

Review Article: Curiosity, Paradox and Dissatisfaction: Queer Analyses of Human Rights

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Abstract

Three recent books are discussed which offer queer analyses of attempts to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) people from violence and discrimination using the international human rights regime. A common theme is the way in which equal rights are invoked and institutionalised to address prejudice, discrimination and violence. The take, however, is critical: while it may be a remarkable turn of events that the United Nations (UN) and similar institutions have become LGBTI advocates, such Damascene conversions generate their own dilemmas and rarely resolve structural and conceptual paradoxes. This article foregrounds the curiosity of queer scholars engaged with the application of human rights to matters of sexuality and gender, observes how they articulate the paradoxes and dissatisfactions that are produced in this normatively and politically charged field, and draws out the limitations and complexities of rights politics in combating systemic exclusion.

Keywords

human rights, queer, LGBTI rights

Résumé

La discussion porte sur trois ouvrages récents, qui utilisent la théorie *queer* pour analyser des tentatives de protection de membres de la communauté LGBTI contre la violence et la discrimination par le biais du régime international des droits humains. Un thème commun est la manière dont l'égalité des droits est convoquée et institutionnalisée afin de répondre au préjudice, à la discrimination et à la violence. Ce point de vue est toutefois crucial: les Nations Unies et d'autres institutions similaires, il est vrai, ont changé la donne de manière remarquable en devenant porte-paroles des groupes LGBTI, mais les conversions si éclatantes génèrent souvent leurs propres dilemmes, et manquent généralement de résoudre les paradoxes structurels et

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conceptuels. Cet article met au premier plan la curiosité de chercheurs dans les domaines *queer* qui œuvrent pour la mise en pratique des droits humains dans les champs de la sexualité et du genre. On observera comment ces chercheurs articulent les paradoxes et les mécontentements produits par ce terrain chargé normativement et politiquement, et quelles sont les limites et les complexités de la politique des droits dans la lutte contre l'exclusion systémique.

Mots-clés

droits humains, *queer*, droits LGBTI

Resumen

Examinamos tres libros recientes que analizan desde una perspectiva «*queer*» las tentativas de proteger a las personas de la comunidad LGBTI frente a la violencia y la discriminación utilizando el régimen internacional de derechos humanos. El modo de acogerse a la igualdad de derechos e institucionalizarla frente a los prejuicios, la discriminación y la violencia es un tema común. El planteamiento es, no obstante, crítico: es posible que el hecho de que la ONU y otras instituciones similares se hayan convertido en defensores de la comunidad LGBTI constituya un cambio de dirección notable, pero las conversiones de semejante envergadura generan sus propios dilemas y, rara vez, resuelven paradojas estructurales y conceptuales. El presente artículo destaca la curiosidad de académicos «*queer*» comprometidos con la aplicación de los derechos humanos a cuestiones de sexualidad y género, y expone el modo en que articulan las paradojas e insatisfacciones que se producen en este politizado y normativizado campo. Además, establece las limitaciones y complejidades de la política de derechos a la hora de combatir la exclusión sistémica.

Palabras clave

derechos humanos, *queer*, derechos de la comunidad LGBTI

Dianne Otto, ed., *Queering International Law: Possibilities, Alliances, Complications, Risks* (Abingdon: Routledge, 2018, xiv + 290pp).

Anne Hellum, ed., *Human Rights, Sexual Orientation, and Gender Identity* (Abingdon: Routledge, 2017, ix + 122pp).

Oishik Sircar and Dipika Jain, eds., *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times* (New Delhi: Zubaan, 2017, lxx + 560pp).

The United Nations Universal Declaration of Human Rights declares that 'All human beings are born free and equal in dignity and rights'. In recent years the Human Rights Council of the UN has highlighted the application of this claim to people who suffer violence and discrimination because of prejudice regarding sexual orientation and gender identity. In 2013, the Human Rights Council launched its 'Free and Equal' campaign: 'an unprecedented global United Nations public education campaign for lesbian, gay, bisexual and transgender (LGBT) equality',¹ subsequently also including intersex people

1. United Nations, 'UN Free & Equal Campaign First Year Impact Report 2013-2014' (Geneva: Office of the UN High Commissioner for Human Rights, 2014). Available at: <https://www.unfe.org/wp-content/uploads/2017/05/2014-UNFE-Report.pdf>.

(thus: LGBTI).² The high water mark of these developments came in 2016, when the UN established the office of an Independent Expert for protection against violence and discrimination based on sexual orientation and gender identity (SOGI).

