QUEER RIGHTS, QUEER FUTURES: AN AFFECTIVE EXPERIMENT IN LEGAL FORM

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I. INTRODUCTION

This paper is an affective experiment in queering legal form and how we, as queer legal scholars, might re-imagine and re-create legal rights when casting judgment. It threads creative memoir with pop culture and critical analysis to reimagine the nature of a traditional legal essay. This piece flows in three parts. Drawing on an archive of experiences teaching, researching, thinking, and writing queer legal scholarship, I start the paper with a fictionalized recreation–what Saidiya Hartman calls "critical fabulation"[1]– to distill the emotions that materialize when navigating socio-legal issues that shape jurisprudential, pedagogic, and scholarly ideas about marriage equality and cultural norms about queer love. The next section combines critical theoretical engagements with law and form to reflect on the pedagogic, scholarly, and judicial possibilities of queer judgment making as a "reparative praxis." I argue that this queer engagement with legal form holds space for romance, risk, intimacy, love, and hope as we teach, research, and adjudicate rights for lesbian, gay, bisexual, transgender, queer, and other minoritized (LGBTQ+) people. I conclude that queer judgment is a romantic expression of queer legal form, one that offers us critical, normative, and creative space to re-present how we conceptualize, critique, teach, and practice law.

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1. Alexis Okeowo, *How Saidiya Hartman Retells the History of Black Life,* NEW YORKER (Oct. 19, 2020), https://www.newyorker.com/magazine/2020/10/26/how-saidiya-hartman-retells-the-history-of-black-life.

II. TEENAGE DREAMING . . .

I sink back into the folds of the purple blanket that I have thrown across my sofa. I try to find the nook, the special place where my ass is perfectly cradled by the velvety grey cushion so that I can feel my most comfortable. After a few seconds of contorting my back and shifting the folds of the blanket to give me some additional cushioning for my back, I find that sweet spot.

I grab the TV remote and switch on Netflix. The latest season of *Heartstopper* is out. I've never been a reader of graphic novels, but over the past few years my social media feeds and social conversations have revolved around this cultural text which has been recently adapted and popularized for television. "It's beautiful." "Finally! A show about awkward teenage queer romances." "Well, it's just very cute." These are just some of the concise reviews friends and online acquaintances have shared.

I remember watching that first episode a few years ago. Two teenage boys, Charlie and Nick, lock eyes from across a classroom, and a smile beams across Charlie's lips as he walks over and sits next to Nick. Charlie's world is full of possibility, and his desire for Nick is represented on screen by animated swirling autumn leaves as he utters a "hello" to his new handsome classmate. While the show revolves around the bourgeoning romance between Nick and Charlie, the narrative offers us a range of fun, awkward, annoying, and endearing queer characters who form part of the *Heartstopper* universe which is set in a fictionalized small town in southern England. Each season we see a spectrum of queer life unfold as characters "come out" as gay, bisexual, trans, asexual, and non-binary. (Nick identifies as gay and Charlie self-describes as bisexual).

This fictionalized queer coming of age story resonates with me precisely because it was absent from my adolescence. Growing up in the 90s and early 2000s as a voracious viewer of American, British, and Australian television, young queer people (let alone young queer love) were not a represented possibility in my pop culture landscape. I glimpsed the odd desexualized gay stylist in *Queer Eye for the Straight Guy* or *Ricki Lake* or caught an aggressive gay sex scene in shows like *Oz* when I stayed up late after my family had gone to sleep. But queer teenagers awkwardly navigating love, friendship, and community? That was not on my millennial television horizon.

My ass is uncomfortable. I seem to have dislodged from my nook. I've been binging my way through Season 3 of *Heartstopper* and have lost that lounging sweet spot somewhere between Charlie disclosing his eating disorder to Nick and them making out in bed. It's late. I cannot be bothered with the effort to try and find it again. I acquiesce and head to bed.

Class is about to start. They tap their cards against the reader, each tap accompanied by a grating "beep," as they file into the room and take their seats. Some yawn as they sit down and open their laptops. Others tap on their phones while others chat excitedly as they wait for me to begin speaking. Many of my students are at the end of their teens or just into their 20s. I look at their bored, impatient, impassioned, and longing faces and I think back to *Heartstopper*. "These kids probably think that show is basic," I muse to myself. "Do they even say 'basic' anymore?" my inner voice adds. But what would I know? I have not spoken to the young people I teach about their vernaculars or TV tastes.

