Rising Above Identity Politics: Sexual Minorities and the Limits of Modern Recognition

Lucien Carrier (University of Glasgow)

If the raison d'être of social movements is to bring about (social) change, then it follows that the success of such movements must be gauged against the changes they have brought about. Gay movements in the West have often relied on a strategy based on identity politics, that is to say the movements have framed political claims for social change through the affirmation of a previously marginalized identity. Put differently, strategies based on identity politics are used by minorities to demand acceptance into society through the normative revaluation of the social value attached to their group's defining identity category; a claim is made so that a given group is seen more positively by other groups in society. The legal recognition of a group's identity is an important part of this legitimizing process, hence the focus of gay movements on equal rights. The strategy of demanding the social and legal recognition of sexual minorities though the affirmation of a gay identity, far from fostering emancipation, has entrenched and masked relations of domination within Western society. I will firstly argue that movements that have focused on achieving equal rights have not led to sufficient substantive change, by showing that equal rights have not brought emancipatory change to sexual minorities and have, on the contrary, reinforced structures producing exclusion. Still, while gay movements have failed to bring about substantive social change through the strategies they have used thus far, it can nevertheless be argued that activists should not entirely abandon strategies based on identity politics or even the very concept of identity, as some Queer theorists have suggested. In the second part of this paper, I will defend the idea that both identity and processes of recognition are strategically useful to advance emancipatory claims but that they have, until now, been MI conceptualized. I will show that within the paradigm of modernity, both have become regulatory tools; tools conducive to the retention of present (and oppressive) social structures. Thus, to reinvigorate emancipatory change, I argue for a new understanding of both concepts. This requires us to reorient our goals towards the contestation of current power relations, instead of seeking unconditional acceptance within society.

Keywords: Critical theory, minority studies, legal theory, recognition, postmodernism

Introduction

The emergence of a gay social movement in the West is often attributed to the Stonewall Riots of 1969 (Schiller, 1984).[1] After another unjustified police raid at a famous gay bar in downtown New York, drag queens, gays, and other sexual 'deviants' revolted against the institutional repression of their sexual identity. By taking to the streets, they affirmed their difference to the world and demanded respect for who they were. Strategies such as this, which are based on identity politics, are still prevalent, albeit contested, within gay movements throughout the West. Social movements represent an alliance of loosely bound individuals who primarily agitate for social change (Stammers 2009, p.131-139). When talking about a gay movement, I

[1] I would like to particularly thank Dr. Anderson for his constant help and support.

thus refer to a collective affiliation that is united both by a common interest – improving the social status of gay people - and a subjective feeling of belonging – a shared (sexual) identity.

The question of strategy is central to any social movement. How to bring about change? From the 1970s onwards, gay movements have relied on a strategy based on the concept of identity politics. As a strategy, this is more than an exclusive political alliance based on identity categories – such as race, gender or sexual orientation. Social change is sought through the *affirmation* of a group's identity. In other words, the acceptance of gay people within society through a strategy based on identity politics implies a demand for the normative revaluation of their previously marginalized sexual identity. The famous slogan 'Gay is OK' or the recourse to Gay Pride marches are good examples of a strategy that considers that the acceptance of individuals requires the recognition of their identity. Gay movements in Europe have used various strategies, particularly when framing legal claims. For example, the argument for the decriminalization of homosexuality before the European Court of Human Rights in the 1980s (Dudgeon v. UK 1981; Norris v. Ireland 1988) was one that rested on the legal concept of privacy; the freedom for adults to engage in consensual sex behind closed doors. Social stigma could still be attached to homosexuality: freedom was not granted out of respect for gay identity, but out of a universal principle to which every human is entitled. In this example, social change was brought about without resorting to arguments about identity. A strategy based on identity politics, for the purpose of this essay, is understood as a medium for change based on the normative affirmation of a collective identity with the aim of achieving acceptance within society.

The strategy of demanding the social and legal recognition of sexual minorities though the affirmation of a gay identity, far from fostering emancipation, entrenched and masked relations of domination within Western society. What if, while equal in law, sexual minorities remain oppressed? This question relates to the issue of whether a strategy of identity politics is able to foster *substantive* (or transformative) change, that is, a change profound enough to extensively restructure a given system (Cornell 1993). Thus, although equal legal rights constitute an objective change, one may wonder whether they can restructure our current social system.