In each of the books under discussion, these changes, or ones like them, happening in domestic and regional as well as global contexts, are examined. A common theme is the way in which equal rights are invoked and institutionalised to address prejudice, discrimination and violence. The take, however, is critical: while it may be a remarkable turn of events that the UN and similar institutions have become LGBTI advocates, such Damascene conversions generate their own dilemmas and rarely resolve structural and conceptual paradoxes. In this review my purpose is to foreground the curiosity of queer scholars engaged with the application of human rights to matters of sexuality and gender, to observe how they articulate the paradoxes and dissatisfactions that are produced in this normatively and politically charged field, and to draw out the limitations and complexities of rights politics in combating systemic exclusion.

Before we delve into that field, a few words about the books. Each is an edited volume: Dianne Otto's originated in a queer legal theory workshop at the University of Melbourne, and contains contributions from a wide range of theorists working in queer, critical, postcolonial and feminist modes. Anne Hellum's volume was previously published as a special issue of the *Nordic Journal of Human Rights*,³ which in turn emerged out of a conference titled 'Sexual Freedoms, Equality and the Right to Gender Identity as a Site of Legal and Political Struggles', held in Oslo, December 2014. The authors come from Europe (Norway, the Netherlands, Ireland) and Australia. Its mode (with the exception of a piece by Otto) is more conventional advocacy and scholarship on gender, sexuality and law, including a significant focus on the 2007 Yogyakarta Principles⁴ (discussed further below), recent SOGI developments for the international conventions on women and children (CEDAW and CRC respectively) and national cases from Norway and the UK on gender in the law.

In the introduction to our final volume, Oishik Sircar and Dipika Jain ask, 'What *right* do we have to represent queers?... we must say: we don't have a right, we have

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2. This acronym takes many forms, with its various extensions usually intended to include additional groups of sexuality and gender identity/expression diverse people, usually on indentitarian grounds (where, for example the G stands for Gay which is understood as a sexual identity). It is worth noting that the UN does not add Q (for queer) to its acronym; and queers may reject the acronym altogether, often because of its indentitarian, culturally specific, or geo-politically loaded reference points. I tend to use the version of the acronym being used by authors in the immediate context (for a useful glossary see, <https://lgbtqia.ucdavis.edu/educated/glossary.html>). The other acronym used here is SOGI (also extended to SOGIE (E for expression) or SOGIESC (SC for sex characteristics)). SOGI is used by the UN and is often used outside the West because of its capacity to be distant from the Western cultural and indentitarian forms usually associated with the categories in the LGBT+ acronym. These terms have often been the subject of acrimonious debate: my intentions here are to provide generous and flexible usages.
 3. *Nordic Journal of Human Rights* 33, no. 4 (2015).
 4. 'The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity', 2007. Available at: <http://yogyakartaprinciples.org>. Last accessed May 24, 2018.

a *critique!*'⁵ The essays collected in their volume, originally published in a special double issue of the *Jindal Global Law Review* across 2012 and 2013, offer a multitude of critiques of queer politics in neoliberal times, seeking to de-exoticise and de-colonise discourses of sexuality and gender and to self-reflexively critique the commitments of a global queer movement that inhabits the paradox of being both in some sense unified but also fractured.

Among the many and diverse themes picked up within these volumes – and each essay could productively be engaged at length in its own right – a recurring issue is the impact of the new interest by global and regional human rights institutions in the protection of (some?) queer subjects, as exemplified by the developments at the UN noted above. In my comments, then, I shall work with and highlight a number of the essays from these volumes that explore the dynamics generated by this turn to the protection of sexuality and gender diversity, and the way in which various contributors ponder whether this might be, or might possibly be the *antithesis of*, a queer turn in international human rights.

I take my lead here from Dianne Otto. She has essays in each of the three volumes as well as being the editor of the most recent, and her work is thus a useful thread to follow. Her response to the move towards LGBT rights protection is nuanced, sympathetically critical and gets to the nub of much of the discussion found throughout these volumes. In *Queering International Law* she tells us bluntly that: 'A queer analysis cannot be answered by granting equal rights, although this may constitute a partial response'.⁶ This partial response of granting rights is the one which, as we have noted, increasingly has runs on the board at the global institutional level. The UN has been joined by many other formal institutions to affirm that 'gay rights are human rights'.⁷ The paradox, as Otto tells us in another of her essays, echoing Gayatri Spivak,⁸ 'is that the narrow discourse of human emancipation that is offered by liberal rights has material and symbolic effects and is, at the same time, something that we "cannot not want"'.⁹

Many of the essays collected across these volumes address these rights and their effects in the context of the global human rights regime and attempts to make it attentive to 'non-normative' sexuality and gender. Most contributors writing on this theme also grapple with some version of the paradox, or are observing the way in which it plays out, as LGBTI rights become part of the human rights repertoire. Otto is correct to say,

5. Oishik Sircar and Dipika Jain, eds., *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times* (New Delhi: Zubaan, 2017), xlviii.

