

A COLLECTION OF WRITINGS IN HONOUR OF PROFESSOR DIANNE OTTO

CELEBRATING DI OTTO

HILARY CHARLESWORTH*

Di Otto has contributed richly to many areas of scholarship in international law. Her research has had particular impact because it is not doctrinaire, rather it is subtle and reflexive and attentive to ambiguity and contradiction. Hallmarks of Di's scholarly style include a mastery of the technical details of law, a deep appreciation of the power of legal theory and a keen attention to the political consequences of a particular legal stance. Her arguments, although grounded in social justice, are always based on a close reading of legal texts and she never follows the easy route of simply asserting the virtue of her position.

Take, for example, Di's work on feminist theory and international law. While much research in this field has focused simply on the absence of women or overt forms of discrimination, Di's analysis of women's human rights took that field out of its rather limited framework and connected it to international economic developments. For example, her work on the outcomes of the Beijing Conference on Women of 1995 highlighted the neoliberal assumptions of the international order, an aspect of the negotiations that went unremarked by other scholars.¹

Equally, Di's work on the regulation of sexuality in peacekeeping unsettled prevailing scholarship by presenting a radical critique of the 'zero tolerance' policies of the United Nations. While many feminists hailed the 'zero tolerance' approach to sex between UN peacekeepers and local populations, Di argued that it was important to examine the complex sexual economies that surround peacekeeping and understand what the sexual transactions meant to the participants — that 'zero tolerance' policies made the problem one of simply sex, rather than one of survival, or labour, or indeed pleasure.²

Another striking area of Di's research has been the articulation of postcolonial critiques of international law which linked the areas of race, gender and sexuality in a powerful way. She has drawn attention to the way that the 'allegedly universal subject of human rights law ... reproduces hierarchies including those of [gender], race, culture, nation, socio-economic status and sexuality'.³ Di has gone on to participate in important work identifying the elements of queer theory in international law, proposing that the Vatican may provide a starting point for

* Melbourne Laureate Professor, Melbourne Law School; Distinguished Professor, Australian National University.

¹ See, eg, Dianne Otto, 'Holding up Half the Sky, but for Whose Benefit?: A Critical Analysis of the Fourth World Conference on Women' (1996) 6 *Australian Feminist Law Journal* 7.

² See, Dianne Otto, 'The Sexual Tensions of UN Peace Support Operations: A Plea for "Sexual Positivity"' (2007) 18 *Finch Yearbook of International Law* 33; Dianne Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies' in Vanessa Munro and Carl Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Taylor and Francis, 2007) 259.

³ Doris Buss and Ambreena S Manji (eds), *International Law: Modern Feminist Approaches* (Hart, 2005).

imagining what a queer state might look like — by challenging the link between a population's reproductive continuity and statehood.⁴

Di's work on economic, social and cultural rights is also significant. Her research has illuminated debates about the status and impact of the *International Covenant on Economic, Social and Cultural Rights* and she has also written perceptively about the protection of these rights in Australia.⁵ Her involvement with Australian and international NGOs demonstrates her distinctive capacity to connect theory and practice.

Di's interest in re-imaginings of international human rights law can be seen in her work examining the sex/gender distinction. The idea that sex is biological and gender is a social construction has permeated much feminist literature and, to a certain extent, has been imbibed by the UN. Di suggests rather that we understand this distinction as 'multiple and shifting, rather than dualistic'.⁶ She rejects the idea of the body as fixed biologically and sees it rather as culturally produced, thus undermining the standard international approach that sees women as in need of protection. For Di, gender is best understood as a technology of power that can disadvantage men and other gender identities as well as women. She highlights the often tentative advances by the UN human rights treaty bodies in this context and retains faith that 'the discursive practices of international human rights law can reconceive sex/gender as a fluid conception that has multiple forms of expression and identification'.⁷

Thus, while Di's critique of the international and national legal systems is unflinching, her writing is essentially optimistic. She searches for signs of advance, points of contradiction that leave some space for pushing for change within the law. In this sense, she departs from the more pessimistic urgings of some scholars to simply 'take a break from feminism'. This hopeful approach to the emancipatory potential of the law distinguishes Di from many other critical theorists in international law.

⁴ Ralph Wilde, Dianne Otto, Doris E Buss, Amr Shalakany and Aeyal Gross, 'Queering International Law' (2007) 101 *Proceedings of the American Society of International Law* 119, 120–21.

⁵ See, eg, Dianne Otto, "'Gender Comment': Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?" (2002) 14 *Canadian Journal of Women and the Law* 1; Dianne Otto, 'Homelessness and Human Rights: Engaging Human Rights Discourse in the Australian Context' (2002) 27 *Alternative Law Journal* 271.

⁶ Dianne Otto, 'International Human Rights Law: Towards Rethinking Sex/Gender Dualism' in Vanessa E Munro and Margaret Davies (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Taylor and Francis, 2013) 197, 197.

⁷ *Ibid.*

‘JUGGLING CRITIQUE WITH HOPE’

KAREN ENGLE*

I am honoured to offer a few reflections on the occasion of Dianne (‘Di’) Otto’s retirement, though it is a formidable task. Indeed, it is hard to imagine a more daunting assignment than to do justice to Di and her scholarship in a short essay. It is difficult in part because Di is one of the most masterful writers I know. In all that she pens, from emails to law review articles, every word is carefully placed, and each sentence thoughtfully punctuated. Di’s words have fragrances and tastes. Her writing invites you into worlds of ideas and experiences you necessarily do not know. Even if you thought you knew them, through her telling, you understand them in new ways — sometimes more pleurably and playfully, and sometimes more dangerously, than before.

