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Citation: Ashford, Chris (2021) Gender, Sexuality and the Law School: (Re)thinking Blackstone's Tower with Queer and Feminist Theory. *Amicus Curiae*, 2 (3). pp. 450-473.

Published by: School of Advanced Study, University of London

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# **GENDER, SEXUALITY AND THE LAW SCHOOL: (RE)THINKING *BLACKSTONE'S TOWER* WITH QUEER AND FEMINIST THEORY**

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## **Abstract**

This article will focus on exploring gender and sexuality within the law school. Largely silent from Twining's 'grand tour', these two areas are now key parts of the law school landscape, having become firmly established as key elements of law school discourse and legal scholarship in the years since *Blackstone's Tower* was published. The Blackstone's Tower of Twining's imagination was, Twining suggested, 'holding up a mirror to a familiar world', and it was a world that made only passing reference to gender and no reference to sexuality. Feminism is mentioned twice in 244 pages, whilst queer—still emergent within legal scholarship in 1994—is not referenced at all. A once radical and vital text can perhaps appear antiquated to today's readers. Yet, this should not be regarded as a criticism of the text but rather a reflection of how the law school and legal scholarship has transformed since 1994. Whether in the number of gender and/or sexuality and law courses that now permeate through the UK law school, or the extraordinary growth first of feminist scholarship and more recently queer scholarship, the law school has been profoundly impacted by socio-legal shifts in gender and sexuality research. This is scholarship that does not merely serve as 'another' theory or an addendum to jurisprudence, for these theories have offered the ability to reshape the very architecture of the law school and to re-imagine Blackstone's Tower for what it is and what it can be. This article seeks to explore that journey and offer a glimpse of future possibilities.

**Keywords:** legal education; gender; sexuality; queer; feminism; gay; pedagogy; LGBTQ; teaching.

## [A] INTRODUCTION

Three years after the publication of *Blackstone's Tower*, the election of Tony Blair's Labour Government coincided with a dramatic period of law reform relating to what might loosely be described as 'gay rights' and later (with the implementation of the Gender Recognition Act 2004) 'trans rights', particularly after the equalization of the age of consent and a greater emphasis on identity politics rather than rights linked to specific sexual acts (Ashford 2011a). Progress on women's rights has arguably been less transformative over this period, but there have been some landmark legal reforms, for example the Female Genital Mutilation Act 2003, the Modern Slavery Act 2015, and the key appointment of Brenda Hale as the first woman President of the UK Supreme Court in 2017.

The English law school, the focus of Twining's 1994 Hamlyn Lectures, is now located in a very different environment. There has been a significant shift in social and cultural attitudes that has provided a new visibility to sexuality and created a new landscape for research into law, sex and sexuality (Tierney & Dilley 2009: 52-53). This has in turn led to a growing problematization of the relationship between LGBTQ people and the law (see, for example, Majury 1998). More generally, recent years have seen a transformation in pedagogy within schools, embracing greater diversity, notably through the *No Outsiders* programmes (see more generally DePalma & Atkinson 2009; and, on tensions with faith communities, Nixon & East 2010). This change in the schooling environment also reshapes the educational experiences of many who will go on to study in English law schools.

Whilst research from law schools arguably contributed in part to this legal, social and cultural shift, more recently still it has also been affected by the growing emergence of activist queer legal scholarship (Raj 2020), the greater inclusion of LGBTQ identities as part of existing modules, for example criminal law/criminal justice (Fradella 2007; Fradella & Ors 2009), other optional/elective subjects such as family law, or human rights law (Gerber & O'Hara 2019) and a growth in gender, sexuality and law modules/classes which also give greater prominence to feminist scholarship too (see, more generally, Moran 2000; Ashford 2010a; 2011b). At the same time, there has been growing recognition of childhood—and educational development more generally—as a key site of intervention in our construction of gender and sexuality (Sedgwick 1993; Dyer 2017).

The university-based law school was, Twining suggested in *Blackstone's Tower*, still coming of age (1994: 2), yet he also observed that a characteristic of Blackstone's Tower—namely the English law school—

was that it seemed to exclude outsiders (1994: 193). This perhaps goes some way to explaining the absence of engagement with themes of gender and sexuality in *Blackstone's Tower*, in that the law school had not yet sufficiently 'matured' to engage with these issues. This assumption of 'maturing' of course reflects the heteronormative and patriarchal biases inherent to the law school in that questions of gender and/or sexuality are 'second order' questions rather than of primary concern for the law school. We'll come to gender, and we'll come to sexuality. Eventually. This presupposes that it is 'neutral' not to engage with these ideas, but this fails to critique the very prejudices and assumptions that lie in a 'neutral' consideration of the law school.

