Staging repair

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1 Prelude: stage notes

In 1934, an intimate encounter between two men, Nowshirwan and Ratansi, became the subject of a sodomy trial in Karachi. A three-page judgment by the High Court of Sindh, *(Meherban) Nowshirwan Irani v Emperor*, is all that remains of their story.

In 1983, Robert Cover wrote a foreword to the *Harvard Law Review*'s annual survey of the United States Supreme Court term. This essay, titled 'Nomos and Narrative', would go on to become one of the most influential and widely cited texts in the law and humanities canon.[2]

In 2016, a performance piece titled *Queen Size* began its run in Delhi. Choreographed by Mandeep Raikhy, the show positioned itself as a response to the colonial anti-sodomy law that remained in force at that moment.

A judicial decision, a legal-theoretical essay, a theatrical performance. In this essay, I reassemble these objects, staging a jurisprudence of repair in the process. Before we walk into this world, I offer you a few orienting notes that might guide your journey.

A Note 1: on repair

Repair work is a fairly quotidian activity. We are constantly engaged in it.[3] When bones break, when bodies are afflicted with illness, we

turn to repair. Out in the physical world, daily tasks around our homes often involve minor mendings. Our relationships rip and tear, and we do what we can to reforge them. Repair also undergirds our legal institutions. The trial might be characterised as an attempt to repair, even if we quibble with what the object of repair is.[4] The various doctrines through which law addresses conflict are marked by idioms of repair: remedy, restitution, compensation, damages – to name a few. When I speak of repair in this essay, it is not these forms that I address.

Instead, the repair-work that I refer to emerges in dissent to the state, found in spaces that are not characterised as formal legal institutions, emerging from actors who do not occupy roles within these institutions. *Queen Size*, the theatrical performance that holds much of this essay together, might be seen as one of a raft of dissenting practices that emerged against the colonial sodomy law in India. These were practices that challenged the law through prefiguring[5] new worlds: through the performance of marriage and marriage-like practices (Partners for Law in Development 2010) or the performance of gender identity on an affidavit (International Commission of Jurists 2017: 44) or, as in the case of *Queen Size*, through the performance of gay sex in a theatrical venue.

But what were they seeking to repair?

'Whoever has carnal intercourse against the order of nature, with man, woman or animal, shall be imprisoned ….'

This is the text of Section 377, the sodomy law in India. For queer persons like me, growing up in this time and place, the only way in which the law recognised our ability to have intimate relations was through these words. Section 377 sat on a scaffolding of other laws[6] and judicial decisions[7] that only identified queerness through words that leached away humanity, let alone intimacy. This was a legal framework that made strangers of queer persons, that impaired their ability to form relations, that impaired the quality of our relations.

If this ability to relate is the object of impairment, then a jurisprudence[8] of repair is a practice that might allow queer persons to form lawful relations,[9] to form attachments, to form them joyfully. They might

detach from a particular normative universe constructed around the sodomy law, but they also attach to, and inhabit a different nomos in the process. My description of repair in this manner draws upon the work of American queer theorist Eve Kosofksy Sedgwick.

In the mid 1990s Sedgwick began to express an exhaustion with a paranoid form of critical theory.[10] This was a time when HIV/AIDS deaths were the leading cause of mortality in American adult men; when the United States government had all but washed its hands of the responsibility of dealing with the AIDS crisis. Critical theory, Sedgwick noted, was very good at drawing attention to and exposing systematic oppression. But what happens at a point where death and oppression and disrepair is a daily lived reality? If critique were to tell you that we live in a world that, in this case, oppresses queer people, what would we know then that we don't already know?

Sedgwick describes, in contrast to this paranoid form of reading, a reparative impulse, which 'is additive and accretive … it wants to assemble and confer plenitude on an object that will then have resources to offer to an inchoate self' (Sedgwick 2003:149).

This is a will to repair, an urge to repair, drawn in part from the lived experience of the queer communities that Sedgwick is enmeshed with. She asks us to look at the ways in which queer people take the fragments of a culture that will not accept them, and use it to craft something that will provide them sustenance, that will allow them to find ways of living joyfully, to find ways of living at all. It is this ethic that she tries to fold into the practice of reparative reading. To then read a text for the possibility of repair, is to read a text to see the resources it can offer us.

Sedgwick does not provide us with a prescriptive program of reparative reading (Warner 2004); neither does she have an account of law – not an account that is reparative at any rate (Halley 2017). But if we approach her on the terrain of ethos – if we think of an ethos of repair as a set of 'approaches with cultural, ethical, ideological and aesthetic dimensions' (Davies 2005: 87),[11] we might find a way of translating her work within a jurisprudential register. In this essay, I

find this register within the jurisgenerative[12] musings of Robert Cover.

A strand that connects Sedgwick and Cover's work is their engagement with narrative that might heal what the law breaks. To read Cover as a reparative jurisprudent enables us to recognise how communities generate ways of living of with law that run counter to a constraining state law. In the case of this particular essay, it allows me to describe *Queen Size* as a dissenting site that does repair-work.

Conversely, my choice of this theatrical performance allows me to hold on to the activity of staging, to watch the conduct of repair-work unfold across a performance of *Queen Size*. By paying attention to staging in this manner, I join a different set of conversations in legal theory.

B Note 2: on staging

'It's time to do a different kind of theater' (Schlag 1991: 807).

