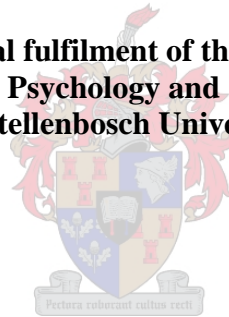


***COLLIDING CONSTRUCTS – EXPLORING DISCOURSES REGARDING
TRADITIONAL MARRIAGE AND LESBIAN MARRIAGE:
A LITERATURE REVIEW***

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STATEMENT

I, the undersigned, hereby declare that the work contained in this assignment is my own original work, and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature

Date

Abstract

This study explores the discourses in the literature regarding same-sex marriage and their underlying assumptions. Emphasis is placed on highlighting how researchers assume particular socio-political positions in their constructions of lesbian identity and same-sex marriage. The historical evolution of the concept and institution of marriage is traced so as to throw light on the socially constructed nature of a concept we might otherwise assume is fixed. Social constructionism provides the theoretical point of departure for the literature review and is applied through the tool of discourse analysis. The review attempts to explore in what ways the literature itself solves the tension between marriage as traditionally heterosexist and lesbians' construction of their own identity in the context of intimate relationships, namely lesbian marriage.

Abstrak

Hierdie studie ondersoek die diskoerse en onderliggende aannames in die literatuur oor selfde-geslag huwelik. Die kollig val op hoe navorsers spesifieke sosiopolitieke posisies in hulle konstruksies van lesbiese identiteit en selfde-geslag huwelik inneem. Die historiese ontwikkeling van die konsep en instelling van die huwelik word ondersoek om die sosiaalgeskepte aard van 'n konsep wat ons andersins as vasgestel sou kon aanvaar, uit te lig. Sosialekonstruksie verskaf die teoretiese vertrekpunt vir die literatuurstudie en word deur middel van diskoersanalise toegepas. Die studie poog om te ondersoek hoe die literatuur self die spanning tussen die huwelik as 'n tradisioneel heteroseksistiese instelling en lesbiese vrouens se konstruksie van hul eie indentitiet in die konteks van intieme verhoudings, naamlik lesbiese huwelik, op te los.

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1. Introduction

Lesbians as the subject of psychological research are marginalized on two levels, firstly as women and then as lesbians. By extension, same-sex marriage as a field of enquiry has largely been ignored. Existing literature frequently neglects to account for social and political discourses that inform the researcher's stance with regard to the topic.

Over the past few years there has been an escalation in interest regarding same-sex marriage internationally. The issue is emotionally charged precisely because it involves profound legal, social, political, and moral considerations - invoking the most basic understandings of values, traditions, and prejudices. Andrew Sullivan (1997) in his reader on same-sex marriage aptly describes the difficulties this debate raises:

Marriage is alternately praised and derided as a lynchpin of procreation, love, power, economics, convenience, morality and civil rights. Homosexuality similarly evokes opposing judgments: it is seen as a perversion; a source of identity, love and desire, a freely chosen lifestyle, a fabricated personality, a revolution against the status quo. And when these two contested areas are brought together, this matrix of interpretation is multiplied even more, so that, at times, it may seem as if no one is even speaking about the same thing. (p. xix)

The idea of same-sex marriage is unsettling because it is simultaneously radical and conservative. For some it is abominable or unnatural, while for others it is a betrayal, representing as it does 'assimilation into a culture that we should be changing' (Eskridge, 1996, p.7). The most common initial objection to the notion of same-sex marriage is often founded on the perception that it is unprecedented and therefore wrong. Yet there is significant ethnographic, historical and anthropological evidence of same-sex marriage in other cultures and at other times in history (Eskridge, 1996).

1.1 Legal-historical overview of marriage in South Africa

The legal and historical trajectories that marriage has followed locally are briefly traced, revealing that the institution of marriage is of pivotal importance to most South Africans. It remains the only legal institution that comprehensively safeguards the rights of individuals in domestic partnerships (de Vos, 2004) and is a powerful symbol of societal acceptance and belonging.

Between 1652 and 1994, marriage in South Africa conformed to a large extent with Canon law and Roman-Dutch law, both as a concept and as an institution (Robinson, 2005). The contract of marriage was seen as a sacrament: the sacred union between one man and one woman, instituted by God, for the purpose of producing and raising children. In South Africa during the period leading up to the transitional Constitution, the moral and legal conceptualization of marriage was heavily influenced by the biblical justification for its exclusivity.

For the greatest part of our modern history, South Africa's patriarchal common law and its supplementary statutes were designed to impose a Christian Nationalist understanding of marriage on a multi-cultural population (Le Roux, 2005). Le Roux (2005) reminds us that during the apartheid era, a marriage was accordingly only recognized if it was concluded in terms of the Marriage Act (1961) between two sexually potent and fertile persons of different sexes but of the same race (the latter proscription in terms of the Prohibition of Mixed Marriages Act, 1949, since repealed). It was a fundamentally culturally and racially biased act as it failed to recognize marriages formalized through indigenous African rites, Muslim or Hindu law (Budlender, Chobokoane & Simelane, 2004).

The new constitutional dispensation that came into effect in 1994 ushered in a very different era in which Christianity and the Afrikaner world-view were no longer privileged. Since then, clear deviations from the common law requirements of marriage have taken place (Robinson, 2005). Such changes in public policy are reflected in the Recognition of Customary Marriages Act (1998) and the more recent recognition of same-sex marriages in the Civil Union Act (2006). Thus, the Bill of Rights has led to unequivocal challenges to

both gender and exclusivity as essential elements of the common law definition of marriage.

The legal situation with regards marriage changed radically, especially for African¹ people, with the passing of the Recognition of Customary Marriages Act in 1998 (Budlender et al., 2004). However the Act does not recognize all religious marriages: Islamic and Hindu marriages are still excluded. While a Muslim Marriages Bill exists, the recognition of Muslim marriages, in particular, remains a contentious issue (Goolam & Rautenbach, 2004).

The recent recognition of customary marriages serves as an example of the shift away from the traditional view of marriage as exclusive. The Act (1998), which came into effect on 15 November 2000, grants full recognition to customary marriages, irrespective of the number of wives a husband has, and retains the feature of *lobolo* (bride wealth). Legal opinion remains divided on whether polygyny violates a woman's right to equality in the context of the Bill of Rights, and it remains open to constitutional scrutiny (Robinson, 2005).

A further example of the deviation from the common-law requirement of two people of the opposite sex is the very recent recognition of same-sex marriage. Between 1998 and 2003, activists challenged the 'monolithic presumption of heterosexuality reflected in the legal system' (Williams, 2004, p. 33). As a result, a range of legal rights and responsibilities previously associated only with marriage (e.g. insurance, adoption, inheritance rights etc), have accrued to long-term same-sex partnerships (Robinson, 2005). However, Lind (2005) argues that those who live family lives outside of the traditional norms of marriage are still left with inequitable results recognized by the Constitutional Court, but which it is not yet prepared to resolve.

¹ The author is mindful of the fact that the use of racial categories in South African scholarship is controversial: such categories are socially constructed and carry important social meanings (Swartz, Gibson & Gelman, 2002). Leading South African psychological researchers (see, for example, Potgieter, 1997; Shefer, Strebel & Foster, 2000; Swartz et al., 2002; Walker & Gilbert, 2002) have argued that the use of such categories in social research is important in that it serves to highlight the impact that apartheid had on specific groups of people. The categories are used here according to the 1996 population census.

On 30 November 2003, the Supreme Court of Appeals in *Fourie and Another v Minister of Home Affairs*, Case Number 232/2003 declared the common law prohibition of same sex marriage unconstitutional (Isaack, 2005). This ruling paved the way for the removal of the statutory and regulatory barriers to same-sex marriage in South Africa. On 1 December 2005, in a unanimous decision, the Constitutional Court told the government that it must within a year enact legislation granting same-sex couples the right to marry. The development of the common law concept of marriage to embrace same-sex partners, as ‘the union of two persons to the exclusion of all others while it lasts’, came into force with the enactment of the Civil Union Act. The Civil Union Act (2006), which grants the same rights and responsibilities to same-sex couples that the Marriage Act (1961) does for different-sex couples, was subsequently ratified by Parliament on 30 November 2006 (Joint Working Group, 2006).

Due to a range of key weaknesses in data on marital status in South Africa, there is a very incomplete understanding of marital patterns in the country. Data difficulties are further exacerbated by the wide range of marriage practices, as well as the differing cultural (including religions) understandings of what constitutes marriage (Budlender, Chobokoane & Simelane, 2004).

Changes in both laws and perceptions of what constitutes marriage, problems with data collection and interpretation make it almost impossible to pinpoint the number of reported marriages, let alone trends. Given all the above difficulties, inconsistencies and weakness in data, only the most tentative conclusions can be reached, and then only meaningfully from 1994 onwards:

- The overall percentage of registered marriages solemnized under civil law appears to be decreasing (from 48.4 % in 1997 to 44.6 % in 1998)
- It is generally accepted that polygyny is no longer widespread in South Africa (South African Law Commission in Budlender et al., 2004): in 1998 less than 4% of married women reported that their husbands have other wives.

- Most adults are married. The prevalence (proportion of adult population ever married at age 50) of marriage among South Africans during the period 1995 – 1999 averaged 83.4 per cent.
- Jacobson, Amoateng, and Heaton (2004) found that interracial marriages among South Africans are increasing by about 3% per year relative to the overall rate.

Budlender et al. (2004) conclude that ‘Marriage, entry into marriage, and their measurement are clearly not simple concepts, particularly in multicultural, multilingual societies such as South Africa’ (p. 23). According to J. Kritzinger (personal communication, May 26, 2007), during 2006 the Department of Home Affairs registered a total of approximately 200 000 marriages, of which 17 000 were customary marriages. Between 1 December 2006 and 31 April 2007, 562 same-sex marriages were registered in terms of the Civil Union Act. This latter figure is expected to rise considerably as the number of marriage officers licensed to perform marriages under this Act increases (J.Kritzinger, personal communication, May 26, 2007).

South Africa is the first nation in Africa and only the fifth in the world after Belgium, Canada, the Netherlands and Spain to legally recognize same-sex marriages. The issue remains controversial, topical and the focus of media attention. The deeper socio-political relevance, however, lies in the potential of the recent legislative changes - and the associated debate - to continue challenging heterosexist norms regarding marriage, and to facilitate a bolder re-imagining of the legal regulation of intimate relationships in South Africa (de Vos, 2004). Few would argue that despite constitutional ideals, heterosexism is alive and well (Shefer, 2002). The same-sex marriage issue can perhaps be viewed as a test case for the ability of the Constitution to uphold minority rights.

1.2 Author’s motivation for the review

According to Charmaz’s (1995), the postmodern approach requires that researchers demonstrate reflexivity by acknowledging their social, political and historical contexts and the role that these contexts play in informing their

position in relation to the subject matter. In keeping with the postmodern approach, the author of the current paper acknowledges that her own socio-political history has motivated and informs this inquiry. The author is a white, middle-class, lesbian postgraduate Psychology student in her early forties.

1.3 Aims of the study

Much research has been carried out in South Africa and internationally on the evolution of the institution of marriage (including interracial marriage), legal and constitutional aspects of same-sex marriage, arguments for and against (particularly religious opposition), the status of its recognition globally and its interconnectedness with heterosexism. More broadly, much work has also been done on how the world views gay males and lesbians in general. Many researchers, however, acknowledge the dual marginalisation of lesbians – first as women, then as lesbians - and the dearth of lesbian-focussed research. The role that political discourses play in informing the existing literature on both lesbians and same-sex marriage is little understood and rarely acknowledged.

The aim of this review is to explore the assumptions that underlie the discourses in the literature regarding same-sex marriage. In addition to foregrounding such discourses, this literature review will seek to interrogate how researchers construct lesbian identity in the context of intimate relationships. The underlying assumptions that inform marriage as a social construct are also explored. While the review incorporates both international and local literature, particular attention is paid to South African research, due to the recent removal of legal barriers to same-sex marriage in this country.

The next chapter seeks to contextualize the socially-constructed nature of marriage by tracing the history of the institution. In particular, it focuses on the evolution of same-sex marriage across cultures and epochs. The third section outlines the theoretical context of the review. Undertaken from a post-modern perspective, it employs discourse analysis as a methodology, with particular reference to social constructionism. In chapter 4, the discourses around lesbian relationships are explored with particular reference to relationship quality, parenting, psychological and sexual intimacy, domestic violence and sex role

identification. Against this backdrop the fifth chapter explores the underlying assumptions in discourses within the literature addressing same-sex marriage. The focus of this chapter is on delineating the primary discourse positions that researchers assume when investigating the topic. It further seeks to highlight the ambivalent discourses that exist within LGBTI communities themselves and attempts to show how conflicting discourses can co-exist within a particular society, using South Africa as an example. Chapter six will provide the reader with a summary of the argument, synthesising the most prominent discourses within the literature and concludes by suggesting possible directions that future research might take.

2. Marriage in context

The aim of this chapter is to provide an historical account of the evolution of the concept of marriage, so as to highlight its socially constructed nature. This will be done by exploring firstly how marriage is understood and secondly the assumptions, principles, similarities and differences which underpin its conceptualisation broadly. This is followed by a brief overview of how same-sex marriage has manifested both historically and across a range of cultures.

2.1 Describing (not defining) marriage

Adult cohabitation is ritualised as marriage in most societies and is seen as a key rite of passage into adulthood (Hamon & Ingoldsby, 2003). However, Gerstmann (2004) points out that historically, there has been a lack of consensus on the definition, meaning and status of marriage. The temptation to define marriage is a modernistic idea which runs counter to the spirit of social constructionism. *Describing* marriage is preferred over defining it, as this approach renders it possible to constantly renegotiate what is collectively understood by the concept of marriage.

