Feeling Queer Jurisprudence: Injury, Intimacy, Identity

By Senthorun Sunil Raj. London: Routledge, 2020

Feeling Queer Jurisprudence: Injury, Intimacy, Identity is a nuanced and multi-layered text. Embedded in queer affect theory and law and emotion scholarship, the book offers a detailed blend of case analysis and theoretical work as it considers 'how injury is emotionally rendered in acts that stigmatise, shame, or disavow non-heterosexual intimacies and identities because they disturb a social order that values matrimonial coupling and reproductive sexuality' (Raj 2020, 3). The legal and juridical recognition of such injuries can be shaped by LGBTQ people's emotional responses to the harms they have suffered, but as Raj reminds us, the space of judicial recognition of both emotion and injury is a 'precarious terrain' (Ibid, 140).

Raj makes a compelling case for the analysis of emotion and emotional registers of law. Focusing on cases that have addressed the rights of LGBTQ individuals and groups from multiple jurisdictions, but most notably the US, Australia and the UK, the book argues that emotion has both political and analytic value (Raj 2020, 9). Raj shows how bodies and affects are differentially organised and oriented (Ahmed 2006) relative to each other in case law and how emotion shapes these affective arrangements, giving form and visibility to different types of injury or pain experienced by LGBTQ people, and making tangible particular aspects of LGBTQ lives. In so doing, emotion can both illuminate and hide the contours of LGBTQ intimacy and identity.

This perspective allows Raj to navigate the different scales and structures through which LGBTQ individuals face injustices and suffer emotional harm. He notes that, '[s]hifts in an individual's "bad feeling", without changes to the structural or discursive conditions that give rise to such feeling, render the emotive appeal to pursue effective legal remedies fleeting and counterproductive for those who desperately seek such remedies' (Raj 2020, 13). Emotion is powerful: it connects us, provokes a reaction, operates as a catalyst for change. In his close reading of LGBT cases however, Raj is able to show how legal remedies that recognise the emotions of individual litigants may reify these emotions in institutional structures in ways that may have unexpected consequences or facilitate forms of legal recognition that depoliticise the operation of long lasting structural violence.

The conclusion that can be drawn from Raj's analysis is thus not that we should approach emotion as a positive or negative presence in law, but as an inescapable aspect of jurisprudential writing and legal reasoning (Raj 2020, 12). The challenge is to account for how emotions open and close down space for the presence of queer identities and intimacies within law and legal spaces (Raj 2020, 141). Having set out the case for this form of analysis in the first chapter of the book, the following chapters are each devoted to reading specific emotions in the texts of LGBT cases. Chapter two focuses on disgust, beginning with judicial disgust directed towards gay, bisexual and queer men in decriminalisation and sadomasochism cases, before turning to the projection of disgust on homophobic killers. Chapter three

analyses hate, through hate crimes and hate crime legislation. This is followed in chapter four by an exploration of anger felt by LGBTQ individuals and refracted in law and unlawful discrimination cases. Chapter five traces how fear is crystallised in LGBTQ asylum decisions, analysing both the fear experienced by those seeking asylum and by judges who fear the asylum system will be abused. Finally, chapter six examines judicial expressions of love and monogamous love in equal marriage cases.

The cases examined span jurisdictions: they have been selected in order to 'bring together the ways emotions shape progressive ideas of injury, intimacy, and identity' rather than to 'exhaustively account for their jurisdictional or cultural or stylistic particularity' (Raj 2020, 6). While this approach departs from traditional doctrinal scholarship, for many queer legal scholars, the majority of the cases analysed are familiar. Raj's analysis, and the analytic lens he adopts towards emotion in these cases allows us to re-encounter these texts and perhaps to perceive something new within their familiar language. Drawing upon Johns, we are invited to 'linger' over the problem: to take our time and to reflect on the analytical tools at our disposal (Ibid, 7).

This commitment to lingering over the texts is one of several engagements with temporality in the book. The other most notable temporal analysis is found in the use of the lens of emotion to question the march of LGBT progress through law. Raj shows clearly the paradox of legal recognition and protection that comes at the expense of the erasure of structural violence or the imposition of respectability and heteronormativity on queer communities. There is a deliberate ambivalence in Raj's approach to the cases that he analyses: litigation is not presented as antithetical to securing better lives for LGBTQ people, but his reading of the structural dimensions of emotion demonstrates the violence and harm that can still be caused to LGBTQ individuals and groups by progressive LGBTQ legal and political projects. The focus on emotion makes clear the tension between law as a means of pursuing legal justice that makes queers visible, and the possibility of queerer forms of social justice that are less reliant on law. In this way, Raj brings a further analytical dimension to a familiar debate within activist scholarship – that of the limits of legal progress (Franke 2012; Weber 2016) and the complexities of queerness and time (Ahmed 2006; 2010; Berlant 2011; Edelman 2004; Freeman 2005).

