors and psychiatrists agree that this deviation may often be cured; but if you allow people to think that it is a normal way of life, it is quite possible that things will get worse, instead of getting better. If authorities would agree to say that it is a disease or an abnormal psychological condition, one cannot imagine that this sexual deviation would be encouraged to spread on a plea of “freedom”, as true freedom of the individual is based upon the respect of other peoples’ freedom.⁴⁵⁶

David Réal Caouette, the Ralliement des créditistes MP for Témiscamingue, went so far as to suggest:

instead of making it legal, why not bring forward a bill aiming to build hospitals where those sick people could be treated? I suggest we should take this course instead of introducing in the house a bill allowing adults to commit such acts together.⁴⁵⁷

Evidently, several MPs believed that forcefully “treating” men who had sex with other men was preferable to decriminalization or was a necessary accompaniment to decriminalization. Like MPs who supported the partial decriminalization of anal sex without forced “treatment,” these MPs also conceived of homosexuality as a disease with which men who had sex with other men were afflicted.

⁴⁵⁵ *House of Commons Debates*, 028 (21 April 1969) at 7758-59 (John Patrick Nowlan).

⁴⁵⁶ *House of Commons Debates*, 028 (13 February 1969) at 5482-83 (Roland Godin).

⁴⁵⁷ *House of Commons Debates*, 028 (21 April 1969) at 7754 (David Réal Caouette).

MPs understood this desire as a symptom of the disease of homosexuality, and as such biologized men's same-sex desires. Pathologizing same-sex desires facilitated the shift from culturalist explanations, in which a homogenized construction of Muslim culture was blamed for Muslim men's desire to have sex with other men, towards individualized explanations in which the illness of individual white men became understood as the cause of their same-sex desires. This biologization fuelled the construction of men with same-sex desires as white, which simultaneously situated racialized people as straight and enabled sexual orientation (as it was later understood) to be conceptualized as an essential trait that could be analogized to race.

The Emergence of Canadian Exceptionalism

The biologization of homosexuality created the conditions of possibility for Canadian exceptionalism to materialize through sexuality. With pathologization, MPs no longer conflated Indigenous and other racialized men with men who had sex with men. As such, the "disease of homosexuality" came to be racialized as white such that compassion, tolerance, and/or pity could be extended towards men who had sex with other men. In this section, I explore the development of Canadian exceptionalism to demonstrate how Canadians' expressions of compassion towards men who had sex with other men was incorporated into the ways in which straight, white Canadians became exalted as exceptional citizens. I begin by tracing the emergence of Canadian exceptionalism out of a subordination to Britain. Canada began to assert its independence from Britain during this period in ways that reified the heterosexist and racist nature of Canadian belonging that had preceded Canada's movement towards legal independence from Britain.

As I discussed earlier, the *Canadian Citizenship Act, 1946* was central to Canada's redefinition of its relationship to Britain. The *Canadian Citizenship Act, 1946* also institutionalized a form of Canadian subjectivity that was deeply heterosexist and patriarchal. As Robert Kerr

clarifies, “The Act provides that the wife of a Canadian citizen may be granted citizenship after one year of residency in Canada, but for most other persons, including the husbands of Canadian citizens, the minimum residency requirement is five years.”⁴⁵⁸ When challenged, the court found “the differentiation made with respect to married women to be in accord with historical concepts under which the wife may be deemed to take the status of her husband.”⁴⁵⁹ Moreover, “If a child was born ‘in wedlock’, citizenship was inherited from the father. If a child was born ‘out of wedlock’ citizenship from the mother.”⁴⁶⁰ This new, modern law reinscribed and institutionalized Canada’s heterosexism and patriarchal values in new ways.

Moreover, as Ranbir Banwait argues, “The 1947 Citizenship Act belongs to the same pool of legislation that policed racial relations through the grammar of patriarchy.”⁴⁶¹ For example, Sandra Ka Hon Chu clarifies that:

While the *Exclusion Act* was repealed in 1947, racist restrictions on the immigration of Chinese persons continued until the early 1960s. This legislative activity reflected a wider pattern of anti-Asian public policy in Canada. In addition to the head tax and the Exclusion Act legislation, Chinese immigrants were subject to more legislative control than any other migrant group in Canada. These included laws disenfranchising Chinese Canadians, taxes levied on rice and laundries, prohibitions against the employment of White women in Chinese restaurants, prohibitions against Chinese ownership of Crown land, segregation of schools, and prohibitions against entry to various occupations and professions.⁴⁶²

Additionally, legislators embedded jus soli citizenship into the *Canadian Citizenship Act, 1946*. This form of nation-building that grants citizenship to anyone born within Canadian borders makes it so people born outside of Canada have to apply to become Canadians. Jus soli naturalizes

⁴⁵⁸ Robert Kerr, “The Canadian Bill of Rights and Sex-Based Differentials in Canadian Federal Law,” *Osgoode Hall Law Journal* 12, no. 2 (1974), 378.

⁴⁵⁹ Kerr, “The Canadian Bill of Rights and Sex-Based Differentials in Canadian Federal Law,” 378.

⁴⁶⁰ Lois Harder, “‘In Canada of All Places’: National Belonging and the Lost Canadians,” *Citizenship Studies* 14, no. 2 (2010): 209.

⁴⁶¹ Ranbir Banwait, “Legislating Race, Grammars of Patriarchy: Citizenship, Statelessness, and Velma Demerson’s Incurable,” *Canadian Literature* 223 (2014): 19.

⁴⁶² Sandra Ka Hon Chu, “Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era,” *Canadian Journal of Women and the Law* 18, no. 2 (2006): 404.

Canadian (and other national) borders such that the internationally recognized governance structure within those borders has the right to grant and deny citizenship as it sees fit. As Reece Jones argues, “Drawing a border is an inherently violent act that relies on the threat of force to support a territorial claim...building walls and securing borders does not stop migration but simply makes it much more dangerous.”⁴⁶³ The *Canadian Citizenship Act, 1946* legitimized Canadian borders and Canadian citizenship, making crossing Canadian borders more difficult and dangerous for people born outside them. Jus soli is also a tool of white colonial settlement that grants Canadian citizenship to anyone born in Canada. When white immigrants, the explicitly preferred immigrant at the time, had children in Canada, the Canadian state automatically recognized them as Canadian citizens, thus naturalizing the process of expanding and legitimizing the presence of the white settler population as a vital part of the white settler colonial project of Canada.

Therefore, racism and white settler colonialism were and are central to the construction of Canadian exceptionalism, as it is only through the erasure of Indigenous existence and of racist repression that Canada can be constructed as an innocent, benevolent, and peaceful nation-state. That parliamentary debates over the decriminalization of private acts of anal sex between two consenting adults over the age of 21 became a site through which Canadian exceptionalism was produced points to the centrality of sexuality to white settler hegemony in Canada.

Compassion, Tolerance, and Western Imaginaries

Sunera Thobani documents the deeply racialized history of constructing Canada as compassionate. The development of the welfare state facilitated this construction of Canadian compassion and the uneven distribution of the benefits of public welfare demonstrate the

⁴⁶³ Reece Jones, *Violent Borders: Refugees and the Right to Move* (London: Verso, 2016), 3.

racialization of this institution. Thobani describes how the state's provision of welfare feminized constructions of Canada. She argues these feminized constructions supported the assertion that Canada valued egalitarian gender relations, which was used as evidence of white Canadians' superiority over Indigenous and other racialized people.⁴⁶⁴

The welfare state and charitable organizations adopted pro-natalist policies that supported white parents in having and raising children while it vilified and punished Indigenous parents and other racialized parents.⁴⁶⁵ The welfare state targeted Indigenous parents primarily through the residential school system and later through the child welfare system, both of which were constructed as "caring" institutions despite the physical, emotional, and sexual torture to which they subjected Indigenous children. As Thobani argues:

Aboriginal women were already "wilded" in the settler imagination of the nineteenth century as sexual "savages," and civilizing their children was deemed possible only if they were removed from these women's care.⁴⁶⁶

Thobani clarifies that constructions of Indigenous women's sexualities were central to the state's denial of access to the supports white women received as well as the justifications for the state's violent regimes of "care" for Indigenous children.

The state-funded supports white women received were denied to non-Indigenous racialized women in different ways, but also drew on constructions of the deviant sexualities of racialized people. Thobani describes how, before the 1960s, immigrant women were vilified because "their sexuality and fertility [was] defined as a specific threat to the nation's purity."⁴⁶⁷ These ideas informed the development of the welfare state and immigration reforms that constituted immigrant women as the dependents of immigrant men, a move that bolstered

⁴⁶⁴ Thobani, *Exalted Subjects*, 108.

⁴⁶⁵ Thobani, *Exalted Subjects*, 112.

⁴⁶⁶ Thobani, *Exalted Subjects*, 120.

⁴⁶⁷ Thobani, *Exalted Subjects*, 109.

constructions of immigrant communities as hyper-patriarchal and white Canadians as valuing gender equality while simultaneously situating immigrant women as the dependents of immigrant men rather than the welfare state.⁴⁶⁸ Thobani argues that:

Constituted primarily as dependents in the national imaginary, their sexuality and fertility defined as a potent threat if not properly controlled and channeled, immigrant women were made to embody the line of demarcation against which “national” interests had to be defended.⁴⁶⁹

Because of both institutional and interpersonal racism, immigrant women who were racialized as non-white were frequently denied access to the supports white women received from the state and charitable organizations.⁴⁷⁰ Evidently, the benefits of Canadian compassion have been unevenly distributed; while white women have received state and private support in having and raising children, Indigenous and other racialized women have been and continue to be denied such support and subjected to violent and repressive regimes of “care.”

I begin my analysis of quotations from the House of Commons debates with a discussion of how MPs discursively aligned Canada with the west to secure the attachment of whiteness to Canadian identity and signal Canada’s superiority to peoples and places imagined to be outside of the west, facilitating the construction of Canadian exceptionalism. In the debates, MPs recalibrated Canada’s position as part of the west and generated a discourse that mobilized sexuality to mark a shift from being a British colony to being an independent nation-state. Securing Canada’s place in western modernity was the first step in constructing Canada as exceptional through the discourse of compassion. Building on this discussion of Canadian exceptionalism, I then analyze how MPs mobilized the discourse of compassion in ways that help constitute Canada as an exceptional nation-state. I argue that MPs’ use of same-sex

⁴⁶⁸ Thobani, *Exalted Subjects*, 109.

⁴⁶⁹ Thobani, *Exalted Subjects*, 132.

⁴⁷⁰ Thobani, *Exalted Subjects*, 133-4.

sexualities to constitute Canada as compassionate enabled a diversification of whiteness in which a more diverse range of white subjectivities were tolerated in Canada. This diversification of whiteness worked to generate an image of Canada as compassionate because of its tolerance of white men who had sex with other men at the same time as xenophobia and anxieties about racialized people in Canada were growing among the white Canadian population. In this way, Canada was able to put forth an image of compassionate Canadian whiteness without addressing the racist structure of Canadian society.

David Lewis, the New Democratic Party MP for York South, interpreted the proposed amendments to the criminal code in this way through his argument that:

[w]hat is being done in these amendments is to try to bring our Criminal Code a little more up to date. This has been done in Britain and other parts of the democratic world. According to my study of this matter we are one of the few remaining countries in the western democratic world with outdated laws like the ones on homosexuality and abortion in our Criminal Code. All western countries with any progressive pretensions have already amended these provisions in their criminal law. We are just catching up with them.⁴⁷¹

In this statement, Lewis reproduces constructions of the west as democratic and progressive while implicitly constructing the peoples and places imagined to exist outside the west as undemocratic and “backwards.” As Stuart Hall clarifies, “‘the West’ is a *historical*, not a geographical construct.”⁴⁷² Hall continues:

This discourse [of the West and the rest] continues to inflect the language of the West, its image of itself and “others,” its sense of “us” and “them,” its practices and relations of power towards the Rest. It is especially important for the languages of racial inferiority and ethnic superiority which still operate so powerfully across the globe today.⁴⁷³

Following Hall, the west is not only a historical construct, but also a racial construct that links whiteness to the west. Lewis connects Canada’s position as part of the west to being progressive,

⁴⁷¹ *House of Commons Debates*, 028 (18 April 1969) at 7698 (David Lewis).

⁴⁷² Stuart Hall, “The West and the Rest: Discourse and Power,” in *Formations of Modernity*, ed. Stuart Hall and Bram Gieben (Cambridge: Polity Press, 1992), 186.

⁴⁷³ Hall, “The West and the Rest,” 225.

democratic, and modern, implicitly labelling the rest of the world unprogressive, undemocratic, and anti-modern through its construction as non-white. Lewis is also pointing to a reconfiguration of what it means to be western; as the criminal repression of people who engage in same-sex practices becomes detached from ideas about the west, the limited tolerance of same-sex practices became part of what it meant to be western. Because of the racialization of this discourse of the west and the rest, Lewis' work to align Canada with the west through limited tolerance of same-sex practices is simultaneously an effort to secure the attachment of whiteness to Canada. The desire to re-align Canada with the west in this historical moment signals anxieties about challenges to white supremacy and western dominance globally as well as within Canada.

MPs also drew on the discourse of compassion in the debates about the partial decriminalization of anal sex in ways that exceptionalized Canadian whiteness. For example, after praising Britain for decriminalization, Gordon Fairweather, the Progressive Conservative MP for Fundy Royal, argued that “homosexuality or homosexual acts between consenting males, unpleasant as that is to contemplate, are nevertheless a case for the most compassionate, sympathetic understanding on the part of civilized men and women.”⁴⁷⁴ Here, Fairweather constructs “compassion” for homosexuals as a civilizational imperative and links this “compassion” to the western civilizational narrative through his use of the term “civilized men and women.”

Fairweather's comments also demonstrate how MPs were beginning to diversify whiteness through sexuality to counter racial anxieties about Indigenous peoples' refusal to assimilate into the white settler population and the increased numbers of racialized people immigrating to Canada. Constructing Canadian whiteness as tolerant of people who engaged in

⁴⁷⁴ *House of Commons Debates*, 028 (27 January 1969) at 4842 (Gordon Fairweather).

same-sex sexual practices helped to construct Canada as respectful of diversity via the inclusion of a more diverse range of white people in the national imaginary; this construction of Canada as respectful of diversity worked to protect Canada from accusations of racism without requiring Canada to actually address its racism. In the debates, MPs used sexuality to diversify whiteness in order to quell fears of the more “threatening” racial diversity that were emerging in Canada after the removal of explicitly racist immigration legislation. Thus MPs could claim to be compassionate and tolerant of diversity through their tolerance of certain manifestations of white non-heterosexuality without needing to extend that same compassion/tolerance to Indigenous people and other racialized people.

In his discussion of anal sex, David Lewis stated:

This behaviour requires charity and treatment rather than criminal prosecution. I find it very difficult to see how the change which is proposed in the bill can be seriously opposed except by those who would discard compassion and understanding toward people who suffer from tendencies we may consider unacceptable and undesirable but for which they obviously are by definition not responsible.⁴⁷⁵

This discourse of responsibility marks a shift from understanding the same-sex practices of Muslim men as culturally determined to the liberal individualist discourse framing white men’s same-sex practices. White men are constructed as individuals who do things that may be biologically determined, but, for white men, this biological determination is never understood as racially/culturally determined. Because white men’s same-sex practices were now being understood as desires/behaviours that were determined by the men’s *individual*, rather than racial/cultural, biological make-up, white Canadian culture was not vilified as causing homosexuality.

⁴⁷⁵ *House of Commons Debates*, 028 (23 January 1969) at 4759 (David Lewis).

Moreover, these MPs did not explicitly draw on race in their constructions of homosexuality, thereby marking the constructed figure of the homosexual as white. As Ruth Frankenberg argues, “[n]aming ‘whiteness’ displaces it from the unmarked, unnamed status that is itself an effect of its dominance.”⁴⁷⁶ The unmarked status of whiteness within parts of the debates facilitated some MPs’ tolerance of same-sex practices. When the men who had sex with other men to whom the MPs referred were not white, they were discursively cast out of the Canadian national imaginary; their discursive removal from the Canadian nation was facilitated by their construction as sexually deviant, with MPs explaining this deviance as culturally/racially determined. Conversely, when MPs pathologized men who have sex with other men as homosexuals and constructed them as white, their deviance came to be understood as something that could be treated or cured through medical intervention. Hence, MPs saw white men as redeemable through treatment but understood men who were racialized as non-white as irredeemable because the MPs believed these men’s sexual deviancy was culturally determined and therefore unchangeable. In this way, the compassion some MPs expressed towards men who have sex with men was racially calculated as it was extended towards these men only when they were imagined to be white.

In her discussion of the creation of the Canadian welfare state in the post-war period, Sunera Thobani argues that:

[t]he welfare state’s characterization of the nation-state as shaped by the ethic of compassion, which was to be the basis for [nationals’] social solidarity, became an important means by which a claim to western civilizational and moral superiority could be reconstituted.⁴⁷⁷

⁴⁷⁶ Ruth Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness* (Minneapolis: University of Minnesota Press, 1993), 6.

⁴⁷⁷ Thobani, *Exalted Subjects*, 112.

Because MPs explicitly drew on the discourse of compassion to rationalize decriminalization, the logic underlying their claims can be understood as part of a broader process of reconfiguring whiteness to secure white hegemony following the horrors of the second world war.

Thobani goes on to assert that “the welfare state’s appropriation of the characteristic of compassion made it emblematic of Canadian national identity, thus endowing political currency on this characteristic as possessed by nationals, but not by their Others” “the Aboriginal and the immigrant.”⁴⁷⁸ While the partial decriminalization of anal sex was not an extension of welfare per se, the political currency the characteristic of compassion accrued during this period enabled the attachment of a specifically Canadian compassion to the partial decriminalization of anal sex, thus producing MPs and other nationals as compassionate through their support for decriminalization. As Thobani demonstrates, the process of attaching compassion to Canadian identity reframed the ways in which Indigenous peoples and other racialized people were excluded from the national imaginary and reconfigured white supremacy in Canada by diversifying whiteness and promoting an image of white tolerance while maintaining the racist structure of Canadian society.

Some Liberal MPs understood medical, psychiatric, and psychological interventions as “compassionate” compared to criminalization, which they conceptualized as barbaric. In this context, the term compassion connotes a version of tolerance in which the existence and partial decriminalization of same-sex practices was tolerated because MPs assumed white people with these desires could be “treated,” allowing their heteronormative citizenship to be restored. Conversely, because MPs understood the non-normative sexual practices of racialized men to be culturally/racially determined, MPs believed that their sexual practices were unchangeable and untreatable, constituting them as a permanent threat to white Canadian heteronormativity and,

⁴⁷⁸ Thobani, *Exalted Subjects*, 107, 9.

therefore, undeserving of citizenship. Wendy Brown argues that tolerance, as a political discourse, marks “subjects of tolerance as inferior, deviant, or marginal vis-à-vis those practicing tolerance.”⁴⁷⁹ The discourse of tolerance itself transforms men who engage in same-sex practices into objects of pity, thereby securing the construction of men who have sex with other men as inferior to the compassionate Canadian who tolerates the homosexual. Therefore, this discourse reifies the constructed inferiority of white men who have sex with other men. Through tolerance, however, white men who have sex with other men are offered some amount of inclusion in the Canadian nation. Because this partial inclusion is part of the diversification of whiteness that constructs racial justice as unimportant, unnecessary, and/or not urgent, white men who have sex with other men are included in the Canadian nation in a way that reconfigures and reinforces the exclusion and marginalization of Indigenous and other racialized people.

Wendy Brown argues that:

modalities of tolerance talk that have issued from postcolonial encounters with indigenous peoples in settler colonies do not follow the same logics as those that have issued from European encounters with immigrants from its former colonies or those that are centered on patriarchal religious anxieties about insubordinate gender and sexual practices.⁴⁸⁰

The compassion on which the MPs’ references are based is a version of tolerance specific to the reaction to pathologized white men’s same-sex desires in Canada in the late 1960s. While signaling the specific permutation of tolerance in different contexts is vital to unpacking its range of meanings, the discourse of tolerance always aligns itself with the liberal west because it is a discourse controlled by the liberal west; this discourse inherently constructs places outside the west as illiberal and intolerant.⁴⁸¹ In this way, the discourse of compassion on which the MPs

⁴⁷⁹ Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006), 13.

⁴⁸⁰ Brown, *Regulating Aversion*, 3.

⁴⁸¹ Brown, *Regulating Aversion*, 6.

draw is also based upon the reconstruction of the west and the rest, who are now understood as both within and outside Canada; this racializing discourse works to secure white hegemony in Canada.

Conclusion

This chapter has outlined arguments from MPs who understood men's same-sex practices as choices the men made and MPs who understood men's desire to have sex with other men as a symptom of the disease of homosexuality. The imagined whiteness of these men who had sex with other men in Canada facilitated MPs' constructions of these men as the deserving recipients of compassion.

MPs who understood men's same-sex practices as behavior racialized these practices, either associating them with Muslim men or imagining Canada to be immune to same-sex desires because the "wide open spaces" of Canada, constructed as though there were no Indigenous people, were understood to promote a virile heteromascularity. MPs understood Muslim men who have sex with other men through a culturalist lens in which same-sex desires were understood to be determined by a homogenous and static "Muslim culture." These MPs worked to construct Canada as an inherently straight and white space; by constructing same-sex practices as something Muslim men did, and conceptualizing Muslim and Indigenous people as outside of or vanished from Canada, these MPs were able to discursively distance Canada from same-sex practices and racialized and Indigenous men simultaneously. In this way, the histories of Islamophobia, white settler colonialism, and homophobia in Canada are intimately bound. At the same time, these discourses reveal the fragility of white hegemonic masculinity and its embeddedness in the Canadian nation-state. The need MPs felt to repeatedly construct Canada as white and straight demonstrates that these MPs were anxious and fearful about the future of

white heterosexual hegemony in Canada; these fears and anxieties were likely heightened because of the growing number of racialized people immigrating to Canada.

MPs who supported decriminalization conceptualized men with same-sex desires as white men with individual pathologies rather than as racialized men who exhibited culturally determined sexual deviancies. By individualizing the “problem” of same-sex desire through the interpretive framework of disease, these MPs could construct white men with same-sex desires as redeemable through treatment. These MPs, however, could not extend this minimal level of tolerance towards Muslim men who had sex with other men because the MPs understood their desires to be culturally determined and unchangeable.

MPs who supported the partial decriminalization of anal sex also did so by resituating Canada’s position as part of the west and drawing on and reconfiguring discourses of compassion and tolerance. MPs drew on the idea that partially decriminalizing anal sex was an act of compassion and incorporated this act of compassion into the construction of Canada and Canadians as compassionate. As Thobani argues, exalting Canadians as compassionate simultaneously depends on the exclusion of Indigenous people and other racialized people from this exalted status.

Incorporating tolerance towards white men who engage in same-sex practices into the ways in which Canadians are constructed as compassionate enabled a diversification of Canadian whiteness in which white men who had sex with other men were understood as redeemable through treatment while racialized men, whose sexual non-normativities were understood as culturally rather than biologically determined, were excluded from national belonging. This diversification of whiteness through tolerance towards white men who have sex with men helped

construct Canada as compassionate and benevolent without doing anything to address the racist structure of Canada society.

Chapter 4: Producing Race and Sexuality as Parallel Phenomena: The Role of Analogical Reasoning in Canadian Liberalism

This chapter examines how race and sexual orientation operated relationally in the Supreme Court of Canada case *Egan v. Canada* (1995). This case concerned Jim Egan’s partner, John Nesbitt, who was denied access to the benefits of the *Old Age Security Act* because he didn’t meet the definition of “spouse” under the act, which defined spouse as a person of the “opposite sex.”⁴⁸² Egan and Nesbitt initiated a Charter challenge claiming that the act discriminated against them on the basis of their sexual orientation. The Federal Court, which first heard the claim, dismissed the action, the Federal Court of Appeal upheld the dismissal, and then the Supreme Court ruled the definition of spouse in the Old Age Security Act was constitutional.⁴⁸³ In their ruling, however, the Supreme Court also for the first time confirmed that sexual orientation was analogous to the “grounds” (race, national or ethnic origin, colour, religion, sex, age or mental or physical disability) that are delineated in the Charter such that discrimination on the basis of sexual orientation was found to be protected by the Charter.⁴⁸⁴

I analyze *Egan* to investigate the constitution of race and sexual orientation as legally analogous categories of discrimination under section 15 of the Canadian Charter of Rights and Freedoms (hereafter the Charter). Using critiques of liberalism as a theoretical framework and drawing on Supreme Court transcripts from *Egan*, I argue that the liberal ideal of equality before the law and the legal analogies between race and sexual orientation this ideal enables flatten the

⁴⁸² *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

⁴⁸³ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

⁴⁸⁴ Lahey, *Are We ‘Persons’ Yet?*, 78; *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1), <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

differences between race and sexual orientation and obfuscates the intersections between them.

As Anjali Arondekar argues:

Buried, in such ‘linkages’, is the very mathematical paradox of parallelism that forecloses any true intersection, even as it invites lines of common origin and travel. Hence, we are often left with a language of analogy and repetition where race as sex and sex as race become parallel political formations only through a constant reminder of their irreconcilable separation.⁴⁸⁵

In her discussion of analogies between gay and lesbian rights and the US civil rights movement, Jasbir Puar argues that these analogies position “gays and lesbians [as] the last recipients of civil rights that have already been bestowed on racial minorities.”⁴⁸⁶ This use of analogy, Puar argues, both situates civil rights as having resolved racial inequalities in the US and:

relieves mainstream gays, lesbians, and queers from any accountability to antiracist agendas, produces whiteness as a queer norm (and straightness as a racial norm), and fosters anti-intersectional analyses that posit sexual identity as “like” or “parallel to” race.⁴⁸⁷

These constructions of race and sexual orientation as legally analogous categories position queer people as white and racialized people as straight, such that the existence of queer racialized people is discursively extinguished.⁴⁸⁸

Throughout the dissertation, I draw on US scholarship when I see it as being applicable to the Canadian case. Work on analogical reasoning, in particular, has been more developed in the US context, and I consider how the theoretical contributions of this work might be relevant to the Canadian context. The strong cultural connection between the US and Canada means that some insights about analogies between race and sexuality in the US also resonate in Canada. However,

⁴⁸⁵ Arondekar, “Border/Line Sex,” 240.

⁴⁸⁶ Puar, *Terrorist Assemblages*, 118.

⁴⁸⁷ Puar, *Terrorist Assemblages*, 118.

⁴⁸⁸ In this dissertation, I focus on the racialized effects of analogical reasoning in Canada, but more work is needed on excavating analogical reasoning not just as a state strategy, but also as a deeply racialized one (i.e., analogical reasoning is white settler reasoning). Crucial work on analogical reasoning *as* racialized governance still needs to be undertaken but is beyond the scope of this project.

as I aim to show how analogical reasoning operates in Canada specifically, I do not simply “apply” US scholarship to the Canadian case, but rather consider it in light of Canadian scholarship on race and sexuality to try to make sense of how analogical reasoning operates in Canada. So, for example, while I draw on Puar’s insight that race/sexuality analogies position racial justice as a completed project, I contextualize this argument in Canada based on my primary research to show that, in Canada, race/sexuality analogies have often positioned racial justice in US history, demonstrating that the elision of Canadian racism happens in relation to dominant ideas about US racism.

The state’s primary mode of regulating racial difference, namely multiculturalism, facilitated this construction of queer people as white and people of colour as straight. As Himani Bannerji argues, because the politics of multiculturalism excludes critiques of classism, sexism, and homophobia, it appealed to conservative racialized men who often became the spokespeople for their communities.⁴⁸⁹ As such, under Canadian multiculturalism, “People can be blamed for bringing on their own misfortunes, while rule of capital and class can continue their violence of racism, sexism, and homophobia.”⁴⁹⁰ While in reality, as Bannerji points out, homophobia and misogyny are common to both white Canadian society and the societies from which racialized people come,⁴⁹¹ multiculturalism constructs homophobia as an inherent feature of racialized communities but not of white Canadian society. Because the homophobic politics of some conservative men come to stand in for the politics of their communities under a multicultural rubric, this framework casts racialized people as not only necessarily straight but also

⁴⁸⁹ Himani Bannerji, “The Paradox of Diversity: The Construction of a Multicultural Canada and ‘Women of Color,’” *Women’s Studies International Forum* 23, no. 5 (2000): 554.

⁴⁹⁰ Bannerji, “The Paradox of Diversity,” 555.

⁴⁹¹ Himani Bannerji, “A Question of Silence: Reflections on Violence against Women in Communities of Colour,” in *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, ed. Enakshi Dua and Angela Robertson (Toronto: Women’s Press, 1999), 269.

homophobic. The parallel that emerges between constructions of straight and homophobic racialized people and white queer people enables the emergence of analogies between race and sexual orientation because the intersection between the two (i.e., queer racialized people) is rendered unimaginable under this logic.

Moreover, while these analogical linkages may invite “lines of common origin and travel,” in this commonality the differences between racism and homophobia are lost, creating legal logic in otherwise incomprehensible comparisons. Following Davide Panagia’s claim that “by focusing on analogical reasoning we may better understand how a specific ideology, namely the liberal version of deliberative democracy, functions,”⁴⁹² I investigate the ways in which analogies between race and sexual orientation animate Canadian (neo)liberalism. I demonstrate how liberalism in the Canadian context, with its requirement of equality before the law as mandated by the constitutionally embedded Charter, equates racial discrimination and discrimination on the basis of sexual orientation.

The Supreme Court’s analogization of race and sexual orientation in this moment reflects the neoliberal values lawmakers were institutionalizing in Canada in the 1990s. As I describe in more detail below, the federal government cut social programs and reduced funding to the provinces in this period, changes which disproportionately harmed Indigenous and other racialized people.⁴⁹³ By constructing sexual orientation as analogous to race, Supreme Court justices helped to recuperate Canada’s image by making the Canadian state appear to not be homophobic. The Supreme Court’s decision to allow the denial of pension benefits to Egan’s

⁴⁹² David Panagia, “The Predicative Function in Ideology on the Political Uses of Analogical Reasoning in Contemporary Political Thought,” *Journal of Political Ideologies* 6, no. 1 (2001): 56.

⁴⁹³ Stephen McBride and Kathleen McNutt, “Devolution and Neoliberalism in the Canadian Welfare State,” *Global Social Policy* 7, no. 2 (2007): 178; Mark Thomas, “Neoliberalism, Racialization, and the Regulation of Employment Standards,” in *Neoliberalism and Everyday Life*, ed. Susan Braedley and Meg Luxton (Montreal: McGill-Queen’s University Press, 2010), 68.

partner Nesbitt⁴⁹⁴ despite the fact that sexual orientation was found to be an analogous ground of discrimination, however, demonstrates how neoliberalism operates in relation to equality discourse. As Wendy Brown argues, “the reduction of...equality to equal standing before the law, eliminates from view many sources of insubordination, marginalization, and inequality that organize liberal democratic societies and fashion their subjects.”⁴⁹⁵ Section 15 of the Charter sets out that “everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law” without discrimination on the basis of several delineated “grounds,” which are: “race, national or ethnic origin, colour, religion, sex, age [and] mental or physical disability.”⁴⁹⁶ The Court has decided to treat other “grounds” as though they were delineated in the Charter, arguing that these additional grounds, which include sexual orientation, marital status, and citizenship, are analogous to the delineated grounds. *Egan* was the first case in which the Supreme Court found sexual orientation and race to be analogous, such that sexual orientation could be read into the Charter (i.e., treated as though it were one of the delineated grounds). Recognizing sexual orientation and race as analogous grounds of discrimination legitimized the Supreme Court’s denial of pension benefits to same-sex couples. This legitimization occurred because it became more difficult to accuse a court of discrimination on the basis of sexual orientation because of a decision in which that same court also constitutionally embedded a prohibition on discrimination on the basis of sexual orientation. *Egan* is demonstrative of Brown’s assertion in that gaining legal equality did not shift the material impacts of homophobia vis-à-vis the denial of pension benefits to Nesbitt. Moreover, as

⁴⁹⁴ Both Egan and Nesbit were white; see: Becki Ross, review of *Challenging the Conspiracy of Silence: My Life as a Canadian Gay Activist*, by Jim Egan, ed. Donald McLeod, *BC Studies* no. 136 (Winter 2002/2003): 135-8.

⁴⁹⁵ Brown, *Regulating Aversion*, 17-8.

⁴⁹⁶ *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1), <https://laws-lois.justice.gc.ca/eng/const/page-15.html>

Didi Herman points out, “antidiscriminatory law is another form of modern discipline, producing self-policing identities, and ensuring the channeling of resistance in ways that do not radically shift the balance of power.”⁴⁹⁷ Thus some legal decisions that are celebrated as victories for queer people work to maintain the status quo by diffusing resistance to homophobic legislation.

I then argue that the constitution of race and sexual orientation as legally and ideologically analogous categories enabled the differential exclusion of sex-same couples and racialized people not born in Canada from the full benefits of citizenship and from ideas about Canadianness. I use legal exclusions from the *Old Age Security Act*, with which *Egan* is concerned, to investigate the legal processes through which some members of same-sex couples and racialized people were excluded from legal benefits and from the Canadian nation. The Canadian state differentially excluded people in same-sex couples and racialized people from access to old age security, which reflects the logic of parallelism that underwrote state actions; the state envisioned queer people and racialized people as two separate, non-overlapping groups, so the Canadian government produced separate legislation to exclude each group from full citizenship. Because the state seemed to conceptualize same-sex couples and racialized people as equally divergent from the straight, white settler norm the *Old Age Security Act* was designed to uphold, the state offered equal treatment, through equal discrimination, to racialized people and same-sex couples. These exclusions were of course exacerbated for queer racialized people who were unimaginable to the Canadian state because the logic of parallelism rendered them unthinkable. Parallelism misconstrues forms of marginalization like racism and homophobia in part by situating them as unrelated phenomena, which enables the analogization of racism and homophobia. Acknowledging the intertwined histories and contemporary imbrications of racism

⁴⁹⁷ Herman, *Rights of Passage*, 45.

and homophobia through an intersectional lens makes analogies between racism and homophobia nonsensical. Because the state did not recognize their existence, Canadian government policies did not reflect the needs, desires, or aspirations of queer racialized people and excluded many, in different ways, on the basis of both their race and sexual orientation.⁴⁹⁸ While the constitution of race and sexual orientation as legally analogous categories of discrimination under the Charter and the exclusion of same-sex couples from the benefits of the *Old Age Security Act* happened simultaneously when the Supreme Court issued its decision, I assert that the creation of the analogies reflected already-established ideas about race which enables me to use my analysis of race/sexuality analogies in *Egan* to explain pre-existing racial exclusions from the *Old Age Security Act*. Moreover, while the analogies between race and sexual orientation in *Egan* were not part of the legal landscape in Canada prior to the Supreme Court's ruling, as I discussed in Chapter 3, I argue that the legal reasoning that led to the creation of the analogy also enabled the Supreme Court's exclusion of same-sex couples from receiving benefits under the *Old Age Security Act*.

This chapter begins by mapping out the contours of race, nation, and sexual orientation in Canada in the early 1990s. Following this discussion, I introduce the Canadian Supreme Court case *Egan v. Canada*. I then provide an analysis of liberalism in the Canadian context, focusing specifically on liberalism's imbrications with race and sexuality and the ways in which these imbrications manifested in 1990s Canada. Next I analyze the production of analogies between race and sexual orientation in *Egan*. Finally, I investigate the creation of "social liberalism" in Canada and assert that the Supreme Court's exclusion of Egan and Nesbitt from the *Old Age*

⁴⁹⁸ Andil Gosine, "FOBs, Banana Boy, and the Gay Pretenders: Queer Youth Navigate Sex, 'Race,' and Nation in Toronto, Ontario," in *Queerly Canadian: An Introductory Reader in Sexuality Studies*, ed. Maureen FitzGerald and Scott Rayter (Toronto: Canadian Scholars' Press, 2012), 510, 513.

Security Act demonstrates the limits of Canada's self-exaltation⁴⁹⁹ as compassionate; while welfare provisions like the *Old Age Security Act* supported the construction of Canada and straight, white settler Canadians as compassionate, the *Act's* exclusions demonstrate that it was only straight, white settler Canadians who were seen as compassionate and deserving of compassion.

Context: Race, Sexual Orientation, and Nation in Canada in the Early 1990s

I contend that *Egan* gained traction in 1995 because of political elites' perception of a "crisis" in Canadian identity and a related questioning of the legitimacy of the federal government. Because of failed constitutional negotiations,⁵⁰⁰ the increasing popularity of the Québécois sovereignty movement,⁵⁰¹ the government's mishandling of the so-called "Oka crisis,"⁵⁰² the actions of Canadian "peacekeeping" troops in Somalia,⁵⁰³ and the increasingly popular belief that "special interests" (i.e., people of colour and Indigenous people) were threatening Canadian values,⁵⁰⁴ political elites understood there to be a "crisis" in Canadian identity in the early 1990s. The government responded by introducing legislation and issuing policy decisions that reduced

⁴⁹⁹ Thobani, *Exalted Subjects*.

⁵⁰⁰ Manon Cornéliier, *The Bloc* (Toronto: James Lorimer & Company, 1995), xi; Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 3rd ed. (Toronto: University of Toronto Press, 2004), 154; Richard Johnson, "An Inverted Logroll: The Charlottetown Accord and the Referendum," *PS: Political Science and Politics* 26, no. 1 (1993): 43.

⁵⁰¹ Gérard Boismenu, "Perspectives on Québec-Canada Relations in the 1990's: Is the Reconciliation of Ethnicity, Nationality and Citizenship Possible?" *Canadian Review of Studies in Nationalism* 23, nos. 1-2 (1996): 99-109; Efe Peker, "Situating the Reasonable Accommodation Debates in Quebec's Contention for Sovereignty," *Arc—The Journal of the School of Religious Studies* 45 (2017): 1-21.

⁵⁰² Simpson, *Mohawk Interruptus*, 150-76.

⁵⁰³ Razack, *Dark Threats and White Knights*; Aisha Ahmad, "Canada and Somalia: Learning from the Legacy of Failed Intervention," in *Elusive Pursuits: Lessons from Canada's Interventions Abroad*, ed. Fen Osler Hampson and Stephen M. Saideman (Ottawa: Centre for International Governance Innovation, 2015), 85.

⁵⁰⁴ Mackey, *The House of Difference*, 33.

immigration numbers⁵⁰⁵ and imposed increased restrictions on people who were admitted to Canada.⁵⁰⁶ Around the same time, the Supreme Court began issuing rulings that allowed people to use discrimination on the basis of “sexual orientation” to claim refugee status.⁵⁰⁷ While there may be a disjuncture between the actions of Parliament (decreasing immigration and imposing increasing restrictions on immigrants) and those of the Supreme Court (creating access to refugee status for people who faced discrimination on the basis of their sexual orientation), I am suggesting that the Supreme Court’s decisions may have actually facilitated those of Parliament. Political elites attempted to resolve the crisis in Canadian identity by reinforcing respect for diversity as a Canadian value by allowing the use of sexual orientation in refugee claims while limiting the overall number of racialized people (and immigrants in general) permitted to enter Canada. In this way, political elites discursively mobilized tolerance of sexual diversity to secure the white supremacist structure of the Canadian nation-state. *Egan* reinforced this move through the Supreme Court’s reading of sexual orientation into the constitutionally entrenched Charter. Here I briefly trace the emergence of the “crisis” in Canadian identity and the contemporaneous changes in immigration law.

