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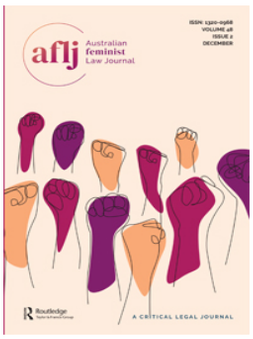

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The Texture of 'Lives Lived with Law:'[1] Methods for Queering International Law

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ABSTRACT

Queer theory's obligations to critique and problematise the mechanisms of power and discourse, especially law, remain important for revealing, unsettling and destabilising established sexual and gender norms. However, as Eve Kosofsky Sedgwick argues, the emphasis on paranoid or critical practices in queer theorising must be counterbalanced by recognising the queer methods of repair evident in the way LGBTQIA+ people engage with systems of oppression in empowering and transformative ways.[2] In this paper, I draw on the methodological tools that Sedgwick provides to examine LGBTQIA+ engagements with international law in terms of their creative, generative and sustaining capacities. Focusing on the experiences of two Australian LGBTQIA+ activists, Rodney Croome and Dianne Otto and the objects they brought to the interviews I did with them, I highlight the queer sensibilities, or queer reparative practices, operating in and through their commitments to law. In doing so, I expand the registers through which to conceptualise queer theory in relation to law and instantiate the queer jurisprudential work occurring in international law.

KEYWORDS Queer jurisprudence; LGBTQIA+; international law; activism; sexuality; gender; law reform; legal materiality; queer; jurisprudence

1. Introduction: Queer Orientations

Queer theory's obligations to critique and problematise the mechanisms of power and discourse, especially law, remain important for revealing, unsettling and destabilising established sexual and gender norms. However, as Eve Kosofsky

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[1] I draw here on the work of Ann Genovese, Shaun McVeigh and Peter Rush who examine 'how we might care for the lived experience of lawful relations'. They describe 'Lives Lived with Law' as bringing 'into relation the scholarly experiences of disciplinary technique, and the experimentation over time with style and forms that help to show what the conduct of lawful relations can be between peoples, between everyday and official experience of law …': Ann Genovese, Shaun McVeigh and Peter D Rush, 'Lives Lived with Law: An Introduction' (2016) 20 Law Text Culture 1, 2–3.

[2] Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Duke University Press 2003); Eve Kosofsky Sedgwick, 'Melanie Klein and the Difference Affect Makes' (2007) 106 South Atlantic Quarterly 625.

Sedgwick argues in her later scholarship,[3] the emphasis on paranoid or critical practices in queer theorising must be counterbalanced by recognising the queer methods of repair evident in the way LGBTQIA+[4] people 'empower themselves' within a 'dominant culture that has not always been, or is not, supportive of them'.[5] Despite its history of criminalisation and oppression and its enduring role in defining sexual and gender difference as 'other' shameful and deviant, LGBTQIA+ people continue to engage with the law in pursuit of personal freedom as well as systemic and structural change. In this paper, I draw on the methodological tools that Sedgwick provides to examine LGBTQIA+ engagements with international law in terms of their queer, creative, generative and sustaining capacities. With a focus on narrative and the lived experience, I examine the experiences of two Australian LGBTQIA+ activists and their engagements with international law to elicit the queer sensibilities, or queer reparative practices, operating in and through their commitments. Rodney Croome is a long-time activist who, with his partner at the time, Nicholas Toonen, challenged Tasmania's criminalisation of homosexuality as a violation of the International Covenant on Civil and Political Rights (ICCPR) by bringing a complaint to the Human Rights Committee. Dianne Otto, an activist and Professor of Law, published the first edited collection on queer theory and international law and has contributed significantly to scholarship and practices that push the boundaries of law and legal thinking. In my interviews with Croome and Otto, I asked them to bring an object, photo, artwork, or item that represented to them law or legal reform. In her turn to repair, Sedgwick used material objects to expand the 'emotional registers'[6] through which to explore queer modes of being in the world. I use them here to expand the registers through which to explore queer ways of being in the world in relation to law.[7]

[3]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2); Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2). Some of the themes of this paper have been introduced in a previous publication: Odette Mazel, 'Queer Jurisprudence: Reparative Practice in International Law' (2022) 116 AJIL Unbound 10. I take the opportunity here to further expand on and deepen my engagement with Eve Kosofsky Sedgwick's work and the ways in which it speaks to the subjective experiences of those I have interviewed. This work forms part of my broader PhD project in which I interviewed 24 LGBTQIA+ people about their engagements with and responses to legal reform in Australia. Drawing on Eve Sedgwick's technique of reparative reading and Michel Foucault's ethics of care of the self and bringing these into relationship with the jurisprudential practices of Robert Cover, I develop in my thesis a method for reading and undertaking empirical legal research that highlights the queer sensibilities operating in the ways LGBTQIA+ people engage with law reform projects to instantiate a queer jurisprudence.

[4]I use the acronym LGBTQIA+ to represent lesbian, gay, bi+, trans, queer (including gender non-binary and gender diverse), intersex, asexual people and others who identify with this collective, with the understanding that these terms might be experienced as fixed or fluid as well as co-existing. I acknowledge the limitations of the use of this acronym, especially with respect to the differing experiences of law and legal processes by people or groups within or across the LGBTQIA+ spectrum.

[5]Kapur, reflecting on Sedgwick: Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018) 167. Kapur's work has been influential to my scholarship and informs my own considerations of Sedgwick (and Foucault) in relation to legal reform.

[6]Eve Kosofsky Sedgwick, *A Dialogue on Love* (Beacon Press 1999) 207.

[7]My work owes a debt to, and builds on, the queer legal scholarship of those who have come before me, for example: Wayne Morgan, 'Queer Law: Identity, Culture, Diversity, Law' (1995) 5 Australasian Gay

The term queer was reclaimed by activists in the 1980s and 1990s in response to the AIDS crisis in the United States and to assert a stance against the subordination imposed by multiple social and legal identity categories.[8] Introduced into academia by Teresa de Lauretis,[9] queer theory quickly expanded with the work of Gayle Rubin, Eve Sedgwick, and Judith Butler, who built on the scholarship of Michel Foucault, to problematise gender and sexual identity categories and expose the operations of discourse and power in the construction of hierarchies that determined what was natural, moral or good.[10] Whilst underwritten by issues relating to gender and sexuality and building on much of the feminist work that came before it, queer was attentive to the interstices between race, class, nationality, religion and other non-normative subject positions. In this way, it sought to expand the possibilities available through these alliances and to address in more complex ways the operations of power and privilege.[11] Law, as a discourse of power, was exposed for its heterosexual and cis-gendered practices and the binary divisions that it naturalised. Whereas the gay and lesbian liberation movements approached the law as a site of worthwhile engagement

and Lesbian Law Journal 1; Carl F Stychin, *Law's Desire: Sexuality and the Limits of Justice* (Routledge 1995); Francisco Valdes, 'Afterword & Prologue: Queer Legal Theory' (1995) 83 California Law Review 344; Brenda Cossman, 'Sexuality, Queer Theory, and "Feminism After": Reading and Rereading the Sexual Subject' (2004) 49 McGill Law Journal 847; Aleardo Zanghellini, 'Queer, Antinormativity, Counter-Normativity and Abjection' (2009) 18 Griffith Law Review 1; Janet Halley, 'A Tribute from Legal Studies to Eve Kosofsky Sedgwick: Introduction' (2010) 33 Harvard Journal of Law and Gender 309; Robert Leckey and Kim Brooks (eds), *Queer Theory: Law, Culture, Empire* (Routledge 2010); Janet Halley and Andrew, Parker (eds), *After Sex? On Writing Since Queer Theory* (Duke University Press 2011); Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (South End Press 2011); Oishik Sircar and Dipika Jain (eds), 'Law, Culture and Queer Politics in Neoliberal Times' (2012) 4 Jindal Global Law Review (Special Double Issue) 1; Davina Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press 2014); Chris Ashford, 'Bareback Sex, Queer Legal Theory, and Evolving Socio-Legal Contexts' (2015) 18 Sexualities 195; Margaret Davies, *Asking the Law Question* (Fourth edition, Thomson Reuters 2017); Kapur (n 5); Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018); Brenda Cossman, 'Queering Queer Legal Studies: An Unreconstructed Ode to Eve Sedgwick (and Others)' (2019) 6 Critical Analysis of Law 23; Senthorun Sunil Raj, *Feeling Queer Jurisprudence: Injury, Intimacy, Identity* (Routledge 2020).

