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The Ru of Law: how legal systems, principles, and aesthetics are queered and 'dragged up' in *RuPaul's Drag Race*

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ABSTRACT

This paper explores the jurisprudential concepts of the reality competition series *RuPaul's Drag Race* (RPDR): how legal norms and aesthetics are intrinsic to the show's structure, and how in turn RPDR queers, or 'drags up', legal language, symbols and concepts. We consider the jurisprudence of RPDR across three frames: (1) the structuring of its legal system through the framework of the reality competition, its rules, and the role of *RuPaul* as judge, jury and executioner; (2) legal and moral principles: how values including liberty and equality are represented in RPDR; (3) RPDR's court system: how law is performed, and its aesthetics and culture parodied and reproduced. Through RPDR, concepts of legality are queered, manipulated and reproduced in ways that both reinforce and reproduce those legal concepts and aesthetics. We argue however that RPDR is unable to realize its potential for radically queer, transformative, counter-normative change.

KEYWORDS Queer theory; legal theory; pop culture; reality television; drag; legal pluralism

Introduction

RuPaul's Drag Race (RPDR) is a global phenomenon.¹ Since 2009, RPDR has spread the hunt for Charisma, Uniqueness, Nerve and Talent worldwide, influenced popular culture and LGBTQ+ communities globally, and launched the professional careers of hundreds of drag artists.² RPDR has transformed

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¹RPDR (World of Wonder (S1–S8), WOW Presents Plus and VH1 (S 9–W14), MTV (S15)). We focus primarily on the main seasons of RPDR, broadcast up to the time of publication, demonstrating both change and continuity in the show over this time, while using RPDR's spinoff seasons in the UK, Canada, and All Stars seasons, chiefly for comparative flavour.

²RPDR S12E9 'Choices 2020' (2020) WOW Presents and VHS1.

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public perceptions of drag as an art form and an industry.³ Here, we make the novel argument that it also provides insights into queer interpretations of legal systems, aesthetics, and principles. We present the first analysis of how legal norms and aesthetics are intrinsic to the show's structure, and how in turn RPDR 'drags up' legal language, symbols, and concepts – queering and transforming them. In doing so, we can better understand, and perhaps challenge, our own understandings of law and justice.

RPDR is almost ubiquitous in its influence on drag culture, and LGBTQ+ culture more broadly, necessitating critical discussion of its effects on how legal systems, aesthetics, and norms are consumed and internalized by members of the public.⁴ By examining RPDR through the framework of different registers of queering, we take an innovative approach in demonstrating how mainstream legal norms and values can be reproduced among the LGBTQ+ community. In this way, RPDR is limited in its potential for deeper, more radical queering of legal normativity. However, we argue that drag can nevertheless challenge prevailing social norms, and that there are exciting insights that legal academics can learn about law from drag.

We will first discuss 'queer' – an expansive term that challenges and deconstructs heteronormative systems across scholarly disciplines. We present our novel conceptualization of a framework of queering, operating across a range of registers, to reflect various ways that RPDR approaches queering of legal systems, aesthetics, and principles, across superficial or deeper levels. Second, we examine the 'legal systems' which structure the trials, judgement procedures, and dispute resolution mechanisms of RPDR, including how RPDR incorporates structures from reality television shows, U.S. Ball Scene drag competitions, and the U.S. legal system. Third, we evaluate how RPDR similarly internalizes, drags up, and reproduces legal norms, particularly from within the political ideology of American (neo-)liberalism. We demonstrate how values supposedly inherent to U.S. constitutional morality – equality and liberty – are simulated and, to an extent, queered in the show. Fourth, we examine how RPDR drags up legal aesthetics and symbolism in its court process. From panels of judges, to specific legal-themed challenges, and references to the legal profession, RPDR adopts, queers, and reproduces perceptions and aesthetics of law and legality. This can reveal a great deal about how drag artists conceive of law, often as a farcical parody of itself. However, we also show how – much like in legal and political life in the U.S. itself – the Ru of Law chiefly exists to meet imperatives of profitability and sensationalism, subsumed by prevailing neoliberal norms. We argue that RPDR can and

³Possibly to the point of domination: Hazel Collie and Gemma Commene, "Assume the Position: Two Queens Stand Before Me": RuPaul as Ultimate Queen' [2020] 11(4) *Celebrity Studies* 402.

⁴Phoebe Chetwynd, 'Postfeminist Hegemony in a Precarious World: Lessons in Neoliberal Survival from RuPaul's Drag Race' (2020) 21 (3) *Journal of International Women's Studies* 22.

should go further in challenging legal and authoritative norms, engaging in a more radical queering through drag artistry.

1. 'Queering' on different registers

As 'queer' is an expansive term, inclusive of a spectrum of concepts, here we envision different levels of queering. There are lighter, more superficial registers of queering, in which gendered and hierarchical norms and structures are playfully parodied but otherwise left unchallenged; and deeper registers of queering, in which these norms and structures are destabilized and challenged, with liberatory, transformative potential. Drag, itself a method of queering, can engage across these registers, ranging from gender parody that *reinforces* normative ideas of femininity and individualism, to radical performances which robustly challenge them.

'Queer' has been recognized as innately undefinable: it 'takes on varied shapes, risks, ambitions, and ambivalences in various contexts'.⁵ It extends beyond a description or analysis of same-sex attraction or non-heteronormative identities and actions. As a method, to 'queer' (as a verb)⁶ indicates engaging in a critique of structures, categories and norms. Different scholars use 'queering' in different senses, this way. For example, 'queering femininity' suggests deconstructing that which is considered feminine within the boundaries of heteronormative social and cultural structures.⁷ McCann suggests that: 'queer methodology is about troubling the subject, employing a queer reading approach, and drawing from multiple perspectives and traditions, all in order to challenge "dominant logics."⁸

From this, we can observe how RPDR, like much drag artistry more broadly, certainly engages in softer registers of queering gender. This involves recognizing and reinterpreting gender and power roles, often in ways that are playful or parodic, without truly destabilizing or threatening the structures that underpin them. Drag often participates in this queering by parodying the performativity of gender. To understand this, we must first refer to how Judith Butler, in *Gender Trouble*, deconstructs both the gender binary and the sex binary.⁹ For Butler the 'gendered self' is 'produced', via 'the regulation of attributes along culturally established lines of coherence' – that is, genders are social constructs dependent upon socio-cultural regulation.¹⁰ Butler argues that gender is not an attribute or essence but 'an identity instituted

⁵Lauren Berlant and Michael Warner, 'What Does Queer Theory Teach Us About X?' (1995) 110(3) *PLMA* 343, 344.

⁶Janet R Jakobsen, 'Queer Is? Queer Does? Normativity and the Problem of Resistance' (1998) 4(4) *GLQ: A Journal of Lesbian and Gay Studies* 511, 516–17.

⁷Hannah McCann, *Queering Femininity: Sexuality, Feminism and the Politics of Presentation* (Routledge 2018).

⁸Hannah McCann, 'Epistemology of the Subject: Queer Theory's Challenge to Feminist Sociology' (2016) 44(3–4) *Women's Studies Quarterly* 224, 236.

⁹Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990).

¹⁰*ibid* 32–33.

through a stylised repetition of acts'.¹¹ Butler then argues that exaggerations of femininity or masculinity in drag performances highlight and parody the more everyday performative nature of gender. Even a light queering (a drag parody of feminine beauty standards, for example) involves identifying social constructs that align with dominant narratives.

A queered critique, even at this lighter register, need not solely extend to gender, nor sexuality. As Love explains, we recognize the application of queering in fields beyond the identification of same-sex attraction, and even intersections with race, ethnicity, and nationality, but also through analysis of many disciplines including politics, pedagogy, and indeed law.¹² This approach is helpful in allowing us to identify other hierarchies of power and domination through a critique of normative gender and sexuality. As will be demonstrated, RPDR engages in this deconstruction of gender, but also of legal norms and aesthetics, through playful parody: observing and mocking these phenomena, without seeking necessarily to undermine the structures which uphold them.

