

# Encyclopedia of Law & Society: American and Global Perspectives

## Queer Theory

Contributors: Leslie J. Moran

Editors: David S. Clark

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The term *queer*, once primarily one of abuse, has now come to be associated with political and theoretical positions that offer a challenge to contemporary sexual politics and heterosexuality in particular. Queer's specific political point of departure is the political landscape and agenda of post-Stonewall lesbian and gay identity politics, referring to a 1969 police raid on the Stonewall Inn, a gay bar in New York City, and subsequent riots.

The identity politics general objective is to explore, question, and challenge the persistence of the presumption of heterosexuality. *Heteronormative* is a key term in queer writing. It refers to the social, political, and cultural centrality of heterosexuality, which continues to occupy the place of the assumed and unquestioned norm of human association and function as the fundamental and elemental form within social theory and political practice.

## Development and Issues

One of the preliminary challenges of queer theory focuses on the nature of sexual identity developed through the terms *lesbian* and *gay*. Although the origins of these terms, and the politics out of which they emerged, drew on social construction theories of sexuality, highlighting the contingent and political qualities of sexual identity, *lesbian* and *gay* have come to represent fixed and essential categories that name individual and collective sexual personalities. Queer theory seeks to highlight sexual identity as a historically and politically contingent category of human subjectivity.

Another queer challenge focuses on the idea that *lesbian* and *gay* are terms that refer to sexual minorities. This issue is also closely associated with the queer critique of multiculturalism and cosmopolitanism that both advocate tolerance and acceptance of sexual minorities as part of a pluralistic idea of the wider community (often described as a rainbow alliance). Queer writing is sharply critical of the way the phrase *sexual minorities* depends on crude analogies with racial and ethnic models of individual and collective identity and community.

Scholars also express concern about the apolitical and ahistorical assumptions for identity made in the minority model. Queer scholarship questions the way the minority model works with an assumption that identity is singular. Can *sexual minority* or even *sexual minorities* capture the diversity of all of those who make up such a community or adequately name the complexity of factors that influence and inform an individual's experience of identity?

The minority model works with an assumption that the sexual, racial, and ethnic are separate, distinctive, complete dimensions of individual and collective identities. These issues also affect themes of multiculturalism and cosmopolitanism, which work with the assumptions of identity and community found in these minority models. The metaphor of the rainbow does not [p. 1256 ↓ ] capture the overlapping, hybrid, intersecting qualities of individual and community life. *Queer* also offers a challenge to the themes of tolerance, equality, difference, and diversity found in this context. The terms under which tolerance of lesbians and gays has emerged—their equality, difference, and diversity—have been recognized within the pluralist models of multiculturalism and cosmopolitanism and are informed by the presumption of heterosexuality, which is and remains the norm.

## Queer Theory's Critique

Queer theory offers a critique of the social realm of sexuality using a multidisciplinary set of tools drawing on poststructuralist, French, and U.S. feminists; post-Marxist political theory; and cultural, film, and literary studies. Much of queer scholarship has an arts and humanities focus rather than a social science location, though one of the objectives of queer scholars may well be to challenge such disciplinary divisions.

The parameters of work by law and society scholars that might be associated with queer scholarship are difficult to define clearly. In part, this is because of the rich tapestry of disciplinary influences associated with queer critique. In part, this difficulty may be something promoted by queer critique, which has as a key objective the questioning of categories, challenging their assumptions and their capacity to confine, control, contain, and limit. However, this does not mean that one cannot identify examples of queer-influenced scholarship. Many scholars who have been influenced

by queer theory have examined sexual identity in law by way of a critique of essentialist models of identity. They have highlighted the multiple and intersectional nature of identity and problematized the turn to the state for recognition. Furthermore, they use the insights of queer theory to examine discrete aspects of law in, for example, criminology and the criminal justice system, civil and human rights, kinship, and the workplace.

## Specific Studies

In 1994, Lisa Bowers published one of the first essays within law and society scholarship to draw on queer theory. Her essay exemplified the queer engagement with the effects of lesbian and gay politics of official recognition. Janet Halley's pioneering studies of the United States Supreme Court decision of *Bowers v. Hardwick* (478 U.S. 186, 1986) are another excellent example of queer influence. Her studies of this important moment in U.S. constitutional sexual politics continue to offer some of the best legal scholarship, using techniques of deconstruction to examine the constitution of heterosexuality through homosexuality as other.

Carl Stychin's *Law's Desire* was a key text engaging with queer theory influenced by deconstruction. Leslie Moran's *The (Homo)sexuality of Law* offered a poststructuralist analysis of sexual identity, this time in the context of English law, developing a Foucauldian analysis. Margaret Davies's essay was a brilliant example of the potential of queer theory, exploring the nature of sexual identity by way of a critique of core legal themes of personality and property. Her work exemplifies queer theory's ability to expose the fundamental instability of what appear to be fixed categories of sexuality and to challenge and disrupt the sexual and gender hierarchies through which heterosexuality takes shape and form.

While “queer” offered (and still has the capacity to offer) a profound critique of sexual politics and sexual identity, it has rapidly become incorporated into more mainstream identity politics. In much scholarship, the term *queer* is used as just another (albeit new) identity category. In that context, it is a term that has lost most if not all of its capacity to challenge and to question.

Leslie J. Moran

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*See also*

- [Critical Feminist Theory](#)
- [Deconstruction](#)
- [Discrimination, Sociology of](#)
- [Essentialism](#)
- [Foucault, Michel](#)
- [Hate Crimes](#)
- [Marriage and Civil Unions, Same-Sex](#)
- [Postmodernism](#)
- [Race and Ethnicity](#)
- [Relativism, Philosophical](#)
- [Sexual Orientation](#)

#### Further Readings

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