

QUEER THEORY

LAW, CULTURE, EMPIRE



EDITED BY
ROBERT LECKEY AND KIM BROOKS

a GlassHouse book

Queer Theory: Law, Culture, Empire

Edited by Robert Leckey
and Kim Brooks



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Robert Leckey and Kim Brooks
Montreal, October 2009

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Introduction

Robert Leckey and Kim Brooks

The cover of this book shows a close-up of what appears to be the sculpture of a man, sitting. He seems to be naked (how quickly the personification of that which is perceived as human: he, not it). Fabricated from bone and plaster, he is unquestionably white. It might be more usual, for a male nude sculpture, for him to be standing. But he looks normal. And yet, something might be slightly off. He looks relaxed, almost languid. The legs crossed at the knee, the arms so loosely crossed at the wrist are unmanly, somewhat effeminate. He sits like a gay man gossiping on a bar stool, in a way that many men may have been instructed – perhaps by their fathers – not to sit.

If one's perspective shifts, if one sees more of the figure, the oddness intensifies. Despite the first impression in the close-up, the larger figure is not normal, at all. He is not human, or not fully. Part of what disturbs about the larger sculpture he forms part of – he and the other two of Jane Alexander's *Butcher Boys* – is how human he remains nevertheless. He is too human to be rejected entirely as animal or other. The bestiality of the head and the intimations of violence notwithstanding, the part in the close-up remains beautiful. Indeed, as men who desire other men know, to call a grown man a 'boy' is to eroticize him, to make him 'something you play with' (Mendelsohn 1999: 101). Their hybridity makes these figures far more perturbing than a representation of things wholly bestial or monster. *The Butcher Boys* are categorical abominations, beings that disrupt by eluding categorization. By their calling established categories into question, and standing outside the normal, they are decidedly queer. As elaborated by Jaco Barnard-Naudé in Chapter 5 in this collection, that queerness is specifically located. *The Butcher Boys* dwell in the South African National Gallery in Cape Town, a location that evokes histories of colonialism, institutionalized racism, and the deployment of law for repressive and emancipatory ends. The need to view or read carefully in order to appreciate the close-up's queerness makes it an apt portal into this collection.

The attraction of queer theory is its resistance to definition. It has little claim to be a unified theory of any sort. If it has a core, queer theory is about resisting categorization, for itself and for its subjects. It has been described as

'a zone of possibilities in which the embodiment of the subject might be experienced otherwise' (Edelman 1994: 114). 'Queer' can refer to 'the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone's gender, of anyone's sexuality aren't made (or *can't be* made) to signify monolithically' (Sedgwick 1993: 8). This collection celebrates such a refusal of definitions – as well as the insistence that definitional closure is impossible or undesirable. It also exemplifies two distinct but related approaches to queer.

First, as a noun or adjective, queer can denote particular subjects. As such, queer theory can reflect on what it means to be queer (Colebrook 2009: 11). Thus, some contributors use queer to refer to subjects, identities, or other things, in line with early queer theorists who devoted energy to disarticulating what it means to be 'normal', to creating non-normativities, and to embracing anti-assimilationism (Warner 1999). Here, queer risks stabilizing into an identity rather than remaining a radical critique of identity (Halberstam 1997: 260). Yet the identities signified and produced as queer have remained contested and in flux, with new identities insisting on their queerness too (for example, transgender, two-spirited, intersex, and questioning).

Second, in resistance to reification, many queer theorists focus on queer as a verb. As a verb, queer can better perform 'its outlaw work' (Freccero 2006: 5), including that of disorientation (Ahmed 2006: 4). Thus, other contributors to this collection use queer more as a lens for viewing the world askant. Deployed this way, queer changes the way in which we theorize. Queer can signify not specific subjects, but 'a political and existential stance, an ideological commitment, a *decision* to live outside some social norm or other' (Ford 2007: 479).

The collection embraces the definitional instability of queer. At the same time, its contributors ask what queer theory might bring to an exploration of the confines and openings sustained by law, culture, and empire. The three terms of the subtitle appear advisedly without linking words so as to leave their relations unarticulated. Our aim is not to shut down their possible modes of interaction. Earlier collections have explored law in the domains of culture, such as cultural property, copyright, and popular culture (Sarat and Kearns 1998), and law *as* culture (Sarat and Simon 2003). In the present collection, by contrast, it would be a mistake to posit at the outset the relation in which law, culture, and empire connect one to another. Before sketching ways in which this collection's chapters align those key terms, it is worth situating this enterprise, however provisionally, in relation to recent work holding itself under the (anti)label queer.