The first part of this essay will briefly summarize two relevant critiques that relate to intersectionality and the normative dimension of identities. In the second part I will argue against abandoning a strategy of recognition of identities and call instead for a reconceptualization of the concepts of identity and recognition, and an understanding of them as tools for social contestation as opposed to tools for mere acceptance through legal and non-transformative social change. To conclude, I will link my observations to Boaventura de Sousa Santos' analysis of the paradigm of modernity and ask whether social contestation should be brought against that very paradigm in order to achieve transformative change.

I – An exclusive inclusion: the failure of identity politics

To a certain degree gay movements in Western Europe have succeeded in achieving equal rights for sexual minorities. Although such changes must be acknowledged, the benefits they have brought should not conceal remaining social relations of domination and exclusion. This section will briefly expose two major issues that strategies based on identity politics have either left unaddressed or have even exacerbated. The first relates to a certain lack of intersectional

awareness while the second involves the perpetuation of oppressive and reductive sexual categories. The intention of this section is to establish the shortcomings of a strategy based on the *acceptance* of difference through the affirmation of sexual identities and the lack of structural change as a result.

Intersectional studies have been a fashionable field of research in feminist and anti-racist academia for the past twenty years. In short, it represents the idea that our multiple identities intersect, and so do the privileges and injustices associated with them. The result is not a mere addition or subtraction of advantages and disadvantages which would follow a linear thread. The resulting oppression can be exponential (powell 2014, p.151). For example, a black lesbian can face prejudices on three distinct accounts: because of her race, her gender and her sexuality. A strategy based on identity politics seems to overlook these issues by ignoring factors other than sexual identity. The *raison d'être* of gay movements is to change the situation for gay people in society solely by demanding the acceptance of their sexual identity. Such a strategy implies that the gender, race or social status of gay people is irrelevant since only their sexual orientation matters. Therefore, gay rights movements which adopt a strategy based on identity politics accept the compartmentalization of individual identities and disregard the impact other prejudices may have on gay people's lived experiences. The consequences of such a lack of intersectional awareness are far-reaching.

Politically, it suggests that when the struggle for sexual rights is over, then the 'job is done'. There can be sympathy towards other minorities, but it remains a secondary purpose: the demand for change is thus not far-ranging enough. A strategy centred on identity politics is focused on removing hindrances to political participation based solely on sexual orientation (Fraser & Honneth 2003). This implies that when those hindrances to political participation are removed, sexual orientation is no longer considered a source of prejudicial treatment. According to this logic, a black lesbian would now only face prejudicial treatment related to her gender and her race. This is problematic on two counts. Firstly, because it leaves to other movements the duty of addressing other forms of exclusion – which constitutes in itself a refusal to engage with the structural causes of exclusion. Secondly, it removes incentives for the privileged members within a given group to act in the interests of the marginalized. If sexual orientation no longer binds different groups demanding social change under the common experience of a sexuality-based prejudice, then once prejudice against sexual orientation is removed a white gay man becomes a member of the most privileged group in Western society: white men. That man could then perfectly assert his dominance against other minorities and militate for their further oppression. The examples of 'Gays with Trump', or the appeal of the far-right party 'Front National' to the gay electorate in France (Chrisafis 2017) demonstrate that the lack of intersectional awareness in gay movements has led to – or at least left unaddressed - the marginalization of others, particularly Muslims. For example, in the Netherlands, the portrayal of Islam as a threat to gay rights is an argument used to justify Islamophobia among sexual minorities (Jong 2015). The fragmentation of struggles for social emancipation implies estrangement between different movements and different communities.

