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Queer(ing) Judgments

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Introduction

Dear reader...

We are dancers. We are teachers. We are students. We are lovers. We are jokers. We are fighters. We are friends. We are…

We open *Queer Judgments* by opening our queer selves to you. As editors/contributors, we are embodied across the pages of this edited collection that give words to our queer emotions, identities, activisms, theories and doctrines. *Queer Judgments* is an opening. It is an invitation to collaborate, converse, critique, imagine, and create the possibilities of working queerly within and against law by becoming queer judges. We do this work because we seek to build a world where everyone can flourish without violence, exclusion, discrimination, and inequality.

The Global Scene

As we write the introduction to our edited collection, there are momentous changes across legal systems that seek to improve the lives of lesbian, gay, bisexual, transgender, queer, intersex, asexual, and other (LGBTIQA+) people. In the last decade, courts in countries like India, Mauritius, and Botswana have decriminalized homosexuality while parliaments in places like Singapore and Angola have done the same.[1] Jurisdictions like Australia, Taiwan, Chile, and United Kingdom (UK) have passed legislation to recognize same-sex marriages, with others providing civil unions.[2] Portugal, Pakistan, and Aotearoa New Zealand have made it possible for people to self-declare their gender without unnecessary medical, surgical, or bureaucratic procedures.[3] Malta was

1. Human Dignity Trust, 'A History of LGBT Criminalisation,' accessed 26 January 2024, https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/.
2. ILGA, 'Legal Frameworks: Same-Sex Marriage and Civil Unions,' accessed 26 January 2024, https://database.ilga.org/same-sex-marriage-civil-unions.
3. ILGA, 'Legal Frameworks: Gender Recognition,' accessed 26 January 2024, https://database.ilga.org/legal-gender-recognition.

one of the first nations in the world to explicitly prohibit surgical interventions that aim to 'correct' the bodies of intersex infants.[4] In 2017, the Yogyakarta Principles (an international document setting out how international human rights laws apply to issues of sexual orientation and gender identity) were revised and improved to recognize changing international norms, and explicitly recognized issues affecting intersex people.[5] This non-exhaustive list captures the scale and intensity of *progressive* reforms over the past decade for LGBTIQA+ people, which have been made possible by legal and social activisms in local courts, national parliamentary forums, and international committees.

Yet, law reforms have not been universally progressive when it comes to protecting LGBTIQA+ people from stigma, inequality, and discrimination. Under the guise of combatting 'gender ideology,' some states in the United States of America (USA), Russia, Hungary, and Poland have sought to further restrict the public visibility of queer and trans people.[6] Typically referred to as 'gay propaganda,' these jurisdictions seek to curtail freedom of speech and association by proscribing Pride marches, LGBTIQA+ organizations, and educational materials designed to facilitate acceptance of sexual and gender non-conformity in schools.[7] So-called 'progressive havens' for LGBTIQA+ people like the UK and some USA states treat the existence of trans and non-binary people as a threat to the social order, and these groups find their access to public spaces and healthcare is rendered a topic of hostile public scrutiny.[8] Countries like Uganda have further strengthened laws criminalizing homosexuality, including the death penalty for certain gay sex offences.[9] The scale and intensity of what we might colloquially describe here as a 'backlash' to LGBTIQA+ rights highlight that our rights do not emerge transnationally as a simple story of progress. Our existence, visibility, safety, and freedom remain deeply contested across the world. And legal progress is haphazard, insecure, and contingent.

In this context of flux and contradiction, we offer *Queer Judgments* as a space to reflect on the desirability and possibilities of law while holding space to cultivate friendship and solidarity between communities fighting for justice. This is not a new conversation. Many queer legal scholars have written extensively about how legal systems perpetrate systemic inequalities and are sceptical about the role

4. *Gender Identity, Gender Expression and Sex Characteristics Act 2015* (Malta).

5. Mauro Cabral Grinspan, Morgan Carpenter, Julia Ehrt, Sheherezade Kara, Arvind Narrain, Pooja Patel, Chris Sidoti, and Monica Tabengwa, 'Yogyakarta Principles Plus 10,' accessed 26 January 2024, https://yogyakartaprinciples.org.

6. This is part of a global trend involving state and non-state actors, which academics and activists are documenting. See LSE Gender Institute, 'Transnational Anti-Gender Movements,' accessed 26 January 2024, https://www.lse.ac.uk/gender/research/AHRC/AHRC-home.

7. Catherine Jean Nash and Kath Browne, *Heteroactivism: Resisting Lesbian, Gay, Bisexual and Trans Rights and Equalities* (London: Zed Books, 2020).

8. David Remnick and Masha Gessen, 'What We Talk About When We Talk About Trans Rights,' The New Yorker, 11 March 2023, accessed 26 January 2024, https://www.newyorker.com/news/the-new-yorker-interview/what-we-talk-about-when-we-talk-about-trans-rights.

9. Reuters, 'Uganda passes a law making it a crime to identify as LGBTQ,' Reuters, 22 March 2023, accessed 26 January 2024, https://www.reuters.com/world/africa/uganda-passes-bill-banning-identifying-lgbtq-2023-03-21/.

of law in remedying the harms faced by people minoritized because of their sexual or gendered identities and behaviours.[10] Such scholarship detail the way legal and administrative institutions police non-normative sexual identities and expressions (criminalizing homosexuality, denying family recognition, banning Pride) and how public policies and social norms inhibit gender diversity (fixing legal sex/gender to what is assigned at birth, blocking gender affirming healthcare).[11] We have each written separately about the problematic way law deals with LGBTIQA+ people, including in the areas of asylum law, family law, criminal law, and public law.[12] While we are deeply critical of law, we also do not disavow it entirely. We position ourselves as individuals who are speaking to, with, and against the law in different spaces. This resonates with what some scholars describe as 'queer lawfare,' where we seek to resist legal and political discrimination by turning to courts where it is practical or useful to do so.[13] By taking this position, we recognize the structural limits of using law to address homophobia, biphobia, transphobia, misogyny, racism, colonialism, capitalism, and ableism. Yet, we also recognize the utility of minimizing some of these structural harms by using legal remedies to make life easier and fairer for queer people.

Crafting our Queer Project

Queer Judgments builds upon these critical and ethical commitments. Before detailing the scope of the edited collection and unpacking the contributions we have gathered, we want to take a moment to explain how this project came to life. The Queer Judgments Project is an initiative that evolved from disparate conversations between the current co-editors about how legal judgments related to sexual orientation, gender identity and expression and sex characteristics (SOGIESC) could have been written in more appropriate terms in light of the legal framework at the time. We wanted to cultivate a project that brought together friends, colleagues, and activists who were interested in improving and challenging the law and its application to make life better for LGBTIQA+ people and communities. The main aim of the project (beyond just this edited collection) is to re-imagine, re-write and re-invent, from queer

10. Including some of this volume's contributors: see, for example, Diane Otto, ed., *Queering International Law: Possibilities, Alliances, Complicities, Risks* (London / New York: Routledge, 2018).

11. See, for example, Martha Albertson Fineman, Jack E. Jackson, and Adam P. Romero, eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Farnham: Ashgate, 2009); Robert Leckey and Kim Brookes, eds., *Queer Theory: Law, Culture, Empire* (Abingdon: Routledge, 2010); Libby Adler, *Gay Priori: A Queer Critical Legal Studies Approach to Law Reform* (Durham: Duke University Press, 2018); Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law* (Boston: South End Press, 2011).

