Special Section:
Queer Judgments, edited by Alex Powell &
Katie Jukes, pages 133-339

Foreword to the Special Section

Graeme Reid

Before reading this "Editorial" and the articles that follow in this Special Section, please watch the "Foreword" recorded by Graeme Reid, the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity.

Editorial

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It is a pleasure to introduce this Special Section which, following on from the publication of the *Queer Judgments* edited collection earlier this year, marks out the arrival of a distinctive field of work engaged in the practice of Queering Judgment (Ferreira & Ors 2025). This Special Section is the second planned output from the Queer Judgments Project.[1] Decisions regarding how the Queer Judgment Project should operate were made collectively during a series of workshops at the outset of the endeavour. The Project continues to be active, and we hope that this will be the second of many outputs associated with it. The Queer Judgments Project builds on a range of earlier antecedents, including the Feminist Judgments Project (Hunter & Ors 2010) and the work of theorists such as Alex Sharpe (2017) who have argued that the relationship between queer theory and law is not always a simple one with the act of legal judgment often cast as being a mode of practice that has the effect of cementing particular arrangements of power/knowledge (Butler 2020: 132). In other words, legal judgment and its calcifying effects are of

[1] The project has its own website and we would invite you to check it out regarding the Queer Judgments Project.

exactly the form that queer theory is generally understood as trying to challenge (Halberstam 1998). Indeed, as Raj has argued, queer judgments engage in processes which "critique … socio-legal norms that cohere the value of social reproduction, gender conformity, sexual monogamy and privatised responsibility", rendering visible the role of these knowledges and ideological devices within the context of legal judgment (2025: 4). But, as a result of engaging with the formal structures of legal judgment, queer judgments also engender the forms of governmentality incumbent within the form and style of legal judgment (Raj 2025: 4).

Where queer approaches to law are deployed from a counter-normative perspective, with the focus being on the "repudiation of dominant norms" without the "renunciation of prescriptive projects", we argue that queer theory can offer useful interjections which show how other domains of power/knowledge condition legal reasoning (Zanghellini 2009: 1-3). This is because, much as David Nelken has argued, "What counts as legal knowledge, or knowledge for law, is something that changes over time. And this mainly happens outside the courtroom" (2006: 602). Given this, we argue that queer judgments, and the analysis which has emerged around them, present a useful interjection that can help to showcase how different epistemes are enacted within legal regimes. In so doing, much as the Feminist Judgments Project did before, queer judgments showcase the contingency of legal reasoning with a view to demonstrating how a different outcome could have been reached, even from within the same legal framework as those deployed within the original judgment. In this sense, we might see one of the primary strengths of queer judgments as arising from their ability to expose the relationship between law and epistemology in both an analytic and pedagogical sense.

Indeed, through exposing the contingency of legal decision-making, even when operating within a singular legal framework, queer judgments can help to expose how forms of knowledge regarding the nature of subjectivities become implicated within legal reasoning, affecting how legal institutions comprehend and make sense of human lives. Adopting Judith Butler's understanding of the human subject as a category that can be given or retracted depending on compliance with other norms (Butler 2009: 1-15), it could be argued that queer judgments enable us to recognize what Alex Powell terms "meta-politics", that is, the ways in which discourse with its effects on power/knowledge shape and reshape human beings and the attendant effects that this has on how law is interpreted and applied (2025: 22-38).