A similar layer of nuance is brought to a second familiar theme in queer scholarship: that of how LGBTQ communities negotiate visibility and invisibility. As Currier (2010, 156) reminds us, the operation of visibility – be it evading danger through invisibility or manifesting presence in visibility – is vital to understanding and changing LGBTQ lives. Sedgwick (1991, 71) famously describes the closet and coming out as the overarching structure of western (Tucker 2009) gay oppression this century. And from a more legal perspective, Johnson (2010) has traced how the spectre of the closet has influenced the pursuit of LGBT rights through the prism of the protection of privacy, and the limitations of this. Raj touches on questions of privacy in his analysis of disgust, but also extends the analysis further by exploring how regimes of emotional visibility operate in law, how different emotions are rendered

legally visible or invisible and what the effects of these differential visibilities can be. For example, Raj shows how the crystallisation of disgust in case law can be used both to avoid recognising queer intimacies or identities but can also be used to reposition these intimacies into respectability and acceptability in a way that expunges them of 'abject queerness'. Similarly, the language of hate crime can draw attention to egregious violence committed by individuals while simultaneously shielding the possibility of recognition of other forms of social or structural violence. The language of love can perform a similar organisational function, detaching respectable, aspirational familial sexuality from 'deviant' otherness. This perspective also allows us to reflect on who is allowed to feel which emotions within case law. For example, the moving and detailed chapter on refugee claims shows how fear is separated from worry, anxiety and other emotions and given a legal legitimacy that allows a path to asylum.

The value of this analysis is that it retains a commitment to the ambivalence of emotional encounters in law. Raj rightly does not attempt to simplify the operation of emotion into a positive or a negative outcome for those seeking LGBTQ justice. He instead recognises the complexity of outcomes as emotions arrange and crystallise particular patterns and modes of action. Emotion can be a powerful catalyst for action and change (as discussed in the chapter on anger), it might also lead to a lack of action (as the individualising effects of hate crime legislation risk impeding action of structural violence), or to an impasse or even a withdrawal as emotions come into conflict (see eg. Cooper 2019). Thus, '[r]eading emotion is not about condemning those who gleefully washed their Facebook profile photos in rainbows when O*bergefell* was decided. Rather, it is an analytic strategy that can politically affirm the partial utility of such decisions while making legal room to support queer intimacies and identities' (Raj, 2020 134).

In this way, Raj taps into Cooper's (2019, 17) observation that 'the value of legal texts here comes particularly from the stories judges tell.' These stories are multiple, complex and 'far from settled and clear' (Ibid). A key contribution of this book is the methodology that it develops for unpacking judicial stories by turning an analytic lens towards emotion. This has much in common with feminist projects that have sought to re-visit case law through a feminist perspective (eg Hunter et al. 2010). As a queer project (or a project that seeks to queer both law and emotions) it develops the kind of approach suggested by Colebrook (2009, 21), in which she argues that conditions of the queer are those which expose how 'the normal is achieved, produced, effected and also, therefore exposed as contingent, constituted and open to change'. Thus Raj not only demonstrates the presence of emotion in law (thereby challenging the idea of law as neutral, objective or rational) but also traces how these emotions come to be reified in law, and what the effects of this are. This implicitly holds open the possibility that these emotional registers might be changed – or queered – thus retaining the potential for new ways of acting, being or feeling.

Raj states explicitly that the book is not intended as a conclusion to politics of queer law reform: it is a methodology for attending to emotion as part of a long and ongoing project. He concludes the book with a discussion of how scholars, lawyers and activists might better reflect on emotion in LGBTQ work. While understanding the danger of being too prescriptive in these reflections, it would be interesting to see this analysis taken forward – what kinds of cases might we pursue in order to 'confront emotional attachments in law to advocate more expansive accommodation of queer intimacies and identities' (Raj 2020, 151). Or indeed, how we might analyse the crystallisation of emotion in other forms of queer activism or action beyond the courts and the push for legal progress.

A final and related query can be drawn from the book's own commitment to lingering over the problem: that of how we might further complicate, or even queer, the case law analysed in order to trace further possibilities for action. As Raj notes, emotions are complex and rarely exist in isolation; one might wonder if something is lost by identifying one particular line of cases with one particular emotion and whether these or other cases could be revisited to explore whether there are emotional counternarratives that can be identified. For example, how do we account for the fact that judicial crystallisations of fear in asylum cases might be accompanied by recognition of joy or freedom – often in the same case?[1] Similarly, what roles might collective expressions of emotions such as sorrow or grief (such as during the AIDS crises of the 1980s and 1990s or currently in response to high levels of violence and victimisation faced by trans women and particularly trans women of colour) play in refining, shaping and de-individualising legal constructions of anger and injury?

These questions are not so much criticisms as provocations that build on Raj's excellent and nuanced work. In recognising emotion in law, Raj reminds us that we live complex emotional lives as part of complex affective assemblages – this complexity is reduced in judicial narratives, but there remains the possibility of returning to the fullness of our affective arrangements to seek out new forms of action, or simply to question why some emotions are reified in case law, while others remain legally unseen.

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[1] Notably in the UK Supreme Court decision *HJ (Iran) & HT (Cameroon) v SSHD* there is a clear reification of fear, but also of joy, freedom or hope, in the much discussed comment that gay men should be 'free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates' [2010] UKSC 31, 78

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