
Book Reviews

Dianne Otto (ed.). ***Queering International Law: Possibilities, Alliances, Complicities, Risks***. New York: Routledge, 2017. Pp. 290. £105. ISBN: 9781138289918.

Skilfully assembled and edited by Dianne Otto, *Queering International Law* is a collection of papers that exemplifies what Anne Orford and Florian Hoffman have recently described as one of the most exciting aspects of new research in international legal scholarship: 'thinking in innovative ways about the relation between the theory, history, and practice of international law'.¹ The collection is the product of a legal theory workshop inspired and organized by Otto in 2015 at the Melbourne Law School to 'promote a better understanding of the complicities and compromises that engagement with power, in the form of international law, may extract' (at 9). Traces of Otto's rich body of scholarship and her infectious commitment to international law as a project that has the potential to deliver 'a more egalitarian, inclusive, peaceful, just and redistributive international order' are discernible in each of the contributions, which, nonetheless, maintain their own distinct voice and perspective. Otto is a master of fostering intellectual exchange and, thus, *Queering International Law* can also be read as a densely packed conversation between and among legal scholars who share Otto's ability to work across different methodological and theoretical traditions and who do not cower from engaging with extra-legal material.

The title of the collection immediately provokes a number of questions: What does queering international law entail; what can it contribute to the discipline; how, if at all, can international law be queered? Otto does not keep us in suspense for long and, in her lucid introduction, begins to answer our questions while preparing us for what is to follow conceptually and methodologically. Queer theory, she emphasizes, is more than simply about normative inclusion (at 1); rather (and to paraphrase Otto), it is an alternative critical method that, in reframing legal problems through the analytic prism of sexuality, sheds further light on the conceptual and analytic underpinnings of international law, thereby introducing the possibility to craft new solutions.

Otto is at her best when grappling with what critical engagement entails. She does so with a rich foray into the genealogy of curiosity, a human trait that is feared, maligned, disciplined and celebrated. We are urged to engage with curiosity transgressively (at 6), which is precisely what queer theory seeks to do, in common with other critical traditions including, most notably, feminist methods (at 5). For Otto, it is the transgressive engagement with curiosity that opens up the space to interrogate and reveal the particular ways in which dominant ideologies consolidate and enhance existing inequalities, including through international law. As the contributions to this collection demonstrate, queer engagement is concerned with exposing international law's complicity in those practices of inequality, with elucidating how sexuality and sexual and gender norms are constituted and deployed by the law as organizing principles, and, by making apparent what is embedded, hidden, silenced, with contesting them and agitating for transformative change. This latter ambition endows queer theory with political aspirations that go beyond ontological critique, in common with post-colonial and feminist interventions.

¹ Orford and Hoffmann, 'Introduction: Theorizing International Law', in A. Orford and F. Hoffmann (eds), *Oxford Handbook of the Theory of International Law* (2016) 2.

Yet, in the process of moving from critique to advancing new legal solutions, queer legal theorists confront a number of seemingly insurmountable paradoxes that engaging with international law necessarily entails. Is it possible, asks Otto, to appeal to international law without 'legitimising the heteronormative imperial heritage of the normative framework'? Is an engagement with international law even possible without inadvertently reaffirming the regulatory power of the state and the structural injustices upon which it is constituted? Is queering international law possible, let alone a desirable strategy? Otto raises these questions leaving us to arrive at a judgment informed by the articles that comprise the collection, each of which 'gesture[s] towards some of the paradoxes facing queer engagement with international law' (at 9).

Not all readers will be content with Otto's decision to assemble the collection under the four thematic groupings: complicities, possibilities, alliances and risks. As Otto readily admits, most of the contributions overlap several of the themes, and, consequently, the sub-headings can be distracting especially where the link is tenuous.

1 Complicities

The Complicities section of the book opens with an article from Rahul Rao in which he explores the meaning of atonement to better understand why Britain's political class is far more willing to embrace responsibility for sexual injustices of colonialism (anti-sodomy laws) as opposed to racial crimes (slavery). The view that states should atone for historical injustices is a relatively recent development that has prompted debate among international legal scholars.² Rao's paper enriches this body of scholarship by drawing on non-legal resources including literature, psychology and political theory to reveal how, contrary to popular belief, expressions of atonement often aim to limit or displace guilt through claims and counter-claims around temporality, agency and the construction of identities. Rao stops short of demonstrating how international law is complicit in the formation of each of these grounds and, to that extent, misses an opportunity to enter into what would no doubt be a productive dialogue with international human rights advocates who have made important inroads in this area, notwithstanding the fact that existing international legal doctrine remains inimical towards recognizing responsibility for historical wrongdoings.³ That said, Rao leaves us with a far more nuanced understanding of atonement and of how sexual and gender norms are deployed through expressions of atonement to shape identities and reinstate hierarchical relationships, including through homo-nationalist claims.

