Where is the queer critique of same-sex marriage in South Africa?

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Abstract: This article argues for the necessity of a queer anti-homophobic critique of same-sex marriage in the South African context. The literature on same-sex marriage in South Africa before and after the passing of the Civil Union Act 2006, while acknowledging queer critique, resolves such critique in favour of the 'right' to marry. From a queer point of view, same-sex marriage is problematic because it renews the distinctions between moral and immoral, it is antithetical to the politics of the gay and lesbian movement, it 'undoes' a long history of feminist research where it is argued that marriage is patriarchal and oppressive and finally, it cannot transform the exclusionary nature of marriage. I use Jane Bennett's '"Solemnis(ing) beginnings": Theories of same-sex marriage in the USA and South Africa' (2015) as evidence of the most recent example of this point of view. In the course of my critique of Bennett's article, I will also refer to all of the published literature on the same-sex marriage debate in South Africa. I argue that the opportunity to incorporate queer critiques of same-sex marriage might have been lost 12 years ago but there is no reason why we cannot have these conversations now. The aim of this article is to ignite such a conversation.

Keywords: queer critique; same-sex marriage; South Africa; Civil Union Act; radical feminism

This article revises 'A critical engagement? Analysing same-sex marriage discourses in *To Have and to Hold: The Making of Same-Sex Marriage in South Africa* (2008) - A queer perspective' (see McCormick 2015). Queer critique of same-sex marriage arguments in that article was premature, as it was not explained why queer critique of same-sex marriage in the South African context was necessary. In this article, the necessity for such a critique is explained. The literature on same-sex marriage in South Africa before and after the passing of the 2006 Civil Union Act, while acknowledging queer critique, resolves such critique in favour of the 'right' to marry.[i] Jane Bennett's 2015 article '"Solemnis(ing) beginnings": Theories of same-sex marriage in the USA and South Africa' is used as evidence that queer critique of same-sex marriage continues to be resolved in favour of the 'right' to marry.[ii] In the course of my critique of Bennett (2015), I will also refer to all published literature on the same-sex marriage debate in South Africa. The focus of this article is very specific, and it only concentrates on South Africa and the literature on same-sex marriage (and not general gay and lesbian issues).

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Figure 1. *To Have and to Hold: The Making of Same-Sex Marriage in South Africa* (Judge, Manion & de Waal 2008b) permission granted.

Same-sex marriage literature

The literature on same-sex marriage before and after the passing of the Civil Union Act in 2006 in South Africa has been limited to those theories in favour of same-sex marriage.[iii] Although this literature does engage with the many problems associated with the institution of marriage, it fundamentally supports the 'right' of gay and lesbian people to marry, as it argues that same-sex marriage has the potential to transform the institution of marriage and to end gender discrimination. This literature is hopeful that same-sex marriage will ensure 'proper' citizenship for gay and lesbian people, that it will end prejudice against gay and lesbian people, and start a process where the benefits of being legally married will eventually trickle 'down' to other family forms.[iv]

What is missing from these debates, however, is the queer anti-homophobic critique of marriage.[v] This is a glaring omission in the literature, as there is evidence from other disciplines of a robust engagement with queer theory. Natalie Oswin argues that the recognition/redistribution debates in South Africa 'have raged among feminists and queer theorists and within social movements' (2007: 665). I am sure there were many such debates between LGBTI activists and academics and queer scholars in South Africa in the run up to the passing of the Civil Union Act in 2006 and thereafter, and that this is reflected in the literature; however, these arguments were resolved in favour of same-sex marriage. I should clarify that queer theorists see many positives in the debates about same-sex marriage; the 'fortunate effect' of same-sex marriage for queer theorists, is that it has placed the 'sex/gender system itself under the spotlight' (Brandzel 2005: 195).

