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Queer Theory and Socio-Legal Studies

Sarah Lamble

Birkbeck, University of London
s.lamble@bbk.ac.uk

It has become almost customary to begin any introduction to queer theory by noting the impossibility of defining queer and the inherent paradox in doing so. If there is anything that encapsulates queer, it is the refusal of categorisation. Queer thought and queer practice have focused more on boundary-pushing rather than boundary-setting; contesting identities rather than establishing them; transgressing rather than institutionalising social norms. Moreover, there is no singular form or programme of queer theory; queer entails a multiplicity of perspectives, approaches, and objects of study. So in the very act of seeking to demarcate the field of queer theory, one inevitably risks undoing the queer project itself.

Nevertheless, queer theory can arguably be recognised by its embrace of a particular repertoire of aesthetic styles, critical modes of questioning, and sexual sensibilities. The challenge in mapping out its terrain is to give sufficient character to render it graspable, without pinning it down or domesticating its insubordinate impulses.

Queer as anti-identity

Although queer is now commonly used in popular western culture as an umbrella term to refer to non-normative gender and sexual identities (i.e., lesbian, gay, bisexual, transgender, two-spirited, non-binary, etc.), queer theory and politics originally emerged from a critique of identity itself. In contrast to lesbian and gay 'rights seeking' projects, which sought to recognise and normalize homosexuality in relation to heterosexuality, and to obtain new legal rights for groups defined by their identity, queer aims to question the very idea of gender and sexual identity itself. Reclaiming 'queer' from its derogatory use as a slur, queer politics rejected strategies of normalisation and deliberately embraced a positionality of oddness, abnormality and subversion. As David Halperin famously described, 'Queer is by definition whatever is at odds with the normal, the legitimate, the dominant . . . "Queer," then, demarcates not a positivity but a positionality vis-à-vis the normative.'

Resisting the more conventional assumption that identity—including the gay, lesbian and bisexual identities of the early gay rights movement—denotes an essential truth about one's 'authentic self', queer perspectives see identity as a liminal and variable effect of broader power relations. Thus, queer theory has sought to draw attention to social processes of identity formation and constructions of identity. For example, the very categories of the 'homosexual' and the 'heterosexual', though often taken for granted, are

actually a relatively recent phenomenon in modern Western culture. The emergence of these categories marked an important shift from social norms organised around sexual acts anyone might commit (e.g. sodomy) to the social, legal and medical governance of relatively stable sexual identities (the homosexual, and later others as well). As queer scholars have revealed, the regulatory shift from policing *sexual acts* to targeting and investigating *sexual identities* has worked to produce 'normal' and 'deviant' subjects, and the corresponding enforcement of particular sexual and gender norms. It has also encouraged people to think of themselves in terms of having an 'inner truth', understood as a matter of identity.

By uncovering the ways that sexual identities emerge and become contested sites of power and regulation, queer theory has revealed the ways that identity is central to modern governance. In this sense 'queerness' is a political ethos that works to question and deconstruct identarian logics. Queer is a political positionality or stance in relation to the 'normal' or dominant, but queer thought is skeptical about all identity categorizations, even LGBT ones, and sees identity-based rights claims as limited.

This emphasis on positionality rather than identity means that queer analysis is not reduced to a focus on sexual orientation per se, but rather to a range of subject-locations and formations outside of dominant norms. Queer becomes a point of connection and affiliation for the outcast, rejected, and stigmatised—or what Cathy Cohen famously encapsulated, in the US context, as 'Punks, Bulldaggers and Welfare Queens.' In other cultures and countries, and amongst Indigenous peoples, queer expression takes particular forms that may not be recognized as 'queer' in dominant Anglo-American discourses, but nonetheless challenge gender and sexual orthodoxies. As Cohen has argued, "if there is any truly radical potential to be found in the idea of queerness and the practice of queer politics, it would seem to be located in its ability to create a space in opposition to dominant norms, a space where transformational political work can begin." These spaces of resistance arise within and against particular geographic, cultural, racial and class contexts, and so queer actions and writings are context specific. There is no one-size-fits all global queer theory.

