Dalhousie University Schulich School of Law

From the SelectedWorks of Kim Brooks

2010

Introduction to 'Queer Theory: Law, Culture, Empire'

Kim Brooks
Robert Leckey

Available at: https://works.bepress.com/kim-brooks/15/
The cover of this book shows a close-up of what appears to be the sculpture of a man, sitting. He appears 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. And yet, 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 his chapter 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
nonnormativities, 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 that show 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), and optimism (Snediker 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, Lim, and Brown 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 is 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, Monk, and Beresford 1998). A recent compendium has brought together queer and feminist legal scholarship (Fineman, Jackson and Romero 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, such as popular film, to the lawyers, while the lawyers unhesitatingly grasped those texts’ salience as regulatory instruments. The Bollywood films studied by Shohini Ghosh, the sculpture treated by Jaco Barnard-Naudé, the judicial swearing-in speeches parsed by Leslie Moran, and the New Zealand parliamentary debates analyzed by Nan Seuffert—to give an incomplete list—are all appropriately scrutinized as potentially regulatory and productive texts. The chapters show those sources, in their gaps, insinuations, and excesses of meaning, to partake in queer theory’s ‘certain unsettling in relation to heternormativity’ (Freccero 2007: 485). And all the chapters are carefully alert to their studied texts’ implications for subjects positioned outside the privileged sites of heterosexuality and heternormativity. The treatments of cultural texts provoke reflection on the extent to which cultural or artistic representations, if not themselves sources of law (Kasirer 1995), are nevertheless potentially normative and regulatory.

The disputed terrain of empire and empire studies furnishes terrain on which the complex relations between queer theory, law, and culture intensify. The collection’s invocation of empire inscribes itself against the recent flourishing of related scholarship, including a resurgence of interest in the concept of empire as a political analytic. Some scholars have focused directly on empire, defining it as an ‘open tendency’, denoting among other things ‘an attempt at a sovereign ordering of economic globalization’ (Negri 2008a: 3; also Negri 2008b; Hardt and Negri 2000). On some understandings, empire is ‘a process of constitution of sovereignty—a new sovereignty—over the global market’ (Negri 2008a: 8; compare Douzinas 2007). Other scholars advance the related notion of ‘imperial formation’ as analytically fruitful, positing that it underscores ‘not the inevitable rise and fall of empires, but the active and contingent process of their making and unmaking’ (Stoler and McGranahan 2007: 8; see also Stoler 2006, 2002). For Stoler and McGranahan (2007: 8), imperial formations are ‘politics of dislocation, processes of dispersion, appropriation, and displacement’, depending simultaneously on ‘moving categories and populations’. The analytic of imperial formation connects directly to culture, along the lines of this collection’s inquiry: ‘imperial formation’ includes cultural
practice among a ‘broader set of practices structured in dominance’ (Stoler and McGranahan 2007: 8). Processes associated with empire propel a number of imperatives. Agathangelou, Bassichis, and Spira (2008: 123) write: ‘To (re)consolidate itself, empire requires and solicits the production of certain ways of being, desiring, and knowing (while destroying others) that are appropriately malleable for what comes to be constituted as the so-called new world order.’

Commentators have used notions of empire, traced out in contemporary conditions, to read and lament the catastrophes of recent Western foreign policy. It has been argued that abuses by the American military enact a pre-constructed heterosexed, racialized, and gendered script firmly grounded in the colonial desires and practices of the larger social order (Richter-Montpetit 2007). Such arguments vociferously resist the individualizing, exonerating trope of the few bad apples. For this collection’s purposes, empire’s connections with sexuality and queer theory are at least two-fold.

The first is that, as some chapters show, the project of empire can recruit into a productive role subjects identifying as sexually non-normative and, indeed, as queer. The assumption of such a role may be witting or unwitting. Negri (2008a: 35) writes: ‘In order to produce, global capitalism and imperial sovereignty need to control our entire existence. What is in play is entirely biopolitical, and has to do with desires and ways of life.’ These desires and ways of life are precisely the subject of law reform efforts towards recognition of historically non-normative forms of kinship and alliance, which can align themselves with imperial agendas in relation to domesticity and orderly consumption. More specifically, the institution of marriage functions as a site of citizenship production, critical to the formation of a properly gendered, properly racialized, properly heterosexual nation (Brandzel 2005). Law reform efforts towards recognition of historically non-normative kinship thus inscribe themselves specifically in relation to marriage’s intimate ties to citizenship as states continue to maintain and police the racial, gender, and sexual configuration of their citizenries. ‘Queer’ does not per se ‘necessarily disrupt national modes of belonging’ (Hong 2006: 98), and queer theory has often left intact dominant liberal notions of the U.S. citizen-subject (Freccero 2007: 490).