One of the reasons for the lack of critical engagement with queer critique of same-sex marriage, specifically in South Africa, is that 'queer' is perceived by some as a gay white male, middle-class 'identity', and a movement imported from the West (Morgan & Wieringa 2005).[vi] South Africa is influenced by and is part of 'global queer circuits', and although it is vital to take cognisance of the specificities of our context, one cannot merely deride the 'purported importation of a Western-style queerness' (Oswin 2007: 658). Another possible reason for the lack of critical engagement with queer critiques of same-sex marriage, is the influence that the gay and lesbian movement's political strategising has had on published research about same-sex marriage in South Africa. Ryan Thoreson argues that from 1994, the gay and lesbian movement[vii] in South Africa linked homosexuality to a 'concrete, immutable

identity', and dropped the 'language of fluidity and contingency of sexuality' (2008: 681). Oswin adds that it 'developed arguments about the immutability of sexual orientation as parallel to the immutability of race and about the harmlessness of gays and lesbians' (2007: 652). The literature in favour of same-sex marriage before and after the passing of the Civil Union Act in 2006, links homosexuality to a concrete identity.[viii] Bonthuys writes that the Civil Union Act is limited to the 'kinds of lesbian and gay couples [who] identify themselves as lesbian or gay [and who] profess to have a fixed and exclusively lesbian or gay orientation, which they cannot change' (2008b: 177).[ix] The queer theory critique of identity politics, which is rooted in an understanding of subjectivity as being flexible and ambivalent rather than fixed, could have destabilised such a stable alignment.

What is the meaning of the fact that there is no queer critique of same-sex marriage in the South African context, 12 years after the passing of the Civil Union Act? Is this a missed opportunity in the debates about recognition in South Africa? Could we have interrogated the queer critique on our own terms and in the specificities of our own context, and to put it simply have taken what was useful and discarded what was not? In Jennifer Spruill's examination of drag in South Africa, where 'traditional African' (2004: 91) clothing is worn that appropriates the 'representational power of the ethnonationalist ideology' (2004: 106), she argues that this style of drag is 'not susceptible to being "read"', as it 'lacks the familiar gender excess in more "traditional" [i.e. western iterations] of drag and it lacks the usual "wink" of camp' (2004: 107–8). This idea indeed 'speaks back' to a 'politics of parody'. I argue that the opportunity to incorporate queer critique of same-sex marriage might have been lost 12 years ago, but there is no reason why we cannot have these conversations now.

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(History 2007 n,p.)

'Solemnis(ing) beginnings'?
I take cognisance of Bennett's suggestion (via Foucault) that she is anxious about her conversation between 'desire' (gay and lesbian people's desire for the legitimisation of marriage) and the 'institution' (the institution of marriage which upholds and replicates heteronormativity). However, despite all the problems that she herself identifies with marriage, she ultimately agrees that gay and lesbian people should have the right to marry. I critique Bennett's article in the spirit of her invitation to 'fertilise really new debates' (2015: 548). I do this with specific reference to the South African context.

Circulation of same-sex marriage theories

Bennett identifies the same-sex marriage debate both locally and globally, as being one of the 'most profound challenges to theorisation on the politics of gender and sexuality since the late-twentieth-century HIV panics' (2015: 548). She argues that she does not want to reduce the debates about same-sex marriage that emanate from the West as 'merely imperialism', however she does feel that in the African context same-sex marriage debates operate as a 'hegemonic and obfuscating discourse' (2015: 549). However, do the 'hegemonic and obfuscating discourse[s]' about same-sex marriage even include queer perspectives? The queer critique of same-sex marriage has generally 'not been well circulated in the public sphere' (Halberstam 2012: 97). There are only two[x] published articles on the queer critique of marriage in the South African context, and the notion of 'queer' only recently entered into popular discourse as a result of media representation of the #FeesMustFall movement at the end of 2016.[xi] Only the 'for' same-sex marriage debate has been circulating because it is viewed as anti-homophobic, and to be queerly against same-sex marriage is subsumed into the homophobic argument.