6. Dianne Otto, 'Introduction: Embracing Queer Curiosity', in *Queering International Law: Possibilities, Alliances, Complications, Risks*, ed. Dianne Otto (Abingdon: Routledge, 2018), 1–11, 1.

7. Hillary Clinton's speech to the UN, as US Secretary of State, being a notable moment: Hillary Clinton, 'Remarks in Recognition of International Human Rights Day', Archive, US Department of State, 6 December 2011. Available at: <https://2009-2017.state.gov/secretary/20092013clinton/rm/2011/12/178368.htm>. Last accessed May 24, 2018.

8. Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* (New York: Routledge, 2009), 45–6.

9. Dianne Otto, 'Transnational Homo-Assemblages: Reading "Gender" in Counterterrorism Discourses', in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), 73–96, 84.

though, that equal rights *do not* satisfy a queer analysis – or *analyses*, as we see from the variety of them collected here: 36 essays from 40 authors. Before I focus on a selection of those which articulate critical approaches to human rights applied to sexual orientation and gender identity, I start with a few words about how *queer* is introduced and understood across these volumes.

Queer

She has an abundance of Ears and Frogs on her Robe; her Hair stands up on end; Wings on her Shoulders; her Arms lifted up; she thrusts out her Head in a prying posture. The Ears denote the *Itch* of knowing more than concerns her. The Frogs are Emblems of *Inquisitiveness*, by reason of their goggle Eyes. The other things denote her running up and down, to hear, and to see, as some do after News.¹⁰

Your favourite queer scholar may not *quite* appreciate this as their portrait! It is in fact an account by Cesare Ripa of the figure of Curiosity, as it appears in his *Iconologia*, a guide to moral emblems, 1611. Ripa, we are told by Dianne Otto, ‘associates curiosity with deviant expressions of gender, uncontrollable sexual desires and interest in myriad forms of knowledge considered disruptive and dangerous to the status quo’.¹¹ Curiosity’s dangerousness traditionally is traced back to the Old Testament’s Eve, maligned for desiring forbidden knowledge; it is also traced forward to queer thinkers of today, also maligned for thrusting *their* heads in prying postures, for having an itch after illicit knowledge, for being inquisitive and for challenging inequality, exploitation and all things considered ‘natural’.

These transgressive characteristics of curiosity are built into the fabric of Otto’s collection, as it seeks ‘to show how sexuality works as a fundamental organising principle in international law.’¹² The four themes of the book are reflected in its subtitle: complicities, possibilities, alliances, risks. Like the ideas invoked by the title of the second book, *New Intimacies, Old Desires*, these themes are evocative and resonate across all three books considered here. The editors of *New Intimacies, Old Desires* also speak, like Ripa on curiosity, of being on ‘a meandering, crooked way, going back and forth, up and down, inside and out’¹³ as they seek to problematise our frameworks for understanding the relationships between law, culture, queer sexualities and neoliberalism: they offer ‘a messy miscegenation of ideas’ which they understand as a ‘purposeful political act’. Central to this is the move away from queer indentitarian categories; their authors do not claim to speak in the voice of the ‘true queer’; rather, *queering* is seen as a method of critique in the service of emancipation; it is ‘an ethic of responsibility and a praxis of radical transformation’.¹⁴ Queer in Hellum’s volume comes to us primarily from Otto’s chapter, an instructive case of just this *queering*: taking an instance of the attempt to use human rights to protect

10. Otto, ‘Introduction’, 2.

11. *Ibid.*, 2.

12. *Ibid.*, 6.

13. Oishik Sircar and Dipika Jain, eds., ‘Introduction: Of Poweful Feelings and Facile Gestures’, in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), xiii-lxi, xiv.