This assumption of a neutral silence perhaps also provides a framework for the struggle that continues in many law schools to engage with those who are inside the Tower, but who continue, to varying degrees, to be rendered outsiders by their gender or sexuality. This is a struggle that offers nothing less than an opportunity to tear down the walls of Blackstone's Tower.

## [B] GENDER AND SEXUALITY AS A LAW SCHOOL AGENDA

Twining noted that 'a tower is itself an ambiguous symbol, conjuring up images of ancient fortifications, Victorian follies, and modern high rises, such as Centre Point or Canary Wharf' (1994: 3). It is also rather phallic. We could say Blackstone's Penis, or perhaps Willy, Knob, Cock, Dick, Dong, or Whang. For an organ with seemingly limitless synonyms, 'Tower' will probably suffice. For just as Blackstone sought to outline and document the law that was conceived, written, applied and enforced by men, the law school certainly was, and arguably still is, dominated by men and conceptions of the masculine (as well as heterosexual, white and ableist) interpretations of law. As Conaghan has noted, 'for large parts of its history, law served as a bastion of male privilege and female subjection' (2013: 3). A phallic symbol as the conception of the English law school was perhaps still apt for 1994—albeit as a satirical choice—given the continued masculine dominance of the law school. In 2021, it is an anachronistic symbol, although the struggle for gender equity in the law school continues (see, on the English context, Duff & Webley 2021; and, on the North American context, Balachandran & Ors 2019; and Duncan & Ors 2020).

Whilst legal scholars have increasingly engaged with themes of gender and sexuality in research—and feminist and queer theories in particular—

there has been a slower connection with the law school classroom and queer and feminist pedagogies (Brooks & Parks 2004) or indeed the application of masculinities studies (see, for example, Collier 2010). This disconnect perhaps reflects the traditional lower priority and focus given to teaching in some law schools (see Cownie 2011) as they seek to prioritize research instead. This arguably represents an over-correction from the origins of law schools which lay in teaching and training, and a desire to be seen as equal researchers to those in the more established social sciences and humanities (see Twining 1980; 1995). Here is another opportunity for the law school and law teachers who work across disciplinary boundaries to explore issues of gender and sexuality.

Whilst gay student groups began to emerge on university campuses in the USA and Europe in the 1970s (see Liebert 1973), the law school has arguably been slower to catch up in providing a space in which these groups can be visible. In the USA, one 2008 study suggested that the law school climate for GLBT students had improved but also included reports of posters advertising GLBT events on campus being defaced, academics showing disdain for the GLBT community, isolating and ‘freezing out’ GLBT students in classes, and students and faculty using the term ‘gay’ in a pejorative manner. They also highlighted the joking in class around cases such as the key LGBTQ rights cases of *Bowers* (1986), *Romer* (1996) or *Lawrence* (2002) (Strader & Ors 2008). Over a decade on, one can but hope further progress has been made, but there remains a dearth of research on this aspect of the law school. One might, in England and Wales, still point to the discussions around *R v Brown* (1993) as one part of the study of criminal law which is ripe for greater interrogation of attitudes towards sexuality, and especially kink behaviours (see Ashford 2010b; and, more generally, Gledhill & Livings 2018).

We should be cautious in our claims about a shift in gender and sexuality as part of the law school ‘agenda’. Robson (2018: 276) has suggested that, whilst some might argue the legal academy has been queered, this can sometimes amount to some law schools merely ‘touting’ themselves as LGBT friendly. She notes, however—albeit primarily in a US context—that the number of LGBTQ law professors has increased dramatically, the number of self-identifying LGBTQ law students has increased, and LGBTQ courses and course content have also expanded. Yet, she is not convinced of the broader queering claim. In particular, there has not been a commensurate focus on developing what a queer pedagogy might look like for law schools. Moreover, queer students and faculty bring a distinct experience to the law school (see, more generally, Dilley 2002), and this experience is shaped not merely by their experience of the

classroom but also by the broader campus dynamic, including time spent on campus and in student accommodation/halls (see Karioris 2019). This necessitates a queer pedagogy that understands and shapes the broader student and faculty experience, which has not yet been developed, so that the law school classroom remains a key site for resistance and pedagogic intervention which to date is largely unexploited.