While theorists present different definitions or explanations of what a more *radical* queering entails, queering in these harder, revolutionary registers involves a deeper critique of social structures that identifies and challenges normativity. For example, what Jagose describes as 'Queer theory's antinormativity' draws from its 'anti-assimilationist, anticomunitarian or antisocial, anti-identitarian, antiseparatist, and antiteological impulses'.¹³ Queerness in this sense recognizes, per Cohen, 'the radical potential of queerness to challenge and bring together all those deemed marginal and all those committed to liberatory politics'.¹⁴ These more radical approaches to queering are useful here, because through a critique of norms regarding sexuality and gender, they further allow us to critique and destabilize other normative frames which are dependent upon these norms, such as capital and liberal legalism.

This involves challenging the propensity of queerness and queer identities to support, and 'assimilate' within, normative structures of oppression.¹⁵ Stephen Valocchi describes the risk of queer identities and practices falling into a pattern of normalization: 'the constitution of persons who reiterate norms in order to become knowing and knowable, recognized and recognizable'.¹⁶ Queerness

¹¹Judith Butler, 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory' (1988) 40(4) *Theatre Journal* 519, 519.

¹²Heather Love, 'Queers ____ This' in Janet Halley and Andrew Parker (eds), *After Sex? On Writing Since Queer Theory* (Duke University Press 2011), 182.

¹³Annamarie Jagose, 'The Trouble with Antinormativity' (2015) 26(1) *Differences: A Journal of Feminist Cultural Studies* 26, 27.

¹⁴Cathy J Cohen, 'Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics' (1997) 3 *GLQ: A Journal of Lesbian and Gay Studies* 437, 440.

¹⁵Steven Seidman, 'Critique of Compulsory Heterosexuality' (2009) 6(1) *Sexuality Research and Social Policy* 18, 19.

¹⁶Stephen Valocchi, 'Normalisation' in Nancy Naples, Renee C. Hoogland, Maithree Wickramasinghe and Wai Ching Angela Wong (eds), *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (Wiley-Blackwell 2006), 1.

cannot exist separately from the logics of normativity. Per Manalansan, we must recognize how ‘norm and queer are not easily indexed or separable but are constantly colliding, clashing, intersecting and reconstituting’.¹⁷ These observations are important because they demonstrate how forms of queering may be limited in their radical potential through reiterating wider normative structures: for example, through drag that imitates and reinforces existing hierarchies within family life; or indeed in law, through imitating deference to judicial authority.

This risk of assimilation or normalization does not mean that there can be no deeper, radical queering. Muñoz’s works indicate the power of drag and queerness more generally to pursue a transformative utopian futurity. In *Disidentifications*, he describes disidentification as an approach to identity that challenges homonormative identity politics.¹⁸ Focusing on drag artists of colour, Muñoz explains how their performances simultaneously reference normative and putative gender, and sexual and racial oppression, while also challenging these structures. This lets them ‘negotiate the phobic majoritarian public sphere that continually elides or punishes the existence of subjects who do not conform’.¹⁹ Drag scenes act as counterpublics, fora outside of the normative public sphere, where marginalized people can form their own spaces, identities, and discourses around, or through negotiation with, dominant ones.

Disidentification is one deeper register of queering that, while reckoning with the reality of a heteronormative world, recognizes the potential for a radically queer future. Reiterating this potential in his later work, Muñoz in his 2009 *Cruising Utopia* praises the optimistic futurity of queerness, describing how queerness ‘approaches like a crashing wave of potentiality’.²⁰ Queerness ‘should and could be about a desire for another way of being both in the world and in time’.²¹ In this even deeper register, queer contains enormous transformative potential. Muñoz’s utopian queering is important here, as it goes beyond identifying normative structures, and instead invites their usurpation by creative and emancipatory alternatives. ‘We must dream and enact new and better pleasures, other ways of being in the world, and ultimately new worlds.’²²

Drag has the potential to do this deeper queering, but not where it reinforces existing structures of oppression – whether that be gender, or other normative systems of hierarchy. Later in their writing, Butler qualified

¹⁷Martin Manalansan, ‘Messing Up Sex: The Promises and Possibilities of Queer(s) of Colour Critique’ (2018) 21(8) *Sexualities* 1287, 1288.

¹⁸José Esteban Muñoz, *Disidentifications: Queers of Color and the Performance of Politics* (University of Minnesota Press 1999).

¹⁹*ibid* 4.

²⁰José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York University Press 2009) 185.

²¹*ibid* 96.

²²*ibid* 1.

their previous arguments on the potential of drag to deconstruct gender through parody, saying that drag is only really subversive ‘to the extent that it reflects on the imitative structure by which the hegemonic gender is itself produced and disputes heterosexuality’s claim on naturalness and originality’.²³ Drag that simply parodies gender, for example through exaggeration of gendered traits, does little to challenge the socio-cultural structures underlying the imitation. The same applies where drag fails to realize ‘the radical potential of queerness’ to effect liberatory politics against structures of domination.²⁴ Butler’s caveat is a core part of our distinction between lighter and deeper levels of queering: merely identifying and mocking these structures (of gender and sexuality, but also by extension hierarchy, domination, liberalism, and so on) through parody, without denouncing or subverting them, risks reinforcing them.

We argue that while RPDR consistently engages in lighter registers of queering, regarding certain legal structures and aesthetics, it misses opportunities to engage in deeper queering of oppressive social structures. Its capitalist, neoliberal nature parodies but ultimately reinforces gender norms, fails to provide liberatory potential for non-Anglophone groups, and limits its potential to challenge hierarchies. We will now examine this across three frames – legal systems, legal principles, and legal aesthetics.

2. The legal systems of RPDR

Despite conceptual conflicts of what constitutes a ‘legal system’ in western tradition,²⁵ the importance of rules is paramount. In a localized yet significant manner, *RPDR* is a legal system: a system of rules, structures, and principles, used to exert power and resolve disputes. That it is not a state, and does not claim a monopoly on legitimate use of force, is irrelevant: law can exist within ‘culturally or religiously defined sites of law, or “semi-autonomous” normative orders specific to particular economic or cultural fields’.²⁶ Showing how *RPDR*, in a fashion, emulates the regulations and processes of a legal system, reveals how the show principally engages in lighter registers of queering of these phenomena, leaving untapped potential to explore more radical queering of legal systems. In particular, understanding constitutional and constitutive elements helps us understand how power is exercised in *RPDR*, through RuPaul as the apex of hierarchy.

RPDR has a set of institutions and rules reflecting key conceptions of a legal system – organs, institutions, and processes, effecting a system of

²³Judith Butler, *Bodies that Matter: On the Discursive Limits of “Sex”* (Routledge 2014) 85.

²⁴Cohen (n 14) 440.

²⁵Lawrence M Friedman and Grant M Hayden, ‘What Is a Legal System?’ in Lawrence M Friedman and Grant M Hayden (eds), *American Law: An Introduction* (online edn, Oxford Academic 2017).

²⁶Margaret Davies, *Law Unlimited* (Routledge 2017) 155.

rules for social control and dispute resolution within its jurisdiction.²⁷ It relies on a system of primary and secondary rules.²⁸ Primary rules may be explicitly provided early in an episode, including rules for challenges: whether that be the use of proscribed or prescribed textiles, or other demands made by RuPaul. Other primary rules are more latent: these include standards of drag aesthetics with which contestants are expected to comply, such as clarity of lipsyncing, cinching one's waist, or the prohibition against physical violence. Secondary rules are similarly latent: they seldom are expressed explicitly, but are demonstrated through practice. These include the set-up of mini-challenges and maxi-challenges, the lipsync processes, the judges' panel, and RuPaul's power to enforce or amend rules. It has a system of arbitration through its panel of judges, with RuPaul acting as chief justice, tasked with deciding which performers merit advancement or elimination. It resolves disputes between performers, regarding this decision, through main stage challenges, and provides opportunities of appeal through 'lipsync for your life' performances in which contestants must demonstrate their claims for advancement.