[8]Championed on the ground by activist organisations in the United States including the AIDS Coalition to Unleash Power (ACTUP), the Lesbian Avengers and Queer Nation, queer emerged in response to highly charged political and cultural conflicts around the AIDS crisis, the resurgence of violent homophobia and the ongoing legacy of the sex wars of the 1980s: Morgan (n 7) 29; Gayle Rubin, *Deviations: A Gayle Rubin Reader* (Duke University Press 2011) 182–93.

[9]Teresa de Lauretis' work addressed the lack of representation of lesbianism in the prevailing gay and lesbian discourse: Teresa de Lauretis, 'Queer Theory: Lesbian and Gay Sexualities: An Introduction' (1991) 3 Differences iii, v–vii.

[10]Gayle Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' in Carole S Vance (ed), *Pleasure and Danger: Exploring Female Sexuality* (Pandora 1984); Eve Kosofsky Sedgwick, *Epistemology of the Closet* (University of California Press 1990); Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990); Michel Foucault, *The History of Sexuality: The Will to Knowledge*, vol 1 (Robert Hurley tr, Pantheon Books 1978).

[11]Dianne Otto, 'Introduction: Embracing Queer Curiosity' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 11; Francisco Valdes, 'Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of "Sexual Orientation"' (1997) 48 Hastings Law Journal 51.

for equality, queer theorists, with their more radical ambitions, saw this as a process of legitimating and embedding cis and heteronormative worldviews.[12]

Queer engagements with law and legal theory have long critiqued the use of rights as a suitable approach to LGBTQIA+ issues, favouring resistance and transgression as opposed to legal inclusion and reform.[13] It would be 'sad indeed', Adam Romero states, reflecting on law and equality, 'if in obtaining the right to sodomy, that which was queer sunk into the banality of normalcy'.[14] The pursuit of equal rights is understood in this context as problematic because it operates to co-opt LGBTQIA+ people into a complacency that keeps intact hegemonic structures and the authority of the state, and fails to contest the 'heteronormative assumptions' these social institutions are built on and reinscribe.[15] Working with queer's commitment to deconstruction, trans activist and law professor Dean Spade questions whether law reform campaigns can ever be useful as a tactic in resistance strategies because at the heart of those, he argues, is the need to abolish the legal system altogether.[16] At the site of international law, Ratna Kapur, similarly, cautions against the desire for, and the promise of rights for LGBTQIA+ people, elucidating the threat it poses for radicality and freedom. Queer engagement with human rights, she states, has 'taken the radicality out of queer rather than resulting in the queering of international human rights'.[17]

Whilst queer theory's problematisation of the operations of power and discourse, especially in law, remains important, in this paper, I employ the methodological tools of Sedgwick's reparative reading (or queer methods of repair) to counterbalance the emphasis on critique in queer legal theorising. Embracing the tension between queer theory and law, I explore the possibilities of thinking between the binary conceptualisations of liberation and repression or 'resistance and compliance'.[18] With an emphasis on narrative and an exploration of the ways material objects can reflect law and legal meaning, I examine the lives and work of Sedgwick, Croome and Otto as

[12]Lisa Duggan, *The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy* (Beacon Press 2003); Michael Warner, 'Introduction: Fear of a Queer Planet' (1991) 29 Social Text 3; Janet E Halley, 'The Construction of Heterosexuality' in Michael Warner (ed), *Fear of a Queer Planet* (University of Minnesota Press 1993); Lauren Berlant, *Cruel Optimism* (Duke University Press 2011).

[13]Annamarie Jagose, *Queer Theory: An Introduction* (New York University Press 1996) 96; Michael Warner (ed), *Fear of a Queer Planet: Queer Politics and Social Theory* (University of Minnesota Press 1993) xxvi.

[14]Adam P Romero, 'Book Review: Split Decisions: How and Why to Take a Break from Feminism by Janet Halley; Methodological Descriptions: "Feminist" and "Queer" Legal Theories' (2007) 19 Yale Journal of Law and Feminism 227, 249.

[15]Duggan (n 12) 50.

[16]Christina Crosby and others, 'Queer Studies, Materialism, and Crisis: A Roundtable Discussion' (2012) 18 GLQ: A Journal of Lesbian and Gay Studies 127, 143.

[17]Ratna Kapur, 'The (Im)Possibility of Queering International Human Rights Law' in Dianne Otto (ed), *Queering International Law* (Routledge 2018) 132.

[18]These debates are well trodden in feminist legal literature, and I acknowledge the work already undertaken in this space. In relation to international law see, for example: Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart 2011).

three queer protagonists. In Part Two, I explore Sedgwick's 'reparative turn'[19] and the opportunities this theoretical practice provides for reading LGBTQIA+ people's engagements with legal reform as productive queer modes of repair, or queer jurisprudence. Drawing on her own examinations of the relations between 'words and other materials'[20] to expand our analytic processes, I chose an item from her collection of creative works that speaks to me of queer repair in international law. In Part Three, I turn to the legal activism of Croome and Otto. Focussing on Croome's work on the decriminalisation of homosexuality and his engagement with and investment in international law, I trace how he has used 'the law to change the law'.[21] By reading reparatively his efforts for legal reform, I frame his commitment to law not as complicit or co-opting but as radical and defiant, empowering and transformative. Despite Sedgwick's emphasis on repair in her later work, she also maintained the importance of paranoid practices and the interdependent and oscillating relationship between the two.[22] Through an examination of the scholarship and activism of Otto, I show how this oscillation is evident in the ways she juggles 'critique and hope'[23] and explore what this means for queer theory's relationship with law. These narratives are presented here as queer jurisprudential stories. They are stories of defiance, commitment, hope and possibility, queer and radical interventions that *do* disrupt the operations of power and privilege to create/queer law and legal meaning.

2. Eve Kosofsky Sedgwick

2.1. Reading Reparatively: Practices for Law

Eve Kosofsky Sedgwick (Figure 1) was an activist, poet, artist, literary critic and teacher and is widely recognised as one of the originators of queer theory.[24] She taught at a number of universities across the United States, was involved in feminist movements within the academy and was an avid supporter and

[19]Kapur (n 5) 167; Robyn Wiegman, 'The Times We're in: Queer Feminist Criticism and the Reparative "Turn"' (2014) 15 Feminist Theory 4, 8.

[20]Eve Kosofsky Sedgwick, 'How to Do Things with Words and Other Materials' <<http://evekosofskysedgwick.net/teaching/ how-to-do-things-with-words-and-other-materials. html>.> accessed 17 September 2021.

[21]Interview with Rodney Croome (Conducted by telephone, Croome in Tasmania, 16 April 2019).

[22]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 128; Eve Kosofsky Sedgwick, 'Introduction: Queerer than Fiction' (1996) 28 Studies in the Novel 277, 278.

[23]In a piece on a collection of writings in honour of Otto, Karen Engle reflects on her contribution to gender and international law as encapsulated in the phrase, 'juggling critique and hope.' This paper draws on this insight into Otto's work: Dianne Otto, 'Impunity in a Different Register: People's Tribunals and Questions of Judgment, Law, and Responsibility' in Karen Engle, Zinaida Miller and DM Davis (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge University Press 2016) 295; Karen Engle, '"Juggling Critique with Hope"' (2017) 18 Melbourne Journal of International Law 120.

[24]'Life of Eve Kosofsky Sedgwick' <https://evekosofskysedgwick.net/biography/biography.html> accessed 22 July 2022. See also the special edition celebrating Sedgwick's contribution from legal scholars: Halley, 'A Tribute from Legal Studies to Eve Kosofsky Sedgwick' (n 7).