Further, as Emily Grabham has argued, within law there is a "propensity to categorise", therefore the role of meta-politics in the (re)shaping of subjectivities might be seen to have particular salience for understanding which lives and bodies legal frameworks are designed around (2008: 186). For example, the way in which subjectivities are conceptualized might have implications for whether (or not) someone fits within a given legal framework and, accordingly, can impact factors such as access to rights and amenities. In this sense, one way in which we might understand the practice of queer judgment-writing, as a subset of the broader pattern of authoring alternative judgments, is as a part of both posing and responding to broader questions around who is the subject of law or who is the human of human rights (Foucault 2001; Rancière 2004; Mignolo 2009; Coleman 2024)? Such questions, of course, link back to the underlying assumptions which, as highlighted through Jack Halberstam's (1998) work mentioned above, queer theorists are invested in challenging. Indeed, much as Sara Ahmed (2021: 175-220) has argued that the shape and structure of an institution can tell you a great deal about whom an institution is designed for (or not), we might say that the shape and structure of law, particularly in its relation to other disciplines and forms of knowledge, can tell you a great deal about whom a society is designed for (or not). Or at least which kinds of subjectivities are validated and intelligible within the epistemes through which that society is constituted.

In this sense, the practice of queer judgment-writing might be viewed as a more practical implementation of the principles of queer theory to the domain of legal reasoning. Within this intervention, there lies the potential to showcase the radical contingency of legal outcomes, also linking the project into broader histories of critical legal and legal realist analysis (Tushnet 1990; Tamanaha 2008). This, in turn, might be seen as providing a critical intervention regarding the role that law plays in creating the subjectivities through which we make sense of the world more broadly. Indeed, if we follow Elena Loizidou's (2007) argument for understanding law as a form of performativity, with a concomitant recognition of how the frames deployed within legal decision-making install themselves as necessary grounds for how we make sense of the world around us, it might be seen that the interventions offered by the practice of alternative judgment-writing are foundational to understanding the relationship between law and epistemology (Butler 1999: 16).

To expand on this, the forms of counter-normative reasoning deployed within the authoring of alternative judgments can be argued to showcase the contingency of the forms of knowledge which law generally renders

as neutral or predetermined and, accordingly, can shed greater light on how law and the knowledges which inform it themselves shape the day-to-day engagements of people, both with each other and the state, not just through the legal frameworks that are established but also in terms of the subjectivities which are fostered within that system and their social implications. Such a task may be seen as particularly important due to the capacity of law to construct what Berlant terms "emblematic knowledge", that is to say knowledge that attains the level of truism, an unchallengeable status often resulting in those challenging such orthodoxies being cast as engaging in strange or threatening kinds of thought (Berlant 1998: 108). Building on this, we might more broadly understand law as contributing to the production of hegemonic frameworks that become foundational to the ways in which people within a society make sense of their interactions of relations (Bates 1975). As Judith Butler and Gayle Rubin (2012) have discussed, these scripts are often particularly strong in relation to sex, gender and sexuality, and the deployment of queer approaches to the act of legal judgment could be argued to be a particularly salient intervention into a field of knowledge that is often presented in such hegemonic terms as to be constructed as effectively beyond challenge, with even affirmative or supportive framings often emerging from forms of biological essentialism, such as what Tim Johnston (2015) has called the "born this way" phenomenon.

Indeed, as Lucy Mayblin has argued, in the context of migration and asylum, law reform and lawmaking often engage significant forms of complexity reduction (2016). They do this partly in order to emulate the scientific method with a focus on enabling legal decision-making as a mode of generating legitimacy based in its neutral and "objective" analysis, or at least the presentation thereof (Douzinas & Geary 2005). In this sense, the deployment of queer theory, with its focus on contesting oversimplified conceptualizations of gender and sexual diversity may offer an important set of interjections to show how law could be otherwise understood and engaged and, in so doing, create the conceptual space for different forms of life to be accommodated within both the legal and epistemological contours of state and society (Powell 2025: 31-34). Indeed, as Spade has argued, harm is often structurally embedded within forms of governance which seek to categorize for the purposes of technical organizational or other forms of sorting (2015). In this sense, alongside its epistemological potential, consideration might also be made of the possibility for queer judgments to offer a useful mode through which students may be taught to better comprehend law within its social and political context. Indeed, it could be said that the work of alternative judgments operate to strip

away the sense of law as being an objective reality discerned by judges and instead show how legal decisions are produced by the interaction and relationship between legal criteria and the other forms of knowledge which must be deployed by judges in order for them interpret and apply this legal criteria.

