

Book Review: Legal Inversions: Lesbians,  
Gay Men, and the Politics of Law.  
Edited by Didi Herman & Carl Stychin.  
Temple University Press, 1995.

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It would not be an exaggeration to say that in the United States, law and sexuality has, within the last five years at least, become one of the fastest growing fields in legal theory. From a scattering of articles, comments and notes chiefly within the civil rights arena, scholarly works in "queer legal theory," as it is commonly called, can now be found everywhere from the most august journals to ones that attract less attention. The output has been rising to such an extent that it has long become impossible (to this writer at least) to keep up to date on even just the most tantalizing of new titles. Moreover, queer legal scholars are publishing well beyond the usual traps. Articles by such scholars are appearing in everything from comparative literature journals to queer law journals published only on the Internet to architectural journals. A recent survey by Professor Francisco Valdes shows that in March 1995, seventy-seven law schools in the United States offer courses in law and sexuality or teach it as a major component of a related course such as Gender, Sexuality and the Law or AIDS and the Law.<sup>1</sup> Professor William Rubenstein's anthology of materials, *Lesbians, Gay Men, and the Law*,<sup>2</sup> published in 1993 has been prescribed reading for many of these courses since it first came out. Next year, Foundation Press is due to release a course book titled *Sexuality and the Law*, edited by Professors William Eskridge and Nan Hunter.

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1. Francisco Valdes, Tracking and Assessing the (Non)Inclusion of Courses on Sexuality and/or Sexual Orientation in the American Law School Curriculum: Reports from the Field After a Decade of Effort (1995) (unpublished, on file with the author).

2. LESBIANS, GAY MEN, AND THE LAW (William B. Rubenstein ed., The New Press 1993).

Yet, despite this burgeoning market, Didi Herman and Carl Stychin (respectively Senior Lecturer and Lecturer in Law at Keele University in the United Kingdom) noted that there was not a book of critical essays on queer legal topics. More specifically, the editors perceived a need for a book that fulfills the task of being "a critical, analytical text about the politics of lesbians and gay men engaging with and being engaged by the law."<sup>3</sup> In fulfilling this task, Herman and Stychin have brought together ten essays (all but two of which had not been previously published) written by (as the editors confessed) young scholars whom they knew, whose works they admired, and "whose work may not yet have achieved a wide, international exposure."<sup>4</sup> Although I can think of at least one contributor who might not precisely describe herself in that way (young and internationally unexposed, that is), the editors and their publishers must be congratulated for their effort in promoting these talented scholars.

And there is much to genuinely admire in this collection. For the main, the essays attempt to grapple with theory rather than a "straight" description of legal doctrine. They intelligently examine the complex relationship between politics, legality and sexuality. Yet, for the most part, the essays are not written in such a way as to either require a deep knowledge of law nor postmodern philosophy for the reader to be able to gain much from reading them. True, there is a wide range of styles and methods represented here, and for all the emphases the editors put on a critical perspective, most of the essays are written in an accessible style. The essays are arranged in three groups: "The Subjects of Law," "The Implications of Strategy," and "Law, Reform, Struggle and the State." Although the editors give a concise description of each of the essays under each of these groups in their Introduction, this reader did not find that much really depended on the positioning or ordering of the essays under these headings. A final general stylistic point: in addition to the Introduction, the editors have provided a useful *précis* at the beginning of each essay wherein they sketch out the main arguments of the piece. Readers with specific interests may therefore quickly determine whether these diverse essays might warrant investing their time and money.

In this regard, this reviewer certainly found ample to warrant both. Space prohibits a detailed exegesis of each of the essays, but several

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3. LEGAL INVERSIONS: LESBIANS, GAY MEN, AND THE POLITICS OF LAW x (Didi Herman & Carl Stychin eds., 1995) [hereinafter *INVERSIONS*].

4. *Id.* at xv.

stand out in my mind. Mary Eaton's essay, *Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity* is easily the most theoretically interesting of the three essays collected under the first theme, "The Subjects of Law." Coming as it does at the end of the first Part, a part wherein the editors tell us that several of the authors adopt "postmodern and Foucauldian approaches to the relationship between discourse and socio-political identities,"<sup>5</sup> Eaton's is clearly the essay whose methodology and style are most rigorously postmodern and Foucauldian. Analyzing the interplay of racial and homosexual discourses through two American anti-discrimination cases involving gay African-American litigants, Eaton sheds remarkable and important light on the relationship between the categories of race and homosexuality. She argues persuasively that "homosexuality is legally coded as white, or to put matters conversely, that race has been legally coded as heterosexual."<sup>6</sup> Although I find myself agreeing heartily with her, the lucidity and forthrightness of her conclusions simply left me eagerly wanting to see her push the analysis further into the realm of exploring more precisely the relationship between race, homosexuality and gender, perhaps into a consideration of these categories as sometimes implicated in their mutual construction. This epiphenomenological praxis can be clearly explored through the agency of the gay Asian stereotype, as I am attempting to argue in my own research, and it is at once exciting, tantalizing and to an extent frustrating to note her conclusion, without much more elaboration, that the "discomfort with a radical estrangement between the two categories (of sex and sexuality) suggest a recognition, unseen in the racial context, that there is actually some connection between them."<sup>7</sup> Moreover, by placing propositions such as the following at the end of a paragraph, Eaton teases us with provocative thoughts, ones that raise more questions than it answers:

Race enters the discourse of sexual identity only analogically and never derivatively. This suggests that, although race and sex ultimately may share the same fate, expulsions from the realm of sexual orientation have been effected differently.<sup>8</sup>

However, what is especially exciting about Eaton's essay is her determination not to leave the site of the deconstructive project with a heap of broken parts. For Eaton, theoretical musing is wasted

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5. *Id.* at xi.

