From gay liberation to marriage equality: a political lesson to be learnt

Abstract

This article deals with the issue of resignification to advance a hypothesis on the way in which social practices are transformed with recourse to the language of institutions. It first discusses the transition from gay liberation to same-sex marriage equality by exploring the trajectory of homosexuals' rights claims. The article continues by providing a theoretical interpretation of what brought this shift about, that is, what the author calls a movement "from the street to the court": in both civil law and common law jurisdictions, legal means are increasingly being used by individuals and groups to make their claims audible to political institutions and to society at large. Then, an analysis is offered of the shape that social struggles take when socio-political claims are articulated with recourse to the legal language. The conclusion is that reliance on the law as a device to achieve political goals and construct same-sex group identity risks producing but a feeble resignification of the conventional heterosexual matrix. In light of that, a more effective way to defy this matrix is to create awareness of what is gained and what gets lost in becoming legally visible.

Keywords: liberationism; judicialization; resignification; rights claims; same-sex marriage.

Introduction

The issue of same-sex marriage equality today is at the centre stage of the political debate. Whether in civil partnerships or conventional marriage, unions between persons of the same sex are now legally regulated in most European countries and States in the US, while other jurisdictions seem well on the way to removing legal impediments to them. According to the advocates of marriage equality, legal recognition for sexual minorities challenges the norms of heterosexuality that still dominate Western societies and confers on gays and lesbians a set of symbolic and material benefits that make them fully equal (see e.g. Calhoun, 2000; Cox, 2014). On the contrary, queer and radical theorists

criticize recent legal developments, for they claim that the revision of social values and legal norms about homosexuality are reasserting conventional ideals about proper kinship relations (see e.g. Auchmuty, 2004; Barker, 2013). Whether or not critics are right, and whether or not legal recognition is inadvertently being detrimental to homosexuals themselves, there is no doubt that in the last four decades something in the battles for sexual equality has profoundly changed. It is this change that this article sets out to investigate. More precisely, I will seek to identify the proper background against which this change should be read.

I will portray the transition from gay liberation to marriage equality as the symptom of a major alteration in the way citizens of liberal states fight their political battles. I will make the claim that one of the major traits of this change is that today's social and political struggles of marginalized and excluded minorities are unable to connect to each other (as it used to be the case before the 1980s). My main concern will be with offering a theoretical hypothesis on what brought this shift about. I will contend that one of the key factors is what I will call a movement "from the street to the court." In effect, one of the key spheres where social struggles are carried out today is the legal field. In both civil law and common law jurisdictions, the most recent legal reforms in state policies on family have been prompted by legal victories for same-sex marriage advocates. I will look at the effects that taking social and political battles into courts produces on the claims lying behind these battles.

To set the stage for this analysis I will delve into the topic of resignification, which is to say, the defiant use of language that challenges the hegemonic symbolic universe and, when successful, proves a powerful instrument of socio-cultural and political change. In effect, not only according to its whole-hearted supporters,[1] marriage equality represents an obvious case of resignification, whereby marriage ceases to signify the legally recognized relationship between a man and a woman. As a result, the web of meanings and references conjured up by the term "marriage" today is hardly the same as a few decades ago. Apparently, the disruption of the binary male/female has successfully resignified one of the most relevant institutions of Western civilization. Whether this has happened or not, I will claim that the ongoing resignification of marriage in the juridico-political context of

today's liberal states does not imply defiance and subversion, but assimilation and integration. In arguing so, I will illustrate why institutional resignification – abundantly debated by critical theorists and queer authors – cannot be equated with resignification that originates from within the social realm, one that is triggered by "unauthorized" speech acts.

Based on a particular view of how the law permits the transformation of social practices and confers recognition on previously marginalized subjects and groups, I will claim that institutional resignification tends to be inherently conservative. For it promotes a politics of cultural units that reifies social identities and reinforces conventional narratives. The article concludes by saying that the fragmentation of political activism favours the achievement of limited goals and thus prevents marginalized subjects and groups from engaging in more coordinated struggles against multiple sources of inequality.

Putting in context or undoing the context?

In an acute analysis of resignification and its conditions of possibility, Moya Lloyd (2007) points out some of the shortcomings of Judith Butler's view of how the defiant use of hegemonic language can, thanks to the iterability of meanings,[2] subvert the hegemonic discourse and confer speakability on abject, wretched, excluded subjectivities. Lloyd articulates a few misgivings about the (alleged) free-floating power of words to assume new meanings when marginalized individuals confront the hierarchy of respectable discourses and endow their own speech with a self-assigned authority. The point Lloyd makes is that to account for the impact of resignificatory practices the analysis of the role and dynamics of language and social meanings is hardly enough. What is needed is, first, a more careful scrutiny of the historical conditions of possibility that allow resignification to succeed, and, second, an inquiry into the collective context of political engagement where the speech act assumes its overall significance. To support her critical reading, Lloyd revisits the example of Rosa Parks – mentioned by Butler – to demonstrate that Parks' successful act of defiance must be read against the

broader backdrop of the organized political struggles taken up by the African-American Civil Rights Movement. In other words, the key to resignification can be found not so much in language as in the social context where language is used.