Critical scholars have long taken an interest in exploring the manifold ways in which international law imposes order through the production of identities, most notably, gender and race. Using the global mining industry as a case study, the authors of the second article, Doris Buss and Blair Rutherford, invite us to consider sexuality as one such axis along which a hierarchical order is constituted by the law (at 36). The unprecedented rush to regulate the sector and, in particular, artisanal and small-scale mining (ASM), is commonly justified through narratives that link the illicit trade in minerals to protracted armed conflicts characterized by high levels of sexual violence, as in the case of the Democratic Republic of the Congo. Buss and Rutherford advance a fresh perspective on the international regulation of ASM by tracing the extent to which sexuality provides one of the 'discursive structures through which constructs of disorder

² Shelton, 'The World of Atonement: Reparations for Historical Injustices', 50(3) *Netherlands International Law Review* (2003) 289.

³ For recent examples, see Shelton, 'Presentation of Claims', in D. Shelton, *Remedies in International Human Rights Law* (3rd edn, 2015) 263.

and order cohere' (at 36). Offering a wealth of new insights, the authors explore how a sexualized dimension of disorder is imputed to ASM; how sexual and gendered metaphors and norms – in policy discourses and the social life of artisanal mines – construct the sexual order of mining and its regulation; and of how international law is made necessary in this space that is depicted as rife with sexual deviance and disorder.

However, for the authors, most problematic of all is the legitimating authority of the law that precludes any debate around 'mining itself, and the global consumption of minerals (and electronics)', thus leaving undisturbed the inequalities and injustices that are intrinsic to the global capitalist mode of production (at 51). This same concern lies at the heart of Monika Zalnieriute's analysis of the multi-stakeholder Internet governance model, given the dominance of the US and US-based information technology giants in the digital space (at 53). To the extent that the digital architecture and infrastructure is owned and managed by private actors, Zalnieriute's observation that global standards for human rights online, including the rights of queer, lesbian, gay, bisexual, transgender (LGBT) and other communities, are being set and enforced by non-state actors is an important insight and necessarily raises questions around who is making international law and how accountability should operate (at 66).⁴

2 Possibilities

In view of the fact that solutions to legal problems are invariably already decided at the point of framing the question, each of the following three chapters in the Possibilities section of the book exemplifies how, by insisting on reframing beyond a binary strategy, queer theory allows for other possibilities to be imagined. In a provocative article, rich with ideas, Vanja Hamzic explores law's violence through the UN Security Council's meeting that was held to consider the persecution of LGBT Syrians and Iraqis by the Islamic State of Iraq (ISIS). The irony that LGBT persons would be called up by the Security Council to facilitate the criminalization and/or annihilation of ISIS is not lost on Hamzic (at 85). More pertinently, Hamzic's article reminds us that the distinction between the violence of torture and beheadings and the archetypal juridical violence inherent in Security Council resolutions or, for that matter, homophobic domestic legislation (both of which make annihilation possible) is always contingent on framing.⁵ After all, the very term 'enforcement' is used to invoke the prospect of state violence.⁶

Hamzic thus forces us to consider whether it is possible to champion the law and to act ethically in the knowledge that the law's tools are constituted on a legacy of oppression and violence and that, in the very application of the law, violence – juridical and actual – is embraced. Successive generations of scholars have endeavoured to unravel this paradox that lies at the heart of law, and while some have sought solace in problematizing, deconstructing and contextualizing or re-imagining law's fabric, others have sought to distance themselves from the discipline, including from international law.⁷ Hamzic, on the other hand, tempts us with another possibility in the idea of a legality that would place us outside the legal–illegal dyad, spatially and discursively, 'still untainted' by gender roles and violence. Somewhat frustratingly, he leaves us to search elsewhere for a fuller exposition of what precisely this entails (at 83 and 90).⁸ How prevailing conceptions

⁴ See also S. Sivakumaran, 'Who Makes International Law? The Case of the Law of Armed Conflict' (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084238.

⁵ ECtHR, *Bayev and Others v. Russia*, Appl. no. 67667, Judgment of 20 June 2017.

⁶ On juridical violence, see, e.g., Cover, 'Violence and the Word', 95 *Yale Law Journal* (1986) 1601.

