

# *Respectability Politics and the Rights of Queer and Transgender People: Critiquing an Obsolete System in the 21st Century*

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## **Introduction**

For many, the quest for gay rights ended with the advent of marriage equality; yet while the issue monopolized the movement's financial and social resources, it was not the sole item on the LGBTQ advocacy agenda (Rayside 2016, 263-64). In the long protest wave that swept across Europe and North America in the 1960s, few activist movements can claim as great an impact on public policy and popular beliefs as advocates fighting against the social and political marginalization of sexual minorities. This is particularly true in Canada, where the lesbian, gay, bisexual, transgender movement secured major gains from the mid-1980s onward. Although I do not claim that the LGBT movement has eliminated inequity and prejudice based on sexual difference, or that all observers agree on how much has been won, the Canadian case raises important questions. Prioritization of marriage equality caused certain voices within the community, namely queer and transgender people, to be silenced and ignored. This marginalization has not been without material effect with regards to said groups, whose rights claims have been considerably complicated *legally*, and relegated to the 'back burner' *socially*.

This paper will seek to illustrate how

the marginalization of queer and trans people—especially those of a racial minority—can in part be attributed to the concept of 'respectability politics' in the LGBTQ rights campaign. In its simplest form, respectability politics espouses the view that minorities who act in a 'respectable' manner will persuade the dominant group to extend the same rights protections to said minority that they extend to themselves. Furthermore, the argument that respectability politics will have to be abandoned in the quest for truly effective queer and trans rights is supported by literature on LGBTQ rights and Black rights advocacy. Naturally, it would be reductive to compare the marginalization of Black people to that of LGBTQ people simply based on their status as historically disadvantaged groups; as such, that is not what this paper argues. Rather, this paper seeks to illustrate that the doctrine of respectability politics—widely applied by the civil rights movement of the 1960s—is extremely similar, if not identical, to strategies deployed in the mainstream LGBTQ rights movement. Through studying the limits of respectability politics for the Black rights movement, we can draw inferences regarding its (in)effectiveness for LGBTQ rights claimants, specifically queer and trans people.



This paper will first discuss the pitfalls of respectability politics with regards to the civil rights movement of the 1960s, specifically the strategy's tendency to silence voices who fall outside a slim 'respectably Black' subgroup. Following this, the historical treatment of Black LGBTQ people within the Black community will help illustrate the link between respectability politics and support of marginalized subgroups. Subsequently, this framework will be applied to the fight for LGBTQ rights, to show how the same phenomenon has occurred within the LGBTQ community (regarding both racism, and trans and queer ideas). Finally, using the concept of homonormativity, this paper will argue that respectability politics is no longer compatible with true queer and trans rights protection, just as it is no longer 'simpatico' with the modern-day Black Lives Matter (BLM) movement.

### **Section I: Essence of Respectability Politics**

Respectability politics, taken to its most base roots, is quite a simple concept: groups who seek rights should present themselves as 'worthy' of respect from the dominant class. If they can prove said worthiness, rights will follow. For the civil rights movement, the doctrine of respectability politics took the form of Black people calling out and eliminating the "bad" traits present in their community (Harris 2014, 33). This strategy was designed to uplift Black people through the elimination of stereotypes of inferiority, and it would be executed through the careful cultivation of the Black citizen as successful, moral, and generally "upright" (Obasogie and Newman 2016, 546). As Obasogie and Newman note, respectability politics is about "incorporation into the hegemonic normativity of whiteness" (2016, 548). We can read this as seeking inclusion in an existing system, without seeking to change pre-existing norms and parameters for what

is good or acceptable: this key characteristic is instrumental for our understanding of the limits of respectability politics, as it elegantly sums up what the doctrine can and cannot accomplish.

Proponents of respectability politics would argue that it acts as a vehicle for the deliverance of rights, while uplifting rights claimants in the process. This way of thinking is not some 'antiquated' conception of rights: even President Obama chose to focus more on the respectability of actions rather than the underlying issues that caused them when he said that Black citizens over the years have, at points, "lost our way" (referencing riots and other 'non-respectable acts') (Harris 2014, 37). We must not entirely discount the use of respectability politics, as it has been effective in the past; however, it has only been effective for the portion of Black citizens who were able to mould themselves into a White-approved form, a key issue. The dominant White system during the 1960s rights movement held some fairly exclusionary values, and those values became reflected in what Black citizens had to embody to become 'respectable.' This process included correcting for traits that did not reflect an adequate level of 'civility,' reinforce the notion of the nuclear family, or any number of other social phenomena that reflected a different norm than that of the predominant culture.