In this framework, Lloyd underlines that Butler's overestimation of iterability in the language of everyday life leads her to be too suspicious of the official language of the state. Famously, Butler takes stance against the regulation of hate speech because, in her account, hate speech is what the state says it is. If hate speech is regulated and publicly censored, the force of iteration is hindered and the injury connected to the prohibited speech gets even reinforced. Transformative iterability, so to speak, would be legally thwarted, because, paradoxically, injurious speech and its offensive force would be enshrined in law. Lloyd continues by saying that this view of the language of official institutions does not do justice to the potentially innovative and subversive use of state law. The idea that the state and its institutions already-and-always perform acts of censorship and objectification neglects that official state language itself is enmeshed in an ongoing process of iteration. What the state iterates can be as conservative as it can be progressive. Lloyd claims that one should be able to identify what the state is iterating if one wants to assess the conservative or progressive character of state policies and judicial rulings. Again, she maintains, it is the context that qualifies the iteration and the societal dynamics that make iteration have such and such effects on both social reality and the political system.

Lloyd's insistence on the "historicity" of defiant language uses and the need to pay due heed to the socio-political background recalls Pierre Bourdieu's criticism according to which philosophers and linguists wrongly believe they can find in language what, in reality, lies in the social realm and its power positions. For Bourdieu (1991: 111), philosophers and linguists stubbornly strive to look for the power of performative utterances within the formal structure of language and straightforwardly ignore that a speech act "is destined to fail each time that it is not pronounced by a person who has the 'power' to pronounce it." Accordingly, a serious activity of social criticism requires going beyond the appearance of linguistic exchange and assessing the relative power position of the speaker. In this

light, Lloyd's critique can be reframed as follows: Parks' was not an unauthorized act of defiance performed in a vacuum, nor did it invest anything with a new meaning. Her chances of being successful were rooted in a long chain of organized activities carried out by her and the members of the collectivities that had long been struggling to draw segregation to an end. On this account, being authorized is the effect of a complex political operation meant to redistribute power in the social field, or rather, an ongoing and enduring (collective) attack on legitimate usages of language. This is why, in Bourdieu's (1991: 116) effective words, the erosion of the performative efficacy "is part of the disintegration of an entire universe of social relations of which it [is] constitutive." To put it otherwise, Park's iteration turned out to be successful on account of her, her less successful predecessors', and her contemporary fellows' struggle to dismantle the world of social relations that sustained segregation. Language was the upshot rather than the spark.

If Lloyd's critical analysis is sound, her conclusion seems hasty. She quickly analyzes the social, political, and legal dynamics that led institutions to support the "separate but equal" principle from *Plessy v. Ferguson* (1896) through to the 1960s in order to show that what made state language conservative and biased was a complex set of socio-cultural factors. The state and its institutions were actually iterating those factors and thus their actions could not but yield reactionary effects. Nonetheless, she goes on to say, this is not always the case. Decades of social movements and cultural changes laid the foundation for a non-conservative use of the law and finally the state put an end to segregation. According to Lloyd, this is evidence that the state can itself perform resignification and iterate meanings in a progressive fashion. It follows that "it is not the state *per se* that is problematic from an egalitarian or democratic viewpoint […]. It is the speech of particular states as it is articulated within determinate historical and geo-political contexts" (Lloyd, 2007: 142). This conclusion can hardly be denied from a socio-historical point of view. State law is not a repressive machinery at the service of few powerful elites, but has often been used as an active agent of social change when groups and movements were able to have their voice heard in the public arena. As Richard Abel

(1998, 102) reminds us, "[t]he strength of law varies directly with the vigor of the social movements using it."

Nonetheless, it is my claim that also such a more cautious and socio-historically sensitive perspective has its shortcomings. The idea that the degree of conservatism or progressivism of the activity of the state can be fathomed against the broader socio-cultural and geo-historical context runs the risk of assuming that this context is thoroughly transparent and lends itself to being scrutinized vis-à-vis its actual instantiations (such as determinate policies, statutes, or judgments). I believe that a more critical analysis of these instantiations should be able to identify the way in which the context "manipulates" acts of subversion and defiance in order to tame them and to "negotiate" their effects. I put "manipulate" and "negotiate" within scare quotes because I want to make it clear from the outset that this is figurative language: there is none who actually manipulates and negotiates. Or, more correctly, there are numbers of people who engage in discussions, negotiations, debates, litigations, protests, strikes, civic battles, as well as numbers of people who issue laws, lay down rulings, implement policies, make international agreements. In the face of it, there can be no intentional, orchestrated plan to achieve certain results in terms of domestication of drives for change. The thesis I want to put forward is that the taming of defiant and subversive acts occurs at a *semiotic* level, precisely within the fields where the official language of the state is produced and reproduced, and where juridico-politically relevant acts and speech acquire socio-political legibility with a view to exerting effects on the broader socio-cultural and geo-historical context.

To substantiate my thesis I will look at the developing changes in same-sex state policies in the West and the decrease in the politics of disgust (see Nussbaum, 2010) that used to (and in some circumstances still does) confine homosexual sexuality to a state of marginalization and abjection. I will tackle the key question discussed by Lloyd to claim that viewing social change through the lens of the broader context, as if the main variables were only two (namely, acts of iteration and the socio-cultural background where they occur), may be conducive to the misleading identification between *change* and *progression*, so much so that the former is taken to be synonymous with the latter. On the

contrary, I will claim that the variables to be taken into account are at least three, namely, subversive acts, the broader socio-cultural context, and the semiotic interaction between them, which is able to render subversion into a confirmation of some key traits of the existing socio-cultural background. The evolutions in the regulation of same-sex sexuality and unions provide a case in point in light of the paradox nicely brought out by Carolyn D'Cruz in her reflections on the persisting relevance of Dennis Altman's seminal book, *Homosexual: Oppression and Liberation*. By adopting the twofold point of view of the participant (as a member of the queer community) and the observer (as a scholar), D'Cruz (2014: 294) points out that

> Sure, there's been law reform and an increased "acceptance" of certain kinds of queer lifestyles over the decades [...]. Of course decriminalization, [...] the advent of recognition and benefits for same-sex couples in state and federal law, and a shift from relative invisibility to a certain kind of visibility in cultural and political representation are all shifts that work to reduce a particular stigma associated with being queer. Things have indeed changed, but I think the important question here is not so much what has changed, but *how* things have changed and, more specifically, *for whom*.