Queer as politics

What came to be described as queer theory in academic circles initially emerged in the 1980s and 1990s in North America, particularly in conjunction with street-based activism around the AIDS crisis, rising neoliberalism and the ascendancy of LGBT 'respectability' politics (such as fighting for same-sex marriage). Its early instigators were not professors, but graduate students, many of whom were active in community organising and street protests with groups like ACT-UP (AIDS Coalition to Unleash Power). In its early expressions in the academy, the queer theory that was initially most recognised tended to be written by white gay men, but its roots and traditions are broader than that, with many of its key influences coming from other radical political strands, including Marxism, feminism, and the Black radical tradition.

It has been argued that the radical gay and trans liberation movements that were manifest in earlier protest events like the 1966 Compton Cafeteria riot in San Francisco, and the 1969 Stonewall Riots in New York City, were the precursor to 'queer politics' – particularly with their multi-class, multi-gender and multi-racial (albeit sometimes fraught) alliances. These

insurgences were led by social outcasts from working class neighbourhoods—ostracised gays and lesbians, gender non-confirming street workers, prostitutes and hustlers, drug users and transsexuals—who fought back against ongoing police brutality and harassment.

Queer theory and politics partly grew out of concerns that the more radical visions of the 'gay liberation' movement were increasingly being eclipsed and assimilated into a more conservative 'equality and respectability' politics. Queer theorists and activists rejected strategies to present lesbians and gays as equivalent to 'normal' straight people and resisted respectability as a condition for securing access to housing, employment, health care and spousal rights. Queer activists were wary of moves to simply include gays and lesbians within the existing terms of the heterosexual world and its associated social institutions (e.g. marriage, monogamy, the nuclear family, the military). Queer activists didn't seek 'acceptance' or 'tolerance' from 'straight society'; they wanted to dismantle and transform straight society itself.

For this reason, queer politics tended to embrace the provocative, the subversive, the uncomfortable; queer has deliberately taken up strategies of unsettling and disrupting. This was evident in the very names and edgy tactics of many of the organising groups that articulated a specifically queer politic such as Queer Nation; OutRage; PUSSY (Perverts Undermining State Scrutiny); Transsexual Menace; Lesbian Avengers. These groups were comprised of organisers that actively embraced gender and sexual nonconformity: drag queens, leather daddies, radical fairies, butches and femmes, transsexuals and studs. Such groups expressed a discernible queer aesthetic and marked a clear strategic departure from the more politically cautious 'homophile' organisations of the 1950s and 60s, and the white 'professional' class of gays in the 1980s and 90s', who in the global North sought to challenge stigma and discrimination through appeals to respectability and social approval. Queer activists were unapologetically anti-assimilationist and anti-establishment.

Queer theory in the academy likewise sought an irreverent, playful and disobedient approach, resisting academic conventions. In many ways queer theory marked a breakaway from the more identity-focussed 'lesbian and gay studies,' though the boundaries between the two fields remain porous and overlapping, albeit with arguably distinct aims and politics. Queer theory challenged what later became known as 'homonormative' and 'homonational' tendencies within particular strands of LGBT identity politics and mainstream culture, where, under the conditions of neoliberalism and empire, lesbian and gay identities have been deployed politically and socially in the service of conservative and nationalist projects, such as the global 'War on Terror' or pro-military campaigns in the USA.

Queer as critical ethos

While queer theory and politics cannot be reduced to any particular programme or set of goals, some common themes broadly characterise its ethos. First, queer has a broad commitment to interrogate social processes of normalisation. Queer studies owes a particular debt to Michel Foucault's work, as his understanding of power, knowledge and subject-formation (both in relation to sexuality but also more broadly) and his critical history of how human beings came to be governed in the West through identity categories, have played a key role in analysing the ways in which sexuality, desire and intimacy have

become key sites of governance and social regulation. Queer theory has taken up questions of governance by questioning taken-for-granted norms and sensibilities relating to gender, sexuality and desire. For example, in examining the criminalisation of homosexuality, queer theory not only questioned the particular laws which regulate same-sex sexual activity, but also exposed the ways in which wider constructions of deviance work to produce 'good' and 'bad' sexual subjects as well as 'normal' and 'abnormal' sexual practices. Queer theory and politics have tended to push back against the status quo, marking an ethos of what Michael Warner has described as 'resistance to regimes of the normal.'