Such a preoccupation with countering negative stereotypes resulted in narrow representations that ignored the complexity of Black culture, pushing marginalized groups such as women and LGBTQ people to the periphery (Griffin 2000, 34). While both Black men and women had to edit aspects of themselves to appear respectable, the pressure placed on Black women was particularly intense. This is often illustrated by the extra requirement for Black women to abandon their

natural hairstyles, uphold even higher standards of behaviour than their male counterparts, and to hold important places in organizing the civil rights movement while oftentimes operating in the shadows (Ford 2013, 632). The treatment of Black women would therefore come to mirror the treatment of women in general as the ‘subordinate’ gender, as respectability politics often required the men to ‘take point’ in accordance with White European culture.

Here we encounter the core critique of respectability politics: though it was successful as a tool for gaining civil and political rights in the 1960s movement, it failed as a vehicle to address the general subordination of Black people that continues today (Harris 2015, 34).<sup>1</sup> Respectability politics is fundamentally a tool for inclusion in an existing system, rendering it ineffective when attempting to change the terms upon which a system is predicated. In other words, it is ill-suited when the task at hand is changing dominant structures of authority to view ‘un-respectable things’ as worthy of rights protection, rather than changing those things to match existing rights protections. Of course, the term un-respectable here means not objectively undesirable behavior or identity traits, but rather what is not considered acceptable by the dominant class and institutions.

Cathy Cohen, in her oft-referred to piece surrounding AIDS and marginalization in the Black community, notes that certain members—middle-class, heterosexual men—are taken as markers of the general status (positive or

<sup>1</sup> Such subordination exists most visibly in policing, but in other forms as well. For example, the residual effects of redlining and suburban shifts on inner-city living, or differential treatment in education systems.

negative) of the entire racial group (1999, 12). Members of the group who experience struggle outside of this relatively privileged subsection, often considered “marginal or a blight on the community,” must fight for recognition in Black politics (15). Since these groups are often stigmatized by dominant systems, the Black body politic is forced to choose between legitimacy accorded to them by dominant institutions, or the protection of their vulnerable minorities; this often results in the Black community separating its “respectable” members from its “deficient” members, as Cohen puts it (15).

Cross-cutting issues—those affecting only a specific portion of the Black population, and at an intersection with another part of their identity—were dismissed on one of two grounds: that ‘respectable’ members of the Black community would not engage in such un-respectable behavior; or that the issue was primarily one belonging to the other part of that group’s identity, making it an issue of gender or sexuality rather than of race, for example. (Spence 2019, 194). The rights claims of these secondary groups, also known as subgroups, could not be accommodated by the Black political agenda of respectability because they were not seen as respectable in the eyes of the dominant White system. Choosing to aid their marginalized subgroups would, in effect, destroy the credibility painstakingly established by members of the Black community who were able to mold their identities to White norms. For clarification here, Spence discusses the Black community’s relationship with HIV/AIDS: those with the disease were shunned by the Black community because ‘respectable’ people would not engage in drug use, or have



intercourse with others of the same sex (194). Taking ownership for Black people who engaged in these activities would have harmed the carefully cultivated image of the respectable and upstanding Black citizen, so they were framed primarily as drug users or sexual delinquents, and ignored.

Respectability politics is also predicated on the idea that the 'other' should conform to White ideals, insofar as it requires that rights claimants change themselves to fit into existing dominant frameworks. Arguably, the civil rights movement of the 60s was correct in its approach, as simultaneously challenging both the rights void and the system of White norms under which said rights functioned would have made the movement's existence untenable. Modern-day Black rights movements (BLM) no longer prioritize the notion of respectability and are therefore able to advocate for change outside frameworks of existing systems and institutions, a concept which will be discussed in further detail below.