More than three decades ago, Pierre's Schlag's rallying cry cautioned legal thinkers against erasing the 'scene in which their own thought is produced and disseminated' (1991: 886), asking them to acknowledge the theatrics of rationality embedded in legal theory. To engage in such an exercise would be to pursue 'inquiries into the process, form and practice of our own thought' (Schlag 1991: 894). The cost of refraining from this kind of inquiry for Schlag was a domestication, an un-wilding of theory. This was a challenge faced by theory across the political spectrum. He argued, for instance, that even deconstructive approaches with all their transformative potential risked a reduction into 'just another legal resource, just another set of reasoning moves, just another analytic tool for the academic to deploy against their opponents' (Schlag 1991: 891).

Contemporaneous to Schlag's concerns were the theatrical experiments with form documented in the inaugural pages of the *Law and Critique* journal (see eg Rush 1990) and conducted in person at the Critical Legal Conference. Costas Douzinas describes the following moment at the 1989 Critical Legal Conference as the high point of the aesthetic turn in critical legal studies:

> It was something of a watershed. Peter Rush gave a performance: without speaking, he walked around and danced to prerecorded set of comments and music. Ronnie Warrington, Shaun McVeigh, Peter Goodrich and myself performed a play entitled 'Suspended Sentences'. Kate Green and Hilary Lim organised an open debate with the audience about women and law (Douzinas 2014: 187; see also Goodrich 1999).

Also within the critical legal tradition, but joining it with concerns from feminist and critical race theory, was the genre breaking work of Patricia Williams. *The Alchemy of Race and Rights* (1991) is a text that constantly explicates and engages in conversation with its staging, from its very opening lines: 'since subject position is everything in my analysis of the law, you deserve to know that it's a bad morning' (Williams 1991:3).

The attention to 'process, form and practice' that runs through the work of Schlag, Douzinas, Williams and their contemporaries has seeped into the body of work known as law and performance. There are a range of helpful state-of-the-field accounts that speak to the remarkable breadth of this interdiscipline: shifting attention from text to embodiment, context, role, action and uptake (Sarat, Douglas and Umphrey 2018); establishing law as a performative mode of practice (Read 2016); orienting performance as a critical practice in law (Leiboff 2019b); and calling for a 'strategic disciplinarity' and embrace of disciplinary difference between law and performance (Peters 2019). Across these varying trajectories, there is something specific, something at stake within the practice of *staging* that I want to hold on to.

Andreas Philippopoulos-Mihalopoulos places the question of staging at the heart of contemporary legal aesthetics. The staging of law – affectively, sensorially, emotionally – *is* the law (2019: 214). The task here becomes to ask how it is staged in a manner that it is accepted, and becomes relevant (Philippopoulos-Mihalopoulos 2019: 201). This attention to staging becomes a question of justice in so far as it holds law to account when it attempts to perform a vanishing act: when it seeps into the atmosphere, becoming the stuff of common sense

(Philippopoulos-Mihalopoulos 2019: 218).

The theatrical jurisprudent, as trained by Marett Leiboff, is able to discern this common sense by paying attention to their body, by asking how much of themself is deployed in the practice of law (2019a: ix).[13] How do we train our attention in this manner? Leiboff turns to the practice of dramaturgy for a method. In the final note before we leap into our staging, I will qualify Leiboff's dramaturgical approach by returning us within the folds of repair.

C Note 3: my role in this staging

For the purposes of this journey, I will be your dramaturg – a role I have been easing into since we first met a few pages earlier. The dramaturgy I practise is within a very particular key: it is a technique that allows me to stage repair.

Dramaturgy comes attached with an immensely wide range of connotations. Depending on the time and space you look towards, the dramaturg could be a figure concerned with dramatic structure – as with Aristotle's dramaturg – or an 'in-house critic' tasked with assisting in the process of play development – as with Gotthold Lessing in 18th century Germany (Romanska 2015). They could be a reader or literary editor for a theatre company; a composer of drama; a person skilled in the writing and revision of plays (Luckhurst 2006). The figure of the playwright often seems to overlap with that of the dramaturg in these definitions.

Leiboff's dramaturg, as I indicated earlier, is one who trains lawyers and jurisprudents to notice when law goes wrong. In this role, the dramaturg attempts to transfigure legal practice, 'to remind, through repetition and renewal, of the instances of injustice and of failure of law, and their circumstances' (Leiboff 2019a: 8). The training is oriented towards 'having the awareness to notice when harms are done that will be dismissed by someone without that memory' (Leiboff 2019a: 9).

My practice of dramaturgy is grounded in my own experiences: personal and institutional. I indicated earlier that I was one of the many queer people who came of age in a time and place where the law

criminalised our consensual acts of intimacy. I have been performing minor acts of dissent against this law even before I knew of its existence. Once I encountered those words in law school for the first time – 'carnal intercourse against the order of nature' – I proceeded to make the law my own. First, this was through working as an activist-lawyer. Later, it was through my work as a playwright.

A playwright: wright, as opposed to write. Wright as in a craftsperson, as in the one who builds and repairs. To wrought something is to hammer and melt and forge and craft. In *Contempt* (2018), my first play, I wrought together a series of exchanges between the lawyers and judges in *Suresh Kumar Koushal v Naz Foundation*, the Indian Supreme Court decision that re-criminalised[14] queer intimacy in 2013. I placed these in conversation with stories of queer dissent, of people who found ways of resisting the law. Because, a playwright is also one who engages in play, in playfulness, in the proliferation of possibility.

To relate this back to, and place it against, Leiboff's ethos: where she offers a training to notice where the law goes wrong, I start with the premise of law having gone wrong, of a world where injustice is a given. I ask instead how we might resist, recraft, reforge the law into something nourishing. Leiboff's techniques involve staging encounters that disorient and challenge, that prompt and trigger. My focus lies in techniques that draw upon Sedgwick's toolkit of repair: to look *beside* instead of looking beneath or moving beyond, to non-dualistically allow a number of elements to lie alongside each other. To evoke the palm of an open hand, where 'life, loves and ideas might then sit freely, for a while' (Sedgwick 2003: 3). To enable the 'playful translation of dark into bright possibilities' (Halley 2017: 133).