A correspondence

Bennett writes that she wants to 'move towards the possibility of talking about the politics of same-sex marriage [within] the fictive, but lethal, nation-state' (2015: 549). I agree with Bennett that the politics of same-sex marriage is about who is and who is not recognised by the state. Queer arguments about this link have been in circulation for some time (compare Warner 1999; Butler 2002; and Brandzel 2005). However, I do want to interrogate Bennett's claim that the link between same-sex marriage and citizenship should take precedence above a 'correspondence with "the West"' (2015: 549). At the core of the meaning of the word 'correspondence', is an exchange of thoughts, ideas or feelings, which could be positive or negative. But has Bennett provided adequate evidence of a correspondence 'with the West' apropos the queer critique of same-sex marriage? Surely such a correspondence should precede the link between same-sex marriage and citizenship?

Bennett writes that there is a 'possibility' that the passing of the Civil Union Act in 2006:

> may well have been influenced by discourses from beyond the country's border [however she argues] this influence (although certainly present among advocates of

same-sex marriage based in universities or well-resourced research spaces) cannot be seen as dominant. (2015: 555)

Here Bennett is referring to those theories in favour of same-sex marriage from the United States, and makes no mention of queer critique. Despite this omission, is Bennett's suggestion that the 'for' same-sex marriage discourses from the US 'cannot be seen as dominant'?

As early as 1997, the gay and lesbian movement in South Africa made same-sex marriage its number one priority. This was its longest campaign and involved an alliance between activists, lawyers and academics. Judge, Manion & De Waal even argued that same-sex marriage was the 'first LGBTI rights issue to enter the public arena for orchestrated, nation-wide debate' (2008a: 5), and although this debate was firmly entrenched in the South African context, there is no doubt about the influence of global circulations on same-sex marriage at the time. My investigation into the same-sex marriage literature before and after the passing of the Civil Union Act in 2006, indicates that key US legal milestones (for example, *Baer v Lewin*) and key thinkers of the pro same-sex marriage debate (such as but not limited to Eskridge 1993, 1996; Eskridge & Spedale 2006) feature prominently.[xii] Thus, in relation to my question about whether Bennett has provided adequate evidence of a correspondence 'with the West' apropos queer critique of same-sex marriage, I would argue no, and I would further argue that she further underestimates the impact that the 'for' same-sex marriage theories from the US have had on the theorisation of same-sex marriage in South Africa.

Moving the debate

Bennett wants to move beyond the 'familiar dichotomisation' (2015: 548) of the same-sex marriage debate. She writes that in the US context, the 'for' and 'against' same-sex marriage debates were 'dense, multivocal and multidisciplinary' (2015: 555); however, she finds 'some of the blindspots and silo-isations within their choreographies … striking'. For example, those advocates for same-sex marriage within the law such as Joanna Grossman (2005) assume that citizenship is good. This is a blindspot for Bennett, because by its 'very definition, the project of citizenship is an exclusive one' (2015: 552). She posits that same-sex marriage could actually challenge the exclusivity of citizenship, and further claims that Brandzel 'suggests that marriage systems inhabited by lesbians and gay people may well

contribute to "Queer citizenship"' (Bennett 2015: 550). I am not however sure that this suggestion fairly represents Brandzel's argument. Brandzel argues that '"queer" and "citizen" are antithetical concepts', and that 'to be a citizen is not simply a matter of enjoying a specific legal status; it includes the wide variety of practices and imaginings required by citizenship' (2005: 197).

Bennett uses an interview from the queer scholar Scott (2013) (which she does not use in her analysis) to suggest that married lesbian couples can no longer travel to those countries in Africa where homosexuality is criminalised, as their status will 'be in [their] passport'. This fact, she argues, might even challenge the most notable 'blindspot' in the 'bulk of US material on same-sex marriage', which ignores the implications of what having 'it in your passport' globally may entail (2015: 552).