The Chambers Twentieth Century Dictionary holds that marriage is “the ceremony, act, or contract by which a man and woman become husband and wife; the union of a man and a woman as husband and wife” (1983, p.771). Although all languages do not necessarily reflect the same degree of exclusion, this English definition arguably captures the heterosexist hegemony rather succinctly.

In its broadest sense, marriage can be described as the formalisation of a dyadic intimate relationship, although even the restriction to two people has been questioned by some (de Vos, 2004). Cultural diversity around the meanings attached to, when, why, with whom and in what form such formalisation takes place, is vast. Marriages range from traditional to contemporary, and despite many changes over centuries, marriage and family remain at the centre of society (Hamon & Ingoldsby, 2003). Notions of marriage, like most societal institutions, are subject to stresses and shifts along dimensions such as modernisation/traditionalism, love/family practicality, arranged marriage/free choice, cohabitation/marriage and collectivism/individualism (Hamon & Ingoldsby, 2003).

Civil marriage refers to a legal status established through a license issued by the state. Such status grants legal rights to, and imposes legal obligations on, the married partners. Religious marriage, on the other hand, is viewed as a sacrament, liturgical rite, or solemnization of the union of two persons, as recognized by that faith. The clergy and members of a religious group establish their own rules for who may marry within their ranks and are not bound by statutory definitions of marriage (Pawelski et al., 2006).

Pawelski et al. (2006) point out that in many countries, couples may marry in a religious ceremony, civil ceremony or both. Typically, governments grant clerics, ministers, priests, rabbis and other clergy presiding over a religious marriage the authority to endorse the marriage license and establish a civil marriage. The authority to establish civil marriage is also vested in certain public officials such as judges, justices of the peace and others.

In some countries, including many European countries, religious officials have no authority to establish civil marriage. Religious ceremonies are therefore often held after a civil ceremony has already taken place. In these countries a marriage is considered legal only once a marriage license has been issued by civil authorities (Pawelski et al., 2006).

Fairyngton (2004) succinctly describes marriage as the “hub from which so many of our cultural, legal, economic and religious institutions extend” (p.6). Throughout the world, marriage is “recognized as an institution of fundamental social and legal importance” (Schafer, 2006, p.627). Although other forms do exist, the dominant model can be defined as the exclusive, life-long (at least in intention) union between one man and one woman.

2.2 Historical overview of marriage

The institution of marriage, like most human institutions has undergone vast changes over the last two millennia. Sullivan (in Gerstmann, 2004) illustrates this in a somewhat tongue-in-cheek manner as follows:

If marriage were the same today as it has been for 2000 years, it would be possible to marry a twelve-year old you had never met, to own a wife as property and dispose of her at will, or to imprison a person who married someone of a different race. (p. 21)

While individualistic cultures emphasise romantic love, in other parts of the world motivations to marry may include: religious, economic, familial status, political alliances, sexual and emotional reasons, to have a family or simply due to societal expectations (Hamon & Ingoldsby, 2003). The focus here will fall on marriage as the formalisation of a dyadic intimate relationship (de Vos, 2004). Despite a lack of consensus on the definition, meaning and status of marriage, one aspect has remained stable: the rejection of same-sex marriage throughout the Western world (Gerstmann, 2004). Eskridge (in Gerstmann, 2004) asserts that same-sex marriages are commonplace in human history, but that Western culture has been hostile toward same-sex unions since the thirteenth century.

Eskridge (1996) speaks of the civilising functions of marriage, which include: economic security; legitimacy and/or support of a family, including children; the division of labour in the household and; bonding and long-term emotional support within the couple. The public, social, religious and economic functions of marriage have changed considerably over time, according to Whitehead and Popenoe (in Le Roux & van Rooyen, 2007). While marriage traditionally functioned largely as a social institution for economic security and reproduction, it is now increasingly seen as a route to self-fulfillment in Western countries (Le Roux & van Rooyen, 2007).

Historically, some form of marriage has always been a feature of human societies. Typically, the individuals concerned make their new status public and submit to societal demands for adherence to rituals and taboos associated with this social contract (Smith, 2006). All societies have some marital regulations. There are three general pressures or rules that affect marital decisions, namely exogamy, endogamy and propinquity (Hamon & Ingoldsby, 2003). Exogamy refers to the social pressure *not to* marry within your own group or family. Universal incest taboos are perhaps the extreme example. Conversely, endogamy refers to the social pressure *to* marry someone within your own group. An example is the tendency to marry people from the same racial, ethnic, religious and social backgrounds, also called homogamy. Endogamy of both race and religious group has declined considerably during recent decades in many parts of the West. For example, in the United States the number of interracial marriages has increased steadily since 1967 when laws prohibiting them were struck down, nearly doubling since 1980. Interracial marriage now accounts for about 5% of total marriages (Rosenblatt, Karis and Powell, 1995). In South Africa, interracial marriages are increasing by about 3% per year relative to the overall rate (Jacobson, Amoateng & Heaton, 2004). Propinquity refers to geographical proximity: the closer two people live to each other, the more likely they are to meet and perhaps marry. Ironically, exogamy of gender (i.e. the almost universal prohibition of same-sex marriage) is such a deeply entrenched assumption that the legal fraternity considers it invisible: it is not even stated in the general lists of rules that govern who may marry whom (Hamon & Ingoldsby, 2003).

While the monogamous model of marriage is the dominant form in Western societies, multisposal relationships are accepted by a wide range of non-Western religious and ethnic and groups, and are legally practiced in over 850 societies worldwide (Moosa, Benjamin & Jeenah, 2006). Polygamy is a marital system which, by definition, involves more than two individuals. Polyandry – in which a woman is married to more than one husband – is so rare that polygyny - in which a man is married to more than one woman simultaneously - has become synonymous with polygamy. Polygamy is an accepted institution in Middle Eastern and African societies. The Jews of Yemen, for example, still practice polygamy although Judaism banned polygamous marriages centuries ago. In South Africa, the promulgation of the Recognition of Customary Marriages Act (1998) officially recognized polygamous marriages (Robinson, 2005). In sharp contrast, polygamy is a criminal offence in some Western societies where monogamy is invariably the dominant marital model. While the Catholic Church outlawed polygamy in the 16th century, and most Christian groups reject the practice, some Latter Day Saints and fundamentalist Mormon communities continue the practice (Moosa, Benjamin & Jeenah, 2006).

Another form of marriage recognized in only a handful of countries, is the civil union. Sanctioned by civil authority, a civil union is a legal mechanism intended to provide same-sex couples with a legal status either similar or identical, depending on the country, to civil marriage (Pawelski et al., 2006).

Interestingly, marriage rates in Western Europe were low until the late 18th century, especially among peasants and the lower class (i.e. poverty prevented people from marrying) and increased as a result of modernisation in that part of the world (Sterns in Hamon & Ingoldsby, 2003). After peaking in the 19th century, marriage rates are declining in many parts of the world including Western Europe (Hartman, 2004), America (Gerstmann, 2004) and South Africa (de Vos, 2004). Factors cited as playing a role include a decline in the benefits of marital relationships, an increase in cohabitation and the shrinking role of religion in society (Le Roux & van Rooyen, 2007).

2.3 Brief history of same-sex marriage

Same-sex unions are commonplace in history, which comes as a surprise to the modern Western mind. With the exception of the Western world since the 13th century, such unions have been tolerated in many cultures, albeit with a measure of anxiety (Eskridge, 1996). Eskridge (1996) deliberately uses the term same-sex union to denote any legally or culturally tolerated institution which bonds two individuals of the same sex in relationship. Included, for example, are same-sex relationships culturally but not legally recognised and, same-sex marriages sanctioned under a society's legal system and treated as the equivalent of different-sex marriage.

2.3.1 Premodern antecedents to Western (European) culture

While there is only speculative evidence for same-sex relationships in Egyptian and Mesopotamian societies, more tangible evidence exists for same-sex marriage in classical Greece, imperial Rome and medieval Europe (Eskridge, 1996). In the case of the former ancient civilisations, one can say that at the very least same-sex relationships were sometimes treated similarly to different-sex marriages. Bas reliefs on the tomb of a male couple provided by the pharaoh (from which state sanction can be inferred) from around 2600 B.C., depicts the courtier couple in a strikingly erotic manner. Similarly, the tomb of the pharaoh Akhenaton reveals him and his male consort in intimate poses. Several Mesopotamian monarchs such as Hammurabi publicly enjoyed male lovers (Eskridge, 1996).

More well-known is classical Greece's interest in companionate same-sex relationships. For example, Plato's *Symposium* focuses on relationships and love between men. Greek city-states appear to have institutionalised same-sex relationships to some degree, including their sharing the same courtship rituals as different-sex marriages, although historians do not consider them marriages *per se*. Crete, on the other hand, had 'peculiar laws regarding love' (Strabo in Eskridge, 1996, p.21) whereby two men would become partners or companions after a ritualised abduction, feast and the exchange of mutual intentions before

witnesses. Historians have construed these Cretan ceremonies as same sex marriages.

The consensus among historians is that republican Rome was tolerant of same-sex relationships, while imperial Rome considered some to be marriages. Nero, for example, underwent a wedding ceremony with Sporus, which the whole court attended. Not limited to emperors alone, the satirist Martial describes the marriage of 'bearded Callistratus' to 'brawny Afer' (Eskridge, 1996, p.23). The late Roman Empire became increasingly less tolerant of same-sex unions than the republic or early empire had been and, in 342 A.D. passed a statute which appears to prohibit same-sex marriages (Eskridge, 1996).

2.3.2 Native American and Asian cultures

As Eskridge (1996) notes, there is strong evidence for same-sex unions in Native American, African and Asian cultures. Three patterns emerge: same-sex marriages with 'gender-bending *berdaches*, same-sex unions serving social, economic and companionate needs, and female same-sex marriages for purposes of maintaining family lineage' (Eskridge, 1996, p.27).

First-hand accounts by Spanish explorers report same-sex marriages in the Americas, both between two men and between two women. The most well-known example is the *berdache* tradition institutionalised throughout the Aztec, Mayan and Incan civilizations, the area that is today the United States and the West Indies (Eskridge, 1996). A *berdache* is a Native American individual who does not conform to his or her gender role, and assumes at least some of the perceived responsibilities and qualities of the opposite sex. Such persons were considered a third sex. They married individuals of their own sex; these marriages were both legally and socially sanctioned and reflected the household division of labour of opposite-sex Native American married couples (Eskridge, 1996). The phenomenon of *berdaches* is worldwide: other well-researched examples include the mugawe of the Kenyan Meru, the Siberian Chuckchee, Tahitian mahus and Indian hijras. All except the hijras' unions are culturally and legally recognised by their societies as same-sex marriages (Eskridge, 1996).

Non-Western same-sex unions have typically fulfilled economic, cultural or companionate functions. While the bonding between two individuals may be sexual, the primary functions are often social, economic or professional. Despite the fact that such unions often have marriage-like elements and or terminology, they are not always legal marriages. Three examples follow. Firstly, the phenomenon of ‘military wives’: an institutionalised pair bonding between warriors or soldiers in military contexts. The samurai warriors of Tokugawa Japan (who exchanged written and verbal vows), and the ‘boy wives’ for Azande military men in what is now Sudan (including payment of a bride-price) serve as examples. Secondly, ‘companionate unions’: China’s Yuan and Ming dynasties (1264 – 1644) are replete with documented male marriage-like same-sex unions (including bride-price and wedding rituals). Female same-sex unions are less well documented, but do appear to have taken place at least during the Qing dynasty (mid 18th century). A third and final example is the ‘initiatory union’ in aboriginal societies of Australia and Melanesia, in which homosexual initiation relationships have been ritualised. A boy entering manhood engages in short-term sexual relationships with an older man, often as a prelude to traditional marriage (Eskridge, 1996).

2.3.3 African cultures

Woman-marriage may be a manifestation of same-sex union unique to African cultures. Traditional woman-marriages - in which a woman marries one of more other women – has been reported for some 40 groups in West Africa (especially Nigeria), East Africa, Southern Africa and the Sudan (Oomen, 2000). Female husbands took on the social and legal roles of husband and father, through marriage to a woman under the approved ceremonies and rules of her society (O’ Brien in Eskridge, 1996). Amongst the Nuer of Sudan and the Igobo of Nigeria, for example, a woman pays bride wealth for, and marries, another woman and ‘counts as the pater (father) of the children born of the wife ... If she is rich she may marry several wives ... Her children are called after her and ... she is addressed as “father”’ (Krige & Herskovits in Eskridge, 1996, p.34). In South Africa such marriages have been documented amongst the Venda, Lovedu, Pedi, Hurutshe, Zulu, Sotho, Phalaborwa, Narene, Koni and Tawana

and follow all the customary rituals, including the payment of bridewealth (Oomen, 2000).

Most authors have concluded that such marriages are non-sexual in nature, emphasising instead the importance of understanding them from the African perspective of marriage as an inter-familial arrangement aimed at procreation (Oomen, 2000). While there may be no clear indication of sexual relations among women in these marriages, Njambi and O'Brien (2000) believe that the possibility cannot simply be dismissed and instead requires further research. African woman-marriages are not included here to suggest any linkage with lesbianism but rather because they 'bears testimony to a conception of marriage among the people who practise it that is far wider, more comprehensive ... than in Western society' (Krige in Oomen, 2000, p. 281). Additionally, the debate clearly illustrates how the construction of marriage presumes a sexual element.