This stripping away operates by demonstrating to students the epistemological foundations of legal knowledge, bringing into view evidence of the normative judgments which inform the legal reasoning of judges and calling on students to consider how their own knowledge of the world around them would interact with the legal frameworks, rules, and standards with which they engage in a classroom. Indeed, the value of queer approaches to legal pedagogy has recently been recognized in the publication of one of the first textbooks on gender, sexuality and the law (Ashford & Maine 2024). This text includes the use of alternative statutes and judgments in ways which encourage students to reflect on the relationship between knowledge, subjectivities, and the law.[2] As this again suggests, there is an increasing recognition of the need to ensure that students understand how legal education links into other disciplines and forms of knowledge, as well as into the ways in which people experience the world more broadly.

In line with the above, we might conceptualize judgment-writing as a "subversive challenge to judicial authority" (Rogers 2017: 61). However, while doing this, as argued by Nicole Rogers, the act of rendering an alternative judgment also serves to provide a visible example of the malleability of the law. Showcasing this malleability is particularly important because, as Rosemary Hunter has outlined, the mode of teaching law in a United Kingdom (UK) context often focuses strongly on analysis of appellate court decisions (2012). Whilst this is often accompanied by engagement with academic journal articles, this focus on appellate decisions can often leave students with an impression that learning the law is an objective enterprise, as if it were a process of unearthing objective facts, or discovering a law already written. The implication of this is, of course, that law is given, rather than the reality, which is that it is produced within a particular social and political context which then affects how it will be interpreted. As such, whilst the deployment of the format of legal judgment can be argued to, at times, endorse a form of conservatism insofar as it reifies the institution of legal judgment, the act of authoring queer judgments also fits into a broader history of critical

[2] For an example of an alternative statute, see Powell's alternative envisioning of section 66 of the Sentencing Act 2020 (Powell 2024).

scholarship which functions to highlight the contingent and political nature of legal judgment as an enterprise.

In this way, alternative judgments of the kind outlined in this issue, can be argued to carry significant pedagogical potential in balancing the development of legal skill, in terms of understanding and making sense of conventions of legal writing across a range of forums, with substantive understanding of the way in which law sits both within and alongside other forums of power/knowledge. Indeed, as outlined by Ferreira, Moscati and Raj, queer judgments might usefully be understood as opportunities to "reflect on the desirability and possibilities of law", in this sense powerfully combining outsider and insider perspectives (2025: 48). Outsider in the sense that queer judgments, like feminist or wild judgments (Rogers & Maloney 2017), offer a space for different perspectives to enter into the regimes of legal reasoning. But also, insider in the sense that such judgments often draw on forms of legal argumentation which are, at least in part, true to judicial approaches. This, in turn, offers a productive engagement between issues of substance and form, encouraging students to reflect on the role of both substantive power/knowledge and the structure and format of legal judgment as forces which shape the world around them.

In this way, alternative judgments offer a significant pedagogical resource. Indeed, in light of their capacity to show students how various elements of the legal process work, as well as the forms of knowledge deployed within it, alternative judgments operate to produce particular outcomes which are neither given, nor necessary, offering a significant contribution to the critical thinking skills of students, encouraging them to consider both the inputs which legal reasoning accounts for and the normative implications which flow from how judgment is undertaken. For example, as Hunter argues, alternative judgments might support students to understand the importance of how stories are told to the process of legal reasoning, how the way in which the facts are analytically characterized might in turn lead towards alternative legal outcomes, such as by giving voice to subjects who have been historically and contemporarily silenced (2012: 52). In this sense, alternative judgments powerfully and directly draw attention to how a diverse range of factors can become integrated into the production of a legal outcome, foregrounding the role of judges in determining not just law, but also fact. Similarly, and linked into a broader queer work around the nature and function of ignorance, the way in which these stories are told can speak to the types of knowledge that are permitted to be heard within the legal arena (Sedgwick 2008: 8). Of course, these questions of knowledge and ignorance can also powerfully

show the kinds of lives around which legal frameworks are constructed and can therefore support students in understanding the role of law as a governmental regime (Burchell & Ors 1991: 102-103; Dean 1999). In this sense, one of the primary functions of queer judgments can be said to lie in the empowerment of students and scholars alike to "account for the nuanced lives of those who are minoritised because of their sex, sexuality and gender" (Raj 2025: 2).

