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Life as Distinct from Patriarchal Influence: Exploring Queerness and Freedom through Portrait of a Lady on Fire*

Emma Genovese ^a and Tamsin Phillipa Paige ^b

^aUTS Law, University of Technology, Sydney, Haymarket, Australia; ^bDeakin Law School, Deakin University, Burwood, Australia

ABSTRACT


This article examines the interconnection of queerness and freedom in Céline Sciamma's film *Portrait of a Lady on Fire*. The article focuses on the unattainable relationship between Héloïse and Marianne, their friendship with the house maid, Sophie, and the life of Héloïse's mother, la Comtesse, to demonstrate how cultivating queerness can undermine the existence of patriarchal influence in contemporary society. Specifically, we argue that the inherent queerness within mutually affirming and supportive sapphic relationships, and any state of living where a woman maintains singleness, can foster independence, and therefore greater freedom, from restrictive and oppressive law. We first consider assisted reproductive technology and superannuation provisions to demonstrate how these laws create a normative cultural framework of heteropatriarchal oppression. We then analyse the film, using it as a thematic touchstone to explore how the heteropatriarchy is undermined through queerness. Ultimately, the film's representation of life without the masculine gaze begs the question of how women can continue to avoid the fixation of the patriarchy within contemporary society and our laws.

KEYWORDS

Queer theory; assisted reproductive technology; superannuation; singleness; heteropatriarchy

1. Introduction

With so much evidence about the inequality of normalised gendered behaviour and labour in heteropatriarchal environments – from care work expectations in the workforce,¹ to the cognitive labour of running a household,² and an unwillingness of masculine

CONTACT Tamsin Phillipa Paige  t.paige@deakin.edu.au

*Content warning: This article discusses themes surrounding suicide and abortion.

¹See generally: Danielle Docks-Filipek and others, "Professor Moms" & "Hidden Service" in *Pandemic Times: Students Report Women Faculty More Supportive & Accommodating Amid U.S. COVID Crisis Onset* (2023) 48 *Innovative Higher Education* 787 <<https://doi.org/10.1007/s10755-023-09652-x>> accessed 12 May 2023. See also: Margaret Thornton, 'Coronavirus and the Colonisation of Private Life' (2021) 1 *Legalities* 44 <<https://ssrn.com/abstract=4301885>> accessed 12 May 2023. Heteropatriarchy is a concept that refers to the patriarchal social domination in conjunction expectations of obligatory heterosexuality in society. See: Francisco Valdes, 'Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins' (1996) 8(1) *Yale Journal of Law and Humanities* 161–211 expanding on bell hooks' concept of 'white supremacist capitalist patriarch' from *Yearning: Race, Gender, and Cultural Politics* (Turnaround 1991) which she later referred to as 'white supremacist capitalist heteropatriarchy'.

²See generally: Allison Daminger, 'The Cognitive Dimension of Household Labor' (2019) 84 *American Sociological Review* 609.

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individuals to contribute more to domestic labour,³ the question becomes: how can women find freedom from the oppressive nature of heteropatriarchal society? How can we find a life as distinct from patriarchal influence? This is the story that director Céline Sciamma depicts in the French period-drama, *Portrait of a Lady on Fire*,⁴ at the centre of which is an unattainable relationship between two young women of different classes, Héloïse and Marianne, and their unlikely friendship with the house maid, Sophie. The film begins with the artist Marianne teaching painting to a group of young women in her studio. Through a frame narrative, Marianne reflects on her time as an artist employed in the house of la Comtesse, to secretly paint a bridal portrait of her daughter Héloïse. Héloïse has no desire to get married, and has sabotaged previous attempts by other artists to paint her, hence the secrecy. While la Comtesse is away, Héloïse and Marianne's relationship develops, and they form a bond with Sophie, eventually assisting in the termination of her unwanted pregnancy. Despite both Héloïse and Marianne knowing that their relationship cannot last, it is an ideal presentation of a mutually affirming queer partnership (otherwise termed as sapphic relationships). As explored from the perspective of the femme gaze, the film considers the dynamics between women, freedom, and femme collectiveness.⁵ Crucially, the theme which the film criticises is something which has continued to prevail long after eighteenth century France – the inequality and subordination of women.

This article utilises the story of *Portrait of a Lady on Fire* to explore how women in contemporary society are able to resist the heteropatriarchal norms and inequality that subsists within the law and legal structures. Our examination of the law specifically focuses upon assisted reproductive technology (ART) and superannuation regulation, to demonstrate how these laws create a normative cultural framework of heteropatriarchal oppression. In other words, we consider that these laws serve as an example of heteropatriarchal cultural expectations that undermine the possibility of equality between the traditional/heteropatriarchal masculine subject and anyone else. We then use the film as a conceptual, cultural, and thematic touchstone to explore these issues. In particular, the femme characters and relationships within the film are prime examples of how independence and freedom can be gained through queerness. More specifically, the film's presentation of masculine, feminine, and post-feminine societies demonstrate how the cultivation of queerness, whether that be through supportive femme relationships, sapphic relationships, or intentional feminine singledom, can provide respite within a world centred around masculine privilege and dominance. As applied to the contemporary legal system, the cultivation of queerness emphasises that while heteropatriarchal oppression persists, queerness allows room to engage in resistance to normative frameworks, thus resulting in greater freedoms and independence for women.

We rely on a broad definition of queerness that encompasses a variety of different ways of being, living, and existing. Essentially, a central tenet of queerness involves the challenging of normativity, particularly with respect to society's fixed constructions of

³Oriel Sullivan, 'The Gender Division of Housework and Child Care' in Norbert F Schneider and Michaela Kreyenfeld (eds), *Research Handbook on the Sociology of the Family* (Edward Elgar Publishing 2021) 347.

⁴*Portrait de La Jeune Fille En Feu (Portrait of a Lady on Fire)* (Directed by Céline Sciamma, 2019).

⁵We use 'femme' and 'masculine' to provide an alternate approach to gender positionality; one which disavows the use of 'female' and 'male' to describe gender and sexuality. Not only do we believe this avoids the siren call of Trans Exclusionary Radical Feminist ideology, but we think it presents a more nuanced approach to the fluidity of sex/gender.

sex/gender, and the perceived associated roles and expectations.⁶ As such, the parameters of queerness can be conceptualised fluidly, as an ever-changing notion that may be influenced by context, culture, and various other aspects. For instance, bell hooks has expanded upon the concept of queerness, drawing from Tim Dean's scholarship to define queerness 'as being about the self that is at odds with everything around it, it has to invent and create and find a place to speak and to thrive and to live'.⁷ Utilising this conceptualisation, in this article, queerness is defined to include any way of living that diverges from, and thus inherently challenges, heteropatriarchal expectations and norms. This then includes any relationship that does not depend upon heteropatriarchal dynamics, but exists in a space beyond. More specifically, we explore the queerness within the film that exists in the supportive femme relationship between Sophie, Marianne, and Héloïse, the sapphic relationship that exists between Marianne and Héloïse, and the singledom of la Comtesse.

2. Queerness and Contemporary Society

We will argue that the cultivation of queerness emphasises that although heteropatriarchal oppression persists, queerness affords respite in allowing room to engage in resistance to normative expectations and roles that are imposed by patriarchal society – thus resulting in greater freedoms and independence for women.⁸ Rather than attempt to produce a theorisation of the patriarchy that incorporates capitalism or other matters relevant to class oppression,⁹ we aim to draw analogies between the film and specific areas of law in contemporary society. Crucially, we will argue that while ART legislation and superannuation policies continue to penalise women who do not conform to the heteropatriarchy, queerness offers a greater degree of equality by acting to challenge normative expectations – provided there exists a financial capacity to do so. We explore these legal frameworks not because they are the only ones that demonstrate heteropatriarchal oppression, but rather because they are exemplars of heteropatriarchal oppression and also how this oppression can be resisted through queerness, but only when the financial means to resist exists.

2.1. Assisted Reproductive Technology

While there are various avenues in which queer people are able to conceive, ART services constitute a large portion.¹⁰ ART services include 'a range of procedures used to help establish a pregnancy and conceive a child ... involv[ing] techniques such as donor insemination, artificial insemination and ovulation induction ... [along with] in-vitro

⁶See, eg, Lisa Duggan, 'Making It Perfectly Queer' in Lisa Duggan and Nan D Hunter (eds), *Sex Wars: Sexual Dissent and Political Culture* (10th edn, Routledge 2006).