Bennett questions why 'it only matters that US citizens can travel across statelines, inside their own national borders' (2015: 552). This blindspot is a 'failure' on the part of same-sex marriage theorising from the US, as it 'suggests that travelling is not an option that matters' (2015: 552). This is an important point to consider and is certainly a challenge to the assumed notion that to be a citizen always ensures mobility, however, I am not sure that Bennett's use of Scott's unanalysed data fairly represents Scott's argument. Scott (2013) argues that the global move toward same-sex marriage is not just a demand for recognition, but a re-establishment of white privileges and rights:

> Marriage as a global measure of inclusion and endemic violence facing working-class and poor black lesbians [is related to the] dangers of global LGBTIQ movements prioritizing marriage as the proper channel of entry into kinship relationships.

She finally argues that the establishment of the regime of same-sex marriage is itself a 'murderous inclusion' (2013: 536).

Another blindspot for Bennett (2015) can be found in the writings of those theorists 'who strongly identify as "queer"' (2015: 551), such as Jacqui Alexander (2006), Jasbir Puar (2007), Craig Willse & Dean Spade (2004), and John Greyson (2012). Bennett claims that these theorists shape their critique of same-sex marriage in the concepts of '"pinkwashing" and homonationalism' (2015: 551). This is a blindspot, Bennett argues, because:

> at the very same moment in which radical queer scholars articulate enraged harmony around Israeli pinkwashing, they seem completely unaware that the term is already in

circulation through debates on the corporate uptake of breast-cancer advocacy. (2015: 551)

Firstly, queer is not an identity, and refers to anyone who is at odds with the norm, who resists normal kinship relations, and who irritates the boundaries between homosexuality and heterosexuality. Queer is a position that is available for a researcher to adopt. Secondly, I am unsure of how Bennett connects queer critique of same-sex marriage to 'pinkwashing'. Pinkwashing is a term used by queer theorists to describe, specifically, Israel's gay-friendly agenda that effectively silences discourse on the Israeli occupation of Palestine and the voice of Palestinian queers. Thirdly, Bennett reduces the complexity and contestation among queer scholars about pinkwashing to 'enraged harmony'. In her overview of some of the queer literature from the US, she never explains exactly what the queer critique of same-sex marriage is.[xiii] In fact, she only uses the word 'queer' ten times in her article, and it is either collocated with the words 'identity' and 'radical' or linked to radical feminism. Queer theorists point out that in 'mainstream' discussions of same-sex marriage, the queer critique is often overlooked (Brandzel 2005; Halberstam 2012).

Bennett is far more positive of her appraisal of research that is 'for' same-sex marriage in South Africa, and finds none of the 'blindspots and silo-isations'(2015: 551) that she did in her overview of the same-sex marriage debate in the US. For Bennett, the 'most interesting discussion' and analysis of the history and the passage of the Civil Union Act in 2006, is *To Have and to Hold* (2008), as there are 'differences of perspective among the 22 contributors' (2015: 555). However, these 'differences of perspective' are all in favour of same-sex marriage, and there is not even a 'lonely voice', as is the case for example in Robert Baird and Stuart Rosenbaum's (1997) anthology of 'for' same-sex marriage in the US context, where Paula Ettelbrick's now famous short article 'Since when is marriage a path to liberation?' is included. Ettelbrick's (1997) radical feminist critique of marriage was certainly in circulation when *To Have and to Hold* was published in 2008, and is cited by the writers of two of the largest chapters. In fact, the only reason that civil partnership was included as an option in the Civil Union Act, was to take cognisance of the radical feminist critique of marriage. De Vos writes:

> Given the special status that marriage has in our society, most couples would probably not choose to register 'civil partnerships' if they have the choice of registering a 'marriage.' Yet, given the contested nature of heterosexual marriage and feminist critiques [here he cites Ettelbrick] regarding the alleged patriarchal nature of the

institution, the inclusion of this option seems like a net gain for progressives. (2007: 38)