"Good afternoon, everyone. Today, we are looking at relationship recognition and marriage equality," I project loudly to indicate that class is now in session. My Gender, Sexuality, and Law unit is a small class for law students, but I appreciate having only about twenty or so people to chat with each week. The space dispenses with some formalities you might think typical of a university classroom, as we converse like we are gathered in a loungeroom or kitchen table, all sat around a crude circle. This layout feels more personal. I learn each of their names and encourage their contributions by thanking them by name for their interventions each week. In ever-expanding class sizes, it feels like an achievement to learn each student's name. At the same time, I wonder if my students feel like they've achieved something by the simple fact that I know who they are by name. We disclose our feelings about the texts we are studying or the legal decisions we are evaluating. Some even "come out" to position their gender or sexual identity as a disclaimer for the intervention they are about to make.

We started the unit with feminist and queer theories about law. "So, gender is a fluid performance?" one student anxiously summarized a few weeks ago after my attempt to condense Judith Butler's philosophies of sex/gender into a 5-minute spiel. "Not quite," I responded. After a short monologue on the nature of performativity, I remember looking back at that student to observe both recognition and confusion in their pursed lips and focused eyes as they typed furiously on their laptop. "I just think these people are evil and need to be punished," another student claimed a few weeks later, as we reflected on abolitionist critiques of criminal law's investments in punishing hate crime.

Today is lighter. We are talking about marriage and love. I've asked my students to read *Obergefell v. Hodges*, a decade old constitutional law case from the United States that ushered in same-sex marriage for remaining

American states that had yet to legalize it.[2] I start the class with where Justice Kennedy ended his judgment:

> No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.[3]

I stand and read the passage out loud. In that moment, as my tongue moves and words form into sentences, I find myself pausing and enunciating "love" each time. I feel like a celebrant casting blessings upon my students, as if in a marriage ceremony, rather than leading a class on a piece of constitutional jurisprudence. I cringe. "What am I doing?" I think to myself after I've finished reading out loud. The way I have delivered those words, letting my tongue linger on "love," means my students probably think I am enamored by the judgment, even though I have asked them to read one of my law review articles where I offer a "queer critique" of the heteronormative nature of it. Much like that paper (which I suspect many have skimmed if they even bothered to click the link to download it!), I ask them to dwell with the parties to think, as they would have done, about what was at stake in the denial of marriage equality.

"What a cliché!" I imagine my students accusing me of being. I wince. But as my mind wonders on how I might pre-emptively shield myself from such insults ("I was just leaning into the part," I could say), I realize my anxiety is less about the nature of clichéd expressions of marriage and more about how my hopeful tone in delivering the judgment might tether me to the politics of a judgment that privileges monogamy, reproduction, productivity, and state regulation of intimacy. "How very unqueer!" I think. Through that realization, I become less concerned with the gaze of my actual class and begin to project an image of my queer legal peers who scrutinize me. I hear them indicting my delivery, "How can a queer scholar talk so romantically about a normative institution such as marriage?" I revert to thinking about

2. 576 U.S. 644, 680-81 (2015).

3. *Id.* at 681. This case focused on two people, James Obergefell and his partner, John Arthur, who were residents of Ohio and were married in Maryland. After Arthur's death, Obergefell requested that the Court allow him to be listed as Arthur's spouse on the death certificate–even though Ohio refused to recognize same-sex marriages that were validly contracted in other states.

my *Heartstopper* binge last night, and how queer scholars might excoriate the pleasure I felt witnessing saccharine hugs between teenagers and sex scenes that lacked a focus on genital parts and fluids. "Where is the grit?" "Where is the sex?" "The aesthetic is like a playschool fantasy of queer life." These are some of the comments I hear them saying as a chorus in my mind.

As I oscillate between yearning about what it may have been like to have a love like Nick and Charlie's while I was at school to embracing Kennedy J's proclamations about love and marriage, I feel my credentials as a queer legal scholar begin to fray. I turn shamefully from this distracting scene and focus back on my class.

"So, what is the point Justice Kennedy is trying to make here?" I ask out loud as I face the room, with most of my students staring up at me eagerly ready to offer a response. "It's about ending stigma," one student notes from the back of the class. Another adds, "same-sex marriage is a basic legal right of equality." We spend the next ten minutes discussing dignity, equality, liberty, and freedom as everyone in the class affirmatively nods at the importance of such values in our legal system. To the students who speak, marriage equality is entirely unobjectionable, and the legality of Justice Kennedy's arguments, as poetic as they may have been, appears sound to them.

I interrupt the upbeat rhythm of the pedagogical exchange to dwell on the dissents. I point out what Chief Justice Roberts had to say and read out loud again:

> If not having the opportunity to marry "serves to disrespect and subordinate" gay and lesbian couples, why wouldn't the same "imposition of this disability," ante, at 22, serve to disrespect and subordinate people who find fulfillment in polyamorous relationships?[4]

I read this passage with sincerity. While Chief Justice Robert's dissent oozes a homophobic refusal to understand the nature of sexual orientation discrimination and associated stigma, I find this passage surprisingly prescient.[5] As we discuss this passage, students respond with shared accusations of "homophobia," with varying degrees of reasoning to distinguish the conflation of homosexuality with polygamy.