The 2003 anti-sodomy judgment of Lawrence v. Texas marked a watershed in the United States. That judgment inscribed itself on a terrain on which scholars and in many cases political activists (particularly those who have engaged in recent years with legal regimes) had spent countless hours labouring in an effort to reconstitute queerness as normal, acceptable, or at least as requiring tolerance. Indeed, some scholars now write of ‘queer liberalism’ (e.g. Eng 2007), ‘queer citizenship’ (Trevenen 2009; Johnston 2008),
‘homonormativity’ (Duggan 2003), and ‘homonationalism’ (Puar 2007), notions once viewed as oxymoronic. Does not celebrating Lawrence entail a celebration of the highest court’s valorization of private property, domesticity, and monogamy, all decidedly not queer, at least by the usual metrics? (Ball 2008; Eng 2007; Rollins 2005; Franke 2004).

In the US, queer theorists have expressed alarm at a toxic conjunction that they perceive to be no coincidence: an intensification of the project of militarized empire and the gay victory of Lawrence. Agathangelou, Bassichis and Spira (2008: 130) have expressed alarm at the prospect that the ‘privatization of the freedom of the queer subject enshrines a culture of loss of rights for non-U.S. citizens while naturalizing the backdrop of (specifically black) (non) subjects within the United States whose civically dead or dying status has rarely been assigned rights to lose’. In other words, the partial validation, for some purposes, in some places, of some queer subjects can conscript queers into ‘empire’s incessant production of internal and external enemies’ (Agathangelou, Bassichis, and Spira 2008: 138). Margaret Denike’s and Nan Seuffert’s chapters draw on such concerns. They explore the ways in which the state’s recognition of some historically non-normative sexualities presses still further outside those relationship forms not recognized, in the process fortifying traditional notions of monogamous domesticity that advance imperial projects.

Queer theory’s second connection with empire concerns the potential for queer theory itself to be imperial. Ratna Kapur speaks (in this volume) of queer theory as the ‘new imperium in legal scholarship’. Queer theory’s imperial ambitions have been discernable from the outset. This imperialism is partly intellectual, in the thrust of ideas associated with queer theory. Queer can be viewed as imperial for its impulse towards ‘the transformation of everything’ (Hoad 2007: 516), and for its ‘insatiable appetites and marvelous elasticity’ (Freccero 2007: 490). The sense that its anti-identitarianism makes queer theory applicable to identity politics generally (Ford 2007: 479) may presumptively override or invalidate queer’s inflection by local politics and conditions.

Queer theory’s other empirical aspect is empirical, emerging from its Western origin and provenance in the United States. Queer theorists have criticized ‘the provinciality of American-based queer criticism’, and scrutinized the relation between the United States’ neo-colonialist, capitalist presence and the proliferation of ‘queer subjects’, produced and encouraged through the dissemination of queer theory (Arondekar 2005: 246). Hoad (2000) critiques the title of the queer theory classic Fear of a Queer Planet (Warner 1993a), arguing that it links queer theory to queer subjectivity’s site in the United States and its own colonizing fantasies.
The prevalence of white gay men, situated in Western societies, within queer theory—at least during its early years—poses complex puzzles when queer theory travels. Is it a politically salient resource, or itself a technology of neocolonialism, captured by the interests of those most or earliest represented by it? The specifically national character of American queer theory generates concern on the part of diasporic queer theorists that much queer theory in America is based on white male experience and privilege, excluding people of colour and limiting its relevance to third-world activism (Baruddoja 2008). This privileged location may severely constrain its meaning and usefulness for those outside those zones of privilege, a possibility explored by Ratna Kapur’s and Jon Binnie’s chapters. Queer theory’s ostensible definitional openness, capaciousness, and indeterminacy can stand in tension with the impulses to anchor queer theory in the experiences of privileged, Western gay men.

Yet despite this Western, and indeed national, specificity, queer theory has enjoyed enormous success as an export. The global propagation of Western gay culture has been perceived in some quarters as a progressive development of liberating sexual minorities in third world countries—a global queering (Yeoh 2006). On this narrative, an emancipating and glamorized Western gay culture transforms the rest of the world. But such narratives require contestation, including rejection of the ‘dominant tendency to use singular binaries or reductive trajectories (e.g., West to East, first world to third world) to map out global queer lives in the so-called non-Western world’ (Lim 2005: 384). Subtler accounts recognize that while, to some extent, a globalization of gay identity has occurred, giving rise to the figure of the global gay, that figure is a hegemonic yet unstable point of self-identification. Subjects who so identity may be simultaneously privileged and marginalized, local and global, indigenous and cosmopolitan (Benedicto 2008).