6. *Id.* at 51.

7. *Id.* at 67.

8. INVERSIONS, *supra* note 3, at 68.

energy if radical, strategic and political lessons are not also part of the point. In her epilogue, she suggests that a "re-racializing" of the category "homosexual" can produce important lessons for those who wish to break down the boundaries that maintain the exclusion of the homosexual as an outsider class.

Some of the virtues of Eaton's essay are indicative of the wider virtues of the collection as a whole. Diversity of perspective is a definite and welcomed strength within this book. Race is included as either a main topic of an article, as in Eaton's essay, but is also not forgotten in the other essays such as Cynthia Petersen's *Envisioning a Lesbian Equality Jurisprudence* in Part II of this collection. Lesbian issues are given important prominence especially in Part II, with the inclusion of *A Parent(ly) Knot: Can Heather Have Two Mommies?* by Shelley A. M. Gavigan, as well as Katherine Arnup's and Susan Boyd's essay *Familial Disputes? Sperm Donors, Lesbian Mothers, and Legal Parenthood*. Moreover, Ruthann Robson's original treatment of the absence of lesbian criminal defendants as a category for serious legal reflection (*Convictions: Theorizing Lesbians and Criminal Justice*) in Part III adds to the strength of including lesbian issues within the covers of this collection.

Quite apart from gender diversity, this book is exceptional also in terms of its geographical and national diversity. Readers will find essays dealing with cases and statutes from Ireland, Britain and Canada as well as the United States. Nevertheless, if one is to find any fault in this collection, it would be that the editors have generally left it to the reader to make the comparative analysis arising from this diversity of jurisdiction. Their contributors may be excused from not talking to one another, but when the editors lead us to believe in the Introduction that they have invited their vastly dispersed young friends to come together in a book to talk about lesbians, gay men and the politics of law, it would have been nice to have heard their hosts say something about the theoretical consequences of such diversity.

American readers, for example, who are usually fed a strict diet of local law will find a fascinating array of resources and quotes from other common law lands. I would venture to say that even the American reader with an above average intestinal fortitude for local conservative statements hostile to gay and lesbian rights, might find some of the legal material from other common law jurisdictions a little hard to stomach. Take, for example, this catalog of normative statements regarding male homosexuality, delivered by Chief Justice

O'Higgins of the Supreme Court of Ireland, in *Norris v. Attorney General*, decided in 1984:

- (1) Homosexuality has always been condemned in Christian teaching as being morally wrong. It has equally been regarded by society for many centuries as an offence against nature and a very serious crime.
- (2) Exclusive homosexuality, whether the conditions be congenital or acquired, can result in great distress and unhappiness for the individual and can lead to depression, despair and suicide.
- (3) The homosexually oriented can be importuned into a homosexual lifestyle which can become habitual.
- (4) Male homosexual conduct has resulted, in other countries, in the spread of all forms of venereal disease and this has now become a significant public-health problem in England.
- (5) Homosexual conduct can be inimical to marriage and is *per se* harmful to it as an institution.<sup>9</sup>

In Davina Cooper's and Didi Herman's essay, *Getting the Family Right: Legislating Heterosexuality in Britain, 1986-91*, we find these remarkable statements from the Earl of Halsbury's speech in the House of Lords on December 18, 1986:

[W]e have for several decades past been emancipating minorities who claimed that they were disadvantaged. Are they grateful? Not a bit. We emancipated races and got inverted racism. We emancipated homosexuals and they condemn heterosexism as chauvinist sexism, male oppression and so on. They will push us off the pavement if we give them a chance. I am, in their jargon, a homophone [*sic*], a heterosexual exploitationist. The whole vocabulary of the loony Left is let loose in a wild confusion of Marxism, Trotskyism, anarchism and homosexual terminology.<sup>10</sup>

Those [homosexuals] who make the worst of their situation are the sick ones who suffer from a psychological syndrome whose symptoms are as follows: first of all, exhibitionism; they want the world to know all about them; secondly, promiscuity; thirdly, proselytizing; they want to persuade other people that their way of life is a good one; fourthly, boasting of homosexual achievements as if they were due to and not in spite of sexual inversion; lastly, they act as reservoirs of venereal diseases of all kinds.<sup>11</sup>

Equally remarkable is the ability of Cooper and Herman to write with perfect coolness, calmness and reason about the former statement

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9. INVERSIONS, *supra* note 3, at 31.

10. INVERSIONS, *supra* note 3, at 168.

11. INVERSIONS, *supra* note 3, at 169.

that "Halsbury's comments explicitly construct an 'us' and a 'them,'"<sup>12</sup> and of the latter statement, that "(i)mplicit in Halsbury's speech is (among other things) the equation of morality with societal stability."<sup>13</sup>

If one were to regard these essays as different colored mosaics placed next to each other, and if one were to stand back and try to discern a picture composed by these tiles, that picture would be one that told the story of the failure of legal liberalism to ensure the liberation and equality of gays and lesbians within the traditional legal framework. This is one of the main strengths of this book, one on which the editors seem to be strangely silent. Yet collectively, I thought that the essays made a strong case for a re-examination of the power and worth of working within legal orthodoxy as a means of effecting meaningful change. There is much that legal thinkers can gain from this collection, and much, one dare say, that gay and lesbian civil rights groups can learn as well about legal strategies. It is therefore an important achievement for queer legal scholarship in general and for all people interested in law and queer politics that the editors have succeeded in bringing together such a fine array of scholars and presented their ideas in a very readable style and form.

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12. INVERSIONS, *supra* note 3, at 168.

13. INVERSIONS, *supra* note 3, at 169.