Alongside primary and secondary rules, RPDR depends upon on a *Grundnorm*,²⁹ an unwritten, fundamental rule upon which all other rules depend. Namely, RuPaul, as the highest authority on RPDR, is the ultimate arbiter of primary and secondary rules – 'the final decision is mine to make'.³⁰ This power of RuPaul to unilaterally change the rules of the game is rarely used,³¹ but can involve delegating decision-making to a jury of contestants' peers,³² providing for double-saves³³ or double-eliminations,³⁴ or suspending the rules of the game mid-series.³⁵

The interpretation of rules is facilitated by the flexibility of RPDR's *Grundnorm*. Ronald Dworkin in *Law's Empire* emphasized the importance of rules in legal systems, whilst arguing that legal systems are also based on sets of moral principles that guide their interpretation and

²⁷Friedman and Hayden (n 25).

²⁸See HLA Hart, *The Concept of Law* (Clarendon Press 1994) – for Hart, primary rules govern the behaviour of individuals within the legal system, while secondary rules govern the behaviour of the legal system itself: its institutions, processes of change, and so forth.

²⁹Hans Kelsen, *The Pure Theory of Law* (Max Knight tr, 2nd edn, University of California Press 1967). For Kelsen, a legal system is founded upon a *Grundnorm*, from which rules derive their force or legitimacy. See also: Mariusz Jerzy Golecki, 'The European Law from Grundnorm Towards the Cathedral: Constitutional Features of a Complex Legal System' [2011] 13(1) *The European Journal of Law Reform* 59.

³⁰The caveat to this is that RuPaul herself must operate within US law: within this limitation, on the show itself, her jurisdiction remains unchallenged.

³¹Examples include the unexpected return of Naysha Lopez in S8E3.

³²AS3E8, aptly titled 'A Jury of Your Queers'.

³³Examples include Carmen Carrera and Yara Sofia in S3E9, Yvie Oddly and Brooke Lynn Hytes in S11E8, and Alyssa Edwards and Tatianna in AS2E5.

³⁴In the US seasons, this has happened twice: Honey Mahogany and Vivienne Pinay in S5E4, and Dax ExclamationPoint and Laila McQueen in S8E2.

³⁵In AS5, the format changed from the top two contestants lipsyncing for the win each week to a single top contestant lipsyncing against a 'Lipsync Assassin'.

application.³⁶ Whereas Dworkin was laying out the herculean task of synthesizing legal rules and principles within the common law tradition, with the aim that all decisions be consistent with both precedent and this web of normativity, RPDR has a simpler task. Unbound by precedent, RuPaul must simply make decisions that are broadly justifiable to the audience. This absence of precedent can lead to confusion where primary rules are not announced clearly in advance. In many cases however, this may appear to serve no injustice, where the rule itself is relatively straightforward and justifiable. A good example of this is the edict that ‘Drag is not a contact sport’, first announced *after* Mimi Imfurst hoisted her competitor aloft during a lipsync battle.³⁷

The wording of these rules is not always clear. Indeed they may have never been formally codified, and in some circumstances repetition and interpretation lead to certain practices being treated as norms in themselves. For example, in S10E9, Aquaria remarked that there had not yet been a double-save that season, and seemed sure it was bound to happen.³⁸ At times the contestants develop rules further themselves, such as a tentative network of alliances in the All Stars seasons.³⁹ As such, many rules – in their existence, interpretation, and application (by RuPaul and contestants alike) – develop organically as the show progresses.

As such, more holistic and pluralistic approaches to legal systems are especially useful for our understanding of RPDR. Legal pluralism,⁴⁰ in contrast to statist conceptions of law,⁴¹ conceptualizes legal systems inclusive of all normative regulatory phenomena, providing a more expansive definition of what ‘law’ is. This pluralistic approach embraces cultural norms based on the *effect* they have.⁴² In RPDR, this includes the rules mentioned above, but also the rich history of ballroom culture from which the series draws much of its language and hallmark practices,⁴³ the idea of ‘track records’,

³⁶Ronald Dworkin, *Law's Empire* (Harvard University Press 1987).

³⁷S3E4.

³⁸There would then be two double saves in Season 10, in E9 (Kameron Michaels and Eureka!) and E14 (Aquaria and Eureka!).

³⁹For example, AS4E1.

⁴⁰Note that legal pluralism, especially in its nuances, is contested – see generally, Margaret Davies, ‘Legal Pluralism’ in P Cane and HM Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012); BZ Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’ 30 (2008) *Sydney Law Review* 375; M Davies, ‘Pluralism and Legal Philosophy’ (2006) 57 *Northern Ireland Legal Quarterly* 577; E Meliassaris and M Croce, ‘A Pluralism of Legal Pluralisms’ (*Oxford Handbooks Online*, 2017) <www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935352.001.0001/oxfordhb-9780199935352-e-22>.

⁴¹Davies, ‘Legal Pluralism’ (n 40) 817–18; Davies, ‘Pluralism and Legal Philosophy’ (n 40) 586–89.

⁴²RLT Fox, ‘Reframing the Japanese Legal System in Comparative Legal Scholarship: Recognising the Role and Function of Socio-Cultural Regulatory Norms Through Legal Culture and Critical Legal Pluralism’ (PhD thesis, University of Leeds 2019) <https://etheses.whiterose.ac.uk/view/creators/Fox=3ARosemary_Louise_Taylor=3A=3A.html> 92.

⁴³Examples include, ‘Category is ...’ for the runways, ‘Reading is fundamental!’, and ‘realness’ (itself often used as a category for ballroom walks).

and prestige attributed to winning important challenges, such as the ball or Snatch Game. This provides a richer account of the legalistic character of the rules and norms in RPDR, and the experiences of contestants subject to them. It demonstrates the real importance of those rules and norms, regarding the entitlements and expectations of the contestants, and how these rules are applied, interpreted, and enforced by RuPaul.

Reference to ballroom culture infuses this system of rules with language and discourses that draw from queer history, and as such queers the system of rules in terms of parody and playfulness.⁴⁴ This enables RPDR to take a lighter register of queering law: determinations of merit are made according to glamour, rules are fluidly created and enforced to meet the needs of the show as they organically arise, and so forth. There are, however, insights RPDR offers into how drag *could* enable an even deeper, more transformative queering of law. For example, the double-save is perhaps the most radical way in which RPDR challenges traditional conceptions of law, demonstrating an enlightening queering of its enforcement. There *can* be two winners, provided that the merits of each performer are demonstrated. Unlike most determinations of merits within court systems, the double-save avoids zero-sum, winner-loser binaries often seen in courts.⁴⁵ RPDR allows us to imagine collective queer victories. It therefore hints at the possibilities for more creative, queer, and celebratory approaches to rules and their enforcement.

There are limitations to RPDR's radical potential though, which become apparent when examining the commercial nature of RPDR. One revealing principle to analyse in this context is the rule of law (ROL): or, as RuPaul would no doubt stylize it, the Ru of Law.⁴⁶ The most fundamental aspect of this is that rules be routinely enforced. To understand how RPDR uses the ROL, and the limitations of its willingness to do so, reference could be made to Tom Bingham's conception of ROL: that (amongst other things) the law should be publicly promulgated, accessible, clear, and applied equally to all, in a way that is not arbitrary and which protects certain fundamental rights.⁴⁷

Generally, it appears that RPDR does not fall foul of these criteria. Most episodes seem to run in accordance with established rules, with equal application of rules for contestants, clear reasons for decisions, and so forth. However, when looking at episodes which demonstrate *exceptions* to this general rule, it becomes clear that ultimately RPDR does not, and does not

⁴⁴Meredith Heller, *Queering Drag: Redefining the Discourse of Gender-Bending* (Indiana University Press 2020) 195, 197.

⁴⁵James Marshall, 'Lawyers, Truth and the Zero-Sum Game' (1972) 47 *Notre Dame L Rev* 919.

⁴⁶Tara Bellucci, '5 Words RuPaul's Drag Race Has Ru-ined For Me' (Apartment Therapy, 3 May 2019) <www.apartmenttherapy.com/5-words-rupauls-drag-race-has-ru-ined-for-me-236173> accessed 10 April 2024.