14. *Ibid.*, xxxiv.

sexuality and gender diverse people, and considering the consequences of running that attempt through the existing structures and paradoxes of international human rights law. The case is the development of the Yogyakarta Principles, and the summary conclusion, unpacked in more detail below, is the need for them to undergo ‘a queer-feminist coalitional revision’.¹⁵ I turn now to look in more detail at a number of the collected essays in which contributors ask curiously uncomfortable questions about human rights.

Queering Human Rights

Gender and sexuality rights, commonly depicted as on the cutting edge of the human rights movement, have a radical allure. In Ratna Kapur’s telling of the engagement between queer and human rights, found in Otto’s *Queering International Law*, that *allure* is the most that human rights can offer. Human rights have not become queerly radical; ‘the lure of normativity and the glitter of respectability’¹⁶ have dominated the engagement of human rights with matters of sexuality and gender. Rather than the result being the queering of human rights, Kapur suggests the outcome instead has been the de-radicalising of queer. As she comments, ‘Queer radicality that promised to de-link gender as well as sexuality from naturalised, normalised, biological categories, finds itself swept into the normative vortex of human rights... queer advocacy finds itself doing the very governance work in sexual rights that it sought to challenge’.¹⁷

Here Kapur sees queer walking the route that gender has taken before it. In the same way that a form of feminism has established itself in the corridors of the UN, but has also imbibed the norms, values and will to power of the regulatory state and aligned international institutions (thus becoming ‘governance feminism’),¹⁸ so too increased visibility in and recognition by key international organs signals not just the acceptance of LGBTs within the human rights frame, but also something about how that frame has de-radicalised the queer in human rights.

Much of this is because of the way in which queer became absorbed into and complicit with dominant forms of (Western) sexuality, in the process generating those identified as the ‘good homosexuals’. Those unable to cash white, secular, nationalist gay norms, the ‘bad homosexuals’, remain as other-ed as always. Much post-colonial critique has ranged (and raged) over this terrain; but it too does not satisfy Kapur. Notwithstanding her praise of a range of postcolonial scholars who take us beyond the standard tropes of sexual repression or excess and sexual liberation, she observes an inevitability about the way in which the contexts of international human rights constitute the discourse of homosexuality against a cultural other. Critical here are the presumed end goals of same

15. Dianne Otto, ‘Queering Gender [Identity] in International Law’, in *Human Rights, Sexual Orientation, and Gender Identity*, ed. Anne Hellum (Abingdon: Routledge, 2017), 23–42, 25.

16. Ratna Kapur, ‘The (Im)Possibility of Queering Human Rights Law’, in *Queering International Law: Possibilities, Alliances, Complications, Risks*, ed. Dianne Otto (Abingdon: Routledge, 2018), 131–47, 132.

17. *Ibid.*, 135.

18. Janet E. Halley, *Split Decisions How and Why to Take a Break from Feminism* (Princeton: Princeton University Press, 2006); Janet E. Halley, *Governance Feminism: An Introduction* (Minneapolis: University of Minnesota Press, 2018).

sex desire; it is these which seem irrevocably Euro-American in contemporary human rights discourse. Consequently, alternatives are delegitimised and marginalised. 'The ultimate performance of this identity rests in an "out of the closet" LGBT identity that is prescribed as the antidote for all Third World settings'.¹⁹

From here, Kapur gives us a tantalising taste of how to think queerly beyond 'the narrow dialectic of visibility and invisibility'.²⁰ She challenges us to contemplate that queer may *not* need visibility through rights, and that in such a culture or context, insistence on LGBT rights in order to be gay in the world constitutes an *intervention*, not a liberation. Queer, to be radical, must avoid such complicity, and be prepared to look afresh at what constitutes oppression in the world – to consider, for example, that this may include the saviour impulse of the global human rights regime; perhaps understandably a challenging task for those of us who have only just managed to get listed on the global register of rights bearing subjects!

There is no doubting the power of demanding and affirming that queers have rights; but as Kapur says, 'the radical moment is transient'.²¹ Aeyal Gross' analysis in the same volume bears this out and confirms Kapur's repeated concern that queer radicality risks losing out against the way in which rights strengthen the regulatory power of the state and its international instruments to code and recode us into very specific subjectivities and norms, from which queer deviancy is as dangerous as rights protection is lauded. Gross' discussion proceeds under the heading of *homoglobalism*, or *global gay governance*, which he uses to interrogate at the level of global institutions the incorporation by 'state, state-like and state-affiliated power' of ideas and practices from LGBT advocacy.²²

Unlike homonationalism, which focuses on the domestication of gay demands and their co-optation by nationalist projects, and examines the use of LGBT rights in state propaganda, Gross argues that homoglobalism tracks the changing attitudes of states to homosexuality, and the increasing involvement of LGBT advocacy ideas, practices and even people, at the level of global governance. He further argues the need to critically evaluate the promise of global gay governance (GGG) as a genuine force for the advancement of LGBT rights, as against the possibilities for complicity with and co-optation by powerful institutions and interests. Reviewing international developments related to the United Kingdom, the United States and also certain key international financial institutions, Gross concludes that GGG is a 'package deal' in which the good, the bad and the ugly leave queer communities in a familiar double bind: GGG provides access and influence, and with it the potential for harm.