## **Section II: LGBTQ People of Colour and Respectability Politics**

Although this paper seeks primarily to address trans and queer people of colour, this section has been generalized to reflect the similar treatment gay, lesbian, and bisexual people of colour receive. The literature on the junction between sexuality and race highlights the Black community's historical (un)willingness to publicly back its LGBTQ members. Lewis points out that this difference has resulted in reluctance on the part of the Black community to openly support LGBTQ members of their community in a variety of environments, but especially regarding HIV/AIDS. (2003, 61). On its own this would be unremarkable, most every racial group has at one time or another discriminated against their LGBTQ members. However, the interplay between ideas of linked

fate and respectability in the Black community and the according marginalization Black LGBTQ persons face *in addition* to the normal barriers said persons would face from any racial group are interesting. Moore points out that homophobia in the Black community is more prevalent than in the White community, which is often attributed to "older age, lower levels of education, and greater religiosity of [Black people] in research samples" (2010, 317)gay, bisexual, and transgender (LGBT. Moore and others counter this by pointing out that Black people of the same religion and similar education levels as White people were still more likely to have a negative view of homosexuality (Moore, 317)gay, bisexual, and transgender (LGBT, (Lewis 2003, 75). It seems unlikely that Black people are inherently more homophobic than people of other races, so where could a potential explanation lie? It may be possible to link this negative predisposition to the Black community's history of oppression and re-representation of itself to fit White norms.

During the 1960s, attitudes were decidedly anti-gay, meaning any attempt by Black people to present themselves as respectable under the White-dominated system would generate or perpetuate negative attitudes toward LGBTQ people. Bunyasi and Smith note that more recent talk about Black LGBT issues is overwhelmingly silent, and hypothesize that respectability politics as a limiting factor of linked fate ('what is good for me is good for my race') may have something to do with support for LGBTQ and other issues (2019, 192-93). Indeed, the authors point out that Black respondents who highly support respectability politics and linked fate are respectively 18 and 20 per cent less likely to support transgender, gay and lesbian Black people than they would be if they endorsed high linked fate and low respectability politics (205). This suggests an

ongoing linkage between the degree to which a respondent supports respectability politics and their support for secondarily marginalized peoples such as Black members of the LGBTQ community. Pender, Hope, and Riddick further support this when they note that homophobia in the Black community is strongly grounded in racial oppression, as well as power dynamics surrounding Black heterosexual patriarchy (2019, 531).<sup>2</sup>

Additionally, Moore divides her study into age cohorts and finds notable differences in how LGBTQ Black people born in different decades feel about the dynamic between their racial and sexual identities. Those born after 1980 are more willing to express unhappiness with pressure to hide their sexuality than those born in earlier decades, while all groups still hold a strong connection to their Black identity and community; in other words, a sense of linked fate (321) gay, bisexual, and transgender (LGBT. As a whole, civil rights era respectability politics could be acting as a kind of generational trauma, insofar as many members of the Black community may feel that chances of prosperity for their community as a whole are still governed by said doctrine. However, Moore's study may point to Black LGBTQ people slowly exonerating themselves from the cloak of disapproval placed on them by respectability politics. In short, Black LGBTQ persons are gaining more substantive membership in their community because the pall cast over non-heterosexuality by civil rights-era respectability is slowly being lifted.

Of course, we must account for variance in

<sup>2</sup> . Religiosity also plays a role. Higher levels of religiosity in the Black community may or may not be linked to racial oppression and respectability, but studying this point is beyond the scope of this paper.

opinion due to political ideology, religiosity, and other factors that will create differences of opinion in any racial group; however, it is plausible to draw a linkage between the embrace of BLM's rejection of respectability politics by typically younger people, and the difference in opinion dependent on age that Moore highlights.

### **Section III: The Abandonment of Respectability Politics Regarding Racial Justice**

Given the previous two sections, we can effectively surmise that respectability politics means that groups such as the Black rights movement, historically, have been unwilling to champion the rights of those considered to be on the margins of their community, and whose issues happen to intersect with other marginalized groups. This has real and substantive effects for said marginalized groups, who are oftentimes unable to seek support from any of the larger rights-claiming communities they belong to. Practically, the unique challenges posed by female, LGB, and queer and trans issues or rights are necessarily 'thrown to the curb' by respectability politics to the degree that the doctrine allows support only for 'attainable' (read: 'respectable') rights within the current system. Furthermore, frameworks of respectability remove from the table any talk of systemic reform, something that is required if we are to recognize that the current conception of rights may not serve all racial (sub) groups equally well. It is here that we encounter Black Lives Matter. BLM does not subscribe to respectability politics, as evidenced by its protest and advocacy tactics which embrace emotionally-charged "expressive behaviour" and espouse Black humanity rather



than respectability (Tillery 2019, 304), (Harris 2015, 37).

