

SYMPOSIUM ON QUEERING INTERNATIONAL LAW

QUEERLY TROUBLING INTERNATIONAL LAW'S VISION OF "PEACE"

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Queering international law involves dreaming. It requires stepping outside the framing presumptions of "normal" law to reveal and challenge the heteronormative underpinnings of the hierarchies of power and value that the law sustains.¹ Reclaiming the nomenclature of queer from its history as a term of insult and dehumanization, queer theory interrogates the normative framework that naturalizes and privileges heterosexuality and its binary regime of gender. In its reclamation, "queer" gestures toward affirmative assemblages of new meanings and emancipatory imaginaries. In international law, queer theory has been used in many different ways. For some, queerly troubling the normative involves expanding the existing normal to be more inclusive of queer lives, as can often be seen in the field of international human rights law.² As life-giving as inclusion is to those barely existing on the margins, without changing the terms of inclusion this approach risks leaving heteronormativity intact and may even buttress it, as with the legal recognition of same-sex marriage.³ For others, queering international law involves a more fundamental critique of its regimes of the normal that, together, regulate our relations with each other and the planet. The objects of queer theory's structural critique are the conceptual foundations of international law, which rely on heteronormativity as a fundamental organizing principle that helps to normalize inequality, poverty, exploitation, and violence. One example is the "civilizing mission" which justified colonialism and continues to animate present legal norms. As Teemu Ruskola argues in his seminal queer critique, international legal rhetoric attributed normative masculinity to (Western) sovereign states and cast the "deficient" sovereignty of non-Western states in terms of variously deviant masculinities which, together with their civilizational and racial attributes, justified their "penetration."⁴ My "troubling" of international law's account of peace takes a queer structural approach and then outlines some alternative imaginaries suggested by queer theory and activism.

The Radicalism of Queer Theory

The heteronormative analytic intersects with and reinforces the more familiar normalizing tropes of empire, nation, class, religion, race, sex/gender, and (dis)ability. Indeed, links can be drawn between queer visions of peace and the radical challenge presented to international law's normal way of ordering global relations mounted by the Third World during the Cold War, particularly the policy of political non-alignment and proposal for a

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¹ Dianne Otto, *"Taking a Break" from "Normal": Thinking Queer in the Context of International Law*, 101 ASIL PROC. 119 (2007).

² Report of the OHCHR, *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, UN Doc. A/HRC/29/23 (May 4, 2015).

³ Aeyal Gross, *Sex, Love, and Marriage: Questioning Gender and Sexuality Rights in International Law*, 21 LEIDEN J. INT'L L. 235 (2008).

⁴ Teemu Ruskola, *Raping Like a State*, 57 UCLA L. REV. 1477 (2010).

redistributive New International Economic Order.⁵ There are also many links with feminist conceptions of peace, which challenge the work that dualistic tropes of sex/gender do in normalizing militarism, hypermasculinity, and the accumulation of ever more deadly weaponry. Queer theory draws more attention to the harms that human bodies endure during times of peace as well as war,⁶ and questions binary orthodoxies of all kind, including in feminist and Third World canons, to resist the ways of thinking that have so distorted our relationships with each other and the non-human world, and to celebrate instead the many different ways of being human.

All these critical perspectives are informed by histories of subjugation, exclusion, dispossession, and marginalization. They share a kind of gift in knowing that international law's inequitable status quo is not inevitable. They also share an urgency to challenge the justificatory framework that has normalized experiences of oppression, which has relied variously on notions of the civilizing mission, *terra nullius*, preserving the social fabric, free trade and progress, protection of the family, rescuing women from backward cultures, countering terror, defending sovereignty, and so on. Many of these justifications have explicitly found their way into legal reasoning. Queer methods set out to trouble the foundations of the discipline, expose its normalizing rhetorics of power, and foment change—without the threat or use of weapons or militaries.

