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# A Woman’s Right to Be Spanked: Testing the Limits of Tolerance of SM in the Socio-Legal Imaginary

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## I. INTRODUCTION

Picture this: a woman is hired as the secretary of a sole practitioner, a lawyer. During one meeting with her boss, he interrogates her about her sex life. Later, the boss tells her to bend over his desk to receive a spanking for making repeated spelling errors. At one point she is seen delivering the mail to her boss while crawling on her hands and knees, with the letters clutched in her mouth. In another instance she is on all fours on his desk, gussied up as a horse complete with a bridle and a saddle. And finally, not only is making coffee for the boss part of her job, but she has to accomplish this task while in bondage. Though this may sound like a definitive if extreme case of sexual harassment, in fact it is the plot to a love story.<sup>1</sup> And in the end, the boss and his secretary in the movie entitled *Secretary* live happily and sadomasochistically ever after.<sup>2</sup>

In many ways, *Secretary* forges new ground for the sadomasochist subject in popular culture. Typically, sadomasochism (SM)<sup>3</sup> in film is used to advance the suspense, the danger, or the moral decline of the characters. Thrillers like *Basic Instinct* and *Body of Evidence* use sadomasochism to hyperbolize the seductive power of the femme fatale character as she lures her unwitting lover into more and more peril.<sup>4</sup> In thrillers where the male protagonist is the dominant, such as *Tightrope* or *Killing Me Softly*, the men are also portrayed as morally ambivalent characters and prime suspects for murder.<sup>5</sup> In films that feature gay sadomasochism, such as *Cruising* or *Frisk*, real danger appears to inhere in such kinky practices.<sup>6</sup> And historically, romance films that feature sadomasochistic dynamics have also been tainted with the brush of death. The intense romantic dramas *Last Tango in Paris* and *Bitter Moon*

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1. SECRETARY (Lions Gate Films 2002).

2. *Id.*

3. Because the purpose of this Article is to show how the meaning and significance of SM are contested in law and culture, I will not further define the term in this work.

4. BASIC INSTINCT (TriStar Pictures 1992); BODY OF EVIDENCE (De Laurentis Entertainment Group 1993).

5. TIGHTROPE (The Malpas Company 1984); KILLING ME SOFTLY (Metro-Goldwyn-Mayer 2002).

6. CRUISING (Lorimar Productions/United Artists 1980); FRISK (Strand Releasing 1995).

both climax tragically, with one lover, on the verge of insanity, murdering the other (and in the case of *Bitter Moon*, then committing suicide).<sup>7</sup>

*Secretary* bucks these trends with its sympathetic portrayal of an SM couple and its fairy tale happy ending. And instead of receiving criticism for breaking with the cinematic conventions regarding sadomasochist desire, as might have been expected of a counter-hegemonic intervention, the film was applauded by audiences and critics.<sup>8</sup> One notable example is Sarah Smith's conference paper, *BDSM Romance: Constructing Normality in Secretary*, which argues that the film "articulates a sex positive filmic space" for the BDSM (Bondage/Discipline/Sado-Masochism) couple through narrative techniques such as character development, set design and voiceovers.<sup>9</sup> While I agree with this general assessment, I argue that the film also purchases sympathy for its sexually unconventional couple by conforming to other ideological imperatives of a Hollywood love story. I posit that *Secretary* exists in the paradoxical overlap between subversive sexuality and conservative morality. It is both nonnormative *and* normative. While the narrative challenges the sexual hierarchy that marginalizes (some) kinky sexuality, it firmly entrenches other cultural stratifications.

Using Gayle Rubin's foundational model of the hegemonic "sex hierarchy," we can see how sadomasochism might come to be justified in the narrative.<sup>10</sup> Rubin's model schematizes how society ranks people according to their erotic preferences.<sup>11</sup> *Secretary* seems to recuperate sadomasochism, which Rubin allocates to the "Bad" sex category ("Abnormal, Unnatural, Sick, and Sinful"), by associating this maligned sexuality with characteristics listed in the "Good" sex category ("Normal, Natural, Healthy and Holy"), which include heterosexual,

7. LAST TANGO IN PARIS (United Artists 1973); BITTER MOON (Fine Line Features 1992).

8. See, e.g., The Internet Movie Database, User Ratings for *Secretary*, <http://www.imdb.com/title/tt0274812/ratings> (last visited Apr. 8, 2009) (showing that the movie received a median rating of eight out of ten with the users of the database); Roger Ebert, *Secretary*, CHI. SUN TIMES, Sept. 17, 2002, available at <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20020927/REVIEWS/209270303/1023> (giving the movie three out of four stars); The Internet Movie Database, Sundance Film Festival: 2002, [http://www.imdb.com/Sections/Awards/Sundance\\_Film\\_Festival/2002](http://www.imdb.com/Sections/Awards/Sundance_Film_Festival/2002) (last visited Jan. 11, 2009) (indicating that the movie won the Special Jury Prize at the Sundance Film Festival).

9. Sarah Smith, *BDSM Romance: Constructing Normality in Secretary*, Speech Given at the San Francisco State University Conference: Shades of Sexuality in Film: Exploring the Aberrant, the Normal and the Space Between (Oct. 1, 2005).

10. Gayle Rubin, *Thinking Sex, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 267, 282 (Carole S. Vance ed., Pandora Press 1989) (1982).

11. *Id.*

married and monogamous. See Figure 1, labelled as “Figure 2” in Rubin’s article “Thinking Sex”.<sup>12</sup>

Figure 1

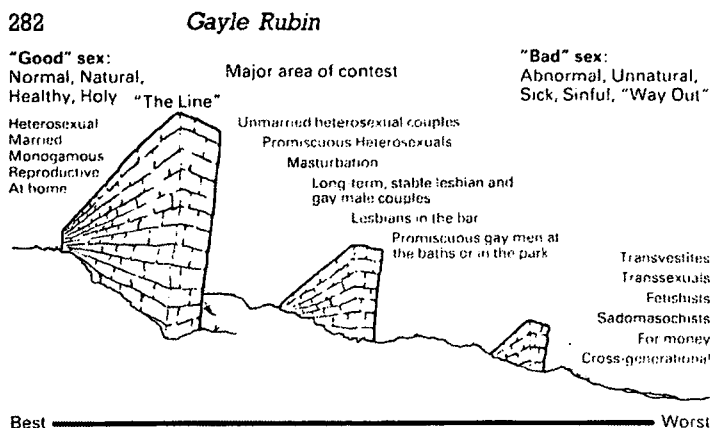


Figure 2 The sex hierarchy: the struggle over where to draw the line

This Article argues that *Secretary*’s moral-sexual order is reflected in the legal gaze upon the sadomasochist subject. In other words, there is a correlation between *Secretary* and legal cases about consensual SM sexuality, in that the judging community (whether audiences, critics, or legal decision-makers) is more lenient with SM that is positioned within heterosexual, marital and monogamous confines. In *Framed: Women in Law and Film*, Orit Kamir argues that “some films’ modes of social operation parallel those of the law and legal system, that some films enact viewer-engaging judgment, and that some films elicit popular jurisprudence.”<sup>13</sup> Kamir’s insight regarding the interpenetration of law and film in the construction of social reality is a useful starting point for considering the shared sexual ideology found in *Secretary* and some recent caselaw on SM. I posit that the legal and cinematic discourse coordinate to constitute SM sexuality as suspect, but nonetheless provide conditions upon which it will be rendered acceptable.

I use the term “socio-legal imaginary” to encapsulate this overlapping gaze between film and law, drawing on work by Charles

12. *Id.* (reprinted with the permission of Gayle Rubin; © 2009 Gayle Rubin).

13. ORIT KAMIR, *FRAMED: WOMEN IN LAW AND FILM* 1 (2006).

Taylor and James Boyd White. In his book *Modern Social Imaginaries*, Taylor attempts to outline an epistemic site, not wholly stable, but not without discernable patterns, where “ordinary people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.”<sup>14</sup> Taylor seeks to distinguish the social imaginary from social theory—which he sees as an abstract discourse often possessed by a privileged few.<sup>15</sup> By contrast, the social imaginary is made up of images and stories, a realm that (at least in the modern West) would be formed in large part by popular cinema.<sup>16</sup> In *The Legal Imagination*, White insists that the law is best viewed as an “art,” not a social science, where legal expressions “constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language.”<sup>17</sup> This text is primarily a teaching tool in which White encourages the student to challenge certain historical trends in law and legal education: the officiousness of law, the objectification of persons to institutional identities, the unthinking perpetuation of patterns of thought and jargon, and the law’s uncritical acceptance of its own “fictional pretenses.”<sup>18</sup> My notion of the “socio-legal imaginary” takes as its premise that the “low” art of cinema and the “high” art of law are in a dialectic relationship that helps to form sexual hierarchy and identity. This is exemplified in *Secretary*’s normative view, which seems to have pushed the boundaries of acceptable sexual behavior in popular culture, and yet accords with recent legal cases demonstrating the power of hetero-marital-monogamous hegemony to absorb and neutralize nonnormative sexual practices.

In exploring *Secretary*’s complex engagement with sexual normativity and the legal gaze, I draw two discursive comparisons.<sup>19</sup> In Part II, I compare *Secretary* to the film *9 1/2 Weeks*. Both of these films can be characterized as kinky love stories premised on the

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14. CHARLES TAYLOR, *MODERN SOCIAL IMAGINARIES* 23 (2004).

15. *Id.*

16. *Id.*

17. JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION*, at xxxiv-xxxv (1973).

18. *Id.*

19. By “discursive comparison” I mean that I seek to scrutinize and deconstruct how language and semiotic systems in law and film constitute meaning and structure the “reality” of our social and political life. See Adam Jaworski & Nikolas Coupland, *Perspectives on Discourse Analysis*, in *THE DISCOURSE READER* 1, 6 (Adam Jaworski & Nikolas Coupland eds., 1999).

sadomasochistic dynamic of male sexual dominance and female sexual submission. Yet while *9 1/2 Weeks* ends in heartbreak, *Secretary* ends in marriage.<sup>20</sup> I deconstruct the narrative and aesthetic components of the two films that uphold their contrasting normative visions, arguing that *Secretary* did indeed manage to portray an SM relationship as both nonpathological and culturally intelligible. However, a close discursive analysis reveals that the narrative relied upon other hegemonies to make the couple acceptable: their whiteness, their attractiveness, their male-top/female-bottom gender dynamic, the mildness of their kinks, and their assimilation into the law of marriage. Part III demonstrates how some of these hierarchies solidify under the legal gaze; when SM practitioners attempt to account for their desires, their exoneration seems to hinge on their ability to fit into prescribed sexual and social identities. I deconstruct *Secretary* in relation to a trilogy of British cases on SM, *R. v. Brown*, *R. v. Wilson*, and *R. v. Emmett*, and one American divorce case on SM, *Twyman v. Twyman*.<sup>21</sup> Examining the interconnections between legal articulations of SM and *Secretary* reveals the extent to which tolerance of SM in the socio-legal imaginary is contingent upon the concepts of marital privacy and spousal fidelity.<sup>22</sup> I seek to use *Secretary* to estrange the law from its autonomous and rational self-conception, tracking the parallel ideological order in the film and these legal cases.

## II. BOTTOMS UP! SHIFTING PERCEPTIONS OF SM FROM *9 1/2 WEEKS* TO *SECRETARY*

The 1986 movie *9 1/2 Weeks* garnered both notoriety and praise for its head-on depiction of a sadomasochistic relationship.<sup>23</sup> While providing unprecedented glimpses of kinky sexuality to a mainstream audience, the moral of the romantic drama suggests that such a

20. *SECRETARY*, *supra* note 1; *9 1/2 WEEKS* (Metro-Goldwyn-Mayer 1986).