As a reparative dramaturg, as a dramaturg attempting to describe a jurisprudence of repair, I invite you to watch with me. Over the next few pages, I walk into the performance space of *Queen Size*, I unfold the world of Cover's essay. These texts are paired, and re-paired. In the process, repair emerges as a possibility.

2 Act I

In which we stand at the periphery of a theatrical performance and a theoretical text, and I place the two beside each other.

A Outside

I am standing on a pavement on Lodhi Road at the edge of Lutyens, Delhi. This is the eighth city of Delhi, constructed in the twilight of colonial rule in India, built on and around structures from seven prior iterations. The broad roads of Lutyens hold much of the city's government apparatus. Lodhi Road sequesters the southern edge of this version of the city, bound on its eastern and western edges with centuries-old mausoleums. Towards the north lies the Supreme Court of India.

The month is May, the year, 2016. The Supreme Court is considering a curative petition to reverse a prior ruling. For a curative remedy to be considered, the Court must be satisfied of a 'gross miscarriage of justice' (*Rupa Ashok Hurra v Ashok Hurra*). In this instance, the decision that the Court has been asked to reconsider is its 2013 ruling which held that Section 377 of the Indian *Penal Code* did not violate the constitutional rights of Indian citizens (*Suresh Kumar Koushal v Naz Foundation*). About two and a half years from today, the Court will grant the curative and reverse *Suresh Kumar Koushal*, in a judgment that will be widely celebrated.

Today, on the evening of the 28 May 2016, not cognisant of this future, I walk down Lodhi Road to a different spot. My destination is No. 24, Jor Bagh, a theatrical venue, where I will shortly encounter the performance *Queen Size*. The show has been described as a choreographic response to Section 377.

By the end of the evening, I will have glimpsed a different normative universe, one without the spectre of Section 377.

B The nomos of 377

'We inhabit a *nomos* – a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void' (Cover 1983: 4).

Robert Cover's essay opens with these words, unlatching a universe of possibility. 'We' inhabit, 'we' create, we find ways of living in these worlds of law. Cover's pluralistic vision unfolds the possibilities of what law might be, at the outset asking us to recognise formal legal institutions as constituting only a fraction of the normative universe 'that ought to claim our attention' (ibid).

What else, then, might claim our attention?

Cover asks us to look towards the narratives that locate and give meaning to the various institutions and prescriptions of law: 'For every constitution there is an epic, for each decalogue a scripture' (ibid).

What about sodomy laws? What narratives give them meaning?

Before its final codified form in the Indian *Penal Code*, Section 377 existed in the form of two draft clauses (Indian Law Commissioners 1837: 3990-1, cited in Gupta 2008). Clause 361 criminalised persons 'intending to gratify unnatural lust' who touch or are touched by another person or animal. Clause 362 reiterated the offence, without the element of consent.

During the introduction of the text of the draft Code in a speech, Thomas Babington Macaulay, its chief draftsperson, noted:

> Clause 361 and 362 relate to an odious class of offences respecting which it is desirable that as little as possible should be said … [We] are unwilling to insert, either in the text or in the notes, anything which could give rise to public discussion on this revolting subject; as we are decidedly of opinion that the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with the greatest precision (Indian Law Commissioners 1837: 3990-1, cited in Gupta 2008).

The text does change, however, from the offence of touching in order to gratify unnatural lust to the offence of committing carnal intercourse against the order of nature. The reasons for this are unclear, though the effect ostensibly serves to demarcate the offence more strictly, at the expense of raising the standard of proof – penetration is required to prove carnal intercourse. And yet, the spectre of touch continues to haunt the law in the narratives around its enforcement. These stories can be found in the range of non-government organisation and activist generated literature in India starting from the early 1990s that attempts to document human rights violations against queer persons. The accounts give us an insight into how, while actual prosecutions rarely take place under the law, it continues to affect the lives of queer persons in a range of indirect ways, which Arvind Narrain (2004) identifies as a distinction between persecution and prosecution.

The first of these reports by the AIDS Bhedbhav Virodhi Andolan ('AIDS Anti-Discrimination Movement') in 1991 takes note of the 'fear and vulnerability' (Gautam, Bhandari et al 1991: 4) that marks the stories of queer intimacies documented within its pages. One story speaks of a guilty lover who finds himself compelled to pray at a family temple after each sexual encounter (Gautam, Bhandari et al 1991: 8); another, of a man who has 'reformed' from his failed efforts at finding a lover (Gautam, Bhandari et al 1991: 9). Leap ahead by a decade to a report by the People's Union for Civil Liberties in 2001, and some of the narratives change. The English-language media in particular leads the charge in portraying sympathetic accounts of queer life, reflecting a community that has emerging spaces to live and flourish. At the same time, stories of violence and harassment that marked the former report continue to proliferate, including encounters with law enforcement, the medical establishment and within the family. Almost two decades after this report, an International Commission of Jurists report released in June 2019 relays a world where the legal framework surrounding queer persons has reformed significantly. Amongst the most significant of these changes is a 2018 decision by the Supreme Court of India that effectively decriminalised homosexuality (*Navtej Singh Johar v Union of India*). A few days after this decision, the report

documents a criminal complaint made by a park walker's association in Bengaluru against gay men allegedly engaging in 'immoral' activities in the park (International Commission of Jurists 2019: 114).