International Law's Vision of Peace

In 1945, following the devastation of two world wars, the “peoples” of the United Nations (UN) dreamed of a peaceful world. They pledged to “live together in peace with one another as good neighbours.”⁷ Yet peace was not defined. Of the forty-five references to peace in the substantive articles of the UN Charter, the majority were coupled with “security,” reflecting the UN’s primary purpose, “the maintenance of international peace and security.”⁸ This coupling signals an understanding of peace as reliant on (state) security. Despite the preemptory nature of the prohibition of the use of force, the central role assigned to the Security Council makes it clear that the dominant vision of peace in the UN Charter relies on military strength and securitized states. The Security Council’s five permanent members (P5) are all armed with nuclear weapons and among the world’s largest arms exporters.⁹ That the Council is entrusted with effectively unlimited power to identify threats to the peace, and then, to take the measures necessary to respond to those threats,¹⁰ normalizes the realist view that aggression in international relations can only be deterred or controlled by the threat or use of countervailing military force. Peace is understood as dependent on military might and reliant on a militarized world order—or, as queer political philosopher Judith Butler describes it, peace is conceived through the “frames of war.”¹¹ It is a top-down vision of enforced peace that is primarily shaped by the geo-political interests of the P5. Borrowing from Giorgio Agamben’s notion of “bare life”—human life that is stripped of legal status and rights by sovereign power¹²—this is “bare peace” which treats most life, human and non-human, as expendable, or “ungrievable,”¹³ in the cause of state security.

⁵ Ilan Kapoor, *The Queer Third World*, 36/9 *THIRD WORLD Q.* 1611 (2015).

⁶ See, e.g., JASBIR K. PUAR, *THE RIGHT TO MAIM: DEBILITY, CAPACITY, DISABILITY* (2017).

⁷ *UN Charter*, pmbl. para. 2 (1945).

⁸ *Id.* Art. 1(1).

⁹ Stockholm International Peace Research Institute, *Market Share of the Leading Exporters of Major Weapons Between 2016 and 2020, by Country*.

¹⁰ *UN Charter*, *supra* note 7, Art. 42. The extent of this power is contested. See, e.g., ERIKA DE WET, *THE CHAPTER VII POWERS OF THE UNITED NATIONS SECURITY COUNCIL* (2004).

¹¹ JUDITH BUTLER, *FRAMES OF WAR: WHEN IS LIFE GRIEVABLE?* (2010).

¹² GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 8 (1998).

¹³ *Butler*, *supra* note 11.

But how is “bare peace” made acceptable in the imaginary of international law? This is where the underpinning of neo-colonial, racialized, gendered—and heteronormative—analytical tropes come into play. Notions of Western superiority and non-Western backwardness, deeply embedded in international law, rely heavily on heteronormative legal rhetoric, as Ruskola argues,¹⁴ which works to valorize militarism as a “manly” pursuit. The legitimating power of heteronormative tropes can be seen in the everyday language of the military, as political scientist Carol Cohn discovered when she participated in a training exercise with United States military analysts. Military resolve was endorsed as a measure of masculine virility and humanitarian concerns about the destruction of civilian food and power systems were belittled as “wimpish.”¹⁵ In this way, heteronormative scripts of gender and sexuality work to normalize existing hierarchies of power, in association with other fundamental organizing principles like empire, nation, race and class, making bare peace, and its economics of weaponry, appear to be “common sense.”

Since the end of the Cold War, even more emphasis has been placed on militarized security. In 1992, the Security Council, no longer polarized by Cold War divisions, dramatically expanded the compass of its responsibilities, asserting that “non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to international peace and security.”¹⁶ This move concentrated even more power in the hands of the Security Council and securitized an unprecedented range of international legal issues, including climate change. It made the Security Council the epicenter of international action. Following the 9/11 Al Qaeda attacks on the United States in 2001, this shift became even more pronounced, with the omnipresent menace of terrorism identified as a threat to international peace and security and U.S. President George W. Bush announcing a new kind of war against terror.¹⁷ This “new normal” legitimated new securitizing technologies and practices that have rearranged social relations in ways that further entrench the hierarchies of value that divide the world’s peoples.¹⁸ They include militarized border controls, sophisticated mechanisms of mass surveillance, cyber-warfare, demonization of asylum seekers, extraordinary renditions, indefinite detention, and the targeted elimination of threatening groups and individuals. Even infectious diseases are treated as a security threat,¹⁹ rather than a public health issue, extending the biopolitical reach of security technologies into even more intimate aspects of our lives and deepening the contours of both local and global inequality. Security in the form of strengthening state power and its biopolitical control has rendered even more life ungrievable.

