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Theorizing Law from the perspective of Literary Diaspora Studies **Janet Wilson, University of Northampton**

Queer Theory, Literary Diaspora Studies and the Law

1. LITERARY DIASPORA STUDIES

I have moved away from the abstract in sense of using different texts; my main aim is to build onto the already existing link that has been made between queer theory and diaspora studies, since some of the objects of queer subject have been achieved in law, and they have acquired certain rights, and so might be model of how diaspora subject may move towards gaining greater recognition

I will refer to some literary texts, notably those which promote bisexual, or gay relationships among 2nd generation diasporans—so written from within the Asian diaspora in Britain (the queer diaspora) -- like Hanif Kureishi's novel *The Buddha of Suburbia*, and the film, *My Beautiful Laundrette*, and the Australian transgressive gay film, *Priscilla Queen of the Desert* (not about diaspora, but about moving from an urban to desert environment so about a journey symbolically out from heteronormative centre to offer a critique of patriarchal society).

The case for the analogy between diaspora movements and queer subjects and movements, has been made in a number of critical studies on Queer Diasporas since the 2000s; commonly agreed they share complementary features of mobility and transgression: the sexuality, identity and desire that defines the category of queer, can be considered as akin to the mobility, estrangement or displacement of the category of the migrant, diasporic subject. Both trouble familiar structures of belonging: queerness subverts gender normativity, the boundaries of gender, and diaspora crosses over geographic borders and disturbs national identity (Meg Wesling). This has increased

exponentially in today's global age. Such is the conflation between the two that the 'diasporic queer' has been described as the emblematic subject of globalisation.

So how does queer studies in association with the diaspora help reconceptualise the law? Both queers and diasporans are groups/communities that are at odds with the nation state and its patriarchal structures and norms, They highlight alternative constructions of kinship and community organisation, are sensitive to issues of assimilation and/or exclusion, and in a global era can move between a transnational and translocal filiations as well as local and community filiations (Werbner). These might be considered as metaphor of alterity to suggest that the state law broaden , e.g. to accommodate plural legal systems, and instead of considering itself in terms of universality , 'ultimacy of determination', fixity and autonomy as Peter Fitzgerald says (p.3) , it should be more responsive, more indeterminate to situations as they arise. This might mean being less dependent on the nation state to lend the law its coherence.

Diaspora studies focus on transnational flows of migration and exile , the creating of new communities in host nations, preoccupied with issues of relocation, which place value on a close relationship with original homeland (although this with its teleology of return is not an inevitable feature of all diasporans) . To the extent they are in-between states/groups, liminally positioned, the diasporic subject has the cultural/human rights that need to be protected, and in turn these they challenge the idea of the nation with its arrangements for citizens. Transnational and migrant subjects struggle towards new forms of citizenship, and acceptance—in the words of Vijay Mishra may ultimately see their work as transforming history and hence the collective consciousness of the nation itself. In terms of Brubaker, they will remake the world (not describe it), because of the strong normative change they cause. The problematic adjudication and negotiation of

their place in the hostland through the gaining of rights—employment citizenships etc; and legal recognition of their distinct cultural practices— is a focus in many literary texts which deal with legal issues (literature and the law): e.g. Caryl Phillips, *A Distant Shore*; Hari Kunzru *Transmission*, and Kirwan Desai *Inheritance of Loss*;

Queer Theory

Queerness also challenges familiar national metaphors and hence national coherence, if we consider that the nation in its arrangements for citizenship, labour etc privileges heterosexuality. Queer studies exposes the paradigms of intersectionality (that is the network of intersections between gender, race, class and nation) that often mask hierarchies, which the law might sustain in relation to circumstances relating to diaspora peoples, by privileging indigenous long term groups over native, newly arrived ones. Queerness is also like diaspora space in that it is a space of inbetweenness, which is non national and non global, where home is an uncanny space of difference, not sameness, imposing states of minority and affiliation. Like diaspora existences there is fracturing of the subject through traumatic dispossession involving loss and melancholy.