I focus the discussion by asking my students to turn to my article critiquing the normative goals of marriage equality. "How might Chief Justice Roberts's point about a judicial focus on dignity be extended to broaden legal relationship recognition in ways that he seems dismissive about?" This prompts a discussion about different types of families and

4. *Id.* at 704. (Roberts C.J., dissenting).

5. *See id.* at 704-12. (Roberts C.J., dissenting).

relationships. Yet, my students return to marriage as something special. "Gay and lesbian people deserve to celebrate their love," one student concludes as a riposte to Chief Justice Roberts. Another student chimes, "When you have faced stigma, marriage equality is more than just about wanting to get married; it is about what having the choice to marry represents about your equality as a person." My students remind me that marriage equality, crystallized in Justice Kennedy's words, is a valentine to the gay and lesbian community who have been denied state affirmation of their relationships.[6]

The romantic possibilities of marriage rights, as opposed to marriage itself, it is what animates my classroom discussion of *Obergefell*. I wonder if that is how they would have written the majority judgment had they, instead of Justice Kennedy, been tasked with it.

I am finishing my monograph. It is an exposition of how emotions shape legal responses to LGBT rights in so-called "progressive" countries. I look around at the books neatly piled up on one side of the table and the judgments arranged on the other side, each one glowing with pink highlighter markings. My last chapter is on marriage equality in the United States.[7] I've been struggling with how to write about *Obergefell*. I keep asking myself, "How would you have decided this case?" I know I would have reached the same outcome as Justice Kennedy. I flash back to the queer kid (me!) prancing around in his mother's heels pretending to be a bride. Marriage play was fun before I had a vocabulary to understand structural heteronormativity or my gay identity. I also know I would have adopted some of Chief Justice Roberts's questions to push Justice Kennedy's analysis to make greater room for alternative intimacies that are non-monogamous or non-sexual.[8] I linger with love as I write my critique of the case and the possibility of pursuing our lives through the rights prisms of liberty and equality. I then toy with these rights terms to see how they might be stretched to be more accommodating of queerness.

I have *Heartstopper* on in the background as I start writing. Isaac, who is one of the asexual characters in the show, quips, "I want to believe in romance." I think for a moment that I also want to believe in romance. But this is not the kind of romance that involves another person in a sexual or caring frisson. Rather, I wonder about my desires for law reform and my belief in a legal system that could make life easier for those of us who are criminalized, punished, policed, and dispossessed. I want to have a romance

6. *Id.* at 661-62.

7. *See* Michael J. Higdon, *(In)formal Marriage Equality*, 89 FORDHAM L. REV. 1351, 1353-54 (2021) (discussing the formal path to marriage equality in the United States).

8. *See Obergefell*, 576 U.S. at 644.

with legal rights that attends to minoritized lives. A romance that makes me and law vulnerable. A romance that holds possibilities of risk, danger, hope, and love. That is what I aspire to do with law. I want to craft a legal valentine.

III. QUE(E)RYING LEGAL FORM: EMOTIONAL ENCOUNTERS AND REPARATIVE PRAXIS

I began writing this paper as an emotional experiment in "wayward" legal storytelling. Saidiya Hartman argues that to write about those who are "wayward" (about lives which are minoritized by structural violence and made queer to a social order) is to engage in a form of storytelling "liberated from the judgment and classification."[9] While Hartman's work is a creative and scholarly retrieval of the lives of Black women at the turn of the twentieth century through a careful study of historical archives, my approach when I created the prose above was rooted in the present, and my archive is experience.[10] I take inspiration from Christina Sharpe's *Ordinary Notes*, where her scribbles about yearning, love, beauty, and freedom are anchors to navigate pressing matters of familial intimacy, embodiment, structural racism, and grief.[11] Like Hartman and Sharpe, I am interested in reflexive forms of creative experimentation: telling stories that are partly speculative and anchored in everyday experiences. As a watcher of *Heartstopper* and teacher and researcher of queer legal studies, the story above involves a protagonist who is similar to me.[12] Their story is rooted in my experiences, even if I have augmented parts of my experiences in a way that means they could no longer be described as autoethnographic. I give myself to the reader in the fragment above with the hope that my tale might serve as an "object lesson," one that illuminates the emotional grammars of queer legal teaching, research, and practice.[13] This creative exercise complements my other more "conventional" forms of critical socio-legal scholarship which are

9. SAIDYA HARTMAN, WAYWARD LIVES, BEAUTIFUL EXPERIMENTS: INTIMATE HISTORIES OF RIOTIOUS BLACK GIRLS, TROUBLESOME WOMEN, AND QUEER RADICALS 9 (2019).

10. *Id.* at xiv.