Multiple nomoi frame these stories depending on the vantage point of the storyteller. I want to hold on to a particular nomos:[15] a nomos of touch, a set of narratives that cast queer intimacy within a space of fear and violence. These stories emerge from both within the queer community, as well as from actors and institutions outside.

C (Still) outside

The choreographer of *Queen Size*, Mandeep Raikhy notes that it was 'initially triggered' by an article by queer activist-filmmaker Nishit Saran first published in the *Indian Express* in January 2000.

I stand outside 24, Jor Bagh on opening night with a group of audience members. We have arrived towards the end of the first 'loop'. The show is conceived in three 45 minute loops played out without an extended intermission. Within these loops, and also at the end of each 45 minute segment, the doors to the venue are opened, the audience are given a chance of leaving, and those who wait outside have the option of entering at a moment of their choosing.

The venue is bounded on one end with large rectangular slats of windows which allow a clear vantage point into the show. It's quite easy to discern what is happening inside, but I resist the impulse, wanting to wait till I'm properly within the space. Instead, I read the handout that's been offered to us. It is a newspaper article from 2000 – the trigger article – by Nishit Saran. Titled 'Why My Bedroom Habits Are Your Business', the piece begins with the following lines, a sentiment that Saran notes is often articulated before him: 'Of course it is completely fine if you are gay. What you do in your bedroom is none of my business … But why do you need to talk about your sexuality? Why do you need to make a public issue of such a private matter?' (Modi 2019).

The need to make the private matter a public concern is a core theme of Saran's documentary *Summer In My Veins* (1999). Saran moves to the United States from India in 1994 to study filmmaking at

Harvard University. In the opening scene of the film, he tells us about his upcoming graduation ceremony, that his mother and aunts are travelling down to the country, and that he intends to come out to his mother during this trip. As we watch fragments of the trip, Saran tells us about his escalating nervousness, which isn't limited to the reaction of his family. He has recently undergone routine HIV testing, less routine this time around because of his recent sexual contact with an HIV positive man. The results aren't due for some time, but it heightens the urgency to come out.

At one point in the film, Saran notes how every time he has gone to India for the summer, he has had a video camera with him, taping most conversations with his mother. That mediating layer between them is what allows him to communicate intimately with her; without it, he feels bare. If he does tell her about his sexuality, it will have to be while she is on camera. And so, in the film's climactic moments he approaches her, camera in hand, finally initiating the conversation. Minna Saran takes a minute to compose herself before she looks straight into the camera, telling her son that, till the time she is alive, she is with him. 'I'm with you' she repeats, over and over, with increasing conviction.

Saran invites us into this intensely private moment with him, performing the argument that he will later make in his article. The making public of that which is private carries within it a transformative possibility. In a few minutes, the doors to 24, Jor Bagh will open, and I will receive my first glimpse at this possibility.

3 Act II

In which we are confronted by the past in the present, and begin to contemplate the possibility of a different future.

A World-making

The titular bed is at the centre of the room, chairs for the audience placed around it. The bed is a *charpai*, constituting a wooden frame where the base is a tightly woven mesh of fibre. As we walk in, two

men are putting the finishing touches on stringing it together.

The world of this performance is being constructed before our eyes.

The man in a blue t-shirt has a slender frame, his focus is on the length of the bed. The man in the orange t-shirt is bigger, stronger. At one point he places the weight of his leg against the bed frame to stretch out the string as taut as he can before he loops it back down.

Image: Sandbox Collective

Let's call them Blue and Orange.

Blue, who has momentarily left the space, returns to assist Orange with pressing down on the bed with their hands. You can hear it clearly now, a creak, the fibres groaning but holding firm. You can hear it clearly because the audience has gone quiet. The only sound now in the room is that creak. The only spot truly visible is the bed, because the lights have been dimmed to form a small radius around it.

Blue and Orange move towards each other, pause, are within

breathing distance, break apart. They circle each other, touch, move away. Complete silence, which is then punctured by the creak of the bed-springs as they leap onto it simultaneously. They straddle each other, then move apart abruptly. Another sound becomes discernible now, an otherworldly hum. They look at each other as if for the first time, shed an item of clothing each, collide again. Each collision, a momentary pause, their bodies, in conversation. The soundscape expands, a pulsating insistent rhythm.

Orange pulls Blue's shirt over his head, the effect is almost comical. They are standing, Blue with his back to Orange, they walk backwards around the bed. Orange starts to trace patterns on Blue's back. In the dimness of this light, the fleeting touch registers sharply.

Next, they are on the bed, Blue sits on Orange's lap.

There is something familiar about this image.

Blue sits on Orange's lap.

So very familiar. Whose memory is this?

In another time, another place, an appellate judge writes: 'The appellant nevertheless removed his own pants, loosened the trousers of Ratansi and made the lad sit on his lap on the top of his organ' (*(Meherban) Nowshirwan Irani v Emperor*: par 1).

Before my eyes, Nowshirwan sits on Ratansi's lap. The music stops.

Image: Varta Trust

B Nowshirwan and Ratansi

The story of Nowshirwan and Ratansi is lodged within a nomos where queer intimacy is attached with fear and violence, a nomos where queer touch is impaired. It takes place long before the existence of meticulously detailed civil society reports. This is a story that we might, using the words of activist-lawyers Arvind Narrain, view as a symbol of 'the trials and tribulations of LGBT persons for over 158 years' (2010: 290). A story about a sexual encounter between two men, captured in a 1934 appellate decision of the High Court of Sindh, now in Pakistan, (*Meherban) Nowshirwan Irani v Emperor*. Here, an intimate encounter between two men is scrutinised before a court of law. Even as a conviction is not made for lack of proof, queer intimacy is marked as revolting.

