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Shakespeare in *My* Canada

Desmond Manderson and Paul Yachnin created the Shakespeare Moot Court Project in 2002, aimed at exploring the interpretative nature of law and literature in relation to Shakespeare. In this court, Shakespeare *is* law; his plays and sonnets form a body of law used to argue cases of various topics. In 2003-2004, the project took on the issue of same-sex marriage in “Love on Trial: Same Sex Marriage and the Law of Shakespeare.” *Halpern v. Attorney General of Canada*, a case from 2002 that challenged the heterosexual definition of marriage in Ontario, was the starting point of the project. The legality of same-sex marriage according to Shakespeare was considered in relation to the meaning of the institution and the necessity of heterosexuality within it (Manderson 479). The case was initially decided in favor of same-sex marriage, and later was appealed and heard for a final time on 27 September 2004 at McGill University to a packed audience, an event which is the subject of this paper. While “Love on Trial” is an exercise in the connections between law, literature, and the social function of Shakespeare, it also performs a cultural function in its connection to a contemporary Canadian social issue. The blending of Canadian concerns regarding same-sex marriage and the authority of Shakespeare are joined in this project to create a forum to discuss the national issue in a literary context.

The arguments for both sides of the appeal were previously published in the *McGill Law Journal* and are thus referred to here. Desmond Manderson’s first argument for the legality of same-sex marriage is the “Armenian argument”: both same-sex marriages and marriages between Armenians do not occur in Shakespeare’s works, yet it does not necessarily follow that

there is a prohibition against them (485). Manderson argues that marriage ultimately represents a fundamental need to sacrifice the self, to put faith in another human being, and to forge the relationships that the very social order stands upon (498). The faith necessary for such relationships is not bound by gender; the absence of same-sex marriage in Shakespeare reflects an historical moment rather than a prohibition. The importance of faith so central to this argument is dependent on Manderson's reading of the ending of *The Winter's Tale* in particular, in which he sees a decidedly secular faith working. In opposition, Paul Yachnin contends that marriage is naturally heterosexual in Shakespeare's works; larger than individual needs, it is fundamentally nested in community values (508). Yachnin appeals to Sonnet XX to argue that same-sex love is *too good* in Shakespeare, necessarily existing outside the institution of marriage. He calls instead for the formation of autonomous homosexual expressions of "interpersonal commitment and faith" rather than their integration within a heterosexual institution (511). Though these arguments rely on Shakespeare to answer a question pertaining to law, they also rely on Shakespeare to discuss a specific Canadian concern regarding the issue of same-sex marriage.

In Shakespeare's time, homosexuality was conceptualized in a radically different way than in contemporary thought. In the twentieth century, the gay pride movement, the influence of feminism and the increasing secularization of society, among other factors, all radically changed what is deemed "natural" in terms of sexuality. Such changes have indeed taken place in a Canada, as is evident with current debates regarding same-sex marriage. This is apparent in "Love on Trial", a particularly Canadian adaptation of Shakespeare, most specifically with its genesis in the case of *Halpern v. Attorney General of Canada* and more generally with the reception it received. Taking place in Montreal, and specifically, the audience at McGill

University, the case garnered both interest and sympathy for the cause of same-sex marriage. Indeed, neither Manderson nor Yachnin argued against the legitimacy of homosexuality itself, but rather for the possibilities of homosexuality within the institution of marriage. Though this reception may be attributed to the university environment, this is not an attempt to suggest that elsewhere there would not be similar reactions to the cause of same-sex marriage. However, the urban, academic, and secular position of the trial, both within Montreal and within McGill University, clearly distinguish the reception of the trial from that of a more conservative setting. This more liberal approach to same-sex marriage was particularly apparent in comments made by the audience; one participant in particular acknowledged how unfavorable Yachnin's position was to argue, that is, against same-sex marriage, a sentiment he agreed with. While this reception could have occurred in many, radically different settings, it can nonetheless be contextualized within its specific location.