## [C] GENDER, SEXUALITY, LAW AND TEACHING

In *Blackstone's Tower*, Twining suggested that two main conceptions of the role of the law school have competed for dominance: the first is the law school as a service institution for the profession (the professional school model); the second is the law school as an academic institution devoted to the advancement of learning about law (the academic model) (1994: 52) and whilst this tension arguably remains, feminist and queer theory has provided a tool for the law school to engage with both conceptions (and the fuzzy interplay of the two). If the law school seeks to focus on either of the aspects that Twining identified, it is arguably impossible to think how it does so today without also seeking to engage with the identity politics (to which gender and sexuality are central) that are key both to the legal profession and also the advancement of learning about law. Both feminism and queer theory provide a critical lens for analysis, but also provide a connection with activism and policy. Law school teaching that engages with gender and sexuality serves both the conceptions of the law school that Twining referred to.

Twining's conception was specific to the English law school. Whilst Robson (1998: 219) has suggested that 'even a *liberal* legal education ... is fundamentally different from a liberal arts education' (original emphasis) in considering the role of gender and sexuality, Robson was approaching the law school in a US setting. For the English law school, it continues to provide undergraduate law programmes, alongside postgraduate taught and research provision and—in different ways—direct or indirect vocational training. Law programmes with their hybrid of the 'core' subjects and 'options' sit across these different agendas and provide an important space in which themes of gender and sexuality can be addressed—either as part of compulsory modules (such as criminal law in the earlier *Brown* example), or in optional modules such as family law, or employment law; and increasingly in modules specifically focused upon gender, sexuality and law (Moran 2000; Ashford 2010a; 2011b). Beyond this, extracurricular activities—which Twining noted was one of



the functions of the law school to provide (1994: 124)—such as mootings, provide a space in which knowledge can be approached differently.

Perhaps one of the preoccupations of the contemporary law school that also informs both law programmes and extracurricular activity is the issue of employability (see, for example, Knox & Stone 2019; Nicholson 2020; and, more generally, Tymon 2013). It is an agenda arguably driven by the marketization of higher education and the emergence of the Teaching Excellence Framework which both necessitate ‘good’ employability, that is to say students graduating into ‘graduate-level’ jobs (see Knox & Stone 2019; Weston & McKeown 2020). Here too are opportunities for the law school to rethink what it does. Mizzi (2016: 137) has argued that ‘heteroprofessionalism’ creates marginalization, with notions of ‘professional’ often ill-defined as educational concepts, but nonetheless requiring a mode of behaviour for successful navigation. For law schools, these norms of behaviour are often rooted in the employability discourse, for example the dress that one might associate with a moot (see, more generally, Mulcahy 2017). This also extends to the ‘professionalism’ of classroom-based discourse. ‘Appropriate’ and ‘professional’ are concepts that can act as anchors pulling us back to traditional patriarchal and heteronormative conceptions of ourselves and co-opt law schools into reproducing these restrictive narratives. It is not enough therefore to restrict feminist or queer thinking to the law school curriculum as this can produce merely the illusion of change.

Moreover, the enriching of the research environment of law schools by feminist judgments projects (Hunter 2012) or zine-making, provides further opportunities to enrich the pedagogy of law schools and embed thinking that challenges norms that persist in our attitudes towards gender and sexuality. It is arguably in the teaching of law that we can see moments of praxis—ephemeral incidents of ‘truth’ provided by lived reality—in our understanding of gender and sexuality in the contemporary law school. Both queer and feminist theory (see Halley 1993 and Butler 2007, respectively) have documented the constructed and performed aspects of sexuality and gender. The law school provides an important site in which these moments of praxis can be seen in relation to a range of discourses, for example in relation to dress and performance (Cownie 2006), the use of theory to shape the curriculum, and broader themes of diversity and intersectionality (see Dark 1996; Randall 2011).

Pedagogy can be vital for enabling us as academics to empower our students, and to drive change (see Taylor 1998). A key contemporary tension for the law school, or so popular and social media tell us, is

the introduction of the ‘trigger warning’ into education spaces. The origins of trigger warnings lie in the feminist blogs of the 1990s, in which readers were provided with a warning to try and avoid or minimize any traumatic responses to the material presented (Forstie 2016: 422). It provided agency to the survivors of sexual assault to choose whether to expose themselves to potentially harmful material. Yet, more recently, queer thinkers have been amongst those who have criticized the growing use of trigger warnings as part of a narrative of promoting the neoliberal classroom and the student as consumer which in turn limits the ability to expose students to new and challenging material (see Halberstam 2014), and with broader implications for academic freedom.