For the individual, the compartmentalization of identities means the sometimes difficult balancing of the different social values attached to one's constituent identities. In a very interesting article, Renee McCoy (2012) surveyed a sample of American black men who identified as gay and asked them about what it meant for them to be black gay men. The results

showed that not only did they identify with 'traditional cultural beliefs of American society about gender' (2012, p.204), but also that they are far from 'removed from identification with traditional role designations' (2012, p.209). McCoy argues that during the interviews these individuals were attempting the difficult exercise of balancing and making compatible traditionally antagonistic social values attached to their respective identities. This demand for *normalcy* is striking; the interviewees seem to seek integration within existing structures, structures which define their relation to gender, masculinity and sexuality; they also renounce the opportunity of contesting them. A plausible interpretation of this trend could be that the individual is defined by a sum of, sometimes contradictory, characteristics that are articulated separately depending on the social value attached to them. The tricky point then is to articulate them in a way where they will be compatible: a traditionally masculine man, who happens to be attracted to other men, and who is also black.[2] When identity is fragmented in this way, there will always be marginalization precisely because there will always be identities and characteristics that clash with one another. For example, if gayness is considered to be compatible with traditional masculinity, without altering the meaning of either masculinity or gayness, then camp gay men remain necessarily somewhat excluded. The addition of letters to LGBTIQA+ is symptomatic of this endless attempt. It shows that a strategy based on a politics of identity where identity is understood as fragmented cannot, structurally, bring about substantive, transformative change. It may bring about *less* inequality but the underlying issues will never be resolved.

As we have seen, the lack of intersectional awareness in gay movements has consequences at the levels of political action and individual perception. The uncritical upholding of the fragmentation of the individual into a sum of separate identities showcases a clear refusal to engage with social structures, that is, with the sources of power producing the current social organization.

I will now show that the affirmation of a gay identity by gay movements has led to a de-radicalization of demands for change and has, instead of asserting difference, fostered indifference. Acceptance is often associated with tolerance (see Boswell 1980 pp.3-61). It is commonly held that a just society *tolerates* difference, and tolerance may be based upon the basis of religion, humanity or any other universal principle (see Todorov 2008, pp.31-46). The acceptance of gay people in society is concomitant with demands for a tolerant society. The recognition of an 'international day against homophobia, transphobia and biphobia', for example, is systematically followed by repeated appeals to tolerance. And yet, such a concept is not necessarily free from oppressive tendencies. This trend can be understood as it concerns other forms of social oppression. Ratna Kapur, basing her analysis on colonial India, explains that tolerance is a cause of concern 'as it becomes a device for social and political control rather than empowering the groups being tolerated' (2010, p.42). She argues it was used to deny 'full legal equality to the natives while also managing their claims for greater recognition and empowerment'. Thus, difference remains 'threatening or toxic' (2010, p.42). From a feminist

[2] This echoes some definitions of race, for example '[it is] first and foremost an unequal relationship between social aggregates, characterized by dominant and subordinate forms of social interaction, and reinforced by the intricate patterns of public discourse, power ownership and privilege within the economic, social and political institutions of society' see Marable 1995, p.186.

perspective, Wendy Brown adds that tolerance becomes a compromise, allowing for tolerated subjects to be included in society, while remaining defined and subordinated by their perceived and repulsive difference (2006, p.28). Both arguments highlight two problems that come with tolerance: firstly, that tolerance is about accommodation and secondly, that it implies the acceptance of an established relation of domination. A tolerant society is one where the mob *refrains* from acting in accordance with the status quo of the present structures of domination. A sexually deviant subject is accepted into society solely because others refrain from excluding them. Not only is the concept of tolerance slightly contradictory vis-à-vis politics of affirmation, it also precludes substantive social transformation by focusing on managing unrest. Since the daily experience of sexual minorities will be somewhat improved, objectively, thanks to tolerance, then a form of de-radicalization necessarily follows. Accommodation removes the incentive for rebellion. The Stonewall riots, for example, would probably never have happened had the police been tolerant of gay people. Even though gay people would have suffered less at the time, without those riots, perhaps there would have never been an organized gay movement, and thus change would have never occurred. De-radicalization is a necessary consequence of tolerance, and without a certain form of radicalism there can be no change. Here emerges the second problem. If tolerance precludes substantive social transformation, then tolerance entrenches current social relations. There can be minor alterations, which would translate into less (or less direct) oppression. But fundamentally, relations of domination would stay unchanged: the dominant faction will keep their dominant position, as will the dominated. In colonial India, tolerated Indians were given a better status in terms of their relations with the British, but they remained fundamentally dominated. Similarly, a gay subject may gain a better social status thanks to tolerance but, *in fine*, they will still be considered a more-or-less negative deviation from the heterosexual norm. Thus, at once, tolerance prevents real change and reinforces relations of domination.