21. *R. v. Brown*, [1994] 1 A.C. 212 (H.L.) (appeal taken from Eng.); *R. v. Wilson*, [1996] 2 Crim. App. 241; *R. v. Emmett*, [1999] EWCA Crim. 1710; *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

22. I want to emphasize that my focus is on SM as a sexual practice and subculture not as a metanarrative to decode the ways power and pleasure intersect in society. While I believe these analyses can be quite insightful, if SM is only analyzed as a metaphor, this can objectify sadomasochists so that the specificity of SM identity and sexuality becomes abstracted in order to understand “larger” (read, more important) questions regarding power, pain, pleasure, and consent.

23. See Roger Ebert, *9 1/2 Weeks*, CHI. SUN TIMES, Feb. 21, 1986, available at <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/19860221/REVIEWS/602210301/102>. Roger Ebert begins his three-and-one-half star review of the film by stating, “The movie ‘9 1/2 Weeks’ arrives in a shroud of mystery and scandal, already notorious as the most explicitly sexual big-budget film since ‘Last Tango in Paris.’” *Id.*

relationship cannot be sustained. Sixteen years later, the film *Secretary* reenvisions the possibilities of a male-dominant/female-submissive love story, this time refusing to imitate the tragic ending characteristic of SM love stories in film.<sup>24</sup>

Before deconstructing the narrative and aesthetic components that justify the different endings in each film, a quick sketch of the major plot points will help ground the analysis. In *9 1/2 Weeks*, Elizabeth (Kim Basinger), an art gallery employee, falls under the seductive spell of an extremely wealthy commodities broker named John (Mickey Rourke).<sup>25</sup> In the nine and a half weeks that span their relationship, their kinky activities escalate from Elizabeth submitting to being blindfolded in their first sexual encounter, to her participating in a threesome with a sex worker during their last tryst.<sup>26</sup> This final activity, from which Elizabeth ultimately flees, becomes her wake-up call that she has allowed the pleasure of submissiveness to supersede dignity and self-respect.<sup>27</sup> The next day, the movie concludes as Elizabeth tearfully leaves John.<sup>28</sup>

In *Secretary*, the awkward and fragile Lee (Maggie Gyllenhaal) begins her first job as a secretary in the law office of Mr. Grey (James Spader).<sup>29</sup> Soon thereafter it becomes apparent to both of them that while Grey likes to dominate Lee, she likes to submit to her boss.<sup>30</sup> They work these erotic dynamics into their office-life such that, for example, a typo by Lee will result in a sound spanking from her employer.<sup>31</sup> Grey, however, decides that such a perverse affair cannot continue and he fires Lee, thereby terminating their affair.<sup>32</sup> But instead of ending the movie at this point, which would have imparted a moral message comparable to the one in *9 1/2 Weeks*, Lee ultimately refuses to accept Grey's reasoning.<sup>33</sup> She holds a sit-in vigil at his office to prove her submissive love to him and comes out to her community as a sadomasochist.<sup>34</sup> Grey is convinced and they reconcile.<sup>35</sup> She leaves her job as legal secretary and becomes his lawful wife, and this closes the film.<sup>36</sup>

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24. See *9 1/2 WEEKS*, *supra* note 20.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *SECRETARY*, *supra* note 1.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*



A. *Contrasting Heroines: Victim of Passion versus Agent of Desire*

In the narrative logic of each movie, both endings feel correct, even though the sadomasochistic sex in *Secretary* is much more hardcore than that in *9 1/2 Weeks*. One important way the filmmakers justified the respective endings is through their portrayals of the heroines' personal journeys. In *9 1/2 Weeks*, the audience is introduced to Elizabeth as a successful and independent woman. She has a prestigious job at a New York City art gallery and socializes with the city's elite art crowd.<sup>37</sup> Yet as her relationship with John unfolds, her independence slowly drains away. Her lover not only orchestrates their sexual encounters, he chooses what she will wear, enjoys feeding her by hand, insists on brushing her hair, and unilaterally decides when they will be together and when apart.<sup>38</sup> A few times, Elizabeth asserts herself and resists playing along with activities she finds degrading. For example, she does not allow John to spank her and she refuses to continue crawling on the ground, despite John's insistence that she do so, punctuated by threats with his belt.<sup>39</sup> However, she does not terminate their relationship until John introduces a third-party into their sex play by hiring a sex worker.<sup>40</sup> The experience of seeing this other woman touching her lover is utterly degrading for Elizabeth and she flees the scene in disgust.<sup>41</sup> Later that night, Elizabeth vomits in a sink, clearly revolted by the sexual scenarios in which she has participated.<sup>42</sup> It seems that she has suddenly recognized her sexual desires and submissiveness as an abject phenomenon, an "otherness" contained within her that she is now seeking to expel.<sup>43</sup> When she leaves John the next day, there is a sense that she has regained her autonomy.<sup>44</sup> A highly symbolic image in the movie portrays her leaving John's building complex, where it looks as if she is leaving a prison-like structure.<sup>45</sup>

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37. *9 1/2 WEEKS*, *supra* note 20.

38. He states to her, "I'll do the dishes, buy the groceries, make the food. I'll feed you, dress you in the morning, undress you at night, bathe you, take care of you." *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Irena Makarushka, *Women Spoken For: Images of Displaced Desire*, in *SCREENING THE SACRED: RELIGION, MYTH, AND IDEOLOGY IN AMERICAN POPULAR AMERICAN FILM* 147-48 (Joel W. Martin & Conrad E. Ostwalt eds., 1995) (arguing that Elizabeth "is horrified at the recognition of an otherness within herself, an otherness she cannot name" and that when she vomits, "overcome with revulsion . . . her self-loathing is transformed into resolution.").

44. *9 1/2 WEEKS*, *supra* note 20.

45. *Id.*; see Figure 2, <http://LawAndSexuality.org/Khan>.

While *9 1/2 Weeks* ends with Elizabeth leaving a kind of prison of passion, *Secretary* begins with its heroine Lee being released from confinement. The plot commences with Lee having just completed inpatient treatment at a mental institution due to her history of perpetrating self-inflicted harm.<sup>46</sup> In moments of acute distress, she physically injures herself, usually through cutting.<sup>47</sup> After her discharge from the hospital, Lee moves back in with her parents in the suburbs.<sup>48</sup> She demonstrates none of the urban sophistication or independence that Elizabeth commanded at the beginning of *9 1/2 Weeks*; instead, Lee is child-like and awkward. When her alcoholic father resumes his drinking, Lee again resorts to self-induced pain to cope with her feelings.<sup>49</sup> But when she begins working for Mr. Grey, things start to change.<sup>50</sup> Under his stern guidance, she begins to dress sexier and speak with more confidence, and stops cutting herself, for good this time.<sup>51</sup> When Grey initiates a sadomasochistic affair in the office, Lee fully embraces her submissive sexuality, often taking the initiative to entice her boss into performing more SM acts with her.<sup>52</sup> Towards the end, she stands up to those in her community who would condemn her for her kinky bent and convinces Grey that they can, indeed, sustain a loving SM relationship.<sup>53</sup> By partaking in sadomasochism, Lee not only finds true love and hot sex, but also her self-respect and mental health.

The personal journeys that Elizabeth and Lee take through SM reap diametrically opposed consequences. While *9 1/2 Weeks* features the descent of a confident and independent woman into subservience and objectification, *Secretary* portrays a troubled and insecure girl who develops into a self-assured and determined woman. In *9 1/2 Weeks*, under the influence of sadomasochistic desire, Elizabeth becomes infantilized; she allows John to take care of her appearance and to make virtually all of the decisions in the relationship.<sup>54</sup> In *Secretary*, through SM, Lee matures; she dresses more like a woman and asserts her own desires to both her family and her lover.<sup>55</sup> And although both films portray sadomasochism as a highly erotic practice for the heroines, only

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46. SECRETARY, *supra* note 1.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. 9 1/2 WEEKS, *supra* note 20.

55. SECRETARY, *supra* note 1.

*Secretary* portrays it as a healing practice. Not only is Lee aroused by Grey's SM advances, she gains a sense of subjectivity and agency by channelling her masochistic tendencies towards a sexual aim. Her body ceases to be an object for self-abuse, and instead becomes a self-directed vehicle for pleasure.

*B. Contrasting Heroes: Alpha Male versus Repressed Man*

The portrayal of the two male dominants is also indicative of the contrasting normative visions of the two films. In *9 1/2 Weeks*, class is used to signal decadence and self-indulgence. John is *obscenely* rich.<sup>56</sup> This correlates with the popular conception that there is a connection between extreme affluence and sexual perversity. His class status also places him in a world unreachable to most audience members and as such, he is not someone to whom ordinary people can relate. John's personality is also daunting. He keeps a tight reign of control on both the relationship and himself. For example, when Elizabeth shows up unexpectedly at his workplace, he is emotionally punitive as he wants to control all the terms by which they are together.<sup>57</sup> Only when she runs out of his office in humiliation does he relent. Even in the end, when Elizabeth has broken off the affair in tears, John's voice cracks for only a moment as he divulges details of his working-class background.<sup>58</sup> When she shuts the door in his face, he continues to believe in his power to control her, giving her to the count of fifty to return.<sup>59</sup> When she never reappears, he doesn't break down or run after her; he simply walks back into his bedroom. He has no interest in a woman whom he cannot control.<sup>60</sup>

In contrast, Grey in *Secretary* appears more accessible, more human. His class status, though privileged, is not remarkable. His legal practice affords him a comfortable upper middle-class life, but nothing approaching the luxury that John enjoys.<sup>61</sup> And as opposed to John's arrogant self-control, Grey appears a desperate, even pathetic man struggling with inner demons. One scene evokes the visual trope of being closeted about one's sexuality, as we see Grey fearfully hiding in a

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56. It is interesting to note that often the rhetoric used to describe very rich people signals dirtiness and perversity: obscenely rich, filthy rich and stinking rich. For a detailed exploration of the cultural association between "dirtiness" and dollars, see WILLIAM IAN MILLER, *EYE FOR AN EYE* 180-96 (2006).

57. *9 1/2 WEEKS*, *supra* note 20.

58. *Id.*

59. *Id.*

60. *Id.*

61. *SECRETARY*, *supra* note 1; see Figure 3, <http://LawAndSexuality.org/Khan>.

closet because an ex-girlfriend has unexpectedly shown up at his office.<sup>62</sup> Unlike John, Grey suffers from self-loathing, convinced that there is something perverse about his sexual tendencies. In his struggle to resist Lee's charms, he attempts to sublimate his urges by intense physical exercise.<sup>63</sup> When he realizes the futility of this diversion tactic, he decides that he must fire Lee to keep temptation away.<sup>64</sup> In preparation for this, he begins writing her a letter of apology stating, "Dear Lee, This is disgusting. I'm sorry. I don't know why I'm like this."<sup>65</sup> It is only because of Lee's perseverance that he manages to accept that his dominant sexuality is not disgusting, but rather a vital part of a beautiful and healthy relationship.

The different portrayals of the two male leads reveal vastly different pictures of the character types that make up an SM relationship. John's upper-class status sets him apart from the norm. He is almost a caricature of a pure alpha male, as his dominating behavior in the bedroom appears to be an extension of his domination of every situation. In contrast, Grey's middle-class status places him firmly within the norm. And he is represented as a meek dominant, as being in control is not his total personality, but rather his sexual proclivity. In this way, *Secretary* attempts to disaggregate the role of being dominant in bed from being a domineering person. Similarly, in the case of Lee, the film disaggregates the role of being submissive in bed from being a subordinated person.

### C. *Contrasting Legal Aspects: Illicit Activities versus Law Office Romance*

Another remarkable difference between *9 1/2 Weeks* and *Secretary* is how the presence of the law frames each narrative. In *9 1/2 Weeks*, the more Elizabeth succumbs to John's depraved scenarios, the more she descends into criminal behavior. Some of the activities are mildly criminal, like engaging in public sex at the top of a clock tower.<sup>66</sup> More seriously, Elizabeth shoplifts a necklace on John's instruction.<sup>67</sup> On the cusp of illegality, John provides Elizabeth male attire so that she can pass as a man and accompany him to a private men's club.<sup>68</sup> But later that night, they get into a street brawl with homophobic men who have read

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62. SECRETARY, *supra* note 1.