Queer disciplines

Some have suggested that queer theory is already somehow over, or 'rapidly approaching its expiration date' (Halley and Parker 2007: 421). Undeniably,

some deployments of queer have had a flattening, if not deadening, effect. At times, queer has been conscripted into service as a sexier, more marketable label for lesbian and gay identities. Such a transformation may reflect 'the inevitable absorption of political dissent within late capitalism into consumer culture' (Halberstam 1997: 256). Queer theory's postmortem has been attempted (Nunokawa 2007), and interveners have asked whether queer theory remains queer and, if so, in what ways (Eng with Halberstam and Muñoz 2005). It has been noted, too, that many of the leading pioneers of queer theory have moved on, nowadays writing on other matters, from other perspectives (Halley and Parker 2007: 421–2). One might, however, regard with suspicion any announcements, from sites of privilege, that the queer party is over. The timing of such proclamations warrants their scrutiny. They come at a moment when the interlocutors in the queer conversations are increasingly varied and less localized in elite educational institutions of the United States. Readers in law may recall the objections to the critical legal scholars' discrediting of rights, precisely when historically marginalized groups were mobilizing rights discourse for political purposes (Williams 1987).

Foucault's work would insist that whatever queer theory heralds, it cannot be unalloyed emancipation. It appears, nevertheless, that a number of contemporary scholars find in queer theory a source of pleasure and analytic and political energy. On one recent view, queer has 'maintained an acute and enabling sense of the discomforts and incoherencies around speaking of the livability of previously marginalized identities, identities which furthermore have been the objects of fantasies or practices of annihilation' (Flannery 2007: 3). The chapters in this collection, drawing on that sense of discursive discomforts and incoherencies, speak against the claims that queer theory is over. Taking queer as 'a continuing moment, movement, motive' (Sedgwick 1993: xii), they show that queer theory and its intersection with law, culture, and empire yield rich analytical and conceptual stories about the world around us, fractured and contested as it remains.

In disciplinary terms, queer remains a rich resource in a number of areas. It retains prominence in literary and film studies. Making an affective turn, recent queer scholarship has scrutinized particular affects, such as loss (Love 2007), love (Restuccia 2006), optimism (Snediker 2009), and shame (Halperin and Traub 2009). Theorists have resisted the teleology of temporality, specifically – and with furious brio – denouncing futurity (Edelman 2004). Another queer intervention on temporality has challenged the homophobic valorization of the history of difference between past and present (Menon 2008). Space and place remain matters of keen interest to queer theorists, or queer theory continues to be a valuable resource to those interested in space and place. Queer interventions persist in areas concerned with space, movement, and belonging: geography and urban studies (Browne et al. 2007; Bell and Binnie 2004; Binnie 2004; Oswin 2008), citizenship studies (Stychin 2003; Bell and Binnie 2000); and migration studies (Luibhéid 2008). If its incursion

there was slower than that into, say, literary or cultural studies, queer has finally insinuated itself into theology and religious studies (Bohache 2008; Loughlin 2007; Wilcox 2007; Jordan 2006). While it has been put forward that 'the queer is not radically outside or beyond recognition and selfhood; it is that which makes a claim to be heard as human' (Colebrook 2009: 15), recent interventions nevertheless challenge the construction of the normatively able human body (McRuer 2006). Indeed, they reach beyond the human as a site for queer investigations (Giffney and Hird 2008).

By contrast, it has been suggested that the queer theory performed in law schools is comparatively uninteresting (Halley and Parker 2007: 422–3). One of the few collections dedicated to queer theory and law is now relatively dated (Moran et al. 1998). A recent compendium has brought together queer and feminist legal scholarship (Fineman et al. 2009). Certainly jurists and political scientists have written about the law and sex. Recent years have witnessed sustained work on the legal developments in terms of civil rights and relationship recognition for same-sex couples. But such work is usually taken up through a presumptively unqueer lens of liberal legalism, including the courts' responses to activists' deployment of liberal rights instruments. Much of this research connects itself explicitly to a gay rather than a queer politics (e.g. Pierceson 2005; Smith 2008), although some critical work with a queer edge embeds legal changes in relation to same-sex couples in larger movements of neoliberal governance (Osterlund 2009). It is against that backdrop that this collection brings queer theory to bear on law, culture, and empire.

Law/culture/empire

One premise of the collection is the intricate, indeed often inextricable, relation of law and culture. Many of the chapters follow this premise, placing one foot in law and the other in another discipline or other disciplines.

From the outset, queer theory has entangled itself with the touchstones of the Western canon (Sedgwick 1990: 48–59). The queer theory industry, it has been said, 'has been mobilised around a re-reading of the canon's images of heterosexual desire to show moments of instability, deviation and mobility' (Colebrook 2009: 21). Indeed, figures such as Shakespeare remain subjects for contemporary queer analysis (Menon 2008). But queer legal theorists, drawing on Foucauldian insights about the multiple locations and sources of regulation, have also turned their gaze to the productive and regulatory effects of a wide variety of cultural texts that are indisputably non-canonical. Popular television shows and films thus come under the microscope of queer legal or regulatory theory (Cossman 2007).

The contributors to this collection whose training or institutional location marks as lawyers adopt a capacious definition of legally relevant texts. Indeed, at the workshop leading to this collection, it was the non-lawyers who expressed occasional bashfulness about the relevance of their texts of study,