One form which this pedagogical potential might take is in the fostering of accountability within students of law. Raj defines the idea of accountability as part of a process of becoming responsible (2025, 5). Specifically, accountability therefore supports the process of transforming "silence into language and action" (Lorde 1984: 43). Through this process, it is argued that queer judgments empower students to both read and see how forms of legal reasoning foster certain subjects while disavowing others (Foucault 1991). Indeed, one of the primary values of queer judgments as a pedagogical tool could be in their ability to make clear the forms of discipline, governmentality and violence operating within the purportedly neutral devices and knowledges through which legal judgment functions. This is important because of the tendency of legal systems, and the decision-makers within them, to present themselves as neutral arbiters. This is despite the fact that the decisions that they render depend significantly on the forms of life that are imagined as existing within the legal system. It is therefore valuable for students to enhance their awareness of how legal frameworks (re)inscribe normative structures and subjectivities. In this sense, the kind of legal education that queer and alternative judgments can empower might be said to correspond to the Foucaldian insight that:

> The real political task … is to criticize the workings of institutions that appear to be both neutral and independent; to criticize and attack them in such a manner that political violence that has always exercised itself through them will be unmasked so that one can fight against them (Chomsky & Foucault 1971).

In this sense, a part of the pedagogical value of queer judgment could be said to be in precisely the sense that they render visible how legal judgments draw from and cement particular epistemologies, therefore enabling students to engage with law as critical thinkers and to both recognize and challenge the forms of violence which are (re)produced within the form of legal judgments.

In order to advance these epistemological and pedagogical values, this Special Section presents six articles and two artistic pieces which contribute to the emerging corpus of work around queering judgment.

These articles span a diverse range of subject matter, each of which advances understanding of the relationship between queer theory, queering and legal institutions, norms and judgments. The academic submissions are diverse in nature, spanning from alternative judgments—offering re-interpretation of previous decisions, but undertaken from a queer perspective—to contributions which seek either to unpack the reasoning from a particular judgment or to unearth broader dynamics in terms of their function in cementing, advancing or fostering particular characteristics and subjectivities.

The section starts with Rafael Lelis, who explores the extent to which the Yogyakarta principles can be considered to be an autochthonous source of law, through an exploration of their deployment within both United Nations and regional human rights forums. Through this exploration, Lelis's contribution develops understanding regarding critical questions around jurisprudence and the origins and sources of law, offering evidence of the role of non-governmental organizations and non-state actors as producers of law and thereby queering the very nature of what it is to author (international) law. In this sense, Lelis's work provides a critical interjection regarding what can be considered to constitute a form of law, offering a strong argument for why the Yogyakarta principles—as a form of queer knowledge production—might be considered to themselves constitute a constituent part of the broader body of human rights international law and thus challenging overly formalist conceptions of international law.

Mariza Avgeri then presents an analysis of the extraterritorial application of the European Convention on Human Rights (ECHR), arguing that the non-extension of extraterritorial protection to gender diverse people arises from conservative conceptions of Convention rights which fail to account for the importance of publicly expressing gender and sexual identities to the realization of privacy and moral autonomy under Article 8 ECHR. In doing this, she draws powerful attention to how gender and sexuality are conceptualized within legal decision-making and how alternative and more expansive conceptualizations of these characteristics would necessitate broader interpretation of state obligations to provide protection. In this sense, the article contributes to understanding of the previously highlighted questions over which kinds of lives the law is authored around and the kinds of knowledge which play into the constructions of the subjectivities around which legal decisions go on to be made.

