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## Imagining Lesbian Legal Theory

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## IMAGINING LESBIAN LEGAL THEORY\*

*Kendall Thomas\*\**

It's great to be here for this particular occasion to honor the work of Ruthann Robson, from whom I have, over the course of many years, learned so much.

First, I've learned from her the critical importance of doing work that is based on and reflects a set of political and ethical commitments to people who live under regimes of domination and inequality. Her scholarship, to me, is a model of engaged adversary scholarship. She has never fallen into the trap, so common to those of us who are professionalized in the legal academy, of thinking that this work does not matter in the lives of real people.

Secondly, through her work, specifically in lesbian legal theory, Ruthann has taught me the importance, to use Shane Phelan's phrase, of "getting specific."<sup>1</sup> This sort of global, universal—the universal gay—term captures, or is supposed to capture, both men and women and those who see themselves on the very complex continuum between those two categories. That specificity is something that Ruthann's work teaches to the degree that no other scholar writing has been able to achieve.

Finally, because she writes in so many different polyvalent discourses, one of the things I've learned from Ruthann's work is the necessity and the validity of writing in different voices. She is a fiction writer. She is a journalist. She is a scholar. The fluidity with which she has moved across these different discourses in an effort to tell the stories of lesbians in and outside the law is really admirable, and this refusal to be locked into the straitjacket of reigning modes of discourse is incredible. She understands that, again, better than any practicing scholar I know.

I want to talk just a few minutes about our contemporary moment. Last night, I was privileged to deliver the Ninth Annual Derrick Bell Lecture on Race in American Law at NYU Law School,<sup>2</sup> and the title of my lecture was *Condoleezza Rice and Wanda Jean Al-*

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\* Edited transcription of spoken remarks delivered at the Symposium to Honor the Work of Professor Ruthann Robson at the City University of New York School of Law, Nov. 5, 2004.

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<sup>1</sup> SHANE PHELAN, *GETTING SPECIFIC: POSTMODERN LESBIAN POLITICS* (1994).

<sup>2</sup> Kendall Thomas, Nash Professor of Law, Columbia Law School, Ninth Annual

len. You all know who Condoleezza Rice is. Wanda Jean Allen may be a name you may not be familiar with.

Wanda Jean Allen was a poor, black, mentally challenged lesbian, who killed her lover, Gloria Leathers, in the parking lot of a police station in Oklahoma in 1988. On January 11, 2001, roughly ten days before George W. Bush took office, Wanda Jean Allen was executed.<sup>3</sup> There is a remarkable documentary, which I recommend to you, by Liz Garbus, called *The Execution of Wanda Jean*,<sup>4</sup> which follows the last three months of Wanda Jean Allen's life. I understand it is still being screened from time to time on HBO.

I chose the title for the lecture last night because of an essay I had read that had a really profound effect on me, by someone most of the people in this room, no doubt, never heard of—a British lyric critic, feminist, and psychoanalytic theorist named Jacqueline Rose. Jacqueline Rose, in a series of lectures that were published in a book called *Why War*,<sup>5</sup> takes up the question of the relationship between two other figures. Those figures are Margaret Thatcher and Ruth Ellis.

Margaret Thatcher, as you know, was the first woman to be elected Prime Minister of Great Britain. Ruth Ellis was the last woman to be executed in the United Kingdom for the murder of her lover in the fifties. Rose brings these two people together because she is interested in the question of the relationship between women, power, violence, war, terrorism, and death. For Rose, Margaret Thatcher presents that question with particular force. She is mindful, though, that any discussion of Thatcher that relates specifically to her as a woman risks sliding into misogyny. Rose, nonetheless, insists that “something about Thatcher's place in the collective imaginary of British culture calls out for an understanding of what it is she releases by dint of being a woman and of the forms of fantasmatic scenario which she brings into play.”<sup>6</sup> Rose asks, “can [Thatcher's] re-election [not once, but twice] be used to understand something about the place of fantasy in our collective political life?”<sup>7</sup> Rose reports on discussions among the British Left,

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Lecture on Race in American Society in Honor of Professor Derrick Bell at New York University School of Law: Condoleezza Rice and Wanda Jean Allen (Nov. 4, 2004).

<sup>3</sup> See *Allen v. State*, 871 P.2d 79 (Okla. Crim. App. 1994), *aff'd sub nom. Allen v. Massie*, 202 F.3d 281 (10th Cir. 2000), *cert. denied sub nom. Allen v. Okla. Pardon and Parole Bd.*, 531 U.S. 1107 (2001).

<sup>4</sup> *The Execution of Wanda Jean* (HBO television broadcast, March 17, 2002).

<sup>5</sup> JACQUELINE ROSE, *WHY WAR? PSYCHOANALYSIS, POLITICS, AND THE RETURN TO MELANIE KLEIN* (1993).

<sup>6</sup> *Id.* at 44.

<sup>7</sup> *Id.*

which she says came very close to acknowledging the importance of this question of the relationship, or rather, the place of fantasy, in our political life.