Here too, in the perpetual wars against terror, pandemics, and climate change, the heteronormative leitmotif repeats. The “enemy” is made out to be “queer” in its dehumanizing sense, as variously unnatural, backward, effete/promiscuous, strange, underdeveloped, and uncontrollable. Indeed, the domestic acceptability of President Bush’s military response to the 9/11 attacks relied heavily on reviving heteronormative tropes of “[b]rawny, heroic, manly men”²⁰ who would not only defend the homeland, but also rescue Afghan women from the gender segregated abnormality of Islam. That the male perpetrators preferred masculine company while on Earth, and hoped for reward in the form of eternal access to virgins in the afterlife, added to the menacing sense of their sexual perversity.²¹ Jasbir Puar and Amit Rai note the posters which appeared in mid-town Manhattan, within days of 9/11, depicting a turbaned caricature of Osama bin Laden being anally penetrated

¹⁴ Ruskola, *supra* note 4.

¹⁵ Carol Cohn, *War, Wimps and Women*, in *GENDERING WAR TALK* 227 (Miriam Cook & Angela Woollacott eds., 1993).

¹⁶ [Note by the President of the Security Council](#), UN Doc. S/23500 (Jan. 31, 1992).

¹⁷ George W. Bush, [Address to the Nation](#) (Sept. 11, 2001).

¹⁸ Fionnuala Ni Aoláin, [Human Rights Advocacy and the Institutionalization of U.S. “Counterterrorism” Policies Since 9/11](#), JUST SECURITY (Sept. 9, 2001).

¹⁹ Christine Schwobel-Patel, [We Don’t Need a “War” Against Coronavirus. We Need Solidarity](#), ALJAZEERA (Apr. 6, 2020).

²⁰ Patricia Leigh Brown, [Heavy Lifting Required: The Return of Manly Men](#), N.Y. TIMES (Oct. 28, 2001).

²¹ John F. Burns, [Bin Laden Stirs Struggle on Meaning of Jihad](#), N.Y. TIMES (Jan. 27, 2002).

by the Empire State Building, arguing that this and other similar representations used sexual deviancy to further demonize the figure of the terrorist. They argue that the apprehension of overwhelming terrorist threat was fueled by Western notions of racialized failed heterosexuality, which fostered an aggressive nationalism in the United States.²² The use of racialized queer tropes as both humiliation and threat helped to justify the anti-terrorism measures that the Security Council, in a further extension of its powers, required UN member states to adopt; measures that seriously eroded many personal freedoms and rights and granted extensive new powers to security organizations.²³ Thus heteronormativity, embedded in the structures and principles of international law, continues to play a central role in normalizing the Charter's minimal vision of bare peace.

Reframing Peace Queerly and the Implications for International Law

The idea of peace has not been a central concern for queer theory. Rather, the focus has been on our relations with each other as humans and, often, with the natural world as well.²⁴ Perhaps the contemporary understanding of peace is too monolithic and prescriptive for queer scholars, and might better be rethought as a plurality of "peaces," as Phillip Kastner and Elisabeth Roy Trudel suggest.²⁵ Maybe peace has been so emptied of radical meaning in this hyper-securitized world that it has itself become a normalizing force, rather than a beacon of resistance to the inequitable status quo. Or perhaps the idea of peace is not compelling because of the many quotidian forms of violence, that are accepted as "the way things are" during so-called peace. Nevertheless, queer theory has much to offer the project of troubling the way that peace has come to be understood and practiced in international law. It requires dreaming of a world, and its laws, devoted to sustaining and enriching life in all its forms.

In this dreaming, the hierarchical relational scripts that normalize bare peace must change. If the dominant relations of power are to be seriously challenged, this change needs to come from the bottom up so that those who live in the most precarious situations are able to contribute their "gifts" of subaltern knowledge. This conjures a very different idea of the sources of international law and portends law as multitudinous rather than singular, embracing its "fragmentation" rather than fearing it.²⁶ But this only makes sense if underpinned by very different relational scripts. As Butler explains in her work on non-violence, human relations need to be based on our interdependencies rather than predicated on individualism because only then will we understand that "[t]here is a sense in which violence done to another is at once violence done to the self."²⁷ This requires complete redefinition of our relations with all forms of life on earth.

One of the most pernicious aspects of the current global relational architecture is nationalism. It is the imagined community of the nation state that dominates one's sense of identity, loyalty and belonging.²⁸ As Benedict Anderson has observed, national feelings of belonging and attachment are so strong that people are willing to die for the nation.²⁹ National loyalties present a major obstacle to thinking in radically inclusive and plural

²² Jasbir K. Puar & Amit S. Rai, *Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots*, 20 *SOCIAL TEXT* 72, 117, 126 (2002).

²³ *SC Res. 1373* (Sept. 28, 2001).