One might argue that tolerance is not necessary for a politics of acceptance. But identities themselves form a statement about what we deem, both individually and as a society, important. That is the normative side of an identity: it does not neutrally define us. Hence, the affirmation of a gay identity represents a normative,[3] and thus potentially oppressive, statement. Inquiring into such a statement means asking how our understanding of gayness, our desires or even our idea of happiness are constructed. This is to over-simplify the complexity involved in the process of identity-formation (see Bellah *et al.* 1985) but there is also another level of analysis where gay identities are inclined to conform to 'heteronormativity' (about heteronormativity, see Warner 1991). In this respect, Sara Ahmed eloquently analyzed the 1996 TV show 'If these walls could talk' (2010 p.109-110). The series starts with an aging lesbian couple in the 1960s. One of the women dies in hospital and the surviving partner is dismissed as merely a 'friend'. In the 1990s, another lesbian couple is trying to procreate and form a family, signifying, according to Ahmed, how their happiness is linked to heteronormativity, to reproduction and integration. She claims that the recognition of sexual minorities involves 'compliance with the terms on which happiness is constructed' (Ahmed 2010, p.110). Ahmed makes a very important point by introducing a notion of control. By taking the example of a popular TV show, she highlights that the equality and freedom that sexual minorities are fighting for is

[3] Normative in this context should be understood as 'ideology' see Gavin Anderson 2008, p.133.

itself derived from a normative set of values, and is thus far from neutral. Gay subjects are subtly pushed to understanding their emancipation in terms of mirroring heterosexual norms. From this perspective, sexual minorities are not accepted based on their difference but on the contrary, based on their compliance with certain social values. Therefore, pursuing equal rights without remaining critical of the reasons why equal rights are being pursued is indicative of a refusal to seek transformative change: acceptance is a result of the normative transformation of sexual minorities and not of social structures. It could be argued that this trend is unproblematic. After all, if sexual minorities get to be happy, why should we inquire into the genesis of such happiness? The issue lies with the fact that if, normatively, sexual deviances and heterosexuality are conflated (to the benefit of the latter) then what is the point of identifying as gay? It is not uncommon nowadays to hear gay activists praise this indifference towards sexual orientation as a sign of social progress (Stone 2016). But such indifference is extremely problematic because it necessarily entails that deviant sexualities become apolitical. Judith Butler explains that an objective difference has no value besides the subjective understanding that this difference is meaningful (1990, p.149). She takes the example of gender and wonders why sex divides humanity in two instead of, say, eye colour (Butler 1990, p.149). According to Butler, to give subjective value to any difference always entails a political choice.

For sexual minorities, indifference means that sexual orientation is no longer attached to a political value: sexual orientation becomes an objective difference that is no longer of relevance. Thus indifference implies that the terms on which sexual orientation is constructed – which are, as we have seen, constructed in relation to, and to the benefit of, a dominant heteronormativity - become undisputable since they are made apolitical. This is why, for example, feminist scholars have contested the essentialization of gender binaries by politicizing the male/female divide (Hunter 2013, p.13-30). Indifference removes the grounds for social contestation and, thereby, it actively promotes the *status quo*. The uncritical affirmation of an identity which fully mirrors dominant sexual patterns results in the negation of meaningful differences and, therefore, results in renouncing social change. As mentioned above, meaningful change is where the systematized distribution of social roles and attributes is profoundly altered. So far, while the changes brought about by gay movements are important, they are merely *corrective* in that they tend to simply result in (at best) a better version of the current system. They do not sufficiently question the validity of the system itself. Such questioning is necessary in order to produce significantly different outcomes.