11. CHRISTINA SHARPE, ORDINARY NOTES (2023). There are several Black feminist experiments with writing about justice. For a recent example of how micropolitical relations reshape possibilities for justice, see also RUHA BENJAMIN, VIRAL JUSTICE: HOW WE GROW THE WORLD WE WANT (2022).

12. *See* discussion *supra* Part II.

13. ROBYN WIEGMAN, OBJECT LESSONS (2012).

methodologically anchored through doctrinal study and autoethnographic practice.[14]

The methodological approach underpinning, and discursive form to, the prose is "queer" to doctrinal forms of legal analysis in that I foreground sexual subjectivity (queer desire) and emotions about law (queer legality) over dispassionate, third-person inflected (hetero)sexual objectivity.[15] I fictionalize and analyze under the sign of "I." In speaking about emotions, the narrator of my story above captures the romance we (as queer people, scholars, activists, lawyers) might have to legal and cultural representations of love. As Sara Ahmed writes, love "reproduces the collective as ideal through producing a particular kind of subject whose allegiance to the ideal makes it an ideal in the first place."[16] In other words, love might be described as an idealized social, political, and cultural expression as well as individual or interpersonal of being. In my story, the narrator is both a queer viewer/consumer (of *Heartstopper*, marriage) who desires greater representation and recognition and a queer scholar (researching, teaching, and critiquing pro-gay texts like *Heartstopper* and judgments like *Obergefell*) with political desires that eschew state recognition and social categorization.[17] These desires embedded in the story pull in different

14. *See generally* Senthorun Raj, *Legally Affective: Mapping the Emotional Grammar of LGBT Rights in Law School*, 31 FEMINIST LEGAL STUD. 191 (2023); SENTHORUN RAJ, FEELING QUEER JURISPRUDENCE: INJURY, INTIMACY, IDENTITY (2020).

15. This paper cannot summarize the rich and contested histories of queer scholarship. Broadly conceived, I take "queer" to mean individual identities, social practices, and analytic habits that dwell in sites of non-normativity. Queer speaks to those spaces and times which eschew the stability of gender/sex categories and embrace the fluidity of intimacy, kinship, and sexual attachments which refuse to conform to heterosexuality, monogamy, fidelity, domesticity, and reproduction. For texts on this subject, see generally Kadji Amin, *Haunted by the 1990s: Queer Theory's Affective Histories*, 44 WOMEN'S STUD. Q. 173 (2016); MATT BRIM, POOR QUEER STUDIES: CONFRONTING ELITISM IN THE UNIVERSITY (2020); JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (reprt. ed. 2010); Lisa Duggan, *Queering the State*, 39 SOC. TEXT, Summer 1994, at 1; HEATHER LOVE, FEELING BACKWARD: LOSS AND THE POLITICS OF QUEER HISTORY (2007); JOSÉ E. MUÑOZ, CRUISING UTOPIA: THE THEN AND THERE OF QUEER FUTURITY (2009); Aleardo Zanghellini, *Queer, Antinormativity, Counter-Normativity and Abjection*, 18 GRIFFITH L. REV. 1 (2009).

16. SARA AHMED, THE CULTURAL POLITICS OF EMOTION 123 (1st ed. 2004).

17. These personal and political tensions are theorized across a range of queer legal texts. For a sample of how these tensions are theorized, see Ratna Kapur, *The Sexual Subaltern and Law: Postcolonial Queer Imaginaries*, *in* ENTICEMENTS: QUEER LEGAL STUDIES 59 (Joseph J. Fischel & Brenda Cossman eds., 2024); Dianne Otto, *Embracing Queer Curiosity*, *in* QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS 1 (Dianne Otto ed., 1st ed. 2017); Tamsin Phillipa Paige & Claerwen O'Hara, *(Re)queering International Law*, *in* QUEER ENCOUNTERS WITH INTERNATIONAL LAW: LIVES, COMMUNITIES, SUBJECTIVITIES 1 (Tamsin Phillipa Paige & Claerwen O'Hara eds., 2025); Vanja Hamzić, *International Law, Coloniality, and the Temporal Otherwise*, *in* QUEER ENCOUNTERS WITH INTERNATIONAL LAW, *supra*, at 85.

directions.[18] The narrator in my story grapples with the problematic cultural ideals of monogamous love and couple intimacy embodied in Nick and Charlie's romance and in Justice Kennedy's poetic gloss on marriage. And they are also titillated by the sentimentality of teenage longing for a "steady boyfriend" and yearning for jurisprudence that might make loving easier for those same-sex couples denied legal recognition. Taken together, each expression of love is productive in that it generates the idealization of particular subjects (people like Nick and Charlie who we might desire, places like schools or courtrooms where we think queer intimacy is possible, and objects like legal judgments that secure queer kinship) and these idealized subjects (re)produce our romantic attachments to them.[19] We might define love then as an "intensified zone of attachment"[20] that binds our attention to individuals, objects, and institutions that promise a "good life"[21] and, in doing so, secures an idealized "self-evident good" of those individuals (Nick and Charlie), texts (*Obergefell*, *Heartstopper)*, and institutions (marriage).[22]