Because Quebec did not sign the constitution Canada patriated in 1982, Brian Mulroney’s Conservative government entered into negotiations with the provinces to amend the constitution, coming to an agreement called the Meech Lake Accord in 1987.⁵⁰⁸ On May 22, 1990, just weeks

⁵⁰⁵ Yasmeen Abu-Laban and Christina Gabriel, *Selling Diversity: Immigration, Multiculturalism, Employment Equity, and Globalization* (Toronto: University of Toronto Press, 2008), 64-5; Statistics Canada, “150 Years of Immigration in Canada,” 4.

⁵⁰⁶ Razack, “Simple Logic,” 184.

⁵⁰⁷ Rohan Sajjani, “Envisioning LGBT Refugee Rights in Canada: The Impact of Canada’s New Immigration Regime,” (June 2014), 10. https://ocasi.org/sites/default/files/impact-canada-new-immigration-regime_0.pdf; Nicole LaViolette, “The Immutable Refugees: Sexual Orientation in *Canada (A.G.) v. Ward*,” *University of Toronto Faculty of Law Review* 55, no. 1 (1997): 1

⁵⁰⁸ Office of the Commissioner of Official Languages, “The Failure of the Meech Lake Accord has a Major Impact on Relations between English-and French-Speaking Canadians,” <https://www.clo-ocol.gc.ca/en/timeline-event/failure-meech-lake-accord-has-major-impact-relations-between-english-and-french>.

before the Accord was set to expire, Conservative MP and “the best friend of the prime minister” Lucien Bouchard denounced the Accord and resigned from the Cabinet and Conservative Caucus.⁵⁰⁹ Premiers elected after the agreement was reached and Indigenous people, most famously Elijah Harper, refused to sign on to the agreement, and the Accord expired in June 1990.⁵¹⁰ The Bloc Québécois also formed in 1990 under the leadership of Bouchard with the central aim of promoting Québécois sovereignty.⁵¹¹

The so-called “Oka Crisis” erupted a month later in July 1990. The “crisis” broke out in response to the town of Oka’s attempt to extend a golf course onto Mohawk land that “still is precious to the Mohawks of Kanehsatà:ke because it held both the bodies of their dead as well as pines that were sacred to them.”⁵¹² Following months of peaceful protest, which yielded no response from Ottawa, “the Warrior society convened at Kanehsatà:ke with AK-47 assault rifles.”⁵¹³ During the 78-day armed standoff that ensued between the Mohawks of Kanehsatà:ke, the Sûreté du Québec, the RCMP, and the Canadian Armed Forces, “2,650 soldiers [from the Canadian Armed Forces] were deployed to handle fifty-five Warriors.”⁵¹⁴ By the end of the crisis three people died: “a Sûreté du Québec officer, a Quebecois resident of Kanehsatà:ke, and an English Canadian who died from teargas poisoning outside of Kanehsatà:ke.”⁵¹⁵ In response to the Canadian government’s ineffectiveness at handling the situation, Canadian and international human rights groups called for the recall of Parliament.⁵¹⁶ Eva Mackey contends that “Canada,

⁵⁰⁹ Cornellier, *The Bloc*, xi.

⁵¹⁰ “Meech Lake Accord Fails” June 17, 2017, Canadian Museum of History, <https://www.historymuseum.ca/blog/meech-lake-accord-fails/>.

⁵¹¹ Éric Bélanger, “The Rise of Third Parties in the 1993 Canadian Federal Election: Pinard Revisited,” *Canadian Journal of Political Science / Revue canadienne de science politique* 37, no. 3 (2004): 585.

⁵¹² Simpson, *Mohawk Interruptus*, 151.

⁵¹³ Simpson, *Mohawk Interruptus*, 151.

⁵¹⁴ Simpson, *Mohawk Interruptus*, 152.

⁵¹⁵ Simpson, *Mohawk Interruptus*, 152.

⁵¹⁶ Mackey, *The House of Difference*, 125.

which sees itself as an international peacekeeper, was now on the international stage as unable to handle its own peacekeeping.”⁵¹⁷ Moreover, as Audra Simpson argues:

it was a spectacular event that pronounced the structure of settler colonialism in Canada, illuminating its desire for land, its propensity to consume, and its indifference to life, to will, to what is considered sacred, binding, and fair.⁵¹⁸

The Canadian government’s ineffective response to the Mohawks’ refusal to give up their land fuelled the crisis of legitimacy with which the Canadian government was faced.

Following the failure of the Meech Lake Accord in 1990, Peter Russel claims there was a general desire in the ROC “to put the Constitution back in the freezer and get on with life,” but resistance from the Québécois and Indigenous peoples led to another round of negotiations in the Charlottetown Accord.⁵¹⁹ Canadian voters rejected the constitutional reform package in a referendum held October 26, 1992.⁵²⁰ Its drafters intended the package to appeal to voters who were unsatisfied by the amendments proposed in the 1987 Meech Lake Accord, primarily Québécois, citizens in the western provinces, and Indigenous peoples.⁵²¹ Throughout 1992, the Conservative government also organized events across Canada to celebrate the 125th anniversary of confederation. The celebrations were, in part, an attempt to manage a “perceived ‘crisis’ in Canadian identity.”⁵²² This was a time of heightened white backlash against multiculturalism; the government responded by developing a policy approach towards the celebrations that aimed to “legitimate the government by giving the impression that the celebrations (organised by the government) were organised by and for ‘ordinary Canadians.’”⁵²³ By appeasing racist white

⁵¹⁷ Mackey, *The House of Difference*, 125.

⁵¹⁸ Simpson, *Mohawk Interruptus*, 147.

⁵¹⁹ Russell, *Constitutional Odyssey*, 154.

⁵²⁰ Johnson, “An Inverted Logroll,” 43.

⁵²¹ Johnson, “An Inverted Logroll,” 43.

⁵²² Mackey, *The House of Difference*, 32.

⁵²³ Mackey, *The House of Difference*, 33.

people in this way, the government's celebrations constructed a vision of Canada that recentred whiteness and included Indigenous and other racialized people only to reaffirm white Canadians' superiority through their tolerance of diversity.

The Conservatives, who had a majority government under Kim Campbell, fared poorly in the October 25, 1993 federal elections, experiencing "the largest drop in the number of elected legislators in Canada's parliamentary history."⁵²⁴ The Conservatives received only 16% of the vote and won two seats in the House of Commons.⁵²⁵ The Liberal Party under Jean Chrétien won a majority government by securing 177 seats and 41% of the vote.⁵²⁶ The Bloc Québécois became the official opposition in its first election, securing 54 seats and 14% of the vote. The NDP won only 9 seats and 7% of the vote.⁵²⁷ The newly formed Reform Party, which aimed to represent the interests of western Canadians, rejected the recognition of Quebec as a distinct society, and focussed their attention on "economic growth and unemployment alleviation," won 52 seats and 19% of the vote.⁵²⁸ The Reform Party ran on a campaign that proposed cutting the annual number of immigrants admitted to Canada from 250,000 to 150,000 and abolishing the Department of Multiculturalism.⁵²⁹ During debates, some Reform Party candidates "vigorously opposed nonwhite immigration and presented arguments reminiscent of fears in pre-World War II British Columbia that whites could be 'swamped' by hordes of Asian immigrants."⁵³⁰ The Reform Party's overt racism in the debates reflects the perceived "crisis" in white Canadian identity that Eva Mackey describes.

⁵²⁴ Jonathan Lemco, "Canada: The Year of the Volatile Voter," *Current History* 94 (1995): 118.

⁵²⁵ Lemco, "Canada," 118.

⁵²⁶ Lemco, "Canada," 119.

⁵²⁷ Lemco, "Canada," 119.

⁵²⁸ Lemco, "Canada," 118-119.

⁵²⁹ Patricia E. Roy, "The Fifth Force: Multiculturalism and the English Canadian Identity," *The Annals of the American Academy of Political and Social Science* 538 (1995), 205-206.

⁵³⁰ Roy, "The Fifth Force," 206.

According to Sherene Razack:

The racial story of the 1990s is a simple one. Canada is besieged. Every Tom, Dick and Harry wants to get in. They will stop at nothing. They do not respect us. They will return our generosity with betrayal. We have no choice but to become strict and to monitor more closely who is coming in. This is “simple logic”, a national story told to justify tighter border controls in the 1990s.⁵³¹

In June 1992, the Conservative government introduced an amendment to the *Immigration Act*, Bill C-86, to the House of Commons, which was passed in December 1992.⁵³² The amendment made it so that people who arrived in Canada without “appropriate identity documents” had greater burdens placed upon them when applying for refugee status and fewer rights if they were granted that status.⁵³³ For example, “Once granted asylum, under s. 46.04(8) of the *Immigration Act* she then does not have the right that other refugees have to apply for permanent resident status.”⁵³⁴ In the 1990s, the majority of the claimants, mostly women and children, in this situation were from Somalia.⁵³⁵ Without permanent resident status, these Somali refugees could not sponsor dependents or leave Canada, were denied access to domestic tuition rates at universities, and faced barriers to securing credit and employment.⁵³⁶ Razack argues that this provision appeared logical to Canadians because of “a national story of a Canada besieged and betrayed by bodies of colour.”⁵³⁷ Again, this story reflects a “crisis” white Canadians interpreted in Canadian identity and the Canadian nation.

Between 1992 and 1993, the Canadian government sent troops to Somalia as part of a US-led “peacekeeping” mission. During the time Canadian troops were stationed there, they

⁵³¹ Razack, “Simple Logic,” 183.

⁵³² Razack, “Simple Logic,” 183-184.

⁵³³ Razack, “Simple Logic,” 184.

⁵³⁴ Razack, “Simple Logic,” 184.

⁵³⁵ Razack, “Simple Logic,” 184.

⁵³⁶ Razack, “Simple Logic,” 184.

⁵³⁷ Razack, “Simple Logic,” 186.

murdered two Somalis, one an adult and the other the 16-year-old Shidane Abukar Arone, and tortured others, including children.⁵³⁸ Photographs of the grinning Canadian torturers posed beside bloodied and hooded Somali prisoners later surfaced in the Canadian media, as did a videotape of Canadian soldiers serving in Somalia drinking beer and engaging in racist exchanges.⁵³⁹ The actions of Canadian soldiers in Somalia shocked Canadians and challenged the legitimacy of Canadian peacekeeping which was so central to the national imaginary.⁵⁴⁰

In March 1994, the Liberal government began an extensive consultation process on immigration policy.⁵⁴¹ Following the consultation process, in November 1994, the Liberals unveiled a variety of changes to immigration policy.⁵⁴² The “changes emphasized lowering immigration levels and selecting immigrants who could ‘contribute’ to Canadian society and place less demand on state-financed integration services.”⁵⁴³ The policy also proposed increasing the number of immigrants from European countries.⁵⁴⁴ The government changed the points system to place more emphasis on “job experience and language skills” and proposed gradually reducing the proportion of family class immigrants and refugees admitted to Canada.⁵⁴⁵ So, in addition to reducing the rights granted to people who entered Canada without “proper” documentation, the Canadian government reduced the overall number of immigrants admitted to Canada.

⁵³⁸ Razack, *Dark Threats and White Knights*, 4.

⁵³⁹ Razack, *Dark Threats and White Knights*, 4.

⁵⁴⁰ Ahmad, “Canada and Somalia,” 85.

⁵⁴¹ Abu-Laban and Gabriel, *Selling Diversity*, 63.

⁵⁴² Abu-Laban and Gabriel, *Selling Diversity*, 64.

⁵⁴³ Abu-Laban and Gabriel, *Selling Diversity*, 64-5.

⁵⁴⁴ Inder Marwah, Triadafi los Triadafi Iopoulos, and Stephen White, “Immigration, Citizenship, and Canada’s New Conservative Party,” in *Conservatism in Canada*, ed. James Farney and David Rayside (Toronto: University of Toronto Press, 2013), 104.

⁵⁴⁵ Abu-Laban and Gabriel, *Selling Diversity*, 65-66.

At the same time as legislators were making immigration policies more restrictive, the Supreme Court was expanding the definition of “refugee” to include people who faced persecution in their countries of origin because of their sexual orientation. The “first successful refugee in Canada whose claim was based on sexual orientation,” an anonymous Bengali man, was granted asylum by the Immigration and Refugee Board of Canada in December 1991.⁵⁴⁶ In January 1992, the Immigration and Refugee Board of Canada granted asylum to the Argentinian man Jorge Alberto Inaudi.⁵⁴⁷ Because the media generated a great deal of publicity around this second case, it contributed to the construction of Canada as a safe haven for persecuted gay refugees around the world. The Immigration and Refugee Board of Canada first granted a trans applicant asylum in 1994 and granted asylum to other trans applicants, though with less frequency than they granted asylum to gay and lesbian applicants.⁵⁴⁸ Bisexual applicants were not granted asylum on the basis of their sexual orientation until 2000.⁵⁴⁹ In *Canada (A.G.) v Ward* (1993), the Supreme Court found that “sexual orientation” is a ground a person could use as the basis for their application for asylum because it is “an innate or unchangeable characteristic.”⁵⁵⁰ As Nicole LaViolette argues, the ruling “suggests that lesbians and gay men are deserving of international protection only because they cannot change the personal attribute for which they are persecuted.”⁵⁵¹ I discuss the *Ward* ruling and “immutability” later in this chapter. Here, I want to suggest that the expansion of the refugee apparatus to allow applicants to make claims based on sexual orientation generated legitimacy and the illusion of benevolence for the Canadian government when it was simultaneously reducing the overall number of people

⁵⁴⁶ Sajnani, “Envisioning LGBT Refugee Rights in Canada,” 10.

⁵⁴⁷ Sajnani, “Envisioning LGBT Refugee Rights in Canada,” 10.

⁵⁴⁸ Sajnani, “Envisioning LGBT Refugee Rights in Canada,” 10.

⁵⁴⁹ Sajnani, “Envisioning LGBT Refugee Rights in Canada,” 10.

⁵⁵⁰ LaViolette, “The Immutable Refugees,” 1

⁵⁵¹ LaViolette, “The Immutable Refugees,” 1.

allowed to enter Canada and creating additional restrictions for those people the government did allow to enter. The types of analogies between race and sexual orientation the Supreme Court justices used in *Egan* consistently constructed racism as a US-based phenomena and thereby disavowed Canadian racism during a period of intensifying racist and white settler colonial violence in and by Canada.

Egan further consolidated this construction of Canadian benevolence by again disavowing the ongoing realities of racism in Canada. The publicity around *Ward* and the cases of refugees offered asylum because of the homophobic persecution they faced in their countries of origin positioned Canada as both inclusive of sexual diversity and a multicultural haven that welcomed refugees. Despite the limited victory that *Egan* represented for advocates of sexual orientation legal reform, the case helped position Canada as accepting of sexual diversity because justices read sexual orientation into the Charter. Moreover, the reasoning in *Egan* worked to secure this image of Canada as a multicultural haven by firmly positioning racism in US history and denying the presence of racism in contemporary Canada.

Egan reinforced this construction of Canadian benevolence towards gay and lesbian and racialized subjects in ways that were in keeping with the neoliberal policy orientation of the government at the time because, while the Supreme Court's ruling in *Egan* recognized sexual orientation as a protected ground under the Charter, it also denied the expansion of social welfare (in this case pension benefits) to same-sex couples. In the mid-1990s, the Canadian government introduced policy changes that:

as well as reducing exclusively federal programmes like unemployment insurance, simultaneously expanded provincial policy choices by removing conditions that had formerly been attached to federal funds transferred to the provinces for social policy purposes, while reducing the resources transferred to help meet these obligations.⁵⁵²

⁵⁵² McBride and McNutt, "Devolution and Neoliberalism in the Canadian Welfare State," 178.

Yasmeen Abu-Laban asserts that “under successive Liberal governments in the 1990s...key programmes that marked the consolidation of the welfare state were dismantled (such as the Family Allowance Act and the Canada Assistance Plan).”⁵⁵³ Moreover, as Mark Thomas argues, “one of the effects of neoliberalism has been to exacerbate patterns of racialized labour market inequality.”⁵⁵⁴ The Court justified its refusal to expand pension benefits to include same-sex couples by simultaneously expanding Charter protections to include “sexual orientation.” In other words, neoliberal policies, like limiting access to Old Age Security, appear more just when coupled with the extension of human rights to marginalized groups.

The early 1990s were years of intense political instability with failed constitutional negotiations, the tumultuous 1993 federal election, and growing calls for Québécois sovereignty. There was a perceived crisis in Canadian identity fuelled by ideas that Indigenous and other racialized people were being shown preferential treatment over “average” (i.e. white) Canadians. This was a time of heightened visibility of Canadian racism through the government’s mishandling of the events at Oka and the military’s complicity in murder and torture in Somalia. Following consultations, the Liberal government policy emphasized decreasing immigration levels in 1994 and imposing greater restrictions on refugees without “proper” documentation, most of whom were Somali women and children. The government cut federal social services and reduced funding to the provinces, changes that have disproportionately harmed Indigenous and other racialized people. In the same period, the government began to allow refugees to use discrimination on the basis of sexual orientation as a ground to claim refugee status (through ad hoc decisions of the immigration board and then more formally through the Supreme Court’s

⁵⁵³ Yasmeen Abu-Laban, “Recognition, Re-Distribution and Solidarity: The Case of Multicultural Canada,” in *Diversity and Contestations over Nationalism in Europe and Canada*, ed. John Erik Fossum, Riva Kastoryano, and Birte Siim (London: Palgrave Macmillan, 2018), 248.

⁵⁵⁴ Thomas, “Neoliberalism, Racialization, and the Regulation of Employment Standards,” 68.

decision in *Ward*) and expanded Charter protections to include the right to be free from discrimination on the basis of sexual orientation. In this chapter, I suggest that the government's expansion of rights on the basis of sexual orientation generated progressive legitimacy for the state, facilitating its ability to decrease immigration levels, impose more restrictions on refugees, and decrease social spending. Moreover, the expansion of gay and lesbian rights in this period helped generate legitimacy for the state through the idea that it fostered respect for diversity, supposedly a deeply entrenched Canadian value.

When the Supreme Court drew on analogies between racism and homophobia in *Egan*, the justices consistently situated racism in the United States and in this way enhanced the progressive legitimacy the Canadian state was working to establish for itself as it was undertaking racist changes to the immigration system, white settler colonial violence at Oka, and anti-Black and Islamophobic violence in Somalia. As such, the Supreme Court decision in *Egan* was part of a broader process of diversifying and recuperating whiteness in which Canada used its nominally progressive stance on sexual orientation to both establish itself as a defender of human rights and provide cover for its simultaneous expansion and intensification of the regulation, surveillance, and violence targeting Indigenous and other racialized people. In the next section, I explain *Egan* in greater detail.

Egan v. Canada

Jim Egan was an early white gay rights activist in Canada who wrote articles calling for legal reform beginning in 1948.⁵⁵⁵ In these articles and letters to politicians, Egan advocated “reform of the Criminal Code, an end to discrimination, and greater understanding and tolerance.”⁵⁵⁶ He

⁵⁵⁵ Warner, *Never Going Back*, 26.

⁵⁵⁶ Warner, *Never Going Back*, 36.

rejected the derogatory way in which gay people were represented in the media and publically denounced such representations.⁵⁵⁷ Egan collaborated with US homophile organizations including the Mattachine Society and mentored other activists such as George Hislop and Sarah Ellen Dunlop.⁵⁵⁸ In the 1950s, Egan publically criticized the purging of “homosexuals” from the US civil service, but was unaware of the parallel campaign going on in Canada which received far less publicity.⁵⁵⁹ Later, in the 1960s, Egan “helped organize political discussion groups in The Music Room, one of [Toronto’s] most popular early gay clubs.”⁵⁶⁰ Egan’s partner, Jack Nesbitt, disliked publicity, so Egan and Nesbitt moved to Vancouver to quietly run a business.⁵⁶¹

Their quiet life ended in the early 1990s when Egan and Nesbitt re-emerged in the public eye to issue a Charter challenge. *Egan v Canada* involved a Charter challenge on the basis that Nesbitt was denied access to old age security because the *Old Age Security Act* legally defined spouse as someone of the opposite sex.⁵⁶² The Court characterized Egan and Nesbitt as “homosexuals who have lived together since 1948 in a relationship marked by commitment and interdependence similar to that which one expects to find in a marriage.”⁵⁶³ When Nesbitt turned 60, he applied for spousal allowance under the *Old Age Security Act*. Nesbitt’s application for the spousal allowance was denied because it was found that Egan and Nesbitt’s relationship could not be defined as spousal, given that the definition of spouse in the Act was “a person of the opposite sex who is living with that person, having lived with that person for at least one year, if the two persons have publicly represented themselves as husband and wife.”⁵⁶⁴ Egan and Nesbitt

⁵⁵⁷ McLeod, “Jim Egan,” 136.

⁵⁵⁸ McCaskell, *Queer Progress*, 332.

⁵⁵⁹ Kinsman and Gentile, *The Canadian War on Queers*, 12.

⁵⁶⁰ McCaskell, *Queer Progress*, 332.

⁵⁶¹ McLeod, “Jim Egan,” 137.

⁵⁶² Lahey, *Are We “Persons” Yet?* 66-7.

⁵⁶³ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 513.

⁵⁶⁴ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 514.

brought their case to the Federal Court and sought a ruling that would find the definition of spouse in the *Old Age Security Act* to be in contravention of section 15 of the Charter. The Federal Court dismissed the case and the Federal Court of Appeal upheld the ruling.⁵⁶⁵ The Supreme Court of Canada upheld the decision, ruling that “The appeal should be dismissed. The definition of ‘spouse’ in s. 2 of the *Old Age Security Act* is constitutional.”⁵⁶⁶ Justices L’Heureux-Dubé, Cory, McLachlin, and Iacobucci issued dissenting opinions in *Egan*.

In her analysis of *Egan*, Kathleen Lahey argues that, because of the deep divisions in the Court, “there has been considerable confusion over how section 15(1) of the Charter should be read and applied.”⁵⁶⁷ Lahey identifies three competing views on this issue. The first view is that the majority decision written by Justice La Forest should be taken as authoritative, even though only three justices agreed with the opinion La Forest wrote. La Forest argued that the denial of spousal allowance to Nesbitt did not violate section 15 of the Charter because the intent of the Act was to provide retirement income to women who had worked in the home and were economically dependent on their husbands.⁵⁶⁸ This intention of the law that La Forest identified demonstrates how Parliament created laws to help stabilize the heteropatriarchal ordering of Canada in which married women who did not participate in wage labour could receive financial support from the government to sustain themselves and both enable and incentivize them to perform the unpaid domestic labour necessary for their husbands to participate in the capitalist economy. This aspect of the law incentivized heterosexual marriage by offering married women who didn’t participate in wage labour some form of government financial support. La Forest wrote “What Parliament clearly had in mind was to accord support to married couples who were

⁵⁶⁵ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 514.

⁵⁶⁶ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 514.

⁵⁶⁷ Lahey, *Are We ‘Persons’ Yet?*, 67.

⁵⁶⁸ Lahey, *Are We ‘Persons’ Yet?*, 68.

aged and elderly, for the advancement of public policy central to society.”⁵⁶⁹ La Forest

continued:

Marriage has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long-standing philosophical and religious traditions. But its ultimate *raison d’être* transcends all of these and is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual. It would be possible to legally define marriage to include homosexual couples, but this would not change the biological and social realities that underlie the traditional marriage.⁵⁷⁰

As Lahey asserts, “La Forest J. was of the opinion that denial of the allowance did not burden gay partners any more than it burdened roommates or siblings who lived together, because the opposite-sex definition of spouse was consistent with the ‘functional values’ connected with heterosexual reproduction.”⁵⁷¹ This argument clarifies that Parliament intended to incentivize not only heterosexual marriage, but also biological reproduction within heterosexual marriages. As such, the law can be understood as mandating the governmental provision of financial support for women who had children within the bounds of heterosexual marriages.

The second view Lahey identifies is that the split opinions in *Egan* render the statements issued in this case unauthoritative; instead, the section 15 analysis written by Justice McLachlin in *Miron v. Trudel* should be the authoritative section 15 analysis.⁵⁷² *Miron v. Trudel* was a Supreme Court case in which the appellants were not married but lived together with their children “as an economic unit.”⁵⁷³ One of the adults, “M,” was in an uninsured car driven by an uninsured driver when they got in an accident.⁵⁷⁴ M made a claim against the other adult, “V’s,”

⁵⁶⁹ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

⁵⁷⁰ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

⁵⁷¹ Lahey, *Are We ‘Persons’ Yet?*, 68.

⁵⁷² Lahey, *Are We ‘Persons’ Yet?*, 68.

⁵⁷³ *Miron v. Trudel*, (1995) 2 S.C.R. 418.

⁵⁷⁴ *Miron v. Trudel*, (1995) 2 S.C.R. 418.

insurance policy for loss of wages which was denied because benefits were only extended to spouses.⁵⁷⁵ The purpose of the case was to determine if the word “spouse” in the insurance policy included unmarried heteronormative common law couples.⁵⁷⁶

The third view Lahey describes is that “Justice Cory’s section 15(1) opinion in fact contains the *ratio decidendi* in this case because it is the opinion which with four other justices did in fact agree.”⁵⁷⁷ Justice Sopinka agreed with Cory’s rationale for concluding that the definition of spouse in the *Old Age Security Act* violated section 15(1). Justice Iacobucci also agreed with Cory’s section 15(1) opinion, Justice McLachlin was in “substantial agreement,” and Justice Heureux-Dubé agreed with Cory “on all the points essential to his ruling.”⁵⁷⁸ Lahey therefore concludes that “on a strict reading of the rules of precedent in split decisions, La Forest J.’s section 15 opinion is merely a dissenting opinion.”⁵⁷⁹

Despite these differing views on how *Egan* should be understood, as Lahey points out, “the Court did confirm that ‘sexual orientation’ is included in the open-ended language in section 15(1) of the Charter, and that ‘opposite-sex’ definitions of ‘spouse’ do violate section 15(1).”⁵⁸⁰ That is, *Egan* confirmed that sexual orientation was an analogous ground of discrimination under section 15 of the Charter. Moreover, the Court found that even though the exclusion of same-sex couples from the definition of spouse could be justified on policy grounds, the exclusion still violated section 15 of the Charter.⁵⁸¹

⁵⁷⁵ *Miron v. Trudel*, (1995) 2 S.C.R. 418.

⁵⁷⁶ *Miron v. Trudel*, (1995) 2 S.C.R. 418.

⁵⁷⁷ Lahey, *Are We ‘Persons’ Yet?*, 68.

⁵⁷⁸ Lahey, *Are We ‘Persons’ Yet?*, 68.

⁵⁷⁹ Lahey, *Are We ‘Persons’ Yet?*, 68.

⁵⁸⁰ Lahey, *Are We ‘Persons’ Yet?*, 78.

⁵⁸¹ Lahey, *Are We ‘Persons’ Yet?*, 44.

In the next section, I provide an outline of a racialized history of Canadian liberalism. I situate *Egan* as part of Canada's liberal trajectory that is premised on promoting individual rights and forgetting that white settler colonialism, slavery, and racism made and make Canada possible. This forgetting of Canadian racism and white settler colonialism that is so central to liberal notions of equality under the law, which is the basis of section 15 Charter protections, enables Canada to construct itself as a defender of equality before and under the law regardless of "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."⁵⁸² This forgetting of Canadian racism was also central to Supreme Court justices' use of race analogies in *Egan* as all of their references to racism were either historical or based in the US.

Canadian Liberalism

In his discussion of the fragmentation of the academic discipline of Canadian history following the proliferation of historical work focused on racialized people, immigrants, women, poor people, Indigenous people, and other marginalized groups in Canada beginning in the 1960s, Ian McKay argues that:

The category "Canada" should henceforth denote a historically specific project of rule, rather than either an essence we must defend or an empty homogenous space we must possess. Canada-as-project can be analyzed through the study of the implementation and expansion over a heterogeneous terrain of a certain politico-economic logic – to wit, liberalism.⁵⁸³

In conceptualizing the history of Canada as the history of the expansion of liberalism over the territories now legally recognized as Canada, histories and historical presents of race,

⁵⁸² *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1). <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

⁵⁸³ Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, ed. Michel Ducharme and Jean-François Constant (Toronto: University of Toronto Press, 2009), 620-621.

Indigeneity, and sexuality are also implicated. Wendy Brown identifies the basic principles of liberalism as “secularism, the rule of law, equal rights, moral autonomy, [and] individual liberty,”⁵⁸⁴ and, in response to McKay, Adele Perry complicates this de-racialized and de-sexualized formulation of liberalism by undertaking an analysis of racialization and gender.

Perry argues:

Globally and locally the liberal order project was predicated on the privatization of women and the relegation of non-Western peoples to various states of reduced humanity, savagery, unfreedom, or containment. Thus, imperialism and patriarchy were not complications of or exceptions to the liberal order: they were necessary to its very production. To put it another way, it is by privatizing women and assuming and sometimes legislating the reduced humanity of non-Western peoples that the liberal subject was defined and redefined.⁵⁸⁵

Hence, liberalism is premised on imperialism and patriarchy. Many early liberals strongly supported enslaving people of African descent and colonizing the parts of the world they constructed as “less civilized,” positions that were understood as consistent with liberalism because conceptions of the human were limited to only include white men.⁵⁸⁶ The privatization of women and the discourse of separate and “complementary” sexes this process of privatization enabled led to heteronormativity, accompanied by the denigration of same-sex intimacies. Moreover, colonizers constructed Black people, Indigenous people, and other racialized people they subjected to colonization as less-than-human, in part, through their construction as improperly sexual, sometimes including the acceptance of same-sex intimacies and non-normative gender expressions.

⁵⁸⁴ Brown, *Regulating Aversion*, 21.

⁵⁸⁵ Adele Perry, “Women, Racialised People, and the Making of the Liberal Order in Northern North America,” in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, ed. Michel Ducharme and Jean-François Constant (Toronto: University of Toronto Press, 2009), 275.

⁵⁸⁶ Domenico Losurdo, *Liberalism: A Counter-History* (New York: Verso, 2014): 1-8.

Emphasizing the role of the nation in the colonial historical present of liberalism, Lisa

Lowe argues that:

Liberal forms of political economy, culture, government, and history propose a narrative of freedom overcoming enslavement that at once denies colonial slavery, erases the seizure of lands from native peoples, displaces migrations and connections across continents, and internalizes these processes in a national struggle of history and consciousness.⁵⁸⁷

Lowe's assertion connects to McKay's urging to conceptualize Canadian history through an understanding of "Canada-as-project," a project of the implementation of liberalism in the parts of Turtle Island that became Canada. Putting Lowe's and McKay's contentions together leads to a conceptualization of Canadian history as not simply the implementation of liberalism, but also the national history of forgetting of slavery, white settler colonialism, and non-white migrations that liberalism entails. The project of theorizing Canada as a coherent whole, as a national project, entails a forgetting of the transnational connectivities of capitalist hegemony, slavery, white settler colonialism, and non-white migration that constitute the conditions of possibility for the formation of the Canadian nation-state and conceptions of the Canadian citizen.

Liberalism underwrote much of the racial context of the 1990s. Over the course of the decade, political philosophers debated and generated a great deal of literature on tensions between liberalism and multiculturalism (i.e., whether multiculturalism threatens liberal individualism).⁵⁸⁸ Part of the conflict in the Meech Lake negotiations involved a conflict over differing strands of liberalism, between individualism and collectivism. Despite the resistance at Meech Lake, "the 'proceduralist' variant of the liberal philosophy of multiculturalism remains the overwhelming narrative of national unity and the predominant governmental rhetoric and

⁵⁸⁷ Lisa Lowe, *Intimacies of Four Continents* (Durham: Duke University Press, 2015), 3.

⁵⁸⁸ Yasmeen Abu-Laban, "Liberalism, Multiculturalism and the Problem of Essentialism," *Citizenship Studies* 6, no. 4 (2002): 460.

policy in Canada.”⁵⁸⁹ The proceduralist variant “privileged a neutral, individual, rights-based, and proceduralist vision stemming from a British and American tradition.”⁵⁹⁰ Relatedly, there is a subfield of multicultural theory, promulgated by Charles Taylor and Will Kymlicka, called “strong multiculturalism” that contends that “cultural” values should be respected so long as they do not interfere with “a core set of individual rights incapable of being trumped in the name of culture.”⁵⁹¹

Taylor attempts to promote the cause of “Canadian unity,”⁵⁹² a response to the “crisis” in Canadian identity discussed earlier. Similarly, Kymlicka:

hopes to “sell” multiculturalism as multinational federalism to an increasingly reactionary English Canada by representing the claims of First Nations, Québécois, and later immigrants as relatively unthreatening and easy to accommodate.⁵⁹³

Kymlicka suggests that the existence of the province of Quebec offers the Québécois a sufficient degree of autonomy, that Indigenous peoples should be offered a similar degree of autonomy, and that racialized people should not maintain their own cultures, but rather assimilate into English or French society.⁵⁹⁴

In addition to the problems with liberal conceptions of multiculturalism, liberal ideals as embedded in peacekeeping practices and immigration regimes perpetuate racism in Canada. As Razack clarifies in the context of the Canadian intervention in Somalia, while liberalism makes guarantees for freedom and sovereignty, just as freedom was not extended to Black people under slavery, “sovereignty and autonomy, cornerstones of the liberal paradigm, are not concepts to be

⁵⁸⁹ Katharyne Mitchell, “Education for Democratic Citizenship: Transnationalism, Multiculturalism, and the Limits of Liberalism,” *Harvard Educational Review* 71, no. 1 (2001): 56.

⁵⁹⁰ Mitchell, “Education for Democratic Citizenship,” 56.

⁵⁹¹ Richard J. F. Day and Tonio Sadik, “The BC Land Question, Liberal Multiculturalism, and the Spectre of Aboriginal Nationhood,” *BC Studies* 134 (2002): 8.

⁵⁹² Day and Sadik, “The BC Land Question,” 9.

⁵⁹³ Day and Sadik, “The BC Land Question,” 10.

⁵⁹⁴ Day and Sadik, “The BC Land Question,” 11.

applied to ‘barbarians.’”⁵⁹⁵ Because liberal conceptions of the human exclude racialized people, sending the Canadian military to Somalia to “keep the peace” is consistent with a liberal paradigm despite its infringement on sovereignty. Moreover, Sedef Arat-Koç argues that cuts to immigration supports and the reduction in the number of family class immigrants in the 1990s “is based on market-oriented values such as self-reliance.”⁵⁹⁶ These changes reflect the ethos of individualism central to liberalism.

Furthermore, the liberal ideal of equal rights for all constitutes the condition of possibility for the emergence of analogies between race and sexual orientation. When the basis of equal rights claims (i.e., race, national origin, religion, etc.) can be enumerated as they are in the Charter, those bases are constructed as parallel phenomena. This is evident in the wording of section 15(1) of the Charter, which states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.⁵⁹⁷

The use of the word “or” to separate the different bases of discrimination rather than “and” or “and/or” implies that people can experience discrimination on one of these bases or another. This wording erases intersectional oppression that occurs where these enumerated forms of discrimination overlap.

⁵⁹⁵ Razack, *Dark Threats and White Knights*, 40.

⁵⁹⁶ Sedef Arat-Koç, “Neo-Liberalism, State Restructuring and Immigration: Changes in Canadian Policies in the 1990s,” *Journal of Canadian Studies/Revue d’études canadienne* 34, no. 2 (1999): 34.

⁵⁹⁷ *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1). <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

Liberal Analogies in *Egan*

Unlike the scholars with whom I have engaged so far, Canadian political philosopher Hilliard Aronovitch praises the virtues of liberalism. Aronovitch asserts that:

something long-associated with liberalism is the quest for a balance between a conservatism that ties us irretrievably to the past or the present and a utopianism that plunges us recklessly into the future. Political practice and political philosophy guided by analogical argument avoid both these extremes; they do so by virtue of the precedent-based but open-ended and evolving dimensions of analogical argument...Analogical argument is the model for this measured approach.⁵⁹⁸

Aronovitch conceptualizes analogical argument as the tool to implement this measured liberalism that forestalls the possibility of political action that could disrupt or alter a political landscape premised on heteropatriarchal white settler supremacy. In his critique of Aronovitch, Panagia argues:

analogical reason is the *sine qua non* of the liberal version of deliberative democracy⁵⁹⁹...I would contend that analogical reasoning is not only a basis for discourse ethics, but also that which comprises and grounds the image of political thought for the liberal ideology of deliberative democracy.⁶⁰⁰

Analogical reasoning is necessary for the operation of liberal democracy and the processes through which liberalism is continuously reconstituted. Since liberalism is premised on racist, white settler colonial heteropatriarchy,⁶⁰¹ analogical reasoning is a tool to reproduce and mask the racist, white settler colonial, and heterosexist liberal order, though the forms and methods of racism, white settler colonialism, and heterosexism that persist may shift.

⁵⁹⁸ Aronovitch, "The Political Importance of Analogical Argument," 92.

⁵⁹⁹ Deliberative democracy is "a form of government in which free and equal citizens (and their representatives) justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future." Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004), 7.

⁶⁰⁰ Panagia, "The Predicative Function in Ideology on the Political Uses of Analogical Reasoning in Contemporary Political Thought," 67.

⁶⁰¹ Perry, "Women, Racialised People, and the Making of the Liberal Order in Northern North America," 275; Losurdo, *Liberalism* 1-8; Lowe, *Intimacies of Four Continents*, 3.

LGBTQ activists have also used analogical reasoning for decades to assert their entitlement to rights to which they did or do not have access because of their sexual orientation. Miriam Smith argues that LGBTQ activists who supported an essentialist understanding of sexuality were particularly drawn to analogical reasoning and “develop[ed] an ‘ethnic politics’ model of lesbian and gay men as an oppressed minority, characterized by an immutable trait.”⁶⁰² Catherine Nash situates the emergence of this “ethnic politics” approach to gay and lesbian organizing at the end of the 1970s when the popularity of gay liberation politics was waning.⁶⁰³ Nash argues that gay and lesbian activists in Toronto used this “so-called ‘ethnic minority’ approach” to construct “gays and lesbians as an identifiable group similar in legitimacy and distinctiveness to other so-called minority communities in the city”⁶⁰⁴ and to “assert that collectively gay and lesbian identity constituted a quasi-ethnic minority.”⁶⁰⁵

While the Canadian state presents multiculturalism as a mechanism to bring about greater equality in society, multiculturalism fosters competition between groups who compete for visibility and access to resources. For example, in their study on the effects of multiculturalism policy on social service provision in Toronto for immigrants from Hong Kong and mainland China, J. Salaff and Pearl Chan argue that the way the government implements multiculturalism policy favours particular organizations, any one of which is incapable of addressing all the needs of the heterogeneous population of Chinese people who immigrate to Canada, which pushes other groups to compete for visibility and resources from other avenues.⁶⁰⁶ Because of Canadian multiculturalism’s promotion of competition, groups sometimes use the strategies developed by

⁶⁰² Smith, *Lesbian and Gay Rights in Canada*, 8.

⁶⁰³ Nash, “Toronto’s Gay Village (1969–1982),” 4.

⁶⁰⁴ Nash, “Toronto’s Gay Village (1969–1982),” 4.

⁶⁰⁵ Nash, “Contesting Identity,” 122.

⁶⁰⁶ J. Salaff and Pearl Chan, “Competing Interests: Toronto’s Chinese Immigrant Associations and the Politics of Multiculturalism,” *Population, Space and Place* 13 (2007): 138.

others in their attempts to gain visibility or resources. In adopting the “ethnic minority approach” to their political activities, gay and lesbian groups entered into the competitive framework of multiculturalism.