If it is challenging to write in a manner worthy of Di’s style, it is equally tough to attempt to convey the substance of her thought. Fortunately, Di has offered me a phrase through her own recent scholarship that provides a useful window into her approach toward gender and international law. Largely about affect, the phrase is ‘juggling critique with hope’. She uses it in a recent book chapter on peoples’ tribunals to describe how they pursue a number of legal aspirations, from the identification of legal violations (critique) to the encouragement of ‘transformative challenges to the existing imaginaries of law’ (hope).¹ In the process of writing about people’s tribunals, Di mirrors the approach she describes, as she both critiques and finds hope in the tribunals themselves. Such an approach is not unique to that chapter. Indeed, juggling critique with hope could describe nearly every piece of Di’s scholarly work.

Di wages her critique by questioning the common sense of international law — about nearly everything: peace, war, gender, sex, sexuality, race, indigeneity and nationality. Specifically, she challenges the ways that international law constructs and is constructed by common sense notions of each of those categories. She often does so by reviving lines of thought and practice that have been subsumed or forgotten. She reminds us, for example, of the history of feminist critiques of militarism that have all but been abandoned in feminist engagement with the United Nations Security Council’s agenda on Women, Peace, and Security.² She also draws our attention to important continuities, such

* Minerva House Drysdale Regents Chair in Law and Founder & Co-Director of the Bernard and Audre Rapoport Center for Human Rights and Justice, University of Texas School of Law.

¹ Dianne Otto, ‘Impunity in a Different Register: People’s Tribunals and Questions of Judgment, Law, and Responsibility’ in Karen Engle, Zinaida Miller and D M Davis (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge University Press, 2016) 291, 295 (‘Impunity in a Different Register’).

² See, eg, Dianne Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade’ (2009) 10 *Melbourne Journal of International Law* 11 (‘The Exile of Inclusion’).

as the regulation of sexuality that animates the UN's Zero Tolerance policy for its peacekeepers.³

Di sometimes expresses concern about the dangers of critique. Critique might be co-opted, for example, even used to legitimise the very structures against which it is aimed.⁴ She expresses these concerns not from the outside, but in moments of self-reflexivity *within* critique and with the striking humility that defines so much of her professional and personal style. For Di, the object of critique is never far away. She applies her critical eye to her own work, as both a scholar and an activist.

I mentioned Di's recent chapter on people's tribunals. It is analytically sharp and insightful, and speaks to her artful capacity to locate and articulate hope. Part of Di's hope in the tribunals, or at least one brand of them, comes from their politics of listening. Audiences are implored to 'listen with [their] hearts'⁵ and then act on a collective responsibility, as Di puts it, to 'do whatever we can, in solidarity with survivors, to struggle for justice both in and beyond the law'.⁶

The chapter also exemplifies Di's enduring commitment to self-critique as she discusses her own role as a panellist on a people's tribunal, the 2012 Asia-Pacific Regional Women's Hearing on gender-based violence in conflict.⁷ She uses the chapter to contextualise and understand the hearing, and to consider whether and how the proceedings differed from those found in a courtroom, on one hand, and other people's tribunals, on the other. In doing so, she critically reads the final statement produced by the four-person panel on which she sat, and concludes that it 'falls short of invoking the sense of shared and collective responsibility that people's responsibility tribunals promote'.⁸ Though she admits that she had an influential hand in drafting the statement and is therefore partly to blame, she does not stop with a *mea culpa*. Rather, she uses the statement's failure to call attention to 'the powerful grip that legal justice has on our imaginings and hopes for justice'.⁹

Although what I just described is reflective of Di's juggling of critique with hope, I wonder whether my title might belie some of the complexity of Di's work. That is, Di does not always or necessarily juggle critique with hope, but often insists on the *hope of critique*.¹⁰ That hope goes hand-in-hand with the danger she identifies. She continually reminds us, borrowing from Michel Foucault, that 'everything is dangerous'.¹¹ So why not engage in critique? And she entices us with its pleasures and its possibilities for desubjugation, as

³ Dianne Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies' in Vanessa E Munro and Carl F Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge, 2007) 259.

⁴ See, eg, Otto, 'The Exile of Inclusion', above n 2.

⁵ Otto, 'Impunity in a Different Register', above n 1, 291.

⁶ *Ibid* 316.

⁷ *Ibid*.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ Others, of course, have engaged in the critique of hope: see, eg, Lauren Berlant, *Cruel Optimism* (Duke University Press, 2011).

¹¹ Dianne Otto, 'Everything is Dangerous: Some Poststructural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law' (1999) 5(1) *Australian Journal of Human Rights* 17.

Foucault puts it.¹² How else might we imagine peace and the decolonisation of minds and bodies other than by attempting to unravel the knowledge that binds us — precisely by finding moments or places where the ‘truth’ is not as we presume to know it? Throughout her career Di has enacted this method, in places and ways even Foucault might never have imagined. She has done so with a nuanced understanding of the function and limits of law and with attention to female sexuality and sensibility (particularly through a queer eye). Along the way, she has influenced the thought and affect of many engaged in scholarship and activism in a variety of fields, ranging from international law and peace studies to feminism and queer theory.

¹² See Judith Butler, ‘What is Critique? An Essay on Foucault’s Virtue’ on Christoph Brunner et al, *European Institute for Progressive Cultural Policies* (May 2001) <<http://eipcp.net/transversal/0806/butler/en>>, archived at <<https://perma.cc/G3UK-3CPE>>, citing Michel Foucault, ‘What is Critique?’ in Sylvère Lotringer (ed), *The Politics of Truth* (Semiotext(e), 1997) 41.