The story about marriage equality and queer love is not only an emotional exercise but it is also a reparative one. The form my story takes is what Eve Sedgwick would describe as an "affect theory."[23] An affect theory is a reparative enterprise that relies on "selective scanning" and "amplification" to resist the tendency to aggregate or taxonomize to "prove" an object of thought conclusively.[24] Such an intimate approach to reading is reparative because it avoids foregone conclusions of what to expect and brings us collectively closer toward "healing" existing problems of producing thought through active reimagining of reading practices and insisting or affirming the potentials of other meanings.[25] To read, research, and teach *Obergefell* reparatively means cultivating a space where a judgment might be read in ways that follow the (surprising) queer possibilities of homophobic disavowals (as I did when the narrator asked their students to think with Chief Justice Roberts) about extending dignity to constitutionalize protections for non-normative (polyamorous) sexual and

18. *See* discussion *supra* Part II.

19. LAUREN BERLANT, DESIRE/LOVE 6-8 (2012).

20. *Id.* at 18.

21. SARA AHMED, THE PROMISE OF HAPPINESS 90 (2010).

22. ELIZABETH A. POVINELLI, THE EMPIRE OF LOVE: TOWARD A THEORY OF INTIMACY, GENEALOGY, AND CARNALITY 17 (2006).

23. EVE KOSOFSKY SEDGWICK, TOUCHING FEELING: AFFECT, PEDAGOGY, PERFORMATIVITY 135 (2003).

24. *Id.* at 135-36.

25. Clare Hemmings, *The Materials of Reparation*, 15 FEMINIST THEORY 27 (2014); Robyn Wiegman, *The Times We're In: Queer Feminist Criticism and the Reparative 'Turn'*, 15 FEMINIST THEORY 4 (2014).

platonic (friendship) relationships.[26] Writing creatively makes room to imagine this reparative curation, as the narrator staged a classroom encounter where students were drawn into conversations about law through (rather than against) their romantic notions of dignity or sentimental hopes for equality. Reparative critical strategies enable us to reflect on both what might be problematic about the normative emotional grammar of love that sutures dignity to heteronormativity, as well as alternative grammars of queer love and kinship which are hidden or refused visibility.[27]

This brings me to the possibilities of "queer judgment" as a reparative pedagogic, scholarly, and legal practice.

IV. FORMING QUEER JUDGMENTS

Queer judgments take shape in different ways.[28] As Nuno Ferreira, Marica Moscati, and I write in our new collection, queer judgments are not prescribed by specific conventions about form (which might be expected in common law jurisdictions that revolve around precedent) but are "a space to reflect on the desirability and possibilities of law while holding space to cultivate friendship and solidarity between communities fighting for justice."[29] Queer judgment writing is a collective process that involves (hypothetical) adjudicators navigating emotions when they are asked to make sense of LGBTQ+ people (who are angry, mourning, hopeful, joyous), and these emotions are crystallized through the form such sense-making generates (such as through judgments that express disgust, rage, happiness towards specific social or doctrinal issues).[30] Creative writing of a classroom encounter made queer judgment possible both in what the classroom encounter describes, and the form my description of that encounter takes.[31]

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26. *See* discussion *supra* Part II.

27. KOSOFSKY SEDGWICK, *supra* note 23, at 140. For a discussion on the possibilities of staging repair through law, see Danish Sheikh, *Repairing (the) International Law (Conference): The Affordances of Theatre*, *in* QUEER ENCOUNTERS WITH INTERNATIONAL LAW, *supra* note 17, at 209.

28. Following FEMINIST JUDGMENTS: FROM THEORY TO PRACTICE (Rosemary Hunter et al. eds., 2010), numerous queer legal scholars have explored queer judgment writing in normative terms to the extent the judgment would be taken up the relevant court who heard the original case. Given the prefigurative ethos underpinning my work, I do not follow this important but more normative pathway. *See generally* DAMIAN A. GONZALEZ-SALZBERG, SEXUALITY AND TRANSSEXUALITY UNDER THE EUROPEAN CONVENTION OF HUMAN RIGHTS: A QUEER READING OF HUMAN RIGHTS LAW (2019); Alex Sharpe, *Queering Judgment: The Case of Gender Identity Fraud*, 81 J. CRIM. L. 417 (2017).

29. Nuno Ferreira, Maria Federica Moscati & Senthorun Raj, *Queer(ing) Judgments*, *in* QUEER JUDGMENTS 1, 2 (Nuno Ferreira et al. eds., 2025).