63. *Id.*

64. *Id.*

65. *Id.*

66. 9 1/2 WEEKS, *supra* note 20.

67. *Id.*

68. *Id.*

them as gay lovers.<sup>69</sup> Perhaps the most illicit activity portrayed features John arranging for a sex worker to join them in a threesome.<sup>70</sup> And as I have stated, this ultimately triggers a crisis for Elizabeth, who realizes that their passionate affair has simply gone too far. The inherent risk-taking of the criminal behavior thus operates as a kind of aphrodisiac that feeds the couple's passion. But more importantly, breaking the law becomes conceptually linked to sadomasochism in the narrative and signals the couple's descent into immorality.

In *Secretary*, the lovers not only abide by the law, they both work in a law office.<sup>71</sup> Mr. Grey is a lawyer, a symbol and an upholder of the law.<sup>72</sup> Of course, the film plays with the concept of sexual harassment, as Grey's probing personal questions, dominant style and sexual advances would be tortious and criminal if the actions were not welcomed. Yet it is clear from Lee's reactions that Grey's behavior is positively the most welcome thing that has ever happened to her. And at the end of the film, she ceases to be his secretary and becomes his lawful wife.<sup>73</sup> The law of marriage comes to sanctify their relationship. Thus, in contrast to *9 1/2 Weeks*, where criminality frames the couple's sexual conduct, in *Secretary* the law folds them into normativity and an idealized heterosexual order.

#### D. *Contrasting Consequences: Slippery Slopes versus Happily-Ever-After*

However, one of the most conspicuous differences between the two films' conflicting accounts of the nature of sadomasochistic desire is expressed in how each narrative paces the SM activity. In *9 1/2 Weeks*, SM is represented as an escalating activity. It starts off relatively mild, with John asking Elizabeth if he can blindfold her.<sup>74</sup> Later, they play a food game where she keeps her eyes shut and he entices her with different flavors, sometimes sweet, like a maraschino cherry, and sometimes painful, like a jalapeño pepper.<sup>75</sup> But soon John is demanding that Elizabeth do things she finds degrading, like lifting up her skirt for a spanking.<sup>76</sup> She refuses this demand and begins angrily slapping him,

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69. *Id.*

70. *Id.*

71. *SECRETARY*, *supra* note 1.

72. *Id.*

73. *Id.*

74. *9 1/2 WEEKS*, *supra* note 20.

75. *Id.*

76. *Id.*

outraged at his audacity.<sup>77</sup> This fight segues into an ambiguous sex/rape scene on a dining room table that starts off as forced sex, but ends with Elizabeth seemingly enjoying the encounter.<sup>78</sup> Towards the end of the film, John attempts to convince her to crawl on the ground picking money off the floor, but she finds the “game” utterly degrading and refuses to continue.<sup>79</sup> And as I noted earlier, their criminal behavior escalates from public sex to paying for sex.

The perilous nature of SM is also expressed in the music of the film. As critic Elizabeth Hirschman suggests, the music communicates the theme of possession.<sup>80</sup> The opening credits are overlaid with Al Green singing, “Love and happiness/Something that can make you do wrong.”<sup>81</sup> The audience is alerted right from the beginning that the kind of love that is about to be depicted has the power to make the lovers “do wrong.”<sup>82</sup> In other words, SM is constructed as “wrong” in itself, or a practice that leads to wrongdoing. A racialized musical metaphor is conveyed when John plays the Billie Holliday song, “Strange Fruit,” on his first date with Elizabeth.<sup>83</sup> The violence of lynching is complacently borrowed to hint at the upcoming violence and objectification that will soon characterize their relationship. And once the affair starts to heat up, the song “Slave to Love” indicates Elizabeth’s loss of control to this passionate affair.<sup>84</sup>

The escalating nature of John and Elizabeth’s activities resonates with a familiar hegemonic mapping of SM relationships that chart such

77. *Id.*

78. Elizabeth Hirschman reads this act as an unambiguous rape, although concedes that Elizabeth embraces him after the sexual encounter. Elizabeth Hirschman, *Possession and Commoditization in Fatal Attraction, Blue Velvet, and Nine and ½ Weeks*, 86-½ SEMIOTICA 1, 30 (1991).

79. 9 1/2 WEEKS, *supra* note 20.

80. Hirschman, *supra* note 78, at 23.

81. 9 1/2 WEEKS, *supra* note 20 (opening credits).

82. 9 1/2 WEEKS, *supra* note 20.

83. *Id.*

84. The movie, however, ends on an ambivalent note. Halfway through the soundtrack accompanying the final credits of the film (that is, after most of the audience would have left the cinema or stopped their videocassette or DVD) is the song “Let It Go” by Luba. The lyrics denounce “society” for forcing human nature to follow the “rules,” the “laws,” the “commandments,” “uniformity,” and “conventionality.” Instead the listener is encouraged to “Let it go / Let it free your body / Let it move your soul.” LUBA, *Let It Go*, on SECRETS AND SINS (Capitol-EMI of Canada 1984). What “it” is is not elaborated upon, but in the context of the film, “it” seems to be one’s passion and one’s urges. We are told in the last stanza to “abandon ideologies and disciplines” and to embrace “nonconformity” and “unconventionality”: an interesting message that seems more appropriate to the moral message of *Secretary* than that of *9 1/2 Weeks*. This suggests that there is, in fact, some complexity in the film’s normative gaze regarding the taboo of sadomasochism.

desires as dangerous or unsustainable. I have already mentioned that both *Last Tango in Paris* and *Bitter Moon* conclude with murder, but even where a relationship is not shown as fatal, it is usually seen as terminal. In the thriller *Killing Me Softly*, although the dominant lover/husband turns out not to be a killer, the couple still parts at the end of the movie.<sup>85</sup> It is as if the previous sadomasochistic encounters had somehow corrupted their love, making it impossible or dangerous for them to continue their marriage. Interestingly, even when a film appears to have a sympathetic take on sadomasochism, as with the French film *Romance*, murder still forms part of the picture.<sup>86</sup> In that film, sexually frustrated Marie finds fulfillment with Robert, an older man who introduces her to sadomasochism.<sup>87</sup> But instead of simply leaving her frigid and narcissistic boyfriend for her new skillful lover, she murders her boyfriend in the end.<sup>88</sup> In this case, the violent outcome is displaced onto a nonsadomasochistic subject, while the perpetrator remains a perverse sexual subject. Thus there is a sense in the popular imagination that an SM relationship will necessarily escalate in severity or depravity and, if you don't get out in time, culminate in violent destruction.<sup>89</sup>

But in *Secretary*, there is no escalation. Grey and Lee's first explicitly SM encounter, when he spans her over his desk, is probably the most hardcore sadomasochistic activity in which they engage.<sup>90</sup> Subsequent activities include role playing and bondage, but the lovers never pursue any dangerous or criminal activities.<sup>91</sup> And after Grey finally accepts that they can integrate SM into a "normal" loving relationship, they have tender nonkinky intercourse.<sup>92</sup> As Brenda Cossman has argued, "[S]exual excess is, at this moment, contained within romantic love."<sup>93</sup> This is further expressed in the soundtrack that accompanies their reconciliation, where Lizzie West sings, "[W]hat grace have I, to fall so in love."<sup>94</sup> While I concede that this ending reinforces

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85. *KILLING ME SOFTLY*, *supra* note 5.

86. *ROMANCE* (Trimark Pictures Inc. 1999).

87. *Id.*

88. *Id.*

89. In the little-known sequel to *9 1/2 Weeks* called *Another 9 1/2 Weeks*, we discover that during the ten years after their affair, Elizabeth became a drug addict in Paris and died of an overdose. The sequel thus conforms to the Hollywood convention that sadomasochism leads to self-destruction and/or death. See *ANOTHER 9 1/2 WEEKS* (Trimark Pictures, Inc. 1997).

90. *SECRETARY*, *supra* note 1.

91. *Id.*

92. *Id.*

93. Brenda Cossman, *Sexuality, Queer Theory, and "Feminism After": Reading and Rereading the Sexual Subject*, 49 *MCGILL L.J.* 847, 870 (2004).

94. *SECRETARY*, *supra* note 1.

the hegemony of marriage, I maintain that an important counter-hegemonic message of the film is that a relationship built on SM desire does not have to escalate in severity, and can go back and forth from tender kisses to harsh spankings.

### E. *Mouse Metaphor*

The contrasting understanding of the consequences of SM practice can be summed up in one notable visual metaphor involving a mouse that appears in both films. In *9 1/2 Weeks*, towards the end of the film, there is a brief shot of a cat in an alley holding a dead mouse in its mouth.<sup>95</sup> Indeed, throughout the film are various shots of dead animals about to be consumed by either humans or other animals.<sup>96</sup> Elizabeth Hirschman reads the semiotic significance of this metaphor as conveying the notion that Elizabeth is meat or prey about to be consumed by her lover.<sup>97</sup> Although I believe Hirschman forces a procrustean feminist analysis onto the film that denies the pleasure Elizabeth derives from the sexual activities, it is clear that within the logic of the film, despite her fervent enjoyment, Elizabeth is being figuratively devoured by the passionate affair.

In contrast, in *Secretary*, there is a brief scene which features Grey releasing a mouse from a humane trap that he keeps in his office.<sup>98</sup> On a literal level, the fact that Grey keeps humane traps instead of fatal snap-traps indicates his compassionate and sensitive nature. On a metaphoric level, the semiotic significance of this, I believe, conveys the liberatory nature of their sexuality. For example, Lee might be temporarily confined in a bondage scene, but ultimately Grey is setting her free, from shame, from repression and from self-destruction. He is not interested in consuming her, but rather in finding ways for both of them to discover their sexuality.

So far, I have demonstrated the ways that *Secretary* has attempted to make room for female submissive and male dominant subjectivity within the terms of conventional sexual citizenship. The woman is not a victim, but rather an agent of desire. The man is not a control-freak, but rather a closeted victim of self-repression. And the portrayal of SM, not as a slippery slope that ends in crime, degradation or destruction, but rather as an avenue leading to mutuality, respect and true love, breaks from Hollywood conventions of this kinky practice. Yet, the film is also

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95. *9 1/2 WEEKS*, *supra* note 20; see Figure 4, <http://LawAndSexuality.org/Khan>.

96. *9 1/2 WEEKS*, *supra* note 20.

97. Hirschman, *supra* note 78, at 25.

98. *SECRETARY*, *supra* note 1.



fraught with other hegemonic relations and assumptions about what must be embodied by an acceptable sexual couple.

*F. Contrasting Colors: Racialized Perversity versus Whitewashed Sexuality*

One thing such a couple must apparently embody is whiteness. Although both couples in *9 1/2 Weeks* and *Secretary* are played by white actors, whiteness is performed very differently in each narrative.<sup>99</sup> Consider the semiotic uses of the racialized body as background in the narrative of *9 1/2 Weeks*. The geographic locale of the relationship is New York City.<sup>100</sup> And the film provides many fleeting shots of this urban, dirty and gray city, for example when we see Elizabeth walking past a garbage truck.<sup>101</sup> As Hirschman argues, the film makes use of the urban versus rural semiotic code, whereby the city represents a site of degradation, and the countryside a space of sanctity.<sup>102</sup> But one important aspect of this urban setting upon which Hirschman fails to comment is the inclusion of many shots, most notably in the opening scene, of Elizabeth passing numerous people of color as she navigates the busy sidewalks of Manhattan.<sup>103</sup> For example, we see shots of African-American joggers, an African-American woman impatiently waiting for her dog to relieve himself, two different shots of African-American men cleaning the window or mirror of a car for money, and one shot of an African-American boy apparently running away from a white man whose pocket he has just picked.<sup>104</sup> Later that night, John and Elizabeth meet for the first time at an Asian butcher shop where the owner is seen spiritedly arguing with another Asian man in a “foreign” language.<sup>105</sup> Their next chance encounter happens at a street fair where a Caribbean band creates an exotic ambience with their uplifting reggae song.<sup>106</sup>

I posit that the people of color in *9 1/2 Weeks* are used as semiotic props to dramatize the nonnormative sexuality that Elizabeth and John are embarking upon. As Gwendolyn Foster states, “blackness in cinema is often associated with bad conduct, hypersexuality, monstrous

99. *Id.*; 9 1/2 WEEKS, *supra* note 20; see Figure 5, <http://LawAndSexuality.org/Khan>.