Bilchitz and Judge also cite Ettelbrick (1997) on the radical feminist perspective on marriage; however, they 'do not deal with the anarchic side of this critique' (2008: 161). Ettelbrick argues that marriage is 'steeped in a patriarchal system that looks to ownership, property, and dominance of men over women as its basis' (1997: 14). Why are these arguments seen to be 'anarchic' by Bilchitz and Judge? Perhaps because they undermine the idea that same-sex marriage will be able to transform these inequalities. To return to the question I posed above: Does Bennett move the same-sex marriage debate beyond what she calls the all too 'familiar dichotomisation'? I would argue no, and I would further argue that in her exposition of the literature she promotes the 'for' debates on same-sex marriage.

Conclusion

The radical feminist and queer critique of marriage is really seen as 'anarchic' by writers on same-sex marriage in South Africa, and there is almost a palpable 'sigh' emanating from the literature that the queer critique of same sex marriage was avoided. In this article I explained the necessity for a queer anti-homophobic critique of same-sex marriage in the South African context. It is necessary, I argue, in order to broaden debates about recognition. We need to start thinking about how we can learn from the many permutations of non-standard family formations (such as child-headed families) and relationship forms not based on the myth of monogamous coupling which are pervasive but undervalued as ways to resist the conservative values associated with marriage. The opportunity to incorporate queer critiques of same-sex marriage might have been lost 12 years ago, but there is no reason why we cannot have these conversations now. The aim of this article is to ignite such a conversation.

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[i] Judith Butler's (2002) argument on intelligible and unintelligible subjects is about who does and who does not get recognised by a human rights discourse. Within this discourse, the language used represents people as bounded by the construction of their gender and their (homo) sexuality. A human is presented as a bounded being that can be recognised, and, therefore, is awarded rights, and sexual minorities are reliant on being intelligible on the norms of others. In the same-sex marriage debate, homosexual people are asking to be made intelligible through marriage, which involves the disruption of established knowledge and realities. Once this disruption is over and married homosexual people are viewed as intelligible, this zone of possibility could be closed.

[ii] With two notable exceptions: Jessica Scott (2013) and Tracey McCormick (2015). I argue above that Scott's (2013) research has been misconstrued by Bennett (2015) as being in favour of same-sex marriage, while Scott actually argues that the elevation of same-sex marriage in the global gay and lesbian movement's agenda, is a 'murderous inclusion' (Scott 2013: 536).

[iii] At the heart of those in favour of same-sex marriage is that heterosexual marriage is discriminatory, because it is only for heterosexual couples of opposite genders, and therefore same-sex marriage needs to be made legal in order to end the prejudice against homosexual couples of the same gender. In addition, it is argued that same-sex marriage is the most important human right to be achieved by the gay and lesbian movement, and that when this is achieved people who do not currently have human rights are next on the list. Same-sex marriage will validate gay and lesbian relationships, as gay and lesbian people should be entitled to the same benefits as married heterosexual people. Additionally, poorer gay and lesbian couples who marry would now be entitled to benefits.

Same-sex marriage will transform the institution of marriage and end gender discrimination by troubling the notion of the 'breadwinner' and 'homemaker' within traditional heterosexual marriage (Brandzel 2005: 188). iv Research by JA Robinson and J Swanepoel (2004), Kerry Williams (2004) and Vasus Reddy (2006) prior to the passing of the Civil Union Act in 2006, documented the complexities and resistances encountered in trying to pass legislation that legalised same-sex marriage. These authors state that not allowing gay and lesbian people to marry 'violate[s] the rights of lesbians and gay men to equality, dignity and privacy' (2006: 152). They acknowledge the problematic nature of marriage, but agree that such problems need to be overlooked for 'reasons of principle' (Williams 2004: 32).