12. See some of our most recent scholarship: Nuno Ferreira, 'Utterly Unbelievable: The Discourse of "Fake" SOGI Asylum Claims as a Form of Epistemic Injustice,' *International Journal of Refugee Law* 34 (2022), 303-326; Francesca Romana Ammaturo and Maria Federica Moscati, 'Children's Rights and Gender Identity: A New Frontier of Children's Protagonism,' *Nordic Journal of Human Rights* 39 (2021), 146-162; Senthorun Raj, 'Legally Affective: Mapping the Emotional Grammar of LGBT Rights in Law School,' *Feminist Legal Studies* 31 (2023), 191-215.

13. Adrian Jjuuko, Siri Gloppen, Alan Msosa, and Frans Viljoen, eds., *Queer lawfare in Africa: Legal Strategies in Contexts of LGBTIQ+ Criminalisation and Politicisation* (Pretoria: University of Pretoria Press, 2022).

and other complementing perspectives, judgments that have considered SOGIESC issues. The project has an international reach and multi-disciplinary scope. Individual contributors were free to choose which judgment they wanted to focus on, featuring voices from across the globe. Similarly, the audiences for the outputs of our project include people outside of academia, especially marginalized communities and young people.

In July 2021, in the midst of the COVID-19 pandemic and related public-health 'lockdowns' at home, we held two scoping workshops to bring together queer scholars and activists to reflect on jurisprudential challenges related to SOGIESC matters. In framing this conversation, we were not tied to specific SOGIESC-related rights issues or subdisciplines of law or styles of jurisprudence. We wanted to create an open space which gave people the opportunity to identify some of the pressing legal, scholarly, and activist concerns relating to SOGIESC-related rights and to work out what a 'queer judgments project' might offer to our collective work to improve SOGIESC-related rights globally. To that end, we asked those interested in the conversation to reflect on the following questions:

1. How might queer judgments be relevant to your work (as a lawyer, scholar, activist, etc)?
2. What jurisdictional and jurisprudential scope should the project have?
3. What theoretical perspectives should inform such a project?
4. What form should 'queer judgments' take?
5. What (scholarly, political, artistic) outputs could we develop together?
6. How might we resource this work?

We had over 30 people from different parts of the world join the initial (virtual) dinner-table conversation to discuss these questions. The discussions that took place online were enormously rich. Some participants spoke about more conventional legal issues like improving the family law system for queer families or removing sex/gender markers from legal documents. Others reflected on the role of queer thinking for less obvious topics like cultural heritage and environmental noise. What became clear as the conversations progressed was that the Queer Judgments Project would not just be limited to an academic edited collection. Rather, people were interested in offering critical commentaries through writing and podcasts, re-writing judgments, experimenting with legal form, queering legal interventions by theatricalizing them or turning them into comics, and collaborating with activists and artists to rethink the limits and possibilities of law when it comes to SOGIESC issues or the lives of LGBTIQA+ people. The possibilities were, quite literally, endless.

We held further workshops with more participants (following an open call) in October 2021 to explore this further. At these workshops, we invited people to address several theoretical questions:

1. How does legality reflect colonial power structures?
2. What kind of queer subjects does the law imagine?
3. Are we seeking legality?

4. Is there value in being stigmatized?
5. In what ways does the law think about the queer subject and how queer subjects position themselves in relation to the law?

We also addressed some methodological questions:

1. How deep does our knowledge of the judgment have to be?
2. How can evidence be queered to become accessible?
3. How can we queer the files that judges have access to?

At these workshops, fellow queer scholars and activists spoke passionately about issues ranging from reimagining the decriminalization of homosexuality to making room for the experiences of LGBTIQA+ people who seek asylum, to rethinking modes of legal gender recognition, to dismantling carceral systems harming socially marginalized populations, etc. The various topics discussed spanned jurisdictions, court hierarchies, and subdisciplines of law. In order to capture all potential contributions, the editors collated the preferences of about 70 people interested in contributing to the project. Based on the responses, we decided that our first output would be an edited collection. But we did not want this to be an expensive output that would only be read by a few academics with access to a library budget. We wanted this collection to be open access and identified Counterpress as our preferred publisher because of their commitment to publishing accessible critical legal scholarship.

After documenting the conversations from these workshops and fiddling with spreadsheets, we identified a group of about 40 people who wished to contribute a critical judgment and/or commentary to the edited collection. While we have assembled an excellent range of scholars and topics in this volume, we also recognize the limitations of this volume in regional spread (we lack contributors based in the Middle East, North Africa, and Latin America) and legal focus (we lack topics relating to private law including contract law, equity, and tort law).

Writing Queer Judgments

The workshops we organized were energizing, emotional, and thought-provoking. We were immersed in a space of queer intimacy, critique, and solidarity. Rather than pre-determine the scope of a 'normal' academic output or set theoretical or institutional parameters, we held space to provoke conversation and creativity around activism, community, law, scholarship, and queerness. Our conversations were queer in the sense that they were about exploring:

> the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone's gender, of anyone's sexuality aren't made (or can't be made) to signify monolithically.[14]

14. Eve Sedgwick, *Tendencies* (Durham: Duke University Press, 1993), 8.

In thinking about the intimacies and emotions constituted through the workshops, we were reminded that we were not simply a group of academics approaching a subject to analyse in a dispassionate or objective sense. We were also not simply a collection of LGBTIQA+ people talking about our lives. We were instead activist-scholar-friends motivated by feelings of responsibility towards minoritized communities (to which we belonged) as well as our desires for scholarly camaraderie that might be used in service of our communities. This meant we had to attend to the 'gaps and overlaps' caused by law, 'dissonances and resonances' of language to describe identity, and 'lapses and excesses' when considering how judgments intervene in the lives of LGBTIQA+ people.

We take 'queer' as a term to express our methodology in putting this collection together. Critical judgment writing—much like the concept of queer—is freighted with tensions, contradictions, and possibilities. Fortunately, we are not new to navigating this terrain. Our labour in putting this edited collection together draws energy from the rich sources of existing critical judgments, including Feminist Judgments, Indigenous Judgments, Children's Rights Judgments, African Judgments, and Earth Law Judgments.[15] As Rosemary Hunter, Clare McGlynn, and Erica Rackley note in relation to feminist judgment writing, 'by intervening in law from a feminist perspective, one of the aims of the Feminist Judgments Project was to disrupt the process of gender construction, and to introduce different accounts of gender that might be less limiting for women.'[16] We recognize the normative importance of this feminist approach because re-writing judgments has the potential to challenge gendered and sexualized power dynamics and make new identities legible in law. In thinking of how to undertake a queer re-imagining of critical judgment writing, we also turned to Alex Sharpe's important article, 'Queering Judgment.' Sharpe describes the process of queer judgment writing as an ethical process that involves foregrounding the voices/stories of those who are marginalized in law, accommodating non-normative identities and relationships, and redressing social disadvantage while recognizing the limitations of law.[17] In doing so, the feminist and queer approaches to critical judgment writing function as both critique and law reform. We embrace critique and normativity in the pursuit of justice.[18] Drawing from the Feminist Judgments Project, Sharpe locates queer judgment writing within parameters that would be easily recognisable as 'judicial' in character. That is,

15. For more detail on the various projects, see 'Critical Judgments,' accessed 26 January 2024, https://criticaljudgments.com/, and 'Queer Judgments,' accessed 26 January 2024, https://www.queerjudgments.org/project. The Feminist Judgments projects have, themselves, been inspired by previous Canadian and USA scholarship: Jack M. Balkin, ed., *What Brown v Board of Education Should have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decisions* (New York: New York University Press, 2002); Jack M. Balkin, ed., *What Roe v Wade Should have Said: The Nation's Top Legal Experts Rewrite America's most Controversial Decision* (New York: New York University Press, 2005); Special Issue, 'The Women's Court of Canada,' *Canadian Journal of Women and the Law* 18(1) (2006).