30. *Id.*

31. *See* discussion *supra* Part II.

To put it more plainly: I was able to write a story that both dealt with individual and collective feelings (love, hope, and respect animating LGBTQ+ lives) that were central to making judgments about queer intimacy (culturally through *Heartstopper* and constitutionally through *Obergefell*) without positioning the narrator/adjudicator as neutral or dispassionate.[32] By writing about emotional judgments relating to queer intimacy, I gave form to an emotional analysis of law through creative prose rather than, as might be judicially expected, a systematic doctrinal analysis.[33]

Emotions are political zones of movement and attachment in this paper. In the story, the characters (the narrator, the students) are "moved" by their emotions (love, hope), but those emotions also ground the body of the writing itself to a particular space (the classroom of Nick and Charlie's romance, the classroom where the narrator teaches *Obergefell*) or sign (individual and judicial valentines to gay people).[34] The analysis I write now also foregrounds how I am moved and attached to particular queer concepts and critical legal ideas as a result of the emotions that shape how we write as queer legal scholars who are both teachers and hypothetical judges.[35]

Writing a queer judgment may be like crafting a romance story. In thinking and writing about the materialization of love in law, this paper demonstrates how exercising judgment (whether *Obergefell* or a fictional story about teaching *Obergefell*) can be approached as literature. In both the formal judgment (*Obergefell*) and queer judgments (a teenage dreaming of queer love), judgment is a cultural expression that relies on a "textual community" or a community of readers to generate meaning.[36] James Boyd White notes:

> Our thought about ethics and justice, about our practical social and political lives, must acknowledge that the facts, the imperatives, and the motives of ourselves and others are not fixed but uncertain, in a sense always made by is in conversation with each other.[37]

For the queer legal scholar, teacher, or judge who reads, critiques, teaches, and feels across *Obergefell*'s text, legal meaning is not static but wound in a complex negotiation of "motives," "facts" and "imperatives" that are reshaped through rhetorical activities of critique, pedagogy, and creative

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32. *See* discussion *supra* Part II.

33. *See* Nasir Majeed et. al., *Doctrinal Research in Law: Meaning, Scope and Methodology*, 12 BULL. BUS. & ECON. 559, 559 (2023) (discussing how doctrinal research is the most common and influential legal research method).

34. THE CULTURAL POLITICS OF EMOTION, *supra* note 15, at 11.

35. *See* discussion *supra* Part II.

36. JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING 24 (1984).

37. JAMES BOYD WHITE, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW 24 (1985).

re-presentation. If we accept texts as an ethical and cultural performance central to community formation, then we might wish to follow Robin West and Jill Stauffer, who urge us to pay closer attention to voices that are absent from the linguistic community that constructs texts.[38] In my story, the narrator brings voice to queer lives (through students) that are inspired (though not necessarily legally impacted) by the recognition offered by *Obergefell*,[39] while remaining critical of the failure of the decision to give voice to those queers who endure homophobic violence (by the state in ways marriage recognition is insufficient to cure). By writing this through a fictional classroom encounter and giving critical form to that encounter through this essay, I was able to follow Patricia Williams' invitation to think about that which is "underseen" through "feeling" the partialities of our social identities.[40]

West's, Stauffer's, and Williams' critique of the limits on legal "textual communities" and the push towards more affective "interactive communities" begs the question: what are the conditions under which subjects can speak to/about/against the law?[41] This is what my story about queer love answers.

In my story, I transpose the scene for judgment about queer kinship from a courtroom to a classroom.[42] A classroom discussion about *Obergefell* reveals how marriage equality animates a future of happiness by allowing us to revel in the comforting emotional familiarity of monogamous sexual kinship.[43] Ahmed argues that happiness indicates how to live a "good life" by orienting individuals to particular objects and horizons that bring about a sense of wellbeing.[44] Even in those cases that countenance an evolving (couple) definition of marriage to demonstrate its changes over time–legal inclusion of same-sex couples only serves to further strengthen, not undermine, the orientation of gay rights towards marriage.[45] After all, as Justice Kennedy says, marriage is a loneliness-alleviating institution.[46] It will save the gays. Yet, for those who do not wish to be married and associate

38. Robin West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 YALE J.L. & HUMAN. 129, 132 (1988); JILL STAUFFER, ETHICAL LONELINESS: THE JUSTICE OF NOT BEING HEARD 1-2 (paperback ed. 2018).

39. Obergefell v. Hodges, 576 U.S. 644, 681 (2015).

40. Patricia Williams, *On Being the Object of Property*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 5, 5 (1988).

41. West, *supra* note 38, at 138, 146.

42. *See* discussion *supra* Part II.

43. *See* discussion *supra* Part II.