Figure 1. Eve Kosofsky Sedgwick at an exhibition of her artwork titled 'In the Bardo', at Stony Brook University, New York, 1999. Photo HA Sedgwick.[180]

champion of AIDS activism, participating in protests with the ACT-UP movement, and a focal point for rallying students to the cause.[25] Her work was central to the development of queer theory as a method for deconstruction – interrogating sexuality, gender, pleasure and desire and how they are culturally defined.[26] Sedgwick suggests that 'one of the things that "queer" can refer to [is] 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'.[27]

Despite her defining work on queer theory as a mode of critique, Sedgwick recognised early on the limitations of critical/deconstructive practices in

[25]'Life of Eve Kosofsky Sedgwick' (n 24).
[26]Hannah McCann and Whitney Monaghan, *Queer Theory Now: From Foundations to Futures* (Red Globe Press 2020) 136; Sedgwick, *Epistemology of the Closet* (n 10); Eve Kosofsky Sedgwick, *Between Men: English Literature and Male Homosocial Desire* (Columbia University Press 1985); Eve Kosofsky Sedgwick, *Tendencies* (Duke University Press 1993).
[27]Sedgwick, *Tendencies* (n 26) 8.

queer theorising.[28] Whilst her discontent with how 'mainstream gay and lesbian culture and politics' had become 'hollowed out, brittle and banalized' through its 'disavowal of [the] trauma and dread' of the AIDS crisis, Sedgwick also questioned queer theory's insistence on retaining 'the paranoid structure' relevant to those AIDS years beyond the context where it reflected the 'palpable purchase on daily reality'.[29] Calling out the binary oppositions being enacted in queer theorising that reinforce the dualities of acceptance or refusal, liberation or repression, Sedgwick began to consider how to move beyond those limitations.[30]

> I am also suggesting that the mutual inscription of queer thought with the topic of paranoia may be less necessary, less definitional, less completely constitutive than earlier writing on it, very much including my own, has assumed.[31]

In her exploration of the possibilities that lie beyond critique, Sedgwick reflects on what she calls the 'short circuit', or circulatory problem, of the 'disciplinary space called queer'.[32] She suggests that queer theory's proclivity to critique/deconstruction can be attributed to Foucault's repressive hypothesis in the *History of Sexuality (Vol 1)*.[33] This hypothesis frames the relationship between power and sexuality as one of negativity, prohibition and censorship enforced by the 'father who forbids', the 'master who states the law'[34] or, as Sedgwick adds, the 'internalized superego'.[35] Fuelled by the experience of gay life and the bureaucratic responses in the US to the AIDS crises, the queer activism and scholarship that came after Foucault's seminal work was imbued with the repressive position and the consequent need to mobilise forces of resistance against it. Sedgwick, through her considerations and application of the work of psychoanalyst Melanie Klein,[36] came to see the repressive position as one of paranoia:

> As I understand my own political history, it has often happened that the propulsive energy of activist justification, of being or feeling joined with others in an urgent cause, tends to be structured very much in a paranoid/schizoid fashion: driven by attributed motives, fearful contempt of opponents, collective fantasies of powerlessness and/or omnipotence, scapegoating, purism, and schism.[37]

[28] Sedgwick, 'Introduction: Queerer than Fiction' (n 22).
[29] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 640.
[30] This shift was influenced in some ways by her breast cancer diagnosis which also sparked her increased interest in Buddhist philosophy. Sedgwick wrote of her battle with depression following her breast cancer diagnosis and the ways in which she worked through that depression. This informed her interest in Melanie Klein and her work on reparative reading followed. See: Sedgwick, *A Dialogue on Love* (n 6); Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2); Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2).
[31] Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 146.
[32] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 635–6.
[33] Foucault (n 10).
[34] ibid 85.
[35] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 634.
[36] Melanie Klein, *Love, Guilt and Reparation and Other Works 1921–1945* (The Free Press 1975).
[37] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 638.

The paranoid position, or paranoid interpretive practice, whilst important for highlighting the ways that structures of power operate to inform and enforce binary notions of sexual and gender differences, Sedgwick notes, is itself based on the dualistic assumption that a sense of self or agency can only occupy one of two positions – powerlessness or omnipotence.[38] As warranted and necessary as this position was at the time in the US, Sedgwick asserts that the paranoid position that was built into the work of 'first-generation queer thinkers' became embedded, and has been maintained in queer scholarship outside of the context and reality in which it was necessarily constructed.[39] By perpetuating the paranoid position and continuing to structure the relationship between power and sexuality as repressive, queer work, in fact, operates to reinforce the binary oppositions that it seeks to overcome:

> [I]mpressed by Foucault's demonstration of the relentlessly self-propagating, adaptive structure of the repressive hypothesis, I came to see a cognitive danger in these interpretations: a moralistic tautology that became increasingly incapable of recognizing itself as such … the pseudodichotomy between repression and liberation has led, in many cases, to its conceptual reimposition in the even more abstractly reified form of the hegemonic and the subversive.[40]

Sedgwick cautions that through this process, we lose sight of the 'middle ranges of agency', or 'the ability to be empowered or disempowered without annihilating someone else or being annihilated'.[41] The effect, she suggests, is that 'one's relation to *what is* risks becoming reactive and bifurcated … one's choices narrow to accepting or refusing … dramatizing only the extremes of compulsion and voluntarity'.[42] Sedgwick's question then is: How do we interrupt this 'baleful circuit?'[43] How do we break with this 'conceptual impasse' and remedy the mechanism of the problem without further engendering it?[44]

Rather than minimising the importance of the circular mechanism or attacking it, Sedgwick instead takes her lead from Klein's work on child psychoanalysis to contextualise it newly.[45] With a focus on individual experiences of the world, Klein construes more intricately the dependent relations of powerlessness and omnipotence. Moving beyond the dialectic embedded in a paranoid position, Klein elaborates on the depressive/reparative position by describing the moment when a child recognises the mother as a 'complete object', realising that both good and bad

[38]Ibid 633. Sedgwick refers here to Freudian analytic theory in which power is understood as implicitly omnipotent, see Sigmund Freud, *Standard Edition of the Complete Psychological Works*, tr James Strachey (Hogarth, 1953).
[39]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 640.
[40]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 12.
[41]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 632.
[42]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 13.
[43]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 635.
[44]ibid.
[45]ibid 636.

parts of the self can co-exist.[46] Expressed by others as a qualitative approach,[47] the depressive/reparative position brings into focus subjectivity and relationality as the 'locus' of 'special inventiveness'.[48] Importantly, it describes not only the preconditions of depression but the range of resources that an individual has and employs to survive, repair and move beyond it.[49] It is, in the context of disenfranchised people, the act of redeeming and reinvigorating 'those parts of the self that had been deemed dangerous (both to oneself and others) and therefore disavowed'[50] – a move toward a sustained '*seeking of pleasure*'[51] rather than a continued pursuit of 'self-defeating strategies for *forestalling pain*'.[52]

Sedgwick brings Klein's work into conversation with Silvan Tomkins' exploration of affect[53] to show how the depressive/reparative position can be used to guide how an affective life might be transformed and transformative. Where paranoid methodological practices focus on the negative affects of distress, anguish, fear, shame, anger and rage,[54] methods that privilege the depressive position (despite the term's negative connotation) explore positive or neutral affects, including interest, excitement, enjoyment and surprise[55] – the creative resources necessary to go 'beyond that depression'.[56] In the context of her literary work, Sedgwick describes the method of emphasising the depressive position as reparative reading – reading texts and semiotic practices for their empowering and productive capacities rather than for their deficient or problematic elements.[57] As a departure from the academic reading practice of 'the hermeneutics of suspicion'[58] that defines so much of critical theory stemming from the works of Marx, Nietzsche and Freud,[59] reparative reading focuses instead on hope and 'ethical possibility',[60] on the potential for personal healing

[46]In contrast, a paranoid position recognises only part-objects, the insistence of 'all or nothing' 'good or bad' ibid 631, 633; Melanie Klein, 'Notes on Some Schizoid Mechanism' (1946) 27 The International Journal of Psychoanalysis 99, 149.
[47]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 628, citing: Meira Likierman, *Melanie Klein: Her Work in Context* (Continuum 2002) 55.
[48]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 629.
[49]ibid 637.
[50]Allen Durgin, 'Depressives and the Scenes of Queer Writing' (Doctor of Philosophy, City University of New York 2014) 3.
[51]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 138.
[52]ibid 137.
[53]Silvan S Tomkins, *Affect Imagery Consciousness* (Springer 1962).
[54]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 115; see also Silvan Tomkins, 'What Are Affects?' in Eve Kosofsky Sedgwick and Adam Frank (eds), *Shame and its Sisters: A Silvan Tomkins Reader* (Duke University Press 1995).
[55]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 21; see also Silvan Tomkins (n 53).
[56]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 637.
[57]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 123–151.
[58]ibid 124; see Paul Ricoeur, *Freud and Philosophy: An Essay on Interpretation* (Denis Savage tr, Yale University Press 1970).
[59]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 124.
[60]ibid 137.