2.3.4 The modern period (of Western cultural domination)

Earlier Greco-Roman acceptance notwithstanding, modern Western society is singularly hostile toward same-sex unions. The turning point can be traced to the 13th century, which saw many governments passing laws prohibiting 'crimes against nature' as well as the Church taking a stronger stand against same-sex intimacy (Eskridge, 1996). Following the more accepting and tolerant climate of the 11th and 12th centuries, Europe after 1200 saw the rise of punitive attitudes toward transgressions of traditional gender roles (e.g. same-sex intimacy and cross-dressing), as well as more broadly against those who did not conform (e.g. Jews, heretics and witches). The state-sanctioned persecution of certain people (e.g. heretics, witches and sodomites) reached obsessive proportions during the early modern period (roughly 1400 – 1700) in Europe. These attitudes subsequently contaminated other cultures in the New World and Africa, where aggressive suppression of indigenous same-sex practices took place during colonisation and enslavement. Missionaries, slave traders and colonial administrators in Africa, China, Japan, Melanesia and elsewhere increasingly imposed rigid Christian views of sexuality and marriage on local peoples.

Despite the ascendancy of the prevailing heterosexist hegemony since the 13th century, same-sex unions have persisted on the fringes of society in at least three forms. Firstly, there are numerous well-documented examples of female couples in Europe and the United States succeeded in marrying in the modern era by one of them passing as a man (Eskridge, 1996). Secondly, the historian Lillian Faderman (1981) has documented dozens of passionate, marriage-like friendships between women since the Renaissance. Increasing economic independence from men in the 18th century resulted in such famous couples as the Ladies of Llangollen. Proliferation of same-sex female couples continued into the 19th century culminating in the so-called Boston marriages among educated, professional women in particular (Faderman, 1981). Thirdly, the male equivalent of personal and often sexual partnerships formed especially in frontier communities without women during the 1800s and 1900s. Sidekick or intimate buddy relationships have been recorded for largely homosocial communities such as miners, cowboys, hoboes and pirates (Eskridge, 1996).

Same-sex couples often sought legal marriages in the 1600s and 1700s in the Netherlands. By the early 18th century, same-sex subcultures had become established in most European cities. In the United States subcultures of 'inverts' (as lesbians and gay men were then known) became well-established in many cities prior to the First World War (Eskridge, 1996). A dramatic expansion of homosexual subcultures followed World War II and as early as 1953 the Mattachine Society (a leading homophile organisation) was debating same-sex marriage.

Since then same-sex marriage has become a global issue (Gerstmann, 2004). In 2001 the Netherlands became the first country to recognise same-sex marriage, followed by Belgium in 2003, Canada, Spain and most recently South Africa, all in 2005. A growing number of countries, including Norway, Sweden, Iceland and France legally recognize quasimarital, same-sex unions (Gerstmann, 2004). Many other European countries are considering various limited forms of legal recognition for same-sex marriages. By contrast, the United States is becoming more and more isolated among Western nations in its refusal to legally recognize committed same-sex relationships (Gerstmann, 2004).

The historical account of marriage provided in this chapter has sought to underscore the socially constructed nature of the institution. It has been shown that, far from being fixed, how societies think about and go about marrying continues to change alongside social norms. Some of these changes, globally and nationally, include: the expanding number of forms which legal marriage can take; the acceptance of interracial marriages and slowly growing recognition of same-sex marriages. These changes perhaps reflect a shift away from an externally-imposed blueprint of what constitutes a marriage to a more sophisticated understanding of the internal dynamics - the rights and responsibilities of the individuals involved - of such unions.

3. Theoretical context

Given that this study will comprise a literature review rather than an empirical investigation, social constructionism will constitute the theoretical point of departure. Social constructionism is viewed as a useful tool for exploring social institutions such as marriage, and constructs such as identity, sexuality and gender. Many sexuality researchers, in particular, align themselves with a social constructionist perspective of human sexuality (Lesch & Kruger, 2004). Although social constructionism is not a single theoretical approach, a widely accepted principle is that individuals actively construct the meaning of their own experiences through interacting with the various systems of which they form part, including the family, community, cultural, economic, legal and medical systems (Burr, 1995; Durrheim, 1997). Social constructionists hold that in order to understand intimate relationships, it is necessary to focus on how people understand their own relationships, what they say about why and how they establish and maintain such relationships and how they experience them. This makes it possible to highlight the power differentials that are embedded in any intimate relationship (Gergen, 1999), including those related to age, ethnicity, socio-economic status and being lesbian in a heterosexist society. This chapter seeks to provide an overview of social constructionist theory with a particular view to understanding how marriage, sex, gender and sexuality are socially constructed.

3.1 Social Constructionism: key concepts

A critical approach, social constructionism invites us to continually question our ways of understanding the world, to challenge the notion that conventional knowledge is based on objective observation of the world around us (Burr, 1995). It stands in opposition to positivism and empiricism which hold that the true nature of things can be discovered through observation (Durrheim, 1997). Basic tenets common to such approaches and which inform this literature review include anti-essentialism, anti-realism, the bounded nature of knowledge, social interaction, power and the relationship between language and thought.

Social constructionists hold that there are no 'essences' that make up the core nature of people and things (Durrheim, 1997), a position known as anti-essentialism. Instead, individuals and the social world in which we live are the products of social processes. From this perspective, dualities such as gay and heterosexual are replaced by notions of how identities are shaped by language, norms, discourses etc. (Burr, 1995). Similarly, social constructionism rejects the idea that there is any single, ultimate truth. Indeed, even the notion that there are objective 'facts' which can be uncovered is problematic. From an anti-realism viewpoint, therefore, all knowledge is relative and is the product of a particular perspective (Burr, 1995; Durrheim, 1997).

Social constructionism is interested in how people create -and are created by, the societies in which they live (Gergen, 1999). It views knowledge is historically and culturally bound. All forms of knowledge derive from specific cultural and historical contexts; there are limits to the ability of people to measure and describe the universe in precise, absolute and universally applicable ways. Social constructionism sees peoples' interactions with each other as central to understanding social phenomenon. Social phenomenon such as prejudice are located neither within individuals (e.g. motivations, attitudes) nor social institutions (e.g. marriage, family) but in the interactive processes between people (Burr, 1995). In similar vein, the notion of power is central to social constructionism. From a constructionist perspective, discourse is embedded in power relations (Bloor & Bloor, 2007). Power is located in two non-discursive sites: the human body and the structures of society. With regard to the latter,

constructionists argue that current patterns of interaction are dependent on power structures which originate in the past and are maintained by many institutionalized practices and conventions (Gergen, 1999).

With regards the relationship between thought and language, social constructionism contends that language precedes thought. The way that we think (i.e. the concepts and categories we use to give things meaning) is governed by language. While the Piagetian position holds that the development of thought precedes the acquisition of language (Gergen, 1999), social constructionists contend that we learn the conceptual frameworks of the cultures into which we are born through the process of learning language. Nel (in Müller & Pienaar, 2003) asserts that “The formation of norms and values takes place not in isolation but within society, communities and peer-groups. The way people learn is through example and by social understanding” (p. 150). Furthermore, language becomes more than a passive vehicle for expressing thoughts and feelings; it is seen as a form of social action. Language is active: as people talk to each other and arrive at shared meanings, so the world is constructed (Gergen, 1999).

3.2 Marriage as socially constructed

The lesson of history is not that marriage must be between a husband and a wife, but that marriage is a socially and politically created institution that serves social and political functions. (Eskridge, 1996, p 92)

The meanings attributed to marriage vary. At one end of the spectrum marriage is understood as a rigid institution that has remained fundamentally unchanged throughout history. At the other, marriage is viewed as a flexible institution that reflects the social, religious and political mores of the day. The latter social constructionist view has been convincingly argued in legal contexts and academic fora internationally and in South Africa (Williams, 2004). Research into the history of same-sex marriage, for example, reveals that far from having

and immutable, universal meaning, marriage has always reflected the prevailing power relations in society (Eskridge, 1996).

Despite the deeply-rooted hegemony of heterosexual marriage as a social construct, Chapter 2 shows how same-sex marriage and its equivalents have manifested in many cultures throughout history. This lends support to the contention that marriage is a fluid rather than a naturally ordained institution with fixed key elements. Further evidence for the idea that marriage is a dynamic institution reflecting the changing religious, social and political contexts in which it occurs, comes from numerous foreign and local courts. For example, the idea that marriage is conceived of differently depending on prevailing societal power relations is found in many of the early twentieth century judgments about polygamous unions. In South Africa, many judgments have characterized polygamous marriages as being ‘inconsistent with the general principles of civilisation as recognized amongst civilised nations’, encouraging immorality, or impossible to recognize (Williams, 2004). Yet less than a century later such propositions have been wholly inverted: the Recognition of Customary Marriages Act (1998) served to legalize polygamous customary marriages. Similarly, the recent South African Law Reform Commission’s report on Islamic marriages (SALRC, 2003) states that polygamy should not exclude anyone from marriage. It explicitly subscribes to the notion that the boundaries of marriage change over time and with changing social needs (Williams, 2004). Perhaps the most dramatic example of change is the recent development of the common law concept of marriage to embrace same-sex partners. A new definition of marriage as ‘the union of two persons to the exclusion of all others while it lasts’ came into force with the enactment of the Civil Union Act (2006).

Some of the many fundamental discourses surrounding marriage, which are widely accepted despite strong evidence to the contrary, include:

- The belief that marriage can only rightly be between a man and a woman.
- The belief that marriage is monogamous.
- The notion that marriage is permanent.

- The idea that marriage is the only morally appropriate site of (hetero)sexual intimacy.

The view taken in this study is that marriage is both socially constructed and represents a site where societal and individual power relations are played out (Eskridge, 1996; Williams, 2004). Much of the literature reviewed in the following chapters challenges the above-mentioned assumptions. For example, by showing that cross-gendered marriage relationships (e.g. boy wives, female husbands, *berdaches*) have been -and continue to be - recognised in many African, Asian and Native American cultures. In other words, husband and wife like male and female are socially constructed categories that need not correspond to biological categories.

Furthermore, transgendered unions such as the well-documented case of Nicholai de Raylan (Eskridge, 1996) who married two women in succession (whom doctors informed of de Raylan's biological sex after her death) highlight the socially constructed nature of both marriage and gender. Defining marriage as a civil contract between 'two parties who are of opposite sex' presumably precludes transgendered persons from marrying since they would have no 'opposite sex' (Robson, 2007). In exploring the legal discourses surrounding transgendered marriages, Robson (2007) concludes that in the United States, courts will generally 'invalidate any marriage that is not between persons of the opposite sex determined by their biological sex at birth' (p. 60). Thus the legal marriage certificate (a state-issued formalistic document) of couples, where either or both of the partners is transgendered, can be usurped by a birth certificate (another state-issued formalistic document). Robson (2007) points out that 'the traditional model of marriage, as opposed to plural marriage ... supports a dyadic and binary mode of social arrangement' (p.65). She takes issue with the NASA cartoon image of a man and a woman, used to represent a model of humanity as a 'technological but benign Adam and Eve' to alien beings (Robson, 2007, p. 65). Robson (2007) contends that this is the perfect illustration of heteronormativity being equated with humanness itself.

Even brief consideration of the inevitable complexities which arise when cross-dressed, transsexual and intersex individuals seek to marry legally, exposes the arbitrary and unfixed nature of categories. A closer look at even the chromosomal level – often invoked as the ultimate biological basis of sex – reveals far less fixity than is popularly believed. While men typically have an XY pattern and women an XX pattern, a small minority of people have unusual chromosomal patterns including XO, XXY (Klinefelter's syndrome), XXXY and XYY. However one might categorise such chromosomally indeterminate individuals, they have routinely married the world over and research to date fails to show that their marriages are anything but satisfactory (Eskridge, 1996).

Refusing to take a position either for or against same-sex marriage, Brettschneider (2005) criticizes the institution of marriage *per se* from a Marxist perspective. She (Brettschneider, 2005) holds that marriage is an ideologically-coloured institution which shores up, co-creates and protects the bourgeois state and the economic base of labor and the means of production. She draws on Peter Staudenmaier's concept of *compulsory monogamy* which he locates, together with capitalism, patriarchy and heterosexism 'as one interlocking structure, where each component reinforces the others, to the detriment of us all' (in Brettschneider, 2005, p.8). Brettschneider (2005) comments evocatively that 'To support the legal institution of marriage as we know it is, at the very least, to support discrimination against those not heterosexually inclined' (p.6).

Commenting on naturalist discourses for coupling and marriage which typically conflate sex and marriage, Robson (2007) describes traditional heterosexual intercourse as the 'shibboleth for marriage itself' (p. 59). While the importance of procreation as an outcome of sexual intercourse is often stressed, discourses establish heterosexual intercourse as the underpinning of marriage. In many legal systems, for example, one party can usually annul a marriage if the other party is unable to engage in heterosexual intercourse despite repeated requests to do so. Revealingly, in cases where the request is for nontraditional heterosexual intercourse, the refusal is seen as justified (Robson, 2007).

Whether tracing its historical, socio-cultural, biological, legal or political trajectories, the notion of marriage as an immutable institution does not stand up to scrutiny. Rather, as can be seen from the above, marriage is by nature a socially constructed and constantly-evolving institution.

