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Introduction: Assimilation and/or Resistance?

Ruthann Robson¹

Sexual minorities, like other minorities, struggle to define our relations within the dominant cultures, politics, and legal systems we inhabit. At stake in this struggle is nothing less than our survival. However, how we conceptualize “survival” differs dramatically amongst us, as do the strategies best suited to accomplish our disparate goals. Such differences are often conveniently divided along a fault line termed “assimilation,” intended to describe the degree of acceptance we seek from heterosexual society, as well as the extent to which we ourselves countenance the norms of heterosexual society. In opposition to “assimilation,” a stance of resistance is often posited. This stance envisions sexual minorities as unique (and probably superior), incorporating a rejection of heteronormativity.

The assimilation/resistance opposition is often critiqued as overly simplistic, a criticism applicable to most dichotomies. Yet when viewed as a continuum, the opposition between an assimilative stance and a resistive one reveals many of the tensions inherent in any quest for social, legal, and political justice. At its core is not only the existence of differences, which may mark one’s practices or claimed identities as minority, but also the points of view with which one perceives present social, legal, and political arrangements. When the issue is simply stated, it often involves pie: whether the object of our struggles is obtaining a (bigger) piece of the pie or whether we are challenging the way the pie is cut, who has the power to cut it, or even the entire notion of “pie.”

While unpretentiousness in phrasing is laudable, the pie metaphor not only suffers from having become a tiresome cliché, but more seriously from a level of increasing abstraction and divorce from process. Resisting both

the shopworn and the abstract, the authors of the innovative pieces that follow each situate their explorations of assimilation in specific doctrines, theories, and geographical contexts. Originally presented at the conference entitled *Assimilation and Resistance: Emerging Issues in Law and Sexuality*² held at Seattle University in September 2002, these pieces eschew “pie” in favor of adventurous journeys. From transgendered marriage in Kansas to the borders between Mexico/Texas and male/female, from same-sex partners in Canada to international refugees, and from the streets threatening violence against women to classrooms where many of us are professors or students, fortunate readers can accompany the authors as they explore the legal frontiers of sexuality.

One frontier is the classroom. As professors teach students, we are instruments in their assimilation, often called “professionalization” in American law schools. Yet as queer professors, we are also resisters to the legal regime, usually encouraging our students to be resisters as well. In their thoughtful essay on the possibilities of queer pedagogy, Professors Brooks and Parkes write as new professors, drawing on their experiences as students in the back of the classroom as well as instructors at the front of the classroom.³ They describe their attempt to develop normative principles of queer pedagogy as a “labour of love” and their passion is evident. For anyone who believes that teaching and learning can be related to queer liberation, their essay should not only be read, but kept close at hand.

Another frontier continues to be gender. While in the stereotypical United States immigration trajectory common markers of assimilation may be name changes (sometimes involuntary) and cosmetic surgeries (think “nose job”), such strategies appear different in the transgendered context. As both Elvia Arriola and Anthony Winer observe, name changes and surgical and other medical interventions are often hallmarks of the—possibly assimilative?—transgender experience.⁴ In his consideration of the transgender marriage cases, most specifically *In re Gardiner* from the Supreme Court of Kansas, Professor Winer argues that these cases illustrate

the limitations of the notions of assimilation and resistance as analytic tools for understanding queer experience. Instead, he suggests notions of the development of selfhood from Michel Foucault's *Care of the Self*. In essence, he suggests that our preoccupation with societal groups and categories such as male and female (and perhaps heterosexual and queer) should be rejected in favor of more interest in self-fulfillment.

Nevertheless, I don't believe Professor Winer would disagree that our individual ideas, possibilities, and limitations of self-realization are shaped by societal norms and conditions. In Elvia Arriola's trenchant essay, *Queering the Painted Ladies*, she compares two friends each named Paula, one a male-to-female transgendered person living in Austin, Texas and the other a homosexual male cross-dressing in Mexico. Their experiences, particularly their experiences of selfhood, differ dramatically across the borders.