Inherent to queer theory is to question; it is central to the ‘radical practice of deconstructing normalcy’ (Luhmann 2009: 151). Whilst the skill of questioning and interrogating ideas and data is arguably inherent to ‘thinking like a lawyer’ (see Gantt 2007; Huxley-Binns 2011), to question or deconstruct normalcy is perhaps more challenging for a discipline that is typically rooted in legal doctrine with its focus on legal rules (see, more generally, Twining & Miers 2014). Queer challenges those rules of normalcy as ephemeral and uncertain and sees that trigger warnings are themselves rooted in these rules of normalcy. For Forstie, these tensions in the use of trigger warnings provide a case study for queer theorists. If the queer classroom is ‘fundamentally affective, political, and imbued with power’ (2016: 491), then what better issue than trigger warnings for the law school to question and explore.

In *Blackstone’s Tower*, Twining described the newspaper exercise he would conduct with first-year students as a way of considering law and society. Students are asked to read all of a non-tabloid newspaper, to mark every passage which, in their view, either deals directly with law or which is ‘law-related’, and to answer some specific questions. They are required to stipulate their own definitions of ‘law’ and ‘law-related’ (Twining 1994: 5). In one Hamlyn lecture that forms part of *Blackstone’s Tower*, Twining undertakes the exercise himself, using *The Independent* newspaper. It is an exercise that provides a useful case study in how an engagement with gender and sexuality research and scholarship can reshape the pedagogic experience. Amongst the stories he notes, two arguably leap out for gender and sexuality scholars in the contemporary law school, and perhaps so too in 1994. He notes that ‘homicide and sex had their normal share of cases reported (including a brief reference to the amputative Lorena Bobbitt)’ and later ‘negligence in respect of the distribution of HIV contaminated blood’. He concludes the section by noting that ‘This looked like a fairly typical day’ (Twining 1994: 6).



Lorena Bobbitt was a story that was treated as a slightly humorous news item at the time—a woman who cut off her husband’s penis with a knife, drove off, and threw it into a field. The penis was eventually found by the police (Lorena told them where she had thrown it) and re-attached to the body of her husband. As a 14-year-old cis-male at the time, I recall the extensive coverage in the media and playground jokes about ‘doing a Bobbitt’ to a guy. How we laughed. Lorena Bobbitt had endured years of rape and abuse at the hands of her husband. The act was the act of desperation and frustration (see Chozick 2019). Would we still laugh today? For a member of the LGBT community—I write today as a gay man—the idea that you could pass over a story relating to HIV when the pandemic was still so seemingly unstoppable, and the funerals of friends and former lovers so fresh in memory of so many LGBT people at the time, is equally remarkable. It is difficult to imagine either story being discussed in a contemporary English law school without considering issues of gender and sexuality. This perhaps speaks to changes that have occurred, and the centrality of law teachers in leading that change.

## [D] THE LAW TEACHER

At the heart of our pedagogy is the relationship between a student and teacher. The law teacher can be an important driver for change in the legal profession, society and a broad range of policy agendas (McKee & Ors; 2020; Raj 2020), in addition to being the key architect of law school pedagogy for students. Whilst Twining suggested that the mass university tends to create a gulf between academic staff and students (1994: 49), the law teacher remains a visible and influential presence for the student body. This is a relationship that can arguably reduce to the familial, but such a reduction is typically couched in heteronormative terms. Here, we can see the particular challenge that non-heterosexual identities bring to the classroom and the student/teacher relationship (Robson 1998: 216). In contrast to other identities, sexuality has arguably received less attention as a lived identity for UK academics more generally, let alone for law teachers (Cownie 2004: 184), and despite the growth in general law and sexuality scholarship, this has not—at least to the same extent—‘spilled over’ into the study of sexuality and the legal academy.

The student/teacher relationship is forged in a shared understanding of power and, with it, desire. In being ‘out’ with our sexuality in the law school, we arguably position ourselves through a prism of desire—and sex (see Robson 1998: 93). We outwardly and consciously define ourselves by our desire in contrast to the silent—but ever present—desire of our heterosexual colleagues. It is a desire that—even if we have children—

is not born of reproductive desire, but unambiguously of sexual desire. Rofes (2000) previously noted that, as a gay male educator, he was someone who immersed himself in and organized his social life around communities that value and prioritize sex, and engaged in behaviour that might be regarded as promiscuous. He was gay, but was a gay liberationist, and what today might be framed as a queer activist or queer teacher. Here lies a further challenge for the operation of the queer law teacher. Is it someone who is 'out' as gay, or is it someone that student might see on hook-up apps like Grindr or Recon? Is it someone who their students might see in leather, rubber, or other fetish gear? The idea that faculty and student might 'accidentally' have sex with one another might be a particularly challenging concept for some. Yet in a public sex venue such as a sauna in a dark room or through a glory hole it is a possibility. These spaces and experiences arguably remain absent for the way norms and codes of behaviours are constructed within and for law schools. Queer interventions provoke questions about the boundaries that we observe or impose upon ourselves and our students. It also potentially raises tensions between queer and feminist thinkers as power becomes (re)problematized.