⁷The new School, 'bell hooks – Are You Still a Slave? Liberating the Black Female Body | Eugene Lang College' (YouTube, 8 May 2014) 01.27.38–01.28.29 <<https://www.youtube.com/watch?v=rJk0hNROvzs>> accessed 13 May 2023.

⁸For an exploration of respite through queerness see generally: Loveday Hodson, 'Queer Edens: Visions of Living with Human Rights' in Claerwen O'Hara and Tamsin Phillipa Paige (eds), *Queer Encounters with International Law: Times, Spaces, Imaginings* (Routledge 2024) (forthcoming).

⁹See Smart, who notes the ultimate benefits in considering specific areas of law rather than producing an all-encompassing theory: Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Sage Pub 1995) 130–34.

¹⁰See generally, Jennifer Power and others, 'Use of Fertility Services in Australian Lesbian, Bisexual and Queer Women's Pathways to Parenthood' (2020) 60 *Australian and New Zealand Journal of Obstetrics and Gynaecology* 610.

fertilisation (IVF) and intracytoplasmic sperm injection'.¹¹ Across Australia, these services are regulated by an intricate range of both federal and state legislation, federal guidelines, and clinical policies.¹² While Victoria, New South Wales (NSW), Western Australia (WA),¹³ and South Australia (SA) have each implemented legislation that specifically regulates the use of ART,¹⁴ services in the Australian Capital Territory (ACT),¹⁵ Northern Territory (NT), Queensland, and Tasmania are provided primarily in accordance with federal guidelines,¹⁶ with some alterations by state legislation.¹⁷

We will argue that legislation which regulates the provision of ART operates within a heteropatriarchal framework. This constraint has occurred in three key respects. First, historically, single women were excluded from accessing ART. Second, current legislation across Australia provides variable access to receiving ART, if people are in sapphic relationships. Third, even where access is allowed for single women and sapphic people, there are significant financial implications – meaning only people of a certain class can access ART services. In drawing analogies to the film, we will argue that queerness can act to challenge normative frameworks, thus disrupting normative conceptions of the 'family' and 'motherhood', provided there is sufficient financial capacity.

Essentially, we consider that the legal system in contemporary society actively penalises people who do not conform to heteropatriarchal ideologies, such as engaging in familial structures that involve men; '[t]he dominant discourse observ[ing] that ... single heterosexual women and lesbians choose to be infertile ... as they could always participate in and conform to the dominant heterosexual pattern of male sexual partnership'.¹⁸ While we acknowledge that the freedom that queerness allows may not result in equality, queerness provides a space for resistance to the normative expectations of the heteropatriarchy.

2.1.1. Singledom

Previously, single women across Australia were unable to access ART, due to legislation that restricted the provision of ART services, often except 'for the benefit of married

¹¹Neera Bhatia and Lily Porceddu, 'Emptying the Nest Egg to Fill the Nursery: Early Release of Superannuation to Fund Assisted Reproductive Technology' (2021) 44 UNSW Law Journal 513, 513.

¹²See generally, Isabel Karpin and Jenni Millbank, 'Regulation of Assisted Reproductive Technology and Surrogacy in Australia' in John Eekelaar and Robert H George (eds), *Routledge Handbook of Family Law and Policy* (2nd edn, Routledge 2021).

¹³WA is in the process of updating legislation governing the provision of ART: Sonia Allan, 'The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008' (Department for Health and Ageing 2019) Part 1; Sonia Allan, 'The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008' (Department for Health and Ageing 2019) Part 2.

¹⁴*Assisted Reproductive Technology Act 2007* (NSW); *Assisted Reproductive Technology Regulation 2014* (NSW); *Assisted Reproductive Treatment Act 1988* (SA); *Assisted Reproductive Treatment Regulations 2010* (ART); *Family Relationships Act 1975* (SA); *Assisted Reproductive Treatment Act 2008* (Vic); *Assisted Reproductive Treatment Regulations 2009* (Vic); *Status of Children Act 1974* (Vic); *Human Reproductive Technology Act 1991* (WA); *Human Reproductive Technology Regulations 1993* (WA); *Human Reproductive Technology Act Directions 2021* (WA).

¹⁵ACT is in the process of developing a regulatory framework for ART Services: ACT Government, 'Assisted Reproductive Technology: Regulation and Access – ACT Government Response' (2022).

¹⁶All ART providers must comply with federal legislation governing the use of embryos: See, eg, *Research Involving Human Embryos Act 2002* (Cth). A variety of guidelines must also be complied with, including: the National Health and Medical Research Council's *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research*: <<https://www.nhmrc.gov.au/art>> and the Fertility Society of Australia and New Zealand's Reproductive Technology Accreditation Committee's Code of Practice: <<https://www.fertilitysociety.com.au/code-of-practice/#copanz>>.

¹⁷See, eg, *Anti-Discrimination Act 1991* (Qld).

¹⁸Anita Stuhmcke, 'Limiting Access to Assisted Reproduction: JM v QFG' (2002) 16 Australian Journal of Family Law 252.

couples'.¹⁹ There were several cases within the courts that challenged these restrictions due to their discriminatory nature. Predominantly, *Pearce v South Australia Health Commission* found that South Australian ART legislation was inconsistent with the requirements under the *Sex Discrimination Act 1984* (Cth), as the plaintiff was 'treated less favourably ... than "a person of a different marital status"'.²⁰ A similar finding occurred in *McBain v State of Victoria* ('*McBain*'), where the respective legislative requirement was also found to be inconsistent.²¹

Interestingly, the line of argument in *McBain* also involved submissions from the Catholic Church, whereby it was suggested that even if discrimination existed within the Victorian legislation, this was reasonable, including because of a child's right to know their parents, and 'having a parent of either sex'.²² Dower also noted that a previous iteration of the National Health and Medical Research Council's *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (NHMRC Guidelines) recognised that 'donor insemination should be provided only to those in "accepted family relationships", which were generally interpreted to mean heterosexual relationships'.²³ Accordingly, previous restrictions of access to ART services to single women were clearly imbedded with heteronormative ideals that constructed the notion of a family as requiring involvement by a masculine form. Preconceptions that justified the prevention of a single woman conceiving are thus closely aligned with arguments that disavow any construction of the family unit that deviates from a two-person, heterosexual, structure.

Currently, single women are now permitted access to ART services; however, there appear to remain some restrictions – at least in the legislative iteration of how ART services should be provided. For instance, sub-sections 23(1)(a)(ia) and (ii) of the *Human Reproductive Technology Act 1991* (WA) respectively note that IVF may be provided where it would benefit 'a women who is unable to conceive a child due to medical reasons', or 'a woman whose child would otherwise be likely to be affected by a generic abnormality or a disease'. This terminology indicates that there continues to exist restrictions on the types of family structures that can access assistance in conceiving. In those instances, only single women who also have medical issues are deemed acceptable. Inversely, this means that single women who are otherwise able to conceive are labelled as unsuitable.

Additionally, the case of *Masson v Parsons & Ors*, and the associated interpretation of section 60H of the *Family Law Act 1975* (Cth), indicates that in some instances, a sperm donor may be classified as a parent under federal legislation.²⁴ While there were several particular facts that contributed to this finding,²⁵ the Court also noted that generally, the circumstances in which a donor of an ART procedure would be considered a parent is 'to be determined according to the ordinary, contemporary Australian

¹⁹See, eg, *Reproductive Technology Act 1988* (SA) ss 13(3)(b) – version 1 August 1996 to 5 July 2000.

²⁰(1996) 66 SASR 486 [18], [23].

²¹[2000] FCA 1009.

²²*ibid* [17].

²³Tami Dower, 'Redefining Family: Should Lesbians Have Access to Assisted Reproduction?' (2001) 25 *Melbourne University Law Review* 466, 469.

²⁴[2019] HCA 21.

²⁵*ibid* [1].

understanding of “parent” and the relevant circumstances of the case at hand’.²⁶ It was also held at first instance that the second respondent, being the first respondent’s current *femme de facto* partner, was not classified as a parent within the meaning of section 60H.²⁷ This issue was not significantly reconsidered in further hearings of the matter.²⁸ Accordingly, even though single women are permitted to conceive, legislation upholds a construction of the family that involves the masculine in a normative role of a ‘father’, signified by listing them as a father on the birth certificate, even where a perceived non-normative operation is intended.