Sean Mulcahy provides an alternative judgment reconsidering a councillor misconduct claim before the Councillor Conduct Panel in the context of local government in the Australian State of Victoria. In the original decision, the statements of the councillor accused of misconduct had ultimately been found to be a matter of "vigorous political discourse" which, while worthy of begin discouraged, were ultimately not determined to be a matter of serious misconduct. Mulcahy reconsiders this decision, embracing broader conceptions of prejudice and exclusion which demonstrate the limited terms on which the original decision had considered these matters. Mulcahy goes on to examine the implications of these limited conceptions for the ability and willingness of LGBTIQA+ people and women to participate in local government, concluding that the adoption of a wider frame of reference, which is more able to recognize the impacts of the conduct of (now former) councillor Lew and others in a similar position on the safety and welfare of LGBTIQA+ people within the political arena, would have resulted in findings of misconduct. In offering this, Mulcahy draws attention to how harms directed towards women and LGBTIQA+ people are often discounted or minimized within decision-making forums.

Eder Van Pelt undertakes a critical reading of the judgment of the Brazilian Supreme Federal Court regarding the legal recognition of same-sex civil unions. By deploying critical perspectives on law and sexuality, he argues that the decision of the court—while ultimately affirming the rights of Brazilians to form same-sex unions—deployed a heteronormative framework which relies on and reifies forms of affect and subjectivities which are dependent on domesticated and respectable performances of difference. Through doing this, he demonstrates how legal decisions which extend legal rights also regulate and govern the kinds of difference which are permissible in a given setting. In this sense, Van Pelt's analysis contributes a valuable interjection which perfectly captures the dilemmas of liberal legalism as a mode through which to advance the protection of LGBTIQA+ people. The article contributes to our understanding of some of the trade-offs which emerge within the context of sexual and gender diverse people accessing rights and protections from liberal structures.

Po-Han Lee analyses how the Taiwanese courts restrict and suspend the sexual agency of disabled people when adjudicating issues regarding consent. By looking at a range of key rulings, Lee analyses how the Taiwanese courts produce desire within a pathologizing lens that evades contextualization and complexity. He goes on to deploy a crip/queer lens to enable them to reconceptualize legal personhood beyond binary questions of capacity, instead arguing for a relational conception of agency

that may permit law to recognize subjectivities which are often framed as ambiguous or unintelligible within legal reasoning. Through doing this, he seeks to expand the scope of rights-based analysis for better accounting for the lived realities of both queer and disabled subjects. As Lee's work usefully demonstrates, the framing of people labelled with intellectual disabilities as non-agentic within legal rationality is often mirrored within clinical and familial settings. This, in turn, speaks to the performative dimensions of law that we have explored above, demonstrating how law operates alongside other epistemes to produce subjectivities and frameworks that are often mistaken as being free-standing or innate. The work is particularly effective in challenging the totalizing or categorical terms through which law makes sense of matters such as capacity and the implications that this has for the sexual agency of people with intellectual disabilities.

Finally, Jwalika Balaji and Mandar Prakhar offer a re-imagining of the *Supriyo v Union of India Judgment*. The actual 2023 judgment saw the Supreme Court of India deny legal recognition to same-sex marriages. Balaji and Prakhar utilize a queer lens to author an alternative judgment which recognizes marriage as a constitutional guarantee within the Indian context. They do this through exploring the promises of dignity, autonomy and equality and through rejecting the heteronormativity and exclusionary framings which had been enshrined in the Special Marriage Act of 1954. However, they go further, arguing that queer relationship structures can work to remove the link between legal benefits and marital status, and instead proposing that legal protection be extended to a diverse range of kinship forms in a manner which permits the legal recognition of types of intimacy and care beyond the context of marriage. In doing this, they contribute a further powerful example of the use of queer judgments as a means to show the contingency of law and how alternative outcomes can be reached from within existing legal frameworks.