⁴⁷Thomas Bingham, *The Rule of Law* (Penguin 2011).

wish to, fully abide by such principles. Specifically, we see disparities regarding clarity, accessibility, and arbitrariness: and this can largely be explained by the needs of a reality show to surprise and entertain its audience.⁴⁸ This in turn gives insights into how rules and their enforcement in RPDR are limited in their emancipatory potential.

This is seen most salaciously in the rare but important phenomenon of contestant disqualification. In S4E8, Willam Belli was disqualified and asked to leave the competition for what was described, in a later reunion episode (S4E14), as receiving ‘conjugal’ visits in the hotel during filming. Contestants are required to sequester themselves throughout the competition. As such visits breach this rule, it would not seem *prima facie* to breach the ROL to disqualify Willam. However, Willam later indicated that there were other reasons for his removal from the show, which were undisclosed.⁴⁹ This flouts the ROL’s – and the audience’s – expectations regarding clarity and consistent enforcement of the rules. The lack of transparency leads to concerns of arbitrariness and inconsistency, which would seem to run counter to the ROL.

RuPaul is wont to deviate from her own rules to create exciting outcomes. In S13E1, all queens were told to lipsync at the *start* of the season. In what the fandom would call ‘RuPaul’s Stanford Prison Experiment’, the queens were then effectively labelled as either winners or losers for the remainder of the series.⁵⁰ These ‘shock’ format changes reveal how the ROL is merely instrumental to RPDR. Fans require a sufficient sense of fairness, or at least routine-ness, to feel comfortable watching and to have reasonably stable expectations.⁵¹ Yet surprises bring excitement, which is crucial for reality television in a competitive market. As such, the ROL is only functionally important to RuPaul, and even then, only to the extent that it allows the show to continue in a recognizable format.

Reality television programmes like RPDR often undermine contestant expectations to broadcast their emotional shock, whilst responsabilizing contestants to find solutions and continue competing. As Redden says, in most reality game shows: ‘Contestants work ceaselessly for a chance, but in situations over which they have little control, while paradoxically they must be held to account for and take responsibility for their circumstances.’⁵² This reflects the position of labourers under neoliberal governance. He quotes Windle, saying: ‘neoliberal learners and workers must not question the

⁴⁸ ‘Viewers are Attracted to People “Being Real,” to Raw Emotions, Surprises, Unpredictable Outcomes’ June Deery, *Reality TV* (Polity Press 2015) 24.

⁴⁹ Joey Keogh, ‘The Real Reason Willam Was Disqualified From RuPaul’s Drag Race’ (*The List*, 28 February 2022) <www.thelist.com/782509/the-real-reason-willam-was-disqualified-from-rupauls-drag-race/> accessed 10 April 2024.

⁵⁰ Rahul Kothari (*Twitter*, 02:36 2 January 2021) <<https://twitter.com/rahkothari/status/1345197275581206528?lang=en>> accessed 18 April 2024.

⁵¹ Deery (n 48) 32.

⁵² Guy Redden, ‘Is Reality TV Neoliberal?’ (2018) 19 (5) *Television & New Media* 399, 409.

fairness of expectations made of them and decisions made concerning them, only their own performance'.⁵³ Likewise in RPDR, the shock value of surprise is prioritized over contestants' emotions. While their reactions may be shown for intrigue and salaciousness, no questioning of RuPaul's judgement is ever broadcast on screen. This reveals how RPDR is limited in its engagement in deeper registers of more emancipatory queering. RPDR's willingness to change the rules of the game allows for spectacular outcomes, to the detriment of queer contestants who are emotionally exploited by this process. This system of rules cannot be truly liberatory for queer people where it co-opts them into its commercial enterprise.⁵⁴

In summary, RPDR's legal system engages in lighter registers of queering. By referring to 'tops and bottoms', drawing from ballroom culture, and centring queer participation, it plays with the concept of a rules-based order, parodies judgement processes, and celebrates queer culture in its language and structures. It even opens possibilities of queering law at a deeper register, challenging the winner-loser binaries intrinsic to western legal systems. However, by centralizing power, its emancipatory potential is limited. RuPaul 'becomes the arbiter of perfection, professionalism, conformity, and even the gender binary'.⁵⁵ RPDR reinforces a hierarchy of both knowledge of, and power over, drag, and exercises this role in ways exploitative of other queer people.

3. Legal principles in RPDR

RPDR incorporates legal principles related to equality and liberty through its system of rules and their application. The extent to which RPDR applies and queers these principles demonstrates again how RPDR may engage in lighter registers of subversion and parody, but struggles to make deeper critiques that would undermine its commercial, neoliberal underpinnings.

Judges on RPDR evaluate contestants based on their performances in challenges, and judges' decisions are (at least outwardly) intended to be impartial. Without wanting, or needing, to have the same claims to objectivity expected in the courts, RPDR judges refer to principles of merit, fairness, and equality throughout their judgements – reflecting how, in common law, judges use principles as part of the body of rules to which they refer in their deliberations.⁵⁶

There are several motivations for RPDR to employ these principles, or to be seen doing so. The first is moral: that it is right to make decisions based on

⁵³ Joel Windle, '“Anyone Can Make It, but There Can Only Be One Winner”: Modelling Neoliberal Learning and Work on Reality Television.' (2010) 51 (3) *Critical Studies in Education* 251, 260.

⁵⁴ Benny LeMaster, 'Discontents of Being and Becoming Fabulous on RuPaul's Drag U: Queer Criticism in Neoliberal Times' (2015) 38 (2) *Women's Studies in Communication* 167.

⁵⁵ Kareem Khubchandani, *Decolonize Drag* (OR Books 2023) 88.

⁵⁶ Dworkin (n 36).

principles, and to apply them fairly.⁵⁷ Second, and perhaps more realistically, is a prudential motivation: having (at least minimally) fair procedures, having clear rules, and applying them consistently, allows the viewers to have reasonably consistent expectations of RPDR. June Deery explains, 'a game structure guarantees a regular cycle of suspense and revelation, crisis and denouement'.⁵⁸ This builds confidence in the programme, and in the brand of RPDR. The third, connected motivation is that regularly making decisions deemed arbitrary, biased, or cruel, may confuse or dishearten the fans, and may lead to a decline in viewership. While surprises and even outrages may engage the audience, frequent deviations from expectations may have the opposite effect.⁵⁹

Many jurisprudential principles have been justified on terms which are not purely moral. Fuller's *The Morality of Law* for example presents arguments in favour of clarity, publicity, and equal enforcement of laws, based in both moral and practical justifications.⁶⁰ A legal system that failed to maintain a minimum level of consistency would cease to be a well-functioning legal system. Similarly, a reality competition that failed to have reasonably consistent application of rules would make a non-paradigm competition show. RPDR appears to reproduce (consciously or otherwise) two fundamental jurisprudential principles worthy of discussion here, namely equality and liberty. More important than how RPDR lives up to these principles, however, is noting the extent to which it queers them, often failing to explore their full emancipatory potential, and how this is explained by RPDR's commercial nature.

RPDR claims to value equality for queer persons, both as contestants on the show and as private individuals. RPDR vocally celebrates equality through diversity, with challenges such as S4E6 'Pride Floats' highlighting the liberation of queer (and specifically gay) identity to which the show aspires.⁶¹ RPDR often presents equality as a key issue in political American life, with judges encouraging viewers to vote in elections and demonstrating support of the wider LGBTQ+ community.⁶² In this way, RPDR draws on a conception of equality that seeks equal participation for queer individuals in social and political life, and indeed as contestants on the show.

Nevertheless, RPDR, while giving lip service to broader issues of equality, often fails to support or treat equally certain demographics. RPDR historically

⁵⁷Not that morality is central to reality television: 'there is no economic incentive in media entertainment to display only morally admirable behaviour, and no accountability if it does not'. Deery (n 48) 13.

⁵⁸ibid 32.