3.3 Sex, gender and sexuality as socially constructed

Constructionists view sexual identity as a cultural phenomenon rather than a natural or essential category (Dreyer, 2006). Ward (in Dreyer, 2006), for example, objects to ongoing essentialist efforts to assign a 'correct place' to human sexuality based on what is assumed to be 'natural'. He describes this process as 'the way in which society habitually calls upon an idea of 'nature' as the ultimate explanation of things which happen within culture.' (p.456). Postmodern thinking criticizes such modern, ahistorical, essentialist ideas and proposes instead a deep social, cultural and historical conceptualization of sexuality. Thus, a fundamental tenet of social constructionism is the now well-rehearsed Foucauldian premise, 'that sexuality is not natural, but rather, is discursively constructed' (Burr, 1995).

The socially constructed nature of lesbianism is aptly illustrated by Gottschalk's (2003) exploration of the dominant cultural beliefs about the etiology of lesbian sexual orientation and identity over three time periods. She concludes that throughout the 20th century, the underlying belief about the etiology of lesbianism has been essentialist i.e. lesbianism is innate or biologically based (Gottschalk, 2003). Such biological theories were mitigated to some extent by feminist theory during the 1970s. Of the three historical periods, the 1950s and 1960s, were dominated by an overwhelming belief the biological basis of lesbianism. In the 1970s and early 1980s, choice became the dominant account, while in the 1990s there was a tendency to revert to biological explanations. Gottschalk's (2003) study illustrates the relationship between dominant cultural beliefs and women's perceptions and understanding about how they came to be lesbians. Her findings show how women interpret and give meaning to their experiences in the specific political and historical context in which their personal sexual identity formation takes place (Gottschalk, 2003).

Johnson (2002) reminds us that there are multiple discourses around sexuality that exist simultaneously, sometimes intersect and often contradict each other. Thus it is possible, in South Africa, to have both the world's only constitutional protection from discrimination on grounds of sexual orientation and the murder of a young woman because of her lesbian identity (Human Rights Watch, 2006a). Similarly, in the United Kingdom, an increasing number of Members of Parliament are openly gay, yet the House of Lords opposes the equalization of the age of consent for gay male sex.

The narrow understanding that sex equals coitus prevails in most sexual discourses. Such an understanding confuses sexuality with sex, with 'sex' automatically connoting intercourse. Social constructionists would argue that '... most interactions between people (of the same sex and the opposite sex) are loaded with sexual interplay, and that sexuality is constantly part of human activity, often not acknowledged and appreciated' (Nel in Müller & Pienaar, 2003, p.144).

3.3.1 Homosexual–heterosexual binary

Social constructionist analyses of difference are often based on the argument that the meaning of one category is based largely on the construction of another category to which it stands in opposition. Such analyses highlight the importance of binary categories such as self/other, heterosexual/homosexual, white/black, man/woman and the consequent construction of privileged/subordinate groups. Such analyses usually call for the deconstruction of dualistic categories, so as to undermine existing power relations. Queer theorists, for example, subvert 'distinctly heterosexual and homosexual identities by critiquing fixed sexual categories and emphasizing the fluidity of desire' (Johnson, 2002, p.329).

Brickell (2006) notes that despite the emphasis on the 'homo/hetero binary' in many discussions of sexuality since the late 19th century, an element of sexual fluidity persisted through the 20th and into the 21st century. It formed a counter-narrative to the assumption that individuals can be glibly assigned to either a

heterosexual or a homosexual subject position. He invites us to retain a healthy skepticism about the validity of the homo/hetero duality; to carefully inspect the nuances of sexual categorization both in the past and now. Brickell (2006) holds that patterns of sexual complexity have always been at play, that homosexuality has never been defined in unified ways in any given era. Rather, this perspective reveals sets of ‘multiple, overlapping and shifting modes of classification that individuals could take up, to varying degrees, in the context of their own lives’ (Brickell, 2006, p.440).

In similar vein, Cross and Epting (2005) note that the inhibitory effect of the homosexual–heterosexual binary on the diversity of sexual experience is well-documented. There is broad agreement amongst social constructionists that the use of sexual labels ‘belies the unique and unfolding nature of growth and development as a sexual person’ (Cross & Epting, 2005, p.53). Objections to the use of such labeling stems from its tendency to foster stereotypical and preemptive thinking about individuals assigned to such categories. LGBTI² people, once classified, run the risk of being seen as nothing but members of that category, with individuals denied their full humanity (Cross & Epting, 2005, p.53). Rather than calling for the abandonment of categorization in favour of the unique integration of experience, however, Cross and Epting (2005) acknowledge both the restrictive and expansive potential of labels. They argue that labels can be both disempowering and a ‘safe place’ which bestows on individuals a sense of belonging (Cross & Epting, 2005).

3.3.2 Sexual citizenship and heteronormativity

There is a substantial body of literature which explores the ways in which ‘ideas of citizenship are based upon certain assumptions about sexuality, in particular hegemonic heterosexuality’ (Richardson in Johnson, 2002, p. 320). Such ideas

² The author rejects the term homosexual due to its negative connotations with psychopathology, focus on the sexual aspects of a person’s identity, and its perpetuation of negative discourse about LGBTI people (Nelson & Prilleltensky, 2005). Instead the term LGBTI (lesbian, gay, bisexual, transgendered and intersex) people is inclusive and more accurately reflects the diversity within human sexual orientation and gender identity. Similarly, the author prefers the term heterosexism over homophobia to signal the macro-level nature of oppression. Heterosexism has more in common with other terms such as “racism” and “sexism” that emphasise the power that major social institutions possess and the way this power is used to subordinate any non-heterosexual identity (Nelson & Prilleltensky, 2005).

impact on a range of citizen rights and entitlements, for example welfare, censorship, adoption, fostering, inheritance, death benefits and medical access/decision-making by partners and access to marriage. LGBTI people can and are excluded from rights and benefits to which heterosexuals have access. In addition, those rights and benefits are often conceived of in ways that are more appropriate to conventional heterosexual relationships rather than same-sex relationships. She draws on Zygmunt Bauman's (in Johnson, 2002) conception of the 'stranger' to characterize LGBTI people as "“passport citizens” of countries that do not acknowledge them except as those “others” who trouble the body politic' (Phelan in Johnson, 2002, p.320). It can therefore be argued that 'lesbians and gay men are not currently citizens in the full political sense' (Phelan in Johnson, 2002, p.320). In this context, the recognition of same-sex relationships challenges the legal privileging of heterosexual relationships.

Johnson (2002) contends that despite ostensibly greater tolerance and better anti-discrimination measures for marginalized non-heterosexual lifestyles and dissident sexual identities in many countries, heterosexual constructions of citizenship are still being privileged in those self-same countries. In answering the question 'Why are the more progressive political attitudes towards gays and lesbians - including the recognition of same-sex marriage³ - still so hotly contested?', Johnson (2002) offers two underlying principles by way of explanation a) 'all citizenship is sexual citizenship' (Bell & Binnie in Johnson, 2002) and b) conceptions of citizenship have traditionally been both gendered and heteronormative.

Discussion of same-sex marriage in the English-speaking literature on sexual citizenship has been dominated by a debate over whether campaigns in support of same-sex marriage are transformative of mainstream discourses and institutions or constitute the normalization and assimilation of difference (Baird, 2006). Bell and Binnie (in Baird, 2006) remind us to take into account 'the

³ Author's addition.

many meanings of marriage (and non-marriage) that contribute to its social (as well as legal) status' (p. 967).

Oesterreich (in Dreyer, 2006) describes heteronormativity as 'society and political economy presuppose the consistent pairing of women and men ... consequently heteronormativity inherently limits who is counted as a citizen and the ways in which a citizen can participate in democratic citizenship.' (p. 447). Dreyer (2006) argues that heteronormativity, embedded as it is in a patriarchal world view, underpins belief patterns which determine gender roles, heterosexual marriage and sexual ethics. It manifests both in insider-outsider love-hate relationships and aversion to sexual minorities (those who are not heterosexual). Heterosexism is 'both the belief that heterosexuality is or should be the only acceptable sexual orientation and the fear and hatred of those who love and sexually desire those of the same sex' (Blumenfeld in Dreyer, 2006, p.446). Commenting on the now widely accepted link between heterosexism and gender, Bem (in Dreyer, 2006) comments that 'Homophobia is embedded in society's binary conceptualization of gender ...' (p. 246).

3.4 Methodology

Literature was sourced from both international and national databases. International databases included Academic Search Premier, PsychINFO, Proquest Social Science Journals, ScienceDirect and Web of Science as they are comprehensive and respected sources of peer-reviewed journal articles. PsychINFO is a global database containing citations and summaries of journal articles, books, technical reports and international dissertations. Academic Search Premier, ScienceDirect and Web of Science offer abstracts and full-text articles from scientific, technical, medical and social sciences journals. Proquest offers full-text periodicals covering the social sciences. Similarly, credible and current South African databases included were South African Studies, Sabinet Online and SA ePublications. South African Studies provides access to periodical articles while Sabinet Online and SA ePublications offer access to electronic journals. These databases offer a high proportion of full-text articles, which makes them attractive from an access and time efficiency perspective.

Although a somewhat higher number of journal articles and other sources were accessed initially, a total of 124 sources were reviewed in depth.

So as to ensure that as much of the available literature was included as possible, local LGBTI organizations were also canvassed for additional material. Relevant websites were also reviewed. The review was not limited to the field of psychology; research from complimentary fields such as sociology, anthropology, and so forth, was included.

Discourse analysis was used as a tool to apply the theoretical paradigm of social constructionism. According to Macleod (2002), discourse analysis is becoming increasingly widely-used as qualitative research methodology in psychology in South Africa. However, she also cautions that while it may be growing in popularity, discourse analysis is not an uncontested domain of research practice. There is no definitive method of discourse analysis, and a wide range of approaches are employed by researchers thereby contributing 'to the constant construction and re-production of the intellectual and research activity called 'discourse analysis'' (Macleod, 2002, p. 17).

Macleod (2002) has synthesized a number of authors' descriptions of the nature of discourse, as follows:

- 'a system of statements which constructs an object' (Parker in Macleod, 2002);
- 'a particular network of meanings, their heterogeneity and their effects' (Hollway in Macleod, 2002);
- 'a form of social practice, rather than a purely individual activity or a reflex of situational variables' (Fairclough in Macleod, 2002);
- 'products and reflections of social, economic and political factors, and power relations' (Widdicombe in Macleod, 2002);
- 'socially organised frameworks of meaning that define categories and specify domains of what can be said and done' (Burman, in Macleod, 2002);

- ‘historically variable ways of specifying knowledge and truth’ (Ramazanoglu in Macleod, 2002);
- ‘a multi-faceted public process through which meanings are progressively and dynamically achieved’ (Davies & Harré in Macleod, 2002).

Of particular relevance here is the common feature which emerges from these conceptualizations, namely that discourses ‘are seen as constructive as they do not simply describe the social world, but are the mode through which the world of ‘reality’ emerges’ (Macleod, 2002, p.17). Discourse analysis thus helps us to understand the everyday practices of individuals in relation to structural or macro-level issues by collapsing the individual-society divide. It allows us to take a closer look at how discourses allow ‘spaces for certain types of selves or subject positionings’, while simultaneously ‘supporting institutions by validating particular practices and marginalising others’ (Parker in Robus & Macleod, 2006, p.464).

This chapter has introduced the central tenets of social constructionism, the theoretical paradigm for the literature review, as well as its application through discourse analysis. In seeking to shed light on the apparently paradoxical yoking of lesbian identity and marriage as traditionally heterosexual, the fluid rather than fixed nature of constructs such as marriage, sexuality, gender and sex was illustrated. The role of power, heteronormativity, sexual citizenship and sexual discourses was explored with a view to understanding their complex inter-relatedness in the ongoing social processes of meaning-making.

4. Lesbian marriage

It would appear that research on lesbian marriage is almost nonexistent. This is perhaps not surprising in view of the fact that legally recognized lesbian marriage became a reality – initially in the Netherlands - only sixteen years ago. But women have partnered one another in intimate relationships of many different forms since

time immemorial (Faderman, 1981; Eskridge, 1996). Given the paucity of data on lesbian marriage *per se*, this chapter aims to explore some of the discourses and their key assumptions which underlie research on intimate relationships between women. Furthermore, this chapter seeks to understand the construct of lesbian marriage in light of the exploration of the construct of marriage undertaken in Chapter 2.

4.1 Lesbian perceptions of marriage

In the United States, a poll of lesbians in 1995 revealed strong interest in getting married. However, not all lesbians view marriage positively or wish to marry (Gerstmann, 2004). Located within discourses of difference, the same-sex marriage debate is at times sharply polarized, with many radical lesbian feminists having voiced their ‘anti’ marriage stance publicly (Peel & Harding, 2004). Within the LGBT community, those who support legalizing same-sex marriage are said to subscribe to an *assimilationist* position, while those who oppose it are known as taking a *radical* position (Yep, Lovaas & Elia, 2003).

To illustrate these diverse viewpoints: Lutzen, (1998) for example, believes that Danish lesbian and gay organizations may have embraced ‘middle-class ideals of “decent” lifestyles’ and that ‘entering a registered partnership may become a new norm which excludes “less respectable” modes of homosexual lifestyles’ (p. 233). She warns that ‘the radical potential of homosexuality as a manifestation of the variety of lifestyles should not be jettisoned in the name of politics of assimilation’ (Lutzen, 1998, p. 233). In trying to reconcile feminist and gay liberationist critiquing of marriage with the contemporary movement for same-sex marriage, Stiers (Esterberg, 2002) argues that same-sex marriage can be seen both as an act of accommodation, helping LGBTI people assimilate into the mainstream, as well as a strategy of resistance in which lesbians and gays challenge traditional ideas about gender, sexuality and marriage. Commenting on feminist objections to same-sex marriage, Stiers wonders whether participation in legal marriage undermines the more liberating and egalitarian possibilities inherent in lesbian relationships: the ability to forge different kinds of roles and relationships unbound by patriarchal traditions of marriage? (Esterberg, 2002).