In effect, if assessed against the socio-historical background, the numerous iterations performed by state law may seem to reveal increased openness and progressiveness in both civil society and state policies on family. And yet, many queer and radical critics contend that there is something wrong with how things are evolving.[3] In this article I set out to cast some light on this "wrong" in order to make a claim about the relationship between political engagement and social change: when socio-political struggles tend to be isolated and social movements pursue self-centered, inward-looking strategies, potentially subversive acts of defiance get "absorbed" in the existing socio-cultural context. In this way, the negotiations that social movements enter into with the hegemonic culture may end up reinforcing some of the key traits of the latter. In line with Bourdieu's view of political conflict, transformative and progressive changes should not be based on specific, insulated battles. Instead, they must be concurrent pushes toward the neutralization of "the mechanisms of the

neutralization of history"; which is to say, those mechanisms that jointly conceal the historical, transient, and therefore mutable nature of specific forms of life, models of relationships, and patterns of conduct, which are "merely the product of a labour of eternalization performed by interconnected institutions such as the family, the church, the state, the educational system, and also, in another order of things, sport and journalism (these abstract notions being simple shorthand markers for complex mechanisms which must be analysed in each case in their historical particularity)" (Bourdieu, 2001: viii).

The politics of cultural units: from homosexuality to the couple

In a half joking half serious article Mariana Valverde (2006) points out that the age of homosexual identity is over. Michel Foucault's influential take on the emergence of homosexuality as a specific entity and form of identity was focused on a historical transition from a view of homosexuality as a range of acts (sodomy), which were hardly equated with a stable homosexual subjectivity, to a view of homosexuality as a specific identity category rooted in human nature.[4] Such a naturalization of homosexuality and the corresponding congealment of a set of acts into an identity category allowed making homosexuals the subject of a variety of knowledges in both the fields of hard and social sciences. Valverde's hypothesis is that, with the end of far-reaching socio-political struggles and the rise of post-identity politics, the category of "the homosexual" has become fuzzy, if not outdated. Today's very use of the signifier "queer" is generally meant to emphasize the instability and vagueness of sexual categories and the multiplicity of sexual orientations.

At face value this could be taken as the felicitous disposal of a disciplinary category whereby marginalized sexualities were targeted as aberrant deviations from the course of nature. The redress for decades of exclusion takes the shape of recognition: while homosexuals are being recognized as equal citizens with equal rights, it is increasingly evident that citizenship and the rights it bestows can by no means be conditional upon sexual preferences. Homosexuals have the inalienable right to

access state institutions and to share the benefits (as well as the costs) of state policies on family life, health, pension, and other spheres of human life regulated by state law. However, a crucial aspect of this process of political emancipation and legal recognition is that it does not seem to be addressed to individual citizens. Valverde shows that state institutions are, *mutatis mutandis*, replicating the process that brought the category of the homosexual into life. At present the subject of recognition is not an individualized subject, but a dyadic one: the "respectable couple." How did this new identity category come about?

To answer this question, it is worth looking at a trajectory that could be viewed as an endogenous transformation of homosexual movements paralleled by a metamorphosis of rights claims. In her typology of rights claims, Diane Richardson (2005) distinguishes among three basic types: *conduct-based*, *identity-based*, and *relationship-based*. This distinction perfectly fits the story I am relating. In my interpretation, the transition from conduct-based to relationship-based rights claims reflects the historical trajectory of political engagement in contemporary democracies from the late 1970s to date. More particularly, such a major shift has brought about an effect of fragmentation in social battles that has hampered further attempts to join forces and launch the collective and concentric attack on the institutional framework of liberal states of which erstwhile movements dreamt. To fully appreciate this trajectory, it is necessary to mention what preceded it and what are its consequences.

So-called "liberationist" movements of the 1960s and the 1970s basically refused to couch their battles in the jargon of rights. They believed liberation would be triggered by a far-reaching attempt to rid society of a variety of socio-political injustices.[5] Only then would the deep-rooted causes of society's sexist and heterosexist ideology be removed. Sexism and heterosexism were regarded not as self-standing socio-cultural phenomena, but as structural properties of an all-encompassing social, political, economic, and juridical "system". This is why, in their perspective, this goal could hardly be achieved *from within* the system. Effective political subversion required a preliminary staunch refusal of any compromises which would redress discrete elements of the broad picture. As Steven

Seidman (2002: 74) notes, "[t]he fight for gay justice was viewed as inseparable from struggles to transform gender roles, the institutions of marriage and the family, and the political economy of capitalism and imperialism."