²⁴ Emily Jones & Dianne Otto, *Thinking Through Anthropocentrism in International Law: Queer Theory, Posthuman Feminism and the Postcolonial*, *LSE WOMEN PEACE & SEC. CTR. BLOG* (2019).

²⁵ Phillip Kastner & Elisabeth Roy Trudel, *Unsettling International Law and Peace-Making: An Encounter with Queer Theory*, 33 *LEIDEN J. INT'L L.* 911 (2020).

²⁶ See further GINA HEATHCOTE, *FEMINIST DIALOGUES ON INTERNATIONAL LAW: SUCCESSES, TENSIONS, FUTURES*, ch. 3 (2019).

²⁷ JUDITH BUTLER, *THE FORCE OF NON-VIOLENCE* 9 (2020).

²⁸ BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (rev. ed. 1991).

²⁹ *Id.* at 7.

ways about law and human connectedness. Nationalism frames human kinship in the exclusionary terms of likeness, modeled on the kinship ties of the monogamous heteropatriarchal family.³⁰ This relational model underpins a system of human (dis)connectedness and divisive loyalties that is endangering us all. Yet this arrangement of global relations is not natural or inevitable. Many queer relational practices, for example, treat sexuality as separate from kinship,³¹ which “allows for the durable tie to be thought outside the [heteronormative] conjugal frame and thus opens kinship to a set of community ties that are irreducible to family.”³² Thus, in queer imaginaries of peace, the primacy of national loyalty must give way to the myriad other assemblages of human kinship that refuse to confine loyalty and connection to the heteropatriarchal and racially imbued band of national relational ties.

It follows that reframing peace queerly requires new post-national understandings of our global obligations to each other and to the natural world, and a new idea of equality that is connected to those obligations. As Butler puts it, the idea of global obligations “is about as far from the neoliberal consecration of individualism as it could be.”³³ That is, envisioning peace as a life-giving and life-sustaining assemblage of relational ties involves not only rethinking statehood, but “transforming the very meaning of personhood”³⁴ from autonomous individuals to social embeddedness and interconnectedness. Equality too needs to be rethought in relational terms rather than as a comparison between individuals or states.³⁵ We are not separable from the conditions of our lives that make some lives more livable/grievable than others, and if we are all “kin” then no life can be livable while other lives remain precarious.³⁶ Queer dreams of peace imagine a world without the structural violence that keeps so many people impoverished, debilitated and disempowered, and the planetary systems of life threatened. This violence sustains the same neoliberal masculinist-heteronormative power elites that benefit from today’s endless armed conflicts. Queering peace requires transforming the law’s assumptions about the human and human interconnectedness, dismantling the loyalties demanded by the nation state, and working to nourish life rather than paving the way to its destruction.

Conclusion

In stepping outside the framing certainties of the “peace” of normal international law, the queer goal is not to produce a new template of assumptions or an alternative normativity. Instead of a blueprint, peace is understood as a process of continual striving to resist, without violence, domination and hierarchy in all its forms, and to take pleasure in our interconnections with all life on earth and in fulfilling the obligations we have to ensure our collective well-being. As a theoretical impulse, queer legal analysis is driven by the need to reveal and understand how law works to sustain structures of domination. But queer is also a political movement that seeks to address lived realities in the present, which requires working with and through the received framework of international law at the same time as contesting it.

³⁰ Dianne Otto, *Resisting the Heteronormative Imaginary of the Nation State: Rethinking Kinship and Border Protection*, in [QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS](#) 236 (Dianne Otto ed., 2018).

³¹ Damian A. Gonzalez-Salzburg, *Queering Reparations Under International Law: Damages, Suffering, and (Heteronormative) Kinship*, 116 *AJU UNBOUND* 5 (2022).

³² Judith Butler, *Is Kinship Always Already Heterosexual?*, in [UNDOING GENDER](#) 127 (2004).

³³ [Butler](#), *supra* note 27, at 44.

³⁴ Judith Butler, *On Being Beside Oneself: On the Limits of Sexual Autonomy*, in [SEX RIGHTS: THE OXFORD AMNESTY LECTURES](#) 2002 (Nicholas Bamforth ed., 2005).

³⁵ [Butler](#), *supra* note 27, at 44–45.

³⁶ DONNA J. HARAWAY, [STAYING WITH THE TROUBLE: MAKING KIN IN THE CHITHULUCENE](#) (2016).