⁷ C. Mieville, *Between Equal Rights: A Marxist Theory of International Law* (2005), at 299.

⁸ See also Hamzic 'Alegality: Outside and beyond the Legal Logic of Late Capitalism', in Honor Brabazon (ed.), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (2016) 192.

of social interaction and identities (which constitute, and are constituted by, those interactions) might be disrupted, re-imagined and nurtured, with or without international law, are questions that are also probed by other contributors to this collection (at 145, 209, 236).

The injustices that are made possible by the dominance of binary framing are also explored by Tamsin Phillipa Paige in her article on the Security Council's involvement in addressing sexual violence in armed conflict pursuant to its women, peace and security (WPS) agenda (at 91). Paige illustrates how the language of the five permanent members produces and solidifies a binary conception of sexual violence founded on heteronormative stereotypes and conceptions of gender and sex difference that are neither natural nor authentic. Paradoxically, as observed by Paige, while the WPS agenda may have advanced the protection regime to counter sexual violence in armed conflict, its exclusive focus on women (and girls) has arguably come at the expense of excluding others, thereby sustaining a global culture of impunity (at 108).

In a sensitively crafted multi-layered article, Maria Elander also reflects on the implications of framing but within the context of testimonies pertaining to sexual and gender-based violence (SGBV) perpetrated during the Khmer Rouge regime. Challenging dominant preconceptions that non-judicial civil society fora are more inclusive, Elander reveals how such fora are often founded on narrowly framed gendered assumptions about what constitutes SGBV, which effectively operate to exclude, as in the case of transgender activist Sou Sotheavy (at 120). In contrast and unexpectedly, it is the quintessential judicial mechanism – the Extraordinary Chambers in the Courts of Cambodia – that is able to provide an entry point, albeit partial, and thus register Sotheavy's experiences of SGBV. As Elander incisively observes, Sotheavy's testimonies 'challenge the stereotype that victims of SGBV are only ever women, and her experience during the regime offers a more complex and inclusive story of multiple forms of SGBV' that have hitherto been silenced by the law (at 127).

3 Alliances

All three articles in the Alliances section compel us to think about the costs that queer engagement with international law extracts as there is always a loss entailed in the move from critique to practice, from the periphery to the centre. For Ratna Kapur, that loss comes in the form of queer theory's radicality and its transformative potential, echoing similar concerns expressed by feminist international law scholars. Kapur presents a compelling case to support her claim that queer 'appears unable to transform or destabilise the normative foundations of human rights that remain firmly embedded in dualistic gender categories and a gender hierarchy' (at 132). Although she concedes that both queer and feminist engagements with human rights law have documented some progress, Kapur bemoans the fact that queer advocacy is traversing the same route as gender, 'where governance feminism has increasingly aligned itself with the regulatory apparatus of the state and the normative order of gender' (at 135). In short, legal recognition paradoxically blunts queer activism of its radical edge. Kapur offers the reader a wealth of insights and nuanced observations in an article that is deeply sceptical that transformative change can be realized within the confines of the 'liberal imaginary' of existing human rights law.

Aeyal Gross, on the other hand, presents a more sanguine view of international human rights law's capacity to accommodate radical change as he weighs the costs entailed in the move of LGBT human rights advocacy from the periphery to the centre and, more specifically, the engagement with international financial and human rights institutions. In doing so, he is persuaded by Otto's proposition that incremental transformative change might be secured and opportunities created for activism (at 163), notwithstanding the dangers of co-option (for everything is dangerous). Gross thus advocates for a 'cost-benefit analysis that assesses the

promise of advancing LGBT rights at the global level against the risk of co-option by global institutions for their own purposes' (at 150).

The magnitude of the challenge that must be overcome if queering international human rights law is to transform lives is made apparent by Anniken Sorlie's illuminating article that uncovers the deep-seated and intransigent fidelity to biology that subsists even among the most progressive of human rights communities. Tracing the emerging jurisprudence of international and regional rights bodies with respect to transgender people, Sorlie reveals a persistent attachment to biology in spite of the recognition that gender and sexuality are social constructs. Likewise, and notwithstanding Norway's recent legislative attempts to rupture the link between biology and legal gender, Sorlie shows how existing domestic laws continue to constitute parenthood founded on heterosexual biological identities, powerfully illustrating the extent to which dislodging preconceptions remains a work in progress (at 190).