4.2 Researching lesbian relationships: what we don't know

Time and again the lack of reliable data regarding lesbians surfaces. For example, it is variously estimated that between one and five per cent of women are lesbians (Amato & Jacob, 2004), although any such statistics remain the subject of heated debate. In the United States census for the year 2000, same-sex couples comprised approximately two percent of all households, translating into around one million couples, an estimated 300 000 of whom are lesbian couples. However, given societal disapproval of non-heterosexual identities, this figure is likely to be a significant underestimation (Clark & Fields in Means-Christensen, Snyder & Negy, 2003).

Lesbian couples logically share many of the same challenges faced by heterosexual couples such as the need to manage their time and financial resources, define the boundaries of their relationship, deal with emotional and sexual intimacy, take decisions and resolve conflict to name but a few. Additionally, however, lesbian couples are faced with the reality of stigmatization and its ramifications in terms of both individual and relationship functioning (Means-Christensen et al., 2003). Little is known about lesbian (or gay male) couples from a developmental lifespan perspective; even less about the impact of heterosexist biases on relationship functioning (Means-Christensen et al., 2003). While Patterson (in McCann & Delmonte, 2005) suggests that established lesbian couples are increasingly undertaking parenthood, the extent of this trend is unknown due to a dearth of accurate data. Research on the impact of child rearing on same-sex couples is almost non-existent relative to the data on heterosexual couples across the family life cycle (Means-Christensen, Snyder & Negy, 2003). Additionally, it would appear that most aspects related to the more recent possibility of marriage for lesbian couples have yet to be investigated.

4.3 The nature of intimate lesbian relationships: what we do know

Research findings are available on many relationship aspects such as parenting, managing finances, coming out and parental acceptance, domestic violence and

intimacy, both sexual and psychological, relationship quality and dissolution amongst others, some of which will be explored here.

4.3.1 Relationship quality and maintenance

One of the heterosexist assumptions made about LGBTI people in mainstream discourse is that they cannot form deep, lasting, committed emotional attachments. However, research on same-sex couples has shown that most lesbians and gay men desire and achieve intimate relationships. American empirical studies have found, for example, that between 45% and 80% of lesbians (and between 40% and 60% of gay men) are involved in stable relationships at any given point (Wynchank, 2006).

Another assumption underlying mainstream discourse is that same-sex relationships differ in fundamental ways from heterosexual relationships by being, for example, of shorter duration or non-monogamous. Yet what little research there is shows clearly that same-sex and different-sex relationships are remarkably similar on a number of dimensions including: relationship-maintenance behaviour, the effects of gender roles on communication, relationship quality and the link between the stage of a relationship and its quality (Herek, 2006; Kurdek, 1998). Findings also indicate greater similarity between same-sex couples and married heterosexual couples, than co-habiting heterosexual couples in terms of relationship satisfaction and love for partner (Means-Christensen et al., 2003). Kurdek (1998), for example, assessed whether married heterosexual couples differ from cohabiting same-sex couples in terms of relationship quality and outcome. He found that relative to married couples, lesbian partners reported more intimacy, autonomy, equality, fewer barriers to leaving and higher rates of dissolution (Kurdek, 1998). Importantly, Kurdek (1998) concluded that the links between relationship quality and outcomes were equivalent for heterosexual and same-sex couples. Yet research of this nature unwittingly perpetuates 'othering' discourses regarding same-sex relationships, by comparing them to a heterosexual norm. It is almost as if authors are attempting to assuage heterosexist fears by showing that lesbian relationships are not different (i.e.

deviant) in any fundamental way, yet in so doing the heteronormative standard is inevitably reinforced.

4.3.2 Lesbian families / parenting

For lesbians, the long route to parenting has been neither properly recognized nor embraced, yet lesbian mothering is a reality, albeit one which society struggles to accept (McCann & Delmonte, 2005). Commenting on adoption policies and practice in South Africa, for example, Mosikatsana (1996) points out that social and judicial biases against gay and lesbian parenting infringe on children's rights to parental care and that "adoption processes are fraught with racist and heterosexist biases"(p.131).

According to the 2000 United States census data, approximately one-third of the estimated 300 000 lesbian households have children younger than 18 years living at home, many from a previous heterosexual relationship. The major lesbian health surveys reveal that 30%–50% of lesbians of childbearing age plan to become parents (Amato & Jacob, 2004). Lesbians' routes to motherhood include: having a child or children from a previous heterosexual relationship; planned parenting options such as donor insemination, surrogacy and co-maternity⁴; adoption, step-parenting, fostering or co-parenting family models⁵. Broader views of parenting could also include those lesbians who have made a regular commitment to caring for children who are not biologically related and do not necessarily live with them, as well as those who care for a relative's child, known as 'relative care' or 'kinship care parenting' (McCann & Delmonte, 2005).

The reasons why lesbians (and gay men) wish to become parents do not differ from those cited by heterosexuals, namely, a desire to nurture children and because they enjoy having children around and want them to have a valued place in their lives (Bigner & Jacobsen, in McCann & Delmonte, 2005).

⁴ In which the egg of one partner is fertilized with donor sperm and the embryo transferred to the uterus of the other partner.

⁵ Co-parenting takes various forms but usually involves three to four LGBT adults, who wish to biologically conceive and parent a child within an agreed family environment.

While lesbians have just as much to offer children as heterosexual mothers, it must be acknowledged that they, their children and extended families face inherent difficulties arising from relating to the outside world. According to Bos, van Balen and van den Boom (2004), it was a lack of empirical evidence on which to base judgments in custody disputes which gave rise to the first systematic studies on lesbian families. In the early 1970s, custody was frequently denied based on three common assumptions:

- 1) the absence of a father together with the presence of a lesbian mother would lead to atypical gender development in children. Girls, assumed to be less feminine in their identity and behavior, would grow up to be lesbian while boys, assumed to be less masculine, would become homosexual.
- 2) children with a lesbian mother would be teased, mobbed and/or ostracized by other children. Consequently they would be at greater risk of developing psychological problems.
- 3) lesbian mothers' competency regarding child rearing, their mental health, and overall adjustment were somehow deficient.

This was the backdrop against which the first studies on lesbian parenting were undertaken, with the implicit aim of showing that lesbian families are no different from heterosexual families, and that lesbians are no less successful than heterosexuals at parenting (Bos et al., 2004). Again, it is the comparative nature of much of this research that simultaneously disconfirms heterosexist assumptions of lesbians as unfit to parent, and serves to shore up discourses which interpret lesbian experience through a heteronormative frame of reference.

4.3.3 Psychological intimacy

In terms of psychological intimacy, the heterosexist position assumes that LGBTI people are unable to form long-lasting, intimate emotional bonds. Mackey, Diemer and O'Brien's (2000) study focused on the meaning of psychological intimacy to partners in both same-sex and different-sex lasting relationships (30 years on average) in middle and old age. Psychological intimacy was defined as 'the sense that one could be open and honest in

talking with a partner about personal thoughts and feelings not usually expressed in other relationships (i.e. disclosure about levels of the self which usually remain hidden in daily life)' (Mackey et al., 2000, p. 201). They found that a greater degree of psychologically intimate communication was reported by lesbian couples, in comparison to either heterosexual or male gay couples. Research of this nature, while valuable in many ways, unfortunately simultaneously entrenches the heterosexual-homosexual binary embedded within mainstream heterosexist discourses.

4.3.4 Sexual intimacy

In 1983, Blumstein and Schwartz's (in Blyth & Straker, 1996) research on married, cohabiting heterosexual, gay male and lesbian couples found that lesbians have the lowest frequency of sexual activity of all the couple types. This finding was confirmed in 1992, when the 'most statistically rigorous and sophisticated national survey of American sexual behaviour' found that 'lesbians are significantly less promiscuous and have more long-term relationships' than either heterosexuals or gay men (Laumann, Gagnon, Michael & Michaels in Hausknecht, 2003, p. 9).

However, this view of lesbian sexuality is not without its critics. The concept of 'lesbian bed death' is now being questioned in terms of its association with 'mainstream sex therapy that is excessively pathology-oriented, phallogentric, and heterosexist' (Nichols, 2005, p. 18). Amongst the questions being posed are: Why, for example, did behavior only count as sexual when it included genital contact with the goal of orgasm? Why shouldn't it include forms of physical contact that were mutual and sensual without being directed toward orgasm? Another approach challenges frequency as a measure of sexual activity. Some research, for example, indicates that the average duration of sexual encounters is greater between lesbians than heterosexuals (Iasenza in Nichols, 2005). Nichols (2005) in a recent survey found that: a typical lesbian encounter lasted an hour, as opposed to thirty minutes for a heterosexual encounter; women with other women kissed more, engaged in more non-genital touching, more digital-vaginal entry, and greater use of sex toys. She concludes that 'lesbian sexual activity may exemplify sex that is more

tailored to women's needs - longer in duration, more likely to include non-genital acts' (Nichols, 2005, p.20).

Within lesbian communities over the last twenty years, attitudes about sex appear to be changing, with more and more experimentation taking place. The traditional lesbian feminist taboo against pornography, for example, is being challenged. In the United States, lesbian-oriented erotic magazines, toy stores, and video studios and clubs that boast of 'action' in the bathrooms are on the increase (Nichols, 2005). Lesbians seem to be expressing a more fluid gender identity. Examples include: 'trannie boys' - women who take male hormones, usually retain their female genitals, but often have double mastectomies; 'bois' - lesbians who dress and act like men (including appearing in public 'packing' a strap-on dildo) but who have completely female bodies and; transgender activists - mostly 'bois' or female-to-male (FTM) transsexuals (Nichols, 2005). There are lesbian bondage/discipline, sado-masochism (BDSM) organizations and clubs in most major U.S. cities, and polyamory - a lifestyle of concurrent, multiple, loving relationships that involve some degree of commitment - is on the increase (Nichols, 2005).

This section serves to illustrate the multiple co-existing discourses regarding lesbian sexuality, and highlights the often contradictory assumptions of lesbians as disinterested in sex on the one hand, and compulsively sexual on the other.

4.3.5 Domestic violence

Both the feminist and heterosexist positions are likely to assume that aggression, violence and sexual coercion between women would be minimal or non-existent, due to the absence of male role-players. Elliot (in Waldner-Haugrud, 1999) suggests that LGBT domestic violence may be kept 'in the closet' to avoid providing evidence for mainstream discourses regarding the alleged 'inferiority' of same-sex relationships. Within LGBT communities, stereotypes - which typify lesbians as nonviolent - prevent people from openly acknowledging the existence of sexual coercion (Waldner-Haugrud, 1999). Waldner-Haugrud (1999) holds that reluctance to define women as

potential perpetrators may also play a role. In her review of the modest research available on sexual coercion in lesbian and gay couples, Waldner-Haugrud (1999) found that sexual coercion does occur in same-sex relationships. In a similar but broader study, Burke and Follingstad (1999) reviewed the existing empirical literature on interpersonal violence in same-sex relationships. Their findings suggest that prevalence rates of same-sex partner abuse are high and show many similarities to heterosexual partner abuse (Burke and Follingstad, 1999).

4.3.6 Sex role identification

In an ironic convergence between heterosexist and lesbian viewpoints, there exists a common perception that lesbians comprise two types: 'butch', having more masculine characteristics, and 'femme', having more feminine characteristics. Many studies have investigated sex role diversity among lesbians (Percy, Docherty & Dabbs, 1996). 'Butch' and 'femme' personality characteristics, like all personality and individual difference characteristics, are partly learned and partly biologically determined. The butch/femme dichotomy emerges from mainstream discourses in which the blueprint for human intimate relating is fundamentally heterosexual. The only way in which lesbian coupling can be understood is through the lense of heteronormativity. From this viewpoint, relationships are required to contain some form of male-female binary in order to become understandable.

4.4 An insider view: perspectives of lesbians who are actually married

The heterosexist position assumes that lesbian relationships imitate heterosexual gender roles, such as a traditional division of labour, in their organization. Given how new the relationship possibility of marriage is for LGBT people, little is known about same-sex couples who choose to marry (Alderson, 2004). Solomon, Rothblum and Balsam (2004) carried out the first quantitative studies to compare gay and lesbian individuals in civil unions⁶ with both heterosexuals and other gays and lesbians. Rather unsurprisingly, the researchers found that

⁶ A state recognized same-sex contract similar to marriage, available in the US state of Vermont since 2000.

the different-sex married couples had been together longer and had a more traditional division of labour and child care duties than the same-sex married couples (Solomon et al., 2004). In a demographic study carried out in Norway and Sweden, where marriage-like same-sex registered partnerships have been available since 1993, Andersson, Noack, Seierstad and Weedon-Fekjær (2006) found that patterns in divorce risks are rather similar in same-sex and opposite-sex marriages. However, divorce-risk levels are considerably higher in same-sex marriages and the divorce risk for female partnerships is double that for male partnerships. Halvorsen, (1999) investigating the impact of legislation enabling same-sex marriage-like relationships in Norway six years previously, concluded that relatively few same-sex couples had registered their relationships in that time period. His findings suggest that it is the symbolic value (e.g. social sanction) rather than the practical aspects (e.g. financial) of legal recognition that were of importance in the Norwegian context (Halvorsen, 1999).