DIANNE OTTO'S FEMINISM AS CRITIQUE OF INTERNATIONAL LAW

AEYAL GROSS*

Dianne Otto is an exemplary critical and feminist scholar of international law. When I say critical scholar, I mean one who engages not merely in 'criticism' but rather in 'critique', seeing the complexities and contradictions of law and looking at its legitimising role but also at the opportunities it offers.

Consider, for example, Otto's discussion of the governance feminism critique in the context of international law. Otto argues that, as she had considered in the past, gender-focused resolutions of the United Nations Security Council may indeed amount to co-option, yet can still create opportunities for further feminist engagement both locally and globally,¹ with the subsequent development of monitoring mechanisms possibly providing an opportunity for feminist activism.² Gender-based Security Council resolutions, then, are a double-edged sword: they provide 'footholds' for feminist activism on the one hand, and a means for the Security Council to enhance its legitimacy and power on the other.³ The resolutions divert attention away from the underlying structural causes of armed conflict (in particular, the inequitable distribution of global power and wealth) while, at the same time, providing a powerful organising tool for local, national, regional and international feminists networks and movements.⁴ While offering this analysis, Otto describes how her own position shifted over time, and how later developments enabled a perspective that allowed her to consider the story as being about more than only co-option.

I found these insights useful in my own research on emerging global gay governance. Recent developments at the UN touching on its human rights mechanisms and on the Security Council, which address sexual orientation and gender identity discrimination, will require attention to their effects in ways resembling Otto's concern with feminist issues.⁵ Otto's openness to these complexities, and her willingness to change her analysis accordingly, point to a

* Aeyal Gross is Professor of Constitutional and International Law at Tel-Aviv University.

¹ Dianne Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council' (2010) 32 *Australian Feminist Law Journal* 97, 112–13.

² *Ibid* 115–16.

³ Dianne Otto, 'Beyond Stories of Victory and Danger: Resisting Feminism's Amenability to Serving Security Council Politics' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan, 2014) 157, 158.

⁴ Dianne Otto, 'Contesting Feminism's Institutional Doubles: Troubling the Security Council's Women Peace and Security Agenda' in Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: Notes from the Field* (University of Minnesota Press, 2017) (forthcoming).

⁵ Aeyal Gross, 'Homoglobalism: The Emergence of Global Gay Governance' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017).

version of ‘feminism as critique’⁶ needed today more than ever — a version that constantly returns to the questions rather than presuming to know all the answers, and committed to the emancipation human rights can offer while mindful of the legitimation they may provide. Thank you, Di, for being such an inspiration!

⁶ I borrow this term from the title of the book: Seyla Benhabib and Drucilla Cornell (eds), *Feminism as Critique: Essays on the Politics of Gender in Late-Capitalist Society* (Polity, 1987).

**AFFECTIVE CRITIQUE:
FEAR, HOPE, ABANDONMENT AND PLEASURE IN
DIANNE OTTO'S LIVING WITH INTERNATIONAL LAW**

VANJA HAMZIĆ*

When I was first prompted to share my reflections on the magisterial figure of Di Otto in transnational feminist scholarship on international law, I replied suggesting that I would like to speak through an assortment of situated (e)motions about the possibility to appreciate Di Otto's relationship with international law as *affective critique*.

However, a cursory glance over the standard set of proposals of affect theorists suggests that all this is well-nigh impossible. Not only is affect often theorised — for instance, in Brian Massumi's work — as autonomous and *outside* social signification,¹ that primary field of critical theory; it is also posited as a critique of sorts of critical social studies, with its attention to the *residue* that constructivist models of social studies leave behind — 'the residue or excess that is not socially produced, and that constitutes the very fabric of our being'.² The visual arts theorist Simon O'Sullivan therefore concludes: '[a]ffects are ... the stuff that goes on beneath, beyond, even parallel to signification. ... [Y]ou cannot read affects, you can only experience them'.³ This assertion implies that affect as critical object stands in opposition to critique, or at least the critique produced by attention to social structures. With its focus on qualitative experience, affect theory, not unlike anthropology, privileges situated, lived sensation, even when that experience is in the domain of the virtual, the domain that escapes the so called 'real world' and because of that, in Massumi's words, 'cannot but be felt'.⁴ Bruno Latour explains this focus precisely as an antithesis

* Senior Lecturer in Legal History and Legal Anthropology, SOAS, University of London (vh1@soas.ac.uk) and Member (2016–2017), School of Social Science, Institute for Advanced Study, Princeton (vhamzic@ias.edu). An earlier version of this essay was published in (2017) 7(1) *feminists@law*, an open access journal of feminist legal scholarship, and is available at <<http://journals.kent.ac.uk/index.php/feministsatlaw/issue/view/27>>. The essay is based on a brief intervention delivered at the Symposium to Celebrate the Work of Professor Dianne Otto, Centre for Gender Studies, SOAS, University of London, 2 September 2016. I am deeply grateful to Gina Heathcote for organising that remarkable event and to Di Otto for her warm, insightful and self-deprecating comments on this piece. What an intensely joyful experience it has been to know and learn from you both!

¹ Brian Massumi, 'The Autonomy of Affect' (1995) 31 *Cultural Critique* 83. See also Brian Massumi, *Parables for the Virtual: Movement, Affect, Sensation* (Duke University Press, 2002).

² Clare Hemmings, 'Invoking Affect: Cultural Theory and the Ontological Turn' (2005) 19 *Cultural Studies* 548, 549.