The detrimental impacts of this competitive approach to multiculturalism was apparent in gay and lesbian activists’ responses to the fatal police shooting of Albert Johnson, a Jamaican-born resident of Toronto, in 1979.⁶⁰⁷ In response to public accusations of racism and excessive use of force following Johnson’s death, the Toronto police were forced to turn the investigation of the shooting over to an independent civilian review board.⁶⁰⁸ While public challenges to police harassment and brutality that directly proceeded Johnson’s death had dealt with both homophobia and racism, Nash describes how gay men and lesbians in Toronto felt “excluded from the public discussions over what was again framed as ‘police-minority’ relations” in the aftermath of Johnson’s death.⁶⁰⁹ In an attempt to have their concerns included in the review process, Nash argues that gay and lesbian activists “worked hard to forge connections between gays and lesbians and other minority groups.”⁶¹⁰ The *Body Politic* published a series of articles “deliberately constitut[ing] gays and lesbians as a minority group with interests in common with ethnic and racial groups” and calling the police killing of Johnson the “latest in a series of incidents involving racism and homophobia.”⁶¹¹

While the *Body Politic* “urged gays and lesbians to support black community protests and demonstrations,”⁶¹² gay and lesbian activists seemed to work in parallel to rather than collaboratively with Black and other racialized communities and activists. As such, gay and

⁶⁰⁷ Nash, “Contesting Identity,” 126.

⁶⁰⁸ Nash, “Contesting Identity,” 126.

⁶⁰⁹ Nash, “Contesting Identity,” 127.

⁶¹⁰ Nash, “Contesting Identity,” 127.

⁶¹¹ Nash, “Contesting Identity,” 127.

⁶¹² Nash, “Contesting Identity,” 127.

lesbian activists attempted to insert the concerns of white gay and lesbian community members into the public consultation on the police killing of Johnson. For example, gay and lesbian activists exerted a great deal of pressure to ensure the final report used the word “discriminatory” instead of “racist” to refer to police conduct so that it would cover gay and lesbian concerns with policing as well, thereby deflecting attention from the racism that had led to Johnson’s death. By blurring the specificity of racism and homophobia through their inclusion within the more amorphous category of discrimination, gay and lesbian activists collapsed both the differences and intersections between homophobia and racism, making them appear more similar than they are. While police violence and harassment directed at both racialized and gay and lesbian communities deserves condemnation, there is no parallel within white gay and lesbian communities to the regular policing killings of Black and other racialized people. As such, constructing discrimination as something racialized and gay and lesbian communities experience equally at the hands of the police detracts attention from the deadly police violence targeting racialized people in order to include the concerns of white gay and lesbian people.

In *Egan* and in meetings of the Special Joint Committee on the Constitution of Canada, which was created to deliberate on the wording of the Charter, Supreme Court justices and MPs drew analogies between race and sexual orientation to demonstrate that sexual orientation, like race, was an “immutable trait” and therefore should be a protected ground against discrimination under the Charter. Additionally, Supreme Court justices mobilized analogical reasoning through the comparisons they drew between race and sexual orientation in different pieces of legislation and by drawing on precedents from previous cases.

In a meeting of the Special Joint Committee on the Constitution of Canada on November 20, 1980, Mary Eberts, the legal counsel for the Canadian Advisory Council on the Status of

Women, provided justification for why the organization was not advocating for the inclusion of sexual orientation in the list of enumerated grounds in Section 15 of the Charter. Eberts stated:

I draw your attention to the remarks we have quoted from the speech of the Prime Minister which you will find on page 12, where he says: “There are, after all, only two permanent conditions attributable to human beings, one is sex, the other is race. All other distinctions from which discrimination may grow are temporary in nature or are subject to change.”⁶¹³

This statement includes a short excerpt of the prime minister’s statement; the Canadian Advisory Council on the Status of Women included the longer statement in the brief the organization submitted to the committee. The longer statement read:

Perhaps this generation has recognized as past generations have not that discrimination based upon sexual or racial reasons lasts for a lifetime. There are, after all, only two permanent conditions attributable to human beings. One is sex. The other is race. All other distinctions from which discrimination may grow are temporary in nature or are subject to change. Education, religion, language, age, health, economic statures, experience — all are or can be transient. Discrimination based upon sex or racial origin is thus doubly unfair. The person against whom the discrimination is practised had no choice of origin and has no option of change.⁶¹⁴

In these passages, race and sex are understood as characteristics of human beings that are unchanging and unchosen. While race and sex are not explicitly named as innate, biological characteristics of the body, arguing that there is “no choice of origin” for race and sex inscribes them with biological meaning. If sex and race are understood as characteristics of people that can only be discerned through self-identification, for example, race and sex could carry different meanings at different moments in a person’s life. A person’s racial identification, or the ways in which that person understands their race, could differ in different geographical locations, for

⁶¹³ *Special Joint Committee on the Constitution of Canada*, vol. 1, November 20, 1980, 9:151.

⁶¹⁴ Canadian Advisory Council on the Status of Women, “Women, Human Rights & The Constitution: Submission of the Canadian Advisory Council on the Status of Women to the Special Joint Committee on the Constitution, November 18, 1980,” <https://studylib.net/doc/18131515/canadian-advisory-council-on-the-status-of-women>.

example.⁶¹⁵ Additionally, the contention that sex is unchanging and unchangeable denies the existence of trans and gender non-conforming people since how a person understands their sex, as well as the anatomical features which are used in sex assignment, may change throughout their lives. While Trudeau avoids discussion of the cause of this supposed “immutability,” that is whether he believes the unchangeability of race and sex to be the result of biology or something else, his statement parallels the language of biological essentialism as both position race and sex as unchanging and unchangeable traits. Moreover, in addition to asserting that sex and race are “permanent,” Trudeau states that, with race and sex, there is “no choice of origin,” implying that the origins of race and sex are biological.

Consequently, Eberts, following Trudeau, positions sex and race as essential, “immutable” traits, while asserting that sexual orientation is changeable, temporary, or the result of free choice. This idea that sexual orientation is changeable, temporary, or the result of free choice had shifted by the time the Supreme Court issued its decision in *Egan*. Rather than shift towards a social constructionist approach that would conceptualize race, sex, and sexual orientation as categories that derive their meaning and substance from the interaction between the biological body and the social world,⁶¹⁶ instead of from biology alone, the Supreme Court positioned sexual orientation as “immutable.” As will be explained in greater detail in the following discussion, the Supreme Court also rejected the option of assessing discrimination without the need to determine the origin or changeability of the aspect of the person that was the subject of discrimination.

In *Egan*, Justice La Forest stated:

⁶¹⁵ Ian Bernard, *Queer Race: Cultural Interventions in the Racial Politics of Queer Theory*, 2nd ed. (New York: Peter Lang, 2008), 9.

⁶¹⁶ Anne Fausto-Sterling, “Dueling Dualisms,” In *Gender and Women’s Studies in Canada: Critical Terrain*, ed. Margaret Hobbs and Carla Rice (Toronto: Women’s Press, 2013).

whether or not sexual orientation is based on biological or physiological factors, which may be a matter of some controversy, it is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so falls within the ambit of s. 15 protection as being analogous to the enumerated grounds.⁶¹⁷

Here La Forest seems to accommodate the possibility of a social constructionist approach to sexual orientation by acknowledging that whether sexual orientation is biological or physiological is controversial. Drawing on his opinion in *Canada (Attorney General) v. Ward* (1993), however, La Forest then added:

the analogous grounds approach in s. 15 was appropriate to a consideration of the character of ‘social groups’ subject to protection as Convention refugees. These, I continued, encompass groups defined by an innate or unchangeable characteristic which, I added, would include sexual orientation.⁶¹⁸

While in *Egan* La Forest describes sexual orientation as “unchangeable or changeable only at unacceptable personal costs,” in *Ward* La Forest characterizes sexual orientation as “an innate or unchangeable characteristic.” In *Ward*, La Forest brings innateness and unchangeability into close proximity, suggesting that either or both could be the correct categorization of sexual orientation. In *Egan*, La Forest cautions that the theory that sexual orientation is biological is controversial, but still explicitly draws on his statement in *Ward* that sexual orientation may be innate and, thus, “like race.” While this view that sexual orientation is an innate or unchangeable characteristic may be sympathetic to critiques of interventions which attempt to make queer people straight, it fails to consider that sexuality is fluid for some people and that many people identify with different sexual orientations over the course of their lifetimes.

Furthermore, La Forest’s statement that sexual orientation “is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs” parallels what Jessica Clarke calls the new concept of “immutability” in the context of US courts.

⁶¹⁷ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 528.

⁶¹⁸ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 528-529.

Because of pressure from gay rights advocates, many US courts “now ask ‘not whether a characteristic is strictly unchangeable, but whether the characteristic is a core trait or condition that one cannot or should not be required to abandon.’”⁶¹⁹ The “old” immutability in the US context, conversely, stated that particular traits, like race and sex, were “accidents of birth.”⁶²⁰ That the “new” immutability in Canadian courts is the same as the new immutability in US courts, suggests that the “old” immutability in each court system may also have been the same.

This is because constructions of race, defined as “immutable,” came into being through colonial encounters that transcended national borders and imperial boundaries. Following Fanon, Thobani argues:

the colonial encounter was structured as a racial one: the violence necessary to bring into being the colonial order fashioned and propagated a racial order. It organized privileges, rights, and entitlements of juridical subjects through a race status actuated as essential and immutable.⁶²¹

The “old” immutability is based on this colonial definition of race as “essential and immutable.”

I turn now briefly to the work of Sylvia Wynter because of her theorization of the centrality of biologized race to conceptions of the human. Wynter describes how contemporary secular understandings of race as an exclusively biological mode of categorizing the “nonhomogeneity of the human species”⁶²² results from the ways in which Darwin’s theory of natural selection began being applied to humans in the late nineteenth century. Wynter traces the emergence of contemporary, exclusively biological understandings of race from previous hierarchical, bifurcated categories of humans from the fifteenth century to the present. In medieval Europe, this hierarchy existed between the clergy as the True Christian Self and the

⁶¹⁹ Jessica A. Clarke, “Against Immutability,” *Yale Law Journal* 125, no. 2 (2015): 4.

⁶²⁰ Clarke, “Against Immutability,” 9.

⁶²¹ Thobani, *Exalted Subjects*, 38.

⁶²² Wynter, “1492,” 34.

laity as well as “heathens” and “idolators” as the Untrue Christian Others (Enemies-of-Christ/Christ-Refusers).⁶²³ With the expansion of the physical sciences and the secularization of European knowledge, these categories were replaced by the Rational Self, which Wynter terms Man1, and the Irrational Others. As Wynter argues:

it was to be the peoples of the militarily expropriated New World territories (i.e., Indians), as well as the enslaved peoples of Black Africa (i.e., Negroes), that were made to reoccupy the matrix slot of Otherness—to be made into the physical referent of the idea of the irrational/subrational Human Other.⁶²⁴

In the late nineteenth century, Darwin and others applied the theory of natural selection to humans in ways that facilitated the creation of new categories, those of Man2/*homo oeconomicus*/selected-by-evolution and those dysselected-by-evolution, to fill the “empty signifying slots”⁶²⁵ of the early colonial period’s rational self/irrational Other.⁶²⁶ Through this process, Wynter argues, race emerged as “a new, extrahumanly determined classificatory principle and mechanism of domination.”⁶²⁷ As Western European knowledge systems became secularized, the only “objective set of facts” that remained from earlier conceptions of the True Christian Self/Untrue Christian Other and the later rational self/irrational Other were “the set of environmentally, climatically determined phenotypical differences between human hereditary variations as these had developed in the wake of the human diaspora both across and out of the continent of Africa.”⁶²⁸ The “deep-seated belief in the *genetic* nonhomogeneity of the human

⁶²³ Sylvia Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation--An Argument,” *CR: the New Centennial Review* 3, no. 3 (2003): 296.

⁶²⁴ Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 266.

⁶²⁵ Wynter, “1492,” 36.

⁶²⁶ Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 265.

⁶²⁷ Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 296.

⁶²⁸ Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 315.

species,” Wynter argues, is premised on “the immutability of ‘race.’”⁶²⁹ As Amit Sen argues, if race were actually “immutable,” then its boundaries wouldn’t require constant policing.⁶³⁰

In *Ward*, La Forest’s use of the phrase “innate or unchangeable,” suggesting either that something could be unchangeable without being innate or that unchangeable was synonymous with innate, constitutes a movement away from the language of scientific racism that was used to justify colonial violence (i.e., “immutable”) without actually changing the biological essentialism the language implies. In other words, the introduction of the word “unchangeable” is a nominal but not substantive movement away from scientific racism.

In her dissenting opinion in *Egan*, Justice L’Heureux-Dubé critiqued the approach La Forest took in writing his opinion because he focussed on deciding whether sexual orientation was an analogous ground of discrimination under section 15 of the Charter (which L’Heureux-Dubé calls the “grounds approach”) rather than determining whether discrimination was present. L’Heureux-Dubé argues that the purpose of section 15 “is to guarantee to all individuals a certain kind of equality: equality without discrimination.”⁶³¹ L’Heureux-Dubé goes on to state that “The nine ‘grounds’ enumerated after this basic guarantee of freedom from discrimination are particular applications and illustrations of the ambit of s. 15. They are not the guarantee itself.”⁶³² Consequently, L’Heureux-Dubé suggests that the proper approach to section 15 cases is to assess whether discrimination exists rather than to determine if there is a ground analogous to the enumerated grounds: race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. In her critique of the “grounds approach,” L’Heureux-Dubé wrote:

⁶²⁹ Wynter, “1492,” 40.

⁶³⁰ Amit Sen, “Policing the Boarder: Regulating Race, Gender, and Sexuality,” *Georgetown Journal of Gender and the Law* 8, no 1 (2007): 71.

⁶³¹ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 542.

⁶³² *Egan v. Canada*, (1995) 2 S.C.R. 513 at 542.

Rather than focus on “discrimination” directly, the “grounds” approach focuses courts’ attentions on the types of grounds which may be a basis for a finding of discrimination. Because a finding that a ground is either enumerated or analogous is a necessary precondition for a finding of discrimination, most analysis is devoted toward characterizing the basis for the distinction and, if the basis is not an enumerated ground, deciding whether the ground is “analogous”. This approach inquires into whether the characteristics of the ground are sufficient to constitute a basis for discrimination, rather than into the absence or presence of discriminatory effects themselves.⁶³³

Similarly, Efrat Arbel and Eileen Myrdahl argue that “the grounds analysis has come to operate less as a way to understand discrimination and more as a hurdle that claimants must overcome for their experiences of discriminations to be made legally comprehensible.”⁶³⁴ Rendering grounds of discrimination analogous, therefore, is not necessary to legal evaluations of discrimination, but rather has been the particular permutation of discrimination analysis that the Supreme Court of Canada has taken. This type of analysis incentivizes the flattening of differences between grounds of discrimination, rendering race and sexual orientation parallel rather than intersecting phenomena.

Moreover, the slippage between “immutability” and biological determinism in these analogies draws race and sexuality into proximity in ways that parallel historical analogies between race and sexual orientation/sexuality. This reasoning reproduces earlier analogies between race and sexuality in the literature of comparative anatomy and sexology that I discussed in Chapter 1. Nancy Leys Stepan suggests that “the metaphors functioned as the science itself...without them the science did not exist. In short, metaphors and analogies can be constituent elements of science.”⁶³⁵ While most analogies in this and the following chapter build explicitly only on histories of anti-Black racism to construct parallels between the discrimination

⁶³³ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 549.

⁶³⁴ Efrat Arbel and Eileen Myrdahl, “Immutability, Immigration Status, and the Limits of Equality Protection,” in *The Canadian Constitution in Transition*, ed. Richard Albert, Paul Daly, and Vanessa A. MacDonnell (Toronto: University of Toronto Press, 2019), 366.

⁶³⁵ Nancy Leys Stepan, “Race and Gender: The Role of Analogy in Science,” *Isis* 77, no. 2 (1986): 267.

faced by Black people and by gay and lesbian people, Rohy suggests that these analogies are premised not only on anti-Blackness, but also on white settler colonial logics that imagined homosexuality as a “regression...to primitive societies or vanished cultures.” As Scott Morgensen argues, “modern sexuality comes into existence when the heteropatriarchal advancement of white settlers appears to vanquish sexual primitivity.”⁶³⁶ Therefore the parallels produced between race and sexual orientation not only re-entrench historical analogies based on scientific racism, but also reinvigorate anti-Black and white settler colonial logics.

Despite her critique of the analogous grounds approach, L’Heureux-Dubé reifies the construction of the enumerated and analogous grounds as “immutable.” L’Heureux-Dubé states:

Most would agree that the common characteristics of all of the enumerated grounds other than religion is that they involve so-called “immutable” characteristics. Religion, on the other hand, has been described as being premised on a “fundamental choice”. Does this mean that s. 15, despite being consciously left open-ended by the drafters, could never have encompassed discrimination on the basis of religion, or any other characteristic which involves a “fundamental choice”? This result seems absurd, yet it seems to flow inevitably from an approach to “discrimination” that relies exclusively on drawing analogies from the essential characteristics of the enumerated grounds. It also demonstrates, in my mind, why reliance on characteristics “analogous” to those in the enumerated grounds is a potentially unsatisfactory means of giving effect to s. 15’s open-ended character.⁶³⁷

After *Egan*, in *Corbiere v. Canada* (1999), the Supreme Court further entrenched immutability as a requirement for a ground of discrimination to be considered analogous to the enumerated grounds through their decision that “two criteria are required to recognize a new analogous ground under s. 15(1): historical discrimination and immutability.”⁶³⁸

While an analysis of historical discrimination may be more in line with the approach L’Heureux-Dubé suggests, the requirement that the ground of discrimination must be

⁶³⁶ Scott Lauria Morgensen, *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization* (Minneapolis: University of Minnesota Press, 2011), 1.

⁶³⁷ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 550.

⁶³⁸ Arbel and Myrdahl, “Immutability, Immigration Status, and the Limits of Equality Protection,” 366.

“immutable” reinscribes traits such as race and sexual orientation as biological and renders them analogous. Extending Arondekar’s argument to include sexual orientation, this form of reasoning produces race and sexual orientation as parallel rather than intersecting phenomena. This is where analogical reasoning’s utility for re-entrenching liberalism becomes clear: since the drafters of the Charter included race from the beginning, the law has supposedly done all it can to address racial inequality. This is true only because liberal legal systems work to maintain the white supremacist settler colonial order of Canada, so, while maintaining this system, the law is limited in what it can do to address racial inequity. Yet the state constructs the Charter as a legal order that prevents racial discrimination or at least addresses racial discrimination when it occurs. As such, the effect of producing sexual orientation as legally analogous to race is to stifle resistance to the heterosexist ordering of the liberal state; the liberal state absorbs such challenges through legal regimes such as the Charter. Since race and sexual orientation are produced as analogous and racial discrimination was “addressed” in the original drafting of the Charter, adding sexual orientation as an analogous ground of discrimination creates the illusion that heterosexism and homophobia have also been addressed. In reality, adding sexual orientation as an analogous ground merely produces the state as a benevolent protector of non-heterosexual Canadians, but does nothing to dismantle the interlocking systems of racism and homophobia that marginalize non-white and non-heterosexual people in Canada.

The analogies between race and sexual orientation the Supreme Court draws on obscure the asymmetrical power relationships that perpetuate racism and homophobia and subsume both under the singular category “discrimination.” Two types of analogies are constructed in *Egan*: Supreme Court justices draw analogies between race and sexual orientation to determine if sexual orientation is an analogous ground under section 15 and also draw analogies between

cases involving discrimination on the basis of sexual orientation and those involving discrimination on the basis of race. The reliance on analogies may be greater in Charter cases because, as justices L’Heureux-Dubé, Cory, McLachlin, and Iacobucci wrote in their dissenting opinion in *Egan*, “Any search for either equality or discrimination requires comparisons to be made between groups of people.”⁶³⁹ Similarly, Justice La Forest, quoting *Andrews*, asserted “It [equality] is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises.”⁶⁴⁰ Justices Cory and Iacobucci also acknowledged that:

In *Andrews, supra*, it was recognized that any search for either equality or discrimination requires comparisons to be made between groups of people. At page 164, McIntyre J. stated: It [equality] is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises.⁶⁴¹

In their opinion, Cory and Iacobucci draw on the definition of direct discrimination in the *Ontario Human Rights Code* because “the same definition has been adopted in s. 15 cases.”⁶⁴² The portion of the *Ontario Human Rights Code* Cory and Iacobucci quote from includes the statement “Direct discrimination occurs...where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, ‘No Catholics or no women or no blacks employed here.’”⁶⁴³ This example fails to differentiate between the histories of legal restrictions on the freedom of Catholics, women, and Black people and to acknowledge the intersections of these forms of oppression.

⁶³⁹ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 517.

⁶⁴⁰ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 532.

⁶⁴¹ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 585.

⁶⁴² *Egan v. Canada*, (1995) 2 S.C.R. 513 at 587.

⁶⁴³ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 587.

Cory and Iacobucci use this definition and example to conclude that the exclusion of same-sex couples from the *Old Age Security Act* constitutes direct discrimination. Cory and Iacobucci state:

The law challenged in this case [*Egan*] is, quite simply, not facially neutral. Section 2 of the Act defines ‘spouse’ as being ‘a person of the opposite sex’. It thereby draws a distinction between opposite-sex couples and same-sex couples. Thus, this case presents a situation of direct discrimination.⁶⁴⁴

Cory and Iacobucci conclude that the “opposite sex” definition of spouse, like the “no blacks employed here” rule, constitutes direct discrimination. In mobilizing the example from the *Ontario Human Rights Code* quoted above, Cory and Iacobucci draw an analogy between racial segregation (“no blacks”) and the “opposite-sex” definition of spouse in the *Act*. Like the “no blacks employed here” rule, the definition of spouse as “a person of the opposite sex” “presents a situation of direct discrimination.”⁶⁴⁵

In analogical reasoning, as Hilliard Aronovitch asserts, “the more there are specific and relevant respects of likeness in the initial analogy, the better the argument on the whole will be.”⁶⁴⁶ Similarly, Sunstein argues that “For analogical reasoning to work well, we have to say that the relevant, known similarities give us good reason to believe that there are further similarities and thus help to answer an open question.”⁶⁴⁷ Through their comparison between racial segregation and heterosexism, Cory and Iacobucci make race and sexual orientation appear to be more similar than they really are.

To construct racism and homophobia as analogous, the divergent and interlocking nature of the histories and present realities of racism and homophobia have to be erased. In this instance

⁶⁴⁴ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 587.

⁶⁴⁵ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 587.

⁶⁴⁶ Aronovitch, “The Political Importance of Analogical Argument,” 81.

⁶⁴⁷ Sunstein, “On Analogical Reasoning,” 744.

of employing analogical reasoning to determine if direct discrimination is present, Cory and Iacobucci obscure the histories of racial, sexual, and religious discrimination by drawing an analogy between disanalogous concepts.

Later in their opinion, Cory and Iacobucci state:

The law confers a significant benefit by providing state recognition of the legitimacy of a particular status. The denial of that recognition may have a serious detrimental effect upon the sense of self-worth and dignity of members of a group because it stigmatizes them even though no economic loss is occasioned. This principle has been recognized in the cases of the U.S. Supreme Court dealing with the segregation of races. See, for example, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). In equality cases, “the main consideration must be the impact of the law on the individual or the group concerned”...The choice of a spouse is a matter of great importance to the individuals involved. A very real benefit which is derived from the payment of the spousal allowance is the recognition by the state of the societal benefits which flow from supporting a couple who, for at least a year, have established a stable relationship which involves cohabitation, commitment, intimacy and economic interdependence. This benefit of the law is very significant. Its importance can be seen by considering what the result might be if, for example, the benefit were to be denied to couples because the individuals were of different races or different religions. The public outcry would, I think, be immediate and well merited. Such legislation would clearly infringe s. 15(1).⁶⁴⁸

The operation of the law involves mobilizing concepts such as “equality” and “discrimination” which, to be applied, are compared to their application in cases deemed to be similar. This is a function of the analogical character of the common law system and its reliance on precedents. In this case, *Egan v. Canada* is compared to *Brown v. Board of Education of Topeka* to demonstrate that “The denial of [state] recognition may have a serious detrimental effect upon the sense of self-worth and dignity of members of a group because it stigmatizes them even though no economic loss is occasioned.”⁶⁴⁹ While this may be true for both *Egan* and *Brown*, the analogical reasoning used to draw the conclusion that discrimination occurs in both cases invisibilizes the different contexts and consequences of exclusion. That *Brown* deals with “the segregation of

⁶⁴⁸ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 594.

⁶⁴⁹ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 594.

racism” is mentioned but not analyzed in relation to *Egan*. Moreover, the information drawn from *Brown*, that “In equality cases, ‘the main consideration must be the impact of the law on the individual or the group concerned,’” is abstracted from the context of the Jim Crow south from which the conclusion was drawn. Cory and Iacobucci’s use of *Brown* in *Egan* reveals more about how the discourse of US racial desegregation circulates in Canada and erases histories and present realities of racism in Canada, producing Canadian racial innocence and US racist guilt.

Drawing on a famous racial discrimination case from the United States, *Brown v. Board of Education*, constructs racism as a US problem, thereby distancing Canada from racism. Despite this disavowal of Canadian racism, Supreme Court justices, representatives of the Canadian state, are able to learn from US racial segregation without examining or acknowledging Canada’s history of racial segregation and the ongoing violences of anti-Black racism in Canada. The circulation of anti-Black racism as racism itself also invisibilizes the violences to which non-Black racialized people are subjected in Canada (and the US) as well as the ongoing project of white settler colonialism in Canada (and the US) which is premised on the destruction of Indigenous life and the theft of Indigenous lands. This reference to racial segregation in the United States and the concurrent invisibilization of Canadian racisms and Canadian white settler colonialism produces Canadian innocence. As Sherene Razack notes, “Both non-elite and elite constructions of Canadian nationalism are usually inflected with comparisons between Canadian innocence and American guilt.”⁶⁵⁰ Consequently, this comparison between racial segregation in the United States and the exclusion of same-sex couples from the legal definition of “spouse” not only invisibilizes Canadian racism and white settler colonialism, but also, in the process, produces Canadian nationalism in opposition to US

⁶⁵⁰ Razack, *Dark Threats and White Knights*, 145.

racism. Additionally, by including race as a ground of discrimination, the Charter makes space for the possibility that racism can or did exist in Canada, but the state simultaneously presents the Charter as the solution to racism. Moreover, through the Charter's construction as the solution to racism, the problem of racism is presented as solved, since its inclusion in the Charter is the solution to racism envisioned by liberal Canada. As such, in addition to presenting itself as progressive on issues concerning sexuality, the Supreme Court justices in *Egan* used the case to construct Canada as "post-race," facilitating the public erasure of the concurrent intensification of racist control in Canada.

This construction of Canadian innocence was so vital to the state at this time because of its own crisis of legitimacy resulting from failed constitutional negotiations, the Québécois sovereignty movement, the government's mishandling of Mohawk resistance at Oka, and the Canadian military's violence in Somalia. Given the explicitness of Canadian racism in Oka and Somalia, this distancing of Canada from racism through the construction of racism as a US problem was particularly important for the Canadian state because it helped recuperate the nation's image as a multicultural haven.

Cory and Iacobucci construct racism as a US problem, albeit one that was resolved, at least in part, by the US Supreme Court ruling in *Brown*. They do not explicitly acknowledge the possibility that racism could exist in Canada, but this potential is implied by the inclusion of race as a ground of discrimination in the Charter. Despite this potential, the acknowledgement of the existence of racism in Canada is blocked by the analogy drawn between racial discrimination in *Brown* and sexual orientation discrimination in *Egan*. This analogy invisibilizes Canadian racism and white settler colonialism, denies the importance of context in comparing the US and Canada, and flattens the differing, though intersecting, operations of racism and heterosexism. The

analogy also discursively constructs a bizarre genealogy in which Canadian homophobia is the next form of discrimination now that US racism has supposedly been resolved. Because *Brown* is a historical racial discrimination case praised as a major victory for the US civil rights movement, its relational invocation in *Egan* not only produces this genealogy in which homophobia is the new racism, but also produces homophobia as a reality in Canada while the presence of Canadian racism is continuously denied.

Egan and the Canadian Welfare State

While Canadian liberalism in the 1990s relied on and reproduced the racist, colonial, and heterosexist logics of earlier manifestations of liberalism, it also deviated from the forms of liberalism premised on notions of limited government in that Canadian liberalism in the 1990s combined aspects of socialism with more traditional liberal principles to constitute a “social liberalism.” In this form of liberalism, which developed because of pressures from the newly emergent working class organizations in the late nineteenth century, the negative freedoms of classical liberalism were supplemented by positive freedoms, with the purported intention of “creating the conditions for all to develop to their full potential, even if this involved measures to counteract the impact of market forces.”⁶⁵¹

In the first half of the twentieth century, most social programs were operated by municipal or provincial governments, but this shifted in the latter half of the twentieth century when social policy became more integral to notions of Canadian citizenship.⁶⁵² One exception to this pattern was the federal government’s introduction of the Old Age Pension in 1928, which

⁶⁵¹ Rianne Mahon, “Varieties of Liberalism: Canadian Social Policy from the ‘Golden Age’ to the Present,” *Social Policy & Administration* 42, no. 4 (2008): 344.

⁶⁵² Rianne Mahon, “Varieties of Liberalism,” 346.

involved a cost-sharing arrangement between the federal and provincial governments.⁶⁵³ This program was expanded into the Old Age Security program in 1951.⁶⁵⁴ With this expansion, Indigenous people living in Canada became eligible for old age security for the first time, as they had been excluded in previous iterations of the legislation.⁶⁵⁵ As such, the history of the *Old Age Security Act* is embedded in white settler colonial machinations aimed at reducing the life chances for Indigenous people, particularly Indigenous Elders, in Canada. Additionally, the *Old Age Security Act* to which Egan and Nesbitt sought access was among the oldest social programs funded by the federal government. Because the federal government's funding of social programs was tied to notions of Canadian citizenship, the funds the federal government supplied to older people through the *Act* can be understood as a component of Canadian citizenship in the first half of the twentieth century. In other words, supplementing older people's income was central to what it meant to be a Canadian.

Rianne Mahon argues that Canadian welfare reform did not adhere to a neoliberal developmental path in the 1980s to the extent that it did in the United States and United Kingdom under Ronald Reagan and Margaret Thatcher; in fact, after two successive Conservative governments between 1984 and 1993, the Liberal governments of the 1990s implemented the largest cuts to social spending,⁶⁵⁶ which had a disproportionate impact on racialized people and immigrants.⁶⁵⁷ Despite the difference between Canada and the US and UK, social assistance programs such as maternity leave and sickness leave were significantly eroded

⁶⁵³ Rianne Mahon, "Varieties of Liberalism," 346.

⁶⁵⁴ Rianne Mahon, "Varieties of Liberalism," 346.

⁶⁵⁵ Brenda Elias, "Moving Beyond the Historical Quagmire of Measuring Infant Mortality for the First Nations Population in Canada," *Social Science & Medicine* 123 (2014): 129.

⁶⁵⁶ Mahon, "Varieties of Liberalism," 342, 349.

⁶⁵⁷ Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars' Press, 2006), 237.

in the 1980s.⁶⁵⁸ Purnima George and Johanna George argue that the neoliberal shift of responsibility for the well-being of older people from the state to the family paralleled increases in non-white immigration to Canada. Moreover, many people who immigrate to Canada as family class immigrants are older people who are excluded from receiving benefits under the *Old Age Security Act*.⁶⁵⁹ In order to qualify under the *Act*, a person must have lived in Canada for at least 10 years after the age of 18 and, in order to receive full benefits, must have lived in Canada for at least 40 years.⁶⁶⁰

This exclusion increases levels of poverty among older immigrants⁶⁶¹ and places pressure on younger family members to care for older family members, creating a situation of dependency that increases the chance of abuse.⁶⁶² In this way, the *Old Age Security Act* offers more benefit to people who have lived in Canada longer, and its exclusions disproportionately impact racialized people. George and George explain that the 10-year-residency requirement is waived for people from countries who have signed an International Social Security Agreement, which excludes India, China, and some countries in Africa, the Caribbean, and South America.⁶⁶³ Thus, the *Old Age Security Act* is particularly exclusionary to many older racialized people who migrate to Canada. This aligns ideologically with the *Old Age Security Act*'s earlier exclusion of Indigenous people, as both Indigenous people and non-Indigenous racialized people have been excluded from liberal conceptions of the human. Excluding Indigenous people from receiving benefits under the *Act* helped secure white settler colonialism in Canada as it reduced life chances for

⁶⁵⁸ Rianne Mahon, "Varieties of Liberalism," 347.

⁶⁵⁹ Purnima George and Johanna George, "Interrogating the Neoliberal Governmentality of the Old Age Security Act: The Case of Sponsored Immigrant Seniors," *Canadian Social Work Review* 30, no. 1 (2013): 66.

⁶⁶⁰ George and George, "Interrogating the Neoliberal Governmentality of the Old Age Security Act," 69.

⁶⁶¹ Lisa Kaida and Monica Boyd, "Poverty Variations among the Elderly: The Roles of Income Security Policies and Family Co-Residence," *Canadian Journal on Aging* 30, no. 1, 96.

⁶⁶² George and George, "Interrogating the Neoliberal Governmentality of the Old Age Security Act," 67.

⁶⁶³ George and George, "Interrogating the Neoliberal Governmentality of the Old Age Security Act," 69.

Indigenous Elders, thereby attempting to weaken Elders' ability to transmit knowledge and language to younger generations and, through population reduction, undermine Indigenous sovereignty, treaty rights, and land claims. Excluding, or partially excluding, older immigrants from receiving benefits under the *Act* generates a definition of Canadianness that is narrower than the group of people who actually possess Canadian citizenship. Legal equality is not extended to all Canadian citizens as access to old age security benefits is limited for people who have been in Canada for less than 40 years.

Moreover, in his lectures at the Collège de France, Michel Foucault conceptualizes “old-age pensions” as regulatory systems. Foucault states:

You have a whole series of mechanisms which are...regulatory systems, which apply to the population as such and which allow, which encourage patterns of saving related to housing, to the renting of accommodations and, in some cases, their purchase. Health-insurance systems, old-age pensions; rules on hygiene that guarantee the optimal longevity of the population; the pressures that the very organization of the town brings to bear on sexuality and therefore procreation; child care, education, et cetera, so you have [certain] disciplinary measures and [certain] regulatory measures.⁶⁶⁴

As such, the social security system Nesbitt sought to access as Egan's partner can be understood as a regulatory system meant to ensure the well-being of certain members of the population. The population whose well-being the social security system sought to ensure was explicitly heterosexual, given La Forest's reading that the purpose of the *Old Age Security Act* was to ensure the well-being of women whose husbands had retired. Moreover, by defining spouses as “opposite sex” couples, the *Act* was obviously intended to benefit only heterosexual couples. In this sense, the *Old Age Security Act* operated as a regulatory mechanism that incentivized normative heterosexuality. As a regulatory structure, the *Act* was also meant to ensure the well-being of the white, heterosexual population. As La Forest states, “What Parliament clearly had in

⁶⁶⁴ Michel Foucault, “*Society Must Be Defended*”: *Lectures at the Collège de France, 1975-1976* (New York: Picador, 1997), 251.

mind was to accord support to married couples who were aged and elderly, for the advancement of public policy central to society.”⁶⁶⁵ Before and after *Egan*, same-sex couples were excluded from the population that Parliament sought to support through the *Old Age Security Act*. Moreover, the *Act* excluded or offered limited benefits to people who were new(er) to Canada, especially racialized people who had migrated to Canada.

Sunera Thobani states that the creation of the Canadian “welfare state increased the legitimacy of the state, stabilized the capitalist system, and weakened class solidarity among the proletariat.”⁶⁶⁶ Moreover, Thobani argues “as the welfare state constituted itself as ‘compassionate’ and ‘caring,’ it exalted national subjects as possessive of those same qualities” and “examine[s] how the welfare state’s appropriation of the characteristic of compassion made it emblematic of Canadian national identity, thus endowing political currency on this characteristic as possessed by nationals, but not by their Others.”⁶⁶⁷ Thus, straight, white Canadians were constructed as compassionate and caring through legislation such as the *Old Age Security Act*, while some non-heterosexuals, racialized people, and Indigenous people were, in different ways and in different time periods, constructed not only as not contributing to such programs (e.g., through taxation, public service, etc.) but also as undeserving of being the recipients of such programs. While racialized people who had immigrated to Canada less than 40 years ago received partial or no access to old age security, gay and lesbian people who had lived in Canada for more than 40 years could access old age security, but not the spousal benefits under the *Old Age Security Act*. As such, while some racialized people and gays and lesbians were excluded or partially excluded from receiving old age security, they were differentially

⁶⁶⁵ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

⁶⁶⁶ Thobani, *Exalted Subjects*, 106.

⁶⁶⁷ Thobani, *Exalted Subjects*, 107.

excluded; the Canadian state excluded some migrants on the basis of how long they had legally resided in Canada and also excluded same-sex couples from receiving benefits as couples, but not as individuals unless they had resided in Canada for less than 40 years. The state excluded racialized people and non-heterosexual people using different criteria because they were conceptualized as parallel, non-overlapping groups. The Canadian state further restricted access to Old Age Security for gay men and lesbians who lived in Canada for less than 40 years as the state not only denied them full benefits but they also couldn't share any benefits they did receive with their partners through spousal support. These constitute some of the limits on Canadian compassion as only certain people and couples were constructed as deserving of support. The difference between the ways people were excluded from access to Old Age Security on the basis of how long they had legally resided in Canada and based on the sex of their partner is an effect of parallel thinking because the state imagines racialized immigrants and gay men and lesbians as two separate, non-overlapping groups.

Following Thobani, the Canadian welfare system constitutes straight, white Canadians as caring and compassionate while constructing racialized people, particularly racialized people who migrated to Canada less than 40 years ago, as the lesser and undeserving recipients of Canadian benevolence, when they are even offered access to such "benevolence." In this way, the Canadian welfare state became enmeshed with straight, white Canadian subjectivity to the exclusion of racialized people, Indigenous people, and gays and lesbians, all of whom were constructed as unable to extend compassion and underserving of receiving compassion. All of these groups differed from the straight, white, settler norm the *Old Age Security Act* was designed to support. While Parliament and the Court excluded the groups for different reasons, the effect of their disqualification was the same in that they did not receive old age security

benefits, suggesting an analogical logic was at play that constructed the difference of each group from the straight, white, settler norm as making them similarly undeserving of state support. Hence, the *Old Age Security Act* was both heterosexist and racist, designed to benefit straight, white individuals and couples, both materially and symbolically. Moreover, Thobani asserts that:

The development of social programs in that country [Britain] had as much to do with the state's global ambitions of maintaining its hegemony over its rapidly disintegrating empire as it did with liberal ideals of expanding citizenship rights on the home front. Liberalism was being compelled to redefine itself at the national level by increasing poverty and destitution that threatened to pull apart the national social fabric; by the demands of the newly enfranchised masses; and by the electoral challenge posed by the growing support for socialist and social-democratic political parties. In North America, these national concerns were also prevalent. Moreover, the economic upheavals of the Great Depression of the 1930s, and the two world wars, helped the new liberalism to garner the support of North American elites – liberals and conservatives alike – who came to accept the inevitability of greater state intervention in the economy if the capitalist system was to survive and if its volatile economic cycles were to be stabilized.⁶⁶⁸

Therefore, the creation of the Canadian welfare system was a reaction to political and economic pressures rather than the liberal ideal of equality. It was such liberal ideals, however, that became the dominant narrative of the Canadian welfare system. Thobani continues:

The welfare state's characterization of the nation-state as shaped by the ethic of compassion, which was to be the basis for their social solidarity, became an important means by which a claim to western civilizational and moral superiority could be reconstituted.⁶⁶⁹

This reconstitution of western superiority was premised on the marginalization of non-straight and non-white Others whose access to the welfare system that formed the basis of these claims to western superiority was limited both materially and discursively. In this way, the *Old Age Security Act* and other welfare legislation worked to construct Canada and straight, white, settler

⁶⁶⁸ Thobani, *Exalted Subjects*, 111.