Being non-heteronormative Queerness looks at frameworks that involve disruption of ties of home and belonging and the formation of new ones, often transnational. These resemble the frameworks used in diaspora studies, Queer politics is based on struggles for sexual and social justice in international frameworks, with a slow and uneven success in changing the law. The legalising of gay marriages earlier this year in several states in the USA and in NZ more recently, shows a readiness to accommodate alternative sexualities, by granting gays the same privileges as heterosexual. In parallel diaspora communities similarly operates translocally or transnationally, maintaining solidarities often through migration, through the

movement of global capital and the labour market. These affiliations also creating special cases that demand legal and social recognition which are adjudicated over in many case studies.

The queer studies model challenges the essentialist non-historical/ahistorical construction of mythological belonging animates it with anxieties, contradictions and discontinuities. Instead in Stuart Hall's terms ('Negotiating Caribbean Identities') it promotes an idea of home as already fractured, fraught with violence of uprooting, displacement and exile—so attempts to overcome elisions and amnesia caused by disruption and loss . Queer diaspora is a metaphor for what we don't usually see when we conceptualise home.

Just as concepts of home and nation are problematized by both groups so is the concept of the family, the paradigmatic emblem of solidity, stability and a core value for the nation. Queer studies exposes the naturalizing **processes and their rhetoric agendas that are** used in relation to the family (cite article) especially when the **national imaginary** might incorporate an image of the nation state as an extended family in which everyone has a place. (i.e. Slavoj Zizek's definition of the imaginary as the state of identification with the image in which we appear most likeable to ourselves, with the image representing what we would like to be; the nation is accessible to a particular group of people of itself because it needs no particular verification of this thing called nation') . Some diaspora communities can queer this cultural metaphor of the nation as a family, because of their reduced attachment and lack of identification with their place of origin; Others reinforce it. Some transnational communities (Eritreans) maintain ties of loyalty and filiation to the homeland and carry out acts of nation building from abroad. So rethinking hierarchy between the nation state and the diaspora community is another way the queer diaspora may challenge conceptualisations of the state legal

system especially when they are informed by values of stability, conformity, the shorthand for such core values in Britain is football and flags.

However the category of transgression and mobility which the queer and diasporic subject share which are often associated with emancipation and liberation, is only one aspect of the tenuous analogy/partnership I am outlining; here it is important to stress groundedness and rootedness. The community that lives in diaspora space (transnational) constructs and recreates culture in different locations—in Avtar Brah's terms following a homing desire which is not the same thing as the desire for a homeland. The new community structure within diaspora might be seen as parallel to the consolidation of gay relationships within the queer community-- both provide a new norms of stability (already recognized in official gay marriage in some parts of the world) ; new forms of normativity. These drawing on the global modes of production and accumulation associated with transnational capitalism, on gendered labour, as well as the national discourses with which they are often in tension. In many diaspora communities the tensions are also between the need to assimilate and contrastingly to protect the original customs, cultural values So the question is how should legal norms be realigned to match the new normativity, and the new family rhetoric is desirable: to protect the sexual and cultural practices of the queer and diaspora subjects.

Some diaspora literature and film point to new possibilities within the bounds of the law. There is the celebration of gay marriage (he gay she lesbian) of *Priscilla Queen of the Desert*, a couple who have a son (so it looks closer to a heteronormative marriage), and an apparently 'straight' marriage between a man and a transsexual man/woman (just to point up the contradictions in marriage that radical gender differences introduce). In Kureishi's novels the conflict between the laws of the homeland and the greater liberation of the hostland are emphasised, the arranged marriage between the

hero's cousin, Jamilla and her Husband, enforced by her Hindu father, fails and she turns to a lesbian alternative, overturning the familiar marital hierarchy with male headship that privileges the masculine as the source of social authority

In relation to these examples, and considering further the analogy between queer practices and cultural practices of people in diaspora will turn to the issue of marriage within Asian diaspora communities in England, as a snapshot of the state law.