Michael Yarbrough (2006) investigates, in depth, the legal arguments in favour of same-sex marriage in South Africa. He also provides an in-depth analysis of Michael Warner's 'abolitionist' (1999) views of same-sex marriage. Yarbrough is an advocate for same-sex marriage based on the principle of 'choice'. 'Many gay marriage advocates speak a voluntaristic language of the right to choose recognition,' he writes, but 'abolitionists such as Warner, however, spurn this formulation for its decontextualized vision of choice' (2006: 502). He is also an advocate for same-sex marriage based on its transformative power. He writes that 'South Africa's proliferationist tendencies may unintentionally suggest new possibilities for mitigating and fracturing marriage's normative power' (2006: 502). Yarbrough concludes that 'If we abolish legal marriage, what next?' (2006: 512).

Writing just after the passing of the Civil Union Act, both Beth Goldblatt (2006) and Pierre de Vos and Jaco Barnard (2007) articulate their 'discomfort' with its exclusionary nature. Goldblatt, in particular, is concerned that in non-formalised domestic partnerships, women's rights 'lag behind'' (2006: 261). However, all in all, they all celebrate the enormous progressive step that South Africa has taken, as the 'marginalized same-sex couple now has a new means of accessing the mainstream, where they choose to do so' (De Vos & Barnard 2007: 825).

In 2007, the *South African Journal on Human Rights* published a special issue on the theme of 'Sexuality and the Law', which contains six articles dedicated to the subject. The sexuality under discussion was homosexuality, and all the articles deal with the significance of the passing of the Civil Union Act in 2006. Various authors investigate the legal nuances of, and the problems with, the Civil Union Act, and ultimately agree that legalising same-sex marriage is about the equal treatment of heterosexual and homosexual people. David Bilchitz and Melanie Judge write that the Civil Union Act 'decentres marriage … allowing a diversity of relationships to be recognised in our law' (2007: 466), while Liz Picarra looks forward to legislation that follows the Civil Union Act, which might allow the possibility for 'unwed heterosexual and same-sex domestic relationships to be brought under the protection of the law' (2007: 569).

Writing a year later in *Sexualities*, Elsje Bonthuys is more specific about the shortcomings of the Civil Union Act, calling it an 'impoverished and disappointing' piece of legislation (2008a: 736). She claims the Civil Union Act is restricted to gay and lesbian people who are 'urban, middle-class people who have the social and economic wherewithal to flout the norms of their families and their religious and cultural communities' (2008a: 732). She suggests that the Act should have included those 'African people who are involved in same-sex relationships that do not fit this profile' (2008a: 734), such as those many people who are involved in heterosexual marriages and engage in same-sex relations. In addition, legislators did not draw from customary law she argues, which has a history of tolerance of a wide array of sexual practices, and has 'proved more malleable and more responsive to same-sex relationships' compared to civil law (Bonthuys 2008a: 735). However, she is not saying that customary law is better than civil law, since both are 'deeply rooted in patriarchy' (Bonthuys 2008a: 735), and despite these limitations her critique of the Civil Union Act should not be construed as saying 'that same-sex marriage should not have been legalized' (2008a: 735).

Reddy acknowledges that the same-sex marriage debate is 'contentious, politically charged and is underpinned by diverse and complicated considerations' (2009: 356), but he writes that such complications should not be overshadowed by the fact that 'the right to marry represents a human and civil rights matter that is connected to politics, culture, law, identity and individual choice and freedom' (2009: 354). Reddy believes that same-sex marriage has the potential to transform gay and lesbian politics, and contends that the 'legal right to marriage is one of the final hurdles in overcoming discrimination against gays and lesbians' (2008: 346).