³ Simon O'Sullivan, 'The Aesthetics of Affect: Thinking Art beyond Representation' (2001) 6(3) *Angelaki* 125, 126, 135 (citations omitted).

⁴ Massumi, above n 1, 91.

to critical thinking. Because for him critique is ‘the destruction of sense *made*’,⁵ the critical impulse should be resisted altogether.⁶ Finally, Gilles Deleuze construes affect as distinct from emotion, as ‘bodily meaning that pierces social interpretation, confounding its logic, and scrambling its expectations’.⁷ In other words, if these propositions are taken for granted, I cannot describe Di Otto’s relationship with international law as affective critique, because affect exists in the residue of discourse, in sensation, which lies outside the domain of critique. I should also be careful not to confuse affect with emotion, for those two are situated differently — emotion in the realm of social interpretation, affect in its bodily alterity that defies any socially imposed logic.

I confess, nonetheless, that I am a believer in affective critique. Clare Hemmings, for example, has helpfully rejected ‘the contemporary fascination with affect as outside social meaning, as providing a break in both the social and in critics’ engagements with the nature of the social’, and proposed, instead, that ‘affect might in fact be valuable precisely to the extent that it is not autonomous’.⁸ Moreover, my suggestion is that affect’s relationship with the social is mutually constitutive, even when affect unsettles the social, works against the social or provides an altogether asocial experience. This symbiosis is best seen at work when certain affects that are socially construed as ‘negative’ become a source of a *feeling* that is both felt as enjoyable and socially constructed as ‘positive’. Eve Kosofsky Sedgwick’s theorisation of shame that becomes pride is an example of such undeniably messy socio-synesthetic transformation.⁹ But it is precisely this messiness — or queerness, if you will — of affect when *in touch* with the social that makes affective critique possible and, with it, the distinctions between the ‘positive’ and the ‘negative’ or even between affect and emotion *intrinsically* unstable. Not only do things and people become messy and off balance when we direct our critical attention to affect; a turn to affect also exposes the inescapably complicated interrelatedness of seemingly autonomous formations. Or, as Silvan Tomkins once quipped:

if we want to understand feeling, we had better understand all the things that are conjoined and that have evolved to be conjoined. We can tease them apart, we can

⁵ As described by Nathan Stormer, ‘Turning Sensation into Sense: What is Critique of Affect?’ (Paper presented at the National Communication Association Convention, San Francisco, 16 November 2010) 2 <http://www.academia.edu/17831606/Turning_Sensation_into_Sense_What_is_Critique_of_Affect>, archived at <<https://perma.cc/ML9U-2HF4>> (emphasis in original).

⁶ Bruno Latour, ‘Why Has Critique Run Out of Steam? From Matters of Fact to Matters of Concern’ (2004) 30 *Critical Inquiry* 225. For a recent anthropological refutation of this proposal, see Didier Fassin, ‘The Endurance of Critique’ (2017) 17 *Anthropological Theory* 4.

⁷ Hemmings, above n 2, 552. However, the relationship between affect and critique is described as ambiguous and complex in many of Deleuze’s works. He writes, for example, of ‘affects that are not simply effects of the body, but veritable *critical entities* that hover over the body and judge it’: Gilles Deleuze, ‘The Shame and the Glory: T E Lawrence’ in Gilles Deleuze, *Essays: Critical and Clinical* (Daniel W Smith and Michael A Greco trans, University of Minnesota Press, first published in 1993, 1997 ed) 115, 124 (emphasis in original) (citations omitted).

⁸ Hemmings, above n 2, 565.

⁹ See, eg, Eve Kosofsky Sedgwick and Adam Frank, ‘Shame in the Cybernetic Fold: Reading Silvan Tomkins’ (1995) 21 *Critical Inquiry* 496. For other similar manifestations of such productive messiness, see Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Duke University Press, 2003).

factor them, we can centrifuge them, but they remain a unitary phenomenon, which exhibits many diverse characteristics at once. Now that is not fashionable in science. It is called contamination. Unfortunately, we are deeply contaminated creatures.¹⁰

The socio-affective contamination is not only a phenomenon deeply beneficial to critical examinations of the human; it should also be embraced as a mode of critique in its own right — a mode that critical theorists attuned to thinking through affects, or even *thinking affectively* (that not being an oxymoron), have done all along. And, it is this kind of critique that I find extremely exciting in the ‘work’, or rather lifeworlds, of Di Otto.

A critical object that Di has grappled with *a lot* throughout her life — an object, therefore that has entered her everyday experience in more ways than one — is that of international law. It elicited, no doubt, in her many a complex feeling and *provoked* into being, so to speak, her many a critical text, lecture, thought. Is there a symbiosis to be observed between these supposedly separate provocations? Is there productive contamination?

I would like to offer my response in four motions, that are also emotions, that are also affects, that are also critical stances, situated in a series of Di’s texts. Those complex four occurrences can tentatively be called ‘fear’, ‘hope’, ‘abandonment’ and ‘pleasure’. I contend that each of these offers an insight into Di’s affectively invested critique, a window to what might be called Di’s methodology that is also, and inseparably so, a way of life with international law.