This section has highlighted two major issues that demonstrate the failure of gay movements to achieve substantive, transformative change. The legal recognition of sexual minorities through the obtaining of certain equal rights has led to their partial acceptance within society. However, such acceptance simultaneously implies renouncing the aim of radically transforming society: change was acceptable only to the extent that social structures, those mechanisms producing exclusion, remained untouched. This explains how some gay associations can openly militate against the integration of other groups and how racism and misogyny can still be prevalent within a gay community. The lines defining exclusion have indeed been displaced, and as a result sexual minorities, to a greater extent, are not excluded on the basis of their sexual orientation *per se*; but those very lines, and the production thereof, still apply, albeit differently. Gay movements failed to bring emancipatory change precisely because they failed to meaningfully contest oppressive social structures. This result cannot be

acceptable for those insisting on being progressive. The next section will address ways in which to move forward.

II – Contesting Modernity: a renewed recognition of sexual identity?

As the previous section argued, gay movements in the West have not brought about substantive social change. To a certain extent, gay rights movements even precluded further transformative change through enabling an attitude of indifference. From a strategic point of view, then, what can progressive activists do? In this section, I will show that despite these issues, entirely doing away with the concepts of identity and recognition would be a mistake since both can prove useful in creating much-needed momentum. I will use different theoretical frameworks to explain that activists should focus on *processes* as opposed to *outcomes* in order to avoid the potential for oppression inherent to a strategy built on the concept of identity politics. I will argue that such processes involve prioritizing the contestation of structures and thus political struggle over acceptance within society. Finally, I will consider the value of applying Santos' broader critique of modernity to the context of the recognition of sexual minorities, as it seems to both help us understand the difficulties which the identity-based approach encounters, and also sketch the beginnings of an alternative approach to gay activism.

The first part of this essay considered the notion of a gay identity as inherently oppressive or, at the very least, unable to bring about substantive change. From the 1990s onwards, an important and eclectic intellectual movement branded under the umbrella term of Queer theory elected to reject the concept of a gay identity. As a strand of post-structuralism,[4] Queer theory defies definition, not least because Queer theorists themselves are often in deep disagreement about both the nature and the goal of their loosely affiliated movement (Morgan 2001, p.208-225). Put in the simplest terms, Queer theorists have demonstrated, using deconstructive methods, the socio-historical contingency of sexual norms. Queer theorists have, more often than not, remained extremely critical of sexual identities, perceiving them as a tool for social control (Stychin 2005, p.90-109). They suggest moving beyond identities in order to promote the idea of a Queer subject – who is unstable and indefinable. This summary does not do justice to the complexity of Queer theory. Although theoretically extremely rich, particularly in its understandings of processes of identification, Queer theory failed to generate momentum. It did not create or sustain a radical wave capable of influencing mainstream politics beyond intellectual circles. Queer theory has been unable to seriously challenge the conceptual ubiquity of identities within social movements. In a particularly stark example, the overall focus of Western gay movements in recent years has been to achieve the legal recognition of gay marriage, and this has been despite over twenty years of criticism from Queer theorists. In France in 2013, in the UK in 2014 and in the U.S. in 2015, gay movements have overwhelmingly sought and celebrated the legalization of same-sex unions.

Critical activists are then faced with a serious issue: Queer theorists may have developed relevant theories, but these cannot take hold in mainstream movements. On the other hand, the concepts of identity and recognition, central to a strategy based on identity politics, may be seriously flawed but are capable of creating momentum within our societies; it seems we cannot

[4] A constructivist philosophical movement which emerged in France in the 1960s in reaction to structuralism, see Jacques Derrida 1972.

imagine or produce social change without them. If the inherent problem with a strategy based on identity politics is that it entrenches a different while perhaps gentler form of oppression, the question to be asked is whether a non-oppressive identity is possible. Put differently, is the potential for oppression within a strategy of identity politics structural or contingent? If it is structural, then a politics of emancipation would necessarily have to abandon the conceptual use of identities and look for other ways to generate momentum. If, however, it is merely contingent, then the issue is to find ways to produce non-oppressive identities. This second approach entails thinking about identities differently. My intention is not to revolutionize identity scholarship within this short paper. My aim is far more modest: I merely wish to open doors that might lead, eventually, to new answers. I suggest that approaching a non-oppressive gay identity requires rethinking the focus of gay rights movements in two consequential ways: from outcomes to processes and thus from acceptance to contestation.