100. 9 1/2 WEEKS, *supra* note 20.

101. *Id.*; see Figure 6, <http://LawAndSexuality.org/Khan>.

102. Hirschman, *supra* note 78, at 24.

103. 9 1/2 WEEKS, *supra* note 20.

104. Hirschman, *supra* note 78, at 24. As such, the first instance of criminality featured in the film is embodied by a boy of color. *Id.*

105. 9 1/2 WEEKS, *supra* note 20.

106. *Id.*; see Figure 7, <http://LawAndSexuality.org/Khan>.

behaviour, and the threat of otherness.”<sup>107</sup> These racial “others” signal a narrative space for sexual diversity and carnality. John and Elizabeth’s whiteness, and subsequently their perversion, thus gets framed by the presence of the racialized other, who represent a more savage sexuality.

This use of the racialized body to signify sexual decadence is particularly conspicuous during their final sexual tryst. John has hired a Latina sex worker who speaks only Spanish throughout the encounter, and who is therefore racially marked as “other” both visually and orally.<sup>108</sup> It is this direct confrontation with the racialized (as Latina) and sexualized (as a sex worker) “other” that throws Elizabeth’s status as white into crisis. To be clear, I am not arguing here that the film is consciously promoting this message. Rather, the defining moment when Elizabeth finally recognizes her own degradation relies upon the logic of whiteness as the *unmarked* signifier of sexual purity, and the underlying cultural associations of Latina subjectivity to hypersexuality, dangerousness and depravity.<sup>109</sup>

The association between people of color and depraved white sexuality thus creates a fissure in white subjectivity. In *Performing Whiteness: Postmodern Re/constructions in the Cinema*, Gwendolyn Foster argues that cinematic performances of whiteness often feature “whiteness as its own other.”<sup>110</sup> She argues that the “bad white” signifies “out-of-control” sexuality,<sup>111</sup> and that in such films “the monster-other is not only white but in struggle with his own body. . . . They are cultural relics, examples of ‘bad’ whites often at war with their own (sometimes) ‘good’ selves.”<sup>112</sup> Under John’s influence, in the midst of the multicultural diversity of the city, Elizabeth comes to embody the good-white/bad-white woman, struggling with her emerging carnal (read racialized) sexuality.

What helps Elizabeth reembrace her good-white self is the presence of an unambiguously good-white character: Matthew Farnsworth, a painter with whom Elizabeth is working.<sup>113</sup> In the one scene that takes place outside of New York City, Elizabeth goes to meet Farnsworth at his

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107. GWENDOLYN FOSTER, *PERFORMING WHITENESS: POSTMODERN RE/CONSTRUCTIONS IN THE CINEMA* 68 (2003).

108. 9 1/2 WEEKS, *supra* note 20; see Figure 8, <http://LawAndSexuality.org/Khan>.

109. See FOSTER, *supra* note 107, at 142 (arguing that in Hollywood, Latinas often signify “untamable sexual appetites”).

110. *Id.* at 3.

111. *Id.* at 73.

112. *Id.* at 68.

113. 9 1/2 WEEKS, *supra* note 20.

cottage in the countryside.<sup>114</sup> And as Hirschman argues, “the countryside symbolizes the mutual sanctity which [Elizabeth] and Farnsworth share and makes their ultimate degradation in the city all the more poignant.”<sup>115</sup> Again, while Hirschman does an insightful semiotic reading of the brief scene in the countryside, I would extend this analysis to consider its racial dynamics. Farnsworth lives away from the multicultural urbanity of the city.<sup>116</sup> He comes to embody the good-white, an identity that Elizabeth has slowly abdicated the more she has allowed John to take her on a deviant sexual journey. The moment that immediately precedes Elizabeth vomiting out her “otherness” takes place in the art gallery, where her eyes meet Farnsworth’s over a loud, drunken and debauched multiracial crowd of people.<sup>117</sup> In that look she recognizes not just their mutual degradation, but also a place of goodness in his face that is signified, in part, as white—i.e., a whiteness that has not been tainted by urban (read racialized) depravity. Thus, despite the fact that *9 1/2 Weeks* ostensibly portrays a relationship between two white people, the narrative relies heavily on racial tropes that signify sexual immorality and whiteness as the unmarked space of goodness (though clearly open to corruption). In other words, the film is in some ways about managing cultural anxiety about the (dis)integrity of white identity. In the end, the lines get redrawn and we no longer have an internal struggle between the bad-white and the good-white in one body. Elizabeth recuperates her former good-white status and John remains unwaveringly a bad-white subject.

In *Secretary*, the couple never comes to be associated with racialized persons, as there are virtually no people of color in the film.<sup>118</sup> But the fact that there are no representations of people of color does not mean the story is racially neutral. As Richard Dyer has argued, if whiteness is only to be analyzed when there are racial “others” as a point of reference, this will, “reinforce the notion that whiteness is only racial when it is ‘marked’ by the presence of the truly raced, that is, non-white subject.”<sup>119</sup> Thus, I posit that the almost pure white cast of *Secretary* has semiotic significance on its own terms, as well as in contrast to *9 1/2 Weeks*.

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114. *Id.*

115. Hirschman, *supra* note 78, at 24.

116. *9 1/2 WEEKS*, *supra* note 20.

117. *Id.*

118. All that I discerned was one quick shot of a woman of color amongst a crowd in a scene occurring at the end of the film.

119. RICHARD DYER, *WHITE* 14 (1997).

Although both the main leads are white, because of their gender roles, their whiteness is played and displayed differently on the screen. The character of Grey occupies the non-particularity of “being ‘just’ human.”<sup>120</sup> Because his race does not register in the popular imagination as being a race, he is simply a man with unusual erotic tastes. If he was marked as black or Latino, his sadomasochistic proclivities would most likely resonate with cultural associations of such men to animality. But as a white man, Grey has the privilege of invisibility and generality. His middle class status as a sole practitioner lawyer further neutralizes and makes invisible his race as white.

Lee, as a white person, also enjoys this hegemonic position of being nonraced. But because she is a woman, her body’s whiteness is particularly invested (and objectified) with symbolic value.<sup>121</sup> In a number of shots, the film trades on her whiteness in order to convey her innocence.<sup>122</sup> In one scene, she is sitting with her mother, her sister and her sisters’ friends by her parents’ pool.<sup>123</sup> While Lee is covered from head to toe to avoid any sun exposure, the others are apparently getting a tan.<sup>124</sup> Although all of the women are white, Lee’s determination to keep her skin as white as possible operates to heighten her symbolic whiteness, that is her “purity, cleanliness [and] virginity.”<sup>125</sup> These characteristics become evident at the end of the film in a most ironic fashion. After sitting for days at Grey’s desk in a white wedding dress, and after urinating through that dress and onto the floor, Lee is still represented as a pure white bride when her lover comes to rescue her.<sup>126</sup> He carries her to an upstairs room and lays her down on an indoor bed of grass, capitalizing on the link between a pastoral setting and acceptable, clean sexuality.<sup>127</sup> Next, Grey bathes Lee, further emphasizing her emerging purity within their new hetero-normative relationship.<sup>128</sup> Afterwards, the camera luxuriates in Lee’s thin naked white body while Grey remains fully clothed.<sup>129</sup> And when they make love the next day, she

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120. Dyer writes that white people enjoy the status of not being associated with the particularity of a racial category; they can stand in for all of humanity because their racial identity is construed as “neutral.” *Id.*

121. *See id.* at 71 (exploring examples of white culture’s adoration of white femininity).

122. SECRETARY, *supra* note 1.

123. *Id.*

124. *Id.*

125. DYER, *supra* note 119, at 70.

126. *Id.*

127. SECRETARY, *supra* note 1.

128. *Id.*

129. *Id.*

is clad in little girl white socks and white panties.<sup>130</sup> Though we know that she has had vaginal intercourse with another man earlier in the film, the symbolic value of her white and infantilized clothing seems to restore her virginity (even as it hints at their naughty appropriation of little girl attire).<sup>131</sup> In these shots, the whiteness of her racial identity and her bridal and virginal clothes operate synergistically to convey innocence, moral purity and beauty.<sup>132</sup>

Despite the movie's celebration of literal and symbolic whiteness, the racial other does creep into the narrative in one oblique way. *Secretary* capitalizes on the sexualization of the racial other through the use of fetishized art objects. During one music montage that occurs after Lee and Grey begin their SM affair, the camera focuses on two consecutive shots of wooden statues that Grey keeps outside of his office.<sup>133</sup> The figures appear to be of Asian origin and invoke hegemonic cultural associations of such imagery with mysterious sensuality.<sup>134</sup> Layered over these images is the sumptuous voice of Leonard Cohen crooning the love song, "I'm Your Man."<sup>135</sup> In the off-space, the audience can glean that our two main characters are gratifying their sadomasochistic desires, as the sounds of spanking and Lee's moans of pleasure meld with Cohen's throaty voice.<sup>136</sup>

This use of "exotic" objects to stand in for the white bodies of Lee and Grey as they engage in kinky sexuality reveals the extent to which, as Dyer has noted, "endemic to the representation of white heterosexuality [is the construction] of sexual desire as itself dark."<sup>137</sup> Yet unlike *9 1/2 Weeks*, which uses actual human bodies of color to represent the danger and "darkness" of the couple's sexual desires throughout the movie, *Secretary* manages the threat of the other by employing racialized objects, not persons, to convey the kinkiness of the couple's sexuality. As Dyer has noted, "projection of sexuality onto dark races was a means for whites to represent yet dissociate themselves from their own desires."<sup>138</sup> As such, projecting the white couple's sexuality onto a totemic

130. *Id.*

131. *Id.*

132. See Figure 9, <http://LawAndSexuality.org/Khan>.

133. SECRETARY, *supra* note 1.

134. *Id.*

135. *Id.* A close reading of the lyrics of this song reveals an irony to its message of total devotion. After listing all the roles that he is willing to play for his lover, Cohen states, "I've been running through / These promises to you / That I made and I could not keep." LEONARD COHEN, *I'm Your Man*, on I'M YOUR MAN (Columbia Records 1988).

136. See Figure 10, <http://LawAndSexuality.org/Khan>.

137. DYER, *supra* note 119, at 13.

138. DYER, *supra* note 119, at 28 (footnotes omitted).

representation of a “dark” culture exploits the racialization of “exotic” sexual practice without putting the whiteness of the two leads into crisis.<sup>139</sup>

In contrast to the multicultural setting of New York City in *9 1/2 Weeks*, the geographic locale of *Secretary* is pristine suburbia. Instead of seeing multiple shots of garbage, dirtiness and pollution, there are multiple shots of parks, grass and water that symbolize the purity and the wholesomeness of the couple’s sexuality.<sup>140</sup> As with the scene in *9 1/2 Weeks* that features Farnsworth in the countryside, good whiteness is associated with rural or suburban spaces marked, in part, by the absence of people of color. The difference is that while *9 1/2 Weeks* associates the rural space with civilized (read nonkinky) sexuality, *Secretary* is attempting to purify and sanctify SM sexuality by associating it with the goodness of nature. In this sense, it contradicts the sexual logic of *9 1/2 Weeks* by relying on the same racial logic. Ultimately, Lee and Grey both embody good-whites and their love story falls under the category of what Foster names, “white heterotopian fantasy narratives which perform and celebrate whiteness.”<sup>141</sup> Part of their acceptability is contingent on their status as unambiguously unracialized good-white lovers.