While there is a body of research from the 1990s which shows that there is little difference between heterosexual marriage and committed same-sex relationships (Alderson, 2004), since then same-sex marriage has arisen as a possibility. Little is known about how same-sex couples construct their relationships within the new context of marriage. In the first phenomenological study of same-sex marriage conducted in either Canada or the United States, Alderson (2004) sought to address this by posing the following research question: ‘What is your experience of being in a same-sex marriage?’ Participants’ reasons for marrying included the ‘sense that marriage brings greater depth, understanding, and completion to a relationship, that it cements a relationship in financial and emotional ways, that it provides recognition of them as a family’ (Alderson, 2004, p.113). Other reasons included wanting: to show their formal commitment to each other for life; wanting the legal protections and perceived social sanctioning that marriage provides; wanting to be part of the political fight for equality by being role-models for the LGBTI youth of today (Alderson, 2004).

This chapter has attempted to foreground some of the assumptions regarding constructions of lesbian intimate relationships and the more recent possibility of lesbian marriage. Research findings are available on a number of relationship aspects

such as parenting, the naming of children, managing finances, coming out and parental acceptance, domestic violence and intimacy, both sexual and psychological, relationship quality and dissolution. However, most aspects related to marriage for lesbian couples have yet to be investigated. Contrary to widely-held assumptions, for the vast majority of these dimensions, research shows that there is no discernable difference between same-sex and different-sex relationships. Ironically, the very act of comparison serves to ‘other’ lesbian relationships. Rather than being acknowledged as separate entities in their own right, lesbian relationships are *compared to* different-sex relationships, thereby perpetuating the heteronormative standard.

5. Exploration of the underlying assumptions in discourses regarding same-sex marriage

All speakers and writers come to the action of speaking and writing with a point of view regarding their position toward the topic, but there is considerable variation in how far a person gives overt and explicit expression to their point of view (Bloor & Bloor, 2007).

This chapter seeks to investigate some of the assumptions that underlie discourses in the literature on LGBTI identities in general and same-sex marriage in particular. Given that an author’s stance and underlying assumptions are frequently implicit, part of the task of discourse analysis is to recognise the stance that is taken; to make such positions visible. Being aware of our own and others’ positions is important since our attitudes and beliefs inevitably skew the way we interpret what we read or hear.

From a state policy perspective, for example, the reality is that while five countries recognize same-sex marriages legally, and bestow on them the same rights and responsibilities as different-sex marriages, 240⁷ countries do not. This section will

⁷ While there is some debate as to what constitutes a country, the author has used the Wikipedia (2007) definition and tally as follows: “there are currently 245 entities considered to be countries in the world, including independent states (both those that are internationally recognized and generally unrecognized), inhabited dependent territories and areas of special sovereignty.”

show that opposition to same-sex marriage is almost invariably based on negative attitudes toward LGBTI people. It begins by outlining a broad typology of discourse: mainstream discourse and discourses of difference. Each category is illustrated by way of various positions and their underlying assumptions and beliefs. Mainstream discourses are reflected in the heterosexist and 'Afrocentric' positions, while discourses of difference are represented by the human rights position. The ambivalence of LGBTI people regarding same-sex marriage is then explored by way of the assimilationist and radical positions. The section closes with a closer look at how conflicting discourses can co-exist, using South Africa as a case study.

5.1 Mainstream discourses

Discourses regarding LGBTI people can be crudely typified as either positive or negative. Authors, who support what will be broadly termed mainstream discourses, tend to take an antagonistic or judgemental stance toward LGBTI people and same-sex marriage. Such discourses are often naturalistic, biologically based, essentialist, sexist and racist in nature. For the purposes of this chapter, the heterosexist and 'Afrocentric' positions will serve to illustrate naturalist discourses.

5.1.1 The heterosexist position

Two of the key assumptions which underlie heterosexist constructions of LGBTI identities are that heterosexuality is the only valid sexual orientation and gender identity and that any other sexual orientation or gender identity is unnatural, immoral, sick and / or sinful. Some of the ways in which the above-mentioned stance and assumptions play themselves out in various legal, political and social domains is traced with a view to contextualising the same-sex marriage debate.

5.1.1.1 Attitudes toward LGBTI people

Despite a decrease in overt heterosexism in some sectors of some societies, intolerance, prejudice and discrimination, victimization and even violence toward those who do not conform to an exclusively heterosexual identity is still alive and well. LGBTI people face prejudice everywhere, be it in the

workplace (Ragins & Cornwell, 2001), at school (Horn, 2006), at home (Yen et al., 2006), in the community, at their own family gatherings (Eskridge, 1996), in places of worship (Olson et al., 2006), on the internet (Irvine, 2006), in hospital (Yen et al. 2006) and even in the therapy room (Kilgore et al., 2005). Such negative attitudes manifest in very real ways including violence, (Beckett & Macey, 2001), material disadvantage (Ash & Badgett, 2006) and an increase in the possibility of psychological distress and mental disorders. Mills et al. (in Yen et al., 2006) found that heightened community alienation, due to fear of discrimination and prejudice, was found to be a major correlate of depression among gay men.

Studies in Western societies have found that negative attitudes toward LGBTI people clearly exist within the medical profession, including psychiatric faculty, general practitioners, nursing educators, medical and nursing students, social workers, and psychologists (Yen et al., 2007). Vermette and Godin (in Yen et al., 2007) found that ‘attitudes toward homosexuality’ had a negative influence on the intention by nurses when providing home care to homosexual AIDS patients. Not limited to the West, however, in a recent empirical study in southern Taiwan, Yen et al. (2007) too found that nurses with more negative attitudes toward homosexuality had lower intentions of taking care of gay and lesbian patients. Such attitudes clearly illustrate the assumption that heterosexuality is the only valid sexual orientation, as well as how oppressive heteronormative discourses are perpetuated.

Negative attitudes are not limited to adults. According to Horn (2006), reports on the school climate for gay and lesbian students in the United States suggest that negative attitudes toward LGBTI people are quite common in adolescence. She found that ‘middle adolescents (14–16) are more likely than older adolescents (16–18) and young adults (19–26) to exhibit sexual prejudice related to social interaction with gay and lesbian peers’ (p. 420).

In a recent study on ‘Anti-Gay Politics on the Web’, Irvine (2006) examined the use of the Internet by Christian Right groups as a new tool for expressing their opposition to LGBTI rights. She analyzed the content of these groups’

heterosexist representations, paying particular attention to the use of mainstream scientific and medical data in their ‘anti-gay rhetoric’ (Irvine, 2006, p.15). All the organizations included in the study featured information opposing same-sex marriage (e.g. ‘Is Marriage in Jeopardy?’), sought to promote anti-gay activism (e.g. ‘The Gay Gene’ and ‘How Parents Can Prevent Homosexuality’) and to present ‘seemingly objective - but actually quite biased and often inaccurate – information’ to their readership. Furthermore, Irvine (2006) found that the websites characteristically combine actual scientific findings with ‘demonizing rhetorical strategies’, and cite their own organizations’ quasi-scientific research presented typically as ‘sound, heavily documented research reports’ (p.17). This research serves as another example of how the assumption that non-heterosexual orientations are immoral, sick or sinful underpins and perpetuates oppressive heterosexist discourses.

5.1.1.2 Opposition to same-sex marriage

Resistance to same-sex marriage remains strong, vocal and widespread (Gerstmann, 2004) and derives from negative mainstream discourses. The heterosexist position regarding marriage rests on a number of key assumptions. For example, it is assumed that from a traditional / historical – or by the laws of nature – marriage is, and always has been, heterosexual. It is also assumed that the beliefs of any particular religion regarding marriage are universally applicable. Heterosexual couples are believed to provide an optimal environment for raising children, while the ultimate purpose of marriage is assumed to be procreation. Furthermore, public morality (i.e. disapproval of same-sex marriage) is believed to be a sufficient basis for law-making. And finally, it is believed that same-sex marriage will weaken the institution of marriage.

These assumptions give rise to the reasons most often advanced for the heterosexual monopoly on marriage, and hence for opposition to same-sex marriage. These reasons, which are explored more fully below, fall into the following broad categories: a) definitional, including history, tradition, natural law (biology) and religion, b) the equation of marriage with

procreation and child-rearing and, c) moral disapproval of non-heterosexual identities.

5.1.1.2.1 Definitional objections

In the 1970s, the main argument against same-sex marriage was definitional: whether as a matter of biology, tradition, religion or history, marriage can only be ‘the union between a man and a woman’ (Eskridge, Spedale & Ytterberg, 2004). Arguments in this category run as follows: ‘marriage is necessarily different-sex, and same-sex marriage is therefore oxymoronic’ (Eskridge, 1996, p 89). Rooted in a particular understanding of how things have always been, such beliefs are often accompanied by the conviction that they should remain so. In addition to being circular, such discourses fail to recognise the often arbitrary, fluid and socially-constructed nature of definitions.

5.1.1.2.1.1 Historical / traditional objections

Based on the assumption that marriage has always been heterosexual, this class of objections runs as follows ‘because marriage has always been considered to be the union of a man and a woman, any other form of marriage is objectionable’. As Eskridge (1996) points out, this is a circular argument: because something has not been done in the past, we shall not allow it. Yet circular arguments are weak responses to normative claims, whose very point is that the status quo ought to change. The mere fact that something has existed for a long time is not sufficient reason for it to remain so. For example, should its longevity have entrenched slavery worldwide? For at least four decades different-race marriages were unacceptable in South Africa. Yet that is no reason to perpetuate this discrimination now that South African society has rejected the racist underpinnings of that exclusion. Thus we see that a change in political context has led to adjustments in the discourses surrounding different-race marriage. Additionally, to assert that ‘marriage has always been different-sex’ is simply not true. Historical evidence attests to the contrary, as was highlighted in section 2.3.

5.1.1.2.1.2 Natural law / religious objections

Opposition based on natural law is represented by arguments such as ‘same-sex marriage is unacceptable because homosexuality isn’t natural’. Eskridge (1996) points out that those natural law opponents of same-sex marriage are ‘essentially dressing up a sectarian religious argument in philosophical garb’ (p.98). Secular officials too, regularly deny same-sex marriages based on religious grounds. This category of opposition is often based on versions of thinly-veiled religious assumptions such as ‘same-sex marriage is unacceptable because homosexuality is sinful’.

Such arguments frequently assume the universal applicability of certain religious beliefs. Yet the separation of church and state in most democratic societies is predicated on the principle of freedom of religion whereby each religion should be free to practice its faith without interference a) from other religions that see things differently and b) the government (Eskridge, 1996).

A recent study, aimed at analyzing the relationship between religion and public opinion about same-sex marriage, found that Non-Protestants are much more likely to support same-sex unions than are Protestants (Olson, Cadge & Harrison, 2006). It also found that individuals with conservative attitudes toward morality and secularism, as well as those who participate actively in religious life are more likely to oppose such unions. Olson et al. (2006) concluded that religious variables play powerful roles in structuring attitudes about same-sex unions and that homosexuality appears to be a significant constituent of the ‘moral values’ discourse that is currently topical in American politics. In this paradigm, the underlying assumption is that to be accepting of same-sex unions means that you cannot also be god-fearing. This pressure to conform clearly illustrates how discourse perpetuates antagonism toward same-sex marriage.

5.1.1.2.2 Procreation-and-family objections

Opposition on grounds of parenting and family often equate marriage with procreation and child-rearing. Such arguments derive from the assumption

that different-gender couples provide an optimal environment for raising children, for example ‘same-sex marriage shouldn’t be allowed because children need a mother and father’ (Gerstmann, 2004). However, there is ample research showing the spuriousness of this assumption. Herek (2006) for example, in a review of relevant behavioral and social science research to assess the validity of this key factual claim, found that a “parent’s sexual orientation is unrelated to her or his ability to provide a healthy and nurturing family environment” (p. 607). He concluded that same-sex couples and their children are likely to benefit in numerous ways from legal recognition of their families, and that providing such recognition through marriage will bestow greater benefit than civil unions or domestic partnerships (Herek, 2006).

For opponents of the notion of queer families, psychoanalysis has become a ‘discourse particularly amenable to homophobia’ (Blevins, 2005, p.65). He points out that the child is central to debates around same-sex marriage whenever psychoanalytic narratives are invoked, because those narratives describe the development of the child as a socially recognizable subject, as a self. And, Blevins (2005) reminds us, Oedipus ‘requires a holy family of mommy, daddy, and child in order to tell the story of the process by which the child grows into a coherent subject, both interpersonally and socially’ (p. 70).

If procreation is the essential goal of marriage, why then do we allow sterile, impotent or menopausal individuals to marry? Such discrimination seems unthinkable because we accept that marriage serves a diversity of functions (e.g. personal commitment, sexual, moral or religious expression and certain legal entitlements) of which procreation is but one. Thus if elderly, impotent or sterile couples are not denied access to marriage on grounds of its linkage with procreation, neither can LGBTI people be denied the right to marry on this basis (Eskridge, 1996).

In similar vein, the Judeo-Christian view of marriage holds that only procreative sexuality can elevate a relationship into the sanctity that is marriage. Eskridge (1996) argues elegantly that the primary goal of marriage

is *unitive* (i.e. the personal and spiritual union of the partners) and not *procreative* and that the production of children should not be a necessary condition for marriage.

5.1.1.2.3 Heterosexist objections

Opposition based on moral disapproval of non-heterosexual identities are often derived from the assumption that public morality is a sufficient basis for law-making. Research by social psychologists shows that support for traditional sex roles is strongly correlated with disapproval of lesbian, gay, bisexual, transgendered and intersex people (Gerstmann, 2004).