Gross' discussion of the emergence of GGG at the UN highlights the dangers. On the one hand, the UN has taken up the cause of LGBT rights quite emphatically, with measures from publicity campaigns to the appointment of an Independent Expert on Sexual Orientation and Gender Identity. Gross makes the observation that many of the UN's key institutional defenders of LGBT rights have come from the global south: Ban Ki-moon,

19. Kapur, 'The (Im)Possibility of Queering Human Rights Law', 140.

20. *Ibid.*, 140.

21. *Ibid.*, 142.

22. Aeyal Gross, 'Homoglobalism: The Emergence of Global Gay Governance', in *Queering International Law: Possibilities, Alliances, Complicities, Risks*, ed. Diannne Otto (New York: Routledge, 2018), 148–70, 149.

Nivay Pillay and Vitit Muntarbhorn being the most high profile among them (but we note that since he wrote, these individuals have left their UN positions). These appear to be unambiguously good developments, although Gross reports misgivings about how such elite leaders can help emancipatory change on the ground.

On the other hand, we have a development, also widely lauded, which illustrates the complicity side of the equation. This is the advent of the UN Security Council's interest in LGBT rights, in the context of ISIS' persecution of LGBT Syrians and Iraqis. Drawing carefully on Scott Long's analysis of this episode,²³ we are left with the impression that this encounter was of more use to the UN and the US than it ever could be to gays on the ground. Gross reports Long's view that the Security Council's meeting was at best useless, and at worst contributed to the increasing number of ISIS executions of LGBT people; that 'putting LGBT victims of ISIS under the symbolic protection of the United States and the Security Council would make sense only if there was something the United Nations could and would do to help them... If all they can do is talk... the *only* result is the cost to gay lives'.²⁴

At this point Gross returns us to Dianne Otto's conclusions about governance feminism at the Security Council, which has also been a double-edged sword, simultaneously deflecting attention from structural problems but providing a strong resource for organisational network activism. Gross enjoins us to examine the effects that developments at the UN generate for LGBT rights, a conclusion that bids us to bide our time in making judgements.

Evaluating global gay governance at the UN may require *us* to bide our time, but another of the volumes under review engages in this task with respect to a development which took place precisely because of UN recalcitrance: the creation of the Yogyakarta Principles. These were established precisely because of the failure of the United Nations and other international agencies to advocate effectively for the human rights of sexuality and gender diverse peoples. Anne Hellum reminds us that: 'The Principles were drafted by a group of high level international experts in Yogyakarta in Indonesia in 2006 to fill the existing human rights gap'.²⁵ Her collection *Human Rights, Sexual Orientation, and Gender Diversity* anticipates the 10th anniversary of the Yogyakarta Principles, a period which allows for significant critical reflection on their impact. The volume contains two essays which do this directly; following these are two essays which look at international law instruments – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Convention on the Rights of the Child (CRC). Two others examine specific rights cases, in the UK and Norway respectively. It is strange, given the focus on the Yogyakarta Principles in the volume, that it does not discuss the (then) impending update of the Principles: YP+10. Of the update itself,

23. Scott Long, 'New ISIS Execution for "Sodomy": Attention, UN Security Council', *A Paper Bird* (blog), 17 September 2015. Available at: <https://paper-bird.net/2015/09/17/new-isis-execution-attention-un-security-council/>. Last accessed May 24, 2018.