2.1.2. *Sapphic Couples*

Across Australia, the provision of ART services to people in sapphic couples is restricted.²⁹ We suggest that these restrictions result in a system that prioritises a heteropatriarchal family structure, and particularly one which comprises of a heterosexual marriage. These normative expectations underlying the heteropatriarchal family structure can be challenged by queer relationships whereby gender roles and relationship structure is questioned and renegotiated.

2.1.2.1. Limited Restriction of ART. In Victoria and NSW legislation does not specifically prevent access to ART by people in sapphic couples.³⁰ There is also no specific legislation that governs ART in ACT, Tasmania, and NT, which means that federal legislation and guidelines apply.³¹

While federal legislation and guidelines do not explicitly restrict access to ART by sapphic couples, the *NHMRC Guidelines* places limits that may impact the provision of ART to sapphic couples.³² Notably, the *NHMRC Guidelines* state that: ‘there must be no unlawful or unreasonable discrimination ... on the basis of ... sex, sexual orientation, relationship status, gender identity or intersex status, social status ...’.³³ Nonetheless, this provision also outlines a means for conscientious objection, stating: ‘a member of staff or a student who expresses a conscientious objection ... is not obliged to be involved

²⁶ibid [29]. See also at [26]–[27], [44].

²⁷ibid [22]–[23].

²⁸Briefly, the issue on appeal was that the ‘finding that the appellants were not in a *de facto* relationship when B was conceived ... precluded a finding that the second appellant is legally B’s “parent”, and paved the way for the ultimate finding that the respondent is B’s “parent”’: *Parsons & Ors v Masson* [2018] HAMCAFC 115 [8]. However, the issue was accepted to be ‘not critical to success in the appeal ... [and] not strongly pressed’: at [99]–[100].

²⁹See generally: Baird, for a comprehensive archive of the experiences of lesbian mothers within Australia: Barbara Baird, ‘Lesbian Mothers in Twenty-First Century Australia: Creating a Political Subject Position’ (2023) 32 *Women’s History Review* 292, 295–98.

³⁰NSW legislation does not mention sexuality. Victorian legislation also specifically recognises a guiding principle that people must not be ‘discriminated against on the basis of their sexual orientation, marital status, race or religion’: *Assisted Reproductive Treatment Act 2008* (Vic) s 5(e). But note that Karpin and Millbank stated that ‘NSW and WA legislation expressly provides for “directed” donation[,] whereby the donor can exclude particular categories of recipient on grounds that could otherwise constitute unlawful discrimination’: Karpin and Millbank (n 12) 211.

³¹But note that ART services provided by SA clinicians in NT must operate in accordance with SA requirements: Allan, ‘The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008 Report’ (n 13) 45.

³²For instance, the *NHMRC Guidelines* also recognise that ‘[t]he interests and wellbeing of the person who may be born as a result of the ART activity must be an important consideration in all decisions about the activity’: *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (National Health and Medical Research Council 2017) 16 para 3.2. It is worth noting that historically, the consideration of the welfare of a child posed issues to lesbian couples: See, generally, Dower (n 23).

³³*Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (n 32) 18 para 3.7. It is unclear why ‘gender identity or intersex status’ are listed together, given these attributes are not associated.

in that treatment or procedure, so long as the objection does not contravene relevant anti-discrimination laws and does not compromise the clinical care of the patient'.³⁴ This exception to discrimination in the form of a contentious objection purports to uphold the prevention of discrimination on the basis of sexuality, but in practice would result in prejudicial refusal.

Irrespective of the legislative environment across Australia, it is also important to note that discrimination likely subsists when people in sapphic couples access ART services.³⁵ For instance, the ACT Government Response Report recognised that queer people seeking ART services in ACT were subject to a range of discriminatory experiences.³⁶

2.1.2.2. Restriction of ART. In WA, SA, and QLD, legislation purports to limit access to ART, or provides avenues for exclusion of sapphic couples. These restrictions are indicative of the embedded nature of the heteropatriarchy within the law, as so-called traditional, heterosexual relationships are prioritised above queer relationships and family structures.

In WA, the legislation surrounding access to IVF is unclear, but it is likely some sapphic couples are excluded.³⁷ That is, IVF can only be provided where a couple 'are unable to conceive a child due to medical reasons'³⁸ or 'whose child would otherwise be likely to be affected by a genetic abnormality or disease'.³⁹ Members of this couple must also be 'married to each other'⁴⁰ or be 'in a de facto relationship with each other and ... of the opposite sex to each other'.⁴¹ It is important to note that whilst this is the legislative stipulation, what occurs in practice is unclear, as it appears that statistics as to relationship structure are not collected.

The WA legislation is inherently heteropatriarchal in nature. It is presumed from the outset that the need to access ART results from an inability to conceive 'naturally'.⁴² This is supplemented by the primary cause in accessing ART services being restricted to 'medical reasons', and other associated issues – even for a non-coupled 'woman' who wishes to conceive. Further, the requirement that couples be 'of the opposite sex'⁴³ specifically excludes non-heterosexual relationships, and relationships involving people of diverse sex. This situates non-heterosexual couples, and especially sapphic couples, as inadequate; existing beyond what is deemed an appropriate family structure with which to have a child.

Additionally, the WA legislation allows gametes to be donated 'for implantation into a recipient ... to be selected in accordance with circumstances specified'.⁴⁴ On the basis of

³⁴ *ibid* 20.

³⁵ See, eg, Rose Chapman and others, 'The Experiences of Australian Lesbian Couples Becoming Parents: Deciding, Searching and Birthing: Australian Lesbians Becoming Parents' (2012) 21 *Journal of Clinical Nursing* 1878; Ruth Mcnair and others, 'Lesbian Parents Negotiating the Health Care System in Australia' (2008) 29 *Health Care for Women International* 91.

³⁶ ACT Government, 'Assisted Reproductive Technology: Regulation and Access – ACT Government Response' (2022) 25–26.

³⁷ See Allan (n 13) 54.

³⁸ *Human Reproductive Technology Act 1991* (WA) s 23(1)(a)(i).

³⁹ *ibid* s 23(1)(a)(ii).

⁴⁰ *ibid* s 23(1)(c)(i).

⁴¹ *ibid* s 23(1)(c)(ii). Emphasis added.

⁴² *ibid* preamble para (B).

⁴³ *ibid* s 23(1)(c)(ii).

⁴⁴ *ibid* s 25(b)(i).

this provision, Karpin and Millbank conclude that a gamete donor to a sapphic couple in WA may be able to ‘exclude particular categories of recipient on grounds that could otherwise constitute unlawful discrimination’.⁴⁵

In SA and Qld, access to ART is not expressly excluded by legislation; however, there exists statutory protections for people who refuse to provide these services to people in sapphic couples.⁴⁶

In SA, an ART service provider may be registered as a registered objector, which means that they hold a religious objection to providing ART to a person because of that person’s sexual orientation, gender identity, or marital status.⁴⁷ Where ART services are denied, the registered objector must refer that person to another ART provider.⁴⁸ This carveout permits the refusal of ART services under the guise of religious belief; however, what constitutes a ‘religious objection’ is not sufficiently outlined in the legislation. In fact, this carveout was only enacted when sapphic couples were permitted access to ART services with the assent of the *Statutes Amendment (Surrogacy Eligibility) Act 2017* (SA).