Let us first encounter fear. In ‘Power and Danger: Feminist Engagement with International Law through the UN Security Council’,¹¹ Di turns to Janet Halley’s contention that ‘feminists now “walk the halls of power”’¹² and provides an account of one such potential ‘hall’ *par excellence* — the United Nations Security Council. While reluctant to agree with Halley’s label for this type of feminist engagement, that of ‘Governance Feminism’, Di still recounts the many dangers of this *modus operandi*, including ‘the risk of legitimising an imperial and hegemonic institution like the Security Council’.¹³ She reminisces, for example, how she was at first ‘despairing about feminist engagement with power’¹⁴ only to find things to be *more complex* than that. Recalling Carole Vance’s warning that ‘sexual panics mobilise irrational fears about sexuality and can catch feminists in a “conservative impulse” that drastically narrows the terms of feminist discourse’,¹⁵ Di finds a suitable example of such situation in Security Council *Resolution 1820*, ‘with its panicked proposal to evacuate women and girls facing an imminent threat of sexual violence and its silences about sexual violence directed at men and boys’.¹⁶ However, Di’s analysis of some other

¹⁰ Silvan S Tomkins, ‘Inverse Archaeology: Facial Affect and the Interfaces of Scripts within and between Persons’ in E Virginia Demos (ed), *Exploring Affect: The Selected Writings of Silvan S Tomkins* (Cambridge University Press, 1995) 284, 285.

¹¹ Dianne Otto, ‘Power and Danger: Feminist Engagement with International Law through the UN Security Council’ (2010) 32 *Australian Feminist Law Journal* 97, 121.

¹² *Ibid* 98, quoting Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press, 2006) 25–6 (citations omitted).

¹³ *Ibid* 99 (citations omitted).

¹⁴ *Ibid*.

¹⁵ *Ibid* 119.

¹⁶ *Ibid*.

related resolutions reveals that they ‘draw from a broader range of feminist ideas’.¹⁷ By delving into the fears, including her own, generated by an inherently dangerous feminist engagement, Di does not shy away from their complexity. It is, in fact, that complexity that can ultimately provide some solace, for it can help both understand and experience what she calls ‘working in the intersections of power and danger’.¹⁸

In the same text, Di expresses a hope in the activist theorist nexus. This hope, very much a staple of Di’s critical life with international law, is first probed by the question: ‘Can an activist be engaged with critical thinking in both law and feminism without stifling her activism or betraying her critique?’¹⁹ While the answer can be positive, she later adds that it is *also* ‘a “somewhat pessimistic” position to take’.²⁰ The complexity of such a hope, and perhaps *any* hope involving international law, is thus laid bare. In another intervention, titled ‘Celebrating Complexity’,²¹ Di reveals that she, too, belongs to the tradition that Sundhya Pahuja ‘has aptly described as having “critical faith” in international law’s potential to challenge established relations of power’.²² To be sure, Di shares:

feminist and queer dissatisfactions with the assumptions, conceptual underpinnings, and vocabularies of international law, which order the way that we think about the international community, maintaining exclusionary normative conceptions of who is fully human, while masquerading as objective and universal.²³

But such discontents, Di explains, can also arise ‘from deep hopefulness that international law may yet be turned to emancipatory ends’.²⁴ This hope cum disappointment, Di readily admits, is complex, perhaps even ‘dangerous’, both as a feeling and a critical stance. But she is adamant that such complexities should be ‘embraced as productive’, rather than seen as a problem.²⁵

This is not to say, of course, that Di has been ready to retain for affective and critical consumption every by-product of her living with international law. In fact, her early work cultivates a keen sense of abandonment, perhaps best captured in her call to ‘Rethinking the “Universality” of Human Rights Law’, in which she argues for ‘the cooperative endeavor between modern and poststructural knowledges’,²⁶ as well as in her article ‘A Question of Law or Politics? Indigenous Claims to Sovereignty in Australia’, in which she explores ‘post-colonial and post-liberal local knowledges’.²⁷ Taken together, these texts

¹⁷ Ibid (citations omitted).

¹⁸ Ibid 118.

¹⁹ Ibid 98.

²⁰ Ibid 120 (citations omitted).

²¹ Dianne Otto, ‘Celebrating Complexity’ (2012) 106 *Proceedings of the American Society of International Law* 168.

²² Ibid 168 (citations omitted).

²³ Ibid 169.

²⁴ Ibid 168–9 (citations omitted).

²⁵ Ibid 171.

²⁶ Dianne Otto, ‘Rethinking the “Universality” of Human Rights Law’ (1997) 29 *Columbia Human Rights Law Review* 1, 45.

²⁷ Dianne Otto, ‘A Question of Law or Politics? Indigenous Claims to Sovereignty in Australia’ (1995) 21 *Syracuse Journal of International Law and Commerce* 65, 103.

deplorable ‘universalizing knowledge’ that law so often harbours. Besides a deep theoretical structure, which sets Di’s work apart from the sea of other contemporaneous legal scholarship, there is, I think, a visceral element to this call for abandonment, a sense of *non-belonging* and uneasiness that Di mines with great skill so that it becomes her critical tour de force. Take, for example, her recollection of sitting in the African Caucus of NGOs at the Fourth World Conference on Women in Beijing, in September 1995, which can be read in her text ‘The Gastronomics of TWAIL’s Feminist Flavourings: Some Lunch Time Offerings’.²⁸ She was there ‘as a representative of the Lesbian Caucus, to ask African women to lobby their State’s representatives to support the recognition of “sexual orientation” as an unacceptable ground of discrimination in the [Beijing] Platform for Action’.²⁹ This is how she remembers the encounter:

The limits of our shared identification as women—and as feminists—felt overwhelming. ... I felt bereft of words that could make ... links and without a framework, in law or politics, that was capable of giving life to these interconnections in that room. ... Before I even opened my mouth to speak, we were divided and ranked by a myriad of dualized identity significations springing from the ontologies of the post-colonial African Woman and the White Lesbian Woman of modernity ... My efforts were met with, what felt to me like, stony silence. On one hand, I felt they were right to distrust me, in light of the many ways that white western feminism has been complicit in colonialism, and continues at times to be aligned with neo colonialism. But I also felt I had failed because I had not found the words to convey the pain and inhumanity of women’s lack of sexual autonomy, and of homophobia, no less in African countries than elsewhere.³⁰

This is Di confronting abandonment head and heart on. Di at her most vulnerable, at her most revealing. Di at her strongest, too, living her politics, letting people and things be hurtful, letting her deep sense of abandonment hurt once more. Then, coming back to it. *Being it* again and again. Letting it flood the mind, too. Letting it yield critique. Letting, in other words, her critique become deeply affectively invested.