### G. *Displacing Abjection*

Within the narrative of *Secretary*, Lee and Grey further gain sympathy for their sexual choices, in part, by differentiating themselves from other, more perverse and less attractive sexual minorities. Thus, besides their whiteness, another currency that Lee and Grey have is their conventional beauty. This was also the case in *9 1/2 Weeks*, as the classically beautiful Kim Basinger and the roguishly handsome Mickey Rourke were cast to draw the audience into their love story.<sup>142</sup> However, *Secretary* itself provides representations not just of acceptable and sympathetic SM subjects (Grey and Lee), but also of disgusting and abject ones. After Grey breaks up with Lee, she initially attempts to meet other men who share her kinky desires.<sup>143</sup> The first man is revealed to be

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139. In a sense, this *is* reminiscent of the way *9 1/2 Weeks* uses African-American characters in its opening scene who are voiceless and in the background, but nonetheless set the stage for exotic and out-of-control sexuality. However, blackness also signifies criminality, as can be most notably seen in the example of the young African-American boy who apparently picks the pocket of a white man in the first scene. *9 1/2 WEEKS*, *supra* note 20.

140. *SECRETARY*, *supra* note 1.

141. FOSTER, *supra* note 107, at 95.

142. *9 1/2 WEEKS*, *supra* note 20.

143. *SECRETARY*, *supra* note 1.

short and bald.<sup>144</sup> Besides being conventionally unattractive, he apparently has poor manners, as we are told in a voiceover that he tries to pinch Lee's nipples before they get into his car.<sup>145</sup> The next man has a shaggy beard, a full moustache and is apparently coded working class.<sup>146</sup> This man wants Lee to urinate for his sexual pleasure.<sup>147</sup> The last man would look normal, except his absurd desires construct him as unsympathetic. Lee explains that his kink is to be tied to a gas stove with the burners on full blast while she throws tomatoes at him.<sup>148</sup> In other words, he is a masochist who is aroused by humiliation.<sup>149</sup> The film purchases sympathy for our two leads, in part by differentiating them from these sadomasochists who are not conventionally attractive, who lack standard social skills, who are not middle-class, whose kinks are too extreme, or who fail to follow the proper male-top/female-bottom dynamic. In this sense, the project of rescuing sadomasochism from the realm of the unacceptable appears inextricably tied to marginalizing other identities upon whom disgust can be displaced. Lee and Grey gain acceptability because they are white, attractive, middle-class, kinky but not too kinky, and because they adhere to the gender imperative of male-top/female-bottom configuration.

#### H. *Matrimonial Resolutions*

What ultimately binds these characteristics into normalcy is the couple's marriage. As Brenda Cossman's queer feminist reading of the movie aptly notes, "Lee's masochism, and the couple's desires were reigned in through the tropes of heterosexual domestication: romantic love, marriage, and suburban domesticity."<sup>150</sup> In Lee's words, "we looked like any other couple you'd see." Marriage and monogamy bestow on them a normalizing privacy shield.<sup>151</sup> Before this, they were conducting their affair at the office; to an extent, they were violating the public/private dichotomy by bringing sex into the workplace. By containing their sexuality within the privacy of their home, they have now conformed to another characteristic of "Good" sex as it is described in Rubin's sex hierarchy model.<sup>152</sup> And as Mason Stokes has argued, in

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144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. See Figure 11, <http://LawAndSexuality.org/Khan>.

150. Cossman, *supra* note 93, at 869.

151. *Id.*

152. Rubin, *supra* note 10.

such narrative formulations that provide nuptial closure to the story, “[M]arriage successfully com[es] to the rescue of whiteness—whiteness and heterosexuality become normative copartners, both invested in buttressing and feeding off of the cultural normativity of the other.”<sup>153</sup> Lee and Grey’s marriage reinforces their whiteness, their class status, and their proper gender roles, even as it assimilates their nonnormative sexual practices. As such, at the end, order is restored.<sup>154</sup> Lee ceases to be Grey’s secretary and becomes his housewife, and they are absolved of any wrongdoing relating to their sexual practices.

Recall that in *9 1/2 Weeks*, it was the breach of monogamy that finally signalled to Elizabeth that the affair had gone too far. It was not the rape on the dining room table, or John’s violent threats with his belt. Rather, Elizabeth is pushed over the brink when she sees the sex worker stroking John.<sup>155</sup> In fact, she physically attacks both John and the sex worker in a furious rage before fleeing the scene.<sup>156</sup> After this, she runs through the red-light district and enters a crowded sex theatre with John hot on her heels.<sup>157</sup> In a kind of daze, she turns to an unknown man in the audience and begins kissing him in front of John, as if to retaliate against John for his perceived infidelity.<sup>158</sup> John, however, is not angry.<sup>159</sup> Instead, he gently pulls her into his arms for a tender embrace.<sup>160</sup> John clearly does not adhere to the heteronormative requirement of monogamy, and is not threatened by Elizabeth’s actions. This is another way that he embodies the bad-white man, since a good-white man would

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153. MASON STOKES, *THE COLOR OF SEX: WHITENESS, HETEROSEXUALITY, & THE FICTIONS OF WHITE SUPREMACY* 20 (2001).

154. It should be noted, however, that the marital normativity portrayed does get troubled. When Lee is performing her sit-in vigil, she is wearing a white wedding dress upon which she is eventually forced to urinate in order to remain rooted to her spot. In a sense, this defilement of an iconic matrimonial symbol conveys her subversion of marital roles and expectations; she will fight for this marriage, but on her own terms. This is further expressed in the final scene, which represents a blending of kinky and nonkinky sexuality. A familiar moment of marital intimacy shows Grey kissing his wife sweetly as she is fixing his tie. But after he leaves the room, the audience witnesses Lee dropping a dead cockroach on their newly made bed, suggesting that she is setting up an SM scene of “punishment” for when he gets home that night. See *SECRETARY*, *supra* note 1. It could be argued that this blemish on an idyllic, almost 1950s-reminescent scene suggests a queering of suburban marriage, and a hint that other couples behind their closed doors as well.

155. *9 1/2 WEEKS*, *supra* note 20.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*



be sexually possessive of his lover.<sup>161</sup> Thus, both *9 1/2 Weeks* and *Secretary* inscribe monogamy as an absolute imperative to a successful and sustainable relationship.

### III. BINDING SM WITHIN THE TERMS OF HOLY MATRIMONY AND COMPULSORY MONOGAMY

In this Part I seek to demonstrate an intertextual link between *Secretary's* sexual-ideological order and cases that were confronted with SM both in and out of a marital context. Although sadomasochism is not explicitly illegal in American, Canadian or British jurisdictions, its practices can get entangled in the law in a number of areas, including obscenity, child access cases, and prostitution-related laws. SM can also be interpreted as "assault" under criminal law if injury occurs, despite, in some cases, the undisputed consent of the parties. These practices, however, would not normally come under judicial scrutiny unless they were to occur in public, or if injury to a party were to necessitate medical assistance.

Bearing in mind this precarious position of SM under the law, a comparative analysis of three assault cases from England reveals a conspicuous leniency towards SM practices when they are positioned within a marital relationship. The first and most infamous case to consider is the 1992 House of Lords decision *R. v. Brown*,<sup>162</sup> cited internationally and appealed (and dismissed) at the European Court of Human Rights.<sup>163</sup> In *Brown*, SM's status as "Bad" sex under Rubin's sex hierarchy model is exacerbated because its participants were gay men involved in group and cross-generational (although all adult) sex.<sup>164</sup> An examination of two subsequent cases, *R. v. Wilson*<sup>165</sup> and *R. v. Emmett*,<sup>166</sup> which respectively distinguished and followed *Brown*, reveals the extent to which sexual orientation and marital status can have an impact on the degree of judicial tolerance of SM practices. The final case I will

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161. This also draws a much more complicated picture of the dynamic between the two lovers. It contradicts Hirschman's monolithic reading of the power relations between the lovers which casts John as the possessor and Elizabeth as the possessed. Instead, one could read the scene with the sex worker as Elizabeth insisting that John is *her* possession such that he is not allowed to get sexual pleasure from another person.

162. *R. v. Brown*, [1994] 1 A.C. 212 (H.L.) (appeal taken from Eng.).

163. *Laskey v. United Kingdom*, 24 Eur. Ct. H.R. 39 (1997) (holding that the United Kingdom did not violate article 8, and finding that a state is "unquestionably entitled to . . . regulate, through the operation of the criminal law, activities which involve the infliction of physical harm.").

164. *Id.*

165. *R. v. Wilson*, [1996] 2 Crim. App. 241.

166. *R. v. Emmett*, [1999] EWCA Crim. 1710.

deconstruct further nuances our analysis. In the 1993 American case *Twyman v. Twyman*, a husband's breach of monogamy pierces through the marital shield that, I suggest, would normally protect his kinky sexual practices from judicial intervention.<sup>167</sup>

Reading *Secretary* in relation to these cases demonstrates the contingency of SM's criminalization and marginalization. Although the above cases come from the 1990s and traverse two jurisdictions, I posit that a comparative analysis of these cases read in conjunction with *Secretary* reveals an overlapping of politics between these two national imaginaries and between law and film.<sup>168</sup> As new cases that address SM emerge in the context of marital and monogamous relations (if in fact, they do emerge), my thesis on the exonerating influence of marriage could be further complicated.<sup>169</sup>

#### A. R. v. Brown

Before we consider the possible palliative effects of marriage on the judicial imaginary, a review of the facts of the *Brown* case will lay the foundation for the predominant "Bad" sex status of SM. The facts that gave rise to the *Brown* case also reveal an intersection of law and film and the "hegemony of the eye," that is, the privileging of knowledge derived from visual evidence.<sup>170</sup>

The case started in 1987 when a special unit in the British police called the "Obscene Publications Squad," while conducting an unrelated investigation, came upon a homemade video that portrayed same-sex SM activities.<sup>171</sup> The police claimed later—after a protracted and costly investigation—that because of the video, they believed the submissives were not consenting, and that they had not merely seized evidence of violent assault, but had in their possession genuine "snuff" films.<sup>172</sup> A

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167. *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

168. *See id.*; *Emmett*, [1999] EWCA Crim.; *Wilson* [1996] 2 Crim. App.; *R. v. Brown*, [1994] 1 A.C. 212 (H.L.) (appeal taken from Eng.).

169. *Brown*, [1994] 1 A.C. at 212. One area of legal intervention that requires further analysis involves child custody disputes between parents who engage in SM sex. This question is beyond the scope of this Article, but a 2003 court case has demonstrated that the mitigating influences of marriage upon the culpability of SM may not extend to SM parents. *See Marty Klein & Charles Moser, SM (Sadoomasochistic) Interests as an Issue in a Child Custody Proceeding* 50 J. HOMOSEXUALITY 233 (2006).

170. *See* LAURA V. MARKS, *THE SKIN OF THE FILM: INTERCULTURAL CINEMA, EMBODIMENT, AND THE SENSES* 24 (2000).

171. *R. v. Brown*, [1992] Q.B. 491, 495.

172. The conflation and confusion of SM imagery with the urban mythical "snuff" film suggests a moral panic at work in the investigation.

murder investigation was initiated.<sup>173</sup> After interviewing hundreds of people, literally digging up a garden of one of the dominants in search of corpses, and spending months and millions of pounds, the police learned that none of the men in the video had been murdered, none of them had suffered injuries requiring medical attention, and none of them had been unwilling participants.<sup>174</sup>

This did not deter the authorities from eventually bringing criminal charges of various assault-related offenses against sixteen men.<sup>175</sup> The accused men consisted not only of the dominant men but the submissives as well, who were charged with accessory to assault upon their own bodies because of their consent.<sup>176</sup> In 1990, the trial judge concluded that consent was not a defense to the crimes before him.<sup>177</sup> Under direction from their counsel, the sixteen defendants pleaded guilty with mitigating pleas.<sup>178</sup> Their sentences ranged from fines to full imprisonment for four years and six months.<sup>179</sup> Two years later, six defendants appealed both the convictions and the sentencing.<sup>180</sup> Lord Lane of the High Court upheld the convictions but reduced the sentences so that the prison terms ranged from three months to three years.<sup>181</sup> However, he ended his decision with a firm caveat that future defendants who found themselves in a similar situation would suffer much harsher sentences (as if three-year sentences were lenient).<sup>182</sup> In 1993, the case was appealed to the House of Lords.<sup>183</sup> The convictions and the sentences were upheld in a three-to-two decision.<sup>184</sup> Four years later, the European Court of Human Rights affirmed this British decision, stating that a state is entitled to regulate private activity when issues of health, safety, and morality are involved.<sup>185</sup>

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173. See BILL THOMPSON, *SADOMASOCHISM: PAINFUL PERVERSION OR PLEASURABLE PLAY?* 2 (1994); Leslie J. Moran, *Violence and the Law: The Case of Sado-Masochism*, 4 SOC. & LEGAL STUD. 225, 225 (1995) (stating the investigation cost £3,000,000).