⁶⁶⁹ Thobani, *Exalted Subjects*, 112.

Canadians as compassionate and inclusive at the same time as the actual legislation excluded some queer and racialized people. That the state's legal apparatus constructed different ways to exclude queer people and racialized people reflects the parallel logic through which the state imagined these groups.

The analogies between race and sexual orientation in *Egan* reflected pre-existing ideas about race and sexuality; these ideas were used to justify the exclusion of same-sex couples and some racialized people from receiving benefits or full benefits under the *Old Age Security Act*. The idea that racism did not exist in Canada facilitated the exclusion of older people who had been in Canada for less than 10 or 40 years from receiving full old age security benefits because the law did not explicitly use race as a category of exclusion, despite the racialized effects of these exclusions. The reciprocal agreement exemption, which states that the 10 to 40 year exclusion does not apply if Canada has a reciprocal old age security agreement with a person's country of origin, is a racist structure because many of the countries with which Canada does not have reciprocal agreements are in parts of the world where the majority of the population is racialized. This is a form of racial exclusion that is more subtle than the "no blacks" example of direct discrimination and of which it is harder to prove the existence because not all racialized people who have lived in Canada for less than 10 or 40 years are excluded. This less overt permutation of racism is representative of racism in Canada, where racism clearly operates but is continuously denied and elided.

In analogizing race and sexual orientation, the specificity of the operation of heteronormativity in Canadian society is also lost. Just as racism is hegemonically conceptualized as systemic and individual acts of discrimination and exclusion, rather than as the result of the white supremacist, settler colonial structure of Canada that liberalism upholds,

homophobia is conceptualized in isolation from the heteronormativity that structures Canadian society. The Supreme Court fails to take into consideration the ways in which excluding same-sex couples from receiving benefits under the *Old Age Security Act* not only constitutes direct discrimination but also reifies the heteronormative structuring of Canadian society. In *Egan*, La Forest describes marriage in this way:

its [marriage's] ultimate raison d'être...is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual.⁶⁷⁰

This passage was quoted dozens of times during the parliamentary debates about the legalization of same-sex marriage between 2004 and 2005, demonstrating that La Forest's opinion in *Egan* became deeply enmeshed in socially conservative political agendas and worked to secure marriage as an exclusively heterosexual institution for the next twenty years.

Because dominant understandings of racism exclude an analysis of the white supremacist structures that work to perpetuate it, and because sexual orientation is analogized to *this* understanding of racism, conceptualizations of homophobia are also detached from analyses of the structures of heterosexism that ensure the perpetuation of homophobia. Moreover, the analogy produces race and sexual orientation as parallel, rather than intersecting, phenomena such that the experiences and existences of racialized queer people are rendered unimaginable.

While sexual orientation was found to be an analogous ground of discrimination in *Egan*, the exclusion of same-sex couples from receiving benefits under the *Old Age Security Act* reveals the consistency of Canadian homophobia before and after *Egan*, a homophobia that helped sustain racist governance in Canada by upholding the straight, white settler norm. The Supreme

⁶⁷⁰ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 515.

Court found the heterosexual nature of marriage to be such a central social good that it considered direct discrimination against same-sex couples to be justifiable at the same moment it declared sexual orientation was a protected ground of discrimination. Just as racism permeated Canadian society before and after the Charter, the finding that sexual orientation was an analogous ground of discrimination did not remove homophobia from the Canadian legal system or from Canadian society more broadly.

Conclusion

The Canadian Supreme Court's construction of race and sexual orientation as analogous grounds of discrimination in *Egan* flattens the differences between racism and heterosexism, produces racism and heterosexism as parallel rather than intersecting systems of oppression, and invisibilizes, or, at best, ahistoricizes Canadian racism. The Supreme Court's treatment of race in *Egan* demonstrates the degree to which racism is erased from conceptions of contemporary Canada. While there was room to acknowledge the existence of homophobia, and even to justify the perpetuation of heterosexism, racism in Canada in the mid-1990s was continuously rendered unimaginable through references to US racism. This demonstrates both the centrality of race to constructions of Canada, as the continual elision of racism from such constructions was necessary for the production of Canada as non-racist or post-race, and the desire to recuperate Canada's image as non-racist in the wake of Oka and Somalia. The Charter acknowledges the possibility of racism in Canada through its inclusion of race as a protected ground of discrimination, but every explicit reference to race in *Egan* was historicized (i.e., "no blacks") and/or situated in the US (i.e., *Brown*). In this way, the Canadian Supreme Court decision in *Egan* reproduces Canada as free from racism, a discursive move that denies the violence to which racialized and Indigenous people were and are subjected in Canada.

Additionally, the fact that the Canadian Supreme Court found sexual orientation to be an analogous ground of discrimination under section 15 of the Charter while justifying its denial of extending benefits under the *Old Age Security Act* to Nesbitt demonstrates the limits of social liberalism in a neoliberal era. While Egan and Nesbitt were offered the negative right to be free from discrimination because of the Court's ruling that sexual orientation was an analogous ground of discrimination, the Supreme Court denied them access to the Canadian welfare state as a couple. Old age security functioned as a normalizing mechanism, incentivizing both heterosexuality and private or semi-private care for older immigrants who were excluded or partially excluded from receiving benefits under the *Act*. This differential exclusion demonstrates the parallel thinking employed to exclude racialized people and non-heterosexual people, as the state understood them to be two parallel, non-overlapping groups of people to whom the full benefits of Canadian citizenship should not be extended.

As such, the *Old Age Security Act*, as a form of social liberalism, continued the heterosexist, racist, and colonial legacies of traditional liberalism, but now justified this heterosexism, racism, and imperialism through neoliberal logics. Offering the protections of the constitutionally embedded Charter to people who experienced discrimination on the basis of sexual orientation or race obfuscated the ongoing operations of racism and homophobia in Canada. While the Charter may delegitimize some forms of discrimination on the basis of race or sexual orientation, it simultaneously legitimized the privatization of income support for same-sex couples and many people who were not born in Canada.

Because supplementing the income of older adults, and providing other forms of social welfare, was central to the ways in which Canadians constructed themselves as caring and compassionate, *Egan* demonstrates that this compassion did not extend to same-sex couples in

1995. Concurrently, the compassion that was integral to Canadians' self-exaltation through the social welfare system did not extend to people who had been in Canada for less than 10 years and was only partially extended to people who had lived in Canada for less than 40 years. Because of the countries with which Canada formed reciprocal social welfare agreements, many of the people who were not born in Canada and who were denied access to the *Old Age Security Act* were racialized. In this way, the parameters of social welfare qualifications not only demarcated the limits of Canadian compassion but also ideologically excluded same-sex couples and some racialized people who migrated to Canada from Canadian citizenship, whether they were legal citizens or not.

The Supreme Court decision in *Egan* demonstrates how the state used analogical reasoning to position race and sexual orientation as parallel phenomena, which in turn legitimized the parallel regulatory mechanisms in the *Old Age Security Act* that differentially excluded same-sex couples and racialized immigrants. Supreme Court justices analogized sexual orientation to US or historical Canadian racism, positioning racism as absent from contemporary Canada and obfuscating the racist effects of the immigration exclusion regulations of the *Old Age Security Act*.

Chapter 5: Race Analogies, Multiculturalism, and the Parliamentary Debates about Same-Sex Marriage

In this chapter, I analyze the 2004–2005 House of Commons debates about the legalization of same-sex marriage. I begin by outlining the legal situation of same-sex marriage in the late 1990s and early 2000s that prompted the debates. Next, I contextualize the debates within the heightened xenophobia, racial surveillance, and racist violence that defined the post-9/11 period in Canada. I situate my thesis within this context and argue that MPs used analogical reasoning in the debates to position racism in the US or in Canada’s past, which enabled them to construct homophobia as the “new racism.” The analogies worked in support of Canada’s “war on terror” by situating homophobia as *the* contemporary form of discrimination, which helped position Canada as “post-race” during a period of intensifying Islamophobia. Additionally, MPs constructed the examples of historical racism they drew on (e.g., Jim Crow segregation, the Chinese head tax, Japanese internment) as epitomizing racism. These forms of historical racism targeted specific racial groups more explicitly than contemporary anti-terrorism legislation, creating discursive distance between what was understood as racism and the racism of anti-terrorism legislation. As such, the parliamentary debates about the legalization of same-sex marriage constructed Canada as respectful of both racial and sexual diversity while simultaneously providing ideological support for the intensification of Canada’s racist anti-terrorism and national security regime.

Legal Landscape for the Legalization of Same-Sex Marriage

In June 1999, the Canadian Parliament held its first vote on same-sex marriage in response to a resolution introduced by Reform Party member Eric Lowther.⁶⁷¹ A vast majority of parliamentarians voted in favour of the resolution, affirming the definition of marriage as “the union of one man and one woman to the exclusion of all others.”⁶⁷² In an attempt to highlight Liberal hypocrisy during the 2004–2005 debates about same-sex marriage, Conservative MPs frequently pointed out that prominent members of the Liberal Party, including Prime Minister Paul Martin, had supported the 1999 resolution. Although this resolution had limited legal implications, it signalled Parliament’s unwillingness to change the definition of marriage to include same-sex couples.

Soon after passing the resolution, the government introduced the *Modernization of Benefits and Obligations Act* (Bill C-23) in February 2000, which extended benefits and obligations to same-sex common law couples in response to the Supreme Court ruling in *M v. H*. This ruling stated that Ontario’s *Family Law Act*’s definition of spouses as a man and woman violated the Charter.⁶⁷³ In March 2000, Parliament voted in favour of this omnibus bill which included a clause stating “the amendments made by this act do not affect the meaning of the word ‘marriage,’ that is, the lawful union of one man and one woman to the exclusion of all others.”⁶⁷⁴

⁶⁷¹ M. Morgan Holmes, Linda A. Mooney, David Knox, and Caroline Schacht, *Understanding Social Problems*, 5th ed. (Toronto: Nelson Education, 2016), 308.

⁶⁷² Jonathan Malloy, “Canadian Evangelicals and Same-Sex Marriage,” in *Faith, Politics, and Sexual Diversity in Canada and the United States*, ed. David Rayside (Vancouver: UBC Press, 2011), 150.

⁶⁷³ *M. v. H.* (1999) 2 S.C.R. 3. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1702/index.do>; Janet L. Hiebert, *Charter Conflicts: What Is Parliament’s Role?* (Montreal: McGill-Queen’s University Press, 2002), 193; Manon Trembley, “Introduction,” in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Trembley (Vancouver: UBC Press, 2015), 21.

⁶⁷⁴ Yuval Merin, *Equality of Same-Sex Couples: The Legal Recognition of Gay Partnerships in Europe and the United States* (Chicago: University of Chicago Press, 2002), 162.

As Sarah Carter explains, monogamous, life-long, heterosexual marriage has not always been the norm in Canada; missionaries and government officials went to great lengths to institutionalize and normalize this form of marriage in the late nineteenth century.⁶⁷⁵ These reformers imposed life-long, monogamous marriage between a man and a woman on both Indigenous and non-Indigenous people whose kinship, sexual, and romantic structures were much more diverse and included same-sex marriage.⁶⁷⁶ Government officials understood monogamous, life-long marriage between a man and a woman to be imperative to the stability of the nation in part because of the ways in which this form of relationality institutionalized patriarchal gender roles and secured male white settler hegemony. But, as Carter argues, marriage laws were not enforced simply to maintain unequal gender relations; government officials believed life-long, monogamous marriage between a man and a woman “would help maintain the new settlers’ social and sexual distance from the Aboriginal population.”⁶⁷⁷ Therefore, throughout the late nineteenth century, government officials enforced this form of marriage on the people in Canada as a way to institutionalize patriarchal gender roles and secure white settler hegemony.

Soon after the March 2000 legislation passed, provincial courts began ruling that the “opposite sex” definition of marriage violated the equality provisions of the Charter. In *Halpern v. Canada* in 2003, the Ontario Superior Court of Justice ruled in favour of same-sex couples who had had their marriage licences denied, arguing that the exclusion of same-sex couples from marriage would not survive a Charter challenge, nor was it a “reasonable limit” under section 1 of the Charter.⁶⁷⁸ Section 1 states “The *Canadian Charter of Rights and Freedoms* guarantees the

⁶⁷⁵ Carter, *The Importance of Being Monogamous*, 3.

⁶⁷⁶ Carter, *The Importance of Being Monogamous*, 5.

⁶⁷⁷ Carter, *The Importance of Being Monogamous*, 6.

⁶⁷⁸ Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*, 154.

rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”⁶⁷⁹ What can be “demonstrably justified in a free and democratic society” was left up to judicial interpretation. As I discussed in Chapter 4, the Supreme Court determined that refusing to extend social welfare benefits to same-sex couples was a “reasonable limit” of the Charter in *Egan*. Following the ruling in *Halpern*, Ontario became the first province to recognize same-sex marriage. Less than a month later, in *Barbeau v. British Columbia*, the British Columbia Court of Appeal overturned a lower court decision and ruled that prohibitions on same-sex marriage were unconstitutional.⁶⁸⁰

In June 2002, the Parti Québécois government passed Bill 84, which conferred all of the benefits of marriage to same-sex couples.⁶⁸¹ In September 2002, the Quebec Superior Court ruled in *Hendricks and Leboeuf v. Quebec* that Parliament’s prohibition on same-sex marriage was discriminatory under the Charter and, as such, the prohibition would become inoperative in Quebec in two years.⁶⁸² Upon the couple’s appeal, the Quebec Court of Appeal struck down the two-year waiting period because same-sex marriage had already been legalized in Ontario and BC.⁶⁸³

In the Yukon in July 2004 the court challenge to the prohibition on same-sex marriage in *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* was successful, with the court basing its decision on the Ontario, BC, and Quebec cases.⁶⁸⁴ In September 2004 in Manitoba, in November 2004 in Nova Scotia and Saskatchewan, and in December 2004 in Newfoundland and

⁶⁷⁹ *Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1). <https://laws-lois.justice.gc.ca/eng/const/page-15.html>

⁶⁸⁰ Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*, 154.

⁶⁸¹ Drouin, *Shakespeare in Québec*, 32.

⁶⁸² Drouin, *Shakespeare in Québec*, 33.

⁶⁸³ Drouin, *Shakespeare in Québec*, 33.

⁶⁸⁴ Rayside, Sabin, and Thomas, *Religion and Canadian Party Politics*, 321; Barrett, “The Present Status of the Law of Marriage in the United States and Abroad,” 132.

Labrador, Charter challenges were similarly successful in overturning prohibitions on same-sex marriage.⁶⁸⁵ The provincial government in New Brunswick stated that it would only recognize same-sex marriage if compelled to do so by the federal government, but, in June 2005 the Court of Queen’s Bench of New Brunswick ruled in favour of four same-sex couples who had challenged the provincial government’s prohibition on same-sex marriage.⁶⁸⁶

In her analysis of the affidavits couples presented to the courts in Ontario and British Columbia, Suzanne Lenon argues that the affidavits relied on notions of the ordinary citizen which “requires aligning its discursive representations with a racialized neoliberal citizenship that holds whiteness as its unspoken yet aspirational ideal.”⁶⁸⁷ As such, Lenon suggests that “whiteness functions as a constitutive element in the victory of same-sex marriage in Canada.”⁶⁸⁸ The debates over same-sex marriage reveal contested notions of Canada and Canadian identity and, as Lenon argues:

the discursive terrain of nationalism and national identity so central to these debates situates the issue of same-sex marriage as a pedagogical practice of (racialized) civility, one that secures the inscription of whiteness that underpins Canadian national identity.⁶⁸⁹

Discursively attaching whiteness to same-sex couples facilitated the construction of same-sex marriage as a social good.

Faced with these provincial court rulings, the federal government had the option of appealing the ruling at the Supreme Court of Canada. The Liberal government decided not to appeal these cases and instead drafted legislation that would legalize same-sex marriage, the

Proposal for an Act respecting certain aspects of legal capacity for marriage for civil

⁶⁸⁵ Everitt, “Mobilization on the Periphery,” 132; Barrett, “The Present Status of the Law of Marriage in the United States and Abroad,” 132.

⁶⁸⁶ Everitt, “Mobilization on the Periphery,” 132; Lenon, ““Why is Our Love an Issue?”” 353.

⁶⁸⁷ Lenon, ““Why is Our Love an Issue?”” 353.

⁶⁸⁸ Lenon, ““Why is Our Love an Issue?”” 353.

⁶⁸⁹ Lenon, “What’s So Civil About Marriage?” 27.

purposes.⁶⁹⁰ The federal government asked the Supreme Court of Canada to issue a reference decision on same-sex marriage, specifically asking the court to decide if Parliament had the legal authority to implement the *Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes*, if the proposal was consistent with the Charter, if the freedom of religion guaranteed under the Charter would “protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs,” and if the stipulation that marriage could only be between one man and one woman was consistent with the Charter.⁶⁹¹ While the Court was developing its response, Prime Minister Jean Chrétien resigned and was replaced by Paul Martin. The Supreme Court found that Parliament did have the authority to change the definition of marriage, that extending marriage to same-sex couples was consistent with the Charter, and that the freedom of religion guaranteed under section 2 of the Charter would protect religious officials from being compelled to perform same-sex marriages. The Court declined to answer the final question, whether the “opposite-sex” requirement for marriage was consistent with the Charter.

Canadian Multiculturalism after 9/11

While these changes to the legal landscape of same-sex marriage were taking place, multiculturalism was being reconstructed as a failed nationalist project in the aftermath of 9/11. As Sedef Arat-Koç argues, since 9/11, “we are in a period of retreat from multiculturalism and a politics of inclusion.”⁶⁹² Sherene Razack asserts that:

⁶⁹⁰ Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*, 154.

⁶⁹¹ Reference re Same-Sex Marriage, Supreme Court Judgments, 2004 SCC 79, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do>

⁶⁹² Sedef Arat-Koç, “Whose Transnationalism? Canada, ‘Clash of Civilizations’ Discourse and Arab and Muslim Canadians,” in *Asian Canadian Studies Reader*, ed. Roland Sintos Coloma and Gordon Pon (Toronto: University of Toronto Press, 2017), 316.

in this climate, where the suspension of rights is legally authorized as necessary in what is called the “war on terror,” there are also calls to end multiculturalism, to increase surveillance of immigrants and refugees, and to further limit their fundamental rights.⁶⁹³

While multiculturalism retained political currency as a defense against the accusation of racism, the government was eroding the legal rights of racialized people, particularly those of Muslim and Arab people. The legalization of same-sex marriage was part of the same discursive regime that constructed Muslim and Arab people as outside of western constructs of civility and thus undeserving of equal rights and access to citizenship. As Jasbir Puar explains in the European context:

Gay marriage, “less about gay rights and more about codifying an ideal of European values,” has become a steep but necessary insurance premium in Europe, whereby an otherwise ambivalent if not hostile populace can guarantee that extra bit of security that is bought by yet another marker in the distance between barbarism and civilization, one that justifies further targeting of a perversely sexualized and racialized Muslim population (pedophilic, sexually lascivious and excessive, yet perversely repressed) who refuse to properly assimilate, in contrast to the upright homosexuals engaged in sanctioned kinship norms. Gay marriage reform thus indexes the racial and civilizational disjunctures between Europeans and Muslims.⁶⁹⁴

Similarly in Canada, the legalization of same-sex marriage inscribed tolerance of diversity as a Canadian value at the same time as the anti-Muslim discourses that helped constitute same-sex marriage as a politically viable possibility were being mobilized to limit Muslim people’s access to citizenship and rights. As Sirma Bilge demonstrates in the Canadian context:

In an era showily declared post-racial and anti-multiculturalist, yet committed to diversity, this ascendancy of gender/sexuality within the rhetorics and politics of “clash of civilizations” constitutes a new inflection of racism.⁶⁹⁵

⁶⁹³ Razack, *Casting Out*, 4.

⁶⁹⁴ Puar, *Terrorist Assemblages*, 20.

⁶⁹⁵ Bilge, “Mapping Québécois Sexual Nationalism in Times of ‘Crisis of Reasonable Accommodations,’” 305.

This is a period in which gay and lesbian rights gain ascendancy in part because of the ways in which their incorporation into the Canadian state legitimizes the racist denial and suspension of rights for Muslim and Arab people in Canada.

The intensification of security and surveillance in the post-9/11 period also worked to secure white settler colonialism in Canada. As Lindsay Balfour asserts, “designations of ‘terrorist’ extend beyond the Muslim community and towards Indigenous people as well.”⁶⁹⁶

Craig Proulx describes how:

As early as 2004, the Privy Council Office declared “domestic extremism” as a threat to the political and economic security of Canada, particularly with regard to “critical infrastructure.” Indigenous peoples, constructed as domestic extremists, became a prime target of the security state.⁶⁹⁷

Since then, Indigenous and Northern Affairs Canada, the Canadian Security Intelligence Service (CSIS), and the RCMP have developed greater inter-agency cooperation and a collective mandate to monitor “First Nations leaders, participants and outside supporters of First Nations occupations and protests.”⁶⁹⁸ In 2005, the Department of National Defense drafted a counterinsurgency manual “wherein radical Native American organizations, particularly the Mohawk Warrior Society, were cited as insurgent security threats without differentiating them from Hezbollah and Islamic Jihad.”⁶⁹⁹ In this way, the increased securitization of the Canadian state following 9/11 intensified the surveillance to which Indigenous people were subjected, although, as Audra Simpson notes, surveillance has been central to the white settler colonial project of Canada since its inception.⁷⁰⁰

⁶⁹⁶ Balfour, “Reframing Redress after 9/11,” 26.

⁶⁹⁷ Proulx, “Colonizing Surveillance,” 88.

⁶⁹⁸ Proulx, “Colonizing Surveillance,” 88.

⁶⁹⁹ Proulx, “Colonizing Surveillance,” 89.

⁷⁰⁰ Simpson, *Mohawk Interruptus*, 127.

In the US context, Christian right leader Charles Colson has argued that same-sex marriage causes terrorism and suggests its legalization is “like handing ‘moral weapons of mass destruction to those who would use America’s depravity to recruit more snipers, more hijackers, and more suicide bombers.’”⁷⁰¹ Carmen Lugo-Lugo and Mary Bloodsworth-Lugo also pick up on connections between terrorism and same-sex marriage, arguing that processes of “browning” in the US transform Iraqis, immigrants, and gays and lesbians into enemies of the US from which the US must protect itself. “Browning” immigrants, “terrorists,” and same-sex couples, they argue:

marks a purposeful pattern of articulating perceived threats to the security of the national imaginary as originating from racialized (that is, “othered”) bodies and spaces. Consequently, governmental and cultural rhetoric has served as a twenty-first-century conventional oven in which the threatening other is “brownd to perfection.”⁷⁰²

Brown, Lugo-Lugo and Bloodsworth-Lugo argue, is a “racial project”⁷⁰³ that “relies on and deploys a non-white imagery.”⁷⁰⁴ Lugo-Lugo and Bloodsworth-Lugo suggest that opponents of same-sex marriage “brown” gay and lesbian couples by constructing them, like immigrants and terrorists, as threats to the US nation-state. According to this logic, gay and lesbian couples are racialized as brown, even if they are white. While Lugo-Lugo and Bloodsworth-Lugo put forth this argument to highlight that similar rhetorics are used to support the Patriot Act, deportations, and bans on same-sex marriage, I would suggest that the argument that same-sex couples are racialized as brown misses the ways in which same-sex couples, particularly in the fight for

⁷⁰¹ Andrea Smith, “Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism,” in *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*, ed. Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen (Tucson: University of Arizona Press, 2011): 58-59.

⁷⁰² Carmen R. Lugo-Lugo and Mary K. Bloodsworth-Lugo, “475° from September 11: Citizenship, Immigration, Same-Sex Marriage and the Browning of Terror,” *Cultural Studies* 24, no. 2 (2010): 238.

⁷⁰³ Lugo-Lugo and Bloodsworth-Lugo, “475° from September 11,” 240.

⁷⁰⁴ Lugo-Lugo and Bloodsworth-Lugo, “475° from September 11,” 243.

same-sex marriage, mobilize whiteness to construct themselves as “normal.”⁷⁰⁵ Moreover, equating sexuality with race in this way analogizes race and sexuality, transforms non-heterosexual sexualities into a form of racialization, and in the process erases race from the analysis.

Other analogies between race and sexual orientation similarly work to erase race and produce a “post-race” Canada. The analogies MPs drew on in the parliamentary debates about legalizing same-sex marriage facilitated the divide between constructions of white settler Canadians as civilized through their acceptance of same-sex marriage and constructions of Muslims as barbaric because of their supposed homophobia and intolerance of sexual diversity. While in the US opposition to same-sex marriage was constructed as patriotic and civilized, in Canada and parts of Europe acceptance of sexual diversity, including same-sex marriage, was constructed as civilized. So in expressing support for the legalization of same-sex marriage, the Canadian state was not only establishing itself as progressive, it was simultaneously constituting Canadian difference from the US. The logic was that just as Canada supposedly respects diversity through multiculturalism while the US expects assimilation through the melting pot, Canada respects sexual diversity through its support for same-sex marriage while the US expects conformity and incentivizes heteronormativity. In this way, Canadian support for same-sex marriage not only constructs Canada as civilizationally superior vis-à-vis homophobic and improperly sexual Muslim others but also as more progressive and advanced than the US.

In the debates, analogies between race and sexual orientation constructed racism as historical and/or a US phenomenon, which constituted Canada as free from racism. This constructed lack of racism is one of the ways in which Canada becomes constructed as civilized.

⁷⁰⁵ Lenon, ““Why is Our Love an Issue?”” 353.

At the same time, the parallel construction of gay people as white and racialized people as straight (but non-heteronormative), coupled with the construction of white Canadians as tolerant of sexual diversity and racialized people as homophobic, revived the analogical reasoning that had already been established as a mode of governing race and sexuality in *Egan*, for example, and also fuelled the constructed division between white civility and Muslim/Arab barbarism.

Race Analogies in the Debates about Same-Sex Marriage

Throughout the debates on same-sex marriage, MPs analogized race and sexual orientation, frequently comparing the denial of same-sex marriage to institutionalized US racism in the form of slavery, Jim Crow segregation, and anti-miscegenation laws. Drawing analogies between past US racism and the inability of same-sex couples to have their relationships legally recognized as marriage positions Canada as “post-race” by distancing contemporary Canada from racism both geographically and temporally. These analogies simultaneously situate the legalization of same-sex marriage as the next stage of a progress march that has already seen an end to the forms of racism included in the analogies—given that slavery has been abolished in the US and Jim Crow and anti-miscegenation laws are no longer in place (though these systems persist in reconfigured forms)—and in which lack of access to same-sex marriage is the last vestige of discrimination in a progressive Canada. As Rinaldo Walcott asserts “The narrative goes something like this: first there was queer repression; second there was gay rebellion and liberation; third there was rights talk; and now we/queers in the Western world are free and full citizens (with marriage in Canada, Spain, etcetera).”⁷⁰⁶ This queer progress narrative marks the legalization of same-sex marriage as the limit point for claims making. At the same time, as Walcott points out, this

⁷⁰⁶ Walcott, *Queer Returns*, 147.

progress narrative infantilizes racialized queer people and queer people in the Global South by situating them in the “childhood” phase of the queer progress narrative.⁷⁰⁷ Moreover, the debates positioned homophobia as a relatively recent phenomenon, thereby invisibilizing the repression of same-sex intimacies and valorization of heteronormativity that had been central to western civilization’s constructions of family, labour, and nation for centuries. This positioning simultaneously obfuscated the ways in which colonial and white settler colonial conceptions of heterosexuality/non-heterosexuality informed constructions of civility/barbarity and fuelled colonial and white settler colonial violence.

In this section, I argue that analogies between racial violence and discrimination and prohibitions on same-sex marriage worked to secure white settler hegemony in Canada by erasing Canada’s history of anti-Blackness in the forms of slavery and Black/white segregation, invisibilizing white settler colonialism in Canada, constructing racial discrimination in Canada as historical rather than ongoing, and erasing Islamophobia from the narrative. While some forms of racial discrimination in Canada were acknowledged (e.g., the Chinese head tax, internment of Japanese people, turning back of the Komagata Maru, etc.), anti-Blackness was continuously positioned in the US. Moreover, the forms of anti-Black racism to which the lack of access to same-sex marriage was analogized (chattel slavery, Jim Crow segregation, anti-miscegenation laws) were constructed as the epitome of racism; this construction of historical US anti-Black racism as the defining example of racism positioned institutional racism that took different forms, notably the Canadian state’s Islamophobia, as somehow different from racism and therefore justifiable. By invisibilizing and historicizing racial violence in Canada, the debates about same-sex marriage constructed contemporary Canada as free of racial inequality and white

⁷⁰⁷ Walcott, *Queer Returns*, 147.

settler colonialism during a period of intensifying Islamophobic and white settler colonial state regulation and violence. In collapsing the differences between racial violence and prohibitions on same-sex marriage, MPs also constructed homophobia as the contemporary “-ism” that *replaces*, rather than coexists with, racism. In this way, the debates over the legalization of same-sex marriage demonstrate how homophobia was constructed as superseding racism.

While the idea that homophobia is “the new racism” is relatively new,⁷⁰⁸ the underlying logics of this construction have a longer history. As Amy Stone and Jane Ward argue:

the contemporary deployment of race by both movements (gay and anti-gay) concurrently is linked to the longstanding use of Blackness by Whites on both sides of anti-gay referendum and initiative campaigns since the late 1970s, as well as to the even longer history of the racialization of homosexuality in Europe and the United States.⁷⁰⁹

Conservative Christian groups who oppose same-sex marriage in the US have often also historically opposed racial justice around immigration and sometimes supported Jim Crow style segregation.⁷¹⁰ Since the 1990s, however, some of these groups have sought Black people’s support by constructing Black rights in opposition to gay rights.⁷¹¹ The preservation of white supremacy is central to this constructed opposition between Black rights and gay rights. As Stone and Ward argue:

From nineteenth-century physicians to twentieth-century religious leaders, White heterosexuals seeking to regulate both queerness and Blackness have worked not only to define these as comparable but mutually exclusive formations (Somerville, 2000), but to ensure that zero-sum “gay versus Black” frameworks remain at the heart of the most significant gay rights debates in the United States.⁷¹²

⁷⁰⁸ Stone and Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black,’” 606; Wahab, “Calling ‘Homophobia’ into Place (Jamaica),” 921.

⁷⁰⁹ Stone and Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black,’” 606.

⁷¹⁰ Stone and Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black,’” 607.

⁷¹¹ Stone and Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black,’” 607.

⁷¹² Stone and Ward, “From ‘Black People are not a Homosexual Act’ to ‘Gay is the New Black,’” 607.

Analogies between race and sexual orientation in Canada also support white settler hegemony. As will be discussed later in this chapter, in 2006, as part of his attempt to “revisit” the issue of same-sex marriage, Stephen Harper tried to demonstrate that same-sex marriage was incompatible with “multicultural values.” As Stone and Ward point out, the logic of analogies (i.e., the idea that sexual orientation is like race) depends on the contention that they are “mutually exclusive formations.”

As Sharon Elizabeth Rush argues in the US context:

equal protection analysis under the Constitution is structured around analogical reasoning, forcing all groups that allege discrimination as a denial of equal protection to analogize their cases to race discrimination cases.⁷¹³

Rush suggests that analogical reasoning is a useful strategy in arguing sexual orientation discrimination cases because it makes abstract concepts more concrete, reduces people’s discomfort in talking about sex, and helps people understand the “confusing” concept of sexual orientation.⁷¹⁴ More importantly, and as I discussed in more depth in Chapter 4, analogical reasoning is foundational to the operations of liberalism, which is premised on racist, white settler colonial heteropatriarchy. Analogical reasoning, for example through the use of legal precedents, helps to maintain the existence of the racist, white settler colonial, heteropatriarchal Canadian liberalism. Janet Halley states “some ‘like race’ arguments are unjustifiably coercive” but argues that:

“Like race” arguments are so intrinsically woven into American discourses of equal justice that they can never be entirely forgone. Indeed, analogies are probably an inescapable mode of human inquiry and are certainly so deeply ingrained in the logics of American adjudication that any proposal to do without them altogether would be boldly utopian.⁷¹⁵

⁷¹³ Sharon Elizabeth Rush, “Equal Protection Analogies—Identity and ‘Passing’: Race and Sexual Orientation,” *Harvard BlackLetter Law Journal* 13, no. 65 (1997): 67.

⁷¹⁴ Rush, “Equal Protection Analogies—Identity and ‘Passing,’” 72.

⁷¹⁵ Janet E. Halley, “‘Like Race’ Arguments,” in *What’s Left of Theory? New Work on the Politics of Literary Theory*, ed. Judith Butler, John Guillory, and Kendall Thomas (New York: Routledge, 2000), 46.

As such, gay and lesbian activists often find themselves arguing that sexual orientation is like race, homophobia is like racism, and gay and lesbian people are like a racial group.⁷¹⁶ As I discussed in Chapter 4, by taking what has been called an “ethnic minority approach” to gay and lesbian politics,⁷¹⁷ gay and lesbian activists entered into the competitive framework of Canadian multiculturalism in which they draw on the strategies of and compete for visibility and resources with people working for racial justice. Because the examples of racism these analogies draw upon are instances of more explicitly racist laws than some of those that have been created to target Muslim people in the post-9/11 period, the use of these analogies also creates distance between contemporary Islamophobic state violence and mainstream understandings of racism. In this way, race/sexuality analogies strengthen the construction of contemporary Islamophobia as more justifiable than historical examples of racism.

William Eskridge demonstrates that the Canadian judiciary has determined that “sexual orientation is like race and sex in that it is a deeply personal characteristic that has been the basis for social and political disadvantage resulting from stereotyping and prejudice.”⁷¹⁸ In *Egan*, this reasoning led the Supreme Court to find that sexual orientation is “analogous” to other classifications listed in section 15(1) of the Charter,⁷¹⁹ thereby institutionalizing the analogy between race and sexual orientation in interpretations of the Canadian constitution. This language of a “deeply personal characteristic” comes from *Egan* (discussed in Chapter 4), but Supreme Court justices repeated this phrase in *Vriend* (1998) and *M v H* (1999), two subsequent

⁷¹⁶ Halley, “‘Like Race’ Arguments,” 47.

⁷¹⁷ Nash, “Contesting Identity,” 122.

⁷¹⁸ William N. Eskridge Jr., “The Same-Sex Marriage Debate and Three Conceptions of Equality,” in *Marriage and Same-Sex Unions: A Debate*, ed. Lynn D. Wardle, Mark Strasser, William C. Duncan, and David Orgon Coolidge (Westport: Praeger, 2003), 169.

⁷¹⁹ Eskridge, “The Same-Sex Marriage Debate and Three Conceptions of Equality,” 169.

cases dealing with sexual orientation. The language of “deeply personal characteristic” is the new language of “immutability” that the Supreme Court institutionalized in *Egan*. In *Egan*, Supreme Court justices referred to “so-called ‘immutable’ characteristics,” but chose not to deploy the language of “immutability” without scare quotes.⁷²⁰ The phrase “deeply personal characteristic” reflects the way “immutability” becomes liberally inscribed in rulings that do not rely on that explicit language. While “deeply personal characteristic” avoids the language of “immutability,” it retains the biological essentialist ideas that underwrote “immutability.” This language of “deeply personal characteristic” also uses this biological understanding of race to secure the liberal order by focusing on race as an *individual* characteristic to avoid addressing the much broader *systemic* nature of racism that structures the world. The language of “deeply personal characteristic” discursively transforms both race and sexual orientation into biological realities rooted in the sexualized history of scientific racism. Moreover, by focusing on the similarities between race and sexual orientation, legal analogies between race and sexual orientation obfuscate the divergent histories and effects of racism and homophobia, as well as the overlapping histories of constructions of race and sexual orientation.

In the United States, the right to marry and have a family life were incorporated into the Fourteenth Amendment following emancipation, while there is no parallel history in Canada.⁷²¹ Miriam Smith asserts that it doesn’t make sense to talk about a right to marriage in Canada because of the lack of constitutional rights for individuals prior to the entrenchment of the Charter.⁷²² MPs, however, drew on US case law to propel their arguments that banning same-sex marriage is akin to slavery, Jim Crow segregation, and anti-miscegenation laws. MPs’ use of US

⁷²⁰ *Egan v. Canada*, (1995) 2 S.C.R. 513 at 550.

⁷²¹ Smith, *Political Institutions and Lesbian and Gay Rights*, 112.

⁷²² Smith, *Political Institutions and Lesbian and Gay Rights*, 112.

legal precedents in their arguments for same-sex marriage in Canada demonstrate transnational thinking about the concept of marriage while simultaneously distancing Canada from US racism.

Like bell hooks' assertion that analogizing race and gender exposes "a sexist-racist attitude toward black women" in the language of feminist movements,⁷²³ analogizing race and sexual orientation erases the existence of queer and trans Black people, Indigenous people, and people of colour. That is, these analogies obfuscate the intersectionality of existence and deny that subjectivity is constituted through both racialization and sexualization. Analogical reasoning helps to maintain boundaries between race and sexuality, which is crucial to racial governance. Conversely, intersectionality fosters the understanding that various systems of oppression are mutually sustaining and can be used to support coalitional political movements that work together across differences to challenge the white supremacy, white settler colonial violence, sexism, ableism, homophobia, transphobia, classism, et cetera of the Canadian state. Instead of considering how racist violence impacts trans and queer people, analogical reasoning constructs racism and homophobia/transphobia as mutually exclusive. This style of reasoning has limited utility in developing an understanding of queer and trans existences as it excludes queer and trans people who are multiply marginalized by racism as well as homophobia and/or transphobia.

In her discussion of same-sex marriage, Anita Neville, the Liberal MP for Winnipeg South Centre, asserted that:

over the course of human history every advance in equality has been resisted by powerful elements of the community. Whether it was the abolition of slavery in the first half of the 19th century, the extension of the franchise to men who were not property owners in the latter part of the 19th century, the enfranchising of women in the early 20th century, or the coming of the welfare state in the mid-20th century, the objection has always been similar. Ending slavery, it was argued, would destroy the natural social order, create economic havoc and create an artificial equality between superiors and inferiors...one is hard pressed to think of any major advancement of human freedom or equality which has

⁷²³ hooks, *Ain't I A Woman*, 8.

not in its time been denounced by someone, and often by those most privileged in society.⁷²⁴

In this way, Neville situates the legalization of same-sex marriage as the next “major advancement in human freedom” after the abolition of slavery, the extension of the franchise to non-property-holding men, women’s enfranchisement, and the creation of the welfare state. By “moving on” to sexual orientation after these victories in undermining racism, classism, and sexism, Neville constructs these prior projects as complete, as if the creation of the welfare state did away with class hierarchies or the extension of the vote to women ended sexism. Moreover, Neville constructs these advancements as internally contained and universal. For example, the extension of the right to vote for women in the early 1900s only granted the franchise to white women; until 1960 Indigenous women were only allowed to vote if they gave up their Indian Status,⁷²⁵ women in Quebec didn’t gain the right to vote until 1940, and in British Columbia Canadian citizens of South Asian or Chinese heritage were denied the right to vote until 1947.⁷²⁶ Therefore, the progressive timeline Neville constructs perpetuates the obfuscation of intersectional existence, reinforces the ubiquity of analogical reasoning, and constructs homophobia as the new “-ism.”