16. Rosemary Hunter, Clare McGlynn, and Erika Rackley, 'Introduction,' in *Feminist Judgments: From Theory to Practice*, eds. Rosemary Hunter, Clare McGlynn, and Erika Rackley (Oxford: Hart, 2010), 7.

17. Alex Sharpe, 'Queering Judgment: The Case of Gender Identity Fraud,' *Journal of Criminal Law* 81 (2017), 417-435. Sharpe's work has been key in inspiring other scholars to undertake 'queer' re-writing of judgments. See, for example, Damian Gonzalez-Salzberg, *Sexuality and Transsexuality Under the European Convention of Human Rights: A Queer Reading of Human Rights Law* (Oxford: Hart, 2019).

18. See Aleardo Zanghellini, 'Queer, Anti-Normativity, Counter-Normativity and Abjection,' *Griffith Law Review* 18 (2009), 1-16.

her queer judgment (she writes of a case relating to 'gender fraud' in the context of a sexual assault prosecution in England) is one that shows 'fidelity to precedent, to judicial custom and to the practices of judges in the English appellate courts.'[19] In each of these projects, a judgment can be queered in relation to how it approaches issues of sexual and gender non-normativity but the form or genre of judgment remains largely the same in order to make the judgment useful for judges who are constrained by the institutional realities of being a judge. This emphasizes the point that judges, like authors, have to make 'strategic choices about how to tell a story,' because 'the way in which the judge tells the story, alongside the form and language of their opinion, plays a role in determining how the judgment is received and whether it gains acceptance.'[20]

What does it mean to be 'strategic' with law in a queer sense? How do we express a 'useful' judgment in queer terms? While we share the commitments expressed by those feminist and queer scholars who have engaged in counter-judgment writing, we expand on them in this volume by providing greater flexibility to 'play' with the genre of judgment. We nurtured a 'queer methodology' by asking our contributors to challenge legal conventions of what a 'correct judgment' ought to look/sound like, inviting them to think with/about other (non-legal) disciplines, and encouraging them to locate themselves more self-reflexively within the terms of their judgments.[21]

We invited ourselves to play. We riff from Davina Cooper's recent scholarship which explores playing as a provisional and pleasurable strategy of governance that can enable us to realize progressive social agendas.[22] While Cooper focuses on extralegal or nonlegal avenues or subjects to explore new modes of governing, we look to play within judgments (as a form of governance) by troubling judicial form and making room to express legal decisions in unexpected ways. In the collection, we make room for our contributors to role play being a judge and engage in 'judicial drag.'[23] In some chapters, this means contributors play politely with law—making decisions that toy with discrete legal concepts or identities without overhauling normative ways of writing a judgment. Others in our collection are more rambunctious, seeking to disrupt the form of legal judgment as well as troubling the subjects that form the basis of a judgment.

We anchor this collection around specific themes, and in this introductory chapter we use the acronyms 'LGBTIQA+' and 'SOGIESC.' We do so ambivalently, noting the limitations of finding a term that does justice to the heterogeneity of people who are minoritized because of their sex characteristics, sexual orientations, gender identities and expressions. De- and postcolonial scholars caution us to attend carefully

19. Sharpe, 'Queering Judgment,' 420.

20. Erika Rackley, 'The Art and Craft of Writing Judgments: Notes on the Feminist Judgments Project,' in *Feminist Judgments: From Theory to Practice*, eds. Rosemary Hunter, Clare McGlynn, and Erika Rackley (Oxford: Hart, 2010), 46.

21. For a more detailed explanation of what queer methodologies involve, and the importance of self-critique and positionality, see Kath Browne and Catherine J. Nash, eds., *Queer Methods and Methodologies: Intersecting Queer Theories and Social Science Research* (Farnham: Ashgate, 2010).

22. Davina Cooper, *Feeling Like a State: Desire, Denial, and the Recasting of Authority* (Durham: Duke University Press, 2019), 116.

23. Judith Butler describes 'drag' as a performance that draws attention to, and denaturalizes, the construction of categories (like sex/gender) that are presumed to be 'normal' or 'natural.' Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990), 145.

to the precarity and porosity of terms relating to sexual and gender diversity in non-Western societies.[24] Identities and behaviours that we might describe in English language academic discourses as 'queer' or 'trans,' have unique cultural and linguistic formulations in different parts of the world. Even the very terms 'sexual orientation' and 'gender identity' have been critiqued for having entered human rights discourses in a way that privileges a binary model of gender.[25] In using the terms LGBTIQA+ or SOGIESC we do not seek to erase these complexities and the contributors in this collection use different terminologies. We invite readers to critically reflect on terminology and recognize that terms evolve.

Dance with Us

Now, dear reader, you must remember that our project is legally artistic, meaning that it aims at stimulating further questions on queer law by unleashing bravery, grace, sensitivity to others, and creativity. Thus, we wish to share with you some moments of our journey that symbolize our legally artistic project: our flower, our relations, the creation of a queer norm, and the queer judge.

The Flower: Visualizing our Proud Authenticity

We, contributors and editors, all pledged to celebrate and not to assimilate—paraphrasing Joseph Sissens, we all turned up authentically as ourselves.[26] Authenticity, passion, beauty, rigour, activism and curiosity drew people together in this project. As editors, we wanted to visually aid the reader to follow our creative and proud journey. Thus, the flower is our logo.

Of course, we are aware that it is nothing new to use a logo for research projects, and it is not new to use flowers as symbols. So, we did not really bring in any innovative marketing tool here! But we tried to bring in some queerness. Conversations about the logo started among the three editors and then involved Rose Gordon-Orr and Gabriel Purvis. The aim was to create a big, wide flower proudly open towards those who look at it. We also wanted to include the new Progress Pride Flag colours for each petal.[27]

After a first enthusiastic brain-storming meeting, creating the flower appeared a bigger task than we had initially thought, and using basic PhotoShop tools only allowed using pre-existing templates of quite rigid flowers and not the more open/queer flower

24. For a more detailed exploration of this point on language and culture, see Sita Balani, *Slick and Deadly: Sexual Modernity and the Making of Race* (London: Verso, 2023); Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (London: Glasshouse Press, 2005); Sandy O'Sullivan, 'The Colonial Project of Gender (and Everything Else),' *genealogy* 5 (2021), 67-75; Ryan Thoreson, *Transnational LGBT Activism: Working for Sexual Rights Worldwide* (Minneapolis: Minnesota University Press, 2014).

25. Matthew Waites, 'Critique of "Sexual Orientation" and "Gender Identity" in Human Rights Discourse: Global Queer Politics beyond the Yogyakarta Principles,' *Contemporary Politics* 15(1) (2009), 137.

26. Royal Opera House, 'Insights: Ballet and the Black Experience,' accessed 26 January 2024, https://www.youtube.com/watch?v=a4Q8cm9g4fo.

27. Victoria and Albert Museum, 'The Progress Pride flag,' accessed 26 January 2024, https://www.vam.ac.uk/articles/the-progress-pride-flag.