24. Gross, 'Homeglobalism', 163.

25. Anne Hellum, 'Human Rights, Sexual Orientation, and Gender Identity', in *Human Rights, Sexual Orientation, and Gender Identity*, ed. Anne Hellum (Abingdon: Routledge, 2017), 1–4, 1.

the Yogyakarta Principles' website says: 'The YP plus 10 document emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation and gender identity and the recognition of the distinct and intersectional grounds of gender expression and sex characteristics'.²⁶

Michael O'Flaherty, author of the first article on the Yogyakarta Principles in the volume, was a key participant in the development of the Yogyakarta Principles in 2006: 'In the role of rapporteur for development of the Yogyakarta Principles it was my function to propose textual language and to negotiate among the participating experts to find consensus formulations'.²⁷ His article details the subsequent influence of the Principles across the various operational levels of international law. The achievement here, on its own terms, is outstanding. From day one, support was loud and clear from the UN Human Rights Council and a wide range of other UN entities. Many individual states articulated support, as did Intergovernmental organisations such as the European Parliament Intergroup on Gay and Lesbian Rights. Subsequently, the Principles have been regularly invoked in the UN's Universal Periodic Review process, and were a key reference point in the United Nations Human Rights Commissioner for Refugees' (UNHCR) Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity (2008).²⁸ They have been mentioned by a range of UN treaty monitoring bodies. The Principles have also been taken up regionally, most notably by a range of bodies in Europe, but also elsewhere, such as in the Inter-American human rights system. And many individual states have used them as standards in the development of their own instruments.

This record of influence and impact is impressive. What might be said about it though, if one adheres to our opening observations, that a queer analysis cannot be exhausted with the provision of equal rights? That observation came from Diane Otto; fittingly then, it is Otto who also provides the other essay in Hellum's volume which most directly considers the Yogyakarta Principles. For Otto, notwithstanding the queer historiography of the Yogyakarta Principles, they 'are in need of queer-feminist coalitional revision'.²⁹ Let us take a look at what Otto means.

A central thrust of Otto's piece concerns the impact of the conventional view that gender and sexuality have a 'biological anchor'. While many feminists and queer thinkers have sought to denaturalise sex *as well as* gender – 'to understand that neither sex or gender exists prior to regulatory discourses which make certain permutations of gender intelligible (normal) and dismiss others that fall outside the [male/female] binary, in various ways, as abnormal'³⁰ – Otto is concerned that the Yogyakarta Principles, like other

26. 'The Yogyakarta Principles'.

27. Michael O'Flaherty, 'The Yogyakarta Principles at Ten', in *Human Rights, Sexual Orientation, and Gender Identity*, ed. Anne Hellum (Abingdon: Routledge, 2017), 4–22, 5.

28. United Nations Human Rights Commissioner for Refugees, 'UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity' (United Nations Human Rights Commissioner for Refugees, 2008). Available at: <http://www.refworld.org/docid/48abd5660.html>. Last accessed May 24, 2018.

29. Otto, 'Queering Gender [Identity] in International Law', 25.

30. *Ibid.*, 24.

human rights instruments (such as CEDAW, itself discussed in several essays across these volumes), fail in their capacity to fully address matters of discrimination and equality *precisely because* they accept conventional biological and heteronormative accounts of sex and gender.³¹

In any critique of the Yogyakarta Principles, it must be remembered that they came into existence on the basis of a very deliberate, conservative, strategy: the objective was to ‘collate and clarify’ the then (2006) state of international law with respect to the issues of ‘sexual orientation’ and ‘gender identity’.³² This remains true of the 2017 update and extension of the principles, which take account of legal developments over the intervening decade. Using this strategy, even a progressive reading of existing law will necessarily be bound by prevailing norms, frameworks and categories. The power of the Principles in part stems from this foundation, and the support they have provided as a consequence for global action cannot be gainsaid. At the same time, advocates must be cognisant of the *limits* of the basis for that support (prevailing international law), particularly when juxtaposed with full-blown queer and feminist ambitions to end all forms of inequality.

Thus, while Otto affirms that the Yogyakarta Principles ‘contribute to a transformative understanding of gender’, she also has significant reservations. For example, the original Principles inclusively argue that everyone has a gender identity, but this genuine advance is articulated in a way that is problematic for people who are gender neutral or do not understand their gender through an identity lens. And then, to advert to a central theme of Otto’s broader analysis, the Yogyakarta Principles’ definition of gender retains a physiological anchor, a key consequence of which is the exclusion of gender subjectivities which challenge the male/female binary, along with the reinforcement and re-naturalisation of that binary. Otto also notes that ‘the representation of gender identity as an individual’s (deeply felt) destiny, without reference to the way that social context continuously de-limits the choices available to every individual, stands in stark contrast to the standard “feminist” UN definition of gender as a social category’.³³ Otto faults the original Yogyakarta Principles for only applying the discussion of gender identity to the situation of transgender people, thus ‘closing down its transformative possibilities for everyone’.³⁴ YP+10 does go further than the original document, expressly including clauses about gender expression, as well as sex characteristics, and linking these to developments in international law during the period. While these may diversify and extend the original’s commitments, it is not clear to me that these changes address Otto’s fundamental concerns.