As we 'move from the back to the front' of the law school classroom, we also draw on those experiences of being taught as we shape our own pedagogy, with Brooks & Parkes noting the importance of 'out' law lecturers in shaping their law school experience and their subsequent thinking about a queer pedagogy (Brooks & Parkes 2003). In my own case, experiencing law school pedagogy as a gay student in the late 1990s and early 2000s, 'out' LGBTQ law teachers seemed relatively rare, but those that were served as important beacons of hope, albeit still within a heteronormative law curriculum and law school dynamic. The diversity of legal academics is perhaps not of concern to some law students, but it remains a vital agenda for law schools (Lai 2015; Vaughan 2016). Legal academics can also be seen as providing role models for law students, with McGlynn noting the particular importance for women law teachers in shifting perceptions of law students towards female lawyers and judges (1999), and similarly Robson invokes the—still imaginary—idea of the lesbian US Supreme Court justice (Robson 1998: 1-4). Moreover, 'out' senior members of the law school can be important role models for junior faculty (Tierney 1997: 102).

Cownie has argued that the study of women legal academics may not only contribute to our understanding of the university as an institution, but also to our knowledge of the discipline of law (1998). Twining was a member of the Faculty of Queen's University Belfast when in 1970 Claire

Palley became the first woman to be appointed as a professor of law in the UK. A landmark event—although not appreciated as such by those making the appointment—about which, as Cownie has noted, relatively little has been written (Cownie’s own work is a notable exception) (Cownie 2015). Celia Wells, reflecting on her life as a UK female law professor, notes that she found ‘talking about the world in a way which includes women as well as men provoked the label “rabid” or “radical” feminist’, adding that, as well as encountering biased law students, she also encountered the same attitudes from her male colleagues (Wells 2019: 91). These biographies and autobiographies are an important dimension in bringing to life the stories of women and can also be seen in the bringing together of a range of disciplines and approaches including feminist and queer scholarship to the study of law (Sugarman 2015; also see Miller 2009). Collectively, these stories document the lives of women law teachers but also raise questions about how these identities can be supported by and in turn reshape the law school.

Twining invokes his attitude towards gender (alongside his approach to racism, inequality, war and poverty) as a sign that he is progressive, saying he is probably more of a social democrat than a legal democrat (Twining & Sugarman 2020). However, the identity of law teachers should not be reduced merely to a political proxy. Feminist and queer theories provide radical interventions in thinking about the identity of law teachers and, if meaningfully engaged with, provoke some challenging conversations for law schools that highlight how male-centric and heteronormative our law schools remain.

## [E] FEMINIST AND QUEER THEORY IN THE LAW SCHOOL

Guth (2016: 248-249) has noted that ‘not all law teachers are researchers’ and that ‘even those who are do not necessarily research in areas where they teach or teach in areas they research’. Nonetheless, it is to research that we often look as the foundation for knowledge that is then disseminated in law schools. Queer interventions here have provided new ways for problematizing research, even down to the acknowledgments that commence monographs and some articles. These acknowledgments offer thanks to families or the scholarly families that have produced academic work. Buehler & Samer (2018) have noted the power of this element of research for denoting academic family ties and a genealogy of queer thinking. It also arguably points to the ways that power plays out in the academy and the ways that gender and sexuality shape the evolution

and presentation of ideas within the law school community. The power of scholars, teachers and their ideas can be glimpsed through these acknowledgments before one even commences reading the substantive work. Whom we thank at the start of a book is arguably as important as what we write on the pages that follow.