Border crossing is also the theme of Jenni Millbank's smart analysis of refugee claims on the basis of sexual orientation in the courts of Australia and Canada.⁵ While the litigants in these cases seek to cross borders, immigrate to a new nation, and perhaps even to assimilate, Professor Millbank asserts that borders between the genders and between public and private trouble the litigants' claims. Assimilation for minorities possesses an element of passing, which, as Millbank demonstrates, proves to be a double-edged sword for sexual minorities seeking to sustain a refugee claim based on their "well-founded fear of being persecuted."

Persecution on the basis of gender, such as rape and sexual harassment, are extreme strategies used by men in power to prevent women from assimilating into civil society. Arguably, the legal regime's prohibitions of such acts are a type of resistance to patriarchy, enabling the assimilation of women. But what happens when men appropriate gender persecutions and declare them gender-neutral? This provocative question is posed by Patricia Novotny's essay, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance*,⁶ which explores the "assimilation" of men into

the category of sexualized victim. Novotny's piece asks more questions than it answers, but she proves a deft guide through territory in which, as she states, "the unsettling of gendered expectations creates both peril and promise."

In addition to sexual violence, women's exclusion from civil society has also been accomplished by the legal rules and traditions of marriage, although much liberalized in recent years. Also increasingly, if controversially, continuing to be liberalized is the gender requirement for marriage and quasi-marital legal forms for same-sex couples. While the conservative objections to such liberalization are vociferous, the marriage strategy has also had its critics amongst sexual minorities, a usual argument including a term like "assimilation." In their cogent article, Professors Boyd and Young dissect the Canadian cases considering same-sex relationships and analyze them in light of the larger issues of resistance and assimilation as posed by various theorists.⁷ They state their own position with an admirable clarity, conceding that same-sex marriage poses an insoluble dilemma, but ultimately concluding that state recognition of same-sex relationships will "connote 'progress' only when the links between recognized relationships and socio-economic inequalities within capitalism are fully exposed and challenged."

Challenging the inequalities within capitalism as we struggle for queer liberation is not a uniformly shared goal amongst sexual minorities, as became apparent at several points during the *Assimilation and Resistance* conference last year. Yet even beyond "mere" capitalism, as Elvia Arriola's article reminds us, our struggles occur in a world subject to the imperialistic "disney-ification" of the American—and perhaps global—culture to which "we" would assimilate and to which "resistance is futile." Our theorizing of gender identity, marriage, and persecution is more necessary than ever, yet many of us increasingly recognize that the choice between assimilation and resistance may be less problematic because of the unattractive dichotomy

rather than because of the illusion of our autonomy. Whether we choose assimilation and/or resistance, I hope we always have room for choice.

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² I also presented at the conference at Seattle University. See Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 TEMPLE L. REV. 709 (2002).

³ Kim Brooks & Debra Parkes, *Moving from the Back to the Front of the Classroom*, 1 SEATTLE J. SOC. JUST. 637 (2003).

⁴ Elvia R. Arriola, *Queering the Painted Ladies: Gender, Race, Class and Sexual Identity at the Mexican Border in the Case of the Two Paulas*, 1 SEATTLE J. SOC. JUST. 679 (2003); Anthony Winer, *Assimilation, Resistance, and Recent Transsexual Marriage Cases*, 1 SEATTLE J. SOC. JUST. 653 (2003).

⁵ Jenni Millbank, *Gender, Visibility and Public Space in Refugee Claims on the Basis of Sexual Orientation*, 1 SEATTLE J. SOC. JUST. 725 (2003).

⁶ Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance*, 1 SEATTLE J. SOC. JUST. 743 (2003).

⁷ Susan B. Boyd & Claire Young, *"From Same-Sex to No Sex?:" Trends Towards Recognition of (Same-Sex) Relationships in Canada*, 1 SEATTLE J. SOC. JUST. 757 (2003).