When I talk about refocusing gay movements towards processes as opposed to outcomes, I simply suggest putting the 'how' before the 'result'. If a group is trying to further a result, it means that this group has already defined the terms under which they want to live. It means that they accept, uncritically, the way in which their result has been produced. The oppression that derives from a gay identity, as discussed in the previous section, stems from this primacy of the result. What do gay movements want to achieve? They want acceptance and inclusion. They want their gay identity to be valued and respected. Structural oppression appears because individuals need to comply with rigid parameters – they need to fit within the knowable identity they are labelled (and labelled themselves) with – and because the power relations that have produced those circumstances are unaltered.[5] Simply put, gay movements cannot move away from an unsatisfactory point A if, in order to get to B, every characteristic of A remains unaltered. If processes are given primacy, however, it means that outcomes remain unknown. Nobody can tell what will be the end point of gay movements. All that can be known are ways to achieve a less oppressive result, and that is by contesting the sources of power that have produced current injustices. The 'how' implies reclaiming those sources of power and producing different, less oppressive situations. Perhaps identities will eventually disappear and thus there will be no need for inclusion because there will be no differentiation. This ignorance as to the outcome is not a proof of some theoretical lacunae but is, on the contrary, indication of a collective process of thought which evidences a real move from A to B. As put by Daniel Tyradellis, an ignorance conscious of itself is a precondition of the act of thinking (2012, p.8-9). What would be the point of thinking collectively if the answers were known before the act of thinking? Focusing on processes has the potential for producing non-oppressive outcomes because it does not impose a given framework – since that new framework is construed collectively – and especially because it can confront the very reasons/structures that led to oppression in the first place.

A refocus on processes will obviously have deep consequences for what we understand as identity. Queer critiques can potentially coexist with this reworked concept of a gay identity. The momentum generated by the idea of a gay identity and the strategy of affirming such an identity can work if we redefine the goals of such a strategy. If our attention is drawn back to processes, then the gay identity we are referring to is not a pre-existing one to be accepted by

[5] See generally Michel Foucault 1995.

society but is one that will be *formed* in that very process. Thus, while refusing to deny the strategic importance of a gay identity for social change, activists can substantially diminish its oppressive potential by reconceptualizing identities as an always-becoming. In this respect, the work of Elisabeth Grosz is particularly relevant. A critical feminist, she developed a Nietzschean-inspired theory of the subject where she refuses to understand subjecthood as a permanent or stable state, but rather as a never ending process. She argues that (2005, p.167-168):

> [I]t may be time for feminists to seek instead what I understand as a politics of the imperceptible, which has its effects through actions, but which actions can never be clearly defined with an individual, group, or organization. Such a politics does not seek visibility and recognition as its goals; rather it seeks actions, effects, consequences, forces which generate transformation without directing that transformation to other subjects who acknowledge its force.

Grosz uses the need for a flexible understanding of identity in order to bring the debate from the individual to the collective: she transforms an inner struggle into a political one and thus she highlights the need to rethink and challenge the world we live in. It is not really the 'I' or even the 'us' that counts. The struggle she is referring to concerns the world and its powers (Grosz 2005, p.194). A very interesting aspect of Grosz's reasoning is that she shows how Queer ideas of a 'different subject' are not necessarily contrary to a politics of identities. She makes it very clear that goals are second to means and that through engagement, what she refers to as 'actions', other becomings are made possible. So, when we think about gay movements, affirming a gay identity is not in itself problematic provided it is understood not as a set of defined characteristics that inherently and ontologically differentiate a group or an individual from others, but as a means of action directed against social and political ordering. Put differently, a gay identity is not something that is directly defined, for example based on sexual orientation, it is a constant (re-)creation through political contestation.