Twining observed that: ‘The distinction between law in books and law in action is dissolving as more of the action gets into the books. There is thus much greater variety in legal literature than there was twenty years ago’ (1994: 13). Yet there remains no textbook in the area of gender, sexuality and law. What may be the first textbook is currently under contract with Edward Elgar with this author and Alexander Maine at Leicester University, and it will take the form of an edited textbook, an attempt to queer the textbook. Perhaps that will be the start of many. For a field that seeks to disrupt boundaries, there is an uncomfortable tension in seeking to draw a boundary in order to define the parameters of a textbook. Nonetheless, the textbook is also rooted in theoretical enquiry, and these theories are themselves rooted in an activist tradition. This might seem at odds with traditional approaches to pedagogy in the law school.

Twining notes in his 2019 memoir that the law in context movement has an underlying ideology of ‘a liberal interpretation of the academic ethic’, suggesting that ‘those who think that the overall purpose of scholarship and education is *not* to understand the world, but *instead* to change it, clearly differ from this view, but even they can be accommodated in this broad movement’ (Twining 2019: 164 original emphasis). This suggests a choice that may seem antithetical to feminist or queer theorists within law schools for whom the need to change the world is a goal of survival and presents arguably a clash with the mindset of Twining—one rooted in that of a white male heterosexual—albeit one who has led a rich and diverse life. For Conaghan (2013: 247), ‘law is not just something that *is* but also something one *does*’ (original emphasis). Conaghan resists the reduction of law into politics but argues that they both often occupy the same space. Yet, as Bradney (2016: 226-227) has noted, whilst legal scholarship has increasingly engaged with law and politics, teaching—in so far as we can tell (and textbooks can be instructive for this understanding)—has not reflected this shift to the same degree.

Feminism allows us to question the truths of law (Smart 1990) and queer fundamentally challenges our conceptions of truth, both providing scope for a significant reappraisal of the law school. Recent decades have seen a growing presence of feminism in the law school curricula since the 1990s (Twining 2019: 250), with Conaghan noting at the turn of this century that

'few areas of law, no matter how musty or arcane, have remained immune from the feminist legal challenge' (Conaghan 2000: 352). The journal *Feminist Legal Studies* emerged in 1993, the first UK peer-reviewed scholarly journal to focus specifically on feminist legal scholarship, providing an important space to nurture feminist legal scholarship (Hunter 2018). In the noughties, the Feminist Judgments Project—based on a similar venture in Canada called the Women's Court of Canada—sought to 'inaugurate a new form of critical legal scholarship, one which seeks to demonstrate in a sustained and disciplined way how judgments could have been written and cases could have been decided differently' (Hunter & Ors 2010: 3). Feminist judgments challenge our assumptions about the 'neutrality' of judges (Grear 2012)—as if to apply feminist theories undermines the very basis of judicial reasoning—yet these interventions allow us to see that that neutrality is often rooted in gendered assumptions. Feminist judgments can be applied to a range of modules; for example Auchmuty (2012) has described the application of them to the property law classroom, enabling a contribution across law school programme provision. More recently, the Women's Legal Landmarks Project sought to highlight the key landmarks in legal history for women in the UK and Ireland (see Rackley & Auchmuty 2018), creating a further resource and arguably an important moment of solidarity for participants.

Recent years have also arguably seen the emergence of assumptions that we operate in a 'post-gay' environment in the classroom, in which understanding and acceptance is provided for all (see Lapointe 2016), yet this is also a space in which LGBT citizens 'conform' to a new normative framework (see, more generally, Ashford 2011a). The scope for queer to reframe the law school should not be underestimated. Bernini—in an eviscerating critique of fellow queer theorists, particularly Bersani—suggests a 'historic difficulty' with queer theory, arguing that 'even the most radical queer critique of liberalism cannot free itself, as it says it would like to, of that normative ideal of a community of love', suggesting a 'waning of revolutionary ideologies and their justification for violence as an accelerator of progress' (Bernini 2017: 47). Yet, at the very least, to question concepts such as love offers the opportunity for a fundamental reappraisal of concepts both rooted in, and seemingly devoid of, the concept from family law to contract law.

Twining (2018: 256) more recently noted his dissatisfaction with the ways that legal education has been theorized since the 1960s, suggesting that legal academics need to 'persistently, confidently, and loudly articulate what is the general mission of our academic discipline'. One might suggest that feminist and queer legal theory offer such an opportunity.



Perhaps for Twining these theories reflect a ‘minority’ interest; sectional rather than universal. Yet, for those legal scholars who identify with these theories—and I identify as a queer theorist—then these frameworks are fundamental world-views and the universality Twining points to is merely one rooted in traditional notions of patriarchal power or homonormative assumptions. These theories—and the struggles that gave birth to them and continue to shape and inform them—also demand a persistence, confidence and volume in the messages that they generate.