Additionally, Black Lives Matter makes a point of advocating for Black people previously left on the outskirts of rights movements, including women, queer, and trans people (Furman et al. 2018, 36). This is possible because the BLM movement—unlike its historical brethren—no longer seeks to obtain rights under a White-dominated system: it seeks to change the system to make the appropriate rights possible. For this reason, Black Lives Matter will never be compatible with respectability politics. As discussed above, Obasogie and Newman note how respectability politics are rooted in the notion that gaining the respect of dominant institutions will result in rights acquisition for Black people, meaning the strategy is designed around conformity rather than broad social reform as a rights vehicle (2016, 548). Since respectability is designed around individual actors and ‘betterment,’ systemic reform is conveniently not something its framework is capable of addressing. BLM counters this by supporting the notion that “all Black lives matter,” rather than only those whose actions reflect “predefined norms of civility,” civility referring to what is ‘respectable’ (553). This reinforces the notion that the Black rights movement has reached and surpassed the limit of what respectability politics can offer: if the goal of BLM is the promotion of rights for classically ‘un-respectable’ subgroups, then a different strategy is required.

The newfound uselessness of respectability to the Black Lives Matter movement is also reflected in their stance on policing and police reform. BLM seeks not to persuade vulnerable Black people to ‘act better’ in interactions with dominant systems, but to change how dominant systems interact with Black people. Respectability politics does nothing when seeking systemic change because it is

predicated on the assumption that the system is correct. Richardson, in a study that interviewed several Black Lives Matter founders, concludes that the participants welcomed and advocated for “many varieties of Blackness” as opposed to the monolithic singular identity model employed in previous decades (2019, 209). This paper is neither advocating for systemic change nor arguing against it, as it is beyond the scope here to analyze whether new systems are required, or if existing ones can be modified; it is true, however, that some queer and trans rights do not fit within current frameworks, as discussed below. This allows the Black Lives Matter movement to advocate for, using Cohen’s terminology, cross-cutting issues that the doctrine of respectability would have rendered irrelevant. BLM is able to advocate for Black people who are LGBTQ, who are women, or who find themselves at the intersection of Blackness and any other subgroup or marginalized identity. In abandoning respectability politics, BLM may thereby advocate for strong systemic change for both its most, and least visible members. This stands in stark contrast to the view that individuals should change *themselves*, such that they may be compatible with existing rights frameworks.

#### **Section IV: Queer & Trans Challenges Regarding the Gay Community**

##### *Situating Queer & Trans Issues Relative to the Larger Movement*

This section of the paper will endeavour to show how comparisons can be drawn between the Black rights movement and its classically marginalized subgroups, and the LGBTQ rights movement and its marginalized subgroups with regards to the politics of respectability and its detrimental impacts. Additionally, this section will suggest that—as is the case for BLM—respectability politics has

outlived its usefulness for the LGBTQ rights movement as it seeks rights that will properly represent its queer and trans members, rather than a monolithic representation of such groups that ignores the true diversity of the movement.

Important for clarification and also to set the stage here: ‘queer’ is not used in this paper as an umbrella term for the movement, but rather to represent ideas running counter to dominant social norms, thereby “[resisting] and [rejecting] the very categories of sex, gender, and sexual orientation that [are] used by the mainstream LGBT movement as a basis from which to gain recognition and legal rights” (Bernstein and Taylor 2013, 13). With regards to agenda-setting, this places those in the LGBTQ community who support queer ideas at odds with those who support marriage or homonormativity, resulting in disagreement regarding the use of the movement’s finite amount of resources. There is seldom unanimous agreement as to the direction that should be taken when in uncharted territory, and the LGBTQ movement is no exception. Additionally, when there is internal debate, one or more subgroups will often ‘win’ said debate, at the direct expense of one or more others: in this case, queer and trans subgroups ‘lost.’<sup>3</sup>

We have seen this in the development of queer and trans rights, which have indisputably lagged behind those of lesbian and gay rights. No one factor is solely responsible for this, but this section will seek to outline how respectability politics, as it has marginalized certain racialized subgroups, has had the same effect on certain LGBTQ subgroups. Both