⁵⁹Mary Beth Haralovich and Michael W Trosset, 'Expect the Unexpected: Narrative Pleasure and Uncertainty Due to Chance in Survivor' in Susan Murray and Laurie Ouellette (eds), *Reality TV: Remaking Television Culture* (New York University Press 2004) 75–96.

⁶⁰Lon L Fuller, *The Morality of Law* (Yale University Press 1964).

⁶¹RPDR S4E6.

⁶²Ricky Cornish, 'The Judges of RuPaul's Drag Race Defend the Trans Community' (*Out Magazine*, 10 April 2023) <www.out.com/gay-tv-shows/ts-madison> accessed 18 April 2024.

forbade cis female and transgender participants. RuPaul stated: ‘Drag loses its sense of danger and its sense of irony once it’s not men doing it ... it’s ... a big f-you to male-dominated culture.’⁶³ Only in later seasons, after years of pressure from the viewership, did we see progress with the admission of trans woman Peppermint in S9.⁶⁴ However, RuPaul explained that he did not consider Peppermint to have transitioned due to a lack of gender-affirming surgery:⁶⁵ a statement for which he later apologized after pressure from fans and transgender performers.⁶⁶ This problematic approach polices the perceived validity of transsexuality from the perspective of the cisgendered male, invisibilizing the central role of trans women in drag, and in LGBTQ+ civil movements historically.⁶⁷ RPDR’s casting has since become more diverse, with the first trans man Gottmik performing in S13 in 2021, and cis woman Victoria Scone participating in S3 of RPDRUK the same year.⁶⁸ However, for a show that apparently platforms and promotes queer identities, it remains anchored in cisnormativity.⁶⁹

Partly, this is due to RPDR’s focus on representing the ‘female’. As Meredith Heller observes, ‘realness’ is consistently demanded throughout the show – to present as obviously female, meeting certain aesthetic standards of female beauty.⁷⁰ Contestants are expected to use corsetry to ‘snatch’ their waists, creating an hourglass figure, to (re-)produce a particular image of feminine desirability. This reinforces heteronormative (female) aesthetics and expectations, rather than challenging them. RPDR’s queering is informed heavily by social scripts of drag which themselves reproduce gender-

⁶³Decca Aitkenhead, ‘RuPaul: “Drag is a Big F-You to Male-Dominated Culture”’ (*The Guardian*, 3 March 2018) <www.theguardian.com/tv-and-radio/2018/mar/03/rupaul-drag-race-big-f-you-to-male-dominated-culture> accessed 27 June 2024.

⁶⁴Whilst Peppermint was not the first trans woman to compete, with Kylie Sonique Love, Monica Beverly Hillz, and Gia Gunn (to name a few) competing on earlier seasons, Peppermint is the first trans woman to compete who had begun transition prior to being cast.

⁶⁵Aitkenhead (n 63).

⁶⁶Caroline Framke, ‘How RuPaul’s Comments on Trans Women Led to a Drag Race Revolt – and a Rare Apology’ (*Vox*, 7 March 2018) <www.vox.com/culture/2018/3/6/17085244/rupaul-trans-women-drag-queens-interview-controversy> accessed 27 June 2024; Joey Nolfi, ‘RuPaul Tweets “Regret” Over Controversial Transgender Comments: “The Trans Community are Heroes”’ (*Entertainment Weekly*, 5 March 2018) <<https://ew.com/news/2018/03/05/rupaul-apology-transgender-comments>> accessed 27 June 2024.

⁶⁷Joe Crocker and Emily Kelford, ‘The Forgotten, Trans-Focussed Past of Modern Drag Culture’ (*TMW Unlimited*, 28 February 2022) <www.tmwunlimited.com/forgotten-trans-focussed-past-modern-drag-culture> accessed 27 June 2024.

⁶⁸Cory G Collins, ‘Drag Race to the Bottom?: Updated Notes on the Aesthetic and Political Economy of RuPaul’s Drag Race’ (2017) 4(1) *Transgender Studies Quarterly* 128; David Oliver, ‘1st Trans Man Appears on “Drag Race”’ *USA Today* (Arlington, VA, 8 January 2021) 6; Daniel Welsh, ‘Victoria Scone Defends Her Casting On Drag Race UK As First Cisgender Woman to Compete on Show’ (*Huffpost UK*, 23 August 2021) <www.huffingtonpost.co.uk/entry/rupauls-drag-race-victoria-scone-first-cisgender-woman_uk_61236e98e4b0e8ac791fc17b> accessed 18 April 2024.

⁶⁹Lela London, ‘Everything RuPaul’s Drag Race UK Isn’t Doing for Trans Non Binary Queens’ (*Forbes*, 12 December 2018) <www.forbes.com/sites/lalalondon/2018/12/12/everything-rupauls-drag-race-uk-isnt-doing-for-trans-non-binary-queens/?sh=27262c3d32cb> accessed 18 April 2024.

⁷⁰Meredith Heller, ‘RuPaul Realness: The Neoliberal Resignification of Ballroom Discourse’ (2020) 30(1) *Social Semiotics* 133.

normativity.⁷¹ 'RuPaul has said that drag's subversive nature will keep it from mainstream co-optation. However, she purports that drag is only subversive when cisgender men confound hegemony through "illusion," performing as women.'⁷² RPDR's queering of gender norms falls foul of Butler's caveat: drag is only truly subversive to the extent that it challenges, rather than reproduces, gender norms.⁷³

Understanding that RPDR adopts a liberal conception of equality – with supposedly formal equality to all persons (at least in later seasons) to participate and compete – reveals how RPDR fails to recognize structural injustice, in much the way liberal democratic systems do.⁷⁴ For example, the show celebrates racial diversity, while building in structural barriers for certain ethnic groups. RPDR suffers from inbuilt linguistic biases: comedy challenges, such as the regular Snatch Game episode, favour queens' verbal comedy skills and improvisations in English. This places queens whose first language is not English at a structural disadvantage: for example, Cynthia Lee Fontaine in S9, and Kiara in CDR S1, were strong contenders who suffered during the Snatch Game, and were eliminated as an immediate result. As Matthew Goldmark explains, specifically Hispanic and Latine/x queens are judged harshly by this process and 'othered' accordingly.⁷⁵ This itself is an example of liberalism and its limitations for queer liberation in the U.S. more broadly. It takes an ambivalent, formal equality regarding gender, race, and sexuality, claiming equal opportunity for individuals, but overlooking barriers which inhibit participation and reinforce stigma.⁷⁶

RPDR does not recognize racism as systemic, and thereby reproduces it. When this is highlighted by contestants, such as The Vixen in S10, and particularly during the reunion episode of that season, they are vilified for exposing structural injustice,⁷⁷ and considered to be behaving disrespectfully.⁷⁸ Beth Montemurro, in her analysis of reality television's attitude to racism, observes that such programmes often present 'racism as a problem of individuals rather than of social structure'.⁷⁹ RPDR does this: presenting an incomplete queer-centric conception of equality, making a stand towards inclusivity, yet failing to recognize racism as a form of structural injustice among the queer community. It fails, therefore, to realize the more

⁷¹Fenton Litwiller, 'Normative Drag Culture and the Making of Precarity' (2020) 39 (4) *Leisure Studies* 600.

⁷²Khubchandani (n 55) 96.

⁷³Butler (n 23) 85.

⁷⁴Amy Gutmann, *Liberal Equality* (CUP 1980).

⁷⁵Matthew Goldmark, 'National Drag: The Language of Inclusion in RuPaul's Drag Race' (2015) 21 (4) *GLQ* 50.

⁷⁶Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 (3) *International Journal of Constitutional Law* 712.

⁷⁷Sara Ahmed, *Living A Feminist Life* (Duke University Press 2017) 37.

⁷⁸RPDR S10E13.