The prosecution's narrative proceeds along the following lines: Ratansi, aged about 18, visits the hotel of Nowshirwan, the appellant,

on a Sunday afternoon and has tea there. They have a brief conversation, after which Ratansi heads off in the direction of a pier with the intention of taking a boat. Finding himself short on necessary cash, he heads back to find Nowshirwan standing on the road at a short distance from the hotel. Nowshirwan calls out to Ratansi, and takes him to his house, close by. Once there, he locks the door and begins 'to take liberties with the youngster who resented the overtures and wanted to be allowed to go away' ((*Meherban) Nowshirwan Irani v Emperor*: par 1).

While these events unfold, Solomon, a police officer who lives next door to Nowshirwan, suspects something unusual. He comes up to Nowshirwan's door, peeps through a chink in the door panel, then calls out to an acquaintance, Gulabdin, to do the same. Gulabdin is disgusted after a momentary glimpse and goes away. Inside the room, Nowshirwan has adjusted his dress following which Solomon announces his presence and marches the two men to the police station. A complaint is filed in Ratansi's name, against Nowshirwan ((*Meherban) Nowshirwan Irani v Emperor*: par 2).

In the original account at the police station, the story has Ratansi lying down on a cot and the appellant on top of him committing an act of sodomy. When the case moves to Court, the story changes such that neither Ratansi nor the two witnesses would admit that this was the version of events recounted at the police station. In the changed account, Nowshirwan removes his pants, loosens Ratansi's trousers and makes him sit on his lap ((*Meherban) Nowshirwan Irani v Emperor*: par 2).

The judge finds the narrative riddled with discrepancies, taking particular note of Solomon's conduct which he finds 'was very strange. He suspected … that the lad had been locked in by the appellant for some immoral purpose; yet he quietly goes and looks on through the chinks of the door and does not raise a hue and cry to prevent the appellant from pursuing his nefarious purpose' ((*Meherban) Nowshirwan Irani v Emperor*: par 4). He ultimately acquits Nowshirwan, given that the element of proving penetration under the Section has not been satisfied.

The acquittal doesn't leave the bodies of the men unmarked, however. The judge reserves this observation for Ratansi: 'I must say

that he appears to be a despicable specimen of humanity. On his own admission he is addicted to the vice of a catamite. The doctor who has examined him is of the opinion that the lad must have been used frequently for unnatural carnal intercourse' ((*Meherban) Nowshirwan Irani v Emperor*: par 5).

The judicial telling narrates a story about queer intimacy where it leaches out any trace of intimacy. Two people touch, but their touch is rendered shameful, held to be an object of disgust. To see their story as a symbol is to glimpse this narrative refracted through a dominant normative universe that marks the queer body with disgust, that presses shame into the queer body in a material way.[16]

In his novel, *On Earth We're Briefly Gorgeous*, Ocean Vuong reflects on what it means for disgust and shame to seep into the queer body. In a farm outside Hartford, Connecticut, he tells us of an encounter between two men behind closed doors. No one is watching, they are away from the world, they have created their own world. But even in that moment, a transgression of sexual roles, the breaking of a gender norm by one man leads to a moment of revulsion in the other. Vuong's narrator observes: 'I thought sex was to breach new ground, despite terror, that as long as the world did not see us, its rules did not apply. But I was wrong. The rules, they were already inside us' (Vuong 2019).

If the law's meaning is inseparable from narrative, what happens when we pay attention to other kinds of narrative? What happens if we try to inhabit another kind of nomos, one where queer touch registers differently?

C Alternity

Robert Cover recognises a range of dissident acts that signify something new and powerful when placed in relation to a norm, giving rise to a special claim for civil disobedients (1983: 4). But resistance or disobedience is not the only manner in which law imbues actions with significance. He goes on to list a range of expressive acts that law might be used for and become inseparable from: to submit, to struggle, to mock, to dignify (Cover 1983: 8).

To this list, I add, the possibility of law to conduct repair.

In his Proposal for a Post-Graduate Internship Program addressed to the Yale Law School in 1985, and published in 1989, Cover made an equivalence between the role of the lawyer and that of the physician. He noted that a lawyer who represents a client whose life, liberty or private property is at risk 'does that which is as necessary to our social existence as the physician's role is to our physical well-being' (Cover 1989:3) The analogy is taken further to describe a clinical legal internship program, which intends to be a 'legal analog of a teaching hospital' (Cover 1989:3). Teaching hospitals allow trainee doctors to experience 'the self-justifying core work of their profession', to 'experience the world of the very ill' by which they might 'come to sense the critical role they, themselves, play in that world' (Cover 1989:3). Stephen Wizner (1996) identifies in Cover's claim for an equivalent legal internship program his broader commitment towards repairing the world through law.

The work of repair envisioned in the internship proposal is one that involves engaging with formal legal institutions in an attempt to remedy violence. But as we know from 'Nomos and Narrative', those institutions constitute a fraction of the normative universe that might hold our attention. Within the essay, Cover offers us pathways towards imagining repair differently. 'Law may be viewed', he writes, 'as a system of tension or a bridge linking a concept of reality to an imagined alternative' (Cover 1983: 8).

There are two parts of this sentence I want to hold on to: the imagined alternative, and the metaphor of the bridge.