A telling example of an outward-looking understanding of political engagement with respect to plural forms of injustice is Guy Hocquenghem's revolutionary sexual politics (see in particular Hocquenghem, 1993). His peculiar mix of poststructuralism and political activism led him to believe the liberation of homosexual desire to be conducive to new modes of relation (a group-identity) opposed to an individualized notion of the sexual self. Yet, such a sexual collectivism was a call for a self-conscious process of political emergence that could even involve loss of identity and individual control. In other words, this group-identity was part and parcel of a broader attack on the phallocentric structure of society that "signifies the difference between the sexes" and "dispenses identity and confers status" (Brookes, 2009: 20). Hocquenghem's concern was with the forceful privatization of intimacy whereby homosexual sexuality was demoted to the sphere of one's private life and was severely censored when displayed in public. In its turn, the phallocentric structure that dismissed and silenced homosexuality was hardly autonomous, for it was ingrained in a broader structure that perpetrated other, non-sexual inequalities. This is why Hocquenghem's understanding of "the anus" was one that did not mean to promote an identity politics designed to achieve equality for a bounded group. The anus, as a political signifier, refrained from all sorts of discriminations and required the collective refusal of all discriminatory practices.

Hocquenghem himself, however, was aware of the internal contradictions of revolutionary movements. As I noted above, to pin down the degree of conservatism which may affect antagonist politics, one needs to explore its collusions with the hegemonic culture. Indeed this was Hocquenghem's (2010: 17) approach when he expressed his bitter dissatisfaction with the difficulties other radical movements had found supporting the cause of homosexual liberation:

> Like the women's liberation movement that inspired it, the revolutionary homosexual platform emerged with Leftism and traumatized it to the point of contributing to its debacle. But while they fissured Leftism by revealing its phallocentric morphology and its censure of marginal sexualities (and of sexuality in general), these autonomous movements, despite their refusal of hierarchy, continued and continue to replicate the conditioned reflexes of the political sector that produced them: logomachy, the replacement of desire by the mythology of struggle, the use of charm diverted to public discourse and considered to be a nuptial parade and an accession to power.[6]

The intensification of fractures among distinct ideological platforms gave life to a new identity politics whereby groups would pursue their own political agenda. The collapse of a collective project, in conjunction with a set of profound socio- and geo-political changes that I cannot address here, left no room for a coordinated political engagement *from outside*. The jargon of rights, on which people were seizing upon, is one that can only be adopted *from within*, whether strategically or full-heartedly. At the same time, the rights discourse is not homogenous, for it is characterized by internal conflicting tendencies that resolve in different types of political engagement. Richardson's typology helps us see how different rights are supported by different claims and lead to different policies.

People who lay claim to conduct-based rights insist that they should be granted the right to freely engage in sexual practices. This claim does not presuppose any link between one's identity and her/his sexual preferences and/or practices. The very concept of identity plays no part. It goes without saying that the ambiguities affecting this type of rights claims might give rise to different outcomes. Liberal states' recognition strategy before the marriage era was to legalize sodomy as a set of acts. In the face of it, what has to be identified is the socio-cultural background that the state, in so doing, was iterating. Liberal states were particularly sensitive to the issue of tolerance of individual private choices and conceptions of the good, with the consequence that same-sex sexual practices were to be considered as choices one made or acts one carried out in her/his private domain. Thus, the main drive was not the valorization of difference and the pluralization of sexual lifestyles, but the expansion of the list of admissible sexual acts that could no longer be persecuted if performed in the private

domain. Evidently, this view was miles away from liberationists' and feminists' discomfort with the persistence of the private/public divide, which they believed to be instrumental in nurturing a conservative configuration of the political. Despite this, the absence of any reference to fixed identities allowed the advocates of conduct-based rights to emphasize elements that were redolent of the previous aspiration to sexual liberation, like the right to pleasure. People's insistence on pleasure was the vehicle for a non-conventional view of sex, where reproduction was demoted to one, non-essential function of sexual intercourse (as male homosexuality evidenced) while autonomy (implying refusal to engage in sexual acts) would in the long run disrupt the image of women as men's sexual object.

In between the 1970s and 1980s, as I stressed above, the fragmentation of left and radical movements along with the steady demise of liberationism prompted organized groups to stress essential properties that were regarded as qualifying specific categories of subjects. The lexicon of sexual freedom gave way to that of "gay rights," that is, rights that are typical of a specific group. This political strategy forcefully introduced the idea that there are identities essentially characterized by unchangeable preferences and desires. On this account, acts are nothing other than an expression of these inborn traits. In this framework, gay activists believed that the recognition of gay rights would be conducive to the recognition of their sexuality as an inseparable feature of the person. In other words, homosexuals were invoking the right to *identify themselves with a specific category*, like Blacks or Hindus. Sexual orientation was then taken as a boundary marker drawing the line between gays and straights. On the other hand, however, this self-identification had severed any ties with a group-identity *à la* Hocquenghem. The identity category that identity-based rights claims espoused was not meant to accommodate all forms of politically pathologized subjectivities, because the idea of the social construction of the subject was fundamentally at odds with the steadfast defence of a stable and well-identifiable category of citizens. The aim was not liberation from a decaying society, but full integration within it as *respectable citizens*. Accordingly, the strategy to attain integration

hinged on the (alleged) fact that one's sexual orientation can be neither chosen nor changed, precisely like skin colour or ethnicity.