Daum and Rosenblum point out that the prioritization of same-sex marriage had the effect of minimizing trans and queer rights as an agenda item but also by nature: same-sex marriage is a flawed base from which to build trans and queer rights because said rights are not necessarily compatible with the existing heterosexually-defined system (2017, 354), (1994, 95). Furthermore, the marriage equality movement focused on rights parity for all, regardless of sexual orientation; this strategy does not serve queer legal needs, as they cannot be properly incorporated into the existing system, since protecting such rights requires acknowledgment that some rights must be directed at a more specific subgroup such as queer and trans people in this instance (Rosenblum 1994, 95). It is important to note here that the rights milestones achieved by the marriage equality movement are not in and of themselves bad, as they do represent a sizeable leap in same-sex rights. The core issue is that they made the development of queer and trans rights more complicated, in part due to the legal and social strategy required by the movement at large.

Additionally, George notes that LGBTQ rights advocates attempted to emulate this ‘sexuality-blind’ system in the trans rights campaign. Using the example of bathroom access, George highlights the fact that emphasizing how transgender individuals are similar to their heterosexual or cisgender counterparts effectively reinforces notions of the gender binary, and conveys that the LGBTQ movement supports said binary (2019, 581). In the wake of marriage equality, opponents of LGBT rights refocused their attention, making transgender rights their main target. To persuade voters to maintain gender identity

<sup>3</sup> This phenomenon is also discussed above in the context of the civil rights movement and respectability.



antidiscrimination protections, LGBT rights campaigns presented trans identity in a specific, but limited, way. These campaigns emphasized gender-conforming transgender individuals—those who adhere to male and female stereotypes—and thereby implicitly reinforced the gender binary. Although LGBT advocates have largely succeeded in their efforts to preserve LGBT rights, their messaging may undermine the movement’s broader litigation strategy and subject nonbinary members of the transgender community to greater discrimination and persecution. The trans rights framing choices thus raise questions about how the LGBT movement’s advocacy decisions blur the lines between success and failure, advancement and retrenchment. To explain this tension, this Article details the history of marriage equality campaign strategies, drawing on primary source campaign materials to identify how and why LGBT rights groups applied those frames to trans rights, as well as the consequences of those framing choices. This Article then analyzes the motivations behind social movements’ framing decisions more broadly to argue for an alternative approach to trans rights advocacy. Framing trans rights is a significant issue that extends far beyond whether a specific city or state maintains or eliminates its gender identity protections. Although framing in an electoral campaign may seem far removed from the work of courts, legislatures, and administrative agencies, this Article demonstrates how porous the boundaries are, such that the frames of the former have a substantial impact on the latter. Drawing on the scholarly literature on acoustic separation, popular constitutionalism, and slippery slopes, this Article explains why LGBT state and local ballot measure contests cannot be separated from the movement’s broader strategies. It therefore demonstrates that electoral frames are integral to legal advocacy writ large. This

leaves out trans people who may not wish to subscribe to such norms and relocates the source of their marginalization from society at large to the community that is allegedly there to protect them, a form of the secondary marginalization Cohen speaks of (1999, 70). Many steps considered positive for the marriage equality movement would be considered largely unhelpful to the trans and queer movements.

Furthermore, we know that there is racism within the LGBTQ community. Giwa and Greensmith point out that as a product of creating social change, the LGBTQ movement became falsely homogenized; this resulted in the dominance of White voices in the movement, and continuing racial oppression (2012, 163). O’Brien alludes to this when she discusses how wealthy White donors viewed trans people as “extremely poor, black, and incarcerated,” though she does not discuss the topic at length (2019, 595). Since it was often wealthy White donors fuelling legal battles, their policy preferences likely would have had a pervasive impact on the nature of cases being litigated. Furthermore, racism in the LGBTQ community exists in all socioeconomic classes: Furman et al. note that trans and queer people of colour are seen as “loud, aggressive and disruptive” while their White counterparts are taken seriously and given priority (2018, 38).