As far as the imagined alternative is concerned, Cover places it in conversation with George Steiner's invocation of alternity. Steiner's alternity offers us an image of the dissenting imagination. Within the worlds of alternity, we might explore 'what might have been' (Reichman 2012: 25). Within these worlds we might 'charge our mental being', we might 'build the changing, largely fictive milieu for our somatic and social existence' (Reichman 2012: 25).

Building fictive milieus, building bridges.

As for the notion of law as a bridge, it might be productive to

materialise this metaphor (see Philippopoulos-Mihalopoulos 2021). Aviam Sofer (2005) imagines a range of different bridges that might serve to connect our world to what might be: cantilevers, pontoons, swing bridges and draw bridges, each letting us imagine different forms of connection and disconnection. Later in his essay, Cover allows us to imagine the bridge as a life lived disobediently.

Looking towards the civil rights sit-in movement from 1961 through to 1964, he describes their acts of justifiable disobedience instead as acts of radical constitutional reinterpretation. The protestors are performing an act of jurisgenesis here, they are generating law. Their lives constitute the bridges between official declarations of law, and their competing visions.

Returning to Nowshirwan and Ratansi's story, activist-lawyer Arvind Narrain attempts to build a fictive bridge. Through gaps in competing testimonies, he draws out the manner in which a consensual act between two men is twisted by the prosecution into a story that frames Nowshirwan as coercing the younger Ratansi into sex. Between the silences in the judicial text, Narrain attempts to tease out this relationship:

> The two knew each other and possibly had met before in Nowshirwan's room … a space where the coercive heterosexism of the outside world could be forgotten for the brief time which Nowshirwan and Ratansi spent with each other. That brief time they spent together might possibly have been a moment when they imagined a world not yet born and a time yet to come, when their desire would be accepted without a murmur. This imaginative realm of impossible desires is what is rudely interrupted when the policeman, Solomon, spies through the key hole (Narrain 2010: 89).

Earlier in this essay, I identified a set of tools which the reparative dramaturg might employ: the translation of dark into bright possibility, the non-dualistic placement of disparate elements beside each other. How might we work with these tools to intervene in the nomos, to re-craft and re-world in particular, this nomos of touch?

In the final act, I will continue my re-staging of Nowshirwan and

Ratansi's story, translating it through the world created by *Queen Size*. I invite us to view *Queen Size* as claiming a space in the nomos, but one that speaks to a different set of values about queer touch and queer intimacy. Both these narratives take place in a world in which Section 377 exists, where it continues to train queer people towards a particular way of thinking about themselves. But if the story in the 1934 case is one where queer touch is rendered shameful within the dominant narrative, *Queen Size* allows us to experience a different affective world, a world where we might feel[17] our way to a different kind of law.

4 Act III

In which we linger upon a hug.

A World-breaking

Look to the door, but nobody comes bursting in.

Instead Nowshirwan and Ratansi get up, and open the door themselves. There is a choice here, you might leave this world if you wish, and if you are standing outside you might enter. A new sound, a stark sound, a chime. The sound of incarceration. A few seconds pass and they move back to the bed. Another few seconds and the charpai is barely visible now, the radius of light has become the tiniest of pinpricks, we can see snatches of them touch each other. The tiniest of chinks.

The Judge: 'one Solomon, who is in the police and who lives next door to the appellant, having suspected something unusual, came up to the door of the appellant's house and started peeping through a chink in the door panels' (*(Meherban) Nowshirwan Irani v Emperor*: par 2).

The chime continues, joined by the hum of a generator. The radius of light expands, and now it is the sound of crickets chirping, a sound of late night silence.

Ratansi is now standing on the bed, Nowshirwan on the ground. Nowshirwan moves in a circle around the bed, never leaving Ratansi's hand – Ratansi spins on the spot. They trade places, now it is Nowshirwan on the bed and Ratansi on the ground, hands still joined.

Round and round they go, touch always a constant.

Pause.

The touch feels unbearable.

I'm now in my room in North Melbourne, the lockdown in full swing, and this performance can only be viewed in fits and starts.

May 2016 was the first time I watched *Queen Size* – but it wasn't the last. More than a year later, in October 2017, I arranged to have it performed within the campus of the law school where I held a position as lecturer. In December of the same year, I found myself at another show, this time in the outdoor compound of a hotel. The following year, I attended yet another performance, this one in an underground theatre venue, a few weeks after the Indian Supreme Court had concluded its hearings in a new constitutional challenge to Section 377. Three weeks after this particular show, the Court pronounced its verdict, and effectively decriminalised the intimate lives of millions of LGBTQ Indians.

I continued to encounter the show once I moved to Melbourne to start a PhD, now on the screen of my laptop. I watched a recorded video of the show seated at my workspace on the eighth floor of the Melbourne Law School in October 2019, pausing every now and then as curious onlookers expressed interest. I watched it yet again as I first started to think through this essay in April 2020, now in a library at the Institute of Postcolonial Studies in North Melbourne. Outside, the world as I knew it had gone quiet, shifted. Touch became a queer idea in this world, something that belonged to a past which seemed increasingly out of bounds, something that existed in a future that looked increasingly uncertain. On my daily walks I found myself keenly aware of pairs, and sometimes groups, who touched, casually or with more deliberation. I found myself carrying the sense of that touch back into the room with me as I sat to watch and think and write my way through this show.

The touch feels unbearable, and I have to pause.

In fits and starts, then, I watch. Because the sensation is so

overwhelming, to watch touch in this form is to experience its excess. In the frame that I have paused upon, I can linger on the indiscernible gaps between chairs in the audience. I watch these bodies huddled together in a room, where to not touch would require a demonstrable effort, so they relax into each other. I watch all of this in my room on a computer screen.