⁷⁹Beth Montemurro, 'Toward a Sociology of Reality Television' (2008) 2 (1) *Sociology Compass* 84, 97.

transformative queer potential to ‘bring together all those deemed marginal and all those committed to liberatory politics’.⁸⁰

Another key legal-political principle which RPDR extols is liberty. Freedom is praised throughout RPDR: to be one’s authentic self, to love others beyond heteronormative boundaries, and to pursue one’s dream. As RuPaul says in S3E5, reflecting on the emancipatory potential of living a gay lifestyle: ‘we get to choose our own family’. In doing so, RPDR presents a queering of freedom as it relates to American political philosophy, albeit in a more assimilationist tone. It celebrates the liberty of the queer individual, and identifies this as a central tenet of American national identity. RuPaul’s song *American*, a cover performance of which was the main challenge of the S10 finale, demonstrates this: ‘Everybody came here wantin’ to be free / New York to California, sea to shining sea ... I am American, just like you too.’⁸¹

Again however, understanding the commercial nature of RPDR as American reality television reveals how its appeals to liberty fall into the more limited confines of individualist, neoliberal political imaginaries. Reality television is prone to neoliberal logics. It only includes ‘ordinary people on terms amenable to the economic interests of media corporations: as free to cheap labourers from whom maximum on-screen value can be extracted’.⁸² The freedom that RPDR celebrates is conceived within negative liberties concomitant to contemporary American liberalism: freedom to love and be queer without interference, and to work and to strive for advancement, but principally for competing individuals. Rugged individualism is praised throughout the show – to be judged as individuals, to celebrate ‘Uniqueness’, and so forth. But ‘little of [RuPaul’s] message is about transforming systems, and most of her catchphrases are about individuality and choice’.⁸³

As Jonathan Ward notes, the show forms a ‘construction of reality’ around gayness that excludes marginalized others.⁸⁴ Much like in western liberalism itself, RPDR presumes that a free market of winners and losers is itself just, provided there is equal opportunity for participation. But as Hermes and Kardolus have argued, this form of competitive meritocracy hints at a simplistic, formalistic version of inclusion, which does not account for truly inclusive practice, with certain racial biases (like, for example, the comedy language barrier) remaining unchecked.⁸⁵ RPDR is indeed liberatory for a cis, white, gay, male, anglophone demographic, but becomes less so the more one deviates from this market. RPDR is a queer microcosm of American neoliberalism:

⁸⁰Cohen (n 14) 440.

⁸¹RuPaul, *American* (RuCo Inc 2017).

⁸²Redden (n 52) 411.

⁸³Khubchandani (n 55) 102.

⁸⁴Jonathan Ward, ‘Serving “Reality” Television “Realness”’: Reading RuPaul’s Drag Race and Its Construction of Reality’ (2020) 17 (1) *Comparative American Studies* 23.

⁸⁵Joke Hermes and Michael Kardolus, ‘Occupying the Intersection: RuPaul’s Celebration of Meritocracy’ (2019) 14 (4) *Critical Studies in Television* 462.

freedom of identity and formal equality, but with fierce competition, naked individualism, and the perpetuation of barriers maintaining structural disadvantage.

This is exacerbated by RPDR's obsession with marketing. Principally, it is a game show, with a \$100,000+ cash prize in later seasons. But beyond this game show mechanic, Alyxandra Vesey has observed how a large focus of the franchise is on material success: records sold and careers launched, predominantly to the benefit of white queens.⁸⁶ RuPaul's own branding and attempts to sell merchandise border on the shameless: for example, the regular 'Available on iTunes' motif, and episodes dedicated to marketing her songs, goods, and brand (like in S4E3: 'Glamazons vs Champions'). Phoebe Chetwynd argues RPDR participates in a postfeminist hegemony, with contestants and viewers made to validate the gender binary and cisnormative womanhood, while RuPaul exploits the labour of contestants.⁸⁷ Similarly, Benny LeMaster has argued that RPDR, and spin-off programmes such as Drag U, promote neoliberal logics of competitiveness and individualism, punish non-normative gender presentation, and reproduce aspects of patriarchal domination.⁸⁸

A queer-oriented show like RPDR *could* provide opportunities to radically reconstruct how these principles of equality and liberty apply to law and justice.⁸⁹ Corey Collins argues that by S7, the show was welcoming more challenging approaches to hegemonic aesthetics and structures, including bearded queen challenges and more accepting attitudes to androgyny.⁹⁰ By the time Gottmik and Victoria Scone were competing, it could realistically be said that steps had been taken to introduce a more robust gender equality to RPDR: one which could challenge cisnormative principles pervasive within western legal culture, as well as western drag. Yet RPDR reinforces the cisnormative identity of these principles, by internalizing, transforming, and reproducing them. They are queered only to the extent that they apply to (some) queer bodies and queer practices throughout the show: ultimately, RPDR does not take a stance of challenging predominant power structures. Much like how queer theory itself claims a theoretical position of emancipation, yet can struggle to transform 'the basic fabric and hierarchies that allow systems of oppression to persist', RPDR likewise only promises emancipatory potential to the extent those systems allow.⁹¹

⁸⁶Alyxandra Vesey, 'A Way to Sell Your Records': Pop Stardom and the Politics of Drag Professionalization on RuPaul's Drag Race' (2017) 18 (7) *Television & New Media* 589.

⁸⁷Chetwynd (n 4).

⁸⁸LeMaster (n 54).

⁸⁹Joe Parslow, 'Not Another Drag Competition: From Amateur to Professional Drag Performance' (2020) 25 (1) *Performance Research* 18.

⁹⁰Collins (n 68).

⁹¹Cohen (n 14) 437.

There is a limit to the extent to which RPDR successfully queers the principles of western legal liberalism. To paraphrase Aleardo Zanghellini, talking about the limitations of queerness itself, RPDR cannot be ‘counternormative all the way down’.⁹² The concomitant problem, then, is that these norms – while superficially wearing the face of queerness – are not sufficiently interrogated. Instead they are reproduced, and these norms can then be internalized among the viewing population.⁹³ Zurbruggen and Morgan have examined how viewers of reality dating shows adopt gender stereotypes presented in the shows they watch, or have their own understanding of those norms reinforced in so watching.⁹⁴ RPDR, by reproducing neoliberal conceptions of equality and liberty, similarly does little to inspire radical and transformative change.

4. Legal aesthetics and the court of RuPaul

In addition to its system of rules and principles, RPDR reproduces the process and visibility of law in colourful ways, most notably through its court system. This is done latently through the presence of a judging panel and lipsync battles as ‘appeals’ or ‘hearings’, and more expressly through specific challenges, such as Season 8’s Supreme Justice mini-challenge, or the courtroom parody maxi challenges like Jersey Justice in All Stars season 4: these are all infused with queered legal aesthetics.

Legal aesthetics conceives of law beyond its textual confinement, considering human experience and perspectives to ‘approach law as an aesthetic object’⁹⁵ involving visibility, sound, touch, and emotion in a sensory approach. As Dahlberg explains, ‘the aesthetics of law is not contingent to the law since it is the phenomenon of law. Material and visual representations of law are the empirical frames through which law appears and functions’.⁹⁶ Without it, law’s function would collapse. Legal aesthetics also encompasses the idea that law can be beautiful⁹⁷ – and in RPDR, fabulous. The visual conception of law through RPDR also represents a highly westernized – and specifically American – approach to law and justice, furthering the narrative of individualism and adversarialism throughout the series. RPDR is rich in

⁹²Aleardo Zanghellini, ‘Queer, Antinormativity, Counter-Normativity and Abjection’ (2009) 18 (1) Griffith Law Review 1, 7.

⁹³George Gerbner, Larry Gross, Michael Morgan and Nancy Signorielli, ‘Growing Up with Television: The Cultivation Perspective’ in M Morgan (ed), *Against the Mainstream: The Selected Works of George Gerbner*. (Lawrence Erlbaum Associates 1994) 193.

⁹⁴Eileen L Zurbruggen and Elizabeth M Morgan, ‘Who Wants to Marry a Millionaire? Reality Dating Television Programs, Attitudes Toward Sex, and Sexual Behaviors’ (2006) 54 Sex Roles 1.

⁹⁵M Paola Mittica, ‘In Quest of Sense. The Way Towards an Aesthetics of Law through Law and Humanities’ (2020) 33(2) Law and Humanities 171, 172–73.