With regards the latter category of opposition to same-sex marriage, the connection between heterosexism and patriarchy has been elegantly articulated by Gerstmann (2004) as follows: 'Homosexuality is despised because it is a threat to a gender-dichotomized world in which men are active and powerful and women are weak and passive. By demonizing gays and lesbians, heterosexual men keep women in their place' (p.52). In similar vein, Eskridge (in Gerstmann, 2004, p.55) succinctly describes homophobia as a 'weapon of sexism'. Similarly, Graham (2004) asserts that while marriage 'contributes powerfully to creating fully-formed citizens, it does so by constructing the unmarried as lacking this virtue. This invidious distinction follows closely, though not completely, that between heterosexuals and homosexuals' (p. 24).

5.1.1.2.4 Policy arguments

In the 1980s, opponents added policy arguments to definitional objections. An early example of such arguments was that same-sex marriage would constitute a state stamp of approval on homosexuality, a situation considered lamentable at best and abominable at worst by many Americans. Also called the 'no promo homo' argument, as a policy it is widely accepted despite resting on little or no evidence (Eskridge, Spedale & Ytterberg, 2004).

5.1.1.2.5 Defence of (different-sex) marriage arguments

Since the 1990s, opponents of same-sex marriage voiced a new line of critique: that providing marriage rights to same-sex couples will undermine different-sex marriage in some way (Eskridge, Spedale & Ytterberg, 2004). Eskridge et al. (2004) argue that instead it is family law that has undermined marriage as an institution by making it easier to exit marriage and by providing civil alternatives with some of the benefits and few of the obligations in many Western countries. Furthermore, the authors assert that allowing same-sex couples - who wish to abide by the civil obligations as well as the benefits of marriage - access to marriage, does not logically undermine the institution (Eskridge, Spedale & Ytterberg, 2004). Eskridge et al., (2004) point out when opponents scapegoat same-sex marriage (or partnerships) as the 'cause' of marriage's decline, they are in fact reinforcing the actual causes of the decline, namely no-fault divorce and cohabitation rights that different-sex couples are increasingly making use of.

In this regard, Badgett (2004) analyzed data on the impact on heterosexual marriages in five European countries, of laws that cater for same-sex marriages or marriage-like partnerships. No evidence was found that giving partnership rights to same-sex couples had any impact on heterosexual marriage. On the contrary, heterosexual marriage as well as divorce rates showed no significant change after the implementation of rights for gay couples in Denmark, Iceland, the Netherlands, Norway and Sweden. Interestingly, the author concluded that because the United States provides many more incentives for different-sex couples to marry than do these European countries, the adoption of same-sex marriage or partnership laws is even less likely to impact on the status of heterosexual marriage (Badgett, 2004). Similarly, Eskridge et al. (2004) found that long-range trends in Danish and Swedish marriage rates, divorce rates, and non-marital births have either remained unaffected by the advent of same-sex partnerships or changed so as to suggest a strengthening in the institution of marriage. They conclude that registered partnerships have

had no clear impact one way or the other on the larger social and legal institutions of marriage and families with children (Eskridge et al., 2004).

5.1.1.3 Public opinion on same-sex marriage

In their study on trends in public opinion about same-sex marriage, Brewer and Wilcox (2005) found that there is a dearth of pre-2003 poll data about attitudes toward same-sex marriage.

In the United States, two National Opinion Research Center surveys yield a trend that spans 16 years. In 1988, 69% of respondents disagreed that 'homosexual couples should have the right to marry', whereas 11% agreed. By 2004, the percentage disagreeing had fallen to 54%, while the percentage agreeing had climbed to 30%. Despite this seemingly positive trend, Brewer and Wilcox (2005) conclude that a) the majority of Americans see 'same-sex marriage as undermining the traditional American family or clashing with their own religious beliefs' and; (b) a majority of citizens consistently oppose recognizing same-sex marriage (p. 600).

Polls taken in Canada in 2003 have shown its residents to be nearly 50% in favour of legalized same-sex marriage (Mofina in Alderson, 2004). The New Zealand public narrowly supported the Civil Union Bill, which was passed into law in 2005, with polls indicating around 56% in favour (Church, 2006).

5.1.2 An 'Afrocentric' position?

Since the mid-1990s and, some have suggested, following South Africa's democratisation, many African politicians, instead of directly addressing social issues such as poverty, political uncertainty, and high rates of HIV/AIDS, have instead turned to scapegoating LGBTI people. The latter flows from what might be termed an 'Afrocentric' position, underpinned by the key assumption that all non-heterosexual identities – including same-sex marriage - are an artefact of colonialism i.e. they are not and never have been indigenous to African societies. As can be seen from the following examples, the 'Afrocentric' position - often based on naturalist discourses – is a particularly extreme

articulation of the heterosexist position, which frequently meets the threshold for hate-speech.

In Uganda, a sodomy conviction carries a penalty of life imprisonment (Human Rights Watch, 2006b). Ugandan President Yoweri Museveni declared in 1999 that 'I have told the CID [Criminal Investigations Department] to look for homosexuals, lock them up and charge them' (Human Rights Watch, 2003). On 29 September 2005, Museveni signed into law a constitutional amendment banning same-sex marriage. The amendment says that 'marriage is lawful only if entered into between a man and a woman', and specifies that 'it is unlawful for same-sex couples to marry'. A parliamentary spokesperson said at the time that criminal penalties for engaging in such marriages would be imposed later (Human Rights Watch, 2007). In 2006 Museveni publicly justified state discrimination against LGBTI people on grounds that 'their actions are against the order of nature'. (African News in ASSECT, 2006, p.8). According to the American Association of Sex Educators, Counselors and Therapists (AASECT) (2006), in the same year Cameroon sentenced 11 men to imprisonment on sodomy charges

In 2006 the Nigerian army dismissed 10 soldiers for engaging in sexual acts with other men. A gathering of about 800 gay activists in Abuja in early 2006, calling for greater tolerance especially from churches, was met with the following response from Archbishop Peter Akinola of the Church of Nigeria: 'It cannot be supported by the scripture. It is against reason'. (African News in AASECT, 2006, p.8). Earlier this year a bill entitled the 'Same Sex Marriage Prohibition Act' was fast-tracked through the Nigerian National Assembly. It will impose a five-year prison sentence on anyone who 'goes through the ceremony of marriage with a person of the same sex' or who 'performs, witnesses, aids or abets the ceremony of same sex marriage'. It will also punish with imprisonment any representation or advocacy for the rights of LGBTI people. Any person 'involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationship directly or indirectly in public and in private', will be subject to the same sentence (Human Rights Watch, 2007, p.1).

In Southern Africa, consensual sodomy between men remains criminalized in Namibia, Zimbabwe, Botswana and Zambia. Robert Mugabe, Zimbabwean president, sparked off a spate of discrimination and oppression in 1995 with the now-infamous claim that ‘homosexuality is un-African’, describing it as a ‘disease coming from so-called developed nations’. Yet lesbian, gay, bisexual, and transgender people in southern Africa repeatedly affirm ‘that words exist in their indigenous languages to describe themselves. Those words may not be synonymous with “gay” or coterminous with the concept of sexuality; some of them may describe acts and not identities, or ritual functions rather than modern social roles; but their existence at least shows, people argue, that the conduct did not come with the colonial invasion’ (Human Rights Watch, 2003).

Sam Nujoma, president of Namibia, was quick to follow Mugabe’s lead stating that ‘we are not going to allow individuals with alien practices such as homosexuality to destroy the social fabric of our society’. In 1998, Zambian politicians publicly condemned the only homosexual man in the country who had dared to ‘come out’ to the media. In the same year, Botswana expanded its colonial-era criminalization of male-on-male sexual acts, to include female-on-female sexual acts.

5.2 Discourses of difference

Those authors who subscribe to discourses of difference, tend to take a supportive stance *vis a vis* LGBTI people. Included here are gendered, feminist and queer discourses, as illustrated by the human rights position.

5.2.1 The human rights position

The human or civil rights construction of LGBTI identities rests on the following assumptions, amongst others. Firstly, it is believed that all people are equal and entitled to the same rights and responsibilities (including access to marriage), irrespective of sexual orientation. Secondly, discrimination on grounds of sexual orientation / gender identity is assumed to constitute a violation of human rights.

5.2.2 Attitudes toward LGBTI people

From a human rights perspective, some of the more oppressive aspects of heterosexism have been eroded in recent years. For example, consensual sex between two adult males was decriminalised in the United States as recently as 2003, when the Supreme Court overturned state sodomy statutes (Blevins, 2005).

American psychologists' attitudes and approaches toward LGBTI people continue to improve. In a recent survey of members of the American Psychiatric Association, Kilgore et al. (2005) found that especially female practitioners are more likely to view an active 'lesbian, gay or bisexual lifestyle-identity as acceptable and non-pathological, more likely to support and provide gay-affirmative therapy, and much less likely to support changing sexual orientation through psychotherapy' (p.395). Interestingly, this more tolerant attitude of female psychologists echoes an earlier meta-analysis of gender differences which found that men in general (not only psychologists) held more negative attitudes toward LGBTI people than did women (Whitley & Kite, 1995).

Progress in terms of tolerance has undoubtedly been made since 1973 when the American Psychiatric Association (APA, 2004) issued its earliest position statement supporting gay and lesbian civil rights, along with the removal – and hence de-pathologising - of 'homosexuality from the *DSM-III*'. In 1974, the American Psychological Association followed suit, agreeing that 'homosexuality is neither a form nor symptom of mental illness' (Wynchank, 2006). In 1992, the World Health Organization removed the diagnosis of homosexuality from the International Classification of Diseases (ICD-10) (Wynchank, 2006). Today the APA's (2004) official position is in support of legislation to allow same sex marriage. However, Goldfried (2001) found that despite the growing clinical and research literature dealing with LGBTI issues, mainstream psychology has tended to ignore much of the work done in this area. Similarly, Bowers and Bieschke (2005), in their study of factors that may affect differential treatment of clients, found that some psychologists hold

inconsistent attitudes toward female clients generally, and toward lesbian, gay, and bisexual clients in particular. As an aside, they also found that female psychologists held more positive attitudes and treatment expectations than their male counterparts for clients in general (Bowers & Bieschke, 2005).

5.2.3 Legal and social policy support for same-sex marriage

The human or civil rights position rests on the central assumption that the legal institution of marriage is a basic human right and should therefore be accessible to all. In many Western countries a greater degree of legal tolerance has been shown toward same-sex couples, including change regarding same-sex unions. In a few instances such unions are equated with marriage. Some types of civil union are identical to marriage other than in name; others have the same rights as those accorded to married couples and are known as 'registered partnerships' or 'domestic partnerships'. With regard to Europe, in 2001 the Netherlands recognized same-sex marriage as equal in status to different-sex marriage. Belgium did likewise in 2003 and Spain followed suit on 30 June 2005. Since 1999, same-sex couples in France can enter into the Civil Solidarity Pact. In Germany the Life Partnership Act became effective in August 2001. On 5 December 2005 the Civil Partnership Act came into effect in the United Kingdom (Church, 2006). Portugal, Switzerland, Scotland and the Czech Republic are considering legislation that would legally recognise same-sex unions (Taverner, 2006).

In the Scandinavian countries, Registered Partnerships acts include those in Denmark (1989); Norway (1993); Sweden (1995); Iceland (1996) and Finland (2002).

Church (2006) notes that between mid-2003 and mid-2005 courts in eight Canadian provinces extended marriage to include same-sex couples. Interestingly, this policy decision was supported by the Supreme Court, legislature and prime minister with practically no public opposition (Hausknecht, 2003). In the United States of America, legal recognition and regulation of same-sex relationships has been generally conservative. Notable exceptions are Hawaii, Alaska, Vermont which allow registration of same-sex

partnerships and Massachusetts, where same-sex marriage is legal (Church, 2006).

The Civil Union Act in New Zealand has been described as almost identical to the Marriage Act with ‘marriage’ replaced by ‘civil union’, was passed by sixty five votes to fifty five. Similarly, the New Zealand public narrowly supported the Bill with polls indicating around fifty six per cent in favour (Church, 2006).

5.3 Ambivalent discourses: LGBTI people’s views on same-sex marriage

In the United States, a poll conducted by *The Advocate* (a gay rights publication) in 1994 revealed that almost two-thirds of the gay men polled wanted to marry, with 85% open to the idea and only 15% not interested (Gerstmann, 2004). A similar poll of lesbians in 1995 also revealed strong interest in getting married. Not all LGBTI people view marriage positively or wish to marry (Gerstmann, 2004). Eskridge (1996) sums up the debate succinctly by asking: ‘Is same-sex marriage something the gay rights movement should seek? Should it be a priority?’ (p.51). The debate over whether campaigns in support of same-sex marriage are transformative of mainstream discourses and institutions or constitute the normalization and assimilation of difference remains unresolved (Baird, 2006).

5.3.1 The radical versus assimilationist positions

Within the LGBTI community, those who support legalizing same-sex marriage are said to subscribe to an *assimilationist* position, while those who oppose it are known as taking a *radical* position (Yep, Lovaas & Elia, 2003). The radical position opposes the legalizing of same-sex marriage. Some of the key assumptions underlying this position include the belief that non-heterosexual identities are socio-politically radical precisely because they challenge heterosexist norms. It is also assumed that marriage, as a heteronormative institution, is fatally-flawed. And lastly, participating in legal marriage is assumed to undermine the more liberating and egalitarian possibilities inherent in lesbian relationships.