174. See *R. v. Brown*, [1994] 1 A.C. 212, 213, 281 (H.L.) (appeal taken from Eng.); *R. v. Brown*, [1992] Q.B. 491, 497.

175. See *R. v. Brown*, [1994] 1 A.C. 212, 213 (H.L.) (appeal taken from Eng.). The accused were charged under chapter 100, sections 20 and 47 of the Offences Against the Person Act of 1861. *Id.* at 212. Some theorists have speculated that the police felt compelled to lay charges to justify the exorbitant costs of their investigation. See THOMPSON, *supra* note 173, at 2.

176. See *Brown*, [1994] 1 A.C. at 213.

177. See *id.*

178. See *id.*

179. See *Brown*, [1992] Q.B. at 492.

180. See *id.*

181. See *id.* at 501.

182. See *id.*

183. See *R. v. Brown*, [1994] 1 A.C. 212, 212-13 (H.L.) (appeal taken from Eng.).

184. See *id.*

185. See *Laskey v. United Kingdom*, 24 Eur. Ct. H.R. 39, 47-50, 52 (1997).

Before analyzing the impact this precedent-setting case had on subsequent cases involving SM in a marital context, it is worth considering the significance of the damning evidence that made the convictions possible. The accused men had been conducting their SM sex life for years in private.<sup>186</sup> Because none of the participants had ever required medical attention, it is unlikely that the police would ever have been aware of their activities had they not been videotaped.<sup>187</sup> The videos, which depicted extreme activities including piercing, whipping and branding, were central to the success of the prosecution.<sup>188</sup> I suggest that the visual evidence acted as an *antialibi*, a kind of impartial witness that belied the testimony of the accused men regarding the consensual and mutually pleasurable nature of the activities. The police and trial judge saw violence, depravity and moral corruption, and *seeing is believing*.<sup>189</sup> In other words, because of the hegemony of the eye, interpretations based on visual evidence, particularly a moving image, command a sense of their own incontestability.<sup>190</sup> And the subjective experience of the participants seems at best epiphenomenal. This case demonstrates an overlapping sensibility between law and film, where the visual field plays a key role in establishing the “truth” of a depicted sexual encounter. In *Brown*, based on a visual artifact, the “truth” arrived at by the majority was conspicuously value-laden, as is demonstrated by the conclusion of one majority judge in the House of Lords decision: “Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is ‘uncivilised.’”<sup>191</sup> Though visual evidence is characterized as objective, the judgment rendered based on this evidence is saturated in ideological interpretation.<sup>192</sup>

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186. See *Brown*, [1992] Q.B. at 495.

187. See *Brown*, [1994] 1 A.C. at 281; *Brown*, [1992] Q.B. at 495.

188. See *Brown*, [1992] Q.B. at 495, 496-97.

189. See *id.*

190. See MODERNITY AND THE HEGEMONY OF VISION 1 (David Michael Levin ed., 1999) (noting that the hegemony of visual over oral evidence is exemplified in a quote from Heraclitus: “[T]he eyes are more exact witnesses than the ears”).

191. *Brown*, [1994] 1 A.C. at 237. Notice as well, the use of the term “uncivilized” conveys an imperial trope. In *Brown*, as in *9 1/2 Weeks*, SM is associated with “uncivilized” racialized others.

192. Another case involving gay SM and visual evidence is the California decision *People v. Samuels*, where a man was charged with distribution of obscene materials and assault based on films he had produced of himself engaged in SM activity. 58 Cal. Rptr. 439 (Cal. Ct. App. 1967). The accused was convicted of assault based on the evidence in the film, despite the stated consent of the submissive parties. *Id.* For an astute analysis of this case and the construction of masochists as nonrational subjects, see Susan R. Schmeiser, *Forces of Consent*, 32 STUD. L. POL. & SOC'Y 3, 17 (2004).

B. R. v. Wilson

While the judicial gaze saw violence and evil in the SM activities in *Brown*, England's Court of Appeal (Criminal Division) decision in *R. v. Wilson* demonstrates the alternative judicial perspectives that can occur if the indicted SM activity is positioned within a more familiar context of intimacy and privacy: the matrimonial home. *Wilson* reflects *Secretary's* ideological strategy of sanctifying sadomasochism by situating it within the bounds of marital heteronormativity.

In 1995, Mr. Wilson was charged with assault occasioning bodily harm for consensually branding his initials onto his wife's buttocks.<sup>193</sup> Although it might be argued that the police decision to charge Mr. Wilson reveals a nonbias towards married and unmarried men, and heterosexual and gay men, it should be pointed out that unlike the submissives in the *Brown* case, Mrs. Wilson was not charged with accessory to assault.<sup>194</sup> As a heterosexual woman, Mrs. Wilson's complicity in the SM activity did not render her a criminal, but rather a victim in the eyes of the police.<sup>195</sup>

At trial, Mr. Wilson was reluctantly convicted based on the House of Lords decision in *R. v. Brown*.<sup>196</sup> However, the trial judge clearly conveyed his dissatisfaction with this outcome, lamenting that "we are . . . saddled with a law which means that anyone who injures his partner, spouse, or whatever, in the course of some consensual activity is at risk of having his or her private life dragged before the public to no good purpose."<sup>197</sup>

However, on appeal, the facts of Mr. Wilson's case were distinguished from those in *Brown*, and the Court of Appeal quashed his conviction.<sup>198</sup> Lord Russell gave three interconnected reasons that exempted Wilson from criminal liability.<sup>199</sup> First, the wife was considered a competent adult, capable of giving consent.<sup>200</sup> Second, branding was construed as a nonsexual and nonaggressive activity.<sup>201</sup> Third, and most

193. *R. v. Wilson*, [1996] 2 Crim. App. 241, 242.

194. *See id.* at 241-42; *Brown*, [1994] 1 A.C. at 213 (finding that the appellants "participated in the commission of acts of violence against each other.").

195. It should be noted, however, that there is a tension between how the submissives were characterized by the police and by the judiciary in *Brown*. While the police successfully charged some of the submissive men, thus branding them as criminals, two majority judges in *Brown* referred to the submissives as "victims." *See Brown*, [1994] 1 A.C. at 233, 235-37, 247.

196. *Wilson*, [1996] 2 Crim. App. at 242-43.

197. *Id.* (referencing the transcript of the decision of the case at trial (unpublished)).

198. *See id.* at 243-44.

199. *See id.*

200. *See id.* at 243.

201. *See id.* at 244 (comparing branding to tattooing).

relevantly, it was not in the public interest to interfere with private marital relations.<sup>202</sup> An examination of the assumptions underlying each of these reasons reveals an anxious desire to protect heterosexuality, marriage and monogamy from the taint of perversion.

On an individual level, the court found that Mrs. Wilson was not harmed by the branding because she was an adult exercising free choice.<sup>203</sup> She is described as a woman of “mature years”<sup>204</sup> who “not only consented to that which the appellant did, she instigated it.”<sup>205</sup> The reference to her “maturity” can only have been meant to convey her ability to consent to injury, which stands in contrast to the “youths” who were so described in the *Brown* case in order to deny their ability to make sexual choices about their own bodies.<sup>206</sup> What Lord Russell ignores is that the submissive partners in *Brown*, like Mrs. Wilson, were legal adults when the material events occurred.<sup>207</sup> Another important parallel is that the submissive partners in *Brown*, again like Mrs. Wilson, instigated many of the sadomasochistic activities.<sup>208</sup> Some enjoyed self-inflicted pain as well.<sup>209</sup> But because the submissives were in their late teens or early twenties, and because there was an age gap between the dominants and the submissives, the court felt entitled to ignore the submissives’ enthusiastic participation in group SM.<sup>210</sup> Though legally adults, their competence was infantilized.<sup>211</sup>

Recall that the issue of the submissive partner’s maturity was an important aspect of character development in both *9 1/2 Weeks* and *Secretary*. In *9 1/2 Weeks*, the more Elizabeth succumbed to John’s agenda, the more vulnerable and child-like she appeared. In *Secretary*, the more Lee engaged in sadomasochistic activities, the more assertive and grown-up she appeared. It is a discursive strategy then, in both the legal and the cinematic narratives analyzed here, to utilize the semiotics and symbols of maturity as a way to gauge the acceptability of a sadomasochistic encounter. In *9 1/2 Weeks*, although Elizabeth is a grown woman in her thirties, the viability of her choice to engage in

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202. *See id.* at 242.

203. *See id.* at 243.

204. *Id.* at 242.

205. *Id.* at 243.

206. *See id.*; *R. v. Brown*, [1994] 1 A.C. 212, 235, 245 (H.L.) (appeal taken from Eng.).

207. *See id.* at 282.

208. *See id.*

209. *See id.*

210. *See id.* at 235-36; *Masochists Seek Court Ruling*, *TIMES* (U.K.), Feb. 3, 1992, available at 1992 WLNR 3892791; Frances Gibb, *Inflicting Injuries for Sexual Pleasure Illegal, Lords Rule*, *TIMES* (U.K.), Mar. 12, 1993, available at 1993 WLNR 3890699.

211. *See id.*

sadomasochistic sex with John is undermined as the movie progressively infantilizes her in relation to him. Similarly, in *Brown*, it was crucial that the law infantilize the submissive partners in order to vitiate their enthusiastic consent. In *Secretary*, though Lee is a woman in her early twenties who gets spanked by her forty-something-year-old boss when permission was *not* asked, her enjoyment and consent are reinforced as the audience sees her blossom into womanhood.<sup>212</sup> At the end of the movie, her decision to move out of her parents' house and join with Grey in matrimony solidifies her status as an adult.<sup>213</sup> Similarly, Mrs. Wilson's status as a married woman endows her with respectability and competence.

In Lord Russell's view, not only are the Wilsons competent adults, but the branding itself does not fall within the realm of sadomasochistic perversity.<sup>214</sup> He contends that "the question certified for their Lordships in *Brown* related only to a sadomasochistic encounter."<sup>215</sup> In contrast, he argues that "the appellant's desire was to assist her [Mrs. Wilson] in what she regarded as the acquisition of a desirable piece of personal adornment."<sup>216</sup> In this analogy, Lord Russell disregards the facts in *Brown*, which included branding as an indictable sadomasochistic activity.<sup>217</sup> Instead, Lord Russell equates the significance of Wilson's branding to the more commonplace activity of tattooing.<sup>218</sup> He further ignores the underlying eroticism of having initials branded on one's buttocks. Indeed, Mrs. Wilson initially desired her husband's initials on her breasts, but he apparently refused.<sup>219</sup> Buttocks and breasts are classic erogenous zones, but Lord Russell strategically ignores this association and places the branding activity within the acceptable realm of female vanity.

As well as evacuating any erotic association with the branding, Lord Russell also held that the activity was not aggressive in nature in contrast to the facts of *Brown*.<sup>220</sup> He describes the appellants in *Brown* as engaging in "sadomasochism of the grossest kind, involving inter alia, physical torture and, as Lord Templeman [one of the majority judges in

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212. *SECRETARY*, *supra* note 1.

213. *Id.*

214. *See* R. v. Wilson, [1996] 2 Crim. App. 241, 243-44 (comparing branding to other forms of personal adornment, such as body piercing and tattooing).

215. *Id.* at 243.

216. *Id.*

217. *See* R. v. Brown, [1994] 1 A.C. 212, 236 (H.L.) (appeal taken from Eng.); R. v. Brown, [1992] Q.B. 491, 495.