Without a doubt, the forceful emergence of the theme of homosexual relationships was furthered by the renewed role of identity. In fact, relationship in this context is not meant to denote relatedness as a key sphere of human sociality (see e.g. Carsten, 2000) much as some anthropologists have tried to argue the same to showcase the richness and variety of homosexual kinship (see the oft-quoted Weston, 1991). Relationship is as fixed a category as it is identity, for it is synonymous with coupledom. To be sure, the theme is not new and was the subject of heated debates within the homosexual community well before the 1980s. On the one hand, as William Eskridge (1993: 1421) points out, gays and lesbians have always "formed same-sex relationships, which members of the gaylesbian community have long referred to as 'marriages'." On the other hand, members of liberationist movements viewed the couple as a compulsory ideal, which when replicated by homosexuals inevitably constituted "a parody" that reinforced a model of relationship based "on ownership – the woman sells her services to the man in return for security for herself and her children – and is entirely bound up in the man's idea of property" (Gay Liberation Front, [1973]1978). The Gay Liberation Front vociferously denounced the infiltration of the "emotional dishonesty of staying in the comfy safety of the home and garden, the security and narrowness of the life built for two, with the secret guilt of fancying someone else while remaining in thrall to the idea that true love lasts a lifetime – as though there were a ration of relationships, and to want more than one were greedy" (ibid.).

The fears voiced by those who were critical of the new junction between rights and relationships was that officially sanctioned unions, especially under the guise of marriage, replicates gender relations that are anchored to a heteronormative regime and controls sexuality by prescribing a specific model of relationship. Through a series of policy measures, the state supports the socio-cultural and economic privilege of state-sanctioned monogamy (Graham, 2004). Those who believe that marriage opens the door to a renegotiation of the social and economic privileges accorded to

heterosexuals reply to these fears by saying that hundreds of thousands of same-sex couples who are now allowed to marry are *de facto* revising the significance of marriage by ushering in a new way of understanding relationships, where reproduction and biological ties are substituted for choice and love. It is not for this article to discuss the reasons for and against marriage (see Croce, 2014b; Croce, 2015b). What counts here is the shape that the ideal of the couple-form has given to rights claims: not only did it reiterate the congealment of acts and identity and the naturalization of homosexual identity; it also reinforced the seemingly natural root of monogamy (see Emens, 2004). In the subsequent section I will show that this happened not because of an intentional project to subsume homosexuality under heteronormative monogamy, but because of the institutional language that, especially within official courts, the supporters of same-sex rights claims have endorsed to obtain legal recognition.

From the street to the court

The trajectory of rights claims seems to attest to a mutual dependence between the political status attached to rights and the semiotic framework in which this status is placed. Therefore, political strategies to equalize the condition of homosexuals are affected by this dependence insofar as the status conferred by rights morphs as the semiotic framework does. Although rights remain "that which we cannot not want" (Spivak, 1993; Brown, 2000) the framework where the rights discourse is positioned alters the configuration and character of rights and thus makes us want something very different (whether or not we are aware of that).

As evidenced by my glimpse into post-liberationist activism, the struggles for gay rights have followed a compound path "from outside to inside." On the one hand, the condition for that was the progressive disposal of an "either/or" political strategy, whereby *either* liberal institutions were to be smashed *or* the pathway to sexual liberation remained closed down. On the other hand, however, this oppositional view was coupled with the growing conviction that society could be changed by capitalizing on the language and categories of mainstream institutions. This momentous change in

the politics of gay rights is epitomized by a celebrated exchange between Tom Stoddard (1989) and Paula Ettelbrick (1989) over whether or not lesbians and gays should pursue the goal of same-sex marriage recognition. As Edward Stein (2009) explains, such a diatribe did not really concern the simple issue of marriage, but was a more complex reflection on the crossroad that same-sex people and groups had come upon. Stoddard's suggestion was that same-sex groups should follow in the footsteps of the civil rights movement and apply its methods with a view to obtaining equality. Ettelbrick thought that access to mainstream institutions would hardly be conducive to equality. She believed the core concern of same-sex political engagement should be with changing the way rights, benefits, responsibilities and duties are allocated through institutional means (marriage being a case in point). In this latter case, strategies to attain equality would run the risk of severing ties between same-sex battles and the broader aim of transforming the distinctions that mainstream institutions sanction and support through policy measures.

In this section I want to make a case for Ettelbrick's misgivings. More specifically, my claim is that, whether or not marriage equality is being beneficial to a good deal of formerly excluded homosexual couples, the change that same-sex individuals' and groups' claims have undergone is remarkable. The main feature of this change, as I understand it here, is a *semiotic conversion* of the political vocabulary of same-sex sexuality. An alteration of the signifier "rights" in order for same-sex rights claims to be "heard" by state institutions and for lesbians and gays to be admitted in the range of respectable citizens who demand equality.[7]

One vivid example of such an alteration in the context of litigation is the famous judgment *Lawrence and Garner v. State of Texas* (2003), where the US Supreme Court struck down Texas sodomy law.[8] Briefly, *Lawrence v. Texas* legalized homosexual acts by dragging it in the context of a specific narrative, one that capitalized on, and sanctified, the triad acts/identity/relationship. The slim majority opinion embraced the idea that homosexual acts are always performed within the framework of relationships, while relationships were described with reference to conventional values of mutual commitment to monogamy, reciprocal loyalty, stability, and durability. Accordingly,

although the events that led to the trial did not have anything to do with relationships, love, and commitment (as Justice Scalia pointed out in his dissenting opinion), the strategy of homosexual associations and organizations turned out to be successful mainly because they piggybacked on that narrative.