Similarly, in his defense of same-sex marriage, Mark Holland, the Liberal MP for Ajax—Pickering, stated that “Slavery was a tradition across all the epoch of history. When it changed it did not lead to the disaster that some forecast. It was quite the opposite. It led to equality.”⁷²⁷ In her refutation of the religious arguments used to oppose same-sex marriage, Judy Wasylycia-Leis, the NDP MP for Winnipeg North, suggested that:

⁷²⁴ *House of Commons Debates*, 124, (28 June 2005) at 1651 (Anita Neville).

⁷²⁵ Joan Sangster, *One Hundred Years of Struggle: The History of Women and the Vote in Canada* (Vancouver: UBC Press, 2018), 7-8.

⁷²⁶ Sangster, *One Hundred Years of Struggle*, 265-266.

⁷²⁷ *House of Commons Debates*, 074 (24 March 2005) at 1035 (Mark Holland).

those who are so using these verses are abusing its authority in the same way the Holy Scripture has been abused to justify slavery, resist equal rights for women and to purport to justify the divine right of kings against the will of elected Parliaments.⁷²⁸

In this way, Wasylycia-Leis takes the argument further than saying that justifying the denial of the legal extension of marriage to same-sex couples is *like* justifying slavery, as she says the scriptures are used “in the same way,” suggesting the existence of a parallel between the institution of slavery and the lack of access to same-sex marriage.

MPs who opposed the legal recognition of same-sex marriages also drew on slavery analogies. For example, Brian Fitzpatrick, the Conservative MP for Prince Albert, argued that religious arguments have historically led to morally good actions, including the abolition of slavery, and, as such, should not be discounted in the debates over same-sex marriage in which they were primarily used to construct same-sex marriage as a moral wrong. While some proponents of same-sex marriage also drew on religious arguments, claiming that the lack of access to same-sex marriage infringed on religious freedoms by denying religious organizations, such as the United Church, the right to marry same-sex couples, the vast majority of religious arguments put forth were in opposition to same-sex marriage. For example, Fitzpatrick stated:

Let us look at the great reforms of the last couple of hundred years: the elimination of slavery, the end of child labour in Great Britain, public education reforms and the end of racial discrimination and segregation in the United States. Who led those causes? Not politicians. Those leaders were people of religious conviction who saw things that were sinful and immoral from their point of view and they wanted public policy and reforms to address those issues. They were successful. That led to some great reforms. What a travesty for history if we had lived in a society in which the government had told those people to shut up or else and they had not led us to those great social reforms. Would we have made the progress that we say we have?...Where would we be today without people such as Gandhi, Martin Luther King, Garrison, Lincoln, Woodsworth, Ernest Manning, T.C. Douglas, Bishop Tutu, Malcolm X and William Wilberforce? They were people who were motivated by their religious beliefs and were successful in leading great reforms in their societies. As for members opposite who are saying that this is wrong, that

⁷²⁸ *House of Commons Debates*, 074 (24 March 2005) at 1036 (Judy Wasylycia-Leis).

somehow people speaking out on the issues of the day because they have religious points of view are wrong, I say to them that they are wrong.⁷²⁹

As Fitzpatrick suggests, some supporters of same-sex marriage drew on secularism in their arguments, contending that secularism is superior to religious belief. The assertion of secularism's superiority, particularly in the post-9/11 period, was a simultaneous assertion of western superiority over Islam given the binary between the west, associated with "democracy, secularism, liberty, and reason," and Islam, associated with "tyranny, religion, authority, and violence."⁷³⁰ For example, Gilles Duceppe asserted:

religions must not impose rights and ways of doing things on the secular state...I repeat: the religious beliefs of some must not become the law of the land. Respecting everyone means having deep respect for the religious beliefs of those who have them, but it also means respecting the beliefs of faiths other than our own...It is extremely dangerous to have this confusion between state and church. This leads to the type of regime we condemn. This leads to the worst excesses. I am not targeting any religion in particular. All religions have experienced such excesses. I hope that, one day, all religions will repudiate them.⁷³¹

The need Duceppe felt to specify that he was not referencing any particular religion suggests that listeners or readers would have otherwise assumed he was condemning Islam. Several months later, Richard Marceau, the BQ MP for Charlesbourg—Haute-Saint-Charles, made similar assertions, commenting:

We live in a secular state, where the separation between church and state is one of our civilization's finest achievements. It is an example of the fundamental principles from the age of enlightenment that have enabled us to expand the definition of marriage to include same sex partners for civil purposes.⁷³²

Here, Marceau clearly positions secularism as one aspect of western superiority over religious, implicitly Muslim, societies.

⁷²⁹ *House of Commons Debates*, 075 (4 April 2005) at 1226 (Brian Fitzpatrick).

⁷³⁰ Talal Asad, "Free Speech, Blasphemy, and Secular Criticism," in *Is Critique Secular? Blasphemy, Injury, and Free Speech* (New York: Fordham University Press, 2013), 15.

⁷³¹ *House of Commons Debates*, 058 (16 February 2005) at 1700 (Gilles Duceppe).

⁷³² *House of Commons Debates*, 124 (28 June 2005) at 1115 (Richard Marceau).

Marceau enacted what Sunera Thobani calls “centering the politics of gender/sexuality to *extend* the onto-epistemological claims of Western civilizational superiority”⁷³³ given that Marceau positioned legalizing same-sex marriage as the outcome of western enlightenment. Thobani argues that “these gender-sexual politics thus become *the* privileged site of authoritative power in philosophical as well as political terms” while overriding “counter-hegemonic narratives of the West that foreground its forms of violence.”⁷³⁴ This constructed clash between secular gender/sexuality politics and Islam presumes “that Muslim queers either do not exist, or if they do, warrant no particular attention here.”⁷³⁵ Thobani clarifies that mobilizing gender/sexuality politics in this way produces “sexuality/gender as signifier of *legitimate* vulnerability, unlike the racial violence directed toward Muslims.”⁷³⁶ This same logic operated in the debates as MPs constructed the legalization of same-sex marriage as evidence of western civilizational superiority and advancement while casting Muslim societies as inherently inferior and implicitly delegitimizing concerns about the intensification of Islamophobia in the post-9/11 period. So while analogies between legalizing same-sex marriage and ending US slavery, Jim Crow segregation, and anti-miscegenation laws in the US positioned these forms of historical US anti-Black racism as the defining examples of racism, thus casting contemporary anti-Muslim racism as not quite racist enough to warrant concern, MPs used the connections they drew between secularism and sexuality politics to construct Islam as inferior to the supposedly secular west and delegitimize critiques of Islamophobia.

⁷³³ Sunera Thobani, “The Secularity of Empire, the Violence of Critique: Muslims, Race, and Sexuality in the Politics of Knowledge-Production,” *Hypatia* 32, no. 3 (2017): 717.

⁷³⁴ Thobani, “The Secularity of Empire, the Violence of Critique,” 717-8.

⁷³⁵ Thobani, “The Secularity of Empire, the Violence of Critique,” 726.

⁷³⁶ Thobani, “The Secularity of Empire, the Violence of Critique,” 727.

To return to Fitzpatrick's slavery analogy, whether put forth in support of or in opposition to the legalization of same-sex marriage, the comparison between legalizing same-sex marriage and abolishing slavery obfuscates the vast differences between both the institution of slavery and that of same-sex marriage, as well as the organizing forces that pressured states to change their laws and policies. Legalizing same-sex marriage granted people who were sexually and romantically attracted to people of the same sex the ability to marry people to whom they were sexually and romantically attracted. After the federal government passed the *Modernization of Benefits and Obligations Act* in 2000, common law same-sex couples had almost all of the same rights, benefits, and obligations as married couples, with two exceptions: 1) common law spouses could be compelled to testify against one another in criminal cases, and 2) in immigration law "opposite-sex married couples enjoyed stronger protections in terms of their right to immigrate to Canada and to sponsor their spouse for immigration, entry and citizenship."⁷³⁷ Many same-sex couples already had ceremonies to celebrate their commitment to one another. As such, for most same-sex couples the passage of the *Civil Marriage Act* simply extended the ability for same-sex couples who so desired to have their relationships legally recognized as marriage. Efforts to legalize same-sex marriage were led by a small group of mostly white LGBTQ organizations and were opposed by many queer people who saw the institution of marriage as inherently heteronormative and oppressive.

Conversely, the abolition of slavery made it illegal to abduct people from Africa, transport them across the middle passage, and legally transform them into property that could be bought, sold, and brutalized. The movement to abolish slavery was broad-based, bringing together enslaved people, religious organizations, social reformers, and philosophers for a

⁷³⁷ Smith, *Political Institutions and Lesbian and Gay Rights*, 144.

common purpose over hundreds of years. While the abolition of slavery certainly did not “le[a]d to equality” as Holland claimed given the continued acceptance of and/or indifference to anti-Black violence, as is exemplified by organized lynchings, the passage of Black Codes, legal segregation, the disproportionate incarceration of Black people, and police violence against Black people, it did create space to challenge the totalizing dehumanization of Black people that was used to justify and was reinforced by slavery. To draw parallels between the legalization of same-sex marriage and the abolition of slavery is to minimize the horror of slavery as well as what Saidiya Hartman refers to as its afterlife—“skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment.”⁷³⁸

Moreover, slavery is referred to in general terms or in reference to the United States, invisibilizing Canadian slavery. This practice of erasing Canada’s history of slavery led Katherine McKittrick to call slavery “a denied and deniable Canadian institution.”⁷³⁹ McKittrick continues:

Slavery in Canada (British North America and New France)...is either forthrightly denied or deemed too brief and too small to warrant intellectual and political consideration. While the institution was certainly not comparable to large-scale slave institutions and economies in the United States or the Caribbean, it did last over 200 years.⁷⁴⁰

Robyn Maynard argues that “the absence of slave plantation economies does not negate the brutality of the centuries-long, state-supported practice of slavery.”⁷⁴¹ Maynard describes how white settlers profited from the enslavement of Black and Indigenous people for hundreds of years and asserts that “the inferiority ascribed to Blackness in this era would affect the treatment

⁷³⁸ Hartman, *Lose Your Mother*, 6.

⁷³⁹ Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (Minneapolis: University of Minnesota Press, 2006), 91.

⁷⁴⁰ McKittrick, *Demonic Grounds*, 97.

⁷⁴¹ Robyn Maynard, *Policing Black Lives: State Violence in Canada from Slavery to the Present* (Halifax: Fernwood, 2017), 20.

of Black persons living in Canada for centuries to come.”⁷⁴² The erasure of Canadian slavery facilitates Canada being “solely positioned as a safe haven (to U.S. fugitive slaves) and a land of opportunity (for black migrant workers, the Caribbean community, and migrants from the continent of Africa).”⁷⁴³ By situating slavery as an evil that occurred elsewhere, MPs perpetuated the erasure of slavery in Canada. Such a denial invisibilizes a root cause of contemporary anti-Black racism, bolstering essentialist constructions of Black people as lazy, prone to criminality, and dangerous as explanations for, for example, targeted deportations of Black people born in the Caribbean⁷⁴⁴ and the disproportionate rates at which Black people are imprisoned in Canada.⁷⁴⁵

These analogies not only obfuscate both historical and contemporary anti-Black racism in Canada, they also situate historical US anti-Black racism, such as slavery, as the defining example of racism, in the process protecting contemporary Islamophobic, white settler colonial, and other racist Canadian state practices from the accusation of racism. This is because racial justice movements forced white supremacist institutions to stop carrying out racism in particular ways (e.g., through slavery or Jim Crow segregation) and so they developed new methods of maintaining white supremacy that target racialized people without explicitly stating that particular laws only apply to racialized people.⁷⁴⁶

MPs who supported the legalization of same-sex marriage also frequently drew parallels between the fight for same-sex marriage and the civil rights movement, implicitly equating

⁷⁴² Maynard, *Policing Black Lives*, 20.

⁷⁴³ McKittrick, *Demonic Grounds*, 97-98.

⁷⁴⁴ Jenny Burman, “Suspects in the City: Browning the ‘Not-Quite’ Canadian Citizen,” *Cultural Studies* 24, no. 2 (2010): 202.

⁷⁴⁵ Julia Sudbury, “Celling Black Bodies: Black Women in the Global Prison Industrial Complex,” *Feminist Review* 80 (2005): 165.

⁷⁴⁶ A recent example is Bill 21 in Quebec, which uses the not-explicitly racial language of “religious symbols” but causes disproportionate harm to racialized people, particularly Muslims. “Bill 21: Our Fight to Protect Religious Freedom in Quebec,” Canadian Civil Liberties Union, accessed October 9, 2021, <https://ccla.org/major-cases-and-reports/bill-21/>.

institutionalized racism with the denial of state recognition of same-sex relationships as marriage. For example, Gerald Keddy, the Conservative MP for South Shore—St. Margaret's, stated:

I realize that not everyone will agree with same gender civil marriage. Some will continue to say that a civil union is good enough, but I respectfully disagree. This was the same argument that was used to justify segregated schools in the United States and was struck down in the now landmark *Brown v. Board of Education* case, which ruled that separate is not equal. I feel certain that the same result would befall any similar legislation here.⁷⁴⁷

Similarly, David Christopherson, the NDP MP for Hamilton Centre, asserted:

We know what happened with our neighbours to the south when they tried separate but equal with the school systems as a compromise approach to having to deal with their federal court, which ordered that separation discontinue. It made the case that separate was not equal.⁷⁴⁸

Putting forth a similar argument, Bill Siksay, the NDP MP for Burnaby—Douglas, stated:

Separate or new institutions or legal arrangements will not meet the test of the value of our citizenship. Civil union applied only to gay and lesbian couples is not an answer because separate is not equal. Separate water fountains, separate sections on the bus, separate beaches, none of these are acceptable in societies that value the full equality of their people. I and my party believe the same is true of civil marriage.⁷⁴⁹

These references to segregation work to separate historical US anti-Black racism, which the MPs condemned, from the contemporary targeting of Muslims, which the state was constructing as permissible. Constructing histories and presents of anti-Black and anti-Muslim racism as unrelated and non-intersecting was particularly useful to the Canadian state in the years after 9/11. This is because the state was invested in creating and enhancing the racialized policing, surveillance, detention, deportation, and torture of Muslims, as well as other acts of state-sanctioned violence targeting Muslims, while at the same time attempting to preserve an image

⁷⁴⁷ *House of Commons Debates*, 123 (27 June 2005) at 1651 (Gerald Keddy).

⁷⁴⁸ *House of Commons Debates*, 076 (5 April 2005) at 1536 (David Christopherson).

⁷⁴⁹ *House of Commons Debates*, 058 (16 February 2005) at 1716 (Bill Siksay).

of Canada as respectful of racial and cultural diversity. Referencing historical US anti-Black racism helped the Canadian state do so because it simultaneously distanced Canada from racism by situating racism in the US, helping to secure Canada's construction as "post-race," while also reinforcing the construction of these forms of institutionalized anti-Black US racism as racism itself. As these anti-Black US institutions were challenged and dismantled, white settler supremacy invented new ways of structuring racism that maintain white supremacy but look different than previous configurations of racism. Because the historical anti-Black US racism the MPs recalled was structured differently than the racism of contemporary anti-terrorism and national security legislation and policies, holding up historical anti-Black US racism as the epitome of racism allowed the MPs to discursively distance these newer policies and pieces of legislation from racism.

These references to segregated schooling in the United States also invisibilize the parallel system that existed in Canada. For example, Robyn Maynard discusses the "Africans' Schools" in Nova Scotia that were in place between 1816 and the 1850s to "instill the values of obedience and submission in the Black populace so they might better accept their role as menial laborers."⁷⁵⁰ In the Western provinces, segregated schools were established to "protect" white children "from the perceived dangers of proximity to Black children."⁷⁵¹ Segregated schools existed in Canada until 1983 and, as Maynard argues:

The history of segregating Black children in many provinces makes visible that not only were Black youth less valued, but they were also represented as a threat to white Canadians. State policies acted, or failed to act, to confine and contain Black youth and children. The attempt to restrict Black access to quality education also had the effect of keeping Black peoples in positions of economic subordination to Canada's white population.⁷⁵²

⁷⁵⁰ Maynard, *Policing Black Lives*, 33.

⁷⁵¹ Maynard, *Policing Black Lives*, 33.

⁷⁵² Maynard, *Policing Black Lives*, 34.

Equating the desegregation of the US school system with the legalization of same-sex marriage erases both the history of segregated schooling in Canada and the differences between institutionalized racism and the denial of marriage recognition to same-sex couples.

In addition to schools established to segregate Black children from white children, Canada has a well-established history of abducting Indigenous children for indoctrination in residential schools, which existed in Canada until 1996. These schools were part of Canada's policy objectives regarding Indigenous people, which were:

to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.⁷⁵³

As The Truth and Reconciliation Commission of Canada notes, "The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources."⁷⁵⁴ Additionally, Sunera Thobani argues that:

the preservation of the residential school system for decades after the development of the welfare state meant that the cultural and political extinction of Aboriginal peoples as self-determining nations was integrated as an objective of this state form.⁷⁵⁵

As such, it is not only the case that residential schools were racist instruments of Indigenous genocide aimed at securing white settler control over Indigenous territories, but it is also true that they were incorporated into the construction of Canada as a benevolent state.

Segregated schooling was part of a larger political project to establish Canada as a white settler colony. Separate schools for Black children were meant to distance Black children from white children and instil a sense of inferiority in Black children and superiority in white children.

⁷⁵³ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), 1.

⁷⁵⁴ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, 3.

⁷⁵⁵ Thobani, *Exalted Subjects*, 108.

Residential schools were designed to assimilate Indigenous peoples into the white settler population by eradicating Indigenous languages and knowledge systems and replacing them with Eurocentric, Christian values in an effort to secure white settler control over Indigenous land and resources. By referencing segregated schools for Black and white children in the United States, MPs perpetuated the invisibilization of Canada's history of segregated schooling for Black and white children and Canada's residential school system, as well as the ongoing legacies of both. For example, the disproportionate rates at which Indigenous⁷⁵⁶ and Black⁷⁵⁷ children are taken from their families of origin by Child Protective Services has been well documented and is frequently understood as a continuation of segregated and residential schools. Thobani writes that "in the welfarist national imaginary, Native families were deficient; Native mothers deviant and a menace to their own children; and the nation the caring benefactor of these children."⁷⁵⁸ As such, the theft of Indigenous children from their families of origin, which is itself a reconfigured continuation of the residential school system, has been constructed as a social good carried out by the state that facilitates the construction of Canadian benevolence. By referring to segregation as a wrong that occurred only in the United States, MPs perpetuated the construction of Canadian history as free of the long-term, systemic anti-Black and white settler colonial racism that actually exist. Because of this erasure, the construction of Canada as a benevolent nation was left intact and reinforced.

MPs also drew parallels between prohibitions against interracial marriage and those against same-sex marriage. In reference to the Conservative's argument that legalizing same-sex

⁷⁵⁶ Nico Trocmé, Della Knoke, and Cindy Blackstock, "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System," *Social Service Review* 78, no. 4 (2004): 577.

⁷⁵⁷ Maynard, *Policing Black Lives*, 5.

⁷⁵⁸ Thobani, *Exalted Subjects*, 109.

marriage would infringe on the religious freedoms of civil registrars who opposed same-sex marriage on religious grounds, Hedy Fry, the Liberal MP for Vancouver Centre, stated:

we are talking about the evolution of the laws of marriage. What I am saying is that those laws evolved because they were responding to inequities in the system at the time. They continue to do so. I would be curious to see anyone get up to defend the right of a civil registrar to refuse to marry a black man and a white woman because of religious convictions. No one in this place would do such a thing.⁷⁵⁹

In this way, Fry situates the legalization of same-sex marriage and that of interracial marriage on the same historical trajectory, obfuscating the different objectives of criminalizing interracial marriages and refusing to recognize same-sex marriages. Since there were never laws explicitly banning interracial marriage in Canada,⁷⁶⁰ Fry was likely making her statement in reference to the United States. Fry continued:

In fact, let us look at the United States, where there were miscegenation laws. In 1967 the first state to change this was Virginia, in *Loving v. Virginia*, which said that two people of a different race could get married. I think members would be surprised to know that the very last state that made these laws illegal was Alabama in 2000. Prior to that, in Alabama a mixed race couple could not legally get married.

Puar argues that, in positioning the legalization of interracial marriage as the precursor to same-sex marriage, the “miscegenation analogy... cleav[es] race from homosexuality and “enact[s] a kind of amnesia about how U.S. legal discourse historically has produced narratives of homosexuality in relation to race.”⁷⁶¹ In this way, the analogy Fry draws between legalizing interracial and same-sex marriages contributes to the construction of racialized people as straight and queer people as white and also invisibilizes the existence of racialized queer people and the imbricated histories of race and sexuality.

⁷⁵⁹ *House of Commons Debates*, 074, (24 March 2005) at 1541 (Hedy Fry).

⁷⁶⁰ Shah, *Stranger Intimacy*, 159.

⁷⁶¹ Puar, *Terrorist Assemblages*, 118.

In the Canadian context, a few examples of these imbrications include: white settlers' use of Indigenous approaches to gender and sexuality to construct Indigenous people as uncivilized to justify colonial settlement⁷⁶²; white settler constructions of Muslim men as having a propensity for same-sex intimacies being used to resist the movement away from explicit preference for white immigrants in Canada's immigration system (as discussed in Chapter 3); and Canada's construction of itself as a global saviour of queer and trans people for allowing refugee claimants to use discrimination on the basis of sexual orientation and gender identity on their refugee claims while simultaneously reducing overall immigration levels and more closely regulating and surveilling people who were granted admission to Canada.⁷⁶³

Additionally, MPs' references to the United States detract attention from the Canadian regulation of interracial marriage specifically, which generally took different forms than it did in the United States. Despite the absence of laws banning interracial marriage, as Constance Backhouse notes, other legislation and social pressures limited the frequency of interracial marriages. For example, in the Western provinces laws preventing men of Chinese descent from hiring white women to work for them limited social contact between white women and Chinese men.⁷⁶⁴ Additionally, "sundown laws" existed in some Canadian municipalities until the mid-twentieth century which prohibited Black people from being outside or present in particular towns in the evening and nighttime.⁷⁶⁵ The pass system, which targeted Indigenous women, limited the movement of Indigenous people off reserves.⁷⁶⁶ Each of these laws or policies was

⁷⁶² Simpson, *As We Have Always Done*, 126; Cannon, "The Regulation of First Nations Sexuality," 2; Barker, "Critically Sovereign"; Finley, "Decolonizing the Queer Native Body."

⁷⁶³ Sajnani, "Envisioning LGBT Refugee Rights in Canada," 10; LaViolette, "The Immutable Refugees"; Abu-Laban and Gabriel, *Selling Diversity*, 64-5; Statistics Canada, "150 Years of Immigration in Canada," 4.

⁷⁶⁴ Constance Backhouse, "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada," *Law and History Review* 14, no. 2 (1996): 345.

⁷⁶⁵ Maynard, *Policing Black Lives*, 38.

⁷⁶⁶ Maynard, *Policing Black Lives*, 38.

aimed, at least in part, at limiting sexual contact between white people and Indigenous and other racialized people. Situating prohibitions on interracial marriage as a part of US history obfuscates this history of Canadian legal interference with interracial contact.

Moreover, constructing same-sex marriage as the new marriage equality issue following the removal of anti-miscegenation laws situates homophobia as the new racism and implies that racism is no longer an issue in Canada. As David Eng argues in the US context:

by analogizing same-sex marriage to this “settled” history of interracial union, queer liberalism is embedded in a narrative of temporal development. That is, homosexuals are now allowed to exit what Chakrabarty describes as the “imaginary waiting room of history.” Emerging as queer liberals, they tacitly underwrite the unending march of human freedom and progress. In such a historical narrative, racial liberation is configured as a politics of the past, while queer liberalism is configured as a politics of the present. Racial liberation is thus deemed a completed project and consigned to a prior historical moment.⁷⁶⁷

In this way, analogical reasoning enables the construction of racism as a historical relic and homophobia as “the new racism.” As such, analogies between race and sexual orientation reinforce white settler temporality through their use of sexuality to situate racism firmly in the past and position the present as “post-race.”

In addition to references to slavery, racial segregation, and anti-miscegenation laws in the US, MPs referred to racism in and by Canada, the most common examples of which were the Chinese Head Tax, Canada’s refusal to let the Komagata Maru and SS St. Louis enter the country, and the internment of people of Japanese and Italian descent during the Second World War. These instances of Canadian racism are all temporally contained, facilitating their construction as aberrations in, rather than as constitutive of, Canadian history. MPs mentioned neither anti-Black racism nor white settler colonialism in Canada. For example, Tony Ianno, the Minister of State (Families and Caregivers), asserted that:

⁷⁶⁷ Eng, *The Feeling of Kinship*, 38.

Our nation has come a long way in its growth. As a respected centre of human rights, Canada has evolved from the days when Chinese people were charged outrageous fees, the head tax, to come to Canada for the privilege to work, and when their spouses or family for many years thereafter were not allowed to immigrate. We are all too familiar with the time when women were not persons, were add-ons and not able to vote, never mind sit as parliamentarians; when Canada showed no compassion in 1914 and did not let a ship of Sikhs land; when in 1939 over 900 Jews aboard the SS *St. Louis*, fleeing the Nazis, were turned away from our country, condemning many of them to the Holocaust. We choose many examples of a way of thinking of the past we would sooner forget. That is not the nation we are now proud of and take pride in. We believe that Canada is the best nation in the world. In our pluralistic society our Canadian values of humanity, tolerance of diversity, opportunity, compassion and decency are a way of life.⁷⁶⁸

Ianno constructs these racist events as historically contained, implying that they did not result from broader policies and ideologies and as though they did not have ongoing legacies in Canada. Constructing these events as historically contained enabled Ianno's conclusion that "Canada is the best nation in the world" because this containment obfuscates the legacies of these events as well as of the policies and ideologies that propelled them.

Marlene Catterall, the Liberal MP for Ottawa West—Nepean, also referenced racist events in ways that implied they were historically contained. Catterall stated:

There are many periods in our past which we can only look back on and wonder that our leaders of the time could have thought those things seemed okay. Usually they involved discrimination against a minority, often out of fear and often out of contempt for a group of fellow citizens, our fellow human beings, who were regarded as inferior and not quite worthy of the same treatment as the majority. We interned Canadians of Ukrainian origin during the First World War. We imposed a head tax on Chinese immigrants and then excluded them entirely. We interned Canadians of Italian origin during World War II. These are times we can only look back on with dismay and wonder that they seemed okay at the time. When Canada closed its doors to Jews fleeing persecution and almost certain death in Nazi Germany, this was surely one of our darkest moments, yet it appears that these actions were considered okay at the time. We have discriminated based on race. We have discriminated based on ethnicity. We have discriminated based on religion.⁷⁶⁹

⁷⁶⁸ *House of Commons Debates*, 074 (24 March 2005) at 1351 (Tony Ianno).

⁷⁶⁹ *House of Commons Debates*, 071 (21 March 2005) at 1746 (Marlene Catterall).

These comparisons between same-sex marriage and the Chinese head tax, internment during the world wars, and the denial of entry to Jewish and South Asian people draw a false parallel between systemic, institutionalized racism and the ability to have the state recognize a relationship as marriage. The extension of same-sex marriage gave same-sex couples few benefits or obligations that they didn't already have as common law spouses. Conversely, the head tax, internment, and the continuous journey provision were all put in place to "protect" white Canadians from contact, including sexual contact, with racialized people and were part of a larger project to replace the Indigenous peoples in Canada with white settlers. The legalization of same-sex marriage, conversely, allowed same-sex couples with relative economic privilege the ability to have their relationships legally recognized as marriage. Conflating institutionalized racism and the denial of same-sex marriage both minimizes the brutality of Canadian racism and exaggerates the liberatory potential of the legalization of same-sex marriage. Moreover, this conflation situates same-sex marriage as the new battle in the fight for equality, reinforcing the ways in which MPs constructed homophobia as the "new racism" in the debates.

Moreover, these constructions of Canadian history as speckled with racism perpetuates the erasure of Indigenous genocide and Black enslavement. At the same time, these constructions of Canada's historical moments of racism were mobilized to construct contemporary Canada as a "pluralistic society," "the best nation in the world," and a place which embraces the unique values of "humanity, tolerance of diversity, opportunity, compassion and decency." Finally, by historicizing Canadian racism as part of an argument in favour of legalizing same-sex marriage, MPs similarly used a limited definition of homophobia by implying homophobia could be extinguished by legalizing same-sex marriage. Because MPs constructed racism and homophobia

as parallel phenomena, and because they constructed Canadian racism as historically contained, MPs suggested that homophobia could be legislated away like racism supposedly was.

The analogies MPs constructed between racism and homophobia situated racism in the US or as brief aberrations in Canadian history, obfuscating the racist impacts of centuries-long Canadian institutions like slavery and white settler colonialism while constructing Canada as a benevolent nation-state. The “like race” arguments MPs used in the debates mobilized this construction of racism as a US formation or as a brief period of Canada’s history, such that constructions of homophobia were similarly limited to the state’s lack of recognition of same-sex marriage. In denying the ongoing presence of Canadian racism, MPs denied the ways in which homophobia would continue to operate after they legalized same-sex marriage. By drawing analogies between racism and homophobia, MPs also invisibilized the existence of queer, trans, and two-spirit Indigenous people, Black people, and other racialized people. Finally, MPs collapsed the differences between systemic racism and homophobia and positioned the legalization of same-sex marriage as the final remnant of state discrimination. That is, MPs constructed homophobia as the last vestige of discrimination, positioning homophobia as the “new racism” as though the problem of racism had been solved. In this way, homophobia was discursively mobilized to deny the existence of the ongoing operations of racism in Canada.

This denial of Canadian racism facilitated the state’s ability to construct itself as respectful of racial and cultural diversity while at the same time intensifying the national security regime that is used to justify the policing, surveillance, detention, deportation, and torture of Muslim people in Canada and globally. The analogies also compared homophobia to a particular type of racism, that is racism that *explicitly* denied people full citizenship rights because of their racial categorization. Anti-terrorism legislation is also deeply racialized but the racialized

targeting of Muslims is less explicit in this legislation than it was in the historical examples of racism the MPs drew upon. As such, race/sexual orientation analogies supported the Canadian state's intensification of the "war on terror" in two ways. First, situating homophobia as *the* contemporary form of discrimination while comparing it to forms of racism that no longer exist fuels the construction of Canada as "post-race." Second, epitomizing historical examples of racism as racism itself makes anti-terrorism legislation appear to be less racist than it is.

Multiculturalism and Same-Sex Marriage

In addition to working to secure white settler hegemony both by erasing Canada's history of slavery, segregation, and white settler colonialism and by historicizing racial and colonial governance, analogical reasoning constructs racism and homophobia as parallel, rather than intersecting, phenomena. This invisibilizes the existence of queer racialized and Indigenous people. In this way, the analogical reasoning MPs mobilize constructs racialized and Indigenous people as straight and queer people as white. Furthermore, institutionalized multiculturalism homogenizes diverse racialized people into the categories traditional and anti-modern, which contributed to their construction as not only necessarily straight, but also homophobic. MPs' discussions of multiculturalism reinforced this portrayal of racialized people as straight and homophobic and implicitly constructed whiteness as tolerant of diversity. Thobani describes how Canada's institutionalization of multiculturalism reconstitutes whiteness as tolerant;⁷⁷⁰ the nation-state's subsequent embrace of gay rights via the legalization of same-sex marriage furthered this construction of white Canadian tolerance. As such, the construction of white Canada as tolerant depended on the concurrent construction of racialized people as homophobic,

⁷⁷⁰ Thobani, *Exalted Subjects*, 148.

and this construction of Canadian tolerance obfuscated the state's intensification of Islamophobic laws, policies, and practices.

MPs mobilized the discourse of multiculturalism to discuss race and sexuality in contemporary Canada. On February 4, 2005, then Conservative Party and official opposition leader Stephen Harper addressed a Sikh congregation in Toronto and told them that legalizing same-sex marriage "is a threat to any Canadian who supports multiculturalism...It is a threat to a genuinely multicultural country."⁷⁷¹ His comments implied that the legalization of same-sex marriage is a threat to multiculturalism because racialized people's ideas are rooted in traditionalism and so they are therefore homophobic. Harper and other members of the Conservative Party mobilized the discourse of multiculturalism and the assumption that racialized people are unaccepting of queerness to argue that legalizing same-sex marriage threatened multiculturalism. Moreover, the Conservative's nominal support for multiculturalism when it served their interests regarding same-sex marriage may have helped them distance their Islamophobic actions during this period from accusations of racism. Liberal MPs also drew on the discourse of multiculturalism to support their position, arguing that racialized communities recognized that their own rights were protected by the Charter, so they wouldn't support limiting Charter rights for any other group, including same-sex couples seeking to have their relationships recognized as marriage. Both positions present a homogenized "multicultural community" that could never reflect the diversity of views and positions racialized people in Canada actually held.

⁷⁷¹ Laghi, "Tories Blast Harper for Same-Sex Warning."

Representations of Sikhism and Queerness in Canada

Some Sikh MPs were pressured not to support same-sex marriages and some gurdwaras in Canada did exert some resistance to same-sex marriage. In March 2005, CBC published an article describing how Giani Joginder Singh Vedanti, the Akal Takhat and highest authority in the Sikh faith, lectured six Sikh MPs who had travelled to India with Prime Minister Paul Martin about the importance of voting against the legalization of same-sex marriage, using anti-gay language and implying same-sex marriage could cause Sikhs in Canada to “fall prey to this practice.”⁷⁷² One of the MPs, Navdeep Bains, argued with Vedanti and, in Parliament, publicly condemned Harper’s comments about same-sex marriage threatening multiculturalism, while the article reports the other five MPs “listened respectfully”; this discussion of the MPs’ response to Vedanti comes at the end of the article titled “World Sikh Group Against Gay Marriage Bill” and after paragraphs describing Vedanti’s remarks, an organization of the content that could leave readers with an overly simplistic understanding of Sikhism as homophobic.⁷⁷³

Later, during the 2006 federal election and after same-sex marriage had been legalized under the Liberal government, Liberal candidates who had supported same-sex marriage were prevented from addressing the largest gurdwara in Brampton, a region that has traditionally been strongly supportive of the Liberal Party.⁷⁷⁴ In 2007, controversy erupted when the *Vancouver Sun* published an article called “Canada’s Changing Moral Landscape: Are Immigrants to the Country Changing the Face of What’s Considered Right or Wrong?” that opened with a quote

⁷⁷² CBC News, “World Sikh Group Against Gay Marriage Bill,” March 28, 2005, <https://www.cbc.ca/news/canada/world-sikh-group-against-gay-marriage-bill-1.536239>

⁷⁷³ CBC News, “World Sikh Group Against Gay Marriage Bill”; *House of Commons Debates*, 052 (8 February 2005) at 1446 (Navdeep Bains).

⁷⁷⁴ Laura Reidel, “Religious Opposition to Same-Sex Marriage in Canada: Limits to Multiculturalism,” *Human Rights Review* 10 (2009): 272.

from Sikh leader Balwant Singh Gill saying “I hate homosexuality”⁷⁷⁵ and implied “that immigrants are changing the moral landscape of Canada” and “‘Canadian values’ are under threat by new immigrants.”⁷⁷⁶ Vancouver-based LGBT activists led by Jamie Lee Hamilton, a prominent white trans activist, called for Gill to step down from his position, for every gurdwara associated with Gill to issue a formal apology, and for the Vancouver police and RCMP to launch an investigation into Gill for inciting hate.⁷⁷⁷ Fatima Jaffer, a member of the Vancouver-based queer South Asian organization Trikone Vancouver, condemned such responses as “playing into [a] reactionary kind of politics.”⁷⁷⁸ Jaffer situates the *Vancouver Sun* story in the context of broader anti-Sikh sentiments in the mainstream media at the time; just five days before the *Vancouver Sun* article was published, two thousand protesters, mostly Punjabi Sikhs, gathered at the Vancouver International Airport and successfully stopped the Canadian Border Services’ deportation of the disabled refugee claimant Laibar Singh to India.⁷⁷⁹ Jaffer argues that the mainstream media portrayal of the protesters’ actions as “illegal” and “violent” is connected to their subsequent portrayal of Sikhs as homophobic.⁷⁸⁰

Following the increase in hate crimes against Sikhs after 9/11, Jasbir Puar argues that within Sikh communities in the US there was “a desire to inhabit a proper Sikh American heteromascularity, one at significant remove from the perverse sexualities ascribed to terrorist

⁷⁷⁵ Todd Douglas, “Canada’s Changing Moral Landscape: Are Immigrants to the Country Changing the Face of What’s Considered Right or Wrong?” *Vancouver Sun*, December 15, 2007, D8.

⁷⁷⁶ Lenon, “What’s So Civil About Marriage?”

⁷⁷⁷ Natasha Barsotti, “Sikh Leader’s Anti-Gay Remarks Ignite Furore,” *Xtra*, January 1, 2008, <https://xtramagazine.com/power/sikh-leaders-anti-gay-remarks-ignite-furore-16880>.

⁷⁷⁸ Barsotti, “Sikh Leader’s Anti-Gay Remarks Ignite Furore.”

⁷⁷⁹ Fatima Jaffer, “Homonationalist Discourse, Queer Organizing and the Media,” Federation for the Humanities and Social Sciences blog, February 29, 2012, <https://www.ideas-idees.ca/blog/homonationalist-discourse-queer-organizing-and-media>.

⁷⁸⁰ Jaffer, “Homonationalist Discourse, Queer Organizing and the Media.”

bodies.”⁷⁸¹ As has been the case in the US, hate crimes targeting Sikhs in Canada continue, sometimes along the “mistaken identity” lines Puar describes, such as when “vandals scrawled ‘terrorist’ on Sikh parade posters in Surrey, B.C.” in 2012.⁷⁸² It’s possible there was also an increased desire within Canadian Sikh communities, or among leaders of Canadian Sikh communities, to perform heteronormativity by condemning same-sex marriage, but academic analysis to support such an assertion has yet to be undertaken.

As Bannerji contends, however, Canadian multiculturalism’s privileging of the voices of conservative racialized men leads to the portrayal of racialized communities as monolithically homophobic and sexist.⁷⁸³ The mainstream Canadian media’s complicity with such portrayals was evident in the media response to the backlash against the *Vancouver Sun* article when only Punjabi TV News and *Xtra* contacted TriKone Vancouver for a response to Gill’s remarks; the mainstream media continued to portray Sikhs as monolithically homophobic.⁷⁸⁴ Harper capitalized on this construction of Sikh homophobia to strengthen his position against same-sex marriage. This representation of Sikhs allowed Harper to construct his opposition to same-sex marriage as supportive of the needs of “multicultural communities.”