⁹⁶Leif Dahlberg (ed), *Visualising Law and Authority: Essays on Legal Aesthetics* (Walter de Gruyter GmbH 2012) 4.

⁹⁷Kamil Zeidler, *Aesthetics of Law* (Gdańsk University Press – Wolters Kluwer 2020) 9.

examples of legal aesthetics visually, and through these RPDR engages in lighter registers of queering, or dragging up, the role and process of the courtroom and the aesthetics of law – leaving untapped possibilities for deeper, more radical queering.

The arena in which rules are applied and decisions made is predominantly the ‘mainstage’. This consists of the runway down which contestants walk; the stage where they perform, and where they stand during judgement; the ‘back of the stage’ where they stand if they are safe from elimination; and the judges’ panel. This compartmentalization of space reflects the architecture of American and English courtrooms, confining and marginalizing different actors.⁹⁸ Taking a pluralistic approach to law, outlined above, reveals that the function and effect of this space designate it as a courtroom. The judges are seated behind a high desk which shields them from the gaze of the contestants, representing a physical barrier. This marks a physical separation between those who judge and are judged, denoting and reinforcing the power dynamic between the judges’ panel and the contestants. Opposite the panel, contestants walk the runway, line up to receive critique on their performance and their runway looks, and do so in full view – nothing shields them from the critical gaze of judges or viewers. Like defendants in the dock, contestants are scrutinized for their performance and adherence to standards set out in the system of rules. Collectively, this spatialisation reflects the power dynamics seen in courtrooms in common law jurisdictions.⁹⁹

Judges are always dressed beautifully with the aid of costume, hair, and make-up assistants, are allowed re-takes of their critiques, and enjoy physical comfort. Conversely, contestants may be dressed in uncomfortable outfits: many former contestants have discussed the pain of standing in heels for prolonged periods whilst receiving critiques. This reflects the disparities in dress and (dis)comfort during court trials, along with the power hierarchies that this disparity reflects and reinforces.¹⁰⁰ Controversially, it was further revealed during Season 13 that RuPaul is not in drag from the waist down whilst on the panel, sparking criticism from fans about double standards and challenging RuPaul’s legitimacy as a judge.¹⁰¹

⁹⁸Dahlberg (n 96) 1.

⁹⁹Pat Carlen, ‘The Staging of Magistrates’ Justice’ (1976) 16(1) *The British Journal of Criminology* 48; Nick Gill and others, ‘The Tribunal Atmosphere: On Qualitative Barriers to Access to Justice’ (2021) 119 *Geoforum* 61.

¹⁰⁰This is seen recently in the re-introduction of formal robes for judges in UK family courts to make them appear more authoritative, despite critiques of robes and wigs being intimidating: *New Law Journal*, ‘Safety Fears Prompt Return of Robes in the Central Family Court’ (*New Law Journal*, 17 April 2024) <www.newlawjournal.co.uk/content/safety-fears-prompt-return-of-robes-in-the-central-family-court> accessed 27 June 2024.

¹⁰¹Sam Damshenas, ‘Utica Issues Apology Following Performance in Recent Drag Race Episode’ (*Gay Times*, 27 March 2021) <www.gaytimes.com/culture/utica-issues-apology-following-performance-in-recent-drag-race-episode> accessed 27 June 2024.

As in traditional court systems, adjudication in RPDR is hierarchical. RuPaul's role and aesthetic as chief judge is paramount. She is concerned not to be outshone by other judges, with her weekly runway walkthrough involving playful banter and compliments from other judges.¹⁰² RuPaul also wears big, glamorous hair which makes her appear taller than other judges (in addition to her natural 6'4" height), cementing her position as head judge, with sole responsibility and power to make decisions on which contestants will win, lipsync, and sashay away. While she has regular co-judges, and usually one guest judge, no drag performers adjudicate alongside her. She claims epistemic authority as an exclusive, unquestioned 'drag superstar'.¹⁰³ Determinations of rights and entitlements are made in this space based upon an evaluation of the merits of the queens in question, supposedly justified by the authority of RuPaul as *the* expert judge.¹⁰⁴

The court of RPDR reflects other aspects of the trial process, although the nature of the claims at stake naturally are different to those in a criminal or civil court. First, the court process of RPDR is essentially adversarial. While some episodes involve group challenges, the aim is always to come out on top. The onus is on individual queens to present their best performances to demonstrate their worth against their competitors – the essence of adversarialism, under Strier's understanding of it.¹⁰⁵ There is indeed a pre-existing affinity between the adversarial common law system and the progenitors of RPDR: the drag ball scene, and reality television series preceding RPDR such as *America's Next Top Model*. In the ball scene, contestants ordinarily compete to win in certain categories, with judges providing critiques and making determinations of aesthetics and merits.¹⁰⁶ In *America's Next Top Model*, similarly, contestants are grilled on their merits by a panel of judges who decide who progresses and ultimately wins the competition.¹⁰⁷ As such RPDR presents a synthesis of competitiveness inspired by other landmarks of American popular culture.

Contestants are given opportunities to present evidence of their calibre through weekly challenges, with successful performers being safe from elimination and potentially winning the week's contest. They are given critiques

¹⁰²Collie and Commane (n 3).

¹⁰³ibid.

¹⁰⁴On the nature of courts more generally see: Denise Meyerson, "What Is a Court of Law?" (2019) 42 UNSWLJ 60.

¹⁰⁵Franklin Strier, *Reconstructing Justice: An Agenda for Trial Reform* (University of Chicago Press 1994).

¹⁰⁶On the ball scene and the legal consequences of the film *Paris is Burning*, see: Phillip Brian Harper, "The Subversive Edge": Paris Is Burning, Social Critique, and the Limits of Subjective Agency' [1994] 24 (2/3) *Diacritics* 90 <<https://doi.org/10.2307/465166>> accessed 18 April 2024.

¹⁰⁷Reality television: 'programmes that feature members of the public in unusual situations, often competing for a prize, and often involving audience participation' – Dolan Cummings, *Reality TV: How Real Is Real* (Hodder & Stoughton 2002) (xii). On the judicial language in *America's Next Top Model*, see: RA Putri, NW Sartini, and MSA Fajri, 'The Analysis of Illocutionary Acts of Judges' Comments in America's Next Top Model and Asia's Next Top Model Competitions: A Cross-Cultural Pragmatic Study' (2020) 16(4) *Journal of Language and Linguistic Studies* 1885.

by the judges of their aesthetics and performances, alongside reasons why certain contestants are the 'tops or bottoms' of the week.¹⁰⁸ Even queens who are 'safe', with decent performances worthy neither of a top position nor elimination, may get feedback from the judges. Top and bottom contestants are then given opportunities to state their cases to the judges – often to say who else 'deserves to go home, and why', but also to explain artistic choices. Lastly, unsuccessful queens are provided with a final appeal to the judges through the 'lipsync for your life' procedure, their 'last chance to impress [RuPaul] and save [themselves] from elimination'.¹⁰⁹

This lipsync battle, whilst not intentionally parodying a defendant's appeal in court, emulates that same practice and sentiment. The performers aim to appeal RuPaul's decision on their unworthiness to stay in the competition, and the most iconic performances involve tight lipsyncing, acrobatic tricks, costume reveals, props, and more. It is each contestant's way of proving their right to stay, and again, like two parties in court, it is adversarial.¹¹⁰ With a few dramatic exceptions, one contestant will win, and the other will lose and be eliminated. Aesthetically, the lipsync battle serves as a hearing of sorts, speaking to the drama and staging of the courtroom as parties compete to prove their case and emerge victorious. This provides a light queering of adversarial processes: a pursuit of victory in heels, death drops, and a pop soundtrack. This adversarial format operates however under RuPaul's authoritarian approach to adjudication – by the time the bottom queens are lipsyncing, RuPaul will have 'consulted with the judges', but again, she jealously guards the 'final decision', never giving reasons why either queen is told 'shantay you stay', or 'sashay away'.