and social change. Hope is an organising principle in reparative reading, says Sedgwick, because the 'reader has room to realise that the future may be different from the present'.[61] In the context of LGBTQIA+ people, it is the practice of turning to one's own resources in an effort to repair the damage done as a result of social or legal exclusion based on sexual and gender differences, and to recognise and reframe those aspects of the self as a source of positivity, and possibility. By focusing on the ways that we, as LGBTQIA+ people, in fact thrive, even within a system that is unsupportive of us, we can come to realise the impact or influence we have on it.[62] 'Among Klein's names for the reparative process', says Sedgwick, 'is love'.[63]

Sedgwick is adamant in pointing out that paranoid and reparative readings are interdependent, relational and oscillating – they are not mutually exclusive.[64] It is the overemphasis on paranoid work that needs to be addressed. Paranoia, Sedgwick reiterates, 'represents *a* way, among other ways, of seeking, finding and organizing knowledge. Paranoia knows some things well and others poorly'.[65] Turning again to Tomkins, Sedgwick says that, to its credit, paranoia operates to tell big truths.[66] However, by the very nature of its reach and reductiveness, it misses the 'descriptive richness'[67] of subjective or localised experiences and becomes immune to historical change or rigid in relation to temporality.[68] In contrast, reparative practice involves 'imaginative close reading … [It] gives up on hypervigilance for attentiveness; instead of powerful reductions, it prefers acts of noticing, being affected, taking joy, and making whole'.[69] As such, reparative practice is 'responsive to its own contingency and therefore adaptable to a changing political environment'.[70] It is local, nuanced and flexible, temporal and contextual, but it should not be mistaken as naïve or limited in its scope:

> [It is no] less acute than a paranoid position, no less realistic, no less attached to a project of survival, and neither less nor more delusional or fantasmatic, the reparative reading position undertakes a different range of affects, ambitions, and risks. What we can best learn from such practices are, perhaps, the many ways selves and communities succeed in extracting sustenance from the

[61] ibid 146.
[62] ibid 128.
[63] ibid.
[64] ibid; Sedgwick, 'Introduction: Queerer than Fiction' (n 22) 278.
[65] Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 130.
[66] ibid 136.
[67] Heather Love, 'Truth and Consequences: On Paranoid Reading and Reparative Reading' (2010) 52 Criticism 235, 237–8.
[68] Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 146.
[69] Love (n 67) 237–8.
[70] Durgin (n 50) 5.

> objects of a culture—even of a culture whose avowed desire has often been not to sustain them.[71]

By focussing on reparative reading, Sedgwick invites us to expand the horizons of queer scholarship, moving beyond an 'all-or-nothing understanding of agency'.[72] By paying attention to subjective experiences and the 'middle ranges of agency' that encapsulate a form of relationality – understanding 'that you can be relatively empowered and disempowered'[73] – we can work with a less binary conceptualisation of power and explore the ways people actively formulate, narrate or articulate their worlds. It is, as Tyler Broadway suggests, reflecting on Sedgwick, a conception of agency that is defined 'by the ability to engender change for a self through affective negotiations that do not conform to the polarities of liberation or the re-inscription of repression' by reimagining the relation between self and other.[74] 'It is the site' Sedgwick says, 'of intellectual creativity … the space in which challenges to a normalizing universality can develop'.[75]

Reparative reading provides a useful method for better understanding LGBTQIA+ people's engagement with legal reform in international law as queer jurisprudential work. As a methodological approach that focuses on the lived experience of LGBTQIA+ people, and how they operate within systems of oppression for meaningful personal and structural change, it provides a way to understand these engagements with law not as acts of assimilation, as often alleged, but as queer expressions of agency and empowerment. By grounding queer theory in quotidian materiality and paying attention to the subjective experiences of LGBTQIA+ people and their commitments to legal equality, we can recognise in more complex ways the queer sensibilities operating through these engagements *with* law.

2.2 Queer Methods: The Aesthetics of Repair

There is an increasing body of work that explores what 'materiality may mean in relation to law'.[76] In the introduction to their Special Issue on legal

[71] Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 150–51.
[72] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 631.
[73] ibid 631–2.
[74] Tyler Bradway, '"Permeable We!": Affect and the Ethics of Intersubjectivity in Eve Sedgwick's A Dialogue on Love' (2012) 19 GLQ: A Journal of Lesbian and Gay Studies 79, 81.
[75] Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 637.
[76] Hyo Yoon Kang and Sara Kendall, 'Introduction: Special Issue on Legal Materiality' (2019) 23 Law Text Culture 1, 2; Jessie Hohmann and Daniel Joyce (eds), *International Law's Objects* (First Edition, Oxford University Press 2018); Peter Goodrich, 'Specula Laws: Image, Aesthetic and Common Law' (1991) 2 Law and Critique 233; Peter Rush and Andrew T Kenyon, *An Aesthetics of Law and Culture: Text, Images, Screens* (Elsevier 2005); Leif Dahlberg (ed), *Visualizing Law and Authority: Essays on Legal Aesthetics* (De Gruyter 2012).

materiality, Hyo Yoon Kang and Sara Kendall consider the reconstructive (as opposed to deconstructive) potential of the legal materialist approach and the clarity it can generate for 'understanding what counts as legal knowledge and how legality materialises'.[77] In her 'step to the side of the deconstructive project',[78] Sedgwick also explores what a turn to materiality can offer to analytic processes. In her book 'Touching Feeling' she describes the move towards reparative practices as a shift from a 'fixation on epistemology … by asking new questions about phenomenology and affect'.[79] The title of her book captures an 'intuition', as she describes it, 'that a particular intimacy seems to subsist between textures and emotions'.[80] The words 'touching' and 'feeling' both encompassing the tactile along with the emotional. Turning to texture, she departs from an analysis of 'nonlinguistic phenomena in rigorously linguistic terms'[81] to further explore reparative practices and the dismantling of dualistic thought:

> [T]he sense of touch makes nonsense out of any dualistic understanding of agency and passivity; to touch is always already to reach out, to fondle, to heft, to tap, or to enfold, and always also to understand other people or natural forces as having effectually done so before oneself, if only in the making of the textured object.[82]

Through her interest in crafting and making textiles, Sedgwick explores the use of media beyond writing in the first person[83] to understand agency, relationality and intersubjectivity through the 'reciprocal interactions between subjects and objects'.[84] It is in the 'indiscriminate realm [of textiles]', says Sedgwick, 'that conscience has no foothold'.[85] As part of this project, I sought to expand the registers through which to understand my participants' responses to law and legal reform and wove into the interviews visual and sensory research methods.[86] I invited Croome and Otto to bring to the

[77]Hyo Yoon Kang and Sara Kendall (n 76) 3.
[78]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 6.
[79]ibid 17.
[80]ibid.
[81]ibid 6.
[82]ibid 14.
[83]Sedgwick, *A Dialogue on Love* (n 6) 207.
[84]Guy Davidson and Monique Rooney, 'Queer Objects' (2018) 23 Angelaki: Journal of the Theoretical Humanities 3, 4.
[85]Sedgwick, *A Dialogue on Love* (n 6) 199.
[86]See for example approaches to sensory research methods in law as well as the social sciences: James EK Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford University Press 2015); Sheryl Hamilton and others (eds), *Sensing Law* (Routledge 2016); David Howes, 'Prologue: Introduction to Sensori-Legal Studies' (2019) 34 Canadian Journal of Law and Society / Revue Canadienne Droit et Société 173; Sean Mulcahy, 'Silence and Attunement in Legal Performance' (2019) 34 Canadian Journal of Law and Society / Revue Canadienne Droit et Société 191; Jennifer Mason and Katherine Davies, 'Coming to Our Senses? A Critical Approach to Sensory Methodology' (2009) 9 Qualitative Research 587; Marilys Guillemin and Anna Harris, *Using the Senses in Qualitative Interview Research: Practical Strategies* (SAGE Publications 2014); Deborah Warr and others, *Ethics and Visual Research Methods: Theory, Methodology, and Practice* (Palgrave Macmillan 2016).