218. *See* *Wilson*, [1996] 2 Crim. App. at 244.

219. *See id.* at 242.

220. *Compare id.* at 243, *with* *Brown*, [1992] Q.B. at 497.

*Brown*] pointed out: ‘obvious dangers of serious physical injury and blood infection.’ The facts of the case were truly extreme.”<sup>221</sup> To be sure, the activities in *Brown* included more than branding, but also bondage, whipping, insertion of nails through foreskin, insertion of wax into the urethra, and cutting of the scrotum.<sup>222</sup> Yet by what principle should Wilson’s branding be distinguished from the branding in *Brown*? Branding obviously causes physical injury, which is why Mrs. Wilson’s doctor contacted the police after examining the burn and the related bruising that had resulted when Mr. Wilson burned his initials with a hot knife.<sup>223</sup> This activity could easily be characterized as “extreme” and “aggressive” (as well as dehumanizing, since it is animals and historically slaves who were branded by their “owners”). But compared to the other activities in *Brown*, which involved multiple sadomasochistic activities and direct genital interference by the participants, it appears less so.

Lord Russell also contrasts the motivations of the dominant partners in *Brown* from those of Mr. Wilson.<sup>224</sup> While the gay men apparently engaged in sadomasochism for “sexual gratification,”<sup>225</sup> Mr. Wilson maintained that his act of branding “was done for love.”<sup>226</sup> Later, Mr. Wilson paraphrases his wife, who allegedly stated, “I’m not scared of anybody knowing that I love you enough to have your name on my body.”<sup>227</sup> The discourse of romantic love comes to sanctify and humanize the activity. Similarly, at the end of *Secretary*, as Cossman suggests, “[T]heir deviance has now been reframed within loving, hetero-normative parameters: it is monogamous, romantic, heterosexual, marital, and non-commercial.”<sup>228</sup> Though in *9 1/2 Weeks*, Elizabeth and John profess their love for one another at different times, these sentiments were not contained within the bounds of marriage.<sup>229</sup> As such,

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221. *Wilson*, [1996] 2 Crim. App. at 243.

222. *See Brown*, [1992] Q.B. at 496-97. The undisputed facts of the case revealed that the men in *Brown* were vigilant in practicing safer kinky sex, for example by sterilizing all instruments and using condoms. *See R. v. Brown*, [1994] 1 A.C. 212, 236, 238.

223. *See Wilson*, [1996] 2 Crim. App. at 242.

224. *See id.* at 242-43.

225. *See id.* at 243.

226. *See id.* at 242.

227. *Id.* If Mrs. Wilson was seeking to make a public declaration about her deep love of her husband, presumably, branding on the arm would have achieved this much better than on her buttocks. She instead chose a very private area of the body which indicates that more likely, she enjoyed a kinky thrill from the branding and/or a psycho-sexual thrill from the idea of being marked by her husband’s name.

228. Cossman, *supra* note 93, at 870.

229. *9 1/2 WEEKS*, *supra* note 20.



not just any love, but only marital love, seems to operate as a kind of emotional alibi to justify the unusual behavior.

The heterosexist and monogamist assumptions of the sanctity of the marital home are made evident in Lord Russell's final policy assessment of the impact of the trial ruling. He concludes: "[W]e are firmly of the opinion that it is not in the public interest that activities such as the appellant's in this appeal should amount to criminal behaviour. Consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution."<sup>230</sup> This assessment places the privacy interests of the Wilsons within the agenda of proper public policy. Their marriage presumptively renders their activities licit. Lord Russell is careful to endow the Wilsons with the culturally cherished roles of "husband" and "wife," therefore imbuing them and their intimate expressions with legitimacy.<sup>231</sup> The activities took place, not just in private, but in the "privacy of the matrimonial home."<sup>232</sup> The appellants in *Brown* were also conducting their affairs in private, but one gets the sense that the matrimonial home is über-private and thus more hallowed than other private areas.<sup>233</sup> It demands more deference and respect from the judiciary and the police system.

### C. *R. v. Emmett*

In order to avoid overstating my argument about the significance of the Wilsons' hetero-marital identity, it is important to examine a British case that followed the *Brown* precedent, but involved a heterosexual couple who were cohabiting at the time of the material events. In *R v. Emmett*, a man was convicted of assault for two incidents of consensual sadomasochistic activity that caused physical injury.<sup>234</sup> In the first incident, Emmett asphyxiated his female partner, causing subconjunctival hemorrhages in her eyes and bruising around her neck.<sup>235</sup> In the second incident, he poured lighter fuel on his partner's breasts and ignited it, causing a serious burn that became infected.<sup>236</sup> After both incidents, the female partner sought medical help at Emmett's insistence.<sup>237</sup> After the second incident, the doctor contacted the police.<sup>238</sup>

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230. *Wilson*, [1996] 2 Crim. App. at 244.

231. *See id.*

232. *See id.*

233. *See id.*; *R. v. Brown*, [1994] 1 A.C. 212, 215 (H.L.) (appeal taken from Eng.).

234. [1999] EWCA Crim 1710, 2 (unreported).

235. *See id.* at 3.

236. *See id.*

237. *See id.* at 4.

Emmett's female partner claimed that both incidents were consensual.<sup>239</sup> And though the police and the judiciary found that consent was not a defense, she was not charged with accessory to assault like the submissives in *Brown*.<sup>240</sup> Again, we see that being female and heterosexual seems to absolve a woman from participating in submissive sexual conduct.<sup>241</sup>

The Court of Appeal upheld the conviction, relying on the *Brown* precedent and clearly stating that the sexual orientation of the partners was irrelevant.<sup>242</sup> Further, even though the couple had gotten married after the material events in question, but before the trial, the court did not allow them to have recourse to the cherished "privacy of the marital home" shield to exonerate their past activities.<sup>243</sup> This would seem to suggest that the primary issue when adjudicating the criminality of consensual activity causing physical injury is not sexual orientation or even marital status, but rather the "extremity" of the activities, which the court in *Emmett* considered to have been extremely dangerous.<sup>244</sup>

Yet an important aspect of the case should be noted. Emmett's sentence of 18 months' imprisonment was suspended for two years at trial, and this was not altered on appeal.<sup>245</sup> Although Emmett now has a criminal record, he did not have to serve one day in jail.<sup>246</sup> This is in contrast to the convicted persons in *Brown*, some of whom served multiple-year jail sentences for participating in activities that never required anyone to seek medical attention.<sup>247</sup> The courts provided no explanation for the difference in sentencing practices. But it should be pointed out that Justice Wright, the presiding judge in *Emmett*, stated "[I]t is only right to recall that, since the events which formed the basis of this prosecution and since the prosecution was launched, [Emmett and his partner] have married each other."<sup>248</sup> What is the significance of this fact, such that it must be "recalled" in the written judgment? Justice Wright does not elaborate on his reasoning, but I posit that the heterosexual couple's current marital status assisted in mitigating Emmett's culpability. Although his conviction still stands, Emmett will

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238. *See id.* at 3.

239. *See id.* at 4.

240. *See id.* at 1-2, 4, 8.

241. *See id.* at 1-2; *R. v. Wilson*, [1996] 2 Crim. App. 241, 241-42.

242. *See Emmett*, [1999] EWCA Crim. at 4-6, 8.

243. *Id.* at 8.

244. *Id.*

245. *See id.* at 2, 8.

246. *See id.*

247. *See R. v. Brown*, [1992] Q.B. 491, 492-93, 501.

248. *Emmett*, [1999] EWCA Crim. at 2.

not be materially punished. Thus, being married, heterosexual and monogamous does not immunize a couple from conviction, but it apparently can buy some leniency. If the activities happen to come in front of the judiciary, a soft lens will be employed, to either normalize (as was the case in *Wilson*), or at least to mitigate (as was the case in *Emmett*), any activities that might *spank* of perversion.

Similarly, in *Secretary*, the fact that the affair culminated in marriage worked retroactively to justify the previously taboo behavior of engaging in a sadomasochistic affair at the office. At the end of the film, a soft lens literally operates to discursively mute the previously shown edgy sexuality.<sup>249</sup> In one shot, candle light glows over Lee's naked body as Grey tenderly dries her skin off, which leads the next day to normative heterosexual missionary position sex.<sup>250</sup> In this way, the film uses visual rhetoric, through its lighting technique, to support the ideology of the film that marriage can render kinky sexuality licit, even romantic.<sup>251</sup>

#### D. Twyman v. Twyman

In the 1993 American divorce case of *Twyman v. Twyman*, adjudicated in Texas state court, sadomasochistic sexuality within the marital home does not get the same soft lens treatment.<sup>252</sup> Instead, sadomasochism is linked with deviancy and the trauma of rape. Yet, a comparable ideology of the sanctity of marriage operates in this case as well, although the facts disclose that such sanctity is contingent on fidelity.

For the Twymans, the trouble began five years into their marriage, when the husband, William, asked his wife, Sheila, to try bondage activities.<sup>253</sup> After a few such encounters, Sheila disclosed for the first time that she had been raped at knife-point before the marriage, and because of this did not want to engage in bondage.<sup>254</sup> The issue did not come up between them again until ten years later, when Sheila discovered that her husband was having an affair.<sup>255</sup> When questioned about the reasons, William implied that her refusal to participate in bondage was to blame.<sup>256</sup> The couple then sought joint counseling.<sup>257</sup>

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249. See *SECRETARY*, *supra* note 1.

250. See *id.*

251. See Figure 12, <http://LawAndSexuality.org/Khan>.

252. See 855 S.W.2d 619 (Tex. 1993).

253. *Twyman v. Twyman*, 790 S.W.2d 819, 820 (Tex. Ct. App. 1990).

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

William, however, allegedly continued to blame Sheila for their problems, demeaning her sexual abilities and unfavorably comparing her to his girlfriend and to other kinkier people he had met.<sup>258</sup> At the behest of their counselor, Sheila tried bondage one more time.<sup>259</sup> Again she found the activity unendurable, and refused to continue with it.<sup>260</sup> Soon thereafter, Sheila separated from William and filed for divorce.<sup>261</sup> She later amended her petition to include damages for William's conduct, which she alleged amounted to negligent infliction of emotional distress.<sup>262</sup>

Sheila was successful with her tort claim at trial and the Court of Appeal affirmed.<sup>263</sup> The Supreme Court of Texas, however, could not find in favor of Sheila because it had recently abrogated the tort of negligent infliction of emotional distress.<sup>264</sup> Instead, the plurality judgment found that Sheila had established enough facts to bring her claim within the ambit of *intentional* infliction of emotional distress, a tort recognized under Texas law.<sup>265</sup> Her case was remanded for a new trial to allow her to pursue her claim in light of this appellate restatement of the applicable law.<sup>266</sup>

The plurality judgment, written by Justice Cornyn, does not pinpoint exactly what part of William's behavior was so outrageous as to be potentially tortious.<sup>267</sup> Although Justice Cornyn does cite Sheila's petition, stating that she "alleged that William 'intentionally and cruelly' attempted to engage her in 'deviate sexual acts,'" the Justice himself does not expressly label bondage as "deviate."<sup>268</sup> He is careful to use quotation marks, maintaining the court's theoretical neutrality concerning the nature of bondage. In his concurring opinion, Justice Gonzalez confidently asserts, "What happened to Sheila Twyman . . . involves grossly offensive conduct."<sup>269</sup> Again, however, it seems that it was not necessarily the bondage itself that was offensive, but rather the ultimatum by William that "such activities were necessary to the future of their

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258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* at 819-20.

263. *See id.* at 819.

264. *See Twyman v. Twyman*, 855 S.W.2d 619, 625-26 (Tex. 1993).

265. *See id.* at 622 n.4.

266. *See id.* at 626. Counsel for Mr. Twyman informed me that after the remand, Mrs. Twyman decided not to pursue the tort claim any further.

267. *See id.* at 620-26.

268. *Id.* at 620.