As Katherine Franke (2012) argues, the connection between acts and relationships under the rubric of romantic monogamy in *Lawrence and Garner v. Texas* paved the way for *Perry vs. Schwarzenegger* (2012), which removed Proposition 8 – a ballot proposition providing that only marriage between a man and a woman was recognized in California. In this judgment the trajectory of rights claims is fully accomplished, since the couple is *de facto* represented as the legitimating device that confers legibility and respectability on homosexuals, to the extent that there seems to be no space of thinkability left for homosexual sexuality outside the natural context of the couple. Franke (2012: 94) shows how the testimony by the four plaintiffs were meant to celebrate the sacred union between marriage equality and the vitality of marriage as an institution: they argued that the state "should play a vital role in promoting the institution of marriage and that including same-sex couples in the institution would be good for marriage more generally."

This socio-historical trajectory is relevant to my analysis insofar as it reveals the displacement of rights battles from the field of political engagement to that of the judiciary. In my view, this is hardly something typical of gay rights, as it is the symptom of a broader political process that goes under the label of "judicialization." This is an ambiguous bundle of processes characterized by

> the transfer of contested "big questions" to courts and other quasi-professional and semi-autonomous policy-making bodies, domestic or supranational, may be seen as part of a broader process whereby political and economic elites, while they profess support for a Schumpeterian (or minimalist) conception of democracy, attempt to insulate substantive policy making from the vicissitudes of democratic politics (Hirschl, 2006: 747).

In other words, this is a twofold process. Not only does politics migrate and move to courts, where the negotiation of political issues occurs in a protected and insulated domain, under the supervision of experts who wisely "oversee" social change. Even more profoundly, politics itself allows (or even requires) the law and legal institutions broadly understood, to tackle key political questions that in the past fell within the purview of legislative and administrative institutions. This two-pronged process, therefore, should not be regarded as the mere substitution of legislation for adjudication. Much more broadly, it bespeaks people's increasing reliance on law as a political weapon. It is a general societal transition characterized by a "tendency of populations defined by, among other things, faith, culture, gender, sexual preference, race, residence, and habits of consumption to turn to jural ways and means in order to construct and represent themselves as 'communities'" (Comaroff, 2009: 197).

In these pages I am homing in on the more visible context of litigations because the process of conversion and its importance to the success of same-sex equality battles plainly gives itself away. A number of critics and observers have illustrated how lawyers who took over the homosexual cause strive to "construct identities in order to achieve legal reform" when, for example, the judiciary proves sympathetic to the "homosexual as respectable family member" (NeJaime, 2003: 519). Yet, I believe critics and observers often omit to tackle a basic question: how does this constructed legal identity act back on people's self-understanding?

Elsewhere I have offered a Bourdesian view of how negotiations within the legal field affect laypeople who have recourse to law to settle disputes (Croce, 2014a). I also sought to explain how the effects of the negotiations taking place in a limited domain with reference to precise facts and events, as it were, spill over and alter social perception (Croce, 2012). Nonetheless, in this article I would rather focus on the interplay between the law and people's self-understanding by analyzing what Lloyd refers to as "state iteration." By doing so, I intend to demonstrate that Butler does make a point when she claims that there is a fundamental difference between iterations in the sphere of everyday life and iterations in the sphere of state institutions. As I aspire to show, the language of

state institutions – which Lloyd rightly identifies with the law – has a special nature; for its categories give rise to a different interplay between words and the world than the one typical of everyday language or other fields of knowledge.[9] With a formula, I could say that the language of the law claims that facts have to accord with its own categories and is insensitive to whether or not its own categories square with the facts they are supposed to capture and regulate.

This claim might seem as bold as counterintuitive, if it is true that, to a large extent, all the cases mentioned so far appear to be an invasion of the legal field by the language and categories of everyday life. In effect, romantic relationships and coupledom are scarcely legal creations. They are the product of social actors within daily practices which are brought into the legal field for them to be recognized and regulated under state law. My argument, however, is not that the law creates categories and foists them upon social reality. Such a top-down view of legal normativity would be abstractive and fictitious, because it fails to capture the core of the relationship between the social and the legal domains. It is also worth noting that my main concern here is not with the dividing line separating these two domains of social reality, which are always trapped in an ongoing intercourse and a process of reciprocal influence. Rather, my main concern is with what is required for a claim to cross this line and what the effects are of the transition from one domain to another.

To face this issue, it is important to provide a notion of law that makes sense of law's semiotic impact on everyday life. As I noted above, an effective way to achieve that is to highlight the impact of the so-called "processual" side of the law. From this viewpoint, as I will argue, law can be depicted as a "microcosm" where everyday reality is semiotically represented, deconstructed, and reframed. In this microcosm, people engage in discursive processes meant to rephrase facts and events that occur in everyday life with a view to transforming the conflict "by imposing established categories for classifying events and relationships" (Mather and Yngvesson, 1980: 775). Generally speaking, these established categories take the shape of rules that define things, establish the possible types of relation among subjects, and prescribe binding procedures in order for actions and transactions to be recognised as valid. These categories are applied as a *technique of description* whereby the categories

of everyday language are substituted for legal ones. Law therefore compels the parties to stick to such a restricted and fixed set of categories whereby facts and events are re-ordered and transformed: they are rephrased in the legal jargon – what Bourdieu (1987) calls "process of conversion" – so that laypeople's "ordinary" accounts are entirely revised. In sum, in the bounded space linguistically marked off by legal categories, laypeople, those who represent laypeople, and those who oversee the dispute carry out a process of negotiation whose throbbing heart is the rephrasing of everyday language with recourse to legal language. This very process triggers a twofold interplay between facts and rules: facts come to fit rules whereas rules help reframe facts.