Figure 2. This is an arrangement of selected pages from Eve Sedgwick's 2004 Calendar 'Dropped Held'.[181]

interview something that represented their response to law, law reform and/or legal equality. The object or item acted as a prompt in the interview process and was a catalyst for discussion, but it also provided a way of examining the multi-sensory nature of their lived experience in relation to law.[87]

Approaching Sedgwick as one of the protagonists here, I have chosen from the collection of her work available on a website developed in her honour, an artwork from one of her calendars: 'Dropped / Held' (Figure 2).[88] This is one of

[87]Guillemin and Harris (n 86) 1; Mason and Davies (n 86) 590.
[88]Eve Kosofsky Sedgwick, 'Untitled' <https://evekosofskysedgwick.net/art/dropped-calendar.html> accessed 22 July 2022.

many calendars she produced amongst her textile and clay work and reflects for me the reparative practices she was exploring at the time, as well as the risk, vulnerability and possibility inherent in reading reparatively LGBTQIA+ efforts for legal reform as queer jurisprudence. Reflecting on the turn to repair, Sedgwick acknowledges the relational possibilities and the persistence required as part of this methodological practice:

> The sense that power is a form of relationality that deals in, for example, negotiations (including win-win negotiations), the exchange of affect, and other small differentials, the middle ranges of agency … is a great mitigation of that endogenous anxiety, although it is also a fragile achievement that requires discovering over and over.[89]

Calendars offer a space for recording our commitments and actions, marking the birthdays of those we love, the days we celebrate as a tradition or otherwise. Their blank squares attendant to possibility and potential, thoroughly personal, temporal and contextual. The pictures accompanying each month in Sedgwick's calendar of 2004 depict figures, animals and objects falling, but each dropping/falling is reciprocated with a depiction of holding/catching. These collaged images and stamped designs reflect to me the ethical queer orientation inherent in reading reparatively LGBTQIA+ efforts for legal reform.[90] They express the vulnerability experienced in moments of suspension, the feeling of being in the tension, the space between repression and liberation. That there is dropping, but there is also holding. The pictures animate the reparative impulse, wherein, because 'the reader has room to realize that the future may be different from the present, it is also possible for her to entertain such profoundly painful, profoundly relieving, ethically crucial possibilities as that the past, in turn, could have happened differently from the way it actually did'.[91] Challenging 'the location of queer agency in the performative subversion of norms' and placing 'it instead in affective embodiment',[92] Sedgwick illustrates through these pictures being 'otherwise' in a cis-gendered and heteronormative world. They elicit the feeling of reading reparatively: the despair, the hope, the surprise and joy in being held, the need to discover it over and over.

3. LGBTQIA+ Activism in International Law

3.1 Rodney Croome: 'Using the Law to Change the Law'[93]

Rodney Croome is a gay, cis man and long-time activist living in Tasmania, Australia (Figure 3). In response to the stigmatisation and discrimination

[89]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 631-2.
[90]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 137.
[91]ibid 146.
[92]Bradway (n 74) 95.
[93]Interview with Rodney Croome (n 21).

Figure 3. 'Rodney Croome in Adelaide, South Australia, Australia, 2023. Photo: Odette Mazel.

he experienced as a result of being gay, Croome and others founded the Tasmanian Gay and Lesbian Rights Group (TGLRG)[94] in 1988 to campaign against the criminalisation and vilification of gay and lesbian people.[95] Croome describes the capital city of Hobart at that time as having a 'very repressive atmosphere' for LGBTQIA+ people and says that the 'law, as it stood then, was one of the reasons, one of the main reasons, for that suppression'.[96] Being a part of the TGLRG was dangerous in itself, and participants were told not to use their second names when introducing themselves at community meetings. 'I very quickly realised', said Croome, 'that while I thought I'd grown up in a democracy, in fact, as a gay man, I was living in a police state'.[97] The police actively monitored the gay and lesbian community, and 'any public display, any public presence was shut down by the authorities'.[98] 'It was', he repeats, 'a repressive situation and on top of this mound of hate and prejudice sat the law'.[99]

Croome was involved in the protests at Salamanca Place in 1988 when the Hobart City Council banned the TGLRG market stall for advocating gay and

[94]The group was originally called the Tasmania's Gay Law Reform Group.
[95]Tasmanian Criminal Code Act (Tas) 1924.
[96]Interview with Rodney Croome (n 21).
[97]ibid.
[98]ibid.
[99]ibid.

Figure 4. Rodney Croome being arrested at Salamanca Markets, Tasmania, Australia, 1988. Photo: Roger Lovell.[182]

lesbian rights and promoting the decriminalisation of homosexuality (Figure 4). The protests, held over a number of weeks, resulted in 130 people being arrested, and it remains the largest civil disobedience on LGBTQIA+ issues in recent Australian history.[100] 'Changing the law was in and of itself an important goal', said Croome, 'because that law was in and of itself discriminatory and a violation of human rights … If we wanted to make inroads into that prejudice, if we wanted to make Tasmania a more inclusive place then we had to change the law'.[101] Whilst all other Australian States and Territories had passed legislation to decriminalise homosexuality by 1990, the Tasmanian Government remained steadfast in its opposition to any legal reform. At one of their protests, TGLRG members handed out white feathers as a symbol of cowardice. They laid wreaths on the steps of Parliament House to 'mourn the human loss that will result from the inaction of the legislative council and the bigotry and fear that their attitudes foster'.[102] To highlight the prejudice embedded in the law, members of the TGLRG offered themselves up to Tasmanian police with statutory declarations detailing their participation in homosexual acts that should have them arrested and jailed.[103]

[100]Rodney Croome, 'The Local, National and International Impact of the UNHRC Decision against Tasmania's Former Anti-Gay Laws' (2013) 22 Human Rights Defender 6, 6.
[101]Interview with Rodney Croome (n 21).
[102]*Gay Law Reform: Tasmania Hypocrites and White Feathers Legislative Council Protest* (1990) <https://www.youtube.com/watch?v=rtMjSs_Usnl> accessed 13 October 2022.
[103]*Rodney and Jason Turn Themselves in to the Police* (1990) <https://www.youtube.com/watch?v=A1wolwMWNGY> accessed 13 October 2022.

Despite persistent public advocacy efforts, however, and following two failed attempts at amending the legislation through the Tasmanian Government, there remained no further legal avenues at a state or federal level in the absence of a Bill of Rights.

In 1991, Australia ratified the First Optional Protocol to the ICCPR,[104] and seeing an opportunity to 'keep the issue alive',[105] the TGLRG, placing Nicholas Toonen (Croome's partner at the time) at the forefront, submitted a communication to the Human Rights Committee. While at its conception, the United Nations, in its Universal Declaration of Human Rights, failed to acknowledge, let alone protect people with diverse genders and sexualities,[106] there was an emerging body of scholarly and activist engagement at the site of international law, including from organisations such as the International Lesbian and Gay Association (ILGA) and the International Gay and Lesbian Human Rights Commission (IGLHRC).[107] While early appeals to the Human Rights Committee relating to same-sex sexuality had been so far ineffective,[108] there had been three successful appeals to the European Court of Human Rights Court, which found violations of the right to privacy, by the mid-1990s.[109] There were 'legal processes [in international law] that we went through', said Croome, 'in order to move towards changing the law … It gave us another avenue to move the issue forward'.[110] 'On top of that', he said, 'it provided a way to frame the issue in terms of basic human rights'.[111]

In Toonen's communication to the Human Rights Committee, he argued that sections 122(a) and (c) and 123 of the Tasmanian Criminal Code[112] made him, as a gay man, activist and gay HIV/AIDS worker, a target of police investigation and the subject of derogatory and insulting remarks, threatening his liberty and private life.[113] He further argued that the