In her introduction to *Touching Feeling*, Sedgwick asks us to push past a dualistic understanding of active and passive touch: '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 effectually done so before oneself' (2003: 14). The relation here is between the one who touches, the one who is touched, and their constant reciprocity.

The relation I'm thinking of then, is of the one who watches touch, and the one who is watched. How to reverse a gaze and touch back? How to feel touch through a way of looking, a way that, as Leiboff puts it, '(imbricates) through practice; into the consciousness and hence the body' (2019a: xi); how to watch and then to generate in this encounter a response, a responsiveness through its physicality (2019a: 90)?

Un-Pause.

B The hug

The two men appear to plunge into each other.

> Judge: 'I might as well discuss a particular feature which is too interesting to be omitted from consideration in this judgment' (*(Meherban) Nowshirwan Irani v Emperor*: par 5).

The interesting feature turns out to be an extended observation on what might constitute penetration under Section 377:

> An attempt to commit this offence should be an attempt to thrust the male organ into the anus of the passive agent. Some activity on the part of the accused in that particular direction ought to be proved strictly. A mere preparation for the operation should not necessarily be construed as an attempt. All that we have in this case, if believed is that the appellant made Ratansi sit on his lap. From the version given

> by Ratansi it appears to me that owing to mere friction the appellant got a discharge. That would negative the probability of an attempt at penetration (*(Meherban) Nowshirwan Irani v Emperor*: par 6).

The narrative of Nowshirwan and Ratansi as it stands in the judicial archive exists only in this register of language. Whether apprehended or not, the judge can only imagine them preparing to engage in some form of penetrative intercourse. Nothing else that happened behind that closed door matters.

What might that other world have looked like? How do we restore intimacy, how do we replenish it with tenderness?

Back in the world of *Queen Size*, the two men now pick the charpoi up from different ends, then invert it. The wooden spokes are now up in the air, its fabric mesh on the floor.

They lie down, nestled into each other, and time stops.

Image: Varta Trust

The full lengths of our bodies pressed:

Your instep to my heel,

My shoulder-blades against your chest.

It was not sex, but I could feel

The whole strength of your body set,

Or braced, to mine,

And locking me to you

As if we were still twenty-two (Gunn 1994: 5).

In the mid-nineties, the period when Sedgwick began to work out her account of the reparative, when Nishit Saran moved to Boston, when HIV-related deaths became the leading cause of death in the United States, Thom Gunn published a collection of poetry. Gunn, a migrant from Kent and a resident now of San Francisco titled his volume *The Man with the Night Sweats* (1994), in a nod to a common symptom experienced by HIV-infected persons. The book contains a number of elegies to the friends that Gunn has lost to the epidemic. It opens, however, with a joyful, richly detailed account of a hug between two long-time lovers, a moment that causes time to collapse in on itself. It is entitled 'The Hug.'

Gunn: 'The full lengths of our bodies pressed.'

The possibility of touch itself was a casualty in the early years of the epidemic when modes of transmission were unclear.

Gunn: 'Our grand passion had not yet become familial.'

The passage of time, a life lived. A life and time that many people in Gunn's generation did not, or would not get to inhabit.

To set the tone of the collection with this account then also lets us imagine a moment where the ability to live a full life becomes a possibility. The past was a moment when the virus hadn't moved to its first human hosts, while the future held the possibility of a readily

available cure (anti-retroviral drugs were in limited supply at this point in time). The Hug, then, reaches to the past and gestures to the future even as it lingers within a detailed rendering of a quotidian moment in the present. In the present there is this full-bodied embrace which holds within it multiple horizons.

When faced with Nowshirwan and Ratansi's stories, the judge is unable to comprehend this possibility. In this other narrative, however, we watch it come alive.

C Feeling touch

In the space of this performance, we experience a story being re-written. In this narrative, where law will not come knocking, will not break open the door, we might allow ourselves to feel another law.

Mandeep Raikhy: 'The reason why the charpai became exciting for me was one because … it also represented an object which is transparent. You can see what's underneath it, you can see through it, you can see what's on it. So there is no hiding away, there is no reason to be discreet' (Naskar 2016).

Minna Saran asks her son: 'Why do this on camera?'

There is nowhere to hide.

It is not only the performers who are utterly visible. It's us, as well, the audience. We were never just looking at them. It was never just a chink in the door, an eye at the keyhole. The other backdrop that has been a constant is the rest of us. Through the show, we watch each other, and we are watched by each other.

There is nowhere to hide – there is also, crucially, no *need* to hide.

I watch these two bodies touch with ecstatic abandon, and I step out of my body momentarily. I watch others watch these bodies, lit by the golden light from above our heads, and in this space across us, there is astonished wonder. The nomos that we have formed at this moment exists adjacent to that other nomos of touch, but in this space the very acts the law marks as despicable are celebrated.

The pulsating insistent rhythms of the soundscape give way to snatches of familiar media debates on the law. Before us –

Blue and Orange, or it might be –

Nowshirwan and Ratansi, or it might be –

You and I –

Are undaunted. They rise once again, and this time separate to move towards the audience. Within breathing distance, they pause, and walk along the seated rows, a whisper of touch. Little circles with their bodies, and now one of them is by my side, and now my knee makes contact with his calf. With this final moment of fearless touch, we've knit ourselves together into this alternate nomos.

Cover: 'To inhabit a nomos is to know how to live in it' (1983: 6).

Leiboff: 'We simply can't notice what we have never lived, either literally or by analogy' (2019a: 104).

In this space, we've begun our training in learning how to inhabit the other nomos of joyful touch.

5 Epilogue: disorienting notes

There are a few different tensions that I have tried to work with in the course of this staging.