The de-radicalising consequence of building advocacy on the basis of prevailing structures is seen most clearly in what Otto articulates as the Yogyakarta Principles’ mere re-configuration – rather than contestation – of the heteronormative family model as a basis for state and society (this critique seems clearly to apply to YP+10 as well). Diverse sex and gender subjectivities are given formal sanction, but to properly exist

31. Ibid., 25.

32. ‘The Yogyakarta Principles’.

33. Otto, ‘Queering Gender [Identity] in International Law’, 37.

34. Ibid., 38.

they have to fit into the grid of existing laws and social practices, and as they do fit in, they reinforce the normative power of the status quo: 'the compulsory practice of heterosexuality' as Butler³⁵ puts it, even for those of us who are something other than standardly hetero. The purpose of the family is procreation; the model is the monogamous couple; the primary concern is the interests of the children. Neither the abuse of power relations within the heteronormative family model, nor the question of the freedom and enjoyment of sex, are voiced. Otto's point here, also brought out more fully in her chapters in the two other books, is that the quid pro quo of inclusion ('admission into the heterosexual institutions of the nation')³⁶ is the requirement that queer and feminist critiques of the monogamous heterosexual family and the reproductive state be quietly put to one side.

In this way queers are absorbed into the codes of respectable conduct which are prescribed by the modern neoliberal state, and its increasingly internationalised market system. This theme is central to the final book in our collection. The 15 diverse essays collected here directly or indirectly come back to the question of how the equal rights demand that we opened with is not enough. Each, in some way, disturbs the parsimony of claiming equal rights for LGBTs, showing how beneath and beyond the desire for equal rights that we cannot not want, the prevailing impact of neoliberal modernity twists and distorts both those rights and the various projects that aim to realise them.

This outcome is what Jasbir Puar's contribution analyses under the rubric of homonationalism, defined as 'the consequences of the successes of the LGBT liberal rights movement',³⁷ where the gay rights success story is 'built on the backs of racialized and sexualized others', others who never gained, or who have latterly become invisible to, equal rights structures and advocacy. Citing the call for papers out of which this volume emerged, Puar notes that the rights-based subject is 'arguably the most potent aphrodisiac of liberalism'.³⁸ The papers in this volume deflate the liberatory expectations of such rights-based liberalism by showing the complex outcomes these claims engender in a world structured by the forces of settler colonialism, neoliberal capitalism and imperial power. Puar illustrates this through an extended analysis of Israel's use of its pro-gay reputation to deflect attention from its policy of occupation in Palestine (where the well-being of gays does not attract from the occupier the same concern). Puar shows, as do many of the accompanying authors in the volume, how the narrow accounting of the sexual identity script, in which that single axis becomes all that matters, hides a much larger dynamic. The focus on sexual identity hides and depoliticises a much bigger

35. Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), 25; in Otto, 'Queering Gender [Identity] in International Law', 39.

36. Dianne Otto, 'Resisting the Heteronormative Imaginary of the Nation-State: Rethinking Kinship and Border Protection', in *Queering International Law: Possibilities, Alliances, Complications, Risks*, ed. Dianne Otto (Abingdon: Routledge, 2018), 236–57, 246.

37. Jasbir K. Puar, 'Homonationalism as Assemblage: Viral Travels, Affective Sexualities', in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), 1–27, 3.

38. *Ibid.*, 1.

question about the regulation of identity in general, a part of which is the silent and unquestioning prioritisation of a Euro-American liberal rights framework as the natural home for the shared living of all sexual subjectivities.

Vanja Hamzić, for example, recounting sexual and gender relations in the Indonesian archipelago, raises these same questions in a different context. Criticising international civil society for a rights based homonormativity that eschews grounded, locale-specific analyses in favour of ones fed by the abstract norms of Northern humanism, Hamzić argues that liberal rights are ‘a false heuristic device... an estoppel to rethinking workable solutions for problems at hand’;³⁹ their pre-emptive superiority comes at the cost of other solutions which may give the underprivileged bargaining power and respite. Hamzić argues for a personhood *beyond* rights. In Indonesia, he argues, this is an *archipelagic* personhood: one informed not by northern norms and sexual subjectivities, but by those emergent out of the archipelago’s own ethno-cultural particularity. He eschews those who argue that the global rights based discourse is the most promising route to greater acceptance of gender variance, recounting the damage done by assimilatory strategies employed in Indonesia to the broad range of gender and sexuality subjectivities found in the archipelago, and the lack of fit between northern indentitarian sexual subjectivities and the lives of people in these islands.