[104]*Optional Protocol to the International Covenant on Civil and Political Rights,* (opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1).
[105]Interview with Rodney Croome (n 21).
[106]Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).
[107]Nicole Laviolette and Sandra Whitworth, 'No Safe Haven: Sexuality as a Universal Human Right and Gay and Lesbian Activism in International Politics' (1994) 23 Millennium: Journal of International Studies 563; Cynthia H Enloe, *The Morning After: Sexual Politics at the End of the Cold War* (University of California Press 1994).
[108]The Human Rights Committee monitoring the International Covenant on Civil and Political Rights found that the Finnish Government was justified in limiting freedom of expression for the sake of protecting public morals, see Human Rights Committee, Report of the Human Rights Committee, 37th sess, Supp No 40, UN Doc A/37/40 (22 September 1982) annex XIV, 165 [10.3]–[11] as cited by Otto in Otto, 'Introduction: Embracing Queer Curiosity' (n 11) 8.
[109]*Dudgeon v United Kingdom* (1981) Series A no 45; *Norris v Ireland* (1988) Series A no 142; *Modinos v Cyprus* (1993) Series A no 259.
[110]Interview with Rodney Croome (n 21).
[111]ibid.
[112]These sections criminalise sexual activity between consenting adult men in private: Criminal Code Act 1924 (Tas).
[113]*Toonen v Australia* Communication No 488/1992, 50th sess, UN Doc CCPR/C/50/D/488/1992 (4 April 1994) (Human Rights Committee) para 2.1-2.7.

legislation 'created the conditions for discrimination in employment, constant stigmatization, vilification, threats of physical violence and the violation of basic democratic rights'.[114] The effect, he said, was that the Criminal Code violated a number of Australia's obligations under the ICCPR, namely its article 2(1) prohibiting discrimination, article 17 on the right to privacy and article 26 on the right to equality before the law.[115] The Committee, which considered the communication in 1994, held in *Toonen v Australia* that Tasmania's laws criminalising consenting sexual conduct between men *had* contravened articles 2(1) and 17(1) read in conjunction, and that the relevant sections of the Criminal Code should be repealed.[116] Having found a violation of articles 2(1) and 17(1), the Committee found it unnecessary to consider if there had been a violation of article 26, but, importantly, stated that 'in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation' broadening the interpretation of the word 'sex'.[117] The decision was the first of its kind to acknowledge the human rights of homosexual people in the private sphere, a significant moment for the recognition of LGBTQIA+ people in international law.

Following the decision, and once it became clear that the Tasmanian Government was still refusing to change its laws, the Australian Government passed the federal Human Rights (Sexual Conduct) Act 1994 (Cth). This legislation recognised the right to privacy with respect to sexual conduct involving consenting adults in private and was designed to override the Tasmanian laws. The Tasmanian Government, however, still refused to amend its legislation, and in 1997 Croome took the Government to the High Court to test whether ss122(a) and (c), and s123 of Tasmania's Criminal Code Act 1924 were inconsistent with the Commonwealth's Human Rights (Sexual Conduct) Act and therefore invalid.[118] The relevant provisions of the Criminal Code Act 1924 (Tas) were finally repealed after the Tasmanian Government failed to have the matter struck out by the High Court. 'The High Court ruled our case admissible, which was the biggest hurdle we faced, and when it was clear that they were going to rule in our favour, the Tasmanian Parliament realised the game was up, and the law was reformed'.[119]

[114]ibid para 2.4.
[115]*Toonen v Australia* (n 113); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[116]*Toonen v Australia* (n 113).
[117]ibid para 8.7. While Article 26 did not form the basis of the Committee's decision, this issue was picked up and substantiated in *Mr Edward Young v Australia* Communication No 941/2000, 78th sess, UN Doc CCPR/C/78/D/941/2000 (18 August 2003) (Human Rights Committee).
[118]This was by virtue of the effect of s109 of the Australian Constitution, which states that when a law of a State is inconsistent with a law of the Commonwealth the latter will prevail. The High Court held that s109 was effective in this case: *Croome v Tasmania* (1997) 191 CLR 119.
[119]Interview with Rodney Croome (n 21).

Croome acknowledges the arguments against engaging with the institutions that embed heterosexual and gender-conforming standards, but 'law as an institution', he states, 'will not be abolished'.[120] When 'laws are in and of themselves discriminatory', they must be changed, especially if they legitimate 'prejudice and hate', he urges. We can 'use the law to change the law', and in the process of changing the law, Croome emphasises, we change 'hearts and minds'.[121] It is through the 'campaigning, the lobbying, the advocacy, the judicial appeals' that shifts in perception and understanding occur.[122] 'The fact people are discussing these issues and talking to each other, and also listening to the personal stories of LGBTI people' says Croome, 'that, inevitably, leads to a reduction in prejudice and hate … [it] has a positive impact on community attitude, as does the law reform when it finally occurs itself'.[123] Despite the violence that Croome, Toonen and other members of the TGLRG faced as a result of law, they maintained hope in the possibilities of legal reform. By working with the law, they challenged and fundamentally changed, the normative operations of international law. The Human Rights Committee's unprecedented decision recognising LGBTQIA+ rights as human rights paved the way for increased activity in the UN on LGBTQIA+ issues,[124] as well as provided the foundation for further advocacy and other complaints.[125] On the 20th anniversary of the decision, the then UN High Commissioner for Human Rights, Navi Pillay, acknowledged that the 'Toonen case was a watershed with wide-ranging implications for the human rights of millions of people'.[126]

[120]ibid.
[121]ibid.
[122]ibid.
[123]ibid.
[124]For example, in 2013 the Office of the UN Commissioner for Human Rights Launched Free & Equal, a campaign aimed at promoting equal rights of LGBTI people; in 2015 12 UN entities release a joint statement calling for the end to violence and discrimination against LGBTQIA+ people; in 2016, the UN Human Rights Council created the mandate of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and in 2019, a number of UN entities came together to develop a Programmatic Overview of the role of the UN in combatting discrimination and violence against LGBTQIA+ people: 'OHCHR and the Human Rights of LGBTI People' (*United Nations*) <https://www.ohchr.org/en/sexual-orientation-and-gender-identity> accessed 14 October 2022.
[125]For example: *Mr Edward Young v Australia* (n 119); *Rosanna Flamer-Caldera v Sri Lanka* CEDAW/C/81/D/134/2018, 23 March 2022; Laurence R Helfer and Alice M Miller, 'Sexual Orientation and Human Rights: Toward a Unites States and Transnational Jurisprudence' (1996) 9 Harvard Human Rights Journal 61; Corinne Lennox and Matthew Waites, 'Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: From History and Law to Developing Activism and Transnational Dialogues' in Corinne Lennox and Matthew Waites (eds), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth* (University of London Press 2013). Further, in 2006, a group of 29 international human rights experts from across 25 countries developed and adopted the Yogyakarta Principles (updated in 2017) outlining a set of principles relating to international human rights law and its application to sexual orientation and gender identity: 'Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity' <www.yogyakartaprinciples.org> accessed 13 October 2022.
[126]*How Gay Rights Debate Began at the UN* (2011) <https://www.youtube.com/watch?v=qd9dGN6dBwA> accessed 13 October 2022.

Figure 5. TGLRG badge, Equality Chair, Plaque, Tasmania. Photos: Odette Mazel.

The objects that Croome chose to represent law, legal reform and/or legal equality were a TGLRG badge and a park bench (Figure 5). For him, the badge represents the activism and commitments of the people who put their bodies on the line and paved the way for legal reform. It is a representation of how legal change is predicated on defiance, courage, and radical personal action. It gestures toward what we can learn, as Sedgwick says, from 'the many ways selves and communities succeed in extracting sustenance from the objects of a culture – even of a culture whose avowed desire has often been not to sustain them'.[127] For me, it is a reminder that we must not take for granted the work of those that came before us. When he was nominated for Australian of the Year in 2015, Croome gave this badge to the National Museum as a memento and celebration of gay law reform, a symbol of repair, excitement and joy.