I have already pointed out that the relation between legal categories and facts is of a special kind. By entering the legal field, the parties commit themselves to finding out a *paradigm of argument* on whose basis they can provide a sharable account of the relevant facts in terms of one or more implicit or explicit normative referents. It is this process that prompts the parties to transcend their personal view of things and to locate themselves into a semiotic framework that transforms the conflict. This explains why the outcome of litigations successfully change the way people perceive what is outside the legal field (and thus their own experience). The interplay between legal categories and facts that the law encourages affects the way people linguistically frame and thus perceive and understand their reality. In this regard, I would like to underline once again that it is not the strategic use of the legal jargon on the part of lawyers that effects a change in the lexicon of social battles, as NeJaime appears to submit. The change is sparked by a process bound up with law's nature itself: the very entrance into the legal field presupposes a conversion whereby legal categories inevitably come to affect the categories of ordinary language.[10] The efficacy of this conversion, by which legal battles can be won, favours the spill-over effect and intensifies the impact of the semiotic conversion over the social realm.

I believe Lynn Mather and Barbara Yngvesson (1980: 775) get to the heart of the matter when they explain why law is so special a type of public discourse. Governed by certainly more formal and explicit rules than the ones governing discursive exchanges in the public arena, the public struggles

taking place within the legal field become significant because their outcomes "not only inform and affect social practice, but also provide the language for challenging that practice." In effect, once people gain access to the legal field and perform the process of conversion under the guidance of legal experts, they are endowed with the special authority to challenge and amend the practices that they deem unjust, unsatisfactory, or oppressive. The intercourse between the language of everyday life and the language of the law, therefore, is as expensive as it is advantageous. The cost is that of being subsumed under a set of categories that reframe issues of everyday life in such a way that certain elements are preserved while others are silenced and omitted. In the case of same-sex rights litigations, the privilege that the legal categories of relationship, partnership, and marriage[11] accord to the narrative of romantic love and mutual commitment goes to the detriment of, among other things, sex.[12] In this way, the homosexual discourse is put in a context of connections and references that gives it a particular shape and brings into existence the cultural unit of "the respectable couple." The main advantage, on the other hand, is the access into the sphere of legal speakability, where practices that used to be excluded from the repertoire of respectable lifestyles are symbolically rehabilitated as worthy of respect. Further, this symbolic process materially resolves in a set of concrete benefits tied to legal recognition (such as visitation rights, pension rights, family and medical leave, rights and obligations with regard to children, and others, depending on the jurisdiction at stake and the relation of same-sex unions to the other typologies of unions).

Conclusion

What is the lesson that has to be learnt from the transition at stake? Should radical critics chide those who want to obtain recognition from the state as forming a respectable couple? I do not think so. The aim of critical analysis can hardly be the "identification of the enemy", or rather, of people who are alleged to obstruct the road to a truly fairer society. From this angle, my argument thus far did not want to support the conclusion that the struggle for marriage equality is *in se* detrimental to same-sex

political activism. Rather, my point was that there are different ways to lay claim to recognition, some of which, as Susan Boyd (2013: 290) maintains, glue marriage rights to privileges for "those who are already advantaged along the lines of class, race, and even gender, and contribute to the oppression of those who are poor and otherwise disenfranchised". To lessen such an exclusionary effect, in line with Ettelbrick's warning, I believe the pursuit of legal recognition should not dispose of the broader aim of dismantling the long-standing association between state-based institutions and the privileged position of some citizens.

Within this framework, the purpose of this article was to contribute to tackling the question of why marriage equality risks creating new divisions between respectable and less respectable citizens. My answer was that it is the very same language through which legal recognition is negotiated and granted that reinforces the tie between being respectable and desiring "the state's desire" (Butler, 2004: 111). Why is that so? For two main reasons. First, because iterations performed by state law cannot be equated to iterations performed by social actors in the social realm, since state law (especially when it comes to its judicial mechanisms) is an insulated sphere where language and categories cling to structured patterns and follow rigid procedures, which act back on the claims that they deal with. The second reason is that, because of the prior point, state iterations cannot be read and weighed against the socio-cultural background, given that the relationship between the latter and the law is opaque.

What then needs to be done is a pondered analysis of newly recognized social practices in order to identify the features that have been included and those that have been left out by the semiotic conversion that the law imposes. Only that way can one fathom the impact of state iterations on social practices and fully appreciate the degree of progressiveness or conservativeness of specific judicial decisions and policy measures. Moreover, this type of inquiry necessitates a full-fledged critical-theoretical apparatus because the negotiations carried out within the public discourse of law tend to remove traces of their exclusionary effects. This happens mainly because the translation from the language of everyday life into the legal language depends on laypeople's active cooperation, as they

are required to deconstruct and reconstruct their experiences, stories, and viewpoints under the supervision of legal officials. This sort of "collusion" makes the effects of exclusion produced by legal regulation seem the natural consequence of some people's own legal victories on other people. In other words, individuals who do not fit the cultural units that the state supports (such as e.g. unwed or polyamorous parents) turn out to be excluded from the range of respectable citizens because those homosexuals who fight for relationship-based rights reinforce the pre-eminence of the monogamous couple.