Scholars attaching themselves to queer theory but writing from outside Western privilege have increasingly laboured in recent years to queer the diaspora, in the process aiming to ‘disrupt a singular and normalized queer subject and constituency’ (Arora 2007: 31). Ideally, such disruption might serve ‘to dismantle mainstream hegemonic understandings of queer as white, male’, making space instead for the ‘contextual multiplicity of queer subjects’ (Arora 2007: 31). Such efforts have proliferated, bringing queer theory into contact with race, postcolonialism, globalization (Riggs 2006), insistently locating queer theory outside the global north (Gopinath 2005; Rodríguez 2003), and especially outside the US (Martin et al. 2008). Taking queer theory elsewhere can reveal that the ostensibly queer analysis of same-sex marriage—that is, the fierce opposition to it (Warner 1999)—
may be parochially American rather than universal. Debates on relationship recognition might be inflected differently in other locales, and their relation with queer theory may be more fluid than some US critics, writing in universalizing language, have assumed (Boellstorff 2007).

Unsurprisingly, this project of diasporic queer analysis itself calls for care. Wesling (2008) has argued for careful examination of the recent emergent articulations of normative and queer as theoretical twins: one subverting gender normativity, the other troubling geographic and national stability. It has been argued that ‘queer racialized and queer diasporic subjects are the most telling register of the contradictions of nationalism under contemporary global capital’ (Hong 2006: 98), although the dynamics of transnationalism operate unpredictably (Boellstorff 2008: 116). Taking particular locations into account, seeing queer theory as contingent and specific, can aid in disrupting the universalizing tendencies of queer academic and activist discourses (Blackwood 2005; Shiu-Ki 2004). Consistent with these calls, a number of the chapters in the collection locate their exploration of queer outside the global North, and indeed a number of them cross political boundaries.

**THE COLLECTION’S FOUR PARTS**

Each of the following chapters explores in some detail the intersections of queer theory and law, culture, and empire. Many of them do so, not through universalizing theory, but through alertness, in a rooted, local way, to the contingency of the materiality of sex lives and regulatory forces. The contributors to this collection remain attentive to the material social conditions of their subjects. Remaining true to the contingencies of queerness and queer theory more generally, none of the authors explores only one of these themes independently, and in many cases the boundaries between law, culture, and empire are blurred. Furthermore, a number of the chapters, when addressing legal matters, do so comparatively, to some extent calling into question the impermeability of the jurisdictional borders ostensibly established by states and empires. While the chapters’ affiliations and alliances are multiple, the collection organizes them in four parts.

The chapters in the first part of the collection, ‘Constitution’, explore the tensions that become evident in any reading of queer theory and queer politics, in relation to the forces that produce and modulate the subjectivities and identities associated with non-normative sexualities. Drawing on the insight that imperial projects are predicated on and produce politically powerful epistemological claims (Stoler and McGranahan 2007: 11), they contrast the constitutive effects of discourses of neoliberalism, rights, and liberal tolerance.
The second part of the collection, ‘Representation’, illuminates the collection’s principal themes in several ways. Interrogating the relationships between performativity, performance, and queerness has been a longstanding preoccupation of queer scholars (e.g. Butler 1999 [1990]). Chapters in this part investigate some of the complicated ways that queerness is represented, performed, seen, and rendered intelligible. Attentiveness to empire and its function in the process of commodification and unification assists the authors in this collection to resist the draw to tell simple, universal stories. Instead, each performs a carefully situated reading of one or more ‘texts’, defining the term largely.

The chapters in the third part, ‘Regulation’, deepen the examination of law’s regulatory and repressive effects in relation to non-normative sexualities and subjectivities. These authors find queer theory useful for throwing into relief the potential alliances between unlikely groups for political mobility. They take queer not only as denoting those who identify as sexually non-normative (lesbian, gay, bisexual, transgender, and so on), but also as encompassing those who fail to fit within other historically organized and valorized categories. These chapters take three settings regulated by law—assisted reproduction, polygamy, and same-sex marriage—and identify ways in which queer claims (perhaps rooted in legal argument) align in surprising ways with claims made by those commonly cast as decidedly not-queer. The authors argue for building alliances by noting the ‘queerness’ of the claims of the identified allies – heterosexuals who also experience fertility challenges, polygamists, and religious heterosexuals.