So far, I have discussed an alternative to the binary opposition between a strategy of affirming a gay identity and Queer theory, since they are both lacking. I hold that an alternative can be achieved if activists re-centre their attention to processes instead of outcomes. In doing so, I have characterized the importance of *contestation* when reconceptualizing a gay identity and have shown how ignoring outcomes is actually key to non-oppressive change. At this point, an obvious question comes to mind: if contestation is necessary to the processes in question, and if such processes are themselves necessary for a non-oppressive and transformative change, then what should such contestation be directed against? 'Structures' or even 'systems' are quite vague terms. Here I will discuss the need for contestation to occur at the level which informs both our institutional arrangements and our perception of these: the paradigmatic level.

Boaventura de Sousa Santos (2002) offers a very workable understanding of the mechanisms of the paradigm of modernity and also outlines a strong critique that can prove helpful for any movement seeking transformative change. It is important to understand the logic of modernity if one is to contextualize this debate. According to Santos, modernity is a system of thought, a paradigm that has dominated European thinking since the end of the *Renaissance*. Santos identifies modernity as resting on a dynamic between the two pillars of

regulation and emancipation, the tension of which draws a line that we refer to as progress (2002, p.5-25). Emancipation is supposedly driven by expectations, i.e. desires for social change (2002, p.9), while society is afterwards stabilized with the establishment of new regulations (2002, p.10). The issue is that most contemporary emancipatory movements are themselves regulatory, hence, despite apparent change there is a lack of real transformation (Santos 2010, p.225-242). Efforts for transformative change must therefore engage with the paradigm of modernity, in order to rectify it or surpass it. This analysis of modernity should be appreciated for its schematic value. It fits rather neatly with the description of gay movements I have given above: while a strategy based on identity politics seems to foster a certain emancipation of sexual minorities, it only replicates a different form of control and regulation. If Santos' account of modernity is accepted, then activists focusing on processes must find ways to contest these dynamics of regulation. If they do not, they will stay within that cycle and produce different forms of control. In the last chapter of *Toward a New Legal Common Sense*, Santos outlines potential counter-hegemonic strategies. He tries to 'unfold the signs of the reconstruction of the tension between social regulation and social emancipation, as well as the role of law in such a reconstruction' (2002, p.494), and by doing so he calls for an open research agenda (2002, p.495). What he means here is that any such reconstruction requires the contestation of what is presented as 'realism', whose systems of thought define themselves as pragmatic and discard divergence as idealism. When thinking about gay movements, activists consider themselves to be engaged in emancipatory processes when, in fact, they are considered to be idealists. This can be taken as a sign that they are engaged with something new and, perhaps, transformative.

Conclusion

In conclusion, this short paper has shown that despite its failure to bring substantive change to the situation of gay people in the West, a strategy based on identity politics is still relevant in today's struggles. The affirmation of a defined identity risks reproducing the very oppressive tendencies that gay movements are trying to depart from. However, if identities are conceived differently, and if gay movements shift their focus towards processes as opposed to outcomes – thus towards contestation as opposed to acceptance – then it is possible to recombine an efficient strategy with a sounder theoretical background. I suggest that contestation should take place in reference to the paradigm of modernity, since it informs both our social organization and our perception of it. In so doing, I draw attention to the similarities of Santos' analysis of modernity and the problems we have encountered throughout our discussion of a gay identity-based struggle for recognition. The rise and fall of a strategy for emancipation based on identity politics within gay movements may be followed by a rebirth of its conceptual usefulness, provided activists accept some uncertainty and contest the limiting paradigm of 'realism' that imposed itself as un-falsifiable truth. The social emancipation of sexual minorities is indistinguishable from a wide-scale critique of institutional arrangements and consequently transformative change can only emerge if new doors are opened and old ways left behind.

Bibliography

Ahmed, Sara. 2010. *The promise of happiness.* Durham: Duke University Press.

Anderson, Gavin. 2008. Imperialism and Constitutionalism. In Emilios Christodoulidis & Stephen Tierney (eds.), *Public law and politics: The scope and limits of constitutionalism*, 129-138. Aldershot: Ashgate.

Bellah, Robert, Richard Madsen, William Sullivan, Ann Swidler & Steven Tipton. 2007. *Habits of the heart: Individualism and commitment in American life.* 3rd edn. Oakland, CA: University of California Press.