Judith Stacey and Tey Meadow (2009) state that South Africa legally recognises same-sex marriage and polygamy, while in the US same-sex marriage and polygamy are not recognised, and are even prohibited. According to Stacey and Meadow 'South Africa [is] vanguard family pluralism de jure' (2009: 171), because it 'sets the gold standard for vanguard, pluralist family jurisprudence, including legal recognition for both same-sex marriage and polygyny' (2009: 169).

For Mikki van Zyl (2011), the fact that same-sex marriage is legal is a result of the lobbying by white, middle-class, gay males. This is problematic for her, as the privilege of race, class and status, she argues, 'effectively erased from the equality clause … queers, female-headed households, unmarried mothers, pregnant teenagers, and people living with HIV and AIDS …' (Van Zyl 2011: 351). Like Bonthuys (2008a), she argues that, when drafting the Civil Union Act, there was little consideration of those kinship relations and same-sex practices that existed in pre-colonial Africa, and that created spaces for alternative desires. Van Zyl finally

argues that same-sex marriage has the 'potential to effect social transformation of contemporary kinship relationships, and challenge the assumed heteronormativity of everyday life' (2011: 354).

Judge is concerned with the impact that same-sex marriage has had on masculine and feminine subjectivities. Similar to the research presented above, she is concerned with the contradiction between the promise of legislation and the continued 'discrimination and exclusion' of sexual and gendered 'others' (2014: 66). Drawing from Butler (1990), Paula Ettelbrick (1997) and Andrea Dworkin (2006), Judge outlines the radical feminist critique of normativity and marriage. However, she finds 'problems' (2014: 68) with these positions, because, by marrying, same-sex couples pose a threat to 'heterosexual domination' and perform 'destabilising resistance' to the heteronormative logic of sex and gender (Judge 2014: 69). Finally, in her view, marriage between same-sex couples has 'effectively named … the love that *dare* not speak its name' (2014: 69 original emphasis).

[v] Queer critique of same-sex marriage includes:

- Same-sex marriage is limited to self-identified gay and lesbian people. Married gay and lesbian couples will become to be seen as more respectable than any other of the myriad permutations in queer lives. These include, but are not limited to: drag kings and queens; single gay and lesbian people; bisexual people; transsexual, transgender and intersex people; transvestites; promiscuous gay men and men who have sex with men; porn actors; people who practice bondage, discipline, sadism and masochism (BDSM); sex workers; cross-dressers; people who do not behave in gender appropriate ways such as effeminate men and butch women; adulterers; unwed parents; and heterosexual single and divorced people (Rubin 1984; Warner1999; Butler 2002; Halberstam 2012; Scott 2013).

- Same-sex marriage only benefits gay and lesbian married people. In the South African context there are 15 state benefits that the Civil Union Act affords. However, marriage also affords numerous benefits from civil society, such as discounts on insurance policies and healthcare. Such benefits queer theorists argue, are linked exclusively to marriage and they question why these benefits cannot be made available to all people regardless of their marital status (Warner 1999; Butler 2002; Scott 2013).

- Same-sex marriage debates 'drown out centuries' of critical perspectives and activism on marriage that brought to the fore the 'racialized, colonial, and patriarchal processes of state regulation of family and gender' (Spade & Willse n.p.). Ettelbrick argues that marriage is 'steeped in a patriarchal system that looks to ownership, property, and dominance of men over women as its basis, [and] the institution of marriage long has been the focus of radical feminist revolution' (1997: 14).

- Same-sex marriage is antithetical to the long history and politics of gay and lesbian movements; 'Since when is marriage a path to liberation,' Ettelbrick asked in 1997. She adds 'marriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture; and the validation of many forms of relationships' (1997: 15).