Critiques of Canadian Multiculturalism

Pierre Elliott Trudeau’s government first introduced Canadian multiculturalism through the Multicultural Policy of 1971 and further entrenched it through the *Multiculturalism Act* in 1988.⁷⁸⁵ The four original tenets of multiculturalism policy were:

⁷⁸¹ Puar, *Terrorist Assemblages*, 167.

⁷⁸² Ritu Bhasin, “Sikhs Have Been Living in Fear of Hate Crimes since 9/11,” *Global and Mail*, August 8, 2012, <https://www.theglobeandmail.com/opinion/columnists/sikhs-have-been-living-in-fear-of-hate-crimes-since-911/article4468643/>.

⁷⁸³ Bannerji, “The Paradox of Diversity,” 554.

⁷⁸⁴ Jaffer, “Homonationalist Discourse, Queer Organizing and the Media.”

⁷⁸⁵ Haque, *Multiculturalism within a Bilingual Framework*, 22, 242.

1. To assist all Canadians to develop culturally,
2. To assist all Canadians to overcome cultural barriers to full participation in Canadian society,
3. To arrange cultural encounters to promote unity,
4. To assist immigrants to learn one of the two official languages.⁷⁸⁶

Tania Das Gupta asserts that multiculturalism policy was introduced “to divert attention from the French-English question” during the most revolutionary period of the Québécois separatist movement.⁷⁸⁷ Moreover, as Thobani argues, “the adoption of multiculturalism helped stabilize white supremacy by transforming its mode of articulation in a decolonizing era.”⁷⁸⁸ This transformation included a shift from the language of race to that of culture, such that racial difference could be discussed as cultural difference without referring to race.⁷⁸⁹

The multiculturalism policy came out of the Royal Commission on Bilingualism and Biculturalism.⁷⁹⁰ Eve Haque argues that the terms of reference set out for the Commission (“which spoke only of ‘two founding races’”)⁷⁹¹ facilitated the dismissal of claims put forth by Indigenous groups and the redirection of “other ethnic groups” claims for language rights into multiculturalism. Within the report, the commission utilized different and contradictory definitions of language and culture when defining the English and French and the “other ethnic groups,” allowing “other ethnic groups” to be defined as cultural groups (with culture defined as “traditional” and therefore at odds with modernity) with the private right to foster their culture, but without collective/group rights granted to the English and French.⁷⁹² Through the

⁷⁸⁶ Tania Das Gupta, “The Politics of Multiculturalism: ‘Immigrant Women’ and the Canadian State,” in *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, ed. Enakshi Dua and Angela Robertson (Toronto: Women’s Press, 1999), 191.

⁷⁸⁷ Das Gupta, “The Politics of Multiculturalism,” 191.

⁷⁸⁸ Thobani, *Exalted Subjects*, 146.

⁷⁸⁹ Thobani, *Exalted Subjects*, 145.

⁷⁹⁰ Das Gupta, “The Politics of Multiculturalism,” 191.

⁷⁹¹ Haque, *Multiculturalism within a Bilingual Framework*, 6.

⁷⁹² Haque, *Multiculturalism within a Bilingual Framework*, 8, 150.

commission, language came to “function as a technology of exclusion to limit the boundaries of culture.”⁷⁹³ Operating *through* culture, language became “the technology of hierarchicalization” between the English and French and other ethnic groups and provided “the template for future modes of differential inclusion.”⁷⁹⁴ Bilingualism established the predominance of the English and French languages and “assured an equally dominant place for the related cultures.”⁷⁹⁵ Haque asserts that “The commission’s goal was to develop a new, unisonant formulation for nation-building; one that could preserve the white-settler hegemony at the same time as it disavowed its racialized exclusions.”⁷⁹⁶

Following the implementation of multiculturalism that resulted from the commission’s work, anti-racist feminist scholars began to critique multiculturalism as a device for managing and containing difference. Himani Bannerji argues that official multiculturalism is “an ideological state apparatus...a device for constructing and ascribing political subjectivities and agencies for those who are seen as legitimate and full citizens and others who are peripheral to this in many senses.”⁷⁹⁷ Bannerji asserts that:

paradigms, such as that of civilization and savagery or tradition and modernity, offer the discursive terrain or interpretive schema for understanding or representing cultural traits of colonized or enslaved people. It is from this source that the content of difference and diversity of official multiculturalism evolves. This reduces non-Europeans the world over into pre-modern, traditional, or even downright savage peoples, while equating Europeans with modernity, progress, and civilization.⁷⁹⁸

Through her analysis, Bannerji demonstrates that multiculturalism “from above” operates through race, such that these traits “whiten” Canadians of European descent while “blackening or

⁷⁹³ Haque, *Multiculturalism within a Bilingual Framework*, 155.

⁷⁹⁴ Haque, *Multiculturalism within a Bilingual Framework*, 156.

⁷⁹⁵ Haque, *Multiculturalism within a Bilingual Framework*, 158.

⁷⁹⁶ Haque, *Multiculturalism within a Bilingual Framework*, 239.

⁷⁹⁷ Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender* (Toronto: Canadian Scholars’ Press, 2000), 6.

⁷⁹⁸ Bannerji, “A Question of Silence,” 268.

darkening” racialized people.⁷⁹⁹ As such, multiculturalism re-entrenches, deepens, and legitimizes the racial hierarchy within which white people and people of colour are situated, while transferring the discursive contents of race into the signifier “culture.” In this way, official multiculturalism reinforces white supremacy even as it purports to celebrate and affirm the value of racial/cultural difference.

Multiculturalism and Same-Sex Marriage in the Debates

MPs presented petitions opposed to same-sex marriage frequently throughout the debates. While there were several petitions urging Parliament to legalize same-sex marriage, the vast majority of petitions expressed their opposition to same-sex marriage. A typical example of such a petition was presented by Cheryl Gallant, the Conservative MP for Renfrew—Nipissing—Pembroke:

Mr. Speaker, the petitioners from Renfrew—Nipissing—Pembroke recognize that the best foundation for society, families and the raising of children is the lifelong union between one man and one woman. They are asking that Parliament define marriage in federal law as being the union of one man and one woman to the exclusion of all others.⁸⁰⁰

There were also many petitions and statements opposed to same-sex marriage put forth by groups of racialized people. Lynne Yelich, the Conservative MP for Blackstrap, read one such petition:

The Islamic Society of North America-Canada wishes to express its opposition to Bill C-38, which would change the definition of marriage to include same-sex couples. ISNA-Canada is the oldest and largest grassroots Muslim organisation in North America, and on this issue, can speak confidently for the majority of Muslims in North America, who are opposed to changing the traditional definition of marriage.⁸⁰¹

⁷⁹⁹ Bannerji, *The Dark Side of the Nation*, 6.

⁸⁰⁰ *House of Commons Debates*, 058 (16 February 2005) at 1520 (Cheryl Gallant).

⁸⁰¹ *House of Commons Debates*, 124 (28 June 2005) at 1601 (Lynne Yelich).

Pierre Poilievre, the Conservative MP for Nepean—Carleton, relayed his conversation with a group of Tamil Canadians:

early this month I had occasion to meet with about 55 Tamil Canadians in my home community of Barrhaven and committed to take their concerns to the highest democratic chamber in the land: this House. They told me they support traditional marriage.⁸⁰²

John Duncan, the Conservative MP for Vancouver Island North, stated:

Mr. Speaker, I have petitions from the Canadian Alliance for Social Justice and Family Values, an 80% ethnic Chinese group based in Vancouver. These petitions contain 7,000 signatures in which the petitioners are supporting the traditional definition of marriage. I had previously delivered a petition from the same group on the same subject with 22,000 signatures, so it is now up to 29,000. The petitioners are urging Parliament to use all possible democratic, legislative and administrative measures to preserve and protect the current definition of marriage as between one man and one woman.⁸⁰³

In addition to these and other petitions and statements by racialized communities, MPs used statistics to present racialized people as unaccepting of queerness. For example, Gurmant Grewal, the Conservative MP for Newton—North Delta, presented “An Environics Research Group poll conducted for the CBC” which “surveyed 1,203 Canadians between March 26 and March 30 and found that 52% of Canadians disagreed with the plan to change the definition of marriage to include couples of the same sex and that only 44% agreed with the Liberal plan.” Grewal concluded that “Interestingly, the disapproval jumped to 65% among Canadians born outside our borders.”⁸⁰⁴

These statistics, petitions, and paraphrased opinions stating racialized communities opposed same-sex marriage homogenized racialized communities, equated the organizations who were given voice in Parliament with all racialized communities, and obfuscated the diversity of thought both within and between racialized communities. The repetition with which MPs

⁸⁰² *House of Commons Debates*, 056 (14 February 2005) at 1406 (Pierre Poilievre).

⁸⁰³ *House of Commons Debates*, 065 (25 February 2005) at 1219 (John Duncan).

⁸⁰⁴ *House of Commons Debates*, 087 (21 April 2005) at 1546 (Gurmant Grewal).

presented this evidence of racialized people's opposition to same-sex marriage discursively transformed the belief that racialized people are homophobic into common sense knowledge, such that both Conservative and Liberal MPs integrated the idea that racialized people are homophobic into their opposing positions. Thus, while MPs understood white people's support for same-sex marriage as a result of their tolerance of sexual diversity, Liberal MPs described racialized people as supporting same-sex marriage despite their homophobia. This idea that racialized people are homophobic denies the internal diversity of racialized communities, obfuscates alternative explanations for why some racialized people opposed same-sex marriage, ignores the possibility that there were racialized communities and individuals who embraced queerness but did not prioritize the legalization of same-sex marriage as an organizing platform, and invisibilizes white people's homophobia.

Conservative MPs reproduced and defended Harper's statement that legalizing same-sex marriage would threaten Canadian multiculturalism. John Duncan, the Conservative MP for Vancouver Island North, argued that "The Liberal government is proposing to remove the traditional definition of marriage and labelling it a violation of human rights. This is a threat to religious freedoms and multicultural values enshrined in the charter."⁸⁰⁵ Peter Goldring, the Conservative MP for Edmonton East, stated "The collective beliefs of the vast majority of Canadians from across the world's cultural communities is that the traditional definition of marriage is a union of one man and one woman."⁸⁰⁶ In this way, Goldring collapsed the differences between and within racialized communities, spoke on behalf of all of these communities, and declared that they are all opposed to the legalization of same-sex marriage.

⁸⁰⁵ *House of Commons Debates*, 071 (21 March 2005) at 1735 (John Duncan).

⁸⁰⁶ *House of Commons Debates*, 071 (21 March 2005) at 1816 (Peter Goldring).

The Conservative compromise, which is how Conservative MPs referred to their position, was that the “traditional” definition of marriage should not be changed but that same-sex couples should be given all the rights, benefits, and obligations of marriage. James Bezan, the Conservative MP for Selkirk—Interlake, explained the position in this way:

there is no reason that the state cannot recognize all of these diverse people through legislation, including those who want to retain the traditional definition of marriage at the state level out of respect for its origins. That would be the path in our law to a truly diverse and multicultural society, one that allows different viewpoints to be accepted within the law and recognizes cultural uniqueness.⁸⁰⁷

Larry Miller, the Conservative MP for Bruce—Grey—Owen Sound, described the Conservative position as follows:

On the one hand, there are people who believe the equality of rights of gays and lesbians should rule over rights to religious free faith, religious expression or multicultural diversity. On the other hand, there are people who think that marriage is a fundamental institution, but that same sex couples can have equivalent rights and benefits, and should be protected.⁸⁰⁸

Similarly, Harper stated:

The issue involves all kinds of aspects of life that are very close to personal identity, to sexual identity which for many people has been a difficult path, cultural tradition and ethnic identity and of course personal faith in one’s relationship to their God. ...At the one end there is a significant body of opinion, led today by the Prime Minister, which believes that the equality rights of gays and lesbians trump all other considerations, trumping any rights to religious faith, any religious expression or any multicultural diversity, and that any restriction on the right to same sex marriage is unjustifiable discrimination and a denial of human rights...this debate will not reach a conclusion or social peace until equal rights, multicultural diversity and religious freedom are balanced.

While the petitioners organized themselves along religious (e.g., the Islamic Society of North America-Canada) and ethnic (e.g., the primarily Chinese organization Canadian Alliance for Social Justice and Family Values) grounds, MPs primarily represented the opposition to same-sex marriage by “multicultural communities” in racial terms. This is exemplified by Harper’s

⁸⁰⁷ *House of Commons Debates*, 087 (21 April 2005) at 1635 (James Bezan).

⁸⁰⁸ *House of Commons Debates*, 075 (4 April 2005) at 1325 (Larry Miller).

statement that the Prime Minister “believes that the equality rights of gays and lesbians trump all other considerations, trumping any rights to religious faith, any religious expression or any multicultural diversity” as he separates religious reasons for opposition to same-sex marriage from multicultural opposition. Following Harper’s logic, racialized people’s opposition to same-sex marriage derives not from the anti-queerness embedded in their religions but rather is something that inexplicably exists within them. MPs’ inability or refusal to articulate the reason for racialized people’s alleged opposition to same-sex marriage suggests that they see this opposition as racial. In other words, racialized people do not oppose same-sex marriage because of their religious or cultural beliefs; rather, they are *inherently* opposed to same-sex marriage. Constructing racialized people as inherently opposed to same-sex marriage racializes homophobia such that constructing racialized people as homophobic is part of the way in which they are racialized. Moreover, this discursive move simultaneously distanced whiteness from homophobia. While racialized people were constructed as inherently homophobic and, therefore, opposed to same-sex marriage, white people constructed themselves as tolerant of queerness, whether or not they supported the legalization of same-sex marriage.

Other MPs criticized Harper for his claims. For example, Navdeep Bains, the Liberal MP for Mississauga—Brampton South, stated:

The Leader of the Opposition recently stated that extending civil marriage to same sex couples “is a threat to any Canadian who supports multiculturalism and is a threat to a genuinely multicultural country.” With wild claims such as this, it is no wonder so many Canadians are wondering why the Leader of the Opposition is using the charter to divide this country as opposed to uniting it.⁸⁰⁹

Harper defended his comments in Parliament, stating:

The Liberals may blather about protecting cultural minorities, but the fact is that undermining the traditional definition of marriage is an assault on multiculturalism and the practices in those communities. All religious faiths traditionally have upheld the

⁸⁰⁹ *House of Commons Debates*, 052 (8 February 2005) at 1446 (Navdeep Bains).

belief that marriage is a child-centred union of a man and a woman, whether Catholic, Protestant, Jewish, Hindu, Sikh or Muslim. All of these cultural communities, rooted in those faiths, will find their position in society marginalized. I believe the Liberal vision of multiculturalism is really just a folkloristic one. The Liberals invite Canadians from cultural communities to perform folk dances and wear colourful costumes, but they are not interested in the values, beliefs and traditions of new Canadians unless they conform to the latest fashions of Liberalism. All races, colours and creeds are welcome in Liberal Canada as long as they check their faith and conscience at the door. That may be the Liberal vision for Canada in the 21st century, but it is not ours. In our Canada, vibrant cultural communities will be allowed to share not only their food and their dress but their beliefs and aspirations for themselves and their families.⁸¹⁰

In this statement, Harper collapses the differences between “multiculturalism,” “Canadians from cultural communities,” “all races, colours, and creeds,” and “new Canadians,” such that all racialized people in Canada are positioned as new to Canada, and all people who are new to Canada are conceptualized as racialized. This positioning erases the existence of racialized people in Canada throughout and preceding Canada’s existence as a country, invisibilizing Canada’s history of slavery, racist labour regimes and immigration policies, and white settler colonialism. Moreover, in this way, Harper mobilizes the discourse of multiculturalism to protect a conservative, Christian construct of the family.

Harper’s purported concern about the state of Canadian multiculturalism and the well-being of racialized people appears disingenuous given his political record. Harper was originally elected to Parliament as a member of the Reform Party, which critiqued the immigration policies of the late 1980s “for changing ‘the ethnic makeup’ of Canada.”⁸¹¹ In 1990, the Reform Party passed a resolution stating that it was “‘the responsibility of the state to promote, preserve and enhance the national culture’ and that ‘ethnic cultures’ should ‘integrate into the national

⁸¹⁰ *House of Commons Debates*, 058 (16 February 2005) at 1631 (Stephen Harper).

⁸¹¹ Yasmeen Abu-Laban, “Reform by Stealth: The Harper Conservatives and Canadian Multiculturalism,” in *The Multiculturalism Question: Debating Identity in 21st-Century Canada*, ed. Jack Jedwab (Montreal: McGill-Queen’s University Press, 2014), 153.

culture.”⁸¹² Despite the fact that the Reform Party never formed a national government, its ideologies were integrated into the agenda of Progressive Conservative Prime Minister Kim Campbell’s government, which “disbanded the Department of Multiculturalism and Citizenship and integrated the Multiculturalism Program into the Department of Canadian Heritage.”⁸¹³ Harper’s involvement in the overtly racist Reform Party calls for an explanation for his purported concern about the state of Canadian multiculturalism.

Harper’s mobilization of the discourse of multiculturalism can be explained in part by the ways in which the anti-racist potentiality of official multiculturalism had been stymied by the Conservative and Liberal governments that ruled Canada following the enactment of the *Multiculturalism Act* in 1988. The Liberal governments of Jean Chrétien and Paul Martin, for example, maintained the structural changes Campbell’s government had implemented. The equity-oriented potential of multiculturalism was further limited by the Liberal embrace of neoliberalism in the 1990s and 2000s, which involved funding cuts to social services, as well as a shift in multiculturalism policy from supporting cultural development to supporting international business relations.⁸¹⁴ Moreover, Chrétien’s government reduced funding to multiculturalism programs by 30 percent and put forth a policy that “subsumed the expression of ethnocultural diversity under the notion of shared Canadian identity.”⁸¹⁵ So, by the time Harper made his statement about the threat same-sex marriage supposedly posed to Canadian multiculturalism, official multiculturalism was neoliberal, individualistic, and business oriented.

⁸¹² Abu-Laban, “Reform by Stealth,” 153-154.

⁸¹³ Abu-Laban, “Reform by Stealth,” 154.

⁸¹⁴ Abu-Laban, “Reform by Stealth,” 154.

⁸¹⁵ Elke Winter, “Rethinking Multiculturalism after its ‘Retreat’: Lessons from Canada,” *American Behavioral Scientist* 59, no. 6 (2015): 643.

Moreover, this Conservative concern about how legalizing same-sex marriage would threaten multiculturalism came only four years after 9/11 when, as Sherene Razack demonstrates, there was a movement to end multiculturalism, increasingly surveil racialized, especially Muslim, communities, and further limit the rights of racialized people in Canada.⁸¹⁶ Sedef Arat-Koç asserts that this period saw efforts to increasingly align Canada with “western civilization” and US imperial militarism. Sunera Thobani argues that the post-9/11 period exposed the limits of Canada’s self-exaltation as a multicultural society. Thobani asserts that:

If immigrants and refugees were imagined primarily as a burden on taxpaying Canadians and a drain upon scarce social and economic resources at the end of the twentieth century, the “Muslim” immigrant and refugee has come to be constructed as a serious threat to the very survival of the west at the dawn of the new millennium.⁸¹⁷

As Arat-Koç argues, this alignment with the west has been accompanied by “a re-whitening of Canadian identity and increased marginalization of its nonwhite minorities.”⁸¹⁸ This period, when so many MPs were vigorously defending their visions of multiculturalism, was simultaneously a time when whiteness’ attachment to Canadian identity was being re-entrenched and racialized people were being increasingly surveilled, detained, and attacked, both within Canada and by Canadian forces abroad.

Given this context, Harper’s statement demonstrates that, even as racialized people and communities were being increasingly marginalized, surveilled, and attacked, the discourse of multiculturalism continued to hold political currency. Harper’s comments clarify that even though, as Thobani argues, the limits of Canada’s self-exaltation through the use of multiculturalism were exposed in the post-9/11 period, Canadians remained attached to a particular vision of multiculturalism. The constructions of racialized people as traditional and

⁸¹⁶ Razack, *Casting Out*, 4.

⁸¹⁷ Thobani, *Exalted Subjects*, 27-28.

⁸¹⁸ Arat-Koç, “The Disciplinary Boundaries of Canadian Identity after September 11,” 32.

“backwards” which accompanied, for example, Islamophobic constructions of Muslim people as terrorists, existed contemporaneously with a continued Canadian attachment to multiculturalism and contributed to the ongoing construction of what multiculturalism meant/means. Even Muslim people, who were so viciously targeted by the heightened racist policing and violence following 9/11, were embraced by the multiculturalism exhorted by the Conservatives. Harper mobilized this discourse of multiculturalism in a way that secured multiculturalism as a value of white Canada, on the surface embracing racialized people, while simultaneously distancing racialized people and communities from Canadian modernity through their reinscription as traditional and “backwards” because of their supposed rejection of queerness. While Harper claims, perhaps accurately, that the Liberal vision of multiculturalism is limited to food and dance, his statement suggests that the Conservative vision of multiculturalism is that “multicultural communities” can be included only when their “traditional values” align with Conservative values. Thus, the debates about same-sex marriage demonstrate how the discourse of multiculturalism became a political device that was used to simultaneously secure the construction of Canadian whiteness as non-racist, bolster a Conservative politic opposed to the full inclusion of gay and lesbian people in the Canadian state, and re-entrench the construction of racialized people and communities as traditional and anti-modern.

Liberal MPs also mobilized the discourse of multiculturalism to support their position. They argued that racialized people knew their rights were protected by the Charter so they understood that limiting the scope of the Charter to exclude same-sex couples was a threat to their own rights. For example, Bill Graham, the Minister of National Defence, asserted:

In my experience, the multicultural communities that I have the privilege of working with in my riding, with their rich different cultural backgrounds, are uniformly of the view that they want the protection that the charter offers them and they are willing to offer that charter protection to others. I can say something else about my riding and I am very

proud of it. I recall years ago when I first was elected. We have something called Gay Pride in Toronto. I think maybe other cities and countries have pride as well. Twenty-five years ago it was a political event. People protested about being discriminated against. Today it is one of the biggest events in downtown Toronto, as I am sure my colleagues from the city of Toronto who are here today would agree. Grandmothers and children from every race, every multicultural society, and every facet of Toronto are there participating. Why are they participating? They are participating in something that is a celebration of our common humanity, our tolerance and respect for one another, and our ability to get along. Go and ask the grandmothers who are there with their children watching Gay Pride in downtown Toronto. The members here are telling us that this is going to end society, that it is all going to come to a terrible end. Ask them what they think as they bring their children to an event which celebrates our common humanity. That is what it is all about. It is about our common humanity.⁸¹⁹

By stating that “Grandmothers and children from every race, every multicultural society, and every facet of Toronto are there participating... in something that is a celebration of our common humanity, our tolerance and respect for one another, and our ability to get along” Graham forecloses the possibility that racialized people may be participating in Pride celebrations because they are queer and/or trans. Like the Conservatives, the Liberals construct being a racialized person and being queer and/or trans as parallel phenomena, as mutually exclusive. Although they fail to recognize the intersections of race and sexuality, Liberal MPs continued to construct being a racial minority and a sexual minority as complimentary. Graham continued:

We have heard a great deal in the House about the nature of multicultural societies. I know something about multicultural societies. I happen to live in a riding which has a very rich mixture. I happen to know many of the people in that riding, many of whom have cultural hesitations about this matter, who feel that it is not part of their religious tradition, who would not wish to see it as a part of their family. However, those same people know that they have had the privilege of coming to this country and living in a society with a constitutional protection such that while it might apply in this circumstance as something they disagree with or would not practise themselves, they know that those same rights will protect them when the time comes. That is the essence of what the charter protection is all about. It protects all equally.⁸²⁰

⁸¹⁹ *House of Commons Debates*, 061 (21 February 2005) at 1611 (Bill Graham).

⁸²⁰ *House of Commons Debates*, 061 (21 February 2005) at 1611 (Bill Graham).

Even in asserting that racialized people support same-sex marriage, Graham constructed racialized people as unaccepting of queerness. Moreover, the Supreme Court's interpretation of race and sexual orientation as analogous informs the MP's construction of racialized people and queer people. While the Supreme Court's ruling in *Egan* equalized and analogized the groups under the Charter, the Charter itself became constructed as an object of reverence for both groups such that their love of and desire to be protected by the Charter becomes another modality through which racialized people and queer people are constructed as analogous.

Despite the opposite conclusions they reached, MPs across the political spectrum constructed "multicultural communities" as traditional, unaccepting of queerness, and internally homogenous. The assumption that racialized people were both straight and unaccepting of queerness because of their cultures shifted the ways in which "multicultural communities" were homogeneously racialized. While the vast majority of white Conservatives also opposed same-sex marriage, they justified their position using their Christian beliefs while consistently asserting that they supported equal rights and opportunities for queer people. In other words, white Conservatives could oppose same-sex marriage while claiming to not be homophobic. Racialized people's opposition to same-sex marriage, conversely, was constructed as a logical result of their *inherent* homophobia. In this way, homophobia became incorporated into the racialization of racialized communities as traditional and out-of-sync with modernity.

Moreover, this argument that the Charter exists to protect all equally was echoed by other MPs who used the discourse of minority rights to equate the rights of "multicultural communities" and of queer people. These rights could be so easily equated not only because of the analogical reasoning embedded in the Canadian legal system but also because multiculturalism operates through the logic of diversity. Diversity, as Bannerji argues, "has been

used to signify a multiplicity of socio-political presence, as a cornucopia of differences of all sorts, that mark the Canadian social space.”⁸²¹ The propensity of legal discourse to rely on analogical reasoning, as discussed at the beginning of this chapter, facilitates the incorporation of sexual orientation into this notion of diversity, such that queer people are constructed as another culture within a multicultural framework. This functions to re-whiten constructions of sexual minorities because they are positioned as distinct from the cultures of racialized people, again invisibilizing the existence of racialized queer and trans people.

In the debates, diversity was discussed in terms of minority rights. For example, Prime Minister Paul Martin stated:

Let us never forget that one of the reasons Canada is such a vibrant nation, so diverse, so rich in the many cultures and races of the world, is that immigrants who come here, as was the case with the ancestors of many of us in this chamber, feel free and are free to practice their religion, to follow their faith and to live as they want to live. No homogeneous system of beliefs is imposed on them. When we as a nation protect minority rights, we are protecting our multicultural nature. We are reinforcing the Canada we cherish. We are saying proudly and unflinchingly that defending rights, not just those that happen to apply to us, not just those that everyone else approves of, but all fundamental rights, is at the very soul of what it means to be a Canadian.⁸²²

Martin continued:

Without our relentless, inviolable commitment to equality and minority rights, Canada would not be at the forefront in accepting newcomers from all over the world, in making a virtue of our multicultural nature—the complexity of ethnicities and beliefs that make up Canada, that make us proud that we are where our world is going, not where it’s been.⁸²³

MPs mobilized the assertion that racialized people are homophobic to justify the Conservative position that legalizing same-sex marriage threatened multiculturalism as well as the Liberal position that “multicultural communities” supported same-sex marriage because they saw any

⁸²¹ Bannerji, *The Dark Side of the Nation*, 35.

⁸²² *House of Commons Debates*, 058 (16 February 2005) at 1536 (Paul Martin).

⁸²³ *House of Commons Debates*, 058 (16 February 2005) at 1541 (Paul Martin).

extension of Charter rights as a protection of their own rights. In the debates, multiculturalism functioned as a politicized discourse that could be given different and contradictory meanings depending on one's political affiliation. In all versions of multiculturalism mobilized in the debates, however, MPs constructed racialized people as unaccepting of queerness because of their attachments to their traditional and "backwards" cultures. The Liberals, whose vision of same-sex marriage became law, operationalized their analogical logics to draw gay and lesbian communities into multiculturalism such that LGBTQ became another "multiculture" embraced by Canadian multiculturalism. As Jasbir Puar argues, the "analogizing of race and sexuality has a protracted history in gay liberationist tenets that eventually rendered sexuality a form of minorization parallel to ethnicity."⁸²⁴ In the Canadian context, that form of minorization was inclusion in the multicultural rubric.

Multiculturalism functions not only as a way to manage and constitute difference, it also helps create a particular form of whiteness. As Thobani argues:

multiculturalism has been critical also in the *reconstitution* of whiteness in its distinct (and historically new) version as a culturally "tolerant" cosmopolitan whiteness. This has facilitated a more fashionable and politically acceptable form of white supremacy, which has had greater currency within a neocolonial, neoliberal global order.⁸²⁵

Including LGBTQ people as a culture within multiculturalism further solidifies this reconstitution of whiteness as tolerant by adding to the list of groups this form of whiteness will tolerate. An analogical framework that constructs racialized people as straight and homophobic and queer people as white, as well as the Conservative position that racialized people are intolerant of queerness, locates homophobia in racialized communities and in this way contributes to the construction of white tolerance. By repeatedly constituting racialized

⁸²⁴ Puar, *Terrorist Assemblages*, 118.

⁸²⁵ Thobani, *Exalted Subjects*, 148.

communities as homophobic, Conservative MPs invisibilized their own homophobia and that of their constituents. Liberal MPs who constructed racialized communities as both homophobic and supportive of same-sex marriage similarly displaced white homophobia onto racialized communities. In these ways, analogical reasoning, and the binary between constructions of white people as tolerant and racialized people as homophobic that this form of logic enables, contributes to a construction of Canadian whiteness as tolerant.

Conclusion

The debates about legalizing same-sex marriage demonstrate that the analogical reasoning embedded in the Canadian legal system facilitates the equation of racism and homophobia, obfuscating the divergent histories and impacts of racism and homophobia in Canada and across and beyond Canadian borders. Moreover, by situating racism in the United States and in Canada's history rather than as a defining feature of contemporary Canada, while positioning homophobia in the present, MPs constructed homophobia as replacing racism, as the new mode of discrimination since racism was understood to be absent from contemporary Canada. Additionally, MPs positioned historical examples of US anti-Black racism as the defining examples of racism, thus distancing contemporary Islamophobia from accusations of racism and thereby legitimizing Islamophobic policies and practices in Canada. Instead of grappling with contemporary racism, particularly anti-Muslim racism, MPs used the framework of multiculturalism to interpret and discursively manage difference. By enabling queer people to become a culture within multiculturalism, analogical logics also worked to secure neoliberal multiculturalism as an ideal framework for managing difference.

MPs also incorporated opposition to same-sex marriage into their conceptualizations of multiculturalism, such that homophobia became part of the way in which racialized people were

represented as outside of modernity. This construction of racialized people simultaneously drew them into Canada through the multicultural embrace while also constructing them as inherently incongruent with life in contemporary, modern Canada. While Conservative MPs who opposed the legalization of same-sex marriage constructed racialized communities as opposed to same-sex marriage because of their homophobia and Liberal MPs constructed racialized communities as tolerant of same-sex marriage despite their homophobia, MPs on both sides of the debate relied on constructions of racialized communities as monolithic, homogenous, and anti-modern. Analogical reasoning enabled this binary construction of racialized people as homophobic and queer people as white, which, in addition to its racist portrayals of racialized people, constructs whiteness as tolerant in opposition to racialized homophobia.

Conclusion

In this dissertation, I conceptualize the Canadian state's regulation of sexuality as a racial project. I analyze the state's use of analogical reasoning and question the appeal this mode of reasoning has to the state and what interests it serves. I build on queer and feminist scholarship on analogy to develop a new understanding of the role of analogy in legal and legislative debates. I argue that the Canadian state's use of analogical reasoning to conceptualize race and sexual orientation serves the interests of the state in two main ways.

First, this mode of reasoning has helped the Canadian state reconfigure its erasure of racism in Canada and the racial structuring of the white supremacist settler colonial project that is Canada. As I discussed in more depth in Chapters 4 and 5, analogical reasoning enabled state actors to construct racism as a US formation and/or an aberration in Canada's history, thereby obscuring the enduring racist structuring of Canada that began with the colonial invasion and has become more institutionalized throughout the Canadian state's existence as a racist, colonial project. The state's denial of the ongoing racist structuring of Canada is necessary to maintain its self-construction as a benevolent middle power. This image of Canada that the state works to maintain serves state interests by delegitimizing critiques of the racism in and of Canada.

Second, constructing race and sexual orientation as analogical rather than intersecting phenomena has been part of an effort to diffuse more radical demands for justice by people working against multiple and intersecting forms of racial and sexual repression. The way the Canadian state drew analogies between race and sexual orientation implied that racism was no longer part of the fabric of Canadian society because racist laws supposedly no longer existed and also positioned the Canadian legal system as a source of justice that had resolved racism and could resolve homophobia. Situating the Canadian legal system as the forum in which justice can

be realized constrains how justice can be imagined, legitimizes the Canadian state, and delegitimizes the work for justice and freedom that happens outside state structures and poses a far greater threat to the Canadian state.

In the dissertation, I explicate how analogical reasoning and parallel rationalities have reinscribed the white homonormative subject as the sexually non-normative subject worthy of state concern⁸²⁶ in a move that delegitimizes calls for justice from both queer subjects who don't conform to homonormative expectations and racialized subjects, queer and straight, who make demands for racial justice. I show how state actors have mobilized analogical reasoning to use this white homonormative subject to symbolize the state's respect for diversity while disavowing Canadian racism, constituting a diversification of whiteness⁸²⁷ in which white subjects become representative of the forms of diversity the state protects. In the post-9/11 period, the use of gay and lesbian subjects to diversify whiteness has functioned to disavow calls for justice from Muslim subjects whose concerns about Islamophobic state practices are seen as less legitimate than, for example, calls for the legalization of same-sex marriage.

Previous queer and feminist scholarship on analogy had shown how analogies between race and gender constructed Black people as men and women as white,⁸²⁸ which was repeated in modified form in the way race/sexual orientation analogies position racialized subjects as straight and gay/lesbian/queer subjects as white. Analogies between race and sexuality in Canadian courts and legislatures since the 1990s built on the analogization of race and sexuality in evolutionary science, comparative anatomy, and sexology that positioned both racialized subjects and "homosexuals" as less evolved, mature, and adult than straight white men.⁸²⁹ This historical

⁸²⁶ Thobani, "The Secularity of Empire, the Violence of Critique," 727.

⁸²⁷ Wahab, "Affective Mobilizations," 868; Smith, "Diversity in Theory and Practice," 63.

⁸²⁸ hooks, *Ain't I A Woman*, 8.

⁸²⁹ Somerville, *Queering the Color Line*, 24-5; Rohy, *Anachronism and Its Others*, ix-x.

work on race/sexuality analogies in scientific discourse has centered on a binary Black/white mode of racialization in the United States. I situate analogical reasoning in Canada, where less scholarship has taken up race/sexuality analogies, and also situate the analogies in relation to not only anti-Blackness, but also Islamophobia, white settler colonialism, and, to a lesser extent, anti-Asian racism. In the dissertation, I analyze the operations of analogical reasoning in *Egan* in Chapter 4 and the parliamentary debates about the legalization of same-sex marriage in Chapter 5.

Scholarship on more recent uses of race/sexuality analogies has again been mostly based in the US context. This work has shown how these analogies position racial justice as having been achieved, reproduce a parallel construction of racialized people as straight and gay/lesbian/queer people as white, make racial justice appear to not be an urgent priority in sexuality justice movements, and obfuscate the interconnected histories of race and sexuality.⁸³⁰ In the dissertation, I extend this work to the Canadian context, arguing that these effects exist here as well but they emerge in relation to the United States because, in these discourses, Canadian racism is disavowed by positioning racism in the US. Furthermore, I demonstrate that the way Canadian state actors have used these analogies distance racism and homophobia from their systemic underpinnings in ways that limit how racism and homophobia are understood. These limited understandings situate racism and homophobia as problems that can be legislated away without addressing the white settler hegemony or heterosexism that are foundational to Canada.

This dissertation also maps out the historical interconnections of racism and homophobia in the 1969-2005 period in Canada. There is important scholarship that takes up the imbrications

⁸³⁰ Puar, *Terrorist Assemblages*, 118.

of race and sexuality in Canada between the 1700s and early 1900s⁸³¹ as well as work on homonationalism and other connections between race and sexuality beginning in the late 2000s.⁸³² This dissertation, however, draws connections between these bodies of scholarship and begins the work of outlining the relational operation of race and sexuality in Canada between 1969 and 2005. There was a significant shift in the state's treatment of sexual non-normativity during this period as the Canadian state moved from complete denunciation and criminalization of same-sex practices to the introduction of laws aimed at creating legal equality for gay/lesbian/queer citizens, as has been shown by a great deal of scholarship on gay, lesbian, and queer Canadian histories.⁸³³ This work points to the importance of this historical period for sexuality in Canada, yet scholarship on race and sexuality in Canada hadn't yet considered their relationship during this time period. This dissertation is an effort to fill in this gap, explicating the Canadian state's racialized management of sexuality during this time.

In this 1967-2005 period, I trace a shift in the operation of parallelism, from associations between queerness and Muslim sexualities being juxtaposed to constructions of Canadians as straight and white to later representations of gay and lesbian subjects as white Canadians being distinguished from those of racialized people in Canada, who were constructed as straight in the 2005 debates, but not normatively so. In both early representations of Muslim sexualities in the 1967-1969 debates and constructions of "multicultural communities" in the 2005 debates, Canadian state actors understood the attitudes of racialized people towards sexuality to be

⁸³¹ For example, Carter, *The Importance of Being Monogamous*; Shah, *Stranger Intimacy*; Dua, "Exclusion through Inclusion"; Mawani, *Colonial Proximities*.

⁸³² For example, OmiSoore H. Dryden and Suzanne Lenon (Eds.), *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging* (Vancouver, BC: UBC Press, 2015); Wahab, "Calling 'Homophobia' into Place (Jamaica)," 908-28; Lenon, "'Why is Our Love an Issue?'" 351-372.

⁸³³ For example, Manon Tremblay (ed.), *Queer Mobilizations: Social Movement Activism and Canadian Public Policy* (Vancouver: UBC Press, 2015); Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada*; Warner, *Never Going Back*; Lahey, *Are We "Persons" Yet?*.

culturally determined, embedded in a premodern worldview that understands sexuality differently than it is presented as being understood in western worldviews. This construction of racialized people as bound to culture invisibilizes diversity among racialized people, including sexual diversity, which enables such culturally bound constructions of racialized people to be used to further political ambitions, for example with both Liberals and Conservatives mobilizing this culturalist view in the 2005 debates about multiculturalism and same-sex marriage. While the construction of racialized people as homophobic is a complex phenomenon, it can be explained in part by the utility of this construction to the maintenance of white settler hegemony in Canada.

The political representations of gay and lesbian people I discuss in chapters 4 and 5 are also flattened through analogical logics, such that they are represented as always white and Canadian, but also as desiring coupledness, lifelong monogamy, marriage, and children. These normative demands have been relatively easily accommodated through legal reforms because existing institutions could be expanded to include same-sex couples without fundamentally changing their purposes or operations. A more expansive and accurate understanding of queer communities, recognizing that some queer people are racialized, disabled, and/or poor, and that some would prefer multiple sexual partners and public sex to marriage and kids, would be much more difficult for the state to accommodate. The state's construction of queerness through homonormative whiteness allows for its accommodation within existing structures and, importantly, this accommodation enables the state to present itself as gay friendly, a term that is comparative to the supposed homophobia of other, usually differently racialized, states.