Rose mentions in particular the father of culture studies in Britain, Stuart Hall. Hall says that the challenge for the Left after Thatcher's re-election victory is to try to figure out why it was that although the conservative government was "unpopular in terms of its policies," that government had nonetheless "managed to mobilize a new ideological constituency" made up in large part of people whose vote for the conservative government was a vote against their own material interests.<sup>8</sup> I'm sure that idea resonates with you in the aftermath of the 2004 national election—a report I saw on CNN.com revealed that almost one in four people who identified themselves as gay, lesbian, or bisexual in the exit polls voted for George W. Bush.<sup>9</sup> So Rose's question is, how is it that unpopular policies don't prevent the mobilization of ideological constituencies? Politics, she writes, are formed not just on the basis of so-called real majorities, but also on equally real symbolic majorities. The Left weakens itself politically by failing to take these images seriously, leaving the important field of symbolic identifications to the Right. Rose notes that in her terms, Stuart Hall is arguing here that politics is not only but *also* a "matter of fantasies, in which the way that people 'imagine' themselves occupies a crucial place."<sup>10</sup>

Thatcherism was only the most recent expression of a political phenomenon whose history in Britain, at least, went back to the 1930s, when the Left had to ask itself why, in the face of increasing political oppression, large sections of people, including those who are most exploited, move not to the left but to the right. This question of political fantasy of images and identifications, it seems to me, is a necessary prelude to any understanding of how people in unequal social, legal, and political relations of power can embrace their inequality, and how people can lick the lash of their domination. Since the law in our country plays such a prominent part in the way people understand themselves politically, it is an important site for addressing this political question.

And so, I just want very briefly to mark out diagrammatically how we might understand the regime of death penalty law as a

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<sup>8</sup> *Id.* at 44-45.

<sup>9</sup> CNN.com, *Election 2004 Results*, <http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.htm> (last visited Aug. 27, 2005); see also Chris Bull, *Campaign Notebook—Gays for Bush*, [http://www.gay.com/news/roundups/package.html?coll=news\\_feature&sernum=965&page=2](http://www.gay.com/news/roundups/package.html?coll=news_feature&sernum=965&page=2) (last visited Aug. 27, 2005).

<sup>10</sup> ROSE, *supra* note 5, at 45.

component part in the structure of political fantasy, because the death penalty continues to be supported by a remarkably high number of people in the United States. It is supported indeed to a remarkably high degree by the populations that are most adversely effected—the poor and people of color—largely through the construction of images about the death penalty that are articulated both within the legal system and within the broader culture. The “Death Penalty State,” if we can call it that, is a part of the state in which we have seen an incredible explosion in the prison industrial complex. The Death Penalty State is intimately tied, I would suggest, not just to domestic repression, but to the broader project of the “Killing State” abroad, especially after 9/11.

So, diagrammatically and very quickly, the images of Condoleezza Rice and Wanda Jean Allen: two mutually reinforcing visions of the relationship of women to violence, terrorism, and death in contemporary American political culture.

Condoleezza Rice is, above all, a citizen, a stateswoman. Wanda Jean Allen, a criminal convict. Condoleezza Rice is a *subject* of the Killing State. Wanda Jean Allen is an *object* of state killing. Condoleezza Rice is an apologist for lawful violence. Wanda Jean Allen is an agent of lawless violence. Condoleezza Rice, as her title suggests, is a guardian of national security. Wanda Jean Allen is a veritable repository of all that is socially dangerous. Condoleezza Rice embodies the embrace of what Randall Kennedy calls “racial reputation” and the “politics of respectability.”<sup>11</sup> Wanda Jean Allen, the woman who walked around her house in front of men with her chest bare, embodies the politics of shame. Condoleezza Rice, enlightened post-racial American that she is, is an ethnic figure, so African-American in her narrative that she tells a story again and again (usually by focusing on the three-fifths clause of the Constitution).

African-Americans have become part of our multi-ethnic democratic culture. Wanda Jean Allen, at trial, was effectively constructed by the prosecution as a black male. Race was used for homophobic purposes in her trial. Wanda Jean Allen represents the fall back into race. Condoleezza Rice, notwithstanding the speculations some of you have no doubt read on the Internet, is putatively heterosexual. Wanda Jean Allen is perversely homosexual.

I submit to you that in a few years, we are going to be trying to

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<sup>11</sup> RANDALL KENNEDY, RACE, CRIME, AND THE LAW 18 (1997).

make sense of the ways in which, after *Lawrence*,<sup>12</sup> “racialized” figures can be used in the service of homophobic projects. The fact that *Lawrence* has been decided by no means entails—this is a point so obvious that I feel embarrassed saying it—the end of institutional homophobia.

Another incredible feature of this whole story, particularly because these women are black, is that Rice is a saint; she is a Sunday school teacher; and Allen, even though she repudiates her lesbianism and embraces Christianity because her life is at stake in bible-belt country, is a sinner. These figures, however, Condoleezza Rice and Wanda Jean Allen, quite obviously introduce the question of race into the paradigm that Jacqueline Rose develops around Margaret Thatcher and Ruth Ellis, and explicitly raise the question of sexuality.

One of the spaces that Ruthann’s work has opened up is the need to think about questions of race, sexuality, and gender together, not because they are, in Crenshaw’s term, “intersectional,” but because they are inter-articulated and embedded in one another.<sup>13</sup> As Judith Butler puts it, race, gender, and sexuality are lived in the modality of one another, and, as we see, although the word race was never mentioned in Wanda Jean Allen’s trial, gendered and sexualized stereotypes were.<sup>14</sup> She was the man in the relationship. Her partner whom she killed was the woman. Gender and sexuality can operate as part of a racial project. Once we see that, we begin to see the connection between the practice of state killing and the institution of the Killing State. After September 11, that’s particularly crucial because we begin to see the ways in which the death penalty in the United States, as a domestic project—racist, homophobic, and misogynist—is intimately connected to the international work of the new Killing State, which the United States has become. This thoroughly racialized project, which uses homophobia, creates the conditions of possibility for the extension of state killing abroad. A killing which, as you know, has historically been and will no doubt for some time well into the future, remain the liquidation of people who themselves are predominantly poor and black or brown.

This is the new unilateral order, stitched together in a seam-

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<sup>12</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>13</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

<sup>14</sup> JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

less political imagery. People accept Wanda Jean Allen at home and Condoleezza Rice abroad because both underwrite a fantasy of security. We fight them over there so we don't have to fight them here. But we kill them here and elsewhere.