Fig. 1: Queer Judgments Project logo

we had discussed. Thus, in a typical collaborative queer creative style that nurtures the talent and the beauty of those involved, Rose and Gabriel played with colours and edited them into a logo. As a result, the flower of the Queer Judgments Project is a queer flower (Fig. 1)!

Although, like all flowers, it brings psychological and physiological advantages to those who look at it,[28] the Queer Judgments Project Flower—with its colours—celebrates all queer people, and inspires you (the reader) to smile, joyfully act, and cultivate 'an emotional spark, social engagement, novelty-seeking, creative exploration—ESSENCE.'[29]

Moreover, our flower wants to remind you of—and respect—what queer people are teaching all of us around the world: braveness, dignity, and pride to be our real self.

28. For a review on the literature on the effects of looking at flowers, see: Junfang Xie, Binyi Liu, Mohamed Elsadek, 'How Can Flowers and Their Colors Promote Individuals' Physiological and Psychological States during the COVID-19 Lockdown?' *International Journal of Environmental Research and Public Health* 18/19 (2021), 10258.

29. Daniel Siegel, *Brainstorm.The Power and Purpose of the Teenage Brain* (London: Scribe UK, 2013), 16.

Relations

What became apparent from the conception of this endeavour was the centrality that relations—as social relations and knowledge-making—played and play in this project and in our queer approach to law (its production, reproduction, transgression, and re-writing).

Friendship, collegiality, collaborations, writing together with the protagonists of some cases, dedication to friends, all characterize this project. We believe that 'freedom is participation,'[30] and encouraged a participative and collaborative approach throughout all the creative process of writing, re-drafting, and reviewing the papers. Editors and contributors met for group and one-to-one meetings to better define the focus of chapters; similarly, editors and contributors reviewed the chapters. We wish to thank all contributors for reviewing each other's chapters with thorough kindness and curiosity.

Relationality, connections, and collaboration speak also to the future steps of this project to accommodate the voices of those that for various reasons have not contributed to this edited collection. For instance, although the workshops saw the participation of friends from South America, Africa, and Middle East, most of their contributions will be eventually included in the future outputs of this project.

Our relations (some already consolidated, others created during the project) became a tool for knowledge-making. Using dancing as metaphor, we were at the same time choreographers and dancers. We created starting from the basic steps, slowly adding details that would highlight our potential, while ensuring coordination.[31] Like dancers, we learned from each other, sometimes through a process of unlearning our individual knowledge and relearning from interacting with each other; we did not avoid divergences, instead we worked together to resolve them, and dance in harmony. We used our social relations as tool to produce knowledge too. Thus, our endeavour—to use Strathern's reflections—'does not simply seek out associations and dissociations across phenomena, but imagines and describes them as relations, and indeed may use the epithet "relational" to claim a distinctive quality of analysis.'[32] But like Les Ballets Trocadero de Monte Carlo, Alvin Ailey or Maurice Bejart,[33] the knowledge we produce in our Queer Judgments Project dance, wishes to enable you—a dancing reader—to reflect on your own (biased) knowledge about the other, and change it. Indeed, we created a new norm!

30. Giorgio Gaber, 'La Libertà,' 1972 (original text in Italian: 'La Libertà è Partecipazione'). To listen to the song: accessed 26 January 2024, https://www.youtube.com/watch?v=j3vowbyQBiQ.

31. For some reading on creating choreography, see, for instance, Validimir Angelov, *You, the Choreographer. Creating and Crafting Dance* (London: Routledge, 2023); Jo Butterworth and Liesbeth Wildschut, eds., *Contemporary Choreography. A Critical Reader,* 2nd ed. (London: Routledge, 2017). On legal dancing, see, Sean Mulcahy, 'Dances with Laws: From Metaphor to Methodology,' *Law and Humanities* 15/1 (2021), 106.

32. Marilyn Strathern, *Relations: An Anthropological Account* (Durham and London: Duke University Press, 2020), 1.

33. If you do not know them, that is a shame. However, you can always learn about them: accessed 26 January 2024, https://trockadero.org/; https://www.alvinailey.org/; https://www.bejart.ch/en/company/maurice-bejart/.

Queer is the Norm

Tom Boellstorff has suggested that queer might be a method to be adopted to queer aspects of life that do not appear to be queer at first sight. He poses questions like:

> How might a shift to method, 'a word [queer studies] rarely uses,' open conceptual space for interpreting queer studies as a modality of inquiry potentially applied to any topic? How might the 'studies' of 'queer studies' thereby act less like a noun and more like a verb, a 'queer studying' even of things not self-evidently queer?[34]

Similarly, in this project, we all reflected on whether and how we could queer a judgment. We discussed whether to write a queer judgment, who is the queer judge, and how to write a queer judgment. Without giving away any spoilers about personal choices that each contributor explained in their commentary (because for you to read the whole book is indeed a queer act), three main common facets are apparent.

First, deciding to write a queer judgment came up through personal negotiations balancing conflicting emotions, resistance to the oppressive hetero-cis-normativity of the law, our personal experience of acceptance and oppression, and queer innate tensions to innovate. Motivations were several. For some of us, writing for this project has been an exercise in resilience—as Kseniya Kirichenko in this volume suggests, '[t]o find the source of support within myself'—to overcome brutal judgments against queer people. For others, writing for this project represented one of the numerous occasions to raise awareness and educate to respect. For others, it was a further step towards decolonizing knowledge, law, and academic writing. For others yet, it has been a way to conclude an intense journey of ethnographic activism.[35] But at the end, to put it joyfully and using Raffaella Carrà's words, we thought that '[m]any times, unconsciousness is the path to virtue. Arguing, arguing to love each other more and more.'[36] And so, we argued—and wrote!

Next, how did we queer our writing, you might ask? In a queer way of course! Let us explain. At the outset, the contributors to this edited collection have precisely shown how a queer approach creates new understanding and practice of drafting, writing, and publishing in law. We welcomed what Mario Mieli once pointed out, in that '[w]e should stop to be the exception that proves the norm given that this norm oppresses us.'[37] Proudly, the voices of the Queer Judgments Project have not only revised,

34. Tom Boellstorff, 'Queer Techne: Two Theses on Methodology and Queer Studies,' in *Queer Methods and Methodologies: Intersecting Queer Theories and Social Science Research*, eds. Kath Browne and Catherine J. Nash (Farnham: Ashgate, 2010), 215-216 (citations omitted).

35. Claire Jin Deschner and Léa Dorion, 'A Feminist and Decolonial Perspective on Passing the Test in Activist Ethnography: Dealing with Embeddedness through Prefigurative Methodology,' *Journal of Organizational Ethnography* 9/2 (2020), 205.

36. Raffaella Carrà, 'Tanti Auguri,' 1978 (original text in Italian: 'Tante Volte l'Incoscienza è la Strada della Virtù, Litigare, Litigare per Amarsi Sempre di Più"). To dance and sing with us you can look at: accessed 26 January 2024, https://www.youtube.com/watch?v=nFvrARdJuAU.

37. Mario Mieli, 'Dirompenza della Questione Omosessuale,' in *La Gaia Critica. Politica e liberazione sessuale degli anni Settanta. Scritti (1972-1983)*, eds. Paola Mieli and Massimo Prearo (Venezia: MarsilioEditori, 2019), 99. For an English account of Mario Mieli's work, see *Towards a Gay Communism. Elements of a Homosexual Critique*. Translated by David Fernbach and Evan Calder Williams (London: Pluto Press, 2018).

but proposed new ways to create, interpret and apply the law. Our contributors have shown that queering judgments is not only a process of rewriting but is also a process of deconstructing the oppressive norm and creating a queer norm.