Finally, the fourth part, ‘Exclusion’, focuses on the broad theme of exclusion and foreignness, a long-standing preoccupation of queer theorists. This part returns to key themes identified in the first part of the collection, focusing on the need to resist hegemonic presumptions of normalcy as well as to call into question the signification of being foreign. These chapters disconcert comfortable definitions of the domestic or national and the foreign, setting such demarcations against backdrops of power relations. Exclusionary definitions of foreignness emerge as unstable, contingent, and contestable.

If some of the chapters stand in continuity with the queer agenda presaged by Michael Warner nearly twenty years ago—queer struggles aiming ‘not just at toleration or equal status but at challenging’ homophobic and heterosexist social institutions and standard accounts of the world (1993b, xiii), others unquestionably reflect successive waves of queer struggle by engaging with questions that could not have been posed then, such as recent legal developments’ unintended material and discursive consequences. While bringing a variety of richly complementary—and at times contradictory—approaches to
their subjects, the chapters attest that queer remains ‘a volatile, contentious, and enabling term’ (Flannery 2007: 3). And they bring it to bear on contemporary examples that were not available in the earlier years of queer theory, such as the aftermath of Proposition 8, the anti-gay marriage plebiscite in California, the rise of the gay rights movement in Eastern Europe, the same-sex couple’s respectable entry into migration law, and the recent gay rights litigation in post-apartheid South Africa. The chapters embody various affects, some of them delineating, for instance, hostile forces of racism, heterosexism, and homophobia. Yet they also hint at queer theory’s hope that ‘even the most pernicious and powerful modes of control have within them contradictions from which new modes of living and knowing emerge to contest, explain, and unsettle’ (Hong 2006: 98).

Constitution

Jon Binnie’s chapter advances the important task of connecting class relations, neoliberalism, and the politics of non-normative sexualities. Seeing the relation between neoliberalism and queer sexualities as ambivalent, he argues that we must attend to the material circumstances in which queer subjectivities are produced and contested. His focus on the politics of LGBTQ organizing in Poland and Central and Eastern Europe generally provides a reminder of the parochialism with which much Anglo-American theory constitutes queer. If its pejorative connotations makes queer edgier in Anglo-American discourses than the language of gay or lesbian identities, queer’s utter unintelligibility equips it to operate more successfully in Poland than the more disruptive terms gay and lesbian. Binnie calls us to challenge discourses that produce queer subjects as materially and geographically privileged. At the same time, he suggests that relations ordinarily figured as commercial and consumerist may constructively enter the field of politics: he thus identifies a blurring of tourism and activism on the part of Western European queer subjects in Eastern Europe.

Ratna Kapur, writing her chapter from posts in New Delhi and Geneva, deliberately decentres queer theory. Like Binnie, she illuminates the limits of Western queer theory. Drawing on post-colonial theory, she challenges the binary matrices against which queer discourse operates: the West and the Rest, the colonizer and the colonies, the powerful and the impoverished, the here and the there. In the arena of sexuality, specifically, such binary thinking associates pleasure, desire and agency with the West while constituting third world sexual subjects through lenses of violence, victimization, impoverishment and cultural barbarism. Kapur argues that queer as prevalently constituted fails to capture the multiple positions of sexual subalterns. She traces an explosion of public representations of non-normative sexualities, while expressing caution that the call for tolerance associated with them proves cause for concern. In a context shaped by colonial
encounter, tolerance—inflected as a notion for religious minorities—operates as a technology for social and political control, rather than empowering the groups being tolerated. It is not only queer, then, but also strategies sought to improve the lives of sexual subalterns that must be scrutinized for their signification in given contexts.

**Representation**

Shohini Ghosh’s chapter takes us to Bombay Cinema, reading cinematic texts not as an authoritative archive of contemporary cultural sensibilities, but as specifically sexual representations. Ghosh offers a textured reading of classic cinematic texts, arguing that the layers of reading, rereading, and misreading that they induce reveal the complicated positions of non-normative desires. Male and female protagonists, unmoored from the structures of predictable moral choices, confront a queer world of moral flux and ambiguity. Ghosh argues that films in the late 1990s did more than present new queer stories to the cinematic spectators. Rather, by erotically charging ordinary interactions, they mainstreamed an interpretative strategy commonly used by queer subcultures, thereby opening older texts to retrospective queering. Her chapter traces a perceptual process through which spectators of Bombay Cinema not only learned to see the queer, but learned to see queerly, reading queerly the ambiguities and gaps. Ghosh’s interpretive performance in her context of Bombay Cinema models a hermeneutics for queer reading of texts of many kinds in many locations.