In October 2018, the Tasmanian Parliament voted to place a chair in Parliament Gardens commemorating how far Tasmania had come in respect of LGBTQIA+ equality. The 'Equality Chair' is located only metres from Salamanca Place, where the earlier protests took place. It sits across the road from the Supreme Court and in front of the Tasmanian Parliament – situated amongst important historical sites of the Tasmanian struggle. The chair is a representation of the impact

[127]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 150–51.

those activists have had on law and a celebration of 'the transformation of Tasmania from the state with the worst laws and attitudes about LGBTI people to the state with some of the best'.[128] It signifies that the law can and should be changed. It is emblematic of the positive outcomes that can be achieved through radical action and legal reform, an acknowledgement of the history, and a statement about the importance of queer narratives in public places.

Croome's is a story of rebellion and reform, disruption and commitment. His narrative highlights the reparative practises occurring in and through law that become visible when we pay attention, as Sedgwick suggests, to the 'middle ranges of agency' – how disenfranchised people draw on their internal resources to engage with systems of oppression in ways that are personally empowering as well as transformative of the systems themselves.[129] These are queer jurisprudential acts.[130] His legal activism is neither naïve nor complicit. Croome experienced first-hand the discriminatory effects of law. Despite this, and in defiance of a system that criminalised him, he, along with many other activists, fought to create a space within it, a space between repression and liberation, resistance and compliance.

3.2 Dianne Otto: 'Juggling Critique and Hope'[131]

Dianne Otto is an activist and Professor of Law (Figure 6). She held the Francine V McNiff Chair in Human Rights Law and was the Director of the Institute for International Law and the Humanities at the Melbourne Law School. She identifies as a socialist feminist lesbian but also feels comfortable with the descriptor queer.[132] Otto's work on feminist, postcolonial and queer legal theory in international law and international human rights law has been hugely influential for many students and scholars, including me. She convened the first symposium on queer theory and international law, publishing the papers in a seminal edited collection.[133] In the introduction to that book, Otto contemplates whether 'appeals [can] be made to international human rights law to make precarious queer lives more liveable *without* legitimising the heteronormative imperial heritage of the normative framework of

[128]'Tasmanian Memorial Celebrates State's "transformation" on LGBTIQ Rights' (*QNews*, 23 October 2018) <https://qnews.com.au/memorial-unveiled-to-celebrate-tasmanias-transformation-on-lgbtiq-rights/> accessed 17 September 2021.
[129]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 632, 637.
[130]Elsewhere I have worked with the methodologies of Robert Cover to show how LGBTQIA+ commitments to law are queer and jurisprudential: Odette Mazel, 'Violence in the Name of Equality: The Postal Survey on Same-Sex Marriage, LGBTQIA+ Activism and Legal Redemption' (2022) 48 Australian Feminist Law Journal 137.
[131]Otto, 'Impunity in a Different Register: People's Tribunals and Questions of Judgment, Law, and Responsibility' (n 23) 295; Engle (n 23).
[132]Interview with Dianne Otto (West Brunswick, Victoria, 28 May 2019).
[133]Otto, *Queering International Law* (n 7).

Figure 6. Dianne Otto at her home with a die, Victoria, Australia, 2019. Photo: Odette Mazel.

international law'.[134] Bringing to her work a 'queer curiosity'[135] Otto interrogates the role of law as a discourse that reifies notions of sexuality, gender, race and class as they play out in the heteronormative state.[136] Yet, she is always attentive to the possibility and potentiality of law being otherwise. As Hilary Charlesworth notes, 'while Di's critique of the international and national legal systems is unflinching, her writing is essentially optimistic. She searches for signs of advance, points of contradiction that leave some

[134]Otto, 'Introduction: Embracing Queer Curiosity' (n 11) 7.
[135]ibid 2.
[136]Wayne Morgan, 'In Honour of the Queerly Curious: Professor Dianne Otto' (2017) 19 Melbourne Journal of International Law 133, 134.

space for pushing for change within the law'.[137] 'This hopeful approach to the emancipatory potential of the law', Charlesworth continues, 'distinguishes Di from many other critical theorists in international law'.[138] Her sense of hope, however, comes hand in hand, as Karen Engle notes, with an acknowledgement of the dangers inherent in such engagements.[139] Otto's scholarly work and activism provide a unique representation of the oscillatory and interdependent relationship between paranoid and reparative practices that Sedgwick sets out. Otto's is a queer intervention in international legal theory and practice, a long-standing commitment to critiquing law whilst valuing it as a worthwhile and necessary site of engagement through which to pursue change.

Otto came to the law after being a community outreach worker. In that role, she saw how the law worked 'against the interests of the young people and women' that she was working with, reflecting that, at that time, the police did little to help or support domestic violence victims and tended to harass and target homeless young people, the unemployed, the working class, LGBTQIA+ people and people of colour.[140] Providing character references for those she worked for, Otto often found herself in the Magistrates Court and in attendance at the Winlaton Young Women's Detention Centre in Nunawading, Victoria, where many of her clients spent time. Her interactions with these sites of law only increased her sense of dissatisfaction with the legal system as she became increasingly aware of its own injustices and the failure of incarceration to provide any substantive opportunities for rehabilitation.[141] At the same time, however, she witnessed the work of lawyers in homeless clinics and with the communities she was engaged with, seeing first-hand the positive impact they had on people's lives. Using their legal knowledge and their legal power, she noted, they diverted people from a system that did not serve them well. It was then that she decided to study law, believing that it would give her a 'different angle to come at injustice'. 'I just thought', she reflected, that 'law would give me some different tools'.[142]

It was in her international human rights classes as a student that she realised how her two worlds – community activism and law – could come together. 'The human rights field', she said, 'just wouldn't be as developed as it is without the huge numbers of people organising from the grassroots level up'.[143] Non-Government Organisations (NGOs) play a crucial role in

[137]Hillary Charlesworth, 'Celebrating Di Otto' (2017) 18 Melbourne Journal of International Law 118, 119. See also: Loveday Hodson, 'Queering the Terrain: Lesbian Identity and Rights in International Law' (2017) 7 feminists@law 1.
[138]ibid.
[139]Engle further points out that Di often insists on the '*hope of critique*': Engle (n 23) 121.
[140]Interview with Dianne Otto (n 132).
[141]ibid.
[142]ibid.
[143]ibid.

lobbying and working with states, bringing to bear the on-the-ground realities of peoples' lives to the processes of framing and reforming international law.[144] Eventually finding herself in academia after working for Amnesty International, Otto realised how her activism could inform her scholarship and teaching practices. Much of her work, she says, is also about inspiring students to use their 'legal knowledge as an activist – to encourage them to think about the limits of the law and how they might work to change that'.[145]

Lesbian issues had been absent from a lot of feminist debates in international law when she was a law student. There was 'a lot of prejudice about homosexuality', says Otto, 'other feminists were worried that feminism would not be as effective if it took up lesbian issues'.[146] Although the community of feminist scholars was a safe and affirming place to be a lesbian, there was still a 'kind of silence around sexuality in the public sphere', she says.[147] Otto never shied away from her sexuality, but neither did she announce it to her colleagues or students. However, following the decision in *Toonen v Australia*, things shifted says Otto: 'I'm working in international law and … the Toonen case is decided, and that's the first time in international human rights law that sexual orientation is recognised as a prohibited form of discrimination'.[148] 'So yeah … that helped'. 'It opened some more space for me in my field of work'.[149] 'I think the law plays a huge role in diminishing … shame', said Otto, 'the Toonen decision – that really made [LGBTQIA+ issues] hugely less shameful in the human rights field'.[150]

Not long after she joined the academy, Otto attended the Beijing World Conference on Women in 1995. Despite the recent decision in Toonen, a number of countries opposed references to gender and sexual orientation in the Draft Platform for Action, arguing that the use of 'gender' threatened the binary of male and female sexes, and that the inclusion of homosexuality was unacceptable.[151] As a participant in the Lesbian NGO Caucus at the conference, Otto volunteered to go to the African NGO caucus to talk about the importance of recognising sexual orientation as a prohibited ground for discrimination. Whilst her plea was met with silence, in the corridors after the session, multiple women approached to thank her for bringing the issue to the fore. It was an important personal moment for Otto, who later published a piece about her experience and, in the process, made her own sexual orientation explicit.[152] '[I]t was like