Additionally, we cannot ignore the influence race has on agenda-setting: White voices have historically dominated LGBTQ discourse (Furman et al. 2018, 35). Therefore, the dominant voices in the movement do not face the systems of racism and oppression the likes of which are encountered regularly by non-White members of the LGBTQ community. This has the effect of ‘whitewashing’ the movement and further reinforcing the dominance of White voices. Black communities are marginalized on a racial basis, but have historically been dominant on a sexual one



(they have been seen and presented as a heterosexual group, for reasons of respectability); LGBTQ communities have been oversimplified with a similar sense of false unity, insofar as they prioritize visibility of gay White members to the exclusion of racialized and other sexually diverse members (Morrison 2013, 34). Therefore, the compound effects of subordination based on race and sexuality creates a situation where people who find themselves at the intersection of such identities may not be able to seek support from either ‘dominant’ group. Thus, the secondary marginalization faced by racialized queer and trans people — as a function of being a minority on multiple fronts— is doubly severe.

We must also take into account the fact that same-sex marriage mirrors opposite-sex marriage, while queer and trans rights occupy an entirely separate envelope. Therefore, marriage issues are arguably easier to fight for than trans and queer rights. Bernstein and Taylor note that same-sex marriage allows for the normalization of “‘good’ gays,” those who accept same-sex marriage, to the immediate detriment of “‘bad’ gays,” those who prefer alternate systems (2013, 13). This is analogous to LGBTQ people who are viewed as ‘respectable,’ and ‘un-respectable’ by dominant systems. In this case, the dominant system is heterosexual, though as noted above it is also composed primarily of White voices, generating a racial component.

### *Differences in Marriage and Trans Rights Campaigns*

In Canada, the same-sex marriage battle was fought first and foremost through litigation under the auspices of section 15 of the

Charter. Kirkup points out that the trans rights campaign had not even attempted the ‘analogous grounds’ argument until 2014 (2018, 379). Kirkup also notes that trans people did not enjoy the financial support that their marriage-seeking counterparts did, essentially taking large-scale litigation off the table and forcing them to engage instead with human rights tribunals (389-90). It seems that the LGBTQ community, so willing to support the fight for marriage equality, suddenly found their pockets devoid of any change to donate to their transgender counterparts. Interestingly, Rayside notes that Egale Canada did experience a significant drop in funding after the end of the marriage equality fight (2016, 267). In the long protest wave that swept across Europe and North America in the 1960s, few activist movements can claim as great an impact on public policy and popular beliefs as advocates fighting against the social and political marginalization of sexual minorities. This is particularly true in Canada, where the lesbian, gay, bisexual, transgender movement secured major gains from the mid-1980s onward. Although I do not claim that the LGBT movement has eliminated inequity and prejudice based on sexual difference, or that all observers agree on how much has been won, the Canadian case raises important questions about what happens. This would suggest a de-prioritization of non-marriage issues such as queer and trans rights, or a lack of understanding within the movement that LGBTQ rights encompassed more than those of same-sex homonormative couples, at the very least. When trans rights issues have gone to court, they portray a specific subset of the trans population that conforms to a binary gender, meaning that the needs of



those who are gender nonconforming will not be adequately served (George 2019, 608). In the wake of marriage equality, opponents of LGBT rights refocused their attention, making transgender rights their main target. To persuade voters to maintain gender identity antidiscrimination protections, LGBT rights campaigns presented trans identity in a specific, but limited, way. These campaigns emphasized gender-conforming transgender individuals—those who adhere to male and female stereotypes—and thereby implicitly reinforced the gender binary. Although LGBT advocates have largely succeeded in their efforts to preserve LGBT rights, their messaging may undermine the movement’s broader litigation strategy and subject nonbinary members of the transgender community to greater discrimination and persecution. The trans rights framing choices thus raise questions about how the LGBT movement’s advocacy decisions blur the lines between success and failure, advancement and retrenchment. To explain this tension, this Article details the history of marriage equality campaign strategies, drawing on primary source campaign materials to identify how and why LGBT rights groups applied those frames to trans rights, as well as the consequences of those framing choices. This Article then analyzes the motivations behind social movements’ framing decisions more broadly to argue for an alternative approach to trans rights advocacy. Framing trans rights is a significant issue that extends far beyond whether a specific city or state maintains or eliminates its gender identity protections. Although framing in an electoral campaign may seem far removed from the work of courts, legislatures, and administrative agencies, this Article demonstrates how porous the boundaries are, such that the frames of the former have a substantial impact on the latter. Drawing on the scholarly literature on acoustic separation,

popular constitutionalism, and slippery slopes, this Article explains why LGBT state and local ballot measure contests cannot be separated from the movement’s broader strategies. It therefore demonstrates that electoral frames are integral to legal advocacy writ large. Such an approach may have been effective for marriage equality given its comparatively simple goal; however, the same strategy is less effective when advocating for the more complicated rights necessitated by trans and queer needs.