I conclude, however, with a few words on pleasure, for it permeates Di’s life with international law, too. Recall, for instance, her thoughts on statehood from a queer perspective, in the short text titled “‘Taking a Break” from “Normal”: Thinking Queer in the Context of International Law’.³¹ Observing that many criteria of statehood in international law, such as the requirement of a ‘permanent population’, seem so obviously organised ‘along the grid lines of heterosexual kinship relations’,³² Di wonders what could be done to unsettle them. And, then, she suddenly comes to this realisation:

Curiously, the debate about whether the Vatican can be properly called a ‘state’ illustrates this nicely. One point that is made by those who want to deny its

²⁸ Dianne Otto, ‘The Gastronomics of TWAIL’s Feminist Flavourings: Some Lunch Time Offerings’ (2007) 9 *International Community Law Review* 345, 345–7.

²⁹ *Ibid* 346.

³⁰ *Ibid* 346–7.

³¹ Dianne Otto, “‘Taking a Break” from “Normal”: Thinking Queer in the Context of International Law’ (2007) 101 *Proceedings of the Annual Meeting (American Society of International Law)* 119.

³² *Ibid* 120.

statehood is that its population lacks ‘permanency’ because, as it is made up of celibate priests and nuns, it is not self-sustaining. So the Vatican may provide a starting point for thinking through how a ‘queer’ state might ‘look’ — a thought that gives *me* pleasure.³³

There, I think, lies the beauty of Di’s affective critique. It jolts us out of our accustomed ways of thinking and being in the world. It unsettles us with excitement. And, let’s not forget Silvan Tomkins’ apt remark: ‘I am, above all, what excites me’.³⁴

³³ Ibid (emphasis in original) (citations omitted).

³⁴ Silvan S Tomkins, *Affect, Imagery, Consciousness, The Positive Affects* (Springer, 2008) vol 1, 191.

CRITIQUE AS ACTIVISM AS CRITIQUE

GINA HEATHCOTE*

‘Activism is a form of critique, and critique — even academic critique — is a form of activism.’¹

This quote, from Professor Dianne Otto, and the chapter from our book it is drawn from, holds two important lessons on being an academic that Di taught me and that I continue to carry with me.

The first lesson is that which the quote tells us: critique is activism, activism is critique. There are disagreements, of course, but the divide between activist and academic spaces is an imagined one, an illusion. As academics, as lawyers, as feminists, the desire to critique, to analyse, to deconstruct, to rebuild, to unravel, to excavate knowledge as it presents itself is a political decision that is an activist’s choice. I think of law like math — a series of formulas and equations to be solved, to be proved, to be applied. Critique asks us to look at how the numbers are put together: on the page and in the stories we tell — stories that say the number two comes after the number one. Count on eight more and then you are at ten. What if I ask: whose fingers are you counting on? Why always start here? And not there? What happens if I look at the whole hand? Critique is this second set of tasks, critique is a knowledge project — breaking it down and re-imagining it — critique is rethinking, critique is activism.

In the second lesson, Di taught me to listen — I mean really listen and in particular to those outside of academic spaces. This is embedded in the above quote, which in stretching and imagining the connection — the conversation that exists between activism and critique — reminds us that the knowledge projects of academia are also part of feminist and queer activism. Di taught me to notice how our colleagues in NGOs and colleagues working with international institutions get it: they understand the critiques, the criticisms of the institutions, the co-optation and risks. They create footholds and they expose themselves, render themselves vulnerable and take risks to change the things that look like they cannot be changed. Di’s article ‘A Sign of “Weakness”’² is all about honouring the stories and learning from the histories of women and feminists that did and do. Listening reminds us that the tussles and tensions of contemporary feminisms have trajectories across space and time such that we do not need to start again but we might listen some more.

I was deeply honoured to host a symposium to celebrate Di’s oeuvre of work in September 2016 at SOAS University of London. I enjoyed the images of the

* Gina Heathcote is Reader in Gender Studies and International Law at SOAS University of London.

¹ Dianne Otto, ‘Beyond Stories of Victory and Danger: Resisting Feminism’s Amenability to Serving Security Council Politics’ in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan, 2014) 157, 167.

² Dianne Otto, ‘A Sign of “Weakness”? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325’ (2006) 13 *Michigan Journal of Gender & Law* 113, 175.

bright orange celebration in Melbourne a few months later. I had (and have) a strange feeling that both felt more like beginnings than endings. Some of those beginnings are seeds that Di has planted through her inspirational mentoring of queer and feminist scholars on how to write, on how to live, on how to be. However, I think (I hope) outside of academia, the activist–academic blurring continues with no plans to retire.