Similarly, in QLD, section 45A of the *Anti-Discrimination Act 1991* (Qld) allows medical practitioners to deny the provision of ART services on the basis of marital status or sexuality, by ensuring they are not subject to a complaint under the legislation.⁴⁹ This exclusion differs from that provided in SA, as it is not specifically tied to any underlying religious belief. Instead, denial of provision of services appears to be tied directly to any kind of prejudice held in relation to a person’s marital status or their sexuality. This is supported by the policy decisions behind the amendment to introduce section 45A of the *Anti-Discrimination Act 1991* (Qld),⁵⁰ which occurred following the series of cases associated with *JM v QFG*.⁵¹ In this case, it was held that the refusal to provide ART to a lesbian who was in a relationship with another woman was not direct discrimination, because the refusal was a result of failure to comply with medically-defined ‘infertility’.⁵² It was also found that no indirect discrimination occurred, due to similar reasoning.⁵³

Protection for refusal of ART in SA and Qld also espouses heteropatriarchal conceptualisations of the ‘family’. Access to ART can be denied solely on the basis that a couple is not married, or because of a person’s sexuality or gender, thus resulting ‘in a heterosexual diagnosis of what is an acceptable partnership arrangement’.⁵⁴ While the legislation does not explicitly state that these beliefs extend specifically to queer notions of sexuality and/or gender, there exists an implication that the focus of this restriction is non-normative identity. Accordingly, when queer couples can access ART, there exists a fundamental challenge to what a family can constitute. In relation to sapphic couples specifically, they represent a family structure that persists without the involvement of the masculine.

⁴⁵Karpin and Millbank (n 12) 211.

⁴⁶*Assisted Reproductive Treatment Act 1988* (SA) ss 8(3), (2)(ba); *Anti-Discrimination Act 1991* (Qld) s 45A.

⁴⁷*Assisted Reproductive Treatment Act 1988* (SA) ss 8(3), (2)(ba).

⁴⁸*ibid* s 9(1a).

⁴⁹See also Explanatory Notes, *Discrimination Law Amendment Bill 2002* (Qld) 15.

⁵⁰Note that Hansard discussion considered that ART technology was implemented only to assist conception related to ‘the natural union of a heterosexual relationship’: Queensland, *Parliamentary Debates*, Legislative Assembly, 29 November 2002, 5169 (Lawrence James Springborg, Shadow Attorney-General, Shadow Minister for Justice, Shadow Minister for Innovation, Information Economy and Rural Communities).

⁵¹[1998] QCA 228. For an analysis of this series of cases, see: Stuhmcke (n 18).

⁵²*JM v QFG* [1998] QCA 228, 385–86 (Davies JA), 390–92 (Pincus JA), 394–96 (Thomas JA).

⁵³*Morgan v GK* [2001] QADR 10.

⁵⁴Stuhmcke (n 18) 252.

2.1.3. Financial Restriction

Even when sapphic couples and single women can use ART services, access is further limited by additional financial impediments. These impediments relate to the Medicare rebate process, limits to private health insurance funding, and costs in relocating to states with more beneficial legislation.

The limiting of access to ART services through financial capacity prioritises a heterosexual family structure, in that any financial assistance is provided according to a medical definition of infertility that presumes heterosexuality. Accordingly, the ability to conceive without the masculine can require greater access to financial resources that would not otherwise be required for a heterosexual couple.

2.1.3.1. Medicare Rebates. Findings from the Australian Longitudinal Study on Women's Health survey, which occurred at multiple points from 2012 until 2019, revealed that the total benefits received under the Medicare Benefits Schedule for ART services was approximately \$19 million, with the average per woman being \$12,269.⁵⁵ Additionally, on average, women were out of pocket \$7,535, ranging from \$0 to \$59,378, with the total out of pocket expense being \$11.5 million.⁵⁶ This data did not include information about the relationship status or sexuality of the women involved; however, ART services are only payable under Medicare benefits if it is deemed 'clinically relevant', which essentially means it is necessary to treat a person's medical infertility.⁵⁷

Single women and lesbian couples are not deemed 'medically infertile' but 'socially infertile'. As such, additional expenses are incurred if the person seeking to access ART does not have a medical infertility, or while seeking to be diagnosed with a medical infertility.⁵⁸ For instance, there are additional costs associated with accessing donor gametes – that of which can impact sapphic couples and single people specifically.⁵⁹ Queer femme collectivity has the potential to challenge and address this heteropatriarchal demand that fertility be set up in a medical/social dichotomy through activism, lobbying, and visibility. Until the distinction between 'medical' and 'social' infertility is achieved, however, this dichotomy of infertility reinforces that the freedom of queerness is only available to those with sufficient financial independence.

2.1.3.2. Private Health Insurance. The availability of private health insurance to assist in covering costs associated with ART services is also limited due to the types of treatment covered and the level of funding required.

Only certain ART services are covered under private health insurance. This includes hospital treatment, with the examples provided being retrieval of eggs or sperm, IVF, and gamete intra-fallopian transfer.⁶⁰ Significantly, the treatments that are covered are

⁵⁵D Loxton and others, 'Reproductive Health: Contraception, Conception and Change of Life – Findings from the Australian Longitudinal Study on Women's Health' (2021) 144, 161.

⁵⁶*ibid* 161.

⁵⁷Services Australia, *Education Guide – Billing Assisted Reproductive Technology Services* <<https://www.servicesaustralia.gov.au/education-guide-billing-assisted-reproductive-technology-services?context=20>> accessed 21 July 2023.

⁵⁸See, eg, Fiona Blackwood, 'Same-Sex Couples Dealing with IVF Treatment Model "Set up for Heterosexuals"' *ABC News* (17 August 2019) <<https://www.abc.net.au/news/2019-08-17/same-sex-couples-ivf-treatment-set-up-for-heterosexuals/11420074>> accessed 22 July 2023.

⁵⁹ACT Government (n 36) 1.

⁶⁰*Private Health Insurance (Complying Product) Rules 2015* (Cth) sch 5 cl 2.

outlined according to Medicare Benefits Schedule Items,⁶¹ those of which only address some facets of ART procedures.

Funding assistance for ART services is often only available on an unrestricted basis under a gold policy,⁶² which is the highest available policy; however, individual insurances may offer ART services as additional clinical categories on a restricted or unrestricted basis.⁶³

Additionally, clinics that provide ART services can be privately run, meaning there are no supplementary forms of government funding. For example, '[a]ll ART services in the ACT are provided privately, with no low-cost or public options available'.⁶⁴ This restricts the available avenues for funding further for people who are unable to afford private health cover. Much like the unjust Medicare fertility dichotomy, queer femme collectivity has the potential to change this, but until then, queer freedom in ART and private health cover is tied to financial freedom.

2.2. Superannuation

In Australia, there are several avenues that allow savings to be accumulated both in preparation for, and throughout, retirement. These avenues include the Age Pension safety-net, both voluntary and compulsory superannuation savings, and non-superannuation savings.⁶⁵ The majority of superannuation savings comprise of compulsory superannuation payments, under defined contribution schemes.⁶⁶ Birch and Preston consider that this national retirement scheme, and the defined contribution scheme specifically, 'contribute[s] to large differences in the superannuation balances and retirement incomes of men and women'.⁶⁷ This is because the gap in savings increases over time, including because of the differences in employment histories and the gender pay gap,⁶⁸ with a gap in earnings of 35% eventually equating to a 50% gap in retirement savings.⁶⁹

We argue that the current employment and retirement savings structure relies upon a heteropatriarchal underpinning, which ultimately results in disproportionate outcomes for women, and especially queer women. Specifically, the system presumes that at the point of retirement, a person can rely on funds that amongst other factors, have resulted from a double income, with one of those incomes deriving from a man's employment. An issue arises for relationships that do not involve men, with income and thus savings negatively impacted by underlying gaps in superannuation, the gender pay gap, and the ability to withdraw superannuation early for purposes related to health, such as IVF procedures. Ultimately, we consider that while the structures associated with retirement savings are imbued with heteronormative assumptions, queerness provides space for

⁶¹Listed MBS items are: 13200, 13201, 13202, 13203, 13209, 13212, 13215, 13218, 13221, 13241, 13251, 13260, 13290, 14203, 14206, 37605, 37606: *ibid.*

⁶²*ibid* sch 4 cl 1.

⁶³*ibid* sch 4 cl 1.

⁶⁴ACT Government (n 36) 1.

⁶⁵Elisa R Birch and Alison C Preston, 'Women, COVID-19 and Superannuation' (2021) 24 *Australian Journal of Labour Economics* 175, 177. See also *Superannuation Guarantee (Administration) Act 1992* (Cth).

⁶⁶*ibid.*

⁶⁷*ibid* 178.

⁶⁸*ibid.*

⁶⁹Jun Feng and others, 'Why Women Have Lower Retirement Savings: The Australian Case' (2019) 25 *Feminist Economics* 145, 150.

resistance by challenging the traditional configuration relationships – thus undermining the current rationale.