Second, queer has an interest in questions of sex, desire, erotics, pleasure and sexuality broadly conceived. Early queer theorists such as Gayle Rubin and Eve Sedgwick argued that the domains of pleasure, sexuality and desire were not being adequately explored within existing feminist analytical frameworks of 'gender' or 'biological sex' and instead warranted study in their own right. This was partly response to particular strands of feminism which were dominant at the time, which tended to neglect issues of sexuality or treat sexuality within a presumptive heterosexual framework. Such queer feminists also pushed back against tendencies within queer theory to prioritise and fetishise white gay male sexuality and culture. However, the relationship between 'feminist theory' and 'queer theory' is arguably synergistic with considerable crossover between the two. Likewise, owing to an attentiveness to questions of power relations in general, queer theory—particularly more recently—has resisted efforts to consider desire in narrow terms. Instead, queer theory has scrutinised the ways in which gender and sexual practices and expression intersect with other social relations of power, such as race, class and disability, particularly within the fields critical race studies, indigenous studies and 'crip theory'. Queer thinking has also interrogated the ways in which sexual practices and norms are woven through other social formations such as time, place, culture, capitalism and empire. For example, queer indigenous scholars have challenged the ways that colonial legacies continue to shape and frame how indigenous sexual practices and gender expressions are named, understood and governed in contemporary cultures. Rather than focussing on sexuality as attached to identities per se (i.e. how LGBTQ subjects understand themselves), queer has sought to examine the ways that social and cultural norms and practices are infused with logics of sexuality and erotics of power. Queer questions both conventional understandings of sexual identity and sexual practices and considers the ways that sexuality, intimacy and desire are often present in unlikely or unexpected places.

Third, queer has an interest in transformative social change. Though frequently characterised as a deconstructive practice that largely functions through negation (i.e. critiquing what is, rather than prescriptively saying what ought to be), queer analysis has sought to challenge the status quo not simply for the sake of critique itself, but in order to forge new possibilities, generate new worlds and enact alternative ways of being. While tending to eschew any kind of programmatic politics which seeks to impose a new normativity over existing ones, queer theory and politics have long been interested in a politics of generative possibility and potentiality, albeit in experimental, tentative and playful ways—with both utopian and dystopian strands. For example, by playfully invoking non-normative kinds of desire, queer politics disrupt and question dominant power relations (e.g., hierarchies between heterosexual and homosexual, the channelling of desire through scripts of monogamy, marriage and particular kinds of family formation), and in

doing so create space for non-normative desires to emerge and proliferate. It is precisely the disruptive moment of “queering” that is arguably most generative, as it opens up space for new possibilities that exceed established norms. In this way, queer theory does not advocate for any particular kind of desire or practice or expression, but rather for troubling normative practices in order to reshape the conditions of possibility. Hence queer investments in transformation are necessarily ongoing and incomplete. As José Esteban Muñoz writes in *Cruising Utopia*, “We may never touch queerness, but we can feel it as the warm illumination of a horizon imbued with potentiality.”

Queer as practice/method

Queer theory does not depend on a specific domain or object of study (e.g. a focus on sexuality) and can be seen instead as an approach or *way of doing critique*. In moving away from the notion of queer as an identity and towards that of queer as a practice, queer becomes a way of doing something, a mode of asking questions, a way of seeing the world—a verb rather than an adjective or noun. To queer something, is to disrupt straight logics, to view the world askance, to engage in practices of troubling. As Carla Freccaro describes, queer performs ‘outlaw work.’

Although much early queer theory first emerged within humanities tradition, it can now be found in a wide range of interdisciplinary endeavours, including cultural studies, sociology, geography, history, economics, politics, law and philosophy of science.

To queer something is to enliven it with a queer sensibility or orientation. For example, in literary contexts a queer approach might entail a re-reading of an ostensibly ‘straight’ text for its ‘queer sensibilities’. This might involve not so much looking for hidden gay or lesbian characters but rather identifying queer or camp subtexts, or reinterpreting relationships between characters in queer ways. It is a practice of perceiving things differently, or drawing attention to unnoticed patterns, signs or symbols, of reading alternative meanings into dominant frames. It can be a practice which *queers* the boundaries between reading and writing. For example, ‘slash fiction’ is a popular genre within ‘fan fiction’, where fans of a popular film or television show invent their own narratives through visual representations or fictional accounts. This might entail taking specific characters and creating imagined plotlines that involve straight characters developing gay romances or taking up queer roles. (Early Star Trek shows, for example, have given rise to many interesting queer interpretations and sequels). Such readings take up the role of fantasy to remake and reshape conventional narratives in queer ways.