269. *Id.* at 626.

marriage.<sup>270</sup> In a dissenting opinion that would have upheld Sheila's claim as originally pleaded, Justice Spector also found William's behavior to be "grossly offensive conduct."<sup>271</sup> She later summarizes the trial level findings by saying that "Sheila's mental anguish was a direct proximate result of William's sexual practices."<sup>272</sup> But which sexual practices? His interest in bondage, or the affairs in which he engaged to satisfy that interest? Even Justice Spector's dissent, which unequivocally finds William's actions tortious, never pinpoints bondage in itself as intrinsically offensive.<sup>273</sup>

Justice Hecht's dissent outlines the ambiguity of the relevance of the bondage that I am attempting to delineate.<sup>274</sup> In his opinion, Sheila's claim for intentional infliction of emotional distress fails to meet the standards of legitimacy required at common law because it relies on an overly-subjective and value-laden determination.<sup>275</sup> As he states, "[I]t is unclear what components of the conflict between Sheila and William were actionable."<sup>276</sup> He enumerates three causes for Sheila's suffering: "William's affair, his interest in bondage, and the breakup of the marriage."<sup>277</sup> Justice Hecht explains that if the first or the last reason are taken to be sufficiently outrageous to merit a tort claim, the majority of divorce cases could involve tort damages.<sup>278</sup> Justice Hecht then addresses the conflict over bondage, describing it as William "attempting to interest Sheila in sexual conduct which he considered enjoyable but she, in her words, 'did not like.'"<sup>279</sup> Justice Hecht purposefully casts their conflict in neutral terms, as one of irreconcilable sexual differences, not of deviancy versus normalcy.<sup>280</sup>

A close reading of the multiple opinions in *Twyman v. Twyman* indicates that not one judge issued a direct indictment of bondage in isolation of other factors.<sup>281</sup> Although the majority of opinions are focused on the bondage, the condemnation of the practice is implied and not explicit. Unlike the decision in *Brown*, where (gay) sadomasochism is decied as "evil," this family law case is much more subtle in its

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270. *Id.*

271. *Id.* at 641.

272. *Id.*

273. *See id.* at 640-45.

274. *See id.* at 629.

275. *See id.*

276. *Id.* at 636.

277. *Id.*

278. *See id.*

279. *Id.*

280. *See id.*

281. *See id.* at 619-45.

denunciation. Instead, it appears that the outrageousness of William's conduct was located in the overlap between his interest in bondage, his pursuit of it outside of marriage, and his insistence that his wife participate in bondage in order to save the marriage.

In *Sexual Citizens*, Brenda Cossman addresses the politics of belonging and symbolic citizenship through the practice of marriage.<sup>282</sup> She states, “[M]arriage . . . is one of citizenship’s central and constitutive practices.”<sup>283</sup> Yet, as she explains, being married does not buy one unconditional access to sexual citizenship; rather, “[Marriage] is also an ongoing practice . . . and as such, must be done in a particular way.”<sup>284</sup> In this sense, William may have had access to sexual citizenship at the beginning of his marriage, when he first requested that Sheila engage in light bondage. But when she subsequently refused to participate in his kink and he unapologetically sought sexual fulfillment outside of the marital home, he lost the right to deference from the courts. As Cossman argues, “[T]he adulterer is becoming a new kind of unbecoming citizen.”<sup>285</sup> William could not access traditional rights of privacy for married couples because he had already maligned the sanctity of his marital home by his infidelity. By seeking out extramarital sex, he had rendered his sex life public and open to judicial scrutiny.

Janet Halley suggests that one insightful reading of the case would reveal compulsory marital monogamy as a regulatory practice which endowed Sheila with the court-appointed victim-power to punish William.<sup>286</sup> On this view, he is guilty of wrongdoing not just because he was a pervert but also because he satisfied that perversion outside of the home. Of course, it never occurs to any of the judges (or apparently to the Twymans’ marriage counselor) that perhaps William *should* get his kinks satisfied with other women in order to save the marriage. In this scenario, William and Sheila could attempt an “open” marriage in order to respect Sheila’s association of bondage to her past rape, while also respecting William’s needs for sexual fulfillment. Irreconcilable sexual differences can potentially become reconcilable if monogamy ceases to be compulsory. However, this would have dissociated William’s bondage practices from love and commitment and, as I have argued, SM’s

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282. BRENDA COSSMAN, *SEXUAL CITIZENS: THE LEGAL AND CULTURAL REGULATION OF SEX AND BELONGING* 71 (2007).

283. *Id.* at 70.

284. *Id.* at 71.

285. *Id.* at 84.

286. JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 362 (2006).

acceptability in the socio-legal imaginary is contingent upon it taking place within the bounds of marital love and monogamous commitment.

In *Secretary*, monogamy is similarly entrenched as an imperative to a successful marriage. Lee initially dates the boy next door, Peter, a person on whom she has always had a crush.<sup>287</sup> In their first outing, Lee is clearly smitten and enthusiastically engages in a long romantic kiss with Peter.<sup>288</sup> Coincidentally, Grey witnesses this kiss.<sup>289</sup> Overcome with jealousy, he steps up his domineering behavior at the office, which eventually leads to their explicit SM affair.<sup>290</sup> Then, once Lee makes the decision to fight for a long-term relationship with Grey, she unequivocally rejects Peter by breaking off their engagement. She informs her now-ex-fiancé, “Peter, I don’t want you.”<sup>291</sup> Though Steven Shainberg, the director of *Secretary*, insists that this scene dramatizes Lee’s assertion of her own identity as a sadomasochist,<sup>292</sup> it also neatly disposes of any possible polyamorous loose ends. We know that Lee is completely devoted to Grey and that she has no lingering feelings for any other man when they eventually marry.

Grey too is presented as absolutely monogamous. In the original script, Lee says in a voiceover at the end of the film, “Edward hired a new secretary. I insisted it be a man, and Edward complied.”<sup>293</sup> Shainberg explained that they put that line into the screenplay to allay any fears that Grey might resume his SM antics with the new secretary (obviously assuming that Edward is heterosexual and not bisexual).<sup>294</sup> Shainberg later explains that he ended up cutting that line out of the film because he “felt their relationship had gone far enough that hopefully we believed in some way [Grey] had been healed, too, that he didn’t need to be doing at the office with the next secretary what he did with Lee.”<sup>295</sup> The director’s normative view clearly envisions a commitment to monogamy as part of the journey to sexual healing. As such, it was not just marriage, but monogamy, that marked the couple’s maturity and sexual well-being.

287. *SECRETARY*, *supra* note 1.

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Interview by David Breskin with Steven Shainberg*, in ERIN CRESSIDA WILSON, *SECRETARY: A SCREENPLAY* 142 (2003). It should also be pointed out that Peter’s class status is much lower than Grey’s, making him a less ideal candidate for marriage within the logic of the story.

293. *SECRETARY*, *supra* note 1.

294. WILSON, *supra* note 292 at 142-43.

295. *Id.* at 143.

Reading *Twyman* in relation to *Secretary* reveals an overlapping agenda to naturalize compulsory monogamy. William's bondage fantasies were one thing; seeking satisfaction for these desires outside of the home was a completely different thing. Although it seems that William was attempting to address his infidelity and his desires by seeing a therapist, his refusal to abdicate his perverse inclinations in the face of his wife's past trauma rendered him a bad sexual citizen. Unlike the finale of *Secretary*, which is careful to contain the perversity (and any desire) within the bounds of marriage, William failed in "the project of self-governance."<sup>296</sup> He did not discipline his perversity, but instead indulged it by transgressing the marital boundaries. In this sense, he was more like John in *9 1/2 Weeks*, who defied compulsory monogamy to enjoy sexual exchanges outside of his primary relationship. Further, making bondage a condition of his fidelity prioritized lust over love and commitment. As we have seen in *Secretary*, to convert SM into a proper sexual practice requires the normalizing framework of marital love and monogamy.

#### IV. CONCLUSION

A close and comparative discursive analysis of *Secretary* reveals that sadomasochism has gained currency only within particular heteronormative strictures. In my cinematic comparison, I demonstrated that while both *9 1/2 Weeks* and *Secretary* feature the erotic thrills of an SM relationship, they convey radically different conceptions of the significance of these desires. In 1986, *9 1/2 Weeks* presented SM as a dangerous slippery slope, where the "normal" dynamics of heterosexuality (where the man is active and the woman passive) become pathological in the extreme. Elizabeth went from being an autonomous woman to an object controlled at the whim of her lover. In contrast, in 2002, *Secretary* presented SM not as an exaggerated version of heterosexuality, but rather as a variation of heterosexuality, a different kind of sexual orientation. And while both films showed SM as having a transformative effect on their female protagonists, the transformation experienced by Lee in *Secretary* was positive, rather than negative.

This brings us to the reasons why I called this Article "A Woman's Right to Be Spanked." First, while *9 1/2 Weeks* portrays sexual spanking as a humiliating activity in which the heroine refuses to engage, *Secretary* shows it as a catalyst for a woman to discover her true sexuality. But more importantly, what the title tries to acknowledge is the

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296. COSSMAN, *supra* note 282, at 83.



important foregrounding in *Secretary* of the sexual submissive taking control of her own sexuality. It is *her* right to be spanked. As you see in this final frame of the movie, Lee is staring right back at the camera, appropriating the power of the gaze. She reverses the voyeurism of the film and seems to be daring the spectator to feel sorry for her, to pathologize or condemn her.<sup>297</sup> The narrative supports this rebellious look, as the audience has witnessed her transition from an object of self-abuse to a subject of active desire. But in order to package this message to a mainstream audience, the movie had to rely on other hegemonies: the couple's whiteness, their attractiveness, their male-top/female-bottom heterosexuality, and their domestication into marriage and monogamy.

In my comparison of *Secretary* to the cases *Brown*, *Wilson*, *Emmett*, and *Twyman*, I interrogated the overlapping cultural imperative of marriage and monogamy found in law and film. I demonstrate that while sadomasochism has gained some legitimacy as a sexual choice for married couples, it still remains on the fringe, guilty until proven innocent in the socio-legal imaginary. In *Wilson*, the husband was initially convicted because of the nonnormative action of branding his initials on his wife's buttocks. But because the evidence disclosed that Mrs. Wilson was an enthusiastic recipient to this branding, because the activity appeared less "extreme" than the gay sadomasochistic activities in *Brown*, because the activity took place within the privacy of the matrimonial home, and because both husband and wife claimed that love was their primary motivation, the Court of Appeal absolved the husband of any wrongdoing. Indeed, the presiding judge even chastised the prosecutor for bringing a claim that invaded the private life of husband and wife.<sup>298</sup> *Emmett* revealed that while being heterosexual and married could not buy total exoneration for a sadomasochistic couple, it can buy some leniency in sentencing if injury occurs.

In *Twyman*, the husband's interest in bondage could not be absolved because he sought satisfaction outside of the marital home. His wife did not share his perverse interest, so the desire could not be purified within the terms of marriage and commitment. Admittedly, the fact that none of the judges felt entitled to condemn bondage outright indicates a shift in the socio-legal imaginary regarding such marginalized sexual practices. However, full acceptance is contingent upon the normalizing frameworks of love, marriage *and* monogamous commitment.

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297. See Figure 13, <http://LawAndSexuality.org/Khan>.

298. See *R. v. Wilson*, [1996] 2 Crim. App. 241, 244.

Thinking about these cases in relation to *Secretary* reveals the problematic gains for sexual liberation achieved in recent pop cultural and legal articulations of SM. While *Secretary* and cases like *Wilson* indicate that some space has been made for kinky couples in the socio-legal imaginary, their subjectivity seems to hinge upon displacing abjection onto other marginalized sexual and social identities (for example, gay men or masochistic men), and adhering to the constrictive regulatory regimes of marriage and monogamy. In other words, SM's status as "Bad" sex is not irrevocable, but can move closer to "Good" sex if it is positioned within a hetero-normative and gender-normative framework. Taking this into consideration, I posit that a comparative analysis of *Secretary* reveals the extent to which a narrative can be both groundbreaking and mainstream. The goal of this Article has been to use *Secretary* as a focal point to examine this ideological ambivalence in the socio-legal imaginary.