When comparing the difference in superannuation amounts between men and women, there are various factors identified which contribute to the disproportionate amounts that women obtain. One factor is the gender pay gap, with men generally earning more money when compared with women. In assessing statistics related to the salaries of women and men at the beginning of their careers, Dey and O’Neil conclude that the gender pay gap exists across most professions, with the exception being engineering and social work.⁷⁰ While they conclude that the gender pay gap at the point of workforce entry is shrinking, they note that it becomes wider in later life and career stage.⁷¹ They attribute this to pauses in labour participation related to child rearing care expectations.⁷² This in turn impacts end of financial capacity to retire because of how superannuation is accumulated – something that is evident in the Australian Bureau of Statistics data of gender pay gap.⁷³

Another factor relates to the tendency of women to have lesser participation in the workforce due to household responsibilities and other gendered care expectations, including those related to parenthood already noted. Lower superannuation contributions can arise as a result of a move to part-time work, or other career breaks due to care obligations.⁷⁴ These impacts to employment history often occur when having children particularly because the cost of child care and the taxation system makes returning to work in a full time pattern financially less viable for women faced with heteropatriarchal care expectations.⁷⁵ This heteropatriarchal care expectation placed upon femme subjects goes beyond childcare and ‘motherhood’ to encompass all forms of unpaid care work in society.⁷⁶ The net result of this economic inequality is the dependence of femme subjects in heteropatriarchal relationship dynamics on the masculine subject for economic security in later life – evidenced by the fact that single older women are the fastest growing demographic of poverty in Australia.⁷⁷

We consider that the factor relevant to household responsibilities varies for sapphic couples, particularly due to differences in how household chores and care responsibilities are allocated when comparing queer and heterosexual relationships. This is in part supported by Kelly and Hauck’s study involving 30 queer people in Portland, Oregon, which assessed perceptions of household chore arrangements amongst cis, trans, and non-binary people within relationships.⁷⁸ The allocation of chores was divided according to a variety of factors, including personal preference and availability – rather than just specialising into employment or household duties according to sex/gender (as heterosexual

⁷⁰Tania Dey and Michael O’Neil, ‘COVID-19: An Opportunity to Reset Policy Levers for Better Gender Equality in the Economy and Society’ (2021) 24 *Australian Journal of Labour Economics* 145, 150.

⁷¹*ibid* 150–54.

⁷²*ibid* 152.

⁷³‘Gender Indicators – Australian Bureau of Statistics’ (21 February 2023) <<https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators>> accessed 31 July 2023.

⁷⁴Birch and Preston (n 63) 178.

⁷⁵Dey and O’Neil (n 68) 158–59.

⁷⁶R Godderis and K Rossiter, ‘“If You Have a Soul, You Will Volunteer at Once”: Gendered Expectations of Duty to Care During Pandemics’ (2013) 35 *Sociology of Health and Illness* 304, 306.

⁷⁷Birch and Preston (n 63) 176.

⁷⁸Maura Kelly and Elizabeth Hauck, ‘Doing Housework, Redoing Gender: Queer Couples Negotiate the Household Division of Labor’ (2015) 11 *Journal of GLBT Family Studies* 438, 439–40, 447. But note that participants involved queer couples that comprised varying gender identities: at 456.

couples typically organise).⁷⁹ Further, couples noted that while activities were not arranged in an equal split, importance was placed more so on the allocation being fair.⁸⁰ Kelly and Hauck's study ultimately found that participants 'challeng[ed] normative gender roles and creat[ed] alternatives for how gender shapes social life'.⁸¹

Additionally, Titlestad and Robinson's study of thirteen sapphic couples in Australia revealed that:

[m]any parents spoke positively of the freedom to decide how they would divide co-parenting between them, without automatically falling into socially prescribed gender roles ... [instead] divid[ing] child care responsibilities in a way which suited them based on their age, health, career, personality and personal strengths.⁸²

Accordingly, when navigating how to split household chores and thus working responsibilities, sapphic couples act to challenge presumptions that bolster the current retirement system: sapphic couples do not comply with manifestations of normative femininity/masculinity and associated tasks.

We state that the differential navigation of gender roles within sapphic couples is where one facet of this freedom from heteronormativity lies. That is, the imperceptibility of traditional gender roles within sapphic relationships questions (or queers) typical pre-determinations in heterosexual couples; those of which prescribe that the woman has responsibility for household chores (and particularly feminine household chores) and caretaking associated with children. Thus, the freedom within queerness may act to challenge one factor that contributes to the unequal accumulation of superannuation by women. This is not to say that sapphic relationships are not impacted by other employability factors that result in disproportionate outcomes for women; rather, sapphic relationships challenge the normative articulation of gender roles, with traditional gender roles impacting women's participation in the workforce.

3. Freedom in Queerness

In *Portrait of a Lady on Fire*, queerness encompasses mutually affirming queer relationships involving women, femme collectiveness in the form of friendships involving women, and instances where women intentionally maintain singleness through not being defined by a partner who is a man. Specifically, the sapphic relationship includes the romantic relationship between Héloïse and Marianne, femme collectiveness includes the friendship between Héloïse, Marianne, and Sophie, and la Comtesse is a prominent representation of feminine singledom.

Accordingly, while each of the forms of queerness within the film represent how queerness can provide freedom within a heteropatriarchal society, these relationships continue to be plagued by masculine oppression. For Héloïse and Marianne, their relationship forms initially as a result of deception, for the purpose of Marianne painting a portrait for Héloïse's soon to be husband. While overcoming this obstacle, Héloïse and Marianne

⁷⁹ibid 440, 451.

⁸⁰ibid 447.

⁸¹ibid 460.

⁸²Angharad Titlestad and Ken Robinson, 'Navigating Parenthood as Two Women; The Positive Aspects and Strengths of Female Same-Sex Parenting' (2019) 15 *Journal of GLBT Family Studies* 186, 197.

understand their love is fleeting, because society demands that Héloïse be wed to a man. Irrespective of these demands, Héloïse and Marianne engage in a partnership that has an ongoing impact and shapes their world view for the rest of their lives. For Sophie, she is burdened with an unwanted pregnancy, but is supported by meaningful femme connections when seeking an abortion.⁸³ Additionally, la Comtesse has gained an independent life free from the restriction of ‘partnership’ with a man, which has only occurred because of the death of her husband.

Intertwined with these expressions of queerness is the notion of financial independence; whereby the possibility of freedom is also confined by fiscal autonomy. That is, Marianne has significant autonomy, at a relatively low cost, because she is able to take over her father’s painting business. While la Comtesse has more autonomy than others, this only arises as a result of her marriage to a man. Any freedoms that are granted to Héloïse and Sophie are only able to occur alongside feminine collectiveness that looks beyond class – such as that afforded by the Benedictines and sapphic friendships respectively.

These expressions of queerness and the impact of financial independence are best explored through considering the film in three distinct stages. Those being: masculine society, feminine society, and post-feminine society. Masculine society spans the portion of the film that includes scenes with men. Feminine society exists for the majority of the film, where the scenes predominantly involve women. Finally, post-feminine society includes parts of the film that take place in time after the duration of feminine society. Although these stages are not termed as such throughout the film, there are nonetheless three distinct phases that appear with Marianne’s reflection of her time with Héloïse, Sophie, and la Comtesse. Our labelling of these stages provide a useful method of consideration by presenting how queerness operates in each of these spaces.

While the presence of the patriarchy in a film set in eighteenth century France is to some extent inescapable, *Portrait of a Lady on Fire* demonstrates what life without this influence could look like. Queerness acts to provide some semblance of freedom within a society that will always be dominated by patriarchal perspectives. As far as possible, the film teases at a world that, although tainted by the patriarchy, offers a form of freedom that can exist within oppressive masculine control.

3.1. Masculine Society

The presentation of masculine society begins when Marianne remembers arriving at the home of Héloïse, Sophie, and la Comtesse after a sea journey. Viewers are immediately met with the stark image of Marianne in a rowboat alongside several men. This stage of the narrative ends once Marianne reaches the house. Significantly, throughout the entirety of the masculine society stage, Marianne is the only woman, and she is firmly represented as an independent individual.