[144]See for example: Pierre-Marie Dupuy and Luisa Vierucci (eds), *NGOs in International Law: Efficiency in Flexibility?* (Edward Elgar Publishing 2008).
[145]Interview with Dianne Otto (n 132).
[146]ibid.
[147]ibid.
[148]ibid.
[149]ibid.
[150]ibid.
[151]ibid
[152]Dianne Otto, 'Lesbians? Not in My Country' (1995) 20 Alternative Law Journal 288.

a code', said Otto, 'marginalised groups are always alert to little signals. We have our own codes, in a way, to convey that we might be a lesbian … so people could find it if they wanted to or avoid it if they didn't'.[153]

Since then, Otto's scholarly and activist work has been instrumental to queer and feminist legal thinking, both within the academy and beyond it. Recently, in what might be construed as a metaphor for 'making whole',[154] the Committee on the Elimination of Discrimination Against Women handed down its landmark decision in *Rosanna Flamer-Caldera v Sri Lanka,* finding that the criminalisation of same-sex lesbian conduct in Sri Lanka was a violation of human rights under the Convention.[155] The decision was significant on a number of levels,[156] but was particularly important for its intersectional recognition and inclusion of gender and sexual difference. The Committee stated that 'rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women' and that it applies to 'non-heterosexual relations'.[157] As amicus curiae for the case, Otto's arguments fell not on a silent crowd, as was her experience in Beijing, but instead were supported by the CEDAW Committee, who, in a rare gesture, recognised her contribution in the body and footnote of the opinion.[158] In much of her scholarly work, Otto considers the limits of the liberal paradigm and of law as a discourse of power embedded firmly within it. However, her work also engages with 'the possibilities of emancipatory alliances and more complex and mobile understandings of power, both within and beyond the law'.[159] Otto's work and activism are illustrative of the importance of paranoid queer practices, but they are also evidence of the queer practices of repair occurring *within* international law. By continuing to ask 'queer questions', she says, we will find solutions 'that help to fundamentally change the way in which things have been normally done in international law'.[160]

Otto brought to the interview a six-sided die. Legal reform processes, she said, 'can be a roll of the die, with the outcomes left to chance'.[161] Law is a 'double-edged sword', says Otto, 'it's both restricting and freeing'.[162] 'There's no doubt that the law is a very powerful aspect of our lives and in many ways helps to constitute our daily realities' but the task for those of us working in the law' she says, is 'making law as inclusive, as empowering

[153]Interview with Dianne Otto (n 132).
[154]Love (n 67) 237–8.
[155]*Rosanna Flamer-Caldera v Sri Lanka* (n 125).
[156]For further details see: Christine Chinkin and Keina Yoshida, 'CEDAW and the Decriminalisation of Same-Sex Relationships' (2022) 3 European Human Rights Law Review 288.
[157]*Rosanna Flamer-Caldera v Sri Lanka* (n 125) para 9.7
[158]ibid para 7.3 and 7.4; Chinkin and Yoshida (n 156) 295.
[159]Otto, 'Introduction: Embracing Queer Curiosity' (n 11) 11.
[160]ibid.
[161]Interview with Dianne Otto (n 132).
[162]ibid.

as possible, as freeing as possible'.[163] Whilst Otto remains critical of international law, she has never lost hope or faltered in her determination to affect change within it. Her life's work is evidence of the queer reparative impulse, a commitment to 'intellectual creativity' in which, as Sedgwick notes, 'challenges to a normalizing universality can develop'.[164] Rolling the die is worth the chance.

4. Conclusions: Smuggling Queer into Law

Queer work is contextual, and in this paper, I bring Sedgwick's method of reparative reading into conversation with two Australian non-Indigenous activists and their engagements with international law, as this is the place where I work and live. While I have emphasised here the queer work of repair, I acknowledge that different contexts, spaces and places require queer paranoid practices. The critical queer work of Kapur, Spade, Romero, Otto and others is vital for exposing the heteronormative functions of law, and for thinking beyond the constraints of the systems we have, for keeping our 'queer curiosity' alive.[165] But LGBTQIA+ lives are lived with law,[166] and as Sedgwick guides us, it is important that we counterbalance the emphasis on paranoia to recognise the queer work being undertaken in and through practices of repair.

In their interviews, both Croome and Otto reflect on the shame and stigma they experienced as an LGBTQIA+ person as a result of the discrimination embedded in and enabled by law. In some ways, it propelled their activist work. Sedgwick's explorations of affect began with a fascination with 'shame'[167] and its relationship to the development of a (queer) sense of self.[168] Both invalidating and foundational, Sedgwick conceptualised '"queer performativity"' as 'a strategy for the production of meaning and being, in relation to the affect shame and to the later and related fact of stigma'.[169] It was a reclamation of sorts in which, as she explains, eroticising shame becomes a 'way of coming into loving relation to queer … '[170] But, as her work developed, Sedgwick says, the 'fascination led me so far into the forest of affect theory [that shame] let go its hold on me there'.[171] Through her increasing attention to queer modes of repair, Sedgwick acknowledges

[163]ibid.
[164]Sedgwick, 'Melanie Klein and the Difference Affect Makes' (n 2) 637.
[165]Dianne Otto, 'Resisting the Heteronormative Imaginary of the Nation-State: Rethinking Kinship and Border Protection' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 256.
[166]Genovese, McVeigh and Rush (n 1).
[167]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 21.
[168]ibid 37.
[169]ibid 61.
[170]ibid 41.
[171]ibid 21.

that the positive and 'autotelic' affects of 'interest-excitement and especially, enjoyment-joy' became much more 'involving'.[172] Croome and Otto didn't shy away from the shame they experienced, but they acknowledge the relief (and joy) when that shame and stigma were diminished through legal reforms. While changing the law is only one strategy in a complex social, political and economic world, it has important implications for the liveability of LGBTQIA+ lives. Working with the law comes with its risks, but it also comes with possibilities.[173]

So, what can we glean from other materials? How can a badge, a bench, a calendar, or a die animate a queer jurisprudential story about LGBTQIA+ engagements with international law? Contemplating the work that queer does in a world dominated by cis-gendered and heterosexual representation, Sedgwick recalls her attachments to a few childhood objects that were, for her, resources for survival in an adult world:

> I think many adults (and I am among them) are trying, in our work, to keep faith with vividly remembered promises made to ourselves in childhood: promises to make invisible possibilities and desires visible; to make the tacit things explicit; to smuggle queer representation in where it must be smuggled and, with the relative freedom of adulthood, to challenge the queer-eradicating impulses frontally where they are to be so challenged.[174]

The objects presented in this paper are representations of the queer practices enacted by LGBTQIA+ people in relation to law. They are objects of struggle, suspension, chance, repair, commitment and hope – insights into the texture of 'lives lived with law'.[175] They speak of queer agency and the creative and innovative ways that disenfranchised people engage with systems of oppression in empowering and transformative ways. The objects invite us to explore, in a sensory way, expressions of 'the 'middle ranges of agency', and to understand in a more nuanced way the possibilities that emerge in the space between liberation and repression, hegemony and subversion.[176] It is a method that prioritises ontology over epistemology,[177] challenging 'the location of queer agency in the performative subversion of norms' and placing 'it instead in affective embodiment'.[178] LGBTQIA+ people *are* engaging with law in queer and creative ways that challenge its normative operations, 'smuggl[ing] queer representation in where it must be smuggled … challeng[ing] the queer-eradicating impulses frontally where they are to be so challenged'.[179]

[172]ibid.
[173]Otto, *Queering International Law* (n 7).
[174]Sedgwick, *Tendencies* (n 26) 3.
[175]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 17; Genovese, McVeigh and Rush (n 1).
[176]Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (n 2) 13.
[177]ibid 17.
[178]Bradway (n 74) 95.
[179]Sedgwick, *Tendencies* (n 26) 3.

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[180]Photo provided with permission from HA Sedgwick. See also: Kate Collins, 'Work and Love Are Impossible to Tell Apart: The Eve Kosofsky Sedgwick Papers' (*The Devil's Tale*, 28 April 2022) <https://blogs.library.duke.edu/rubenstein/2022/04/28/eve-kosofsky-sedgwick-papers/> accessed 22 July 2022.
[181]Photos provided with permission from HA Sedgwick: see Eve Kosofsky Sedgwick, 'Untitled' <https://evekosofskysedgwick.net/art/dropped-calendar.html> accessed 22 July 2022.
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