Boswell, John. 1980. *Christianity, social tolerance, and homosexuality: Gay people in Western Europe from the beginning of the Christian era to the fourteenth century*. Chicago, IL: University of Chicago Press.

Brown, Wendy. 2006. *Regulating aversion: Tolerance in the age of identity and empire*. Princeton, NJ: Princeton University Press.

Butler, Judith. 1990. *Gender trouble: Feminism and the subversion of identity*. New York, NY: Routledge.

Chrisafis, Angelique. 2017 (31 January). The man who could make Marine Le Pen president of France. In *The Guardian*. https://www.theguardian.com/world/2017/jan/31/florian-philippot-could-make-marine-le-pen-president-france.

Cornell, Drucilla. 1993. *Transformations: Recollective imagination and sexual difference*. London: Routledge.

Derrida, Jacques. 1972. *Positions*. Paris: Les Editions de Minuit.

Dudgeon v. United Kingdom A45 (1981); (1982) 4 EHRR 149.

Foucault, Michel. 1995. *Discipline and punish: The birth of the prison*. Alan Sheridan (trans). New York, NY: Vintage Books.

Fraser, Nancy & Axel Honneth. 2003. *Redistribution or recognition? A political-philosophical exchange*. London: Verso.

Grosz, Elizabeth. 2005. *Time travels: Feminism, nature, power*. Durham: Duke University Press.

Hunter, Rosemary. 2013. Contesting the dominant paradigm: Feminist critiques of liberal legalism. In Margaret Davies & Vanessa E. Munro (eds.), *The Ashgate research companion to feminist legal theory*, 13-30. Farnham: Ashgate.

Jong, Alex de. 2015 (8 February). Pro-gay and anti-Islam: rise of the Dutch far-right. In *Roar Magazine*. https://roarmag.org/essays/wilders-fortuyn-nationalism-netherlands/.

Kapur, Ratna. 2010. De-radicalising the rights claims of sexual subalterns through 'tolerance'. In Robert Leckney & Kim Brooks (eds.), *Queer theory: Law, culture, empire,* 37-52. London: Routledge.

Marable, Manning. 1995. *Beyond black and white: Transforming African-American politics,* New York, NY: Verso.

McCoy, Renee. 2012. Ain't I a man? Gender meanings among black men who have sex with men. In Dana-Ain Davis & Shaka McGlotten (eds.), *Black genders and sexualities,* 204-210. New York, NY: Palgrave Macmillan.

Morgan, Wayne. 2000. Queering international human rights law. In Carl Stychin & Didi Herman (eds.), *Sexuality in the legal arena*, 208-225. London: Athlone.

Norris v. Ireland A 142 (1988); (1988) 13 EHRR 186.

powell, john. a. 2014. Understanding structural racialisation. *Clearinghouse Review Journal of Poverty Law and Policy*, Volume 47(11-12). 146-153.

Santos, Boaventura de Sousa. 2002. *Toward a new legal common sense.* 2nd edn. Butterworths: Lexis Nexis.

Santos, Boaventura de Sousa. 2010. From the postmodern to the postcolonial – and beyond both. In Encarnacion Rodriguez, Manuela Boatca & Sérgio Costa (eds.), *Decolonising European sociology: Transdisciplinary approaches*, 225-242. London: Routledge.

Schiller, Greta. 1984. *Before Stonewall: The making of a gay and lesbian community.* [DVD]. Peccadillo Pictures.

Stammers, Neil. 2009. *Human rights and social movements*. London: Pluto Press.

Stone, Brian. 2016 (2 February). How indifference is (one) sign of LGBT progress. In *The Huffington post*. https://www.huffingtonpost.com/brian-stone/how-indifference-is-one-s_b_4450470.html.

Stychin, Carl. 2005. Being Gay. *Government and Opposition*, Volume 40(1). 90-109.

Todorov, Tzvetan. 2008. *La peur des barbares: Au-delà du choc des civilisations*. Paris: Robert Laffont

Tyradellis, Daniel, Jean-Luc Nancy. 2012. *Qu'appelons-nous penser*? Berlin: Diaphanes.

Warner, Michael. 1991. Introduction: Fear of a queer planet. *Social Text*, Volume 29. 3-17.