For instance, while the rowboat is being rowed to shore by the men, Marianne’s box of canvases falls into the water and begins to float away. As Marianne gazes between the men and the canvasses, the camera pans to a shot that shows the men as they simply stop rowing and look towards the canvases. Marianne then jumps into the water to

⁸³We aren’t made aware of the circumstances of Sophie’s pregnancy in the film, only that it was unwanted and that Sophie sought the assistance of femme collectivity surrounding her to obtain an abortion.

retrieve the canvases herself. In the following scene, Marianne now faces away from the men and towards the camera, soaking wet and wrapped in a blanket.

Additionally, once the rowboat reaches the shore, Marianne leads with one man trailing behind carrying her possessions. However, as soon as the man reaches the rocks, he places Marianne's belongings on the ground and walks off. After asking where to go, Marianne is told to head straight towards the trees and in the next scene she is viewed carrying her possessions and climbing up steep rocks.

In this short scene, feminine autonomy in the masculine society stage is presented as somewhat undesirable. Marianne is so autonomous that she is treated almost with an air of disrespect, with the men offering no form of meaningful assistance. For instance, viewers are not shown how Marianne got back into the rowboat, nor how she obtained the blanket. Further, the man who carries her possessions only offers vague guidance – which only occurs after Marianne queries directions. However, in another sense, viewers are presented with this alternative perspective that actually, men have nothing substantial to offer to an independent woman. This is characterised by the deliberate decision to highlight Marianne's actions in her independence, over any support received by the men. As such, the film demonstrates that within masculine society, while the exercise of independence may be fraught with obstacles, women are more than capable of existing autonomously from men.

In relation to contemporary legal structures, this depiction of masculine society in the film is reminiscent of current day financial disparities, those of which are exemplified by the assumptions that underpin superannuation law. Much like the masculine society, contemporary society structures financial arrangements in a manner that presumes a subordination of the femme subject and devaluing of their contribution in comparison to the masculine. In particular, in this segment of the film we see the punishing of Marianne for her financial independence – something that is mirrored in contemporary law and society through the presumption of heteropatriarchal social norms.

3.2. *Feminine Society*

The depiction of feminine society begins once Marianne is greeted by Sophie. This stage exists for the majority of the film and ends when the man who initially carried Marianne's possessions returns to collect her. As explained by Céline Sciamma, this image of the man is poised to act as 'a jump scare of [the] patriarchy' after most of the film exists without any men present.⁸⁴ Throughout this stage of feminine society, there are various representations of the freedoms that exist where men are absent. Accordingly, many moments in this stage provide depictions of how queerness can act as a form of respite and subversion of patriarchal demands.

3.2.1. *Marianne and Héloïse*

The relationship between Marianne and Héloïse is a strong representation of a mutually affirming sapphic partnership. This relationship also provides commentary on the

⁸⁴Emily St James, 'Portrait of a Lady on Fire Director Céline Sciamma on Her Ravishing Romantic Masterpiece' *Vox* (19 February 2020) <<https://www.vox.com/culture/2020/2/19/21137213/portrait-of-a-lady-on-fire-celine-sciamma-interview>> accessed 11 May 2023.

concepts of equality, marriage, and power. While Marianne and Héloïse have different perceptions of what equality and freedom means for them, we consider that both women understand that their relationship exists as a temporary reprieve from patriarchal confinements.

Marianne and Héloïse's discussion of equality occurs in relation to the discovery that each of them previously spent time at The Benedictines. Héloïse understood the benefits of the convent, not only in being able to access books and music, but in being around other women. For her, 'equality is a pleasant feeling' that is achieved by being in the convent.⁸⁵ Conversely, Marianne found the convent unjust, as she was punished for drawing in her notebook margins. For Héloïse, the convent was equal by reason of there being no men, and it allowed greater access to activities that she loved. For Marianne, the convent's creation of equality stifled the individuality and freedom of expression she already held outside of the convent – due to being able to take over her father's business. Accordingly, their conversation demonstrated that each woman has a different understanding of equality, largely due to their class and position within society.

The looming presence of Héloïse's forthcoming marriage, and the way that this is discussed, also provides insight into the reprieve of a sapphic partnership. Héloïse is destined to marry a Milanese man if he likes her portrait, and it is inferred that this is only because her sister, who was originally meant to marry him, died by suicide. Marianne does not know if she will marry, because she is instead able to take over her father's business. In response to this revelation, Héloïse states that Marianne can choose whether or not to marry, and that choice is why Marianne does not understand her. Marianne simply states with sincerity that she does understand Héloïse. This scene confirms that despite the differences in class and position between Marianne and Héloïse, there is a mutual appreciation of their standing as women in society.

Additionally, Héloïse's forthcoming marriage is demonstrative of the unwanted return to a heteropatriarchal construct that relies upon forcing her into a family and relationship structure whereby her primary value is her ability to produce children. In this heteropatriarchal relationship, Héloïse's reproductive autonomy and freedom is stripped from her, but had she been able to remain in her sapphic relationship with Marianne, this freedom would have instead been maintained. Crucially, remaining in a sapphic relationship would have also meant that any decision to potentially conceive a child would have been Héloïse's alone, thus emphasising the reprieve that sapphic relationships offer with respect to bodily autonomy. However, none of this is possible for Héloïse because she lacks the financial independence required to remain free from the demands of heteropatriarchal society. In this way the plight of Héloïse mirrors the restrictions placed on intentionally single and sapphic individuals in relation to modern ART legislation: bodily autonomy and reproductive freedom exists, but are only available when combined with sufficient financial means and independence.

Marianne and Héloïse's relationship is typified as a mutually affirming sapphic partnership through themes surrounding power and consent. When Héloïse agrees to pose for Marianne, Marianne begins to explain to Héloïse how well she can read her, understanding Héloïse's actions when she is angry, embarrassed, or annoyed. Marianne states that

⁸⁵ Adèle Haenel as Héloïse in: *Portrait de La Jeune Fille En Feu* (Portrait of a Lady on Fire) (Directed by Céline Sciamma, 2019).

she would ‘hate to be in [Héloïse’s] place’, inferring that she would not wish to be an artist’s subject. Héloïse responds that she and Marianne are in ‘exactly the same place’, with Héloïse looking at Marianne while Marianne paints. To Marianne’s surprise, Héloïse is able to tell Marianne her actions when she doesn’t know what to say, when she loses control, and when she’s troubled. This scene signifies that there exists no hierarchy between the two women, the subject and artist are one in the same for Marianne and Héloïse. This balance is further supported through the way that consent is conceptualised in the film. Céline Sciamma specifically recognises the ‘eroticism of consent’ that exists, particularly with Marianne and Héloïse’s first kiss, where ‘[t]hey both unveil their mouths . . . [which] is not like the usual scene. Each time somebody touched somebody, they asked’.⁸⁶ The emphasis on consent supplements the concept of equal power; each woman actively consents to engage with the other in equal standing. The negotiation of power dynamics and consent between Marianne and Héloïse can be contrasted to the typical gender and relationship roles that exist between heterosexual couples, those of which are reinforced by contemporary superannuation regulations. Namely, heteropatriarchal relationship dynamics presume a subordination of the femme in preference to an assumed privileging and superiority of masculine expressions.⁸⁷

Irrespective of the mutually affirming dynamics that exist between Marianne and Héloïse, both women begrudgingly understand that their relationship can only be temporary.⁸⁸ When the second portrait of Héloïse is near completion, Marianne voices that she wishes to destroy this painting also, because ‘[t]hrough it, [Marianne] will give [Héloïse] to another’. Marianne acknowledges that since the women have acted on their feelings, now she believes Héloïse has some choice to continue with the marriage. Yet, when Héloïse asks if Marianne would like her to resist the marriage, Marianne says no. Although both women are hurt by the understanding that their relationship cannot continue to exist, they reconcile upon understanding that they only have one final day together until la Comtesse returns. This devastating scene exists near the end of the depiction of feminine society and is a brutal reminder to the viewers that the freedoms experienced in the time without men were only momentary. Unfortunately, this is a persistent reminder that queerness in the time of contemporary society can still only afford a temporary reprieve from heteropatriarchal dominance.⁸⁹

3.2.2. *Marianne, Héloïse, and Sophie*

The film’s illustration of femme collectivity is a central representation of how queerness can subvert patriarchal expectations. The supportive friendship between Marianne,

⁸⁶Tracy E Gilchrist, ‘Portrait of a Lady on Fire’s “Eroticism of Consent” Changes Cinema’ *Advocate* (17 February 2019) <<https://www.advocate.com/film/2019/12/19/portrait-lady-fires-female-gaze-fight-against-convention#toggle-gdpr>> accessed 19 May 2023.