The first is a tension between describing and evoking: how do I ask you to see what I see? How do I make you feel what I feel? Tethering my description to a performance of *Queen Size*, even as the performance fragmented across time and space, was my attempt at navigating this tension. I have hoped, in this manner, to convey the possibilities that an attention to dramaturgy can offer to a jurisprudential practice oriented to repair.

The second tension lies within Cover's bridge, the tension that links a concept of reality to an imagined alternative. This tension is the practice of law, a practice that allows us to craft the bridge from reality to imagined alternative. I have lingered within the world offered by *Queen Size*, a world that exists partly in the imagination but is also

tethered to reality, a reality where the acts performed by its actors were physical acts, acts that carried the mark of criminality, acts that were subject to the very real possibility of state sanction.

The final tension is one that we might consider as a translation of Cover's bridge into Sedgwick's lexicon. It is the tussle between what might have been – a concern of the past – and what could be – a concern of the future. In Sedgwick's world, this tension might be found in the practice of hope by a reparatively-positioned reader. Traumatic as it might be, hope allows the reparative reader to entertain the possibility of a different future. It might also, Sedgwick suggests, allow us to entertain the 'relieving, ethically crucial' possibility that the past could have happened differently (2003: 146).

This form of speculation, the casting about for what might have been is already a jurisprudential concern when we think about dissent. It is, at least in part, the animating concern behind the various critical judgment rewriting projects, most notably the Feminist Judgments Project (see Charlesworth 2019; Davies 2012) and its different iterations. We might also find a version of this counterfactual imagination in the institutional legal dissent, as Ravit Reichman (2012) does. Through staging a jurisprudence of repair, as I have done in this essay, I offer another way of approaching this question.

Endnotes

1 Danish Sheikh is a PhD Candidate at Melbourne Law School, Australia. This essay emerges from my doctoral research on describing a minor jurisprudence of repair. I am very grateful for the generous supervision I have received from Peter Rush and Shaun McVeigh and for the detailed feedback from my academic assessor, Ann Genovese. I also offer my gratitude to the two anonymous reviewers and to Marett Leiboff and Sean Mulcahy for their insightful and detailed suggestions. Versions of this essay have been presented at the University of Lucerne's Doctoral Forum in Law and Humanities in 2020 and the Osgoode Graduate Law Students Association Conference in 2021, and I thank the organisers and participants for their feedback. I have also benefited immensely from the discussions I had on a draft of this essay with Swethaa Ballakrishnen and Trishna Senapaty as part of the Law and Society Association Graduate Student and Early Career Workshop in 2021. Finally, I am grateful to the panel of judges for the Zipporah B. Wiseman Prize for Scholarship on Law, Literature and Justice for nominating an earlier draft of this essay as a finalist for the 2021 prize.

2 For a discussion of Cover's legacy, see Burf 2005 and Minow 1987. For a discussion of the significance of Cover's description of a nomos to law and literature scholarship, see Reichman 2009.

3 For an account of the many ways in which we might unfold the word 'repair', see Spelman 2003.

4 If we believe in a system of retribution or deterrence then what is being repaired is an idea of injustice; if we believe in a system of restoration then what is being repaired are our relations with each. See Stauffer 2015.

5 For an exploration of different registers of prefigurative practices, see Cooper 2020.

6 See for instance, the *Criminal Tribes Act 1871* that created a register of criminality; section 268 of the Indian *Penal Code 1860* which criminalises public nuisance; a range of state-level police Acts and buggary laws that indirectly target queer persons.

7 *(Meherban) Nowshirwan Irani v Emperor* is an early and prominent example that I will return to in this essay, but the most recent and notable one is the Indian Supreme Court's *Suresh Kumar Koushal v Naz Foundation*,

effectively re-criminalising homosexuality. See also *D.P. Minawalla v Emperor*; *Ratan Mia and Another v State of Assam*.

8 I place myself within a jurisprudential tradition oriented towards the sensory and the material. See Leiboff 2019a; Barr 2016; Parker 2015; Mulcahy 2021.

9 For an exploration of what it might mean to live with lawful relations, see Genovese, McVeigh and Rush 2016.

10 There are multiple versions of Sedgwick's essay on this topic, perhaps the most widely cited of which can be found in her 2003 essay collection. See Sedgwick 2003.

11 See also Shane Chalmers and Sundhya Pahuja's introduction to the *Routledge Handbook on International Law and the Humanities*, where they use the idiom of ethos to bring a disparate range of scholarly work within a shared umbrella: for them, to think about ethos is to hold on to an emphasis on practice, while joining questions of method explicitly to the formation of a particular community: Chalmers and Pahuja 2021.

12 As placed against the jurispathic courts of the State. See Cover 1983: 40.

13 See also Karen Crawley's (2, Edin010) discussion on theatricality as a mechanism that reveals backstage mechanisms that sustain onstage spectable.

14 For a four year period starting from July 2009, the Indian sodomy law had been held to be constitutionally invalid by a decision of the Delhi High Court. See *Naz Foundation v Union of India*.

15 Even as I hold off from other describing other kinds of nomoi of touch. For instance, I do not speak about touch in relation to the practice of caste, of touch outside the register of consent. For accounts of intimacy that brings together queer touch with these other registers, see Jyoti 2018 and Mohan and Murthy 2013.

16 Senthorun Raj fashions Sara Ahmed's work into a queer jurisprudence of emotion in this manner. See Raj 2020; Ahmed 2014.

17 For an account which lingers in more detail on the element of choreography, and how law might inscribe upon and reconstitute itself through moving bodies, see Shaw 2020.

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