This approach rejects what Sami Zeiden, in his essay about sexuality and governance in the Arab world, terms the ‘remote control’ approach to gay rights as human rights. Here, international activism targets the ‘I’ of sexuality or gender diverse people that is presumed to want to ‘come out’, and tries to switch the programme of lives or contexts to one in which gay rights are provided through human rights, offering this as the master script for the resolution of conflicts around sexuality or gender diversity. Zeiden shows us a much more complex series of paths that can be taken in the public spheres of non-Western postcolonial settings. These include routes where, for people of non-heteronormative sexualities and genders, ‘Their “I” is not always the “I” we assume wants to come out’; he also shows routes where ‘the universalising of gay terminology... can in fact have a locally liberative function’, critically observing though that ‘the term “gay” may have become indigenised to mean many different things’.⁴⁰

In the concluding chapter of *New Intimacies, Old Desires* we find a discussion which takes us back to where we started: Otto’s observation that equal rights can only partially answer a queer analysis. In ‘Queer, beyond Queer?’, Nishant Upadhyay and Paulo Ravecca offer a critique of the liberalism which undergirds many aspects of LGBT rights politics, both within various (especially Western) states, but also at the level of the international human rights regime, and within global discourses of sexual and gender politics. The problem here is the tendency to take LGBT or queer matters and naturalise them so

39. Vanja Hamzić, ‘Selfhood and Archipelago in Indonesia’, in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), 235–52, 238.

40. Sami Zeidan, ‘The Remote Control of the “I” We Assume Wants to Come Out: Sexuality and Governance in the Arab World’, in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), 253–79, 271.

that they are just about sexuality, and commonly, so they are about sexuality understood as an autonomous, and usually personal, space or field of our existence. 'This is the operation we really want to destabilize and challenge'.⁴¹

When LGBT rights are afforded on these naturalised grounds, they stand very little chance of being able to disturb and disrupt the relations of power which structure a given social milieu along class, gender and racial lines. Instead, rights politics tend to play within these structures, effectively providing 'equality' on LGBT issues to those who have already acquired or inherited it in other fields, and leaving undisturbed the disenfranchisement of *others*. Equal rights around sexuality are not going to help those who cannot access rights systems because of their race, class or gender. A queer politics depends on a radical questioning of the reductionisms, segmentations and associated indentitarian strategies of conventional rights politics. It requires a form of social relationality that refuses to 'isolate queer pains from other injustices' – lest (citing Butler) 'queer activism becomes implicated in the oppression of others'.⁴²

Rights based politics has become one of the most visible and, it is commonly argued, one of the most successful tools for fighting oppression and inequality in our time. We have sampled essays from these volumes which show how rights have been specifically taken up and utilised to address violence and discrimination against sexuality and gender diverse people. We have also observed limitations, which range from how sexuality and gender are conceptualised, through to how instruments established for one purpose can be utilised for alternative or even antithetical ends, and on to more critical accounts of the complicity of rights politics with the social, economic, political and ideological drivers of oppression.

After this survey we must concur with Otto that the grant of equal rights, using state-based, regional or global rights regimes, will not – indeed simply cannot – fully answer to a queer analysis. By themselves, rights are not sufficient and may even undercut the radical politics needed to end queer oppression. Many other resources are needed besides. Essential among them, is the presence of Ripa's Curiosity – the queer curiosity to indefatigably run up and down with our heads in prying postures, to see, hear and take up the 'myriad forms of knowledge considered disruptive and dangerous to the status quo'.⁴³

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41. Nishant Upadhyay and Paulo Ravecca, 'Queer, Beyond Queer?', in *New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times*, eds. Oishik Sircar and Dipika Jain (New Delhi: Zubaan, 2017), 469–96, 470.

42. Judith Butler, 'Culture and the Academic Boycott', 7th Annual Israeli Apartheid Week, Toronto, 9 March 2011; cited in Upadhyay and Ravecca, 'Queer, Beyond Queer?', 482.

43. Otto, 'Introduction: Embracing Queer Curiosity', 2.