Jaco Barnard-Naudé’s chapter explicitly connects a cultural representational text with the constitutional law and politics of South Africa to involve the question of the sexual within democracy. He takes Jane Alexander’s sculpture, *The Butcher Boys*, resident in the National Gallery in Cape Town, as point of departure for an analysis of Derrida’s critique of a political founded in fraternity. The chapter locates the sculpture in its patriarchal setting and translates what it represents into reflections on the trajectory of the same-sex marriage debates in South Africa, including judgments by the Constitutional Court. Consistent with queer theory’s impulse to destabilize fixed boundaries, the chapter challenges the inclinations—both, as experience shows, violent and indeed murderous—to found the nation on fraternal sameness and to anchor marriage in a sexed, fundamental opposition. He traces the influence of a patriarchal configuration of the political discernable in the same-sex marriage debate and eventual legalization of same-sex marriage in post-apartheid South Africa. He suggests, in a way more widely applicable, that South Africa’s litigation on sexual emancipation illustrates how easily even a well-meaning, self-conscious, pro-queer discourse can lapse back into patriarchal and fraternal language and institutions.
Leslie Moran’s chapter moves the reader from cinema and sculpture to another kind of performance, those texts performed when judges are sworn in to office. Swearing-in speeches have not been the subject of any sustained comparative analysis, and Leslie Moran’s piece—analyzing speeches from New South Wales—is a welcome addition to the queer theory literature as well as the literature on judges and judging. His starting point is the official determination that, unlike gender, race, and religion, sexuality is irrelevant to efforts to ensure a diverse judiciary. Queer theory’s insights about the public character of sex as well as the unmarked prevalence of heteronormativity set the stage. He examines the relation of sexuality to these texts, including its absence as well as its traces or echoes. Sexual norms are reproduced obliquely but persistently through the trope of family, although some representations hint at the fragility of the heterosexual family’s position. Drawing on queer critiques of kinship and family, Moran traces how his studied texts also figure the legal profession as a family or kinship network. Despite glimmers of non-normative sexuality in the representations of a handful of judges, Moran concludes that heterosexuality remains a key dimension of the judiciary’s project of individual and institutional formation.

**Regulation**

Jenni Millbank’s chapter makes an important contribution by arguing that it is unduly narrow to suppose that it is only same-sex couples who are ‘queering reproduction’ (Mamo 2007). She identifies a gap between literature and political activism addressing the experiences and claims of heterosexual parents undergoing fertility difficulties, on one hand, and literature and political activism aimed more directly at gays’ and lesbians’ desire to become parents. Millbank deploys the the language of ‘reproductive outsiders’ to denote individuals and couples who are pursuing a desire to parent outside the confines of the hetero-nuclear, sexually reproductive family. She connects the two solitudes of heterosexual and same-sex couples. Indeed, she contrasts the self-perception on the part of heterosexual couples of infertility as a private, shameful condition with the rejection by gay men and lesbians of their sexuality as precisely that. Millbank cautiously presents case studies illustrating the room for alliances in law reform efforts in this area. She is nevertheless conscious of the potential clashes or conflicts of interest and of the fractures cutting across the alliances she calls for. Given the openness of regulatory regimes in the United States, her arguments apply most directly to the contexts of countries such as Australia, Canada, New Zealand, and the United Kingdom.

Like Millbank’s, Jeff Redding’s chapter also urges queers to consider the potential for alliances, focusing on the opposition between religious people and queers in the United States. He argues that the protests and animosity fueling the opposition around same-sex
marriage debates have been counter-productive. Redding sees potential for some religious people and queers to consider how their experiences of family law might be similarly ostracized by the mainstream secular and religiously-informed state. Failing such consideration, potential is lost in a largely silent queer retreat into a strictly secular sexuality politics. He argues that the historic animosity between some religious activists and queer populations have undermined the social and legal developments that might enhance their positioning. Drawing on a notion of queer agency, Redding suggests that queer advocates should seek dignity in places other than majoritarian marriage. To the extent that the creation and elaboration of ‘queer legal spaces’, such as non-marital, domestic partnership relationship-recognition regimes, facilitate such agency, such alternatives might be developed with the participation and assistance of groups and organizations, often religiously affiliated, that have experience in developing and occupying alternatives to majoritarian marriage.