Although arguing in a modern Canadian context, both Manderson and Yachnin rely heavily upon the original texts of Shakespeare to legitimize their point of view, with different Shakespeares emerging in their lines of argument. Yachnin rests his argument within a context that recognizes and legitimizes the existence of homosexuality in Shakespeare's text, yet his argument is not divorced from the social reality that produced the text. Sonnet XX clearly advocates a love between men, yet the contention that their love is forbidden suggests that same-sex love is outside of the heteronormative bounds of the society. This is in keeping with the historical context of Shakespeare's England, in which homosexuality, though practiced, was not a socially acceptable option. Manderson's use of Shakespeare differs in that he argues for the possibility of a legal same-sex marriage despite the historical context of the plays. This relies heavily on the idea that social change necessitates the reconsideration of authoritative texts

outside of their historical context. In this light, Manderson is able to argue that the faith necessary to restore relationships and foster the marriage between Pauline and Camillo at the end of *The Winter's Tale* suggests that marriage is not dependent on communal values, thus open to the possibility of same-sex union. Though both Manderson and Yachnin, to differing degrees, appropriate the text of Shakespeare for contemporary Canadian concerns, their arguments rest on the authority conferred on Shakespeare's primary texts.

Both Yachnin and Manderson *adapt* the writing of Shakespeare to argue for or against same-sex marriage; as Daniel Fischlin and Mark Fortier suggest, "adaptation... appropriates Shakespeare's culturally dominant position to perform a wide range of contradictory ideological functions" (14-5). Thus the "cultural work" that this adaptation is performing is one of legitimizing same-sex marriage in the case of Manderson, and legitimizing homosexual experience in the case of Yachnin, through the invocation of the authority of Shakespeare. And yet his authority is recognized to be ever changing and subject to interpretation. Neither Sonnet XX nor *The Winter's Tale* contain commentaries on same-sex marriage; Yachnin and Manderson must rework Shakespeare to speak to current concerns in Canadian society within the context of the university. This relationship to Shakespeare acknowledges the need to reassess and reinterpret his work in light of modern concerns. Adaptation is not an irresponsible tweaking of Shakespeare for a crudely motivated political end, that is, it is not a misappropriation of his works, but rather it becomes "part of a generalized cultural activity that posits reworking in new contexts as more characteristic of cultural development than are originality in creation and fidelity in interpretation" (Fischlin 5). This is even more evident in the case made by Manderson, which rests on the importance and inevitability of cultural change, but it also implicit in Yachnin's consideration of a plurality of communities.

Fischlin and Fortier suggest that although often employed to perform the cultural work as that discussed above, “Shakespeare is inevitably altered by new circumstances” (16). The strong arguments made on either side of the case are a testament to the interpretive value of Shakespeare’s texts: while written in a wildly different cultural context than present-day Canada, they nonetheless provide the depth necessary for arguing an issue that was nonexistent in the sixteenth and seventeenth centuries. Though the trial is interested in looking at law, literature, and the interpretations of both through Shakespeare, in this case it becomes a forum to discuss a particularly Canadian issue. Thus Manderson’s and Yachnin’s adaptations of Shakespeare are related to issues of the nation. This tie between Shakespeare and Canada has been present throughout the history of the country, and “Love on Trial” suggests the continuing importance of Shakespeare in Canada.

Appendix

Works Cited:

Fischlin, Daniel and Mark Fortier. "General Introduction." *Adaptations of Shakespeare*.
Fischlin, Daniel and Mark Fortier, eds. London: Routledge, 2000: 1-22.

Manderson, Desmond and Paul Yachnin. "Love on Trial: Nature, Law, and Same-Sex Marriage
in the Court of Shakespeare." *McGill Law Journal*. 49.3 (2004): 475-514.

Trial:

Title: "Love on Trial: Same Sex Marriage and the Law of Shakespeare"

Date: September 27, 2004

Speakers: Desmond Manderson and Paul Yachnin

Place: Redpath Hall, McGill University, Montreal, QC

Audience: open to the general public; attended by members of the McGill and wider Montreal
community

Notes: recorded for broadcast on CBC Radio