The practice of queer can also be said to encompass certain kinds of aesthetic style which reflects its political bent. Queer is often characterised by aesthetics of disruption, contestation and critique. Queer tends to be edgy, playful, experimental. It is at ease with the contradictory and instable, and dabbles with moments of liminality, crossover and transgression.

Relevance for Socio-Legal Studies

As it has been taken up within socio-legal studies, queer theory has contributed to the existing critical legal tradition. Rather than trying to simply interpret, improve or reform the law, queer socio-legal approaches have sought to understand the broader social, political and historical context for laws and legal norms—both as they are imagined to be and as they operate in practice. If socio-legal studies seeks broadly to go beyond a ‘black letter law’ approach, and instead examine the role of law in society and vice versa, queer socio-legal studies have sought to extend this project to a focus on the socio-legal dimensions of sexuality, sensuality and desire.

The queer literary tradition has been particularly fruitful in the domain of law, via the practice of interpreting laws and legal cases through a queer lens. Reading a court case queerly might entail looking for the subtle (and sometimes not so subtle) queer subtexts, or the implicit assumptions about sexuality that arise in the presentation of facts, in the analogies drawn between situations or the metaphors used to explain legal reasoning. Queer analysis might also entail reading a case for what it *doesn't say* as much as for what it does say: seeing where desire is present within a judgement but not explicitly remarked upon; noting where issues of sexuality are conspicuously absent; identifying what silences or absences reveal about broader social and cultural understandings of a given situation or legal debate. There is also a tradition of reading seemingly ‘progressive’ LGBT rights decisions with a more ‘queer eye’; attending to the ways in which such decisions might instantiate new norms and regulatory regimes that reinforce and privilege particular kinds of sexual practices which implicitly work to regulate and castigate others.

Queer theory as applied to socio-legal studies has been particularly attentive to the role that law plays in governing sex and sexualities, both overtly and more insidiously; and demonstrating how policing of sexual and gender identities and practices are central forms of governance and control in contemporary societies. For queer theorists, gender and sexuality is not a ‘supplementary’ aspect of governance nor an ‘add-on’ to analysis but is embedded within, and pervasive throughout, everyday legal norms and practices.

Queer theory has also been involved in work that displaces the centrality of law itself; looking at the ways in which legal regulation occurs outside of formal legal institutions such as courts, prisons and police and instead attends to the ways in which legal fictions and ideals shape everyday forms of governance.

Queer socio-legal analysis goes beyond the questions previously asked by gay/lesbian rights activists. For example, we might consider the legal issues that arise in relation to LGBT people in prison. A more conventional LGBT rights approach would ask: What are the experiences of LGBT people in prison and how do they differ from ‘straight’ prisoners? How can we protect the rights of LGBT prisoners? In what ways do current prison laws and policy discriminate against LGBT people? By contrast, a queer approach might ask: What role does gender, sexuality, intimacy and desire play in the governance of prisons? How is gender and sexuality salient to the operation of power in prisons? In what ways do erotic economies operate in prison and with what effect? How does desire, longing, and pleasure play out in prison contexts? In what ways is heteronormativity part of the institutional life of the prison? Both sets of questions are legitimate and important, and arguably connected. Analytically, however, the first set of questions tends to treat identity – or group

populations – as the focal point for analysis, and it often blackboxes and reinforces the liberal individual subject of rights that is central to modern legal systems. The latter set of questions, by contrast, tends to foreground issues of sexuality and governance, particularly in relation to institutional power, and opens space for more systemic critiques (e.g. challenging the prison itself rather than its specific treatment of LGBT people).

On the limits of queer

In the contemporary period, many would argue that ‘queer’ has become so widely used and so liberally deployed that it has largely lost much of its critical analytical force. Particularly as LGBT+ identities have become a new niche-market for targeted advertising and product sales, queer aesthetics have been likewise taken up in ways that commodify and commercialise its subversive edginess as a form of lifestyle consumerism. In this context, some have argued that the recent proliferation of sexual and gender identities within popular culture and the greater emphasis on ‘sexual and gender diversity’ is less about challenging social norms, and more about lifestyle branding and ‘pink capitalism’.

In an era where queer is more often than not read as identity politics rather than a critique of identity, queer’s analytical potency risks being tamed and its insurgent capacities dulled. At the same time, queer theory and politics have invariably found novel ways of pushing back and resisting against the enclosure of the status quo. So perhaps it is precisely within the current contradictory tensions and contestations which will continue to give queer its generative and critical force.

Further Reading:

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