⁸⁷Tamsin Phillipa Paige, ‘“The Whore That Lost Everything”: The Tyranny of Law and the Queer Feminisation of Soft Power as Explored in *Black Sails*’ (2023) 17 *Pólemos* 415, 425–27.

⁸⁸This sits in contrast to the embrace of a time limited relationship as a source of joy: Elizabeth F Emens, ‘Regulatory Fictions: On Marriage and Counter-marriage’ in Elizabeth S Ankler and Bernadette Meyler (eds), *New Directions in Law and Literature* (Oxford University Press 2017) 296–97 <<https://academic.oup.com/book/12247/chapter/161737138>> accessed 9 February 2024.

⁸⁹Gina Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (1st edn, Oxford University Press 2019) 21. For a discussion of how even when accepted queerness is still required to conform to heteropatriarchal expectations see generally: Emma Genovese, ‘The Spectacle of Respectable Equality: Queer Discrimination in Australian Law Post Marriage Equality’ (2023) 46 *UNSW Law Journal* 650.

Héloïse, and Sophie is a primary example of this subversion. Throughout their friendship, the lines between class are purposefully blurred to represent the equality that exists within ideal femme collectivity. Céline Sciamma specifically commented on her focus to embody sorority with the film. A primary scene she points to is: 'a long take, a wide shot, of three women in the kitchen with social hierarchy being totally turned around, with the aristocratic woman cooking, whereas the maid is an artist and the artist is looking at the maid'.⁹⁰ In this scene, each woman treats the other as an equal, sharing wine and repudiation of their expected societal roles. Accordingly, within the feminine society stage, the film portrays how queerness can provide freedom from society's heteropatriarchal demands.

A major storyline within the film is Sophie desiring to terminate her pregnancy. This desire is initially expressed to Marianne, whose primary reaction when finding out that Sophie is pregnant is to ask if Sophie wants a child. When Sophie explains that she does not, viewers are treated to several scenes of Marianne and Héloïse assisting Sophie in terminating the pregnancy. However, Sophie learns that their attempts to terminate the pregnancy have been unsuccessful, when the friends attend a bonfire involving a large gathering of women. Upon Marianne learning of this, she immediately insists on accompanying Sophie to the abortion. This whole process for Sophie is reflective of our earlier discussions around ART. Sophie is experiencing in this plotline the stripping of reproductive freedom and bodily autonomy because of her status as a femme subject in a heteropatriarchal society. However, Sophie's bodily autonomy is restored through femme collectivity, with access to termination and support arising from Sophie's relationship with Marianne and Héloïse, and the broader feminine community that is present at the bonfire.

Interestingly, the only representation of a masculine presenting body in the feminine society stage is when Sophie receives the abortion. While Marianne and Héloïse watch the termination, Sophie is also supported by children who lie on the bed next to her. A key frame of the procedure involves a close-up of a masculine coded baby who grasps Sophie's hand and touches her face. This representation of the supportive masculine in feminine society is arguably a subtle signifier that masculine fragility is learned and not born.⁹¹ The almost instinctive reach for supportive and caring touch from the child to Sophie while she is in pain also subverts the heteropatriarchal framing of the child, much like the femme, as a passive subject in society.⁹² The importance of this inclusion is further highlighted in that it is the only presentation in the entire film that the viewers witness meaningful masculine support. This representation is also an additional depiction of queerness, with the masculine presented in a role that is not traditionally associated with patriarchal expectations for men. Accordingly, the feminine collectiveness portrayed within the film does not necessarily demand or require a complete disavowal of the masculine, but rather, a reconfiguration of what the masculine entails. Rather than accepting masculinity as being 'represented by strength, capacity for violence, stubbornness, and a zero-sum game – winner takes all – approach',⁹³ this scene creates the

⁹⁰St James (n 84).

⁹¹See generally Adam Stanaland, Sarah Gaither and Anna Gassman-Pines, 'When is Masculinity "Fragile"? An Expectancy-Discrepancy-Threat Model of Masculine Identity' (2023) 27 *Personality and Social Psychology Review* 359.

⁹²Tamsin Phillipa Paige and Joanne Stagg, 'Well-Intentioned but Missing the Point: The Australian Defence Force Approach to Addressing Conflict-Based Sexual Violence' (2020) 29 *Griffith Law Review* 468, 485.

⁹³Paige (n 87) 425–26.

possibility for a masculinity that is gentle and caring. As such, freedom from patriarchal influence can mean freedom from traditional expectations and norms enforced upon all people – because such traditional masculinity as a cultural and individual behaviour framework is learnt rather than innately coded in bodies.⁹⁴

3.2.3. *La Comtesse*

In brief conversations with Marianne, *la Comtesse's* newfound freedom is indicated to be closely tied with her recent singledom, after she is widowed. The freedom within this singledom is a further depiction of how queerness can act as a form of respite within a patriarchal society.

The contrasts between *la Comtesse's* life when married and her current state are revealed through her discussions with Marianne. *La Comtesse* divulges that she has not been to Milan in 20 years and is eager to return; however, this only appears to be a possibility afforded through Héloïse's marriage to a Milanese gentleman. While *la Comtesse* shares the anger in the treatment of women in society, she implies that the circumstances of the marriage will have benefits for Héloïse. The characterisation of Héloïse as property is also emphasised when *la Comtesse* explains that Marianne is to paint Héloïse without her knowledge, because Héloïse refuses the marriage and refused to pose for a portrait. Héloïse's lack of autonomy is further distinguished from *la Comtesse's* freedom, when *la Comtesse* explains that she will leave for a trip to the coast for several days – a conversation which follows the discussion of Héloïse being locked inside. While the freedom that exists within singledom is represented by *la Comtesse*, this freedom is still marred by the existence of the patriarchy: *La Comtesse* only has her freedom now because of her marriage to a man, which presumably resulted in financial advantage upon her husband's death. In contrast, Marianne also has greater freedom, but instead this freedom operates as a gift from her father – rather than as a reward bought through the violation of heteropatriarchal marriage. Additionally, the discussion of *la Comtesse's* freedoms occur within the context of *la Comtesse* subjecting Héloïse to the same fate as her and was destined for her sister. Accordingly, the queerness within *la Comtesse's* singledom is demonstrative of the freedoms that can subsist within patriarchal society, but they are freedoms usually bought with significant costs and dependant on financial autonomy.

Furthermore, both *la Comtesse* and Marianne have considerably more freedom to live their life, more so than both Héloïse and Sophie. That is, Marianne has the choice to marry because of her work as an artist at her father's business, meaning she does not need to rely on income from marriage with a man. Comparatively, Héloïse is required to marry a wealthy Milanese man, fulfilling the role that her deceased sister was required to satisfy. *La Comtesse* can travel the world because of her widowed husband; yet Sophie's freedom is dependent upon *la Comtesse's* absence: only able to seek an abortion once *la Comtesse* leaves and with the assistance of Héloïse and Sophie. Accordingly, greater freedom is afforded to women in the film who have sufficient financial independence, but ultimately, this financial independence continues to subsist because of advantages wrested from the heteropatriarchy.

In relation to contemporary society and the connections with both ART and superannuation, financial independence poses a serious impediment to the freedom of women in

⁹⁴See generally: Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990).

accessing services or securing their future. Nevertheless, queerness offers a form of respite from heteropatriarchal expectations of conduct within the family or associated gender roles.⁹⁵ It allows for individuals to be themselves (or provide space for exploration to allow them to discover themselves),⁹⁶ rather than having the conduct driven by societal expectation and the negative judgement imposed by drifting too far from that expected norm.⁹⁷

3.3. Post-Feminine Society

The post-feminine society stage occurs both at the beginning and the end of the film, as the film's progression through masculine and feminine society existed as Marianne's reflection of her time with Héloïse, Sophie, and la Comtesse. Post-feminine society is characterised as a time of defiance: women continue to be confined by the patriarchy, and yet there exists a will for resistance.