## [F] QUEERING RUTLAND: A CASE STUDY

In seeking to understand the culture of the law school, Twining invented the University of Rutland, to provide an imagined case study (1994: 66-85). The university was, Twining tells us, founded in 1930, and Twining writes of the institution in 1994. In the tradition of *Blackstone’s Tower*, perhaps we can offer a vision for the law school in 2021 through an alternative prism, and—given the utopian traditions of the theory—I am here applying a queer lens. A queering of Rutland might offer us an alternative, utopian, vision of the law school.

In 2013, the university appointed a new Head of Department and professor. They set about taking advantage of a number of retirements from the Law School to begin the process of co-designing an alternative vision for Rutland. The faculty numbers have further expanded since 1994, from 33 to 66. This doubling has not matched student numbers which have trebled from 600 to 1800. The Law School has grown but remains a relatively modest size compared to many other law schools. The LLB has grown as part of the undergraduate mix whilst the four-year LLB with French and English law continues, albeit with modest numbers. This has over a sustained period allowed for an exchange of faculty and has embedded aspects of French philosophy—particularly poststructuralist ideas from Foucault—deeply into the faculty culture. The family law LLM that Twining described has grown and now engages with complex issues of gender and sexuality in relationship recognition, custody, and has a pioneering partnership with a number of gender-based violence organizations in the UK and internationally, particularly in France. A name change—at the suggestion of the marketing department—added the prefix ‘international’ to the title. The Law School’s faculty, thinking that this was in line with their global ethos, agreed, and the marketing department sighed in relief that it wasn’t another battle that they’d need to have with the law school. The European LLM also continues, and the faculty have recently publicly committed to its continuation, irrespective of Brexit. The Law School projected a light installation onto its building



in the run-up to the 2016 referendum advocating people to vote no, and choose instead to remain within the European Union as part of an outward-looking vision for the UK.

Twining began his tour with the Rutland Law School building, comprised of three converted terrace houses with an ‘ugly’ 1985 modern annex tagged on. Following the expansion of the Law School in the early noughties, the Law School was moved to a modern brick and glass building co-designed with the faculty and students. There is no longer a Latin inscription, simply a sign saying ‘School of Law’. The Denning name was abandoned and the old rather expensive plaque sold off with the proceeds donated to a charity supporting homeless LGBTQ young people. The decision was made following a vote of students and faculty. In contrast to the old building, it is light and open. The creaking lift has been replaced with multiple lifts and accessible entrances to the building.

Digital displays have replaced the notice boards and present an image of a diverse faculty and student body. They also highlight events and activities. One PowerPoint flashes on screen as we enter promoting a forthcoming event with Lorena Bobbitt talking via Zoom ‘Giving Voice to Gender-based Violence’. Although the noticeboards have gone, students have reclaimed a number of walls that are now covered in bright and overlapping posters for community protests and events. The university did attempt to remove the posters, but faculty joined students in protesting that they should stay. Also on the ground floor we see a Law Clinic space. The Clinic is new since 1994 and specializes in LGBTQ services—a ‘Rainbow Clinic’—and one dedicated to services for women. They also have a Street Law Programme with a local charity working with women of colour who have experienced domestic violence. Also on the ground floor are spaces for student groups—the Law School Queer Lawyers for Tomorrow Society and the Student Feminist Judgments Society are among them. There are also small office spaces that are made freely available to small community groups—the majority of which address issues relating to gender and/or sexuality and support the clinic and research impact activity of the Law School, including a number of groups focused on the Global South.

There is no longer a dedicated law library, but there is a range of flexible study spaces that provide digital access to resources. The Law School has in recent years also worked with partners—including many of the groups based on the ground floor—to launch several ‘diamond’ open access academic journals. They include rigorous academic research articles but also more digestible content. As diamond journals, they are free to publish and open access to all readers. Many of the student

and community spaces have student zines placed on them—the latest product of a number of student publishing groups. The third floor houses Rutland’s moot court. On the walls of the moot court, the old framed pictures of male judges have survived, but they are surrounded by pictures of graduates (the law school abandoned the term ‘alumni’ some years ago) and inspirational women and queer lawyers, selected by faculty and students. One QC dressed as a pup appears alongside a breast-feeding judge. Inside, students are engaging in a moot problem co-designed with their tutor exploring a problem relating to HIV transmission and the Offences Against the Person Act 1861. Some of the students recently took part in a policy clinic response to the Law Commission advocating reform of this area of criminal law.