Ultimately, the reforms I've discussed in this dissertation that were supposedly intended to enhance the inclusion of gay and lesbian people in Canadian society have strengthened rather

than undermined Canadian heteronormativity, racism, and white settler hegemony. This strengthening of heteronormativity is in part the result of the fact that the reforms did not address the white settler supremacy that is at the core of heteronormativity in Canada. These reforms have fostered the growth of what Lisa Duggan names homonormativity: “a politics that does not contest dominant heteronormative assumptions and institutions but upholds and sustains them.”⁸³⁴ Each of the reforms I discussed in this dissertation relegitimized the white supremacist and white settler colonial institutions that enacted them by repositioning these institutions as queer inclusive, or at least as less homophobic than they once were. The parliamentary decision to partially decriminalize anal sex in 1969 helped position Canada as exceptionally compassionate and worked to secure Canada’s place as part of the west. By juxtaposing the figure of the redeemable white homosexual with the construction of Muslim sexual non-normativity as culturally determined, MPs expanded the embodiments of whiteness that could be tolerated in Canada while casting Muslims as external to Canada and Indigenous people as non-existent. In *Egan*, judges’ uses of analogical reasoning positioned racism in the US, thereby constructing Canada as free from racism, while simultaneously constructing Canada as gay-friendly by recognizing sexual orientation as an analogous ground of discrimination under the Charter without actually extending pension benefits to Egan’s partner Nesbitt. Finally, the use of analogical reasoning in the debates about the legalization of same-sex marriage positioned homophobia as the “new racism,” disavowing the continuation of racism in contemporary Canada which worked to secure white settler hegemony by delegitimizing critiques of Canadian racisms.

⁸³⁴ Lisa Duggan, “The New Homonormativity: The Sexual Politics of Neoliberalism,” in *Materializing Democracy: Towards a Revitalized Cultural Politics*, ed. Russ Castronovo and Dana Nelson (Durham: Duke University Press, 2002), 179.

The way the state partially decriminalized anal sex in 1969 legitimized policing—including the policing of racialized communities and gay communities—as a force for social good that no longer targeted gay men for being gay men. In reality, however, the reforms led to the increased criminalization of men who had sex with other men in spaces the state considered to be public.⁸³⁵ The police were no longer empowered by law to arrest men for having sex with other men in their homes, but the re-legitimization of policing that the reforms enabled created justifications for the police to harass, arrest, and imprison men who had sex with other men in outdoor cruising areas, at gay bars, in bathhouses, and in other public and semi-public spaces that were and continue to be important parts of gay men’s sexual cultures. As such, the reforms were an attack on gay men’s sexual cultural spaces and a component of the emergence of a privatized and respectablized homonormativity in Canada.

Because MPs who debated the 1969 reforms drew biologically based distinctions between racialized men who had sex with other men and white men who had sex with other men, explaining the same-sex desires of racialized men as a product of their “inferior” and “uncivilized” cultures and the same-sex desires of white men as a symptom of psychiatric illness, the debates also marked an early example of the state’s use of homosexuality to redeem whiteness. Positioning white men who had sex with other men as redeemable through treatment enabled state actors to reconfigure the boundaries of legitimized citizenship such that white men who had sex with other men were often granted inclusion in the state while the exclusion of racialized men who had sex with other men, and all racialized people, was reified and justified through sexual logics.

⁸³⁵ Hooper, “The State’s Key to the Bedroom Door,” 102.

The reforms I've discussed in this dissertation fall within what abolitionist scholars call "reformist reforms," that is those reforms that strengthen the institutions they are supposedly transforming. Granting access to same-sex marriage, for example, undermines critiques of the heteronormative foundations of the institution of marriage while simultaneously reifying the legitimacy of both the institution of marriage itself as well as the Canadian legal system that expanded the legal definition of marriage to include same-sex couples. Ruth Wilson Gilmore differentiates these reformist reforms from non-reformist reforms, which she defines as "changes that, at the end of the day, unravel rather than widen the net of social control through criminalization."⁸³⁶ While the reforms I focus on in this dissertation were positioned as solutions to actual inequities—criminalizing men for having sex with other men, discrimination on the basis of sexual orientation, and lack of access to the benefits of marriage for same-sex couples—because they did not end the criminalization of men who have sex with men, discrimination on the basis of sexual orientation, or unequal access to the benefits of marriage (i.e., people who aren't married receive different benefits from the state because of their relationship statuses), the reforms worked to strengthen and legitimize the Canadian legal system.

Non-reformist reform approaches to the inequities to which these reforms were positioned as solutions might have included: decriminalizing all consensual sex (including, e.g., sex work, public sex, sex with more than two people, etc.); providing sufficient resources to everyone, regardless of sexual practices or relationship status, so that they could have adequate access to healthcare, housing, food, clean water, and other resources necessary for life; and abolishing marriage as a legal category so that people's access to material resources is not dependent on their relationship statuses. Such reforms could have enhanced people's abilities to

⁸³⁶ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 242.

live fulfilling lives and may have supported political coalitions between those working for sexual and racial justice. The Canadian state's use of analogies between racism and discrimination on the basis of sexual orientation when debating and implementing reforms aimed at creating a more inclusive society for LGBTQ2S people perpetuated the erasure of racism in Canada, relegitimized white settler colonial legal systems, created justifications for maintaining institutions like marriage that ensure inequitable resource distribution, and constrained and diffused more radical demands for justice and freedom.

The limitations of legislating based on the assumptions embedded in analogical logics raises the question of how the state should respond to calls for justice and equity from racialized and sexually non-normative subjects. The reforms I take up in this dissertation presume a white middle-class gay or lesbian subject as the subject seeking sexual justice, constraining the visioning of justice to initiatives deemed important to the white middle class. If instead, as others have suggested,⁸³⁷ state actors sought the perspectives of those most negatively impacted by current policies when considering policy reform, they would be better able to provide supports to those people who are most marginalized by the current arrangement of power in Canadian society. If the perspectives of, for example, queer street-based sex workers were taken into account when the decriminalization of anal sex was being considered or if the perspectives of people receiving disability supports, who can have their benefits scaled back if they enter into a relationship,⁸³⁸ were centred in debates about "marriage equality," the legislative outcomes of these debates would have been more responsive to the needs of the people most marginalized by

⁸³⁷ Jamila Michener, Mallory SoRelle, and Chloe Thurston, "From the Margins to the Center: A Bottom-Up Approach to Welfare State Scholarship," *Perspectives on Politics* 20, no. 1 (2020): 154-69.

⁸³⁸ Sarah Trick, "How the Ontario Disability Support Program Makes Falling in Love a Challenging Proposition," *TVO*, August 24, 2018, <https://www.tvo.org/article/how-the-ontario-disability-support-program-makes-falling-in-love-a-challenging-proposition>; Jeff Rock, "Twenty Years of Marriage Equality? No, Not for Disabled Ontarians," *Toronto Star*, January 13, 2021, <https://www.thestar.com/opinion/contributors/2021/01/13/twenty-years-of-marriage-equality-no-not-for-disabled-ontarians.html>.

the law. This points to the urgent need to push law makers away from centring the concerns of the white middle class in their decision making.

In addition, despite the state's efforts to construct racism and homophobia as parallel phenomena, people have mobilized and made demands that centre the intersections of heteronormativity and white supremacist settler colonialism. For example, Queers Against Israeli Apartheid (QuAIA) organized in Toronto between 2008 and 2015 to resist the Israeli state's construction of itself as a queer-inclusive state surrounded by homophobic Muslim-majority countries to justify its occupation of Palestine.⁸³⁹ QuAIA took up the Palestinian call to use Boycott, Divestment, and Sanctions against Israel and marched in Toronto Pride to raise awareness about the Israeli state's occupation of Palestine and violence against Palestinian people.⁸⁴⁰ QuAIA's analysis of Israeli violence took up questions of race, Islamophobia, imperialism, and heteropatriarchy, enabling queer activists in Canada to resist the use of their identities to further the settler colonial project of Israel.⁸⁴¹ QuAIA's actions were met with fierce resistance in Toronto, including calls to defund Toronto Pride for allowing QuAIA to march,⁸⁴² pointing to the limited notion of queerness that the Canadian state is willing to include, namely a depoliticized queerness that does not seek to disrupt the white settler hegemony that is foundational to the Canadian state. QuAIA's work points to the possibilities of queer mobilizations that centre analyses of race, Islamophobia, and imperialism, and the intense

⁸³⁹ Natalie Kouri-Towe, "Risk, Desire and Adaptation: The Paradox of Queer Solidarity and the Political Possibility of Death Under Neoliberalism and Homonationalism," *Somatechnics* 7, no. 2 (2017): 186; Rafeef Ziadah, "Outside the Multicultural: Solidarity and the Silencing of Palestinian Narratives" (PhD diss., York University, 2013), 200, <http://hdl.handle.net/10315/32038>.

⁸⁴⁰ Ziadah, "Outside the Multicultural," 200.

⁸⁴¹ Michael Connors Jackman and Nishant Upadhyay, "Pinkwatching Israel, Whitewashing Canada: Queer (Settler) Politics and Indigenous Colonization in Canada," *Women's Studies Quarterly* 42, nos. 3 & 4 (2014): 196.

⁸⁴² Ziadah, "Outside the Multicultural," 225.

opposition to QuAIA that emerged in Toronto demonstrates the limits of Canadian acceptance of intersectional queerness.

Overall, I have built on scholarship on race/sexuality analogies, the imbricated histories of race and sexuality in Canada, and gay/lesbian/queer Canadian histories to show how state actors used analogies between race and sexuality to contain demands for sexual and racial justice to those that could be met through legal reform. This was enabled by the use of homonormative sexual subjectivity to diversify whiteness and delegitimize more transformative demands for racial and sexual justice.

Project Limitations

My focus in this dissertation on the discourses mobilized in Canadian state institutions—Parliament and the Supreme Court of Canada—has confined my analysis to Canada in a way that often neglects how local, regional, and provincial, as well as transnational, racialized sexual logics undoubtedly informed how MPs and Supreme Court justices understood the relationship between race and sexuality. In theorizing how “the project of homosexual arrival benefits the ongoing global colonial project,” Rinaldo Walcott argues:

that these dynamics, although nation-bound, are never just that...even though it remains useful to read how these practices play out in a national context, it is always necessary to remember that the national – despite the various violences that it enacts in order to appear singular and contained – is never just singular. The national always leaks elsewhere.⁸⁴³

This dissertation has left many unanswered questions about how, for example, the anti-colonial independence movements in now former European colonies in Latin America and the Caribbean, Africa, and Asia shaped Canadian state actors’ understandings of the relationship between race

⁸⁴³ Rinaldo Walcott, “Forward: The Homosexuals Have Arrived!” in *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*, ed. OmiSoore Dryden and Suzanne Lenon (Vancouver: UBC Press, 2015), viii.

and sexuality in the 1960s. Reading House of Commons transcripts on the partial decriminalization of anal sex, focussing on race, beside House of Commons transcripts that discussed or referenced anti-colonial independence movements, focussing on representations of sexuality and gender, for example, would have provided a more robust archive from which to analyze race and sexuality in the 1960s. While asserting “its broad sympathy with Third World aspirations,”⁸⁴⁴ the Liberal government under Pierre Trudeau developed foreign policy aimed at containing the expansion of communism; as Gary Kinsman and Patrizia Gentile argue, this cold war foreign policy was centred on “the defence of capitalism, whiteness, the patriarchal family, ‘proper’ forms of masculinity/femininity, and heterosexuality.”⁸⁴⁵ Reading the debates about the partial decriminalization of anal sex alongside discussions of decolonization movements in the Global South might have generated more insights about contemporary understandings of race and sexuality because they would have been better situated within the cold war context from which they arose.

My analysis also leaves out questions about how resistance to the apartheid state in South Africa and the global movement to boycott the apartheid state influenced how Supreme Court justices understood the relationship between race and sexuality in *Egan*, which reached the Supreme Court the year after legal apartheid ended in South Africa. Additionally, the heightened vilification of Muslim and Arab people and the US-led invasions of Afghanistan and Iraq in the early 2000s built on pre-existing Orientalist tropes about Islam, including western ideas about Muslim sexualities, but the primary sources I drew on in this project limited the ways in which I could engage with these transnational dynamics. Analyzing the concurrent debates about

⁸⁴⁴ David Webster, “End of the Innocents: Engagement and Decolonization in the Global South since 1968,” *Canadian Foreign Policy Journal* 24, no. 3 (2018): 330.

⁸⁴⁵ Kinsman and Gentile, *The Canadian War on Queers*, 23.

immigration also would have provided a fuller picture of how state actors understood race during this period.

In this dissertation, I've focussed on state archives and neglected LGBTQ2S archives. Investigating how LGBTQ2S archival sources represented race, immigration, and white settler colonialism during the period of each case study would have allowed me to reflect on LGBTQ2S people's perpetuation of, as well as resistance to, analogizing sexual orientation to race to further the project of LGBTQ2S equality.

My analysis is also limited by my lack of engagement with how political and judicial state actors' understandings of the relationship between race and sexuality were informed by the colonial logics of white settler Canada. Controlling and constraining Indigenous sexual and romantic imaginaries, practices, and desires, as well as the sexual violence settlers inflict and inflicted on Indigenous people, have always been central to France's, then Britain's, then Canada's imposition of white settler colonialism in the territories the state considers to be Canada. But because the erasure of Indigenous presence in these territories is imperative to the Canadian state's claims to legitimate governance, white settler sexual violence and sexual repression perpetrated against Indigenous peoples was largely absent from the House of Commons and Supreme Court transcripts I analyzed. While I attempted to integrate a critique of Canadian white settler colonialism into my analysis of the state's understanding of the relationship between race and sexuality in Canada, again the primary sources I drew on offered little to work with in this area.

Concluding Thoughts

It is my hope that this dissertation pushes back against the Canadian state's attempts to position itself as both queer inclusive and a multicultural haven. Such claims undermine

solidarity between differently marginalized groups and foster nationalist sentiments in citizen-subjects who believe this narrative and dismiss demands for justice that go beyond what the state offers. Future projects could take up 2SLGBTQ archival sources and conduct interviews with 2SLGBTQ activists to consider how 2SLGBTQ activists and community organizers have responded to or participated in analogical reasoning in their work. This could address questions about how activists engage with, resist, and transform state logics and address issues of complicity with and resistance to racism in 2SLGBTQ movements.

Bibliography

Archival Sources and Government Documents

- Canadian Advisory Council on the Status of Women. "Women, Human Rights & The Constitution: Submission of the Canadian Advisory Council on the Status of Women to the Special Joint Committee on the Constitution, November 18, 1980." <https://studylib.net/doc/18131515/canadian-advisory-council-on-the-status-of-women>.
- Canadian Bill of Rights*, S.C. 1960, c. 44. <https://laws-lois.justice.gc.ca/eng/acts/c-12.3/page-1.html>.
- Civil Marriage Act*, S.C. 2005, c. 33. <https://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html>.
- Constitution Act*. Canadian Charter of Rights and Freedoms. R.S.C. 1982 s. 15(1). <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.
- Egan v. Canada* (1995) 2 S.C.R. 513. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1265/index.do>
- House of Commons Debates*, 028 (23 January 1969).
- House of Commons Debates*, 028 (27 January 1969).
- House of Commons Debates*, 028 (13 February 1969).
- House of Commons Debates*, 028 (15 April 1969).
- House of Commons Debates*, 028 (17 April 1969).
- House of Commons Debates*, 028 (18 April 1969).
- House of Commons Debates*, 028 (21 April 1969).
- House of Commons Debates*, 052 (8 February 2005).
- House of Commons Debates*, 056 (14 February 2005).
- House of Commons Debates*, 058 (16 February 2005).
- House of Commons Debates*, 061 (21 February 2005).
- House of Commons Debates*, 065 (25 February 2005).
- House of Commons Debates*, 071 (21 March 2005).
- House of Commons Debates*, 074 (24 March 2005).
- House of Commons Debates*, 075 (4 April 2005).
- House of Commons Debates*, 076 (5 April 2005).
- House of Commons Debates*, 087 (21 April 2005).
- House of Commons Debates*, 123 (27 June 2005).
- House of Commons Debates*, 124, (28 June 2005).
- M. v. H.* (1999) 2 S.C.R. 3. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1702/index.do>.
- Miron v. Trudel.* (1995) 2 S.C.R. 418. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1264/index.do>.
- Reference re Same-Sex Marriage, Supreme Court Judgments, 2004 SCC 79, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do>.
- Royal Commission on Aboriginal Peoples. *The High Arctic Relocation: A Report on the 1953-55 Relocation*. Ottawa: Canada Communication Group, 1994.
- Special Joint Committee on the Constitution of Canada. vol. 1. November 20, 1980.
- Truth and Reconciliation Commission of Canada. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

Newspaper and Magazine Articles, Television, and Social Media

- Alexander, Julia. "K-Pop Stans Overwhelm App After Dallas Police ask for Videos of Protesters." *The Verge*, June 1, 2020. <https://www.theverge.com/2020/6/1/21277423/k-pop-dallas-pd-iwatch-app-flood-review-bomb-surveillance-protests-george-floyd>.
- Bain, Beverly (@BeverlyBain13). "This form of attempted subversion is highly problematic since it subverts the issue of racism while privileging whiteness. It conflates racism with homophobia." Twitter, October 5, 2020, 12:36 a.m. <https://twitter.com/BeverlyBain13/status/1312975012102639616?s=19>.
- Barsotti, Natasha. "Sikh Leader's Anti-Gay Remarks Ignite Furore." *Xtra*, January 1, 2008. <https://xtramagazine.com/power/sikh-leaders-anti-gay-remarks-ignite-furore-16880>.
- BBC News. "K-pop Fans Drown Out #WhiteLivesMatter Hashtag." June 4, 2020. <https://www.bbc.com/news/technology-52922035>.
- Belam, Martin and Adam Gabbatt, "Proud Boys: Who are the Far-Right Group that Backs Donald Trump?" *The Guardian*, September 30, 2020. <https://www.theguardian.com/world/2020/sep/30/proud-boys-who-are-far-right-group-that-backs-donald-trump>.
- Bhasin, Ritu. "Sikhs Have Been Living in Fear of Hate Crimes Since 9/11." *Global and Mail*, August 8, 2012. <https://www.theglobeandmail.com/opinion/columnists/sikhs-have-been-living-in-fear-of-hate-crimes-since-911/article4468643/>.
- CBC News. "World Sikh Group Against Gay Marriage Bill." March 28, 2005. <https://www.cbc.ca/news/canada/world-sikh-group-against-gay-marriage-bill-1.536239>.
- CBC Nova Scotia. "Canadian Navy Members Involved in 'Proud Boys' Incident at Indigenous Ceremony." July 4, 2017. https://www.youtube.com/watch?v=AOAgNxp2_7U.
- CBC Radio. "Who are the Proud Boys who Disrupted an Indigenous Event on Canada Day?" July 4, 2017. <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.4189447/who-are-the-proud-boys-who-disrupted-an-indigenous-event-on-canada-day-1.4189450>.
- CNBC Television. "President Donald Trump: White Supremacist Group Proud Boys Should 'Stand Back and Stand By.'" September 30, 2020, video, 1:21. <https://www.youtube.com/watch?v=JZk6VzSL4Y>.
- Chan, Tim. "K-Pop Power: Fandoms Unite to Take Over #WhiteLivesMatter Hashtag on Twitter." *Rolling Stone*, June 3, 2020. <https://www.rollingstone.com/music/music-news/white-lives-matter-k-pop-1009581/>.
- Cornish, Dean. "Meet the Proud Boys, A Group of Men Who Say There's a War on Masculinity." *Dateline*, July 4, 2018. <https://www.sbs.com.au/news/dateline/meet-the-proud-boys-a-group-of-men-who-say-there-s-a-war-on-masculinity>.
- Delgado, Sara. "K-Pop Fancams Got Political to Protect Black Lives Matter Protesters From Dallas Police." *Teen Vogue*, June 1, 2020. <https://www.teenvogue.com/story/k-pop-fancams-protect-black-lives-matter-protestors-dallas-police>.
- Douglas, Todd. "Canada's Changing Moral Landscape: Are Immigrants to the Country Changing the Face of What's Considered Right or Wrong?" *Vancouver Sun*, December 15, 2007, D8.
- Elliott, Josh K. "K-Pop Fans Take Over 'White Lives Matter' Hashtag to Drown Out Racism." *Global News*, June 3, 2020. <https://globalnews.ca/news/7021392/k-pop-white-lives-matter-george-floyd/>.

- Horn, Greg. "Editorial: French Media Steps Up Attack on Kahnawake." *Iori:Wase: News from the Kanien'kehá:ka Nation*, February 19, 2021. <https://kahnawakenews.com/editorial-french-media-steps-up-attack-on-kahnawake-p3313-131.htm>.
- Jackson, Hannah. "MPs Unanimously Agree to Urge Feds to Designate Proud Boys a Terrorist Entity." *Global News*, January 25, 2021. <https://globalnews.ca/news/7598355/motion-passes-proud-boys-terrorists/>.
- Johnston, Malcolm. "Q&A: Kellie Leitch, the Potential Future Prime Minister who Wants to Bring President-Elect Trump's Message to Canada." *Toronto Life*, November 9, 2016. <https://torontolife.com/city/qa-kellie-leitch-potential-future-prime-minister-wants-bring-president-elect-trumps-message-canada/>.
- Kingston, Anne. "How Kellie Leitch Accidentally Revealed Canadian Values." *Maclean's*, May 26, 2017. https://www.macleans.ca/politics/how-kellie-leitch-accidentally-revealed-canadian-values/?utm_source=macleans&utm_medium=organic&utm_campaign=recirc&utm_content=tag_list.
- Kinsman, Gary (@GaryWKinsman). "A useful subversion of the heterosexism and heteromascularity of the 'Proud Boys' but we also have to deal very centrally with their racism, fascism, and sexism." Twitter, October 5, 2020, 12:21 a.m. <https://twitter.com/GaryWKinsman/status/1312971108795076608?s=19>.
- Laghi, Brian. "Tories Blast Harper for Same-Sex Warning." *Globe and Mail*, February 8, 2005. <https://www.theglobeandmail.com/news/national/tories-blast-harper-for-same-sex-warning/article4115327/>.
- Lewis, Rachel Charlene. "Denouncing White Supremacy Must be a Movement, Not a Trend." *Bitch Media*, October 9, 2020. <https://www.bitchmedia.org/article/white-gay-men-cant-reclaim-proud-boys-queer-racism>.
- McCann, Marcus. "This Toronto Undercover Police Operation was Reminiscent of the Bathhouse Raids." *Xtra*, July 24, 2019. <https://xtramagazine.com/power/this-toronto-undercover-police-operation-was-reminiscent-of-the-bathhouse-raids-157363>.
- Montpetit, Jonathan. "Religious Symbols Ban Pits Quebec Feminists Against Each Other." *CBC News*, May 16, 2019. <https://www.cbc.ca/news/canada/montreal/bill-21-quebec-feminists-on-opposite-sides-of-religious-symbols-ban-1.5139422>.
- Renaud, Linda. "Montreal Gay Community gets Organized." CBC Archives, City at Six, October 1, 1978. <https://www.cbc.ca/archives/entry/the-montreal-gay-community-gets-organized>.
- Roache, Trina. "The Military Apologizes while a Grandmother Demands Action on 'Proud Boys' Behavior." *APTN News*, July 5, 2017. <https://www.aptnnews.ca/national-news/the-military-apologizes-while-a-grandmother-demands-action-on-proud-boys-behavior/>.
- Rock, Jeff. "Twenty Years of Marriage Equality? No, Not for Disabled Ontarians." *Toronto Star*, January 13, 2021. <https://www.thestar.com/opinion/contributors/2021/01/13/twenty-years-of-marriage-equality-no-not-for-disabled-ontarians.html>.
- Silva, Christianna. "Gavin McInnes and the Proud Boys: An Extremist Far-Right Group, Explained." *Teen Vogue*, October 18, 2018. <https://www.teenvogue.com/story/gavin-mcinnis-proud-boys-extremist-far-right-group-explained>.
- Tasker, John Paul. "Head of Canada's Indigenous Veterans Group Hopes Proud Boys Don't Lose Their CAF Jobs." *CBC News*, July 5, 2017. <https://www.cbc.ca/news/politics/indigenous-veterans-group-proud-boys-1.4191749>.

Trick, Sarah. "How the Ontario Disability Support Program Makes Falling in Love a Challenging Proposition." *TVO*, August 24, 2018. <https://www.tvo.org/article/how-the-ontario-disability-support-program-makes-falling-in-love-a-challenging-proposition>.

Secondary Sources

- Abu-Laban, Yasmeen. "Keeping 'Em Out: Gender, Race, and Class Biases in Canadian Immigration Policy." In *Painting the Maple: Essays on Race, Gender, and the Construction of Canada*, edited by Veronica Strong-Boag, Sherrill Grace, Avigail Eisenberg, and Joan Anderson, 69-82. Vancouver: UBC Press, 1998.
- Abu-Laban, Yasmeen. "Liberalism, Multiculturalism and the Problem of Essentialism." *Citizenship Studies* 6, no. 4 (2002): 459-482.
- Abu-Laban, Yasmeen. "Recognition, Re-distribution and Solidarity: The Case of Multicultural Canada." In *Diversity and Contestations over Nationalism in Europe and Canada*, edited by John Erik Fossum, Riva Kastoryano, and Birte Siim, 237-262. London: Palgrave Macmillan, 2018.
- Abu-Laban, Yasmeen. "Reform by Stealth: The Harper Conservatives and Canadian Multiculturalism." In *The Multiculturalism Question: Debating Identity in 21st-Century Canada*, edited by Jack Jedwab, 149-172. Montreal: McGill-Queen's University Press, 2014.
- Abu-Laban, Yasmeen, and Christina Gabriel. *Selling Diversity: Immigration, Multiculturalism, Employment Equity, and Globalization*. Toronto: University of Toronto Press, 2008.
- Abu-Laban, Yasmeen, and Nisha Nath. "Citizenship, Multiculturalism, and Immigration: Mapping the Complexities of Inclusion and Exclusion Through Intersectionality." In *The Palgrave Handbook of Gender, Sexuality, and Canadian Politics*, edited by Manon Tremblay and Joanna Everitt, 507-27. Cham, Switzerland: Palgrave Macmillan.
- Ahmad, Aisha. "Canada and Somalia: Learning from the Legacy of Failed Intervention." In *Evasive Pursuits: Lessons from Canada's Interventions Abroad*, edited by Fen Osler Hampson and Stephen M. Saideman, 79-100. Ottawa: Centre for International Governance Innovation, 2015.
- Ahmed, Sara. *Differences that Matter: Feminist Theory and Postmodernism*. Cambridge: Cambridge University Press, 1998.
- Almonte, Richard. "'Treason in the Fort': Blackness and Canadian Literature." In *Rude: Contemporary Black Canadian Cultural Criticism*, edited by Rinaldo Walcott, 11-25. Toronto: Insomniac Press, 2000.
- Anderson, Kim. *A Recognition of Being: Reconstructing Native Womanhood*. 2nd ed. Toronto: Women's Press, 2016.
- Anti-69 Network. "Against the Mythologies of the 1969 Criminal Code Reform." Accessed April 21, 2021. <https://anti-69.ca/>.
- Anti-Defamation League. "Proud Boys." Accessed November 14, 2020. <https://www.adl.org/proudboys>.
- Arat-Koç, Sedef. "The Disciplinary Boundaries of Canadian Identity after September 11: Civilizational Identity, Multiculturalism, and the Challenge of Anti-Imperialism." *Social Justice* 32, no. 4 (2005): 32-49.
- Arat-Koç, Sedef. "Gender and Race in 'Non-Discriminatory' Immigration Policies in Canada." In *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, edited by Enakshi Dua and Angela Robinson, 207-33. Toronto: Women's Press, 1999.

- Arat-Koç, Sedef. "Neo-Liberalism, State Restructuring and Immigration: Changes in Canadian Policies in the 1990s." *Journal of Canadian Studies/Revue d'études canadienne* 34, no. 2 (1999): 31-56.
- Arat-Koç, Sedef. "Whose Transnationalism? Canada, 'Clash of Civilizations' Discourse and Arab and Muslim Canadians." In *Asian Canadian Studies Reader*, edited by Roland Sintos Coloma and Gordon Pon, 316-337. Toronto: University of Toronto Press, 2017.
- Arbel, Efrat, and Eileen Myrdahl. "Immutability, Immigration Status, and the Limits of Equality Protection." In *The Canadian Constitution in Transition*, edited by Richard Albert, Paul Daly, and Vanessa A. MacDonnell, 365-385. Toronto: University of Toronto Press, 2019.
- Arondekar, Anjali. "Border/Line Sex." *interventions* 7, no. 2 (2005): 236-50.
- Aronovitch, Hilliard. "The Political Importance of Analogical Argument." *Political Studies* 45 (1997): 78-92.
- Asad, Talal. "Free Speech, Blasphemy, and Secular Criticism." In *Is Critique Secular? Blasphemy, Injury, and Free Speech*, 14-57. New York: Fordham University Press, 2013.
- Austin, David. *Fear of a Black Nation: Race, Sex, and Security in Sixties Montreal*. Toronto: Between the Lines, 2013.
- Backhouse, Constance. "Legal Discrimination Against the Chinese in Canada: The Historical Framework." In *Calling Power to Account: Law, Reparations, and the Chinese Canadian Head Tax Case*, edited by David Dyzenhaus and Mayo Moran, 24-59. Toronto: University of Toronto Press, 2005.
- Backhouse, Constance. "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada." *Law and History Review* 14, no. 2 (1996): 315-368.
- Bakker, Isabella, and Katherine Scott. "From the Postwar to the Post-Liberal Keynesian Welfare States." In *Understanding Canada: Building on the New Canadian Political Economy*, edited by Wallach Clement, 286-310. Montreal: McGill-Queen's University Press, 1997.
- Baldwin, Andrew, Laura Cameron, and Audrey Kobayashi, eds. *Rethinking the Great White North: Race, Nature, and the Historical Geographies of Whiteness in Canada*. Vancouver: UBC Press, 2011.
- Balfour, Lindsay. "Reframing Redress after 9/11: Protest, Reconciliation and Canada's War on Terror against Indigenous Peoples." *The Canadian Journal of Native Studies* 34, no. 1 (2014): 25-41.
- Bannerji, Himani. *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender*. Toronto: Canadian Scholars' Press, 2000.
- Bannerji, Himani. "A Question of Silence: Reflections on Violence against Women in Communities of Colour." In *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, edited by Enakshi Dua and Angela Robertson, 261-277. Toronto: Women's Press, 1999.
- Bannerji, Himani. "The Paradox of Diversity: The Construction of a Multicultural Canada and 'Women of Color.'" *Women's Studies International Forum* 23, no. 5 (2000): 537-560.
- Banwait, Ranbir. "Legislating Race, Grammars of Patriarchy: Citizenship, Statelessness, and Velma Demerson's Incurable." *Canadian Literature* 223 (2014): 13-30.
- Barker, Joanne. "Critically Sovereign." In *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies*, edited by Joanne Barker, 1-44. Durham: Duke University Press, 2017.
- Barrett, Campbell D. "The Present Status of the Law of Marriage in the United States and Abroad." In *Same-Sex Marriage: The Legal and Psychological Evolution in America*,

- edited by Donald J. Cantor, Elizabeth Cantor, James C. Black, and Campbell D. Barrett, 115-34. Middletown: Wesleyan University Press, 2006.
- Bartha, Paul. "Analogy and Analogical Reasoning." In *Stanford Encyclopedia of Philosophy* (Summer 2022 Edition), Edward N. Zalta (Ed.).
<https://plato.stanford.edu/entries/reasoning-analogy/>.
- Bélanger, Éric. "The Rise of Third Parties in the 1993 Canadian Federal Election: Pinard Revisited." *Canadian Journal of Political Science / Revue canadienne de science politique* 37, no. 3 (2004): 581-594.
- Bernard, Ian. *Queer Race: Cultural Interventions in the Racial Politics of Queer Theory*. 2nd ed. New York: Peter Lang, 2008.
- Bilge, Sirma. "Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies." *Du Bois Review: Social Science Research on Race* 10, no. 2 (2013): 405–24.
- Bilge, Sirma. "Mapping Québécois Sexual Nationalism in Times of 'Crisis of Reasonable Accommodations.'" *Journal of Intercultural Studies* 33, no. 3 (2012): 303-318.
- Bohaker, Heidi, and Franca Iacovetta. "Making Aboriginal People 'Immigrants Too': A Comparison of Citizenship Programs for Newcomers and Indigenous Peoples in Postwar Canada, 1940s-1960s." *Canadian Historical Review* 90, no. 3 (2009): 427-461.
- Boismenu, Gérard. "Perspectives on Québec-Canada Relations in the 1990's: Is the Reconciliation of Ethnicity, Nationality and Citizenship Possible?" *Canadian Review of Studies in Nationalism* 23, nos. 1-2 (1996): 99-109.
- Broder, Samuel. "The Development of Antiretroviral Therapy and its Impact on the HIV-1/AIDS Pandemic." *Antiviral Research* 85, no. 1 (2010): 1-18.
- Brown, Wendy. *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton: Princeton University Press, 2006.
- Browne, G. P. "Introduction." In *Documents on the Confederation of British North America*, edited by G. P. Browne, ix-xxviii. Montreal: McGill-Queen's University Press, 2009.
- Burman, Jenny. "Suspects in the City: Browning the 'Not-Quite' Canadian Citizen." *Cultural Studies* 24, no. 2 (2010): 200-213.
- Burton, William M. "Translatability and Queer Desire in *N*** blancs d'Amérique*: Three Theses + a Hypothesis." *Québec Studies* 61, no. 1 (2016): 137-64.
- Canadian Civil Liberties Union. "Bill 21: Our Fight to Protect Religious Freedom in Quebec." Accessed October 9, 2021. <https://ccla.org/major-cases-and-reports/bill-21/>.
- Canadian HIV/AIDS Legal Network. *The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change*. April 2019.
- Cannon, Martin. "The Regulation of First Nations Sexuality." *Canadian Journal of Native Studies* 18, no. 1 (1998): 1-18.
- Carter, Sarah. *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915*. Edmonton: University of Alberta Press, 2008.
- Challacombe, L. "The Epidemiology of HIV in Canada." CATIE: Canada's Source for HIV and Hepatitis C Information (2020). <https://www.catie.ca/en/fact-sheets/epidemiology/epidemiology-hiv-canada>.
- Chávez, Karma R. "The Precariousness of Homonationalism: The Queer Agency of Terrorism in Post-9/11 Rhetoric." *QED: A Journal of GLBTQ Worldmaking* 2, no. 3 (2015): 32-58.
- Chenier, Elise. *Strangers in Our Midst: Sexual Deviance in Postwar Ontario*. Toronto: University of Toronto Press, 2008.

- Cho, Lily M. "Mass Capture Against Memory: Chinese Head Tax Certificates and the Making of Noncitizens." *Citizenship Studies* 22, no. 4 (2018): 381-400.
- Chu, Sandra Ka Hon. "Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era." *Canadian Journal of Women and the Law* 18, no. 2 (2006): 387-437.
- Clarke, Jessica A. "Against Immutability." *Yale Law Journal* 125, no. 2 (2015): 2-102.
- Collins, Patricia Hill. *Intersectionality as Critical Social Theory*. Durham: Duke University Press, 2019.
- Collins, Patricia Hill, and Sirma Bilge. *Intersectionality* (2nd ed.). Cambridge: Polity Press, 2020.
- Combahee River Collective. "The Combahee River Collective Statement." In *How We Get Free: Black Feminism and the Combahee River Collective*, edited by Keeanga-Yamahtta Taylor, 15-27. Chicago: Haymarket Books, 2017.
- Connors Jackman, Michael, and Nishant Upadhyay. "Pinkwatching Israel, Whitewashing Canada: Queer (Settler) Politics and Indigenous Colonization in Canada." *Women's Studies Quarterly* 42, nos. 3 & 4 (2014): 195-210.
- Cornellier, Bruno. "The Struggle of Others: Pierre Vallières, Quebecois Settler Nationalism, and the N-Word Today." *Discourse* 39, no. 1 (2017): 31-66.
- Cornellier, Manon. *The Bloc*. Toronto: James Lorimer & Company, 1995.
- Cosman, Brenda. "Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*." *Osgoode Hall Law Journal* 40, no. 3/4 (2002): 223-49.
- Crenshaw, Kimberlé. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum*, no. 1 (1989): 139-67.
- Crenshaw, Kimberlé. "Opinion: Why Intersectionality Can't Wait." *The Washington Post*. September 24, 2015. <https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait/>.
- Das Gupta, Tania. "The Politics of Multiculturalism: 'Immigrant Women' and the Canadian State." In *Scratching the Surface: Canadian Anti-Racist Feminist Thought*, edited by Enakshi Dua and Angela Robertson, 187-205. Toronto: Women's Press, 1999.
- Davis, Kathy. "Intersectionality as Critical Methodology." In *Writing Academic Texts Differently: Intersectional Feminist Methodologies and the Playful Art of Writing*, edited by Nina Lykke, 17-29. New York: Routledge, 2014.
- Day, Iyko. *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism*. Durham: Duke University Press, 2016.
- Day, Iyko. "Alien Intimacies: The Coloniality of Japanese Internment in Australia, Canada, and the U.S." *Amerasia Journal* 36, no. 2 (2010): 107-124.
- Day, Richard J. F., and Tonio Sadik. "The BC Land Question, Liberal Multiculturalism, and the Spectre of Aboriginal Nationhood." *BC Studies* 134 (2002): 5-34.
- DelPlato, Joan. *Multiple Wives, Multiple Pleasures: Representing the Harem, 1800-1875*. Cranbury: Fairleigh Dickinson University Press, 2002.
- Dhamoon, Rita, Davina Bhandar, Renisa Mawani, and Satwinder Kaur Bains, Eds. *Unmooring the Komagata Maru: Charting Colonial Trajectories*. Vancouver: UBC Press, 2019.
- Doytcheva, Milena. "'White Diversity': Paradoxes of Deracializing Antidiscrimination." *Social Sciences* 9, no. 50 (2020): 1-20.