44. THE PROMISE OF HAPPINESS, *supra* note 21, at 7.

45. Obergefell v. Hodges, 576 U.S. 644, 681 (2015).

46. *Id.*

with its "cultural baggage" (histories of sexism, classism, ableism, and racism) or seek different paths of sexual liberty/expression, the romantic coupling of equality and dignity eschews alternative modes of relationship recognition.[47] Equality is a happy promise of (future) dignity, one that the narrator emotionally confronts in the classroom and then in trying to write about the issue of marriage equality.

But does constitutionalizing dignity and equality for same-sex couples have to be one that deradicalizes opportunities for queer kinship and sexual freedom more broadly?[48] The story makes room for the possibility (as evidenced in the classroom) that gay couples need not always acquiesce to marital norms (monogamy, fidelity, reproduction, sexual privacy) in order to enjoy the benefits that come with social and legal inclusion.[49] This means reading and writing about our hopes for dignity and equality without presuming they are problematic legal goals.

In *Obergefell*, judicial optimism about socio-legal equality covers over the precarity enshrined by economic and social marginalization. Respectability turns wellbeing into a question of social reputation. Writing on *Obergefell*, Nan Hunter observes that dignity is the judgment's "centre of gravity"–same-sex couples are thereby pulled within marriage's orbit of respectability.[50] While the insistence on "traditional marriage" shifts by dislodging heterosexual procreation, terms like "respect" and "dignity" are the emotional grammars of constitutionalism that render inevitable why same-sex couples revere the institution of marriage.[51] By making marriage equality a dream for a hopeful future–a future of wellbeing, happiness, and security–pro-equality cases like *Obergefell* consign those who are (or choose to remain) unhappy to a life of subordination.[52] Marriage equality becomes

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47. *See generally* KATHERINE FRANKE, WEDLOCKED: THE PERILS OF MARRIAGE EQUALITY (2015) (drawing parallels between movements to grant the right to marry African-American couples following the Civil War and same-sex couples before the *Obergefell* decision); James Hathaway, *Claiming Queer Liberty*, 41 BERKELEY J. INT'L L. 1 (2023) (advocating for countries to pass laws promoting sexual liberty outside the paradigm of marriage as a means to promote general equality); Kathryn Abrams, *Emotions in the Mobilization of Rights*, 46 HARV. C.R.-C.L. L. REV. 551 (2011) (discussing the emotions that underpin the articulation of rights claims); Benedict Douglas, *Love and Human Rights*, 43 OXFORD J. LEGAL STUD. 273 (analyzing "protection of love" cases under an emotions-based approach) (2023).

48. *See* Ratna Kapur, *De-Radicalising the Rights Claims of Sexual Subalterns Through 'Tolerance'*, *in* QUEER THEORY: LAW, CULTURE, EMPIRE 37 (Robert Leckey & Kim Brooks eds., 2010); MICHAEL WARNER, THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE (1999).

49. *See* discussion *supra* Part II.

50. Nan D. Hunter, *Interpreting Liberty and Equality Through the Lens of Marriage*, 6 CALIF. L. REV. CIR. 107, 109 (2015).

51. *Id.* at 108-10.

52. *Id.*

a romance-inducing band-aid, to soothe the pain of homophobic exclusion and stigma while covering over abiding structural inequalities.[53]

Focusing on the affective structure of optimism, Lauren Berlant reminds us that, as a site of promise, optimism is a relational structure that binds us to objects/events/fantasies in precarious ways.[54] How we experience these affects, however, are enormously varied as my story reveals.[55] While optimism can orient us to ways of becoming different, optimism is "cruel" in situations like *Obergefell* when binding ourselves to institutions like marriage and the promise of dignity it offers inhibits the capacity for social transformation that makes kinship possible for all queers.[56] But queers may attach to the optimism that marriage equality could open minds and challenge bigotry through judgments that attend to both institutional forms of discrimination and individual stigmas, which may mean divesting from certain legal doctrines (marriage as the union between a man or a woman, marriage as the only means to dignify or equalize sexual relationships).[57]

To think queerly with and about romance (or optimism) is to understand law's capacity for violence.[58] In the romantic entanglements my narrator had with texts like *Heartstopper* and *Obergefell*, it was easy to lose sight of how marriage enabled violence not only structurally but also interpersonally.[59] But my story, as a form of queer judgment, spoke to the pedagogic, scholarly, and legal possibilities of maintaining critically loving attachments to law.[60] My creative exercise was able to foreground constitutional claims to end sexual orientation discrimination while also interrupting how love as an equality remedy entrenches law's capacities for violence.[61] My narration recognized how constitutional claims that were (hetero)normatively sexually prescriptive risked circumscribing intimacies in narrowly dignified terms,

53. *Id.*

54. LAUREN BERLANT, CRUEL OPTIMISM 2 (2011).

55. *Id.* at 13. For a better understanding of how hope without optimism is a condition for enabling social change, see TERRY EAGLETON, HOPE WITHOUT OPTIMISM 52 (2015).