In contrast to Twining’s time, in which offices were hierarchically allocated, the building allows for spaces to be reconfigured. There are shared spaces and individual spaces, with faculty working in the ways in which they feel most comfortable. The current Dean shares a space with a post-doc researcher and a lecturer who all work on similar themes. Research has grown since 1994. The glass cabinet that once contained a sample of research outputs has long gone, and all faculty can be found producing media outputs alongside research outputs. They performed very well in the last Research Excellence Framework (REF) although the faculty were divided on whether they should even be in REF. Some felt it was representative of the neoliberal agenda that has distorted UK higher education. Others agreed with that but felt it was the best of a series of bad options to more equitably redistribute resource. Debates continue to rage.

Graduates from Rutland continue to go into a range of careers, including the legal profession. There are hopes that the first openly gay member of the Supreme Court will be a high-profile judge who is a Rutland graduate; they regularly visit the Law School with their partners (with whom they are in polyamorous relationships) to talk with students about the profession and to hear from the charity and non-governmental organizations based in the Law School about how they are experiencing the justice system. Rutland remains a work in progress, but it is somewhere they feel they belong.

## [G] CONCLUSION

The brief reimagining of Twining’s Rutland Law School provides us with an opportunity to imagine what could be. Perhaps the imagined portraits still amuse, but why, if they reflect a lived reality? Our ongoing discomfort and imposition of boundaries to our own thought speaks to the vital power that remains in constructions of gender and sexuality.

Robson has noted that LGBTQ law professors have power, and that power can be used to empower law students. Although Robson writes from an American law school perspective, the observation is, I suggest, equally applicable in the English law school context. The ways that we choose to operate our classroom, including who and how we call upon students, how we solicit and utilize preferred names (and one might add gender pronouns), and in the scenarios we present to students, and role plays, are all vital in understanding the gender and sexuality dynamic. This relationship can be more acute in the context of research student supervision and the individual bonds that can be found in those spaces. One might add personal tutoring to this aspect of law school life. Finally, Robson notes the broader law school environment, for example through societies, events and conferences as spaces for empowerment.

Mayo & Rodriguez (2019: 4) have asserted that ‘queerness isn’t done and finished’ and temptations to think of queer as a fixed concept—rather than embrace the fluidity and uncertainty inherent to the theory—are misplaced. Rather, the potential of queer should be nurtured, and, in doing so, pedagogy can be constantly questioned and reframed. Pervasive heteronormative assumptions within higher education (see, more generally, Seal 2019) persist, and so the application of queer (and feminist) theories enables us to transform the law school. This transformation is often rooted in our own scholarship, underlining the importance of nurturing feminist and queer legal thought. Herman (2006: 657) has suggested that ‘Our scholarship is more than just an intellectual pursuit or a means of improving our effectiveness in the classroom.’ For queer theorists, sexual identities are not descriptive but performative. In applying this to the teaching space of the law school (see, more generally, Halley 1993; Nelson 2002), we can move beyond the boundaries that limit our pedagogies and ultimately our understanding of law.

Perhaps as we see the transformative effects of programmes such as *No Outsiders* on our educational system, there will be those who feel that the law school need not change because ‘schools will already have done that’ and shifted the conversation and moved past the silence relating to gender and particularly sexuality that can still operate in some schools (see DePalma & Atkinson 2006). Yet if we, like Twining, draw upon the mission of William Blackstone, we see not a figure—like Blackstone’s great critic Jeremy Bentham—preserved in a glass box loitering in a university building lobby, its head stored away under lock and key elsewhere—but someone who sought to recognize the contemporary world and change law schools to not merely reflect that but to drive change (see, more generally on the Blackstone/Bentham relationship, Posner 1976). Though not a

radical or a reformer—and indeed that has been the basis of criticism of Blackstone—the effect of what he advocated and produced was to enable reform. His, albeit at the time unsuccessful, attempt to create a law school at Oxford was the vision of not someone looking back, but a jurist looking forward. Twining too, at his best, reflected the reality of the contemporary law school and looked forward.

In *Blackstone's Tower*, Twining (1994: 2) suggests that the dominant model of the English scholar-teacher is a competition between 'the expositor, the censor, the scientist and the craftsman' (represented by the four founding figures of Blackstone, Bentham, Austin and Amos respectively). The prisms of gender and sexuality perhaps highlight the fluidity and complexity of these categories. Law schools need to remember this and embrace the radicalism of their history and not only to reflect—with greater diversity—the world we inhabit now, but also to create a new world.

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