The process of creating a queer norm goes beyond the subversion of the hetero-cis-norm, beyond acknowledging that law is oppressive, and beyond trying to re-shape the hetero-cis-norm to accommodate queer experiences. Surely, a queer approach is subversive, but this collection suggests a new starting point which is queer and not only resistance or opposition to the hetero-cis-normative. As Alex Powell explains in his chapter, queer writing is not only anti-normative but also, welcoming Aleardo Zanghellini's call, queer can be counter-normative. As Joanne Stagg also suggests in her chapter, '[t]he queer judge would not assume that cis-heteronormativity signifies a monolithic "norm" from which noncisgendered people or nonheterosexuals depart, nor a norm to which queer individuals should aspire. … They may make the queer ordinary and the ordinary queer.'

This project goes even further than counter-normative—it creates a new norm. This does not mean overlooking or even replicating power structures that have created oppression for queer people. Instead, it means asserting queerness as new norm and to believe that:

> A gay moralisation of life, which combats misery, egoism, hypocrisy, and the repressive character and immorality of customary morality, cannot take place unless we uproot the sense of guilt, that false guilt which still ties so many of us to the status quo, to its ideology and its deathly principles, preventing us from moving with gay seriousness in the direction of a totalising revolutionary project.[38]

We all have struggled, at least once in life, deciding whether to position ourselves within a pseudo-comfortable adherence to what is hetero-cis-morally acceptable—the good gay, good lesbian, the 'it's just a phase bisexual,' the 'she looks like a real woman' trans—or within a tumultuous and liberating subjectivity of who we really are. When adhering to the norm, some of us have faced shame that has immobilized us. Not anymore! We all bring along our personal experiences of exclusion, but we have queerly transformed those experiences into a dynamic force for change. Thus, the 'queer norm' we embrace is one that encourages humility, relationality, care, and courage. As such, it responds to the hierarchical and dominating norms that currently govern queer life.

By creating a queer norm, this collection has taken original shapes and paths. For instance, this novelty is evident in the formats adopted to express our voices in the judgments and in the commentaries that do not always conform to the typical, formal judgment. In this volume, there are counter-judgments, re-written judgments, fictionalized judgments, and even theatre plays and poems (see the contribution by Sanna Elfving, Katie Jukes, Miriam Schwarz and Surabhi Shukla). Although each chapter has a commentary and a judgment, the commentaries take different shapes such as essays, conversations and poems; some commentaries introduce the judgments, and others follow the judgments. Some of us, to celebrate queer people, have used rainbow colours in their text or added pictures (see, for instance, the contributions by Odette Mazel,

38. Mieli, *Towards a Gay Communism*, 105.

Claerwen O'Hara and Dianne Otto, and by Yàdad De Guerre and Marica Moscati). Further, the judgment writing carried out by contributors to this volume has drawn upon an interdisciplinary variety of sources ranging from ethnographic accounts to poetry.

Even when the format of the re-written judgment has been the same as the original judgment in the case in question, something queerly new and original has been added. For instance, conscious of how language can be used politically, some of us have played with words, sometimes making them more respectful (see, for instance, the chapter by Carmelo Danisi and Nuno Ferreira), but other times claiming the ownership of words like dyke/faggot/homosexual. To some readers the use of words such as 'dyke' or 'faggot' or 'homosexual' can sound offensive. However, using them, as in this collection, as Rafael Carrano Lelis and Paula Gerber point out in their chapter:

> is not intended to establish these as the identities of the authors (or anyone else). Rather, they are used as discursive positions that resignify injury, so as to allow collective agency. In this sense ... these categories should not be viewed as gendered or binary. Rather, they are introduced as a new linguistical framework that should not be reduced to the heteronormative interpretation of language.

Others have used the text of the original judgment and then queered words, grammar, and punctuation.

Our pride in creating a queer norm has stretched the limits of what queer judgment writing can mean by adding another layer of queer approach to judgments that were originally favourable to the applicants (see, for instance, contributions by Daryl Yang and by Joanne Stagg). Furthermore, contributors extended a queer approach to topics not directly related to sexuality and gender, like noise pollution from airplanes at Heathrow Airport constituting a violation of private and family life, as Kay Lalor does, or the destruction of cultural heritage as an international crime as Lucas Lixinski does. Creating a queer norm and stretching queer judgment writing has not meant lack of rigour and impartiality of judges, though (see, for instance, Liam Davis considering the limits of a queer approach in addressing the request of the party as well). As suggested at the beginning of this introductory chapter, we are dancers, and like dancers we innovate by bringing together different styles, pushing our minds, and expressing emotions, while committed to rigour and clarity.[39]

Like dancers that know how to manage and liberate the body in time and space—respecting the body although pushing it to its limits—in this collection queer bodies are catalysts and a common theme. Overall, court proceedings transform the body

39. For a beautiful visual account of what dance is, you must see and listen to Maurice Bejart, accessed 26 January 2024, https://www.youtube.com/watch?v=2IsUmj6fTj4. For an overall overview on dance studies, see: Jens Richard Giersdorf and Yutian Wong, eds., *The Routledge Dance Studies Reader, 3rd ed.* (London: Routledge, 2019); and visit the website of the Dance Studies Association, accessed 26 January 2024, https://www.dancestudiesassociation.org/. For a critical analysis of dance ontology, see Anna Pakes, *Choreography Invisible. The Disappearing Work of Dance* (Oxford: Oxford University Press, 2020). On queer studies and dance, see: Claire Croft, ed., *Queer Dance. Meaning and Making* (Oxford: Oxford University Press, 2020); Penny Farfan, *Performing Queer Modernism* (Oxford: Oxford University Press, 2017). See, also, *Queer the Ballet*, accessed 22 April 2024, https://www.queertheballet.com/.

of the litigants involved in them; the psychophysical effects of stress, emotions and expectations impact the parties' bodies. If the hetero-cis-normative law often shapes queer bodies by limiting, castrating, invisibilizing, blaming, sterilizing, repressing and (only rarely) slightly supporting queer bodies, our queer norm celebrates all queer bodies by conceptualizing queer bodies as forces for change, by centring the voices of the queer people who challenged the law (Odette Mazel, Claerwen O'Hara and Dianne Otto), by emphasizing the emotions of queer people (Senthorun Raj), by opening up spaces for queer bodies (see chapters in Part 5), by decriminalizing sexual acts between people of the same sex (see chapters in Part 1), and by recognizing queer reproduction and health (see chapters in Part 4). However, we are aware that this collection does not include judgments addressing the issues that, for example, intersex people face. Given the spontaneous nature of this project, we did not impose any topics on contributors, and topics that have not been covered here will hopefully be included in other, future outputs of the project.

Who is the Queer Judge?

In queering this introductory chapter, we, the editors, have played, experimented, performed, and joyfully pushed our boundaries; so, why not convey our reflections on the identity of the queer judge through a poem? Thus, with the help of a dear and precious friend, Barney Ashton-Bullock, here you are, dear reader, we introduce you our queer judge:[40]

The Queer Judge…

The queer judge provokes, as and when 'needs must.'

The queer judge is rigorous, impartial, a builder of trust.

The queer judge is often droll, employs wit, can humour us.