Nonetheless, countering this tendency does not imply discarding the kind of inclusive policies that liberal states tend to favour. Instead, it requires creating awareness of the hegemonic cultural lexicon state institutions promote (whether intentionally or not) and calling for a richer plurality of relationship-recognition regimes (Croce, 2015c; Redding, 2010). In other words, this means reclaiming the political force of "being different" and thus calling for new ways for the state to address the needs and interests of kinship structures that are not premised on "compulsory monogamy" (Robson, 2014) or "compulsory romantic love" (Wilkinson, 2012).

Political and legal theorizing can be of help in this critical enterprise of creating awareness. In fact, a crucial aim of today's research into non-conventional kinship structures and state recognition strategies is to understand if, how and to what extent "parliamentary and judicial discourse that has arisen 'after equality' has continued to draw on heteronormative ideals of family" (Harding, 2015: 196). This type of investigation, in my reading, can be party to a far-reaching political struggle aimed at giving voice to unheard minority sexualities and practices, whose claims fail to reach out to state institutions precisely because they do not fit conventional standards (Diduck, 2007). Research into minority, excluded abject sexuality and practices serves as a call for thorough scrutiny of the effects of legal equality in an era that appears to be hallmarked by increasing openness to non-heterosexual love and family structures. To this end, if legal means have been largely utilized to construct group identity and to give coherence to same-sex rights struggles (as the trajectory I discussed above evidences), political and legal theorizing, backed up by empirical research, could effectively

counterweight the juridification of society by bringing out tensions and frictions and by emphasising the drawbacks of juridico-political advances, keeping in mind that "telling stories that emphasize incoherence is one way" (Monk, 2015: 213) of making sense of what is gained and what gets lost in becoming legally visible.

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[1] There are notable authors who are aware of the normalizing effects of legal recognition but remain sensitive to the benefits that can gained through it. See e.g. Butler, 2004; Cooper, 2004.

[2] On iterability as the capacity of meanings to project into multiple contexts see Derrida, 1988. On the political relevance of iterability see Loxley, 2007: Chap. 5.

[3] There is an abundance of critical perspectives specifically dedicated to the issue of marriage. To mention a few recent ones: Barker, 2013; Franke 2006; Freeman 2002.

[4] The role of expert knowledges in the construction of the homosexual category is particularly explored in Foucault, 1978. The topic has been thoughtfully touched upon by Weeks, 1990; Faderman, 1978. An accurate analysis of the medicalization of social deviance as a form of self-affirmation on the part of the medical profession is provided in Greenberg, 1988). More generally, see Löfström 1997.

[5] Good examples of this basic stance can be found in Red Collective, [1973]1978); Gay Liberation Front, [1973]1978 (available at http://www.fordham.edu/halsall/pwh/glf-london.asp, last accessed on February 28, 2015).

[6] I analyze how homonormative factors at work in liberationist movements worked as the vehicle for intragroup distinctions in Croce 2015a.

[7] In this light, the term "court" figuring in the title of this section is a shorthand for the broader context of state institutions. In effect, although here I will mainly look at settings in which same-sex rights are being gained through litigation, there are countries were same-sex rights, and same-sex marriage specifically, have been brought in through legislation. If the UK Marriage (Same Sex Couples) Act 2013 is a clear example, in most civil law countries, where judicial law is (explicitly or implicitly) forbidden, changes in family law can only take place through legislative procedures. That said, two considerations should be made. First, as the intercourse between courts and legislatures is concerned, one should not underestimate the critical role played by legal rulings in states where judicial law is ruled out, either because domestic courts call the legislature into action (see Croce, 2015b) or because supra-state courts set standards that have to be fulfilled

by state policies. This latter, for instance, is the case with the European Court of Human Rights, whose judicial activity has been key to the progressive recognition of same-sex unions in many European countries (see Johnson, 2013). Second, and perhaps more importantly, the activity of conversion I am speaking of is not limited to judicial settings. It refers to a far-reaching activity whereby the language of social and political engagement is translated into the language of state institutions. On this account, I will look at the activity of official courts because a direct confrontation between conflicting claims is on stage and the process I aim to foreground surfaces more evidently than in the convoluted processes of law-making. Despite this, whether courts or parliaments take the lead, the set of problems I have in mind relate in a way or another to a more general process of "juridification" (that is, the steadfast reliance on law to further social change) that is growingly permeating Western and non-Western societies (see e.g. Comaroff, 2009).

[8] I discuss at length this judgment in ANONYM. In that context, I also draw on two lucid and largely consonant contributions, namely, Franke, 2004 and Ruskola, 2005.

[9] An instructive contrast between science and law can be found in Latour, 2010. A precious collective book that touches on this parallel is Pottage and Mundy, 2004.

[10] With regard to that, I would like to clarify that I am not neglecting the effects that the deployment of everyday language and categories within the legal field exert on law's language and categories. Law's content is continually negotiated and altered through laypeople's engagement with it (much as it always happens through the mediated of experts). Nonetheless, to understand how change of legal language and categories is possible, as well as the distinctive traits of the procedures that lead to change in them, it is crucial to pin down the particular "direction of fit", as it were, between legal words and the lifeworld, one that prevents a straightforward, bidirectional intercourse between the two.

[11] It goes without saying that these categories take different shapes in different jurisdictions, in keeping with the secondary rules that govern the formation and dissolutions of relationships.

[12] Mark Graham (2002: 25) points out that "sex is often absent from debates on both sides of the North Atlantic surrounding the rightness of gay marriage."