IN HONOUR OF THE QUEERLY CURIOUS: PROFESSOR DIANNE OTTO

WAYNE MORGAN*

I first met Di when she was a student at Melbourne University Law School in the early 1990s. I was a young academic, newly inspired by queer theory and the potential it held in theorising law and legal institutions. What I remember about Di from that time was her enthusiasm and her quietly optimistic practical faith in the power of diversity. Back then, I didn't know how prolific and important Di's work in activism and scholarship was already and would become.

I became familiar with that work over a period of years as Di became both friend and colleague. I remember the depth and power of her work and what an influence it has had on my own activism and scholarship from the 1990s to this day. Two early pieces, in particular, were extraordinary. Her piece in 1996 on 'Subalternity and International Law' can now rightly be called a classic and I still use it in teaching materials today.¹ Her work on 'Rethinking Universals' was equally enlightening.² The themes of community and coalition, diversity and the incommensurability of difference were important in that early work and I note how those themes have remained constant concerns for Di since. If I might reductively summarise that work without doing too much damage, I would characterise it as exploring the ways in which we are learning to work with the incommensurability of difference and the fundamental challenges to statism (masculinist and racist technologies of biopower) that incommensurability represents. Di's work is 'truly treasonous': by which I mean theoretically subversive whilst being eminently practical and based in community activism.

And I have always envied Di for her ability to come up with a great title! 'Holding Up Half the Sky, But for Whose Benefit?',³ 'Everything is Dangerous',⁴ and a particular favourite of mine: 'The Exile of Inclusion'.⁵ Those four words alone impart so much about the nature of identity politics and law reform.

Her role in disseminating and fostering gender and queer-based scholarship in international law and politics has also been crucial. Di was central in organising the first panel on queer theory at the prestigious *American Society of*

* Associate Professor, ANU College of Law.

¹ Dianne Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5 *Social & Legal Studies* 337.

² Dianne Otto, 'Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law' (1997) 18 *Australian Year Book of International Law* 1.

³ Dianne Otto, 'Holding Up Half the Sky, But for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women' (1996) 6 *Australian Feminist Law Journal* 7.

⁴ Dianne Otto, 'Everything is Dangerous: Some Poststructural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law' (1998) 5(1) *Australian Journal of Human Rights* 17.

⁵ Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 10 *Melbourne Journal of International Law* 11.

International Law annual meeting in 2007.⁶ The academic research she has fostered in others, the workshops she has organised,⁷ and the army of PhD students she has supervised all speak to the lasting legacy of her scholarship.

In her most recent work on queer curiosity and the dangers of the heteronormative nation state, Di calls for a more direct queer engagement with neoliberal masculinist economic theory and practices.⁸ Nothing seems timelier, given the state of current international politics and law.

Queer curiosity always has, and it always will, necessitate interrogating discourses of gender, race and class that perform the heteronormative nation state. Di's work has been crucial to this and the world of international legal scholarship and activism is much richer for it. We know the activism (and hopefully the scholarship) will continue in this new phase of her life. We thank her and we wish her all the very best!

⁶ Dianne Otto, "Taking a Break" from "Normal": Thinking Queer in the Context of International Law' (2007) 101 *Proceedings of the Annual Meeting (American Society of International Law)* 119.

⁷ See, eg, *Queering International Law: Possibilities, Alliances, Complicities, Risks, Provocations II* — Legal Theory Workshop Series, Melbourne Law School, University of Melbourne, 14–15 December 2015; *From Rethinking Peacekeeping to Queer Perspectives on Law*, Centre for the Study of Colonialism, Empire and International Law, SOAS University of London, 10 June 2013.

⁸ Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017).

SUBALTERNITY AND INTERNATIONAL LAW: IN APPRECIATION OF DI OTTO

RAHUL RAO*

Looking at Di's formidable contribution to international legal scholarship, I am struck by how little of it I know but also by how deep an impact it has had on me. In this short reflection, I want to think through my earliest and most recent engagements with Di's work, which in retrospect, reveal an enduring theme of her scholarship.

I discovered Di sometime in the early 2000s while I was working on a doctoral thesis, through her 1996 article 'Subalternity and International Law'.¹ My thesis was attempting to intervene in international normative theory, which had, at the time, become monopolised by liberal political theory and polarised — perhaps also paralysed — by a debate between cosmopolitanism and nationalism on the scope of justice. I was trying to use postcolonial theory to reveal the 'dark sides' of both cosmopolitanism and nationalism when manifest as imperialist globalism and authoritarian localism respectively. But I had reached a disciplinary and methodological impasse of my own. All the postcolonial scholarship I was reading was in other disciplines — literary studies, history and anthropology. Moreover, I was encountering a disjuncture of scale that I did not know how to work around: the postcolonial scholarship, especially in its more poststructuralist vein, seemed enamoured of the politics of the fragment, leaving open the question of how to theorise the totalities of global order that to which the disciplines of international relations and international law seemed ontologically tethered.

Di's 1996 article was crucial in helping me to bridge these apparently incommensurable frameworks, not least because incommensurability is a major theme of this piece. Drawing on the work of subaltern studies scholars, Di asks 'whether it is possible to imagine processes whereby non-dominant, non-elite, *subaltern* individuals and groupings could participate as subjects of international law'.² The major contribution of subaltern studies scholarship lies in its critique of both colonial and bourgeois-nationalist schools of Indian historiography on account of their occlusion of subaltern agency. Di ingeniously deploys its arguments to criticise, by analogy, both the foundational premises of the *Charter of the United Nations* and the politics of the Group of 77 that ostensibly sought to challenge them. While the former institutionalises Eurocentric and orientalist conceptions of international legal personhood, the latter reinforces these through an uncritical embrace of the form of the modern nation state and an insidious silencing of subalterns within Third World societies. In contrast to some of the

* Rahul Rao is a Senior Lecturer in Politics at SOAS University of London. He is the author of *Third World Protest: Between Home and the World* (Oxford University Press, 2010), and of numerous articles in the fields of international relations and the politics of gender and sexuality. He is currently working on a book on queer postcolonial temporality.