- Drouin, Jennifer. *Shakespeare in Québec: Nation, Gender, and Adaptation*. Toronto: University of Toronto Press, 2014.
- Dryden, OmiSoore H., and Suzanne Lenon, eds. *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*. Vancouver: UBC Press, 2015.
- Dua, Enakshi. "Exclusion through Inclusion: Female Asian Migration in the Making of Canada as a White Settler Nation." *Gender, Place, & Culture* 14, no. 4 (2007): 445-66.
- Dua, Enakshi. "When Home and Harem Collide: The 'Hindu Women's Question': A Mass Spectacle of the Canadian Nation, Family, and Modernity." In *Unmooring the Komagata Maru: Charting Colonial Trajectories*, edited by Satwinder Kaur Bains, Renisa Mawani, Davina Bhandar, and Rita Dhamoon, 215-43. Vancouver: UBC Press, 2019.
- Duggan, Lisa. "The New Homonormativity: The Sexual Politics of Neoliberalism." In *Materializing Democracy: Towards a Revitalized Cultural Politics*, edited by Russ Castronovo and Dana Nelson, 175-94. Durham: Duke University Press, 2002.
- Elias, Brenda. "Moving Beyond the Historical Quagmire of Measuring Infant Mortality for the First Nations Population in Canada." *Social Science & Medicine* 123 (2014): 125-132.
- Encyclopaedia Britannica*. "British North America Act." Accessed November 14, 2020. <https://www.britannica.com/event/British-North-America-Act>.
- Eng, David. *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy*. Durham: Duke University Press, 2010.
- Ens, Andrea. "'Wish I Would be Normal': LSD and Homosexuality at Hollywood Hospital, 1955-1973." Master's thesis, University of Saskatchewan, 2019. <https://harvest.usask.ca/bitstream/handle/10388/11775/ENS-THESIS-2019.pdf?sequence=1&isAllowed=y>.
- Erikson, Bruce. *Canoe Nation: Nature, Race, and the Making of a Canadian Icon*. Vancouver: UBC Press, 2013.
- Eskridge, William N., Jr. "The Same-Sex Marriage Debate and Three Conceptions of Equality." In *Marriage and Same-Sex Unions: A Debate*, edited by Lynn D. Wardle, Mark Strasser, William C. Duncan, and David Orgon Coolidge, 167-185. Westport: Praeger, 2003.
- Everitt, Joanna. "Mobilization on the Periphery: LGBT Activism and Success in Atlantic Canada." In *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, edited by Manon Tremblay, 125-41. Vancouver: UBC Press, 2015.
- Fahrni, Magda, and Robert Rutherford. "Introduction." In *Creating Postwar Canada: Community, Diversity, and Dissent, 1945-75*, edited by Magda Fahrni and Robert Rutherford, 1-20. Vancouver: UBC Press, 2008.
- Fausto-Sterling, Anne. "Dueling Dualisms." In *Gender and Women's Studies in Canada: Critical Terrain*, edited by Margaret Hobbs and Carla Rice, 125-137. Toronto: Women's Press, 2013.
- Ferguson, Moira. *Colonialism and Gender Relations from Mary Wollstonecraft to Jamaica Kincaid: East Caribbean Connections*. New York: Columbia University Press, 1993.
- Finkel, Alvin. *Social Policy and Practice in Canada: A History*. Waterloo: Wilfred Laurier University Press, 2006.
- Finley, Chris. "Decolonizing the Queer Native Body (and Recovering the Native Bull-Dyke): Bringing 'Sexy Back' and Out of the Native Studies' Closet." In *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*, edited by Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen, 31-42. Tucson: University of Arizona Press, 2011.

- Forchtner, Bernhard. "Critical Discourse Studies and Social Theory." In *The Routledge Handbook of Critical Discourse Studies*, edited by John Flowerdew and John E. Richardson, 259-71. London: Routledge, 2018.
- Foucault, Michel. "*Society Must Be Defended*": *Lectures at the Collège de France, 1975-1976*. New York: Picador, 1997.
- Frankenberg, Ruth. *White Women, Race Matters: The Social Construction of Whiteness*. Minneapolis: University of Minnesota Press, 1993.
- Galabuzi, Grace-Edward. *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century*. Toronto: Canadian Scholars' Press, 2006.
- Galloway, J. Donald. "The Dilemmas of Canadian Citizenship Law." *Georgetown Immigration Law Journal* 13, no. 2 (1999): 201-232.
- Gaucher, Megan. "Monogamous Canadian Citizenship, Constructing Foreignness and the Limits of Harm Discourse." *Canadian Journal of Political Science / Revue canadienne de science politique* 49, no. 3 (September 2016): 519-38.
- George, Purnima, and Johanna George. "Interrogating the Neoliberal Governmentality of the Old Age Security Act: The Case of Sponsored Immigrant Seniors." *Canadian Social Work Review* 30, no. 1 (2013): 65-81.
- Gilmore, Ruth Wilson. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press, 2007.
- Gilroy, Paul. "The End of Antiracism." *Journal of Ethnic and Migration Studies* 17, no. 1 (1990): 71-83.
- Goeman, Mishuana. *Mark My Words: Native Women Mapping Our Nations*. Minneapolis: University of Minnesota Press, 2013.
- Gosine, Andil. "FOBs, Banana Boy, and the Gay Pretenders: Queer Youth Navigate Sex, 'Race,' and Nation in Toronto, Ontario." In *Queerly Canadian: An Introductory Reader in Sexuality Studies*, edited by Maureen FitzGerald and Scott Rayter, 507-20. Toronto: Canadian Scholars' Press, 2012.
- Gouldhawke, M. "About/My Writing." <https://mgouldhawke.wordpress.com/about/>.
- Gutmann, Amy, and Dennis Thompson. *Why Deliberative Democracy?* Princeton: Princeton University Press, 2004.
- Hall, Stuart. "The West and the Rest: Discourse and Power." In *Formations of Modernity*, edited by Stuart Hall and Bram Gieben, 184-227. Cambridge: Polity Press, 1992.
- Halley, Janet E. "'Like Race' Arguments." In *What's Left of Theory? New Work on the Politics of Literary Theory*, edited by Judith Butler, John Guillory, and Kendall Thomas, 40-74. New York: Routledge, 2000.
- Haque, Eve. *Multiculturalism within a Bilingual Framework: Language, Race, and Belonging in Canada*. Toronto: University of Toronto Press, 2012.
- Harder, Lois. "'In Canada of All Places': National Belonging and the Lost Canadians." *Citizenship Studies* 14, no. 2 (2010): 203-220.
- Hargreaves, A. S. "Britannia." In *The Oxford Companion to British History*, edited by John Cannon. Oxford: Oxford University Press, 2009.
- Hartman, Saidiya. *Lose Your Mother: A Journey along the Atlantic Slave Route*. New York: Farrer, Straus and Giroux, 2008.
- Haynes, Chaylo, Nicole M. Joseph, Lori D. Patton, Saran Stewart, and Evette L. Allen. "Toward an Understanding of Intersectionality Methodology: A 30-Year Literature Synthesis of

- Black Women's Experiences in Higher Education." *Review of Educational Research* 90, no. 6 (2020): 751-87.
- Heitzeg, Nancy. "'Whiteness,' Criminality, and the Double Standards of Deviance/Social Control." *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 18, no. 2 (2015): 197-214.
- Helms, Gabriele. *Challenging Canada: Dialogism and Narrative Techniques in Canadian Novels*. Montreal: McGill-Queen's University Press, 2003.
- Henderson, Jennifer. *Settler Feminism and Race Making in Canada*. Toronto: University of Toronto Press, 2003.
- Herman, Didi. "Are We Family?: Lesbian Rights and Women's Liberation." *Osgoode Hall Law Journal* 28, no. 4 (1990): 789-815.
- Herman, Didi. *Rights of Passage: Struggles for Lesbian and Gay Legal Equality*. Toronto: University of Toronto Press, 1994.
- Hiebert, Janet L. *Charter Conflicts: What Is Parliament's Role?* Montreal: McGill-Queen's University Press, 2002.
- Hoffer, William James Hull. *PLESSY V. FERGUSON: Race and Inequality in Jim Crow America*. Lawrence: University Press of Kansas, 2012.
- Holmes, M. Morgan, Linda A. Mooney, David Knox, and Caroline Schacht. *Understanding Social Problems*. 5th ed. Toronto: Nelson Education, 2016.
- hooks, bell. *Ain't I A Woman: Black Women and Feminism*. Boston: South End Press, 1981; New York: Routledge, 2015.
- Hooper, Tom. "'Enough is Enough': The Right to Privacy Committee and Bathroom Raids in Toronto, 1978-83." PhD diss., York University, 2016.
<https://yorkspace.library.yorku.ca/xmlui/handle/10315/33501>.
- Hooper, Tom. "'The State's Key to the Bedroom Door': Queer Perspectives on Pierre Elliot Trudeau's 'Just Society' in an Era of Bathroom Raids." In *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, edited by Christopher Dummitt and Christabelle Sethna, 101-20. Vancouver: UBC Press, 2020.
- Hudson, Graham. "The (Mis-)Uses of Analogy: Constructing and Challenging Crimmigration in Canada." In *The Criminalization of Migration: Context and Consequences*, edited by Idil Atak and James C. Simeon, 37-70. Montreal: McGill-Queen's University Press, 2018.
- Hudson, Sandra. "In Search of a Black, Indigenous Future: Awakening De/Anti-Colonization." Master's thesis, Ontario Institute for Studies in Education, 2018.
https://tspace.library.utoronto.ca/bitstream/1807/101596/3/Hudson_Sandra_M_201806_MA_thesis.pdf.
- Husa, Jaakko. "Language of Law and Invasive Legal Species – Endemic Systems, Colonisation, and Viability of Mixed Law." *Global Journal of Comparative Law* 9 (2020): 149-82.
- Imy, Kate. "Kidnapping and a 'Confirmed Sodomite': An Intimate Enemy on the Northwest Frontier of India, 1915-1925." *Twentieth Century British History* 28, no. 1 (2017): 29-56.
- Jaffer, Fatima. "Homonationalist Discourse, Queer Organizing and the Media." Federation for the Humanities and Social Sciences blog, February 29, 2012. <https://www.ideas-ideas.ca/blog/homonationalist-discourse-queer-organizing-and-media>.
- Jibrin, Rekia, and Sara Salem. "Revisiting Intersectionality: Reflections on Theory and Praxis." *Trans-Scripts* 5 (2015): 7-24.
- Jiwani, Yasmin. *Discourses of Denial: Mediations of Race, Gender, and Violence*. Vancouver: UBC Press, 2006.

- Johnson, Cassidy. “‘Willing Victims’: The Prevalence of Violence and Public Discourse against Indigenous Women and Girls.” *INvoke: Gender, Colonization, and Violence* 5 (2019): 27-35.
- Johnson, Richard. “An Inverted Logroll: The Charlottetown Accord and the Referendum.” *PS: Political Science and Politics* 26, no. 1 (1993), 43-48.
- Jones, Reece. *Violent Borders: Refugees and the Right to Move*. London: Verso, 2016.
- Kaida, Lisa, and Monica Boyd. “Poverty Variations among the Elderly: The Roles of Income Security Policies and Family Co-Residence.” *Canadian Journal on Aging* 30, no. 1, 83-100.
- Kauanui, J. Kēhaulani. *Paradoxes of Hawaiian Sovereignty: Land, Sex, and the Colonial Politics of State Nationalism*. Durham: Duke University Press, 2018.
- Kazemipur, Abdolmohammad. “Religion in Canadian Ethnic Landscape: The Muslim Factor.” In *Immigration, Racial and Ethnic Studies in 150 Years of Canada*, edited by Shibao Guo and Lloyd Wong, 261-280. Leiden: Brill Sense, 2018.
- Kearns, Laura-Lee, and Nancy Peters. “(Re)inscribing Mi’kmaq Presence through Public Petition, Performance and Art.” In *Diverse Spaces: Identity, Heritage and Community in Canadian Public Culture*, edited by Susan L. T. Ashley, 75-99. Newcastle upon Tyne: Cambridge Scholars Publishing, 2013.
- Kerr, Robert. “The Canadian Bill of Rights and Sex-Based Differentials in Canadian Federal Law.” *Osgoode Hall Law Journal* 12, no. 2 (1974): 357-387.
- Kinsman, Gary. “Not a Gift from Above: The Mythology of Homosexual Law Reform and the Making of Neoliberal Queer Histories.” In *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, edited by Christopher Dummitt and Christabelle Sethna, 74-97. Vancouver: UBC Press, 2020.
- Kinsman, Gary. *The Regulation of Desire: Sexuality in Canada*. Montreal: Black Rose Books, 1987.
- Kinsman, Gary, and Patrizia Gentile. *The Canadian War on Queers: National Security as Sexual Regulation*. Vancouver: UBC Press, 2010.
- Kirkup, Kyle. “The Gross Indecency of Criminalizing HIV Non-Disclosure.” *University of Toronto Law Journal* 70, no. 3 (2020): 263-82.
- Kitching, George Tjensvoll, Michelle Firestone, Berit Schei, Sara Wolfe, Cheryllee Bourgeois, Patricia O’Campo, Michael Rotondi, Rosane Nisenbaum, Raglan Maddox, and Janet Smylie. “Unmet Health Needs and Discrimination by Healthcare Providers among an Indigenous Population in Toronto, Canada.” *Canadian Journal of Public Health* 111 (2020): 40-9.
- Kouri-Towe, Natalie. “Risk, Desire and Adaptation: The Paradox of Queer Solidarity and the Political Possibility of Death Under Neoliberalism and Homonationalism.” *Somatechnics* 7, no. 2 (2017): 185-200.
- Kunimoto, Namiko. “Intimate Archives: Japanese-Canadian Family Photography, 1939–1949.” *Art History* 27, no. 1 (2004): 129-55.
- Labelle, Alexie. “Bringing Epistemology into Intersectional Methodology.” *European Journal of Politics and Gender* 3, no. 3 (2020): 409-26.
- Labelle, Alexie. “Intersectional Praxis from Within and Without: Challenging Whiteness in Québec’s LGBTQ Movement.” In *Intersectionality in Feminist and Queer Movements: Confronting Privileges*, edited by Elizabeth Evans and Éléonore Lépinard, 202-18. Abingdon: Routledge, 2020.

- LaFleur, Greta. *The Natural History of Sexuality in Early America*. Baltimore: John Hopkins University Press, 2018.
- Lahey, Kathleen. *Are We "Persons" Yet? Law and Sexuality in Canada*. Toronto: University of Toronto Press, 1999.
- Lamble, Sarah. "Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women's Bathhouse Raid." *Social & Legal Studies* 18, no. 1 (2009): 111-30.
- LaViolette, Nicole. "The Immutable Refugees: Sexual Orientation in *Canada (A.G.) v. Ward*." *University of Toronto Faculty of Law Review* 55, no. 1 (1997): 1-41
- Lawrence, Bonita. "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview." *Hypatia: A Journal of Feminist Philosophy* 18, no. 2 (2003): 3-31.
- Lemco, Jonathan. "Canada: The Year of the Volatile Voter." *Current History* 94 (1995): 118-122.
- Lenon, Suzanne. "Monogamy, Marriage, and the Making of Nation." In *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*, edited by OmiSoore Dryden and Suzanne Lenon, 82-99. Vancouver: UBC Press, 2015.
- Lenon, Suzanne. "Polygamy, State Racism, and the Return of Barbarism: The Coloniality of Evolutionary Psychology." *Studies in Social Justice* 16, no. 1 (2022): 143-61.
- Lenon, Suzanne. "What's So Civil About Marriage? The Racial Pedagogy of Same-Sex Marriage in Canada." *darkmatter* 3 (2008): 26-36.
- Lenon, Suzanne. "'Why is Our Love an Issue?': Same-Sex Marriage and the Racial Politics of the Ordinary." *Social Identities* 17, no. 3 (2011): 351-372.
- Lentin, Alana. "'Race', Racism and Anti-Racism: Challenging Contemporary Classifications." *Social Identities* 6, no. 1 (2000): 91-106.
- Lentin, Alana, "Replacing 'Race,' Historicizing 'Culture' in Multiculturalism." *Patterns of Prejudice* 39, no. 4 (2005): 379-96.
- Leonardo, Zeus. "The Souls of White Folk: Critical Pedagogy, Whiteness Studies, and Globalization Discourse." *Race Ethnicity and Education* 5, no. 1 (2002): 29-50.
- Leroux, Darryl. "Entrenching Euro-Settlerism: Multiculturalism and the Politics of Nationalism in Québec." *Canadian Ethnic Studies* 46, no. 2 (2014): 133-9.
- Leroux, Darryl. "Quebec Nationalism and the Production of Difference: The Bouchard-Taylor Commission, the Herouxville Code of Conduct, and Quebec's Immigrant Integration Policy." *Quebec Studies* 49 (Spring-Summer 2010).
- Li, Alan. "Managing Your Health: A Guide for People Living with HIV." CATIE: Canada's Source for HIV and Hepatitis C Information. <https://www.catie.ca/en/practical-guides/managing-your-health>.
- Library and Archives Canada. "Homesteads." Accessed April 20, 2021. https://www.collectionscanada.gc.ca/canadian-west/052902/05290204_e.html.
- Locke, Terry. *Critical Discourse Analysis*. London: Continuum, 2004.
- Loomba, Ania. *Colonialism/Postcolonialism*. New York: Routledge, 2015.
- Losurdo, Domenico. *Liberalism: A Counter-History*. New York: Verso, 2014.
- Lowe, Lisa. *Intimacies of Four Continents*. Durham: Duke University Press, 2015.
- Lugo-Lugo, Carmen R., and Mary K. Bloodsworth-Lugo. "475° from September 11: Citizenship, Immigration, Same-Sex Marriage and the Browning of Terror." *Cultural Studies* 24, no. 2 (2010): 234-255.

- Mackey, Eva. *The House of Difference: Cultural Politics and National Identity in Canada*. London: Routledge, 1999.
- Mahon, Rianne. "Varieties of Liberalism: Canadian Social Policy from the 'Golden Age' to the Present." *Social Policy & Administration* 42, no. 4 (2008): 342-361.
- Malloy, Jonathan. "Canadian Evangelicals and Same-Sex Marriage." In *Faith, Politics, and Sexual Diversity in Canada and the United States*, edited by David Rayside, 144-159. Vancouver: UBC Press, 2011.
- Marwah, Inder, Triadafilos Triadafilopoulos, and Stephen White. "Immigration, Citizenship, and Canada's New Conservative Party." In *Conservatism in Canada*, edited by James Farney and David Rayside, 95-119. Toronto: University of Toronto Press, 2013.
- Massad, Joseph. "Re-Orienting Desire: The Gay International and the Arab World." *Public Culture* 14, no. 2 (2002): 361-385.
- Matsuda, Mari. "Beside My Sister, Facing the Enemy: Legal Theory out of Coalition." *Stanford Law Review* 43, no. 6 (1991): 1183-92.
- Mattoo, Deepa, and Sydele E. Merrigan. "'Barbaric' Cultural Practices: Culturalizing Violence and the Failure to Protect Women in Canada." *International Journal of Child, Youth and Family Studies* 12, no. 1 (2021): 124-42.
- Mawani, Renisa. *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire*. Durham: Duke University Press, 2018.
- Mawani, Renisa. "'Cleansing the Conscience of the People': Reading Head Tax Redress in Multicultural Canada." *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 19, no. 2 (2004): 127-51.
- Mawani, Renisa. *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921*. Vancouver: UBC Press, 2009.
- Mayeri, Serena. "A Common Fate of Discrimination: Race-Gender Analogies in Legal and Historical Perspective." *Yale Law Journal* 110, no. 6 (2001): 1045-87.
- Maynard, Robyn. *Policing Black Lives: State Violence in Canada from Slavery to the Present*. Halifax: Fernwood, 2017.
- McBride, Stephen, and Kathleen McNutt. "Devolution and Neoliberalism in the Canadian Welfare State." *Global Social Policy* 7, no. 2 (2007): 177-201.
- McCall, Leslie. "The Complexity of Intersectionality." *Signs* 30, no. 3 (2005): 1771-1800.
- McCaskell, Tim. *Queer Progress: From Homophobia to Homonationalism*. Toronto: Between the Lines, 2016.
- McClintock, Anne. *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest*. New York: Routledge, 1995.
- McKay, Ian. "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History." In *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, edited by Michel Ducharme and Jean-François Constant, 617-645. Toronto: University of Toronto Press, 2009.
- McKittrick, Katherine. *Demonic Grounds: Black Women and the Cartographies of Struggle*. Minneapolis: University of Minnesota Press, 2006.
- McLeod, Donald W. "Jim Egan: Gay Warrior." In *Any Other Way: How Toronto Got Queer*, edited by Stephanie Chambers, Jane Farrow, Maureen FitzGerald, Ed Jackson, John Lorinc, Tim McCaskell, Rebecca Sheffield, Tatum Taylor, and Rahim Thawer, 136-139. Toronto: Couch House Books, 2017.

- “Meech Lake Accord Fails.” June 17, 2017. Canadian Museum of History. <https://www.historymuseum.ca/blog/meech-lake-accord-fails/>
- Merin, Yuval. *Equality of Same-Sex Couples: The Legal Recognition of Gay Partnerships in Europe and the United States*. Chicago: University of Chicago Press, 2002.
- Michener, Jamila, Mallory SoRelle, and Chloe Thurston. “From the Margins to the Center: A Bottom-Up Approach to Welfare State Scholarship.” *Perspectives on Politics* 20, no. 1 (2020): 154-69.
- Mitchell, Katharyne. “Education for Democratic Citizenship: Transnationalism, Multiculturalism, and the Limits of Liberalism.” *Harvard Educational Review* 71, no. 1 (2001): 51-78.
- Modood, Tariq. “‘Difference,’ Cultural Racism and Anti-Racism.” In *Debating Cultural Hybridity: Multicultural Identities and the Politics of Anti-Racism*, edited by Pnina Werbner and Tariq Modood, 154-72. London: Zed Books, 2015.
- Morgensen, Scott Lauria. *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization*. Minneapolis: University of Minnesota Press, 2011.
- Motschenbacher, Heiko. “Sexuality in Critical Discourse Studies.” In *The Routledge Handbook of Critical Discourse Studies*, edited by John Flowerdew and John E. Richardson, 388-402. London: Routledge, 2018.
- Mullet, Dianna R. “A General Critical Discourse Analysis Framework for Educational Research.” *Journal of Advanced Academics* 29, no. 2 (2018): 116-142.
- Nash, Catherine Jean. “Contesting Identity: Politics of Gays and Lesbians in Toronto in the 1970s.” *Gender, Place and Culture* 12, no. 1 (2005): 113-35.
- Nash, Catherine Jean. “Toronto’s Gay Village (1969–1982): Plotting the Politics of Gay Identity.” *The Canadian Geographer / Le Géographe canadien* 50, no. 1 (2006): 1-16.
- Nelson, Charmaine A. *Representing the Black Female Subject in Western Art*. New York: Routledge, 2010.
- Nielson, Carmen J. “Caricaturing Colonial Space: Indigenized, Feminized Bodies and Anglo-Canadian Identity, 1873–94.” *The Canadian Historical Review* 96, no. 4 (2015): 473-506.
- Nwoke, Chinenye Nmanma, and Brenda M. Y. Leung. “Historical Antecedents and Challenges of Racialized Immigrant Women in Access to Healthcare Services in Canada: An Exploratory Review of the Literature.” *Journal of Racial and Ethnic Health Disparities* 8, no. 6 (2021): 1447-55.
- Obomsawin, Alanis. *Kanehsatake: 270 Years of Resistance*. National Film Board of Canada, 1993, 119 minutes. https://www.nfb.ca/film/kanehsatake_270_years_of_resistance/.
- Office of the Commissioner of Official Languages. “The Failure of the Meech Lake Accord has a Major Impact on Relations between English-and French-Speaking Canadians.” <https://www.clo-ocol.gc.ca/en/timeline-event/failure-meech-lake-accord-has-major-impact-relations-between-english-and-french>
- Osberg, Lars. “A Quarter Century of Economic Inequality in Canada: 1981-2006.” Canadian Centre for Policy Alternatives, 2008.
- Panagia, Davide. “The Predicative Function in Ideology on the Political Uses of Analogical Reasoning in Contemporary Political Thought.” *Journal of Political Ideologies* 6, no. 1 (2001): 55-74.
- Paul, Kathleen. *Whitewashing Britain: Race and Citizenship in the Postwar Era*. Ithaca: Cornell University Press, 1997.

- Pearlston, Karen. "‘Something More’: The State’s Place in the Bedrooms of Lesbian Nation." In *No Place for the State: The Origins and Legacies of the 1969 Omnibus Bill*, edited by Christopher Dummitt and Christabelle Sethna, 200-22. Vancouver: UBC Press, 2020.
- Peker, Efe. "Situating the Reasonable Accommodation Debates in Quebec’s Contention for Sovereignty." *Arc—The Journal of the School of Religious Studies* 45 (2017): 1-21.
- Perry, Adele. "Women, Racialised People, and the Making of the Liberal Order in Northern North America." In *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, edited by Michel Ducharme and Jean-François Constant, 274-297. Toronto: University of Toronto Press, 2009.
- Petersen, Britta. "The Abduction of Europa." *Liberal Studies* 1, no. 2 (2016): 155-64.
- Podmore, Julie. "From Contestation to Incorporation: LGBT Activism and Urban Politics in Montreal." In *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, edited by Manon Tremblay, 187-207. Vancouver: UBC Press, 2015.
- Proulx, Craig. "Colonizing Surveillance: Canada Constructs an Indigenous Terror Threat." *Anthropologica* 56, no. 1 (2014): 83-100.
- Puar, Jasbir. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham: Duke University Press, 2007.
- Rambukkana, Nathan. *Fraught Intimacies: Non/Monogamy in the Public Sphere*. Vancouver: UBC Press, 2015.
- Rayside, David. *On the Fringe: Gays and Lesbians in Politics*. Ithaca: Cornell University Press, 1998.
- Rayside, David. "Queer Advocacy in Ontario." In *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, edited by Manon Tremblay, 85-105. Vancouver: UBC Press, 2015.
- Rayside, David, and Evert Lindquist. "AIDS Activism and the State in Canada." *Studies in Political Economy: A Socialist Review* 39, no. 1 (1992): 37-76.
- Rayside, David, Jerald Sabin, and Paul E. J. Thomas. *Religion and Canadian Party Politics*. Vancouver: UBC Press, 2017.
- Razack, Sherene. *Casting Out: The Eviction of Muslims from Western Law and Politics*. Toronto: University of Toronto Press, 2008.
- Razack, Sherene. *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism*. Toronto: University of Toronto Press, 2004.
- Razack, Sherene. "‘Simple Logic’: Race, the Identity Documents Rule and the Story of a Nation Besieged and Betrayed." *Journal of Law and Social Policy* 15 (2000): 181-209.
- Reid, John G. "The Three Lives of Edward Cornwallis." *Journal of the Royal Nova Scotia Historical Society* 16 (2013): 19-45.
- Reidel, Laura. "Religious Opposition to Same-Sex Marriage in Canada: Limits to Multiculturalism." *Human Rights Review* 10 (2009): 261-81.
- Richards, Robert J. *The Tragic Sense of Life: Ernst Haeckel and the Struggle over Evolutionary Thought*. Chicago: University of Chicago Press, 2008.
- Rifkin, Mark. *Settler Common Sense: Queerness and Everyday Colonialism in the American Renaissance*. Minneapolis: University of Minnesota Press, 2014.
- Roberts, S. "Common Law." In *International Encyclopedia of the Social & Behavioral Sciences*, edited by Neil J. Smelser and Paul B. Baltes. Amsterdam, Netherlands: Elsevier, 2001.
- Rodgers, Kathleen, and Darcy Ingram. "Ideological Migration and War Resistance in British Columbia’s West Kootena’s: An Analysis of Counterculture Politics and Community

- Networks among Doukhobor, Quaker, and American Migrants during the Vietnam War Era.” *American Review of Canadian Studies* 44, no. 1 (2014): 96-117.
- Rohy, Valerie. *Anachronism and Its Others: Sexuality, Race, Temporality*. New York: State University of New York Press, 2010.
- Ross, Becki. Review of *Challenging the Conspiracy of Silence: My Life as a Canadian Gay Activist*, by Jim Egan, edited by Donald McLeod. *BC Studies* no. 136 (Winter 2002/2003): 135-8.
- Roy, Anjali Gera. *Imperialism and Sikh Migration: The Komagata Maru Incident*. Abingdon: Routledge, 2018.
- Roy, Patricia E. “The Fifth Force: Multiculturalism and the English Canadian Identity.” *The Annals of the American Academy of Political and Social Science* 538 (1995), 199-209.
- Rush, Sharon Elizabeth. “Equal Protection Analogies—Identity and ‘Passing’: Race and Sexual Orientation.” *Harvard BlackLetter Law Journal* 13, no. 65 (1997): 65-106.
- Russell, Peter. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 3rd ed. Toronto: University of Toronto Press, 2004.
- Russell, Peter. “The Political Purposes of the Canadian Charter of Rights and Freedoms.” *Canadian Bar Review* 61 (1983): 30-54.
- Rutland, Ted. *Displacing Blackness: Planning, Power, and Race in Twentieth-Century Halifax*. Toronto: University of Toronto Press, 2018.
- Sáenz-López Pérez, Sandra. *Marginalia in cARTography*. Madison: Chazen Museum of Art, 2014. Published in conjunction with an exhibition of the same title, organized by and presented at the Chazen Museum of Art, February 28-May 18, 2014.
https://digital.csic.es/bitstream/10261/95581/1/Marginalia_in_cARTography.pdf.
- Said, Edward. *Orientalism*, 25th Anniversary ed. New York: Vintage Books, 1979; repr., Toronto: Random House of Canada, 2003.
- Sajani, Rohan. “Envisioning LGBT Refugee Rights in Canada: The Impact of Canada’s New Immigration Regime.” June 2014. https://ocasi.org/sites/default/files/impact-canada-new-immigration-regime_0.pdf
- Salaff, J., and Pearl Chan. “Competing Interests: Toronto’s Chinese Immigrant Associations and the Politics of Multiculturalism.” *Population, Space and Place* 13 (2007): 125-40.
- Saldaña, Johnny. *Coding Manual for Qualitative Researchers*. London: Sage, 2009.
- Sangster, Joan. *One Hundred Years of Struggle: The History of Women and the Vote in Canada*. Vancouver: UBC Press, 2018.
- Saucedo, Ricardo. “GayTwitter: An Investigation of Biases Toward Queer Users in AI and Natural Language Processing.” *The Saint Louis University McNair Research Journal* 1 (2018): 60-6.
- Sen, Amit. “Policing the Boarder: Regulating Race, Gender, and Sexuality.” *Georgetown Journal of Gender and the Law* 8, no. 1 (2007): 67-92.
- Sexton, Jared. “People-of-Color-Blindness: Notes on the Afterlife of Slavery.” *Social Text* 28, no. 2 (2010): 31-56.
- Shah, Nayan. *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West*. Berkeley: University of California Press, 2011.
- Sharpe, Christina. *In the Wake: On Blackness and Being*. Durham: Duke University Press, 2016.
- Shin, Layoung. “Queer Eye for K-Pop Fandom: Popular Culture, Cross-Gender Performance, and Queer Desire in South Korean Cosplay of K-Pop Stars.” *Korea Journal* 58, no. 4 (2018): 87-113.

- Shome, Raka. "Outing Whiteness." *Critical Studies in Media Communication* 17, no. 3 (2000): 366-71.
- Simpson, Audra. *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press, 2014.
- Simpson, Leanne Betasamosake. *As We Have Always Done: Indigenous Freedom Through Radical Resistance*. Minneapolis: University of Minnesota Press, 2017.
- Simpson, Leanne Betasamosake, Rinaldo Walcott, and Glen Coulthard. "Idle No More and Black Lives Matter: An Exchange." *Studies in Social Justice* 12, no. 1 (2018): 75-89.
- Smith, Andrea. "Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism." In *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*, edited by Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen, 43-65. Tucson: University of Arizona Press, 2011.
- Smith, Malinda. "Diversity in Theory and Practice: Dividends, Downsides, and Dead-Ends." In *Contemporary Inequalities and Social Justice in Canada*, edited by Janine Brodie, 43-66. Toronto: University of Toronto Press, 2018.
- Smith, Malinda. "Gender, Whiteness, and 'other Others' in the Academy." In *States of Race: Critical Race Feminism for the 21st Century*, edited by Sunera Thobani, Sherene Razack, and Malinda Smith. Toronto: Between the Lines, 2010.
- Smith, Miriam. *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*. Toronto: University of Toronto Press, 1999.
- Smith, Miriam. "LGBTQ Activism: The Pan-Canadian Political Space." In *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, edited by Manon Tremblay, 45-63. Vancouver: UBC Press, 2015.
- Smith, Miriam. "Nationalism and Social Movement Politics: Gay and Lesbian Rights and the Effect of the Charter of Rights and Freedoms in Quebec." In *Contemporary Quebec: Selected Readings and Commentaries*, edited by Michael Behiels and Matthew Hayday, 360-82. Montreal: McGill-Queen's University Press, 2011.
- Smith, Miriam. *Political Institutions and Lesbian and Gay Rights in the United States and Canada*. New York: Routledge, 2008.
- Somerville, Siobhan. *Queering the Color Line: Race and the Invention of Homosexuality in American Culture*. Durham: Duke University Press, 2000.
- Southern Poverty Law Center. "Proud Boys." Accessed November 14, 2020. <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>.
- Stasiulis, Daiva. "Worrier Nation: Quebec's Value Codes for Immigrants." *Politikon* 40, no. 1 (2013): 183-209.
- Statistics Canada. "150 Years of Immigration in Canada." Last modified May 17, 2018. <https://www150.statcan.gc.ca/n1/pub/11-630-x/11-630-x2016006-eng.htm>.
- Stephan, Nancy Leys. "Race and Gender: The Role of Analogy in Science." *Isis*, 77, no. 2 (1986): 261-77.
- Stevenson, Ana. *The Woman as Slave in Nineteenth-Century American Social Movements*. Cham, Switzerland: Springer International Publishing, 2019.
- Stoler, Ann Laura. "Educating Desire in Colonial Southeast Asia: Foucault, Freud, and Imperial Sexualities." In *Sites of Desire, Economies of Pleasure: Sexualities in Asia and the Pacific*, edited by Lenore Manderson and Margaret Jolly, 27-47. Chicago: University of Chicago Press, 1997.

- Stone, Amy L., and Jane Ward. "From 'Black People are not a Homosexual Act' to 'Gay is the New Black': Mapping White uses of Blackness in Modern Gay Rights Campaigns in the United States." *Social Identities: Journal for the Study of Race, Nation and Culture* 17, no. 5 (2011): 605-624.
- Stychin, Carl F. "Queer Nations: Nationalism, Sexuality and the Discourse of Rights in Quebec." *Feminist Legal Studies* 5, no. 1 (1997): 3-34.
- Sudbury, Julia. "Celling Black Bodies: Black Women in the Global Prison Industrial Complex." *Feminist Review* 80 (2005): 162-179.
- Sugiman, Pamela. "Memories of Internment: Narrating Japanese-Canadian Women's Life Stories." In *Diaspora, Memory, and Identity: A Search for Home*, edited by Vijay Agnew, 48-80. Toronto: University of Toronto Press, 2005.
- Sunstein, Cass R. "On Analogical Reasoning." *Harvard Law Review* 106, no. 3 (1993): 741-791.
- Takei, George. "George H. Takei." georgetakei.com. Last modified July 13, 2018. <https://www.georgetakei.com/george-h-takei-2591309480.html>.
- Taylor, Keeanga-Yamahtta. "Introduction." In *How We Get Free: Black Feminism and the Combahee River Collective*, edited by Keeanga-Yamahtta Taylor, 1-14. Chicago: Haymarket Books, 2017.
- Thobani, Sunera. *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto: University of Toronto Press, 2007.
- Thobani, Sunera. "The Secularity of Empire, the Violence of Critique: Muslims, Race, and Sexuality in the Politics of Knowledge-Production." *Hypatia* 32, no. 3 (2017): 715-30.
- Thomas, Mark. "Neoliberalism, Racialization, and the Regulation of Employment Standards." In *Neoliberalism and Everyday Life*, edited by Susan Braedley and Meg Luxton, 68-89. Montreal: McGill-Queen's University Press, 2010.
- Tremblay, Manon. "Introduction." In *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, edited by Manon Tremblay, 3-41. Vancouver: UBC Press, 2015.
- Tremblay, Manon, ed. *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*. Vancouver: UBC Press, 2015.
- Troc me, Nico, Della Knoke, and Cindy Blackstock. "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System." *Social Service Review* 78, no. 4 (2004): 577-600.
- Turner, Dale. *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*. Toronto: University of Toronto Press, 2006.
- Vosko, Leah. *Temporary Work: The Gendered Rise of a Precarious Employment Relationship*. Toronto: University of Toronto Press, 2000.
- Wahab, Amar. "Affective Mobilizations: Pinkwashing and Racialized Homophobia in *Out There*." *Journal of Homosexuality* 68, no. 5 (2021): 849-71.
- Wahab, Amar. "Calling 'Homophobia' into Place (Jamaica): Homo/trans/nationalism in the Stop Murder Music (Canada) Campaign." *interventions* 18, no. 6 (2016): 908-28.
- Wahab, Amar. "Unveiling Fetishnationalism: Bidding for Citizenship in Queer Times." In *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*, edited by OmiSoore Dryden and Suzanne Lenon, 35-48. Vancouver: UBC Press, 2015.
- Walcott, Rinaldo. "Forward: The Homosexuals Have Arrived!" In *Disrupting Queer Inclusion: Canadian Homonationalisms and the Politics of Belonging*, edited by OmiSoore Dryden and Suzanne Lenon, vii-ix. Vancouver: UBC Press, 2015.

- Walcott, Rinaldo. *Queer Returns: Essays on Multiculturalism, Diaspora, and Black Studies*. London: Insomniac Press, 2016.
- Warner, Tom. *Never Going Back: A History of Queer Activism in Canada*. Toronto: University of Toronto Press, 2002.
- Watts, Vanessa. “Our Home and Nativist Land?” In *We Resist: Defending the Common Good in Hostile Times*, edited by Cynthia Levine-Rasky and Lisa Kowalchuk, 88-95. Montreal: McGill-Queen’s University Press, 2020.
- Webster, David. “End of the Innocents: Engagement and Decolonization in the Global South since 1968.” *Canadian Foreign Policy Journal* 24, no. 3 (2018): 329-43.
- “We Demand’: The Birth of Queer Liberation in Canada.” The Village Legacy Project/Le projet de legs du village. Video, 4:06. Accessed July 2, 2021. <https://www.villagelegacy.ca/items/show/8?tour=1&index=44>.
- Weeks, Jeffery. *Sex, Politics and Society: The Regulation of Sexuality since 1800*. 2nd ed. London: Longman, 1989.
- Weitzer, Ronald. *Transforming Settler States: Communal Conflict and Internal Security in Northern Ireland and Zimbabwe*. Berkeley: University of California Press, 1990.
- Winter, Elke. “Rethinking Multiculturalism after its ‘Retreat’: Lessons from Canada.” *American Behavioral Scientist* 59, no. 6 (2015): 637-657.
- World Health Organization. “HIV/AIDS.” November 30, 2020. <https://www.who.int/news-room/fact-sheets/detail/hiv-aids>.
- Wroth, L. Kinvin. “Common Law.” In *The Oxford International Encyclopedia of Legal History*, edited Stanley N. Katz. Oxford: Oxford University Press, 2009.
- Wynter, Sylvia. “1492: A New World View.” In *Race, Discourse, and the Origin of the Americas: A New World View*, edited by Vera Lawrence Hyatt and Rex Nettleford, 5-57. Washington: Smithsonian Institution Press, 1995.
- Wynter, Sylvia. “Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument.” *CR: the New Centennial Review* 3, no. 3 (2003): 257-337.
- Yuval-Davis, Nira. “Intersectionality and Feminist Politics.” *European Journal of Women’s Studies* 13, no. 3 (2006): 193–209.
- Zine, Jasmine. “Introduction: Muslim Cultural Politics in the Canadian Hinterlands.” In *Islam in the Hinterlands: Muslim Cultural Politics in Canada*, edited by Jasmine Zine, 1-37. Vancouver: UBC Press, 2012.
- Ziadah, Rafeef. “Outside the Multicultural: Solidarity and the Silencing of Palestinian Narratives.” PhD diss., York University, 2013. YorkSpace. <http://hdl.handle.net/10315/32038>.
- Zukas, Alex. “*Terra Incognita/Terra Nullius*: Modern Imperialism, Maps, and Deception.” In *Lived Topographies and the Mediational Forces*, edited by Gary Backhaus and John Murungi. Lanham: Lexington Books, 2005.