Rather than representing discrete perspectives, the feminist and radical positions are perhaps best thought of as points on a continuum. While the former foregrounds feminist objections to the patriarchal aspects of marriage, the radical position emphasizes queer perspectives.

At the opposite end of the spectrum is the assimilationist position, which supports the legalization of same-sex marriage. Some of its key underlying assumptions include the belief that same-sex marriage provides a vehicle for LGBTI people to assimilate into mainstream society. It is also assumed that participating in same-sex marriage provides an opportunity to build new, egalitarian and non-patriarchal models of marital relationship.

The call for full and equal recognition of same-sex partnerships has forced LGBTI communities to examine the nature of their demands. This has sometimes led to conflict, at the heart of which lies a difficult choice for 'lesbian and gay people: "equality" on society's terms, or continued marginalization' (Cameron in Wintemute & Andanæs, 2001, p.v). This question highlights both the assumption that participating in legal marriage forecloses on more liberating possibilities and the opposing assumption that same-sex marriage provides a vehicle for assimilation. Concerns remain regarding on whose terms and on what basis recognition is to be gained. Are same-sex relationships to be recognized only if they conform in all respects, except for the gender of our partners, to traditional heterosexual marriages? Ironically it is the debate itself which holds the potential to transform heteronormative discourses regarding marriage. For many the focus is shifting to asserting an entitlement to self-definition and autonomy, along with calls for the legal regulation of intimate relationships to move away from the marriage model and instead embrace a functional model which takes account of the unequal power relations in intimate relationships (de Vos, 2004).

John D'Emilio (2006), prominent gay rights writer and activist in the United States believes, for example, that the campaign for same-sex marriage has done significant harm to gay rights, has catalysed a slew of anti-gay legislation and

runs counter to historical trends. Others, like LaSala (2007), call for a more vociferous critiquing of the privileges associated with (different-sex) marriage, especially the economic privileges such as health insurance, social security, lower taxation and inheritance advantages. They argue that marriage is not the only worthy form of family or relationship, and should not be legally and economically privileged above all others (Ash & Badgett, 2006; LaSala, 2007). Particularly in view of the fact that the proportion of Americans who marry each year has dropped by 50% since the 1960s, while the proportion of marriages that end in divorce has risen by 50% (Whitehead & Popenoe, 2004). Such critiques clearly illustrate the assumption that non-heterosexual identities are socio-politically radical and challenge heteronormative discourses.

5.4 Conflicting discourses: a South African example

The fact that the South African Constitution (Act 108, 1996) is the only one in the world that prohibits discrimination on grounds of sexual orientation is even more remarkable when one considers the country's long and as yet unwritten history of the 'repression and regulation of sexuality by the apartheid state during its 40-year hold on power' (Retief, 1994, p.99). South African law's approach to LGBTI people, prior to 1994, was to punish and to exclude (Cameron, 1994). While sodomy was a criminal offence until 1998, like elsewhere in the world, sexual acts between two women were not criminalised. Even though South Africa's repressive apartheid-era laws regarding sexual matters were seldom enforced, they nevertheless created misery and fear and had the effect of reducing LGBTI people to the status of 'unapprehended felons' (Mohr in Cameron, 1994).

However, despite radical legal and policy reform since democratisation, opprobrium toward non-heterosexual identities remains widespread and reflects the ideological and cultural Judeo-Christian hegemony (Mosikatsana, 1996). Writing almost a decade later, Parsee (2005) concurs, stating that 'attitudes toward LGBTI people have generally been negative in South Africa' (p.239). While the ruling African National Congress, opposition party and many churches have welcomed the new legislation, public opinion surveys have documented that the majority of South Africans remain uncomfortable with

non-heterosexual identities. Traditional leaders have publicly derided homosexuality as 'un-African'. Zulu King Goodwill Zwelithini has also accused homosexuals of confusing children and tarnishing the image of the Zulu nation (Wynchank, 2006). Reid and Walker (2004b) hold that attitudes towards sexuality reveal wider social anxieties and tensions as evidenced in the southern African region 'in fierce public contestations about HIV/AIDS, gender-based violence and homosexuality' (p.79). Given the historically strong 'homophobic bias in law' (Mosikatsana, 1996) it is ironic that South African courts have led the way in terms of challenging oppressive legal discourse and towards creating an environment where LGBTI people are treated equally.

South Africa is also only the fifth country – and the only one on the African continent – to recognize same-sex marriage. But the picture is rather more complex than the post-1994 legal reform and social policy process may lead one to believe. Public opinion on same-sex marriage is divided. On the one hand there is some evidence of growing acceptance of LGBTI relationships, for example in the inclusion of positive representations of LGBTI characters in popular daytime television programmes. On the other there is growing opposition led, as one would expect, by religious groups (Parsee, 2005) as well as 'an increase in gender-based violence and homophobic attacks' (Reid & Walker, 2004a, p.177). For example, Zoliswa Nkonyana, a 19 year old lesbian, was murdered on 22 March 2006 by a mob in Khayelitsha, a Cape Flats township. Despite constitutional protections, lesbians in South Africa continue to experience assaults on their human rights. Summing up the paradox of South African attitudes, Jessica Stern, researcher for Human Rights Watch's Lesbian, Gay, Bisexual and Transgender Rights Program notes that:

Lesbians in South Africa face abuse and violence simply for not fitting social expectations of how women should look and act. Ten years ago, South Africa enacted the world's first constitution to protect against discrimination based on sexual orientation. Today it's both tragic and telling that Zoliswa Nkonyana still could not be safe in her own neighborhood. (Human Rights Watch, 2006a, p.1)

This chapter has attempted to elucidate a number of stances or positions taken up in relation to discourses which emerge from the literature on LGBTI people and same-sex marriage. It has also sought to make explicit the assumptions underlying these positions. It has been shown that despite significant gains worldwide, LGBTI people face prejudice everywhere (Yen et al., 2006) and live ‘under a cloud of pervasive social homophobia and legal disability’ (Eskridge, 1996, p.180). In South Africa the tension between competing discourses has been foregrounded by the recent legislative changes legalizing same-sex marriage. While the new constitutional dispensation in South Africa has elevated the discourse of equality, the discourse of prejudice prevails and attitudes toward same-sex marriage remain largely negative.

6 Conclusion

6.1 Overview

This study sought to explore the discourses in the literature regarding same-sex marriage and their underlying assumptions. Emphasis was placed on highlighting how researchers assume particular socio-political positions in their constructions of lesbian identity and same-sex marriage.

Chapter 2 sought to trace the historical evolution of the concept and institution of marriage. A compelling reason for providing such an overview is that it throws light on the socially constructed nature of a concept we might otherwise assume is fixed. A legal-historical account foregrounds how understandings and meanings of marriage have changed over time, thereby revealing its fluid nature and opening up the possibility that it does not have to continue to be thought of in traditional ways.

Exploring and acknowledging the dynamic nature of marriage illustrates that while marriage was exclusively heterosexual *de jure, de facto* the situation has always been more complex. ‘Marriage’ is a term often used but seldom questioned. What if a marriage is not a marriage or at least not a marriage as we

know it? In a religiously and culturally diverse society such as South African, for example, our understanding of marriage is no longer framed solely in terms of Judeo-Christian values (Williams, 2004). Developments in many countries in recent years have challenged and recreated both the meanings and forms which marriage can assume. It is no longer of necessity a monogamous union between one man and one woman. Steyn (2003) articulates four interlinked factors which underlie such social change: first, the dynamic nature of marriage and family in modern law and society; second, the international trend towards legal pluralism; third, the process of globalization which brings us into constant contact with other legal systems; and fourth, the increased mobility of people across borders, partly as a result of globalization.

Chapter 3 outlined social constructionism, the theoretical point of departure for the literature review, as well as its application through the tool of discourse analysis. In seeking to shed light on the apparent tension between lesbian identity and marriage, the socially constructed nature of marriage, sexuality, gender and sex was investigated. In an effort to understand the complex and ever-evolving social processes of meaning-making, the role of power, heteronormativity, sexual citizenship and sexual discourses was also explored.

Chapter 4 revealed that research on lesbian marriage is almost nonexistent. This is perhaps not surprising in view of the fact that legally recognized lesbian marriage became a reality – initially in the Netherlands - only sixteen years ago. However, women have partnered one another in intimate relationships of many different forms since time immemorial (Faderman, 1981; Eskridge, 1996). Given the paucity of data on lesbian marriage *per se*, this chapter sought to elucidate the key assumptions which underlie research on intimate relationships between women.

The fifth chapter has endeavoured to show that the recognition of same-sex marriages is part of a larger human rights debate globally over whether governments ought to provide completely equal treatment for their LGBTI citizens. It provided an overview of general attitudes, legal and social policies regarding same-sex marriage which, despite some gains in the last twenty years,

remain overwhelmingly negative. It also sought to articulate a number of positions that researchers take in relation to same-sex marriage, such as assimilationist versus radical, and proposed an 'Afrocentric' position.

A strong theme that has emerged through the literature review is the ambivalence with which marriage is viewed by lesbians. There is a spectrum of positions with regard to same-sex marriage, both for and against. Opponents include feminist rejections of the institution of marriage as patriarchal and therefore fundamentally flawed (Eskridge, 1996). Other opponents include queer critiques of marriage as a heteronormative institution. Also called the radical position, such critiques articulate political objections based on an understanding of legal 'recognition' as synonymous with state 'regulation' (Card, 2007). The feminist and radical positions most clearly illustrate the disjuncture between marriage as a construct and the notion of lesbian marriage. Here these constructs do not 'talk' to each other: there is no overlap, no engagement and the interface between them can best be described as fractured. Ironically, such opponents find themselves in the same anti same-sex marriage bloc as the heterosexist and virulent 'Afrocentric' positions, albeit for very different reasons.

At the other end of the spectrum are the assimilationists, who view marriage as inevitably an assimilation of difference to the norm (Johnson, 2002). Lesbians who do wish to marry most often cite as their reasons, variations on the theme of legal marriage as a vehicle to deliver equality, both in terms of material benefits (e.g. financial) and non-material benefits (e.g. greater acceptance and cultural legitimacy of same-sex relationships) (Hull in Levitsky, 2006). It is the law's perceived symbolic power to legitimize, normalize and equalize same-sex relationships that is sought by supporters - on the one hand, and feared by critics of the legal recognition of same-sex marriage, on the other.

It is in the assimilationist position where one can perhaps most clearly see the overlap between marriage as a construct and how lesbians construct their relationships. The apparent tension is solved by lesbian's rejection of the heterosexist elements of marriage, such as traditional gender roles and their

associated power differentials, on the one hand. And their acceptance of many of the institutional elements, such as material benefits and the legitimising power of legalisation, on the other. It is this creative interface that further underscores the intricate social processes whereby the meanings ascribed to marriage continue to evolve alongside changing social contexts.

It is clear that the meanings that lesbians construct around marriage and their own sexuality do not arise in a social vacuum, but instead are shaped by biographical, community, occupational, interpersonal and other influences. Historical, definitional, legal and practical changes suggest that interpretive frames open and close over time as people encounter new ideas and have new experiences.

The issue of same-sex marriages has been highlighted in a plethora of court cases around the world and has been used in especially American national political campaigns to energize conflicting political and social forces. Such forces of social change project polarizing views of modernity, social values and of civil society. Changes in the structures and functions of marriage symbolize critical influences on how we wish to define one of the most basic forms of human relatedness.

This literature review has attempted to explore in what ways the literature itself solves the tension between marriage as traditionally heterosexist and lesbians' construction of their own identity in the context of intimate relationships, namely lesbian marriage. In an attempt to understand what ideals, images and notions of marriage structure the literature itself, a number of positions that researchers tend to take *vis a vis* marriage have been identified. Given the lack of reflexivity which characterizes much of the literature, one of the goals of a discourse analytic approach is to make such positions and assumptions explicit. Underlying assumptions have been explored so as to understand more fully how these two apparently paradoxical constructs interface with one another. While such a strategy highlights the disjuncture - between marriage as a construct and notion of lesbian marriage - embodied by the feminist and radical positions, it also begins to make visible a middle ground. We are able to see that the

assimilationist position perhaps best provides a space where these two constructs can be made to engage. The assimilationist position allows for a redefinition of marriage, thereby opening up possibilities for lesbians to imagine new, less scripted and more egalitarian forms of marriage.

6.2 Limitations of the current study

The current paper cannot be considered a comprehensive review as it was limited to research published in English. Studies forthcoming from Australia, Canada, Denmark, Norway, South Africa, Sweden, Taiwan, the Netherlands, the United Kingdom and the United States were reviewed. A key limitation of this literature review is therefore its heavy reliance on American research, which comprised 60% of the articles reviewed. A significant gap exists with regard to the African (except South African), European, Asian and South American engagement with the same-sex marriage debate. Furthermore, while it has sought to identify the most prominent discourses that exist in the literature, an in-depth discourse analysis seeking to understand the mechanisms whereby power imbalances are perpetuated has not been undertaken.

6.3 Future research

Much research has been carried out in South Africa and internationally on the evolution of the institution of marriage. However, in general it would appear that most aspects related to the more recent possibility of marriage for lesbian couples is a relatively embryonic field of enquiry. Questions such as: 'Are lesbians willing to conform to traditional views of marriage? Is it a viable alternative for lesbian couples? Might lesbians wish to create new norms around marriage? How is lesbian identity to be normalised within this new relationship possibility? And what are the factors that are likely to inform the way in which they engage with the possibility, one way or another?' remain unanswered. Finally, recognition and acknowledgment of researchers' social, political and cultural contexts seems essential to understanding the discourses that underlie attempts to investigate these questions.

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