Here we can partially blame the nature of litigation, which is such that it essentializes certain people or characteristics, and marginalizes others (Rosenblum 1994, 85). An assumption this paper makes, though data would likely agree, is that proponents of queer ideas are a minority within the LGBTQ movement—or at least a subgroup with less sway than others—and as such have less agenda-setting power. If O’Brien’s findings can be generalized, this would also help explain why queer and trans issues were deprioritized: she notes that affluent White gay men would donate to ESPA according to the issues they valued, and typically, the only form of discrimination said men faced was the inability to legally marry (2019, 595). So, in conjunction with the kind of cases presented to the court, the essentialization and marginalization inherent to litigation enshrined White values such as marriage, and marginalized queer and trans issues as well as perspectives from non-White LGBTQ people.

Essentialization of certain characteristics to the detriment of others in the legal system is not an abstract concept: several high-profile LGBTQ rights cases in the United States situate marriage and respectability, among other values, as vital to the function of LGBTQ rights (Baia 2018, 1043). One could argue whether or not the LGBTQ movement deliberately took a course of action that would

marginalize its queer and trans members; however, it is true that equal protection discourse necessitates extension to discriminated-against claimants the same rights afforded to the dominant class (Daum 2017, 358). In other words, the rights-claiming system is such that it is far simpler to plead for existing rights than it is to argue for the creation of new ones that may cover ‘un-respectable’ ground. It therefore seems natural—though detrimental for secondarily-marginalized members such as queer and trans claimants—for the LGBTQ rights movement to have taken the ‘path of least resistance’ by advocating primarily for marriage rights (read: rights that the dominant class would find respectable). Queer and trans rights, similarly to the rights of secondarily-marginalized groups during the civil rights movement, were set aside by the mainstream movement as an acceptable cost of victory on other fronts.

The nature of queer and trans rights as falling outside the bounds of existing frameworks of law and respectability provides a partial explanation as to why they were not included in the original push for LGBTQ rights. Given the sense of false unity attributed to the movement by the dominance of White gay, and possibly affluent, voices, it is no surprise that issues important to this cohort were prioritized over issues important to those who did not fit the same description or want the same things. Furthermore, we must remember that a legal victory for one group or agenda may create a negative impact for others, given the nature of the law as a rather complicated web, wherein changes to one area may reshape another (George 2019, 622). In the wake of marriage equality, opponents of LGBT rights

refocused their attention, making transgender rights their main target. To persuade voters to maintain gender identity antidiscrimination protections, LGBT rights campaigns presented trans identity in a specific, but limited, way. These campaigns emphasized gender-conforming transgender individuals—those who adhere to male and female stereotypes—and thereby implicitly reinforced the gender binary. Although LGBT advocates have largely succeeded in their efforts to preserve LGBT rights, their messaging may undermine the movement’s broader litigation strategy and subject nonbinary members of the transgender community to greater discrimination and persecution. The trans rights framing choices thus raise questions about how the LGBT movement’s advocacy decisions blur the lines between success and failure, advancement and retrenchment. To explain this tension, this Article details the history of marriage equality campaign strategies, drawing on primary source campaign materials to identify how and why LGBT rights groups applied those frames to trans rights, as well as the consequences of those framing choices. This Article then analyzes the motivations behind social movements’ framing decisions more broadly to argue for an alternative approach to trans rights advocacy. Framing trans rights is a significant issue that extends far beyond whether a specific city or state maintains or eliminates its gender identity protections. Although framing in an electoral campaign may seem far removed from the work of courts, legislatures, and administrative agencies, this Article demonstrates how porous the boundaries are, such that the frames of the former have a substantial impact on the latter. Drawing on the scholarly



literature on acoustic separation, popular constitutionalism, and slippery slopes, this Article explains why LGBT state and local ballot measure contests cannot be separated from the movement's broader strategies. It therefore demonstrates that electoral frames are integral to legal advocacy writ large. Thus, the fight for mainstream gay rights in the courts made a similar approach difficult for trans and queer rights-claimants: the narrow and specific strategy necessitated by litigation encapsulated LGBTQ rights as those desired by dominant voices, thus making it harder to expand such rights to better include trans and queer ideas, or even those falling only slightly outside the norm.