The queer judge elevates the parties/claimants
both in their reveal and their vent.

The queer judge wields spirited sensibility, applies it to other sensitivities; is well intentioned, well meant.
Changes hearts and minds bit by bit.

The queer judge doesn't compromise, broker the irrelevant
or inopportune; can revise a perjurer's hateful tune.

40. Maria Federica (Marica) and Barney are the authors of this poem. Marica wrote a list poem condensing in it what emerged from the contributors' work, and then Barney embellished it to accentuate a playful rhyme structure, so that it could almost be performative / spoken word.

The queer judge utters words like dyke/homo/faggot to show that queer ownership of such words matters.

The queer judge is attentive, alert; listens to the meanings beyond the words.

The queer judge slaloms through archaic laws that produce the 'same old, same old' outcomes as before.

The queer judge makes sure the oppressed and marginalized are seen and heard in the eyes of the law.

The queer judge aims to aid the cause against the hetero-cis-normative, the racist, the classist, the ableist, the colonialist. Prejudice? The queer judge will not stand for it!

The queer judge is empathetic to the charge and course of emotions.

The queer judge is a visionary for what justice could and should be.

The queer judge is a choreographer of curiosity, respects and reads the signs of prosecuting, and defends minds and bodies.

The queer judge makes resilient, informed judgment to mitigate past injustices against all of us 'othered.'

*So that we are no more smothered in **prejudice** and **ignorance**, intended or otherwise, and in this way **the queer judge opens all of our eyes!***

Dear Reader, this brings our dance to the end of the second Act. Take a break and come back to us for the final Act.

The Structure of the Book

The book is structured in five main parts. Part 1 focuses on crime and sodomy cases, Part 2 on privacy and discrimination cases, Part 3 on family and parenthood cases, Part 4 on health and reproduction cases, and Part 5 on asylum and migration cases. Although this structure was adopted for reasons of clarity and logic of the organization of contributions, there is unavoidably some overlap between the five parts of the book owing to the richness and complexity of the cases. Contributions within each Part of the book were ordered chronologically, thus avoiding any other ordering criteria that could prioritize any region, jurisdiction or theme. A chronological order can also

help us unearth influences some case law may have had on subsequent cases in other jurisdictions and even on seemingly unrelated topics.

Part 1—on crime and sodomy cases—starts off with Thomas Crofts, who worked on the 1953 Australian case of *Re Humpris*.[41] Crofts' interest in the case stems in part from the importance of the case in the role it played in the partial and subsequently full decriminalization of male same-sex sexual acts in the UK and afterwards across Australia. The case related to cruising in a park in Sydney, in what was seen according to the law at the time as soliciting for an immoral purpose. Although the man in question won the case on appeal, Crofts re-imagines a positive decision from a queer perspective, within the temporal limits of the case. Senthorun Raj's contribution follows, with a queer dissenting judgment in the 1997 Australian *R v Green* case.[42] The case had to do with a man who killed another man following sexual advances by the latter, where the accused made use of the Homosexual Advance Defence (HAD) to see his crime reduced from murder to manslaughter. Raj puts forward a dissenting judgment focusing on the role of disgust to contest the outcome of the original judgment. Yerram Raju Behara, Malhar Satav and Sal then offer a queer re-working of the judgment in the 2018 Indian case of *Navtej Singh Johar v Union of India*.[43] The case related to the criminalization of sexual acts between people of the same sex, and the Supreme Court of India finally agreed on the unconstitutionality of Section 377 of the Indian Penal Code. Behara, Satav and Sal offer an analysis of the impact of this case on the lived experiences of queer people in India through the form of a belated opinion written after the original judgment. Kseniya Kirichenko follows with a contribution exploring the 2018 decision in *KK v Russian Federation*.[44] This decision from the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) concerned the offensive and discriminatory language used by a member of a Russian regional parliament against the author herself. Kirichenko offers a very personal, queer and intersectional therapeutic dissenting opinion to CEDAW's original decision. Finally, Part 1 closes with the contribution from Waruguru Gaitho, who considers the 2019 Kenyan decision of the High Court of Nairobi on Petition 150 and 234 of 2016.[45] Gaitho re-imagines from a queer and decolonial perspective the upholding of the constitutionality of the criminalization of same-sex relations, by offering a dissenting opinion to the original decision.

Part 2 of the book—on privacy and discrimination cases—is opened with the contribution from Alexandra Grolimund and Alexander Maine, on the 1997 European Court of Human Rights (ECtHR) judgment in *Laskey, Jaggard and Brown v The United Kingdom*.[46] The case concerned the Bondage-Domination-Sadism-Masochism (BDSM) activities of a group of queer men, who were eventually found guilty of

41. *Ex parte Langley; Re Humphris* (1953) 53 SR (NSW) 324.
42. *R v Green* (1997) 191 CLR 334.
43. *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
44. *K.K. v Russian Federation* (25 February 2019) U.N. Doc. CEDAW/C/72/D/98/2016.
45. *Petition 150 & 234 of 2016* (High Court of Nairobi: Constitutional and Human Rights Division).
46. *Laskey and Others v The United Kingdom* (Applications no. 21627/93; 21628/93; 21974/93) [1997] 24 EHRR 39.

assault occasioning actual bodily harm and sentenced to prison. Grolimund and Maine re-imagine the original judgment from a queer perspective, finding that there was indeed a violation of the applicants' right to private life. Kay Lalor follows with a contribution on the *Hatton v UK* case, another ECtHR judgment, this time from 2003.[47] The case related to the noise pollution caused by airplanes at Heathrow Airport, and the ECtHR found that those living in the airport's flight path did not have their right to private and family life violated. Although not an obvious choice of topic for a contribution to this book, Lalor effectively puts forward a queer ecological re-imagining of the original judgment and finds in favour of the applicants. The next contribution is by Andrew Gilden, who explores the decision in *Reliable Consultants, Inc. v Earle*, concerning a 2008 decision by the USA Fifth Circuit Court of Appeals decision to strike down the ban on the sale of sexual devices in Texas.[48] Although the original decision was positive, Gilden argues for greater constitutional protection for the use and purchase of sex toys in his imagined concurring opinion, thus achieving a more transparent, sex-positive, and queerer consideration of sexual technology. Odette Mazel, Claerwen O'Hara and Dianne Otto then offer a poignant analysis of the 2014 Australian High Court decision in *NSW Registrar of Births, Deaths and Marriages v Norrie*.[49] Through this decision, Norrie was successful in changing her sex/gender descriptor on their birth certificate to 'non-specific.' Mazel, O'Hara and Otto re-imagine the case through the lens of the queer figure of tricksters, who unsettle and transgress the limits of the law. Although the original judgment was positive to Norrie, the authors offer an even more positive—and queer—decision, centring Norrie's voice and challenging colonial and heterocisnormative thinking by celebrating self-determination and difference. After this, Flick (Felicity) Adams and Fabienne Emmerich re-imagine the 2016 UK High Court decision in *Hopkins and Sodexo*.[50] The case concerned a lesbian couple in prison, who wished to remain in the same cell and offer each other emotional and physical support, particularly on account of the disability of one of them. Adams and Emmerich put forward a counter-judgment informed by queer, disability and abolitionist perspectives, in the form of a decision by the Court of Appeal on a fictional appeal against the original High Court decision, and find that the appellants did see their rights to private life and equality violated by the prison authorities. Lucas Lixinski offers another contribution that may not seem the most obvious option for a queer judgments volume, but that can effectively be read from a queer perspective: the 2017 International Criminal Court decision in *Prosecutor v Ahmad Al Faqi Al Mahdi (Reparations)*.[51] The case concerned the destruction of parts of the World Heritage Site of Timbuktu in Mali by Islamic extremists, and the reparations order that followed. Lixinski makes a valuable contribution to a developing queer international cultural