¹ Dianne Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference' (1996) 5 *Society and Legal Studies* 337, 364.

² *Ibid* 338 (emphasis in original) (citations omitted).

more uncritical celebrations of Third World state assertion in some Third World Approaches to International Law ('TWAAIL') scholarship, Di's argument opens up space for the theorisation of subaltern challenges expressed in modes of speech that are typically inaudible to the international legal scholar. In a disciplinary sense, her article helped to make audible the foundational work of postcolonial scholars — Edward Said, Gayatri Spivak, Homi K Bhabha, Dipesh Chakrabarty — in the registers of international law and politics.

It would be several years before I met Di in person during one of her stints as a visiting fellow at SOAS University of London. By this time, I had been working at SOAS for nearly three years and thinking increasingly about the politics of sexual orientation and gender identity as a salient issue in global politics. I had been considering offering a graduate course on queer politics, but was unsure about the prospects for institutional support given that there were, to the best of my knowledge, no courses explicitly foregrounding queer perspectives in their titles in SOAS at the time. In May 2011, Di co-organised a workshop entitled 'Queer Perspectives on Law' with Aeyal Gross.³ It is fair to say, I think, that this workshop was something of an institutional and a disciplinary 'coming out' for many of us at SOAS, making visible just how *much* queer scholarship was in fact being produced within the institution, as well as by colleagues in other nearby schools (Birkbeck, King's College London, Kent, Sussex), even if obscured by the institutional silos of departments and faculties.

More recently, Di mobilised these and other networks to curate an extraordinarily stimulating workshop on 'Queering International Law', held at Melbourne Law School in December 2015. The workshop culminated in an eponymous edited volume, in the introduction to which Di urges us to embrace a 'queer curiosity'.⁴ Reminding us of the feminist and subversive genealogy of 'curiosity' as an investigative method, Di invites us to explore both the use of international law to ensure respect for the dignity and personhood of queer subjects as well as the ways in which queer theory casts a different light on the conceptual and analytical underpinnings of international law's adjudication of the normal. But there is also space for pleasure in this curiosity, as Di asks us to 'take a break' from the politics of heteronormative injury to celebrate the expression of human sexuality and gender identity in all its diversity and fluidity.⁵ Certainly I can attest to the pleasure of taking a break from the workshop to visit Ai Weiwei's exhibition honouring Australian human rights advocates at the National Gallery of Victoria, among whom Di has a well-earned place. It was thrilling to look around Ai's room-scale installation built out of

³ Queer Perspectives on Law: Sharing Reflections, Centre for the Study of Colonialism, Empire and International Law, SOAS University of London, 13 May 2011 <<https://soas.ac.uk/cceil/events/13may2011-queer-perspectives-on-law-sharing-reflections.html>>, archived at <<https://perma.cc/J6KQ-C3FH>>.

⁴ Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017).

⁵ Dianne Otto, 'Introduction: Embracing Queer Curiosity' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2017) 1.

Lego-like blocks and to see Di's inspiring words high up on one wall: 'Without hope, solidarity and imagination, change is impossible.'⁶

My current work explores questions of temporality in struggles around queer rights in the Global South. In thinking about questions of time, I have been struck by the way in which contemporary controversies around LGBTI rights in international politics are haunted by the shadow of a much longer struggle around women's rights.⁷ While it is instructive to think about the resonances and dissonances between these different struggles, one of the dangers — as much analytical as political — of such juxtapositions is that they can misleadingly represent these movements as organised around the concerns of cisgendered heterosexual women and gay men respectively, occluding queer and trans feminine subjectivities. Di's work has consistently struggled against these tendencies, making lesbian identities visible in international law while also identifying commonalities that cut across feminist and queer engagements with sexuality and gender identity.⁸ In her critique of the 1995 Fourth World Conference on Women at Beijing, Di writes with a kind of meticulous outrage of the way in which references to sexual orientation were deleted from the final Beijing Platform for Action in return for a watering down of objections to women's rights on grounds of cultural relativism: lesbians here become collateral damage in the skirmishes between so-called progressives and conservatives over women's rights.⁹ In foregrounding the lesbian question, Di populates the abstract categories of her account of 'subalternity and international law' with embodied subjects who struggle, fall, and pick themselves up again to begin anew on the changed terrain enabled by their earlier efforts.

⁶ Andy Walsh, *Chinese Artist Ai Weiwei Recognises Work of MLS Professor Di Otto* (22 January 2016) Melbourne Law School <<http://law.unimelb.edu.au/news/MLS/chinese-artist-ai-weiwei-recognises-work-of-mls-professor-di-otto>>, archived at <<https://perma.cc/NM88-RWRG>>.

⁷ Rahul Rao, 'Queer Questions' (2014) 16 *International Feminist Journal of Politics* 199.

⁸ Loveday Hodson, 'Queering the Terrain: Lesbian Identity and Rights in International Law' (2017) 7(1) *feminists@law* <<http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/378/979>>, archived at <<https://perma.cc/MEB6-XB8Q>>.

⁹ Dianne Otto, 'Holding up Half the Sky, But for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women' (1996) 6 *Australian Feminist Law Journal* 7, 19.