- It is argued by the proponents of same-sex marriage, that, since marriage involves two people who are of the same sex, gender inequality will be undermined, and therefore same-sex marriage has the potential to transform the institutions of both marriage and society. In *To Have and to Hold* several authors echo this point of view. Ruthann Robson argues that an 'optimistic forecast is that the realization of sexual liberation will only grow' (2008: 201), while Bilchitz and Judge add that gay marriage creates 'an equal alternative option to marriage [but] also in some sense decentres marriage' (2008: 155). Queer theorists argue that same-sex marriage cannot transform marriage's exclusionary nature. Amy Brandzel argues that same-sex marriage has not 'forced society to contemplate gender subordination in marriage' (2005:189), and Warner observes that married gay and lesbian people are just as likely to 'divorce, cheat, and abuse each other as anyone else' (1999:114). Rather than transform the institution, same-sex marriage actually 'fortifies gate keeping' (Brandzel 2005: 193).

[vi] Ruth Morgan and Saskia Wieringa argue that 'women's economic and political oppression and their sexual and erotic practices are different from men's and cannot be subsumed under the general category "queer" … one of the major concerns we have is the tendency to essentialise and universalise human experiences by assuming the relevance of "Western" categories to the lives of people elsewhere' (2005: 309–10).

[vii] Any discussion of same-sex marriage in South Africa needs to take into account the legacy of the gay and lesbian movement, and how it has influenced gay and lesbian research. In the 1980s and 1990s, the gay and lesbian movement made space for a wide range of issues that confronted the gay, lesbian and queer community. *Defiant Desire* is a collection of writings, published in 1994, that reflects such inclusion. Its main aim is the 'assertion of "queer culture"', which includes documenting the 'making of "queer societies"' (Gevisser & Cameron 1994: 9) and sub-cultures defined by 'masquerade, resistance, subterfuge and sublimation' (1994: 9 & 6). However, this space became increasingly constricted when the gay and lesbian movement moved towards constitutional lobbying in order to overturn homophobic laws. Such lobbying, Oswin argues 'took a deliberately conservative approach that has been characterized as elitist, unrepresentative, and male dominated' (2007: 650). After the passing of the equality clause in 1994, the gay and lesbian movement 'declared its desire to build a movement that served the interests of the majority of South African gays and lesbians. Thus, race and class

issues were explicitly incorporated into the organization's rights language' (Oswin 2007: 650). The present-day gay and lesbian movement 'has largely abandoned its progressive-left affiliations. It now fights for assimilation and social acceptability' (Oswin 2007: 656).

[viii] See endnote 4 and McCormick (2015).

[ix] Authors such as Morgan & Reid (2003), Reddy (2005), Morgan & Wieringa (2005), Matebeni & Msibi (2015), Reid (2013), and Yarbrough (2017) interrogate such immutability for its exclusion of other same-sex desires and non-normative gender identifications in South Africa and Africa. However, such research is still based on the right of gay and lesbian people to marry, followed by the recognition of other permutations of being.

[x] Besides Scott (2013) and McCormick (2015), which are a direct queer critique of same-sex marriage, Tommaso Milani and Brandon Wolff's (2015) article is an exploratory study of a website that organises same-sex weddings in Cape Town, South Africa. Informed by queer theory, the authors argue that the construction of 'same-sex marriage' on the website portrays same-sex couples who decide to get married as the 'epitome of a responsible lifestyle' (2015: 165), and those that are not getting married as 'immoral and irresponsible' (2015: 165).

[xi] One of the linguistic shifts that was a by-product of the #FeesMustFall movement at the end of 2016, was the emergence into popular discourse of the term 'queer'. This term was used by various liberal media to describe not only the marginalisation by a masculinist discourse of students who self-identify as gay or lesbian, but also to describe feminist students, transgender students, effeminate men, intersex students, and non-binary students.

[xii] See Robinson & Swanepoel (2004), Williams (2004), Reddy (2005 & 2009), Goldblatt (2006), De Vos & Barnard (2007), Bilchitz and Judge (2007), Judge, et al (2008), Picarra (2007), Bonthuys (2008b),Van Zyl (2011), Scott (2013), Judge (2014), and Bennett (2015).

[xiii] Compare note 5 above.