Margaret Denike turns to a more philosophical exploration of the relationship between queer lives and the practice of polygamy. Her chapter explores the deeply colonial, racialized, and orientalist slippery slopes evident in the language of policy makers and scholars who oppose and prosecute polygamy. She analogizes those arguments with the arguments that are often used to resist same-sex marriage claims by queers. Denike is critical of those who argue for recognition of same-sex relationships precisely by contending that they are so distinct from polygamy. Such discourses cast polygamy as hyper-patriarchal, perverse, and inherently inequitable, while upholding monogamous same-sex unions as normal, democratic, and exemplary of gender equality. At the same time, her exploration is thoroughly empirical and historical in the sense that the prohibition of polygamy can never escape its past deployments as an instrument of racially specific nation building. Those who occupy non-normative sexual subjectivities should be alert to the possibility that the simultaneous crackdown on polygamy and valorization of same-sex relationships serve a consolidation of a relatively narrow, traditionally Christian form of monogamous conjugality in the service of Canadian and US national identities.

Exclusion
In his chapter, Nicholas Bamforth interrogates the process of othering that purports to exclude legal interpretations and ideas from other states when laws applying to queer lives are at issue in the United States. Specifically, he challenges the contention, presented after Lawrence v. Texas by conservative, nationalist interlocutors in US debates, that an international pro-gay legal discourse threatens the integrity of domestic constitutional law and democratic processes. Bamforth is alert to the risk that human
rights discourse can be imperial and colonizing, but he argues that use of comparative legal materials is not per se imperialistic. What is necessary is context-specific evaluation of the relative power positions of the parties and the normative sources at issue. From that perspective, it was Justice Scalia’s outright rejection of the value of the foreign that is rightly seen as imperialist. Bamforth argues that absolute universalism and pure moral relativism are both undesirable and inadequate, and sketches an intermediate position for framing human rights claims, one that retains space for belief that one conception is better than any alternative, while acknowledging that, to avoid imperialism, it is necessary to persuade members of other societies of this point.

Nan Seuffert’s chapter turns a queer, post-colonial lens on a different law reform setting – relationship recognition and immigration law reform in New Zealand. Media and parliamentary debates about proposed reforms show that, while the content of debates changes, discourse remains in continuity with longstanding tropes of empire, nation building, domesticity, and exclusion. Debates cast the recognition of same-sex relationships as a sign of modernity, evolution, and progress, one differentiating the nation from other, more benighted regulatory approaches. Moreover, such recognition valorizes domestic, monogamous same-sex relationships, while further othering those least like marriages. Immigration rules recognizing committed same-sex couples have in turn produced new categories of unwelcome foreigners. Instead of seeking to transform the area of relationship recognition, Seuffert concludes that recent reforms have simply reproduced and re-embedded historic relationships of domination, including ones through which imperial subjects subjugated and domesticated those whom they colonized.

The collection concludes with a chapter by Ruthann Robson. Robson’s experimental, performative essay draws together the themes of all four parts of the collection. This chapter performs the experiences of being constituted as queer, being seen, allying with unlikely allies, and being foreign. It grapples with the implications of empire, law, and culture on being and being queerly. Its rhetorical performance connects with examples explored in earlier chapters. Robson’s journey thus touches on the South African history of apartheid that frames Barnard-Naudé’s chapter, the projects of empire and colonialism against which the chapters by Kapur and Seuffert position themselves, and Proposition 8’s struggles over same-sex marriage in California, addressed by Redding.

* * *

The contributors’ journeys – from the complexities of queer activism in Eastern Europe, in Jon Binnie’s chapter, to the unsettling effects of colonialism and settlement in Ruthann
Robson’s – show the need to read texts carefully, with an eye on the weight of the past and alertness to the assumed and the implicit. At a moment when law reform efforts for recognition of same-sex relationships have, in many places, enjoyed success, these chapters call for alertness to the unintended consequences of such achievements, including their potential shoring up of nationalist agendas and othering of non-normative sexualities unsuited to domestication. They remind that legal interventions by subjects positioned as queer unfold against a complex backdrop of cultural representations and imperial inclinations. This chapters show that, in the legal arena as in others, queer theory remains a valuable lens for viewing the world askant, for advancing thought and the analysis of modes of political intervention. On a further look at the cover’s close-up, it appears different, standing in for this volume’s rich, at times disorienting, accounts.

REFERENCES