1. making adjustments to other systems of law, Muslim Hindu, Jewish, although these are more often left as unofficial laws—in a struggle to establish a new normativity. There are already hybrid laws (Angrieze shariat), the incorporation of English law through the civil marriage service into Hindu wedding practices (often to satisfy immigration laws), an adaptive strategy for a new environment. In these hybrid patterns of solemnization state registration process is one element of a ritualized process based on a readaptation of the parties to the English requirements (so two forms of solemnisation one officially instigated, the other seen as informal or custom Hence muslims as well as Sikhs have to marry twice-once according to their own traditions involving rites and rituals, and again at the registry office (this sometimes regarded as polluting affair that requires cleansing). There are informal mechanisms for dispute resolution –called Shariat Councils

2. But for some legal scholars this is not going far enough. W.F. Menski recommends that the European stated based legal system in England become less Eurocentric and more tolerant of non western legal systems that are represented by south to north global migration e.g. Muslim, Sikh and Hindu (Muslim tolerate pluralism in pre colonial times) (REF). Prakash Shah points out there is an inbuilt bias in English law towards indigenous, territorial (white ethnic) nationalist groups that prevent other options and theorisations of the law. He takes the cases when marriages are

transnational/translocal –i.e. communal arrangements between people in different geographically distant locations-- ('Rituals of Recognition, 79) –this concept which he claims helps avoid nationally oriented analysis which is used for purposes of immigration law. Britain is the only country in Europe not to recognize translocal marriages (because of immigration law).

Should the immigrants' cultural practices –esp round marriage, dispute resolution-- be considered as unofficial laws only? What is clear is that the boundaries between unofficial and official laws in Britain are porous, unlike German where minority communities continue to take account of minority /Muslim demands in the name of freedom of religion as a basic human right. In Britain a reluctance to lift **ethnic minority laws** into the formal sphere--they are kept in the realm of unofficial law-- (Menski 26), although at wider level a gradual emergence of hybrid or plural ethnic minority laws in their various culture specific and family specific forms (190) is now evident.

In conclusion: in exploring the intersections between literary diasporas, queer diasporas and the law, what can be gleaned? Inconclusive. Queer diasporas are focused on one kind of social justice and right, of non heteronormativity. But the hybridised and multiple formations of diaspora communities create contradictory and conflicting pulls and tensions between assimilation and cultural protection. On one hand they reinforce the heterosexual norm in demanding their marriage ceremonies according to what the law sees as custom be granted greater legal status in the host nation; on the other their children and grand children, second and third generation diasporas, may pay only token gesture towards their inherited cultural practices: e.g. . Kureishi's example of a lesbian relation is part of an attack on patriarchal values of Indian society seen as

inappropriate to his generation in Britain, and subtle reinforcement of what is usually kept invisible –the bisexual tendencies of the family ideal. Diaspora communities in gaining legitimisation of their indigenous customs, therefore is in the long term more complex than the queer diaspora, because diaspora communities themselves are subject to changing attitudes over the generations

Nevertheless their alternative constructions of kinship and community networks present a challenge to the national imaginary; over time this may affect legal norms, and law may continue to respond to these revised norms of gender and race, and become more inclusive of alternative structures. Yet if greater legal pluralism is admitted then also requires some methodological underpinning: notably the desirability of translation between words, terms and concepts of different legal systems . This has already happened in postcolonial societies whose laws have been revised to take account of new interpretations of the mechanisms for governance, e.g. in NZ the revisions of the Treaty of Waitangi , of which the original signed in 1840 between the Maori (the indigenous NZer) and the representatives of the British Crown. In returning to foundational document of the state in 1970s, new equivalences between maori and english versions had to be found, This was necessary to formulate the conditions for NZ to become a bicultural society.