At the beginning of the film, viewers are met with Marianne teaching a group of women how to draw a portrait, with Marianne acting as the subject. It is during this process that she notices a student has displayed a painting of Héloïse, prompting the frame narrative sequence. With the context of the masculine and feminine society stages, it is apparent that teaching other women how to draw is now an act of defiance. That is, Marianne's enactment of freedom to visit different countries, and be commissioned to paint portraits, has only been possible through working for her father's business. In teaching other women how to draw portraits, Marianne is in effect teaching other women how to become financially independent – like she appears to be.

Near the end of the film, Marianne walks into the kitchen and is greeted by the man who initially carried her possessions. He is seated at the table and is being served by Sophie. This scene signals the return to post-feminine society because the presence of a man has resulted in the reinstatement of previously expected roles, with Sophie now resuming her function in service.

During the post-feminine society stage, the final goodbye occurs between Marianne and Héloïse. This goodbye parallels Marianne, Héloïse, and Sophie's earlier discussion of the myth of Eurydice and Orpheus, and why Orpheus turned to look at Eurydice before leaving the underworld – thus banishing Eurydice once again.⁹⁸ During this discussion, Marianne argues that perhaps Orpheus 'chooses the memory of [Eurydice] ... [making] the poet's choice [and] not the lover's'. Héloïse subverts this interpretation by suggesting that 'perhaps [Eurydice] was the one who said: "turn around"'. After Marianne and Héloïse's brief embrace, viewers see Marianne briskly walking down stairs to leave. As she opens the door, Héloïse calls out: 'turn around'. Marianne obliges and the image of Héloïse in her wedding gown is viewed, mirroring the prior vision Marianne experienced of Héloïse. This scene is a final reminder that Marianne and Héloïse are unable to be

⁹⁵Odette Mazel, 'Queer Jurisprudence: Reparative Practice in International Law' (2022) 116 *AJIL Unbound* 10, 12.

⁹⁶Dianne Otto, 'Introduction: Embracing Queer Curiosity' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risk* (Routledge 2017) 2.

⁹⁷François Ewald, 'Norms, Discipline, and the Law' (1990) 30 *Representations* 138, 154.

⁹⁸For examples of feminist reading of the Eurydice and Orpheus myth see: Helene A Shugart, 'Counterhegemonic Acts: Appropriation as a Feminist Rhetorical Strategy' (1997) 83 *Quarterly Journal of Speech* 210; Ruqaya Ibrahim and Mohamad Fleih, 'Re-Writing the Feminine Myth in Adrienne Rich's I Dream I'm the Death of Orpheus' (2021) 33 *Journal of Al-Anbar University for Language and Literature* 341.

together; however, Céline Sciamma's interpretation of the story of Eurydice and Orpheus imbues Eurydice, and hence Héloïse and Marianne, with agency. Héloïse chooses to ask Marianne, and Marianne chooses to turn. Both women make the poet's choice to remember the reprieve their partnership allowed, rather than giving in to a fantasy that they could be together in a world commanded by patriarchal expectations. Thus, Marianne and Héloïse's final goodbye is itself an act of defiance: they are each provided with a choice to choose the memory of the other.

The defiance and ongoing presence of Marianne and Héloïse's partnership is clearly demonstrated when Marianne sees Héloïse again for the first time. Marianne is at an art exhibition, and rushes to see a portrait painted of Héloïse, with her child. Most significantly, the portrait also includes Héloïse clutching a book, with the page shown to be marked as '28'. This marking is significant because it was the page in Héloïse's book where Marianne sketched a naked image of herself, affording Héloïse with an image to remember her by. This act of defiance further reinforces that Marianne and Héloïse's partnership allowed some sense of freedom – with the memory of their relationship continuing to do so to some extent.

Marianne also engages in an act of defiance while at the art exhibit. That is, Marianne submitted a painting, in her father's name, of Eurydice and Orpheus depicted to be saying goodbye. When a man comments on how excellent her father's painting is, Marianne corrects him by stating she submitted it in his name. Irrespective of this, the man continues his assessment of the painting, recognising the unique portrayal of Eurydice and Orpheus. This scene is significant because despite Marianne being required to submit the painting in her father's name, she still makes it know that it is her work. As such, the scene is another instance of resistance that occurs within patriarchal society.

Arguably, the post-feminine world we see at the beginning and the end of the film is the world which we inhabit today. It is a world with the possibility of resistance to heteropatriarchal oppression, but not without cost. It is a world where the resistance to the overwhelming preferencing of heteropatriarchal masculinity is only possible where sufficient financial means exists. As we have seen in part two in our discussion of both ART and superannuation laws, queerness can offer an escape from heteropatriarchal structures; however, this escape and space of resistance preferences those with financial means and those without affluence do not get full reprieve that queerness offers from the marginalisation of the heteropatriarchy. While femme collectivity and mutually affirming sapphic relationships can work to address financial inequality in these queer spaces, it still remains that the capacity to resist heteropatriarchal oppression is intrinsically linked to financial independence.

4. Conclusion

Portrait of a Lady on Fire ends with Marianne explaining that she lays her eyes on Héloïse one final time, but Héloïse does not see her. This ending is bittersweet. Marianne watches Héloïse weep at the orchestra, listening to the composition that Marianne taught her. Héloïse cries and yet she also smiles, knowing that while they are not together and cannot be together, their relationship has a lasting impact on who they are when apart.

This bittersweet ending is often so reflective of the relationship that queer individuals and communities have with society and the law. There is unbridled joy and sweetness in

acceptance and embrace of our queerness, but there is also the struggle with the societal rejection we face (for if it was truly acceptable in the eyes of society at large to be queer then we wouldn't still need to come out). Both of these facets of our being indelibly shape our being. What is important is that we can find joy, love, respite, and succour in the queer space where there is a freedom to be ourselves free from the oppressive and unfair expectations of heteropatriarchal society. It is this freedom from heteropatriarchal social expectations that allows us, like Marianne teaching young women to paint in order to afford them financial independence, to continue to resist the injustice that the queer community faces.

Within the context of legislative structures, ART and superannuation savings are examples of how society relies upon presumptions that relationships consist of heterosexual partners. The resultant impact is that queer people who live their lives distinct from reliance on the masculine are prejudiced, but there are lessons learned when we look to the freedom that lies within queerness. With respect to ART, not only were single women previously excluded from accessing these services, but even now there is variable access to people in sapphic relationships. Further, even where access does occur, the financial implications are far greater for queer people than people who comply with heteronormative expectations. Similarly, women generally obtain lesser employment and retirement savings in comparison to men, particularly due to the gender pay gap and expected care requirements in heterosexual relationships. We consider that queer relationships challenge these disparities through their questioning of traditional heteropatriarchal norms and expectations, including those related to the structure of the family.

Ultimately, there is freedom in queerness: in being single, living in a sapphic relationship, or in femme collectivity. But much like the ending of the film, this freedom found in queerness is bittersweet. It carries a joy and freedom that comes from casting off the shackles of heteropatriarchal expectations, but it does not exist without a price. It comes with the cost of forever being seen by society as a second-class citizen, at best, or dangerously deviant, at worst. Sadly, it is clear that the law is not only complicit in the cost of queer freedoms, but also often an active participant⁹⁹; however, we contend that it is a cost worth paying when considering the alternative of conforming to the oppression of heteropatriarchal expectations.

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⁹⁹For examples beyond the ones explored in this paper see: Tamsin Phillipa Paige and Joanne Stagg, 'Queer Approaches to International Adjudication' in H el ene Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (2022) <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3871.013.3871/law-mpeipro-e3871>> accessed 12 December 2022; Genovese (n 89).

Notes on Contributors

Emma Genovese (she/her) is a PhD Candidate, Quentin Bryce Law Doctoral Scholar, and Teaching Fellow at the University of Technology Sydney. Her research explores the construction of sex, gender, and sexuality in Australian legislation. She has a particular interest in queer theory, queer and legal linguistics, and corpus linguistic techniques.

Tamsin Phillip Paige is a Senior Lecturer at Deakin Law School. Her work is interdisciplinary in nature, using qualitative sociological methods to analyse international law. She also does law and literature research using popular fiction to understand social perceptions of the law.

ORCID

Emma Genovese  <http://orcid.org/0000-0003-0062-6911>

Tamsin Phillipa Paige  <http://orcid.org/0000-0002-2353-0448>