47. *Hatton v UK* (2003) 37 EHRR 28.
48. *Reliable Consultants, Inc. v Earle*, 517 F. 3d 738 (5th Cir. 2008).
49. *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11.
50. *R (on the application of Hopkins) v Sodexo / HMP Bronzefield QB* (Administrative Court) [2016] EWHC 606 (Admin).
51. *Prosecutor v Al Mahdi (Reparations Order)* (International Criminal Court Trial Chamber VIII, ICC-01/12-01/15), judgment of 17 August 2017.

heritage law, by queering the binaries and other premises subjacent to the original decision, all in the shape of a re-written reparations order. Mariza Avgeri follows with a re-imagined judgment in the 2018 judgment of the Court of Justice of the European Union (CJEU) in *MB v Secretary of State for Work and Pensions*.[52] The case related to the refusal by the UK authorities to grant an earlier retirement pension to the applicant due to her refusal to annul her marriage to obtain official recognition of her gender. The original decision was favourable to the applicant, but by looking at UK, European Union (EU) and European Convention on Human Rights (ECHR) legal elements from a queer and transgender studies perspective, Avgeri puts forward an even more favourable re-written judgment. Avgeri offers a decision which is much more respectful of the rights and needs of trans, non-binary or genderqueer people, especially those who do not wish to undergo surgical interventions or fulfil other legal requirements not compatible with individuals' self-determination. Finally, Carolynn Gray concludes this Part by looking at the 2021 UK Supreme Court judgment in the *Elan-Cane* case.[53] The case concerned the legal recognition of the applicant's non-binary identity in their passport by using X as gender marker. Gray offers a cogent and positive dissenting judgment to the original negative decision of the Supreme Court, built on a critique of the cisgenderism and bigenderism subjacent to the original decision, and a queer interpretation of the human rights of the applicant.

Part 3—on family and parenthood cases—starts off with the contribution from Rafael Carrano Lelis and Paula Gerber, on the 2002 View of the United Nations Human Rights Committee (HRC) in *Joslin et al. v New Zealand*.[54] The case related to the right to marry of two lesbian couples in New Zealand. Lelis and Gerber queer the jurisprudence of the HRC, by offering a re-written View that finds in favour of the applicants, on account of a violation of their right to marry in conjunction with the right to non-discrimination and equal protection of the law. Sanna Elfving, Katie Jukes, Miriam Schwarz and Surabhi Shukla follow with a creative exploration of the 2008 ECtHR judgment in *EB v France*.[55] The case concerned a lesbian adoption applicant who was refused by French authorities. By deploying drama and poetry techniques, the authors explore notions of family, gender, motherhood, parenting and childhood. Although the original decision of the ECtHR was positive to the claimant and found that her right to non-discrimination in conjunction with her right to private and family life had been violated, the authors powerfully unpack the stereotypes and stigma judges still associate with queer parents. The next chapter—authored by Claire O'Connell and James Rooney—re-work the Irish Supreme Court decision in *McD v L and M*.[56] The case consisted of a guardianship dispute between a lesbian couple and a gay man who had acted as sperm donor in the conception of the couple's child. The authors offer a re-imagined dissent against the Supreme Court's original decision,

52. Case C-451/16, *MB v Secretary of State for Work and Pensions* [2016] ECLI:EU:C:2018:492.
53. [2021] UKSC 56; [2023] A.C. 559.
54. *Joslin et al. v New Zealand* [2002] United Nations Human Rights Committee (UN HRC), Communication No. 902/1999, U.N. Doc. CCPR/C/75/D/902/1999.
55. *EB v France*, Application no 43546/02 (ECtHR, 22 January 2008).
56. *McD v L* [2010] 2 IR 199.

by critiquing the notions of marital and de facto families, supported by a queer creation of a constitutional right to procreative liberty. Yàdad De Guerre and Marica Moscati then offer a creative contribution related to the Italian Constitutional Court judgment no. 138/2010, which explored the right of same-sex couples to marry under the Italian Constitution.[57] In an intensely personal dialogue, the authors explore the legal and social developments up until the Court's judgment and subsequent events as well. De Guerre and Moscati also put forward a re-imagined judgment which concludes that the civil code rules concerning marriage that are interpreted as prohibiting same-sex marriages are unconstitutional for violating the parties' rights to marry, constitute a family and equality. Daryl Yang concludes Part 3 by offering a rich discussion of the 2018 Singapore High Court decision in *UKM v Attorney-General*.[58] The case related to an adoption application by a father to legally establish a parental relationship with his biological child gestated through surrogacy, with the aim of obtaining Singaporean citizenship for the child. Although the Court granted the adoption order, Yang argues in favour of a queerer, liberating approach to the case, in the form of a concurring opinion.

Part 4—on health and reproduction cases—opens with Lynsey Mitchell's contribution on the 2017 judgment of the UK Supreme Court in *R (on the application of A and B) v Secretary of State for Health*.[59] The case related to the right to abortion, more specifically having access to abortion in England through the National Health Service (NHS) despite being normally resident in Northern Ireland. Mitchell uses a queer lens to frame this case as being about reproductive rights and, more essentially, about bodily autonomy, rather than a competence devolution issue. This allows Mitchell to re-write the original judgment to find that there had been a violation of the applicants' right to non-discrimination in conjunction with the right to private and family life, as well as a violation of the prohibition on torture and inhuman or degrading treatment. Liam Davis then offers a contribution on the 2020 Court of Appeal judgment in *McConnell and YY v The Registrar General for England and Wales*.[60] The case dealt with the request of a trans man who had given birth to be named as father or parent (but not as mother) in the child's birth certificate. Despite concluding that not even a queer approach to the case could give the applicant the desired outcome, Davis reaches a re-written judgment that considers queer parenthood more carefully and declares the applicable legal norms incompatible with the ECHR. Joanne Stagg follows with an analysis of the 2020 decision of an Australian Family Court in the case *Re Imogen (No. 6)*.[61] The case—relating to a 16-year-old transgender girl—hinged on issues such as medical age of consent, parental authority, and witness expertise. Although the original decision was positive and allowed the girl to access medical transition, Stagg offers an anti-cisnormative and anti-transphobic discussion of the matter in the form of a fictional decision on an appeal against the original decision. The next contribution—authored

57. Constitutional Court, judgment no. 138, 14 April 2010.
58. [2018] SGHCF 18.
59. *R (on the application of A and B) v Secretary of State for Health* [2017] UKSC 41 (UK).
60. *R (on the application of McConnell) v The Registrar General for England and Wales* [2020] EWCA Civ 559.
61. *Re Imogen (No 6)*, No. 761 (FamCA 10 September 2020). [2020] FamCA 761.

by Po-Han Lee, Tsung-Han Yu, Titan Deng and Tzu-Wei Lin—considers the Taiwan High Court's 2022 judgment in Appeal-Review-(1)-Zi No. 162 (2021). The case concerned the criminalization of HIV transmission in the context of chemsex. By offering a queer reading of the 'undetectable equals untransmittable' (U=U) discourse, problematizing the exceptional status of HIV amongst other infectious diseases, and focussing on the agency and shared responsibility of people who engage in sex, the authors re-write the original decision and acquit the defendant. Frank Nasca closes this Part of the volume by proposing a 2023 decision by the Health Services Appeal and Review Board in the *Nathaniel Le May v The General Manager, Ontario Health Insurance Plan* case. The case involved the refusal by the Ontario Health Insurance Plan (OHIP) to fund a phalloplasty surgery for a non-binary transmasculine applicant, on the basis of his need for non-normative surgical outcomes. Before the Board could reach a decision, OHIP chose to fund the surgery and moved to dismiss the case as moot, meaning that the other legal issues raised in the case went undecided. Nasca therefore puts forward the decision the Board should have nonetheless taken to promote systemic policy change, by asserting a queer reading of the applicant's right to transgender healthcare under the constitutional protection of his rights to equality and security of the person.