4 Risks

Critical thinking is by definition an enterprise that demands intellectual risk taking, but, in that process (as demonstrated throughout the collection), multiple risks surface including co-option, misrepresentation and homo-nationalist claims that inevitably reintroduce the very hierarchies that queer, as a tool of critique, aims to displace. These risks may make life on the margins a more hospitable environment; that said, exclusion, self-imposed or otherwise, always entails a precarious existence. The three articles in the Risks section, which is the final section of the book, not only remind us of the extent to which the regulation of sexuality has always been a core technique through which states govern but also urge us to embrace risk by daring to think of alternative patterns of kinship and order in contemporary society.

In an ambitious and richly informative article, Bina Fernandez explores the 'modes of inclusion, dissidence, subversion or normalisation' that are produced when, in seeking asylum, queers cross internationally constituted borders (at 194). Exposing the ways in which refugee law fundamentally fails LGBT persons, including its insistence that they conform with specifically constituted identities, thereby legitimating the 'reification of identity politics and homonationalist consolidation of power' (at 195), Fernandez turns our attention to the border itself. Constituted by international law, the border has long been the topic of critical scholarship. Fernandez injects a new dimension into the discourse, calling for queer politics not to align itself with the idea of 'open borders' but, rather, to embrace the far more radical vision of 'no borders' (at 209). By so doing, Fernandez opens up the possibility for further critical engagement.

Nan Seuffert's article re-explores the writings of Francisco de Vitoria and his references to the allegory of Sodom and Gomorrah to reveal how discourses of sexuality were present at the inception of international law and how they continue to inform international law's construction of identities and rights (at 234). This theme is taken up by Otto in the final chapter of the collection in which she exposes the extent to which the modern nation-state is constituted on heterosexual kinship arrangements (at 247) and of how borders are consolidated through laws founded on narratives that unabashedly link sexual perversion and depravity with the figure of the non-national (at 254). Otto does not disappoint the reader by ending on a pessimistic note. Rather, she chooses to inject hope and, in so doing, does not call for the wholesale abandonment of the state but, rather, presses us to ask, as Gayatri Chakravorty Spivak does, what part of the

state remains useful (at 255)? It is here that we witness a move from queering as a critical project to an activist project that is deeply political.

Otto has long advocated for queer and feminist rights advocates to work in coalition to transform international law and politics.⁹ I share Otto's call to the extent that both constituencies share 'emancipatory imaginaries of community and life free from militaristic, inequitable and anti-democratic grip of national loyalty' (at 256). But I want to suggest that this invitation needs to be extended further afield, including to those who traditionally work within the mainstream. For if recent events in world politics teach us anything, it is that finessing the existing architecture alone, however well intentioned, was never an adequate strategy in a world that is both international and global. What was needed was, and still is, an alternative vision that is attentive, inclusive, pluralist and committed to celebrating and nurturing difference among and between people. If international law is to be relevant into the 21st century, it seems to me that there is a need for both scholars and practitioners to be more creative and to think differently. *Queering International Law* provides us with an entry point by urging each of us to recognize and address the law's complicities in perpetuating inequalities, to form new alliances, to collectively imagine new possibilities and, perhaps above all, to take an intellectual risk in spite, or because, of the perils that lie ahead.

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Individual Contributions

Dianne Otto, Introduction: Embracing Queer Curiosity

Rahul Rao, A Tale of Two Atonements

Doris Buss and Blair Rutherford, 'Dangerous Desires': Illegality, Sexuality and the Global Governance of Artisanal Mining

Monika Zalnieriute, The Anatomy of Neoliberal Internet Governance: A Queer Critical Political Economy Perspective

Vanja Hamzić, International Law as Violence: Competing Absences of the Other

Tamsin Phillipa Paige, The Maintenance of International Peace and Security Heteronormativity

Maria Elander, In Spite: Testifying to Sexual and Gender-based Violence during the Khmer Rouge Period

Tatna Kapur, The (Im)possibility of Queering International Human Rights Law

Aeyal Gross, Homoglobalism: The Emergence of Global Gay Governance

Anniken Sørlie, Governing (Trans)parenthood: The Tenacious Hold of Biological Connection and Heterosexuality

Bina Fernandez, Queer Border Crossers: Pragmatic Complicities, Indiscretions and Subversions

Nan Seuffert, Queering International Law's Stories of Origin: Hospitality and Homophobia

Dianne Otto, Resisting the Heteronormative Imaginary of the Nation-State: Rethinking Kinship and Border Protection

⁹ Otto, 'Queering Gender [Identity] in International Law', 33(4) *Nordic Journal of Human Rights* (2015) 299.