As this Special Section is focused on queer judgments, it is also important that attention is paid to the relationship between queerness and legal form and the relationship between methods and our readers. Accordingly, in adopting a queer positionality, it is important to note that the violences produced by law arise not just from the substance of legal judgments, but also from the form and method of legal judgment as an enterprise. In recognition of this, this Special Section explores not just challenges to and interjections within the epistemological foundations of law—or the disciplines on which legal reasoning is required to draw—but also the form and nature of legal reasoning. For this reason, the Special Section includes a range of artistic and creative contributions alongside

the alternative judgments and academic articles. Creative responses to legal judgments are also, of course, an integral part of the original Queer Judgments Project. Echoing the words of the original editors, Ferreira, Moscati and Raj, our project is legally artistic, aiming to stimulate "further questions on queer law by unleashing bravery, grace, sensitivity to others, creativity" (Ferreira & Ors 2025: 8). These creative outputs, like the academic work and alternative judgments, operate to challenge the subjectivities, epistemologies and frameworks through which law operates. The creative contributions to this Special Section invite readers to rethink law with a call to the senses and to the imagination and to challenge epistemic norms with their own language and imagery. This not only serves the vision of creating a new norm that asserts queerness, but also builds upon the evolution of the existing legal norm to include queer methodology as explored above.

Raju Behara's contribution uses poetry as "jurisdictional counterpractice", challenging legal and corporate "inclusion" with neurodiverse and caste-conscious voices. Set against the backdrop of apparently progressive and inclusive statutory and common law reform in India, Behara's poetry workshops created the space for participants to "perform radical surgery on legal texts". This work is a powerful example of the contribution that poetic imagery and collective thinking can make to reframing normative legal principles and epistemology, showing that: "Queer is the resistance to epistemological violence."

S J Cooper-Knock's song *Equali-T* uses song-writing and poetic methods such as rhythm and rhyme to respond to and challenge the *For Women Scotland Ltd v The Scottish Ministers* (2025) judgment on the definition of the word "woman" within UK law. Cooper-Knock introduces their song with a personal commentary on the judgment and offers the listener not only a response to the judgment but also the joy of a jazzy blues tune, a warm harmony and the surprise of laughter and hope in what might otherwise feel like a dark and exclusionary legal case.

At a time when queer lives including trans and non-binary people are being eroded by the legal establishment, these creative contributions to the Special Section offer an antidote to the cisnormative and heteronormative logics which all of the contributors challenge in diverse and varied ways. These contributions welcome our readers in to listen, to feel and to dance.

Having explored the wonderful contributions which make up this Special Section, we would like to take this opportunity to thank the many fabulous collaborators who have been a part of this project to date. Firstly, we would like to extend our sincere thanks to everyone involved

in the Queer Judgments Project. This project has been undertaken on a collaborative basis and the outputs associated with the project are the realization of decisions made during collaborative workshops at the outset of the project. We would like to express particular thanks to the project's initial organizers, Nuno Ferreira, Senthorun Raj and Maria Moscati, for bringing together such a productive collective and for all of the work that they put into the edited collection which this Special Section follows.

We would also like to take this opportunity to extend our sincere thanks to everyone who has given their time to review contributions to this Special Section. Without the work of peer-reviewers, this Special Section would not have been possible. At a time when many colleagues are facing pressure on workloads, we want to recognize the efforts of those who gave their time to review articles and offer constructive feedback to authors. I am sure they would agree that this has significantly contributed to the strength of the Special Section as a whole.

Finally, we want to thank Graeme Reid for giving his time to provide a foreword for this special section. As the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, we appreciate both the important role that Graeme plays in global monitoring of the lived experiences of LGBTIQA+ people around the world, and how busy this role must leave him. We are therefore particularly grateful for his taking the time to engage with the contributions to this special issue.

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