Finally, Part 5—on asylum and migration cases—contains three contributions. The first one is authored by Alex Powell and it relates to the 2010 UK Supreme Court's decision in *HJ(Iran) & HT(Cameroon) v Secretary of State for the Home Department*.[62] The case concerned two gay men seeking asylum in the UK, and the main point revolved around whether authorities could legitimately expect asylum claimants seeking protection on grounds of their sexual orientation to return to their countries of origin and conceal their sexual orientation to avoid the risk of persecution. Although this judgment has been considered a significant victory for such claimants for reducing the scope of such discretion reasoning, Powell argues for a queer counter-judgment that completely precludes any expectation of discretion and puts forward an alternative that is less homonormative, homonationalist, and restrictive of sexual diversity. This contribution is followed by that of Carmelo Danisi and Nuno Ferreira, who explore the 2013 CJEU judgment in *X, Y and Z v Minister voor Immigratie en Asiel*.[63] The case related to three gay men—from Sierra Leone, Uganda and Senegal—who saw their asylum claims refused by the Dutch authorities. The authors offer a re-written judgment that is informed by a queer reading of the legislation and fundamental rights in question, as well as a human rights-based approach to refugee law, thus not only precluding any expectation of discretion, but also adopting a less restrictive approach to determine that claimants belong to a particular social group, and considering that criminalization of same-sex sexual acts should be presumed to be persecution. Alina Tryfonidou concludes this book by reimagining the 2018 CJEU judgment in the *Coman* case.[64] In this case, the Court considered the situation of a same-sex male couple who

62. *HJ(Iran) & HT(Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31.

63. Joined Cases C-199/12, C-200/12 and C-201/12, *X, Y and Z v Minister voor Immigratie en Asiel*, 7 November 2013, ECLI:EU:C:2013:720.

64. Case C-673/16, *Coman and Others v Inspectoratul General Pentru Imigrari and Ministerul Afacerilor Interne*, ECLI:EU:C:2018:385.

had made use of EU free movement of persons, and wished to see their marriage recognized in Romania—the home country of one of the members of the couple. Although the Court produced a decision that was positive for the applicants by recognizing that their right to free movement under EU law required the recognition of their marriage in Romania, Tryfonidou proposes a re-written judgment that adds to the original by also considering a fundamental rights line of argumentation and queering the terminology and overall approach of the Court.

While most commentaries followed the Counterpress style guide, contributors were given the freedom to vary from that style if for some substantive or stylistic reason they believed a certain variation was required. In relation to the judgments, contributors were also given the option to either follow the publisher's style guide or the original decision's own style.

What Lays on the Horizon

Although we are immensely proud of the substantive piece of work that we—editors and contributors—have put together, and are convinced of the generative nature of this project, we are also undoubtedly aware of the limitations of this volume. We have been unable to include contributions relating to certain regions, such as Latin America and Middle East. The selection of topics considered by the contributions that follow are necessarily limited, and do not cover so many other SOGIESC-related topics such as polygamy, open relationships, cohabitation, political representation, intersex people,[65] asexual people, tensions between SOGIESC-related rights and freedom of religion and other rights, and so on. Moreover, we believe any topic can be 'queered' and 'queer' does not necessarily need to be indexed to SOGIESC issues. Consequently, issues like climate change, Indigenous sovereignty, disability liberation, self-determination, borders, militarization, poverty, etc. can all be analyzed from queer perspectives and judgments pertaining to those issues can be re-written by adopting queer methodologies. We trust future initiatives will gradually cover the space still left uncovered by this volume.

We are also conscious of the limitations of the written medium. Although we have given contributors plenty of freedom to experiment with the form of their contributions, and many have been deliciously creative and inspiring, all contributions remain for the most part constrained by the written format. We will pursue other modes of expression in the future steps of the Queer Judgments Project, including live drama, photography, comic strips, and so on. We invite fellow scholars, activists and artists to join us in this effort to queer the law through non-written and other creative means.

Similarly, we have given much freedom to contributors in terms of terminology. Some preferred shorter acronyms, others longer ones; some preferred to concentrate on characteristics, others on identities; some on collective dimensions, others on individual ones; some on widely accepted terms, others on challenging historically offensive terms

65. Mazel, O'Hara and Otto's commentary makes reference to an amicus curiae submission from Organisation Intersex International Australia, which raised a number of concerns although the *Norrie* case did not involve an intersex person.

that are now being reclaimed but still come across as hurtful to most. As it is commonly recognized in academia and across community groups and organizations, terminology is a minefield. Rather than pretending that there is clearly right and wrong terminology, we accepted the need to embrace a variety of stances about terminology, and embraced the queering of words as well. Can the respectful and well-informed approach to terminology of this volume's contributors serve as an example for future efforts in the field of queer studies and beyond?

More fundamentally, we realize the somewhat naïve idea that we can queer a system that—both historically and presently—has caused so much harm to queer people and resists any urgent change. Even more deeply, as some of our contributors have rightly pointed out, there may not be any point in trying to queer the law, as it will always remain a repressive tool. As true as that may be, we are still of the opinion that there is merit in attempting to queer the judgments below. No matter how slow and partial this process may be, if it translates in some improvement, then this effort will have been worth it. How much this sort of enterprise translates into any practical change is of course extremely difficult to measure and requires a complex mixture of consistent effort, changing of teaching practices,[66] targeted dissemination, continuous awareness raising, and—let us admit it—luck. Still, much beyond any current neo-liberal pressure to translate academic research into practical changes to law and policy (framed as research impact in many jurisdictions), we do hope that this volume will produce positive change to legal frameworks and practices around the globe.

We also wonder how much more queering the law may be stretched and wait expectantly for works that will push those boundaries even further. As contributions below combine queer approaches with feminist, trans, critical race, decolonial, heritage, reproductive, decarceration, disability and ecological approaches, we hope these contributions will inspire others to consider—often unexpected—queer angles to their own work, and nurture combinations of theoretical frameworks that join efforts in broader social justice issues and movements.

This volume is but a seed of many more queer judgments initiatives that may follow. Besides other initiatives still to come within the framework of the Queer Judgments Project itself, we hope that this volume will work as a stepping stone for other volumes and initiatives, perhaps focused on specific jurisdictions, regions, themes, identities, characteristics, and so on. We look forward to seeing those come to fruition and supporting them the best we can along the way. As we do, read our chapters and dance with us!

66. In line with the principles developed by Paula Gerber and Claerwen O'Hara: Paula Gerber and Claerwen O'Hara, 'Teaching Law Students about Sexual Orientation, Gender Identity and Intersex Status within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy,' *Journal of Legal Education* 68(2) (2019), 416.