56. CRUEL OPTIMISM, *supra* note 54, at 43. For a queer critique of love as a form of social transformation, see Jennifer C. Nash, *Thinking with Care: A Critique of Love Across Interdisciplines*, *in* ENTICEMENTS: QUEER LEGAL STUDIES, *supra* note 17, at 303.

57. Obergefell v. Hodges, 576 U.S. 644, 666, 681 (2015).

58. For discussions of law's capacities for violence against racialized, sexualized, and otherwise minoritized people, see generally FOLÚKẸ́ ADÉBÍSÍ, DECOLONISATION AND LEGAL KNOWLEDGE: REFLECTIONS ON POWER AND POSSIBILITY (2023); Karen Engle, *Abolitionist Human Rights: Queering LGBT Rights Advocacy and Law*, *in* QUEER ENCOUNTERS WITH INTERNATIONAL LAW 60 (Tamsin Phillipa Paige & Claerwen O'Hara eds., 2025).
SYLVIA TAMALE, DECOLONIZATION AND AFRO-FEMINISM (2020).

59. *See* discussion *supra* Part II.

60. *See* discussion *supra* Part II.

61. *See* discussion *supra* Part II.

which limited sexual freedoms.[62] Feeling romantic about these cultural texts does not mean they are unproblematic, but the romance I write of materializes by being able to imagine idealized possibilities that cultural texts can produce (even if their content was limited at the time). So, rather than abandon promise of romance and the task of adjudication, queer judgments are a way to "live queerly and ambivalently with rights."[63]

V. AN OPENING . . .

Writing this paper has been an emotional experiment in conceiving, critiquing, and creating fragments of love that materialize in threaded modes of legal study (as a researcher and writer), legal pedagogy (as a legal teacher), and legal practice (as a hypothetical queer judge). This exercise is one that I have chosen to describe as both a process and form of queer judgment making. Such processes and forms reflect an aspiration to "utopian longings and the promise of a future world that reside[s] in waywardness and the refusal to be governed."[64] Such a queer project is romantic to the extent it idealizes the possibilities of what might be otherwise when we take to law playfully. This wayward storytelling foregrounds the way we conceptualize, critique, and practice law by inviting us to think and act with a utopian and reconstructive sensibility. This is what my narrator sought to do in a classroom where we not only allow ourselves to understand the law but also to reimagine how it might be different (for better or worse). Queer judgment, as a pedagogic-scholarly-legal experiment, means we (as queer people tasked with making judgments) can create and pursue different paths in law by making the "what if" the "what is" as we prefigure the conditions for justice.[65] This is why queer judgment matters. It is not a normative rewriting

62. *See generally* Gregg Strauss, *What's Wrong with* Obergefell, 40 CARDOZO L. REV. 631 (discussing how the *Obergefell* opinion only glorifies secular ideals for family life, not nonmarital family units).

63. Loveday Hodson, *Queer Edens: Visions of Living with Human Rights*, *in* QUEER ENCOUNTERS WITH INTERNATIONAL LAW 244, 253 (Claerwen O'Hara & Tamsin Phillipa Paige eds., 1st ed. 2025).

64. HARTMAN, *supra* note 9, at 10.

65. For some examples on these different paths, see SARA AHMED, WHAT'S THE USE? ON THE USES OF USE (2019); Manhar Bansal & Niveditha K. Prasad, *Of Queerness, Rights, and Utopic Possibilities: An Interview with Dr. Swethaa S. Ballakrishnen*, SOCIO-LEGAL REV. (Aug. 10, 2023), https://www.sociolegalreview.com/post/of-queerness-rights-and-utopic-possibilities-an-interview-with-dr-swethaa-s-ballakrishnen; Davina Cooper, *Crafting Prefigurative Law in Turbulent Times: Decertification, DIY Law Reform, and the Dilemmas of Feminist Prototyping*, 31 FEMINIST LEGAL STUD. 17 (2023); Davina Cooper, *Towards an Adventurous Institutional Politics: The Prefigurative 'As If' and the Reposing of What's Real*, 68 SOCIO. REV. 893 (2020); BRENDA COSSMAN, THE NEW SEX WARS: SEXUAL HARM IN THE #METOO ERA (2021); Odette Mazel, *The Texture of 'Lives Lived with Law:' Methods for Queering International Law*, 49 AUSTL. FEMINIST L.J. 71 (2023).

of judicial content to better protect LGBTQ+ rights but is a means of playing around and being creative with judicial form as a means of realizing and critiquing rights.[66] This is a valentine that our communities desperately need.

66. *See* Ferreira et al., *supra* note 29, at 1.