### **Section V: Homonormativity and Respectability: Use and Limits**

A central factor of secondary marginalization in the LGBTQ community—certainly in conjunction with, but perhaps even more so than race—is homonormativity. Lisa Duggan labels homonormativity as a way of thinking that does not express dissent with heteronormative institutions, but rather supports their ongoing existence and conformity to their frameworks by the LGBTQ community (2002, 179). In this way, homonormativity represents a repackaging of respectability politics. The homonormative strategy pursued by the marriage equality movement of seeking inclusion in the (until recently) heterosexual institution of marriage, rather than advocating for acceptance of differences fits itself perfectly into the framework of respectability politics (Matsick and Conley 2015, 410-11). The problem is that support of homonormativity and the gender binary readily enables assimilation of some LGBTQ people into the dominant society, while relegating those who do not fit said ideals to a deprioritized state without the social, legal, or economic benefits rights protection

would otherwise accord them (Daum 2017, 363).

Stryker explains homonormativity as the idea that “homosexual community norms marginalized other kinds of sex/gender/sexuality difference” (2008, 147). Stryker’s statement is similar to what Cohen labels as secondary marginalization: Cohen provides for scenarios where certain more privileged marginal group members are allowed within dominant institutions, while others with slightly different group identities continue to be excluded, or are presented with a refusal to modify said institutions to their needs (Cohen 1999, 70). In the same way that Black norms surrounding respectability pushed those unwilling or unable to meet this criterion to the periphery, homonormativity allows the ‘mainstream’ image of homosexuals to sideline other more differential ideas around gender or sexuality, including trans and queer people.

Therefore, we can begin to see how homonormativity combined with the politics of respectability can result in secondary marginalization of queer and trans voices within the LGBTQ community; similarly to how women, sexual minorities, and other subgroups were secondarily marginalized during the civil rights movement. Furthermore, queer and trans people of colour will face additional barriers in the LGBTQ community due to their non-homonormative sexual or gender ideals and a racial identity that cannot be reconciled with the dominant White normativity within the LGBTQ community.

Homonormativity and respectability politics both stem from an underlying assumption of deference to the dominant system, and maintenance of the status quo (Duggan 2002, 179) (Obasogie and Newman 2016, 548). Being that they are built on the same foundation, both doctrines inevitably result in secondary marginalization: subgroups classified

as ‘un-respectable’ or ‘bad gays’ will be cast away from the mainstream, their needs unable to be neatly packaged into existing legal and societal frameworks. Given this connection, new doors open regarding comparisons between the civil rights movement’s explicit use of respectability politics, and the LGBTQ community’s use of homonormativity and prioritizing of White male voices, an implicit use of respectability politics. By abandoning doctrines of respectability in a similar fashion as the Black Lives Matter movement, the LGBTQ rights movement could better advocate for trans and queer rights in forms that do not oversimplify or inadequately serve the community.

### **Conclusions**

It would be fair to say that queer and trans rights —especially those falling outside the gender binary— cannot be adequately accommodated within the existing heterosexual binary system of rights, societal norms, and laws. Historically, such rights have been meted out only to assimilationist members of the LGBTQ movement who sought the ‘respectable’ option of marriage recognition, even though this created a false “monolithic” gay identity and had detrimental effects on transgender and queer rights claims (Daum 2017, 362). The same structure of marginalization is mirrored in the civil rights movement that occurred in the 60s, and modern organizations such as Black Lives Matter have been able to advocate for previously marginalized groups by patently abandoning notions of respectability (Richardson 2019, 209).

Represented here is a more radical rights conception; one wherein the system

changes to accommodate the rights of previously marginalized individuals and groups, rather than said marginalized people altering or covering up their identities to fit into existing rights frameworks. The modern-day LGBTQ movement could benefit from such a conception of rights for its secondarily-marginalized members; one that uplifts the most vulnerable, rather than repressing them. Indeed, given the link this paper has endeavoured to make between respectability politics and support for people with an intersecting trans or queer and racialized identity, abandonment of the doctrine should be considered vital to the life and prosperity of said LGBTQ individuals. These doubly marginalized people are especially vulnerable to the harms done to them by doctrines of respectability, from one or several of their overarching communities.

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