Once this determination is made, there is no clear appeals process – eliminated queens have no formal route to return to compete. On the rare (but increasingly accepted) occasion that RuPaul decides to reinstate an eliminated queen, there is no evidence how that decision was made, nor why that queen was chosen, except a general statement that they 'may have gone home too soon'.¹¹¹ The decision is made off-screen. Given the wide discretion that applies here and the lack of reliable process, it is a closer analogy to refer to these comeback decisions as prerogative acts of pardon, rather than judicial appeals.¹¹² Through all these stages of the court process, RuPaul wields exclusive authority. This further must be understood within the wider role of RuPaul choosing which contestants compete in each

¹⁰⁸A typically playful, light queering of the judgement process.

¹⁰⁹Collie and Commene (n 3).

¹¹⁰Strier (n 105).

¹¹¹Examples include Kenya Michaels, eliminated in S4E5, returning in S4E10; and Naysha Lopez, eliminated in S8E1 and returning in S8E3.

¹¹²Jennifer Schweppe, 'Pardon Me: The Contemporary Application of the Prerogative of Mercy' (2013) 49 *Irish Jurist* 211.

season, how episodes are edited, and what each week's challenge will be. There is no separation of powers¹¹³ in the constitution of RPDR.

In certain seasons there may be alterations of this core process, although RuPaul never entirely loses her authority to (re-)make decisions. In 'All Stars' seasons, where queens from earlier seasons are invited back to perform against each other, the format is particularly malleable. The first All Stars season featured a compulsory pairing mechanism for queens, until the finale where the remaining two pairs were disbanded to compete as individuals.¹¹⁴ This sowed discontentment between queens, as when a pair was up for elimination, one queen could switch with the other to perform if she felt her partner was lacking in the lipsync performance. Seasons 2, 3, and 4 of All Stars reverted to the winner-takes-all individualist approach, but introduced a different mechanism whereby RuPaul's choice of the top two queens in any given week would 'lipsync for their legacies', to achieve the episode's winning spot. Said winner, however, would be tasked with choosing which of RuPaul's chosen bottoms would be eliminated.¹¹⁵ This process does not undermine RuPaul's ability to pick the winners and potential losers; nor does it prevent RuPaul from choosing who wins in the finale, at her absolute discretion. Further, there have been occasions where RuPaul lets contestants return to the competition even after they have been eliminated by the lipsync winner in this way, effectively overruling these decisions. Most dramatically, this was the case in AS2E5, with the double-return of previously eliminated contestants Alyssa Edwards and Tatianna.¹¹⁶ The only notable exception to this is the shock self-elimination of BenDeLaCrème in AS3E6. Given that the parameters of this power are circumscribed and overseen closely by her, this can be seen not as a *loss* of RuPaul's power, but rather a delegation of it.¹¹⁷

A similar delegation can be seen in the later All Stars seasons, where only one main challenge winner would lipsync, against a Lipsync Assassin (a notable contestant from a previous season, selected by RuPaul). Should the Assassin win, one of the bottom queens is eliminated, determined by a vote by the rest of the contestants – playfully referred to as a 'RuMocracy'. Should the competing All Star contestant be victorious in this lipsync however, she may eliminate one of the bottom queens.¹¹⁸ This seems to

¹¹³Montesquieu, *The Spirit of the Laws* (1748).

¹¹⁴Courtney Young, 'The New "RuPaul's Drag Race All Stars 7" Rules Explained' (*Cosmopolitan*, 26 May 2022) <www.cosmopolitan.com/entertainment/tv/a40117681/rupauls-drag-race-all-stars-7-rules/> accessed 18 April 2024.

¹¹⁵The only seasons to deviate from this format are AS7 and AS9; in the former, no queens were sent home but the winner of each episode earned the power to block another contestant from winning in the next week; the latter is a fundraising charity season.

¹¹⁶You must watch their lipsync to Rhianna's *Shut Up And Drive*. Take a break and watch AS2E5 now.

¹¹⁷On delegation see: J Bendor, A Glazer, and T Hammond, 'Theories of Delegation' (2021) 4 *Annual Review of Political Science* 235.

¹¹⁸Young (n 114).

place more power in the contestants, particularly where a (far from impartial) jury is formed to eliminate a contestant should the Assassin win. This was also shown in a one-off assemblage of ‘a jury of your queers’ in the final episode of All Stars 3, where, controversially, eliminated queens could cast votes for who they felt deserved to lipsync for the crown.¹¹⁹ However, decisions about who is the challenge winner, the Assassin, the lipsync winner, and the list of bottom queens, are all determined by RuPaul – as is the winner of each season. We return to the *Grundnorm*: the *final decision* is RuPaul’s to make.

A light queering of law in RPDR is more expressly presented in the aesthetics of legally themed challenges, which reveal how drag artists interpret legal language, imagery, and processes. Examples include the Supreme Justice mini-challenge (S8E3), Bianca del Rio’s Judge Judy snatch game (S6E5), and the Jersey Justice main challenge (AS4E4). In the Supreme Justice mini-challenge, contestants were given a lawyer’s black gown, and had to create their own Supreme Justice persona, whilst getting into ‘quick drag’ (which is intentionally messy). Contestants mocked the formal dress and behaviour of judges, creating narratives of them being caught in scandals, having dubious qualifications, and otherwise misbehaving. Bianca del Rio’s portrayal of Judge Judy involved a carefully crafted wig to emulate her iconic bob, a black robe, and the use of a gavel. Her comedic success came from accentuating more hostile aspects of Judge Judy in her judicial role. Finally, the Jersey Justice main challenge placed Michelle Visage, RuPaul’s friend and co-host, in the judge’s seat for a series of mock trials, in which contestants improvised characters embroiled in nonsensical legal disputes. All these examples demonstrate critique of (specifically U.S.) law by queering through aesthetics – parodying the appearance and augustness of judges, shouting and fighting through court procedures, and imagining preposterous verdicts.

These parodies of legal aesthetics engage in lighter registers of queering, identifying and parodically subverting dominant cultural norms and assumptions beyond gender and sexuality.¹²⁰ Otherwise ordinary images, roles, words, and even norms, are given new meaning by distortion through the lens of queerness.¹²¹ Presenting a judge as a fussy, bitchy queen (regardless of gender) subverts the assumptions of grandeur that otherwise attach to that role, through norms which we receive and understand through social scripts. Understanding dragging up as a queering is an extension of Judith Butler’s theoretical framing of drag as parody.¹²² Drag not only parodies

¹¹⁹AS3, E8.

¹²⁰Butler (n 9).

¹²¹Heller (n 44); Orlando Woods, ‘Reading is Fun-da-mental: Queering Queer “Safe” Spaces Within Drag Culture’ [2023] 23(6) Feminist Media Studies 2514 <<https://doi.org/10.1080/14680777.2022.2062411>> accessed 18 April 2024.

¹²²Butler (n 45); Butler (n 23).

the gender(s) which it emulates, but also other social scripts that drag mocks through performance, such as class, social mores, and authority figures.

The criminal trial itself has been critiqued as a site of drag, where 'norms can be at least partially exposed because of how trials stage their own performative relation to "law"'.¹²³ As a site of unavoidable performance, those engaged in a trial re-enact social scripts: from collective standing and sitting at key points in the narrative, through to dress, relationships of power and subjugation, and modes of speech (including clichés and legal jargon). By performing it, it comes into being *as* a trial. Reflexively, parodies of trials as seen in RPDR reveal which scripts and symbols drag artists and queer people more broadly identify in their own interpretation of the law as a social practice.

Even where RPDR is not explicitly parodying a trial through a challenge, the scripts used throughout the process of judgement are themselves *law in drag*. Catchphrases like 'shantay you stay / sashay away' are in effect a playful parody of 'we find the defendant innocent / guilty'. The formulaic process of a reality TV programme – whether that's RPDR or its antecedents, with *America's Next Top Model*, for example – lends itself to parody and to self-parody, through leaning into or usurping expectations, adopting and twisting clichés about judgement and execution of performance, and through knowing self-reflections on the programme itself.¹²⁴ RuPaul leans into this: 'I've consulted the judges but frankly I don't give a damn what they have to say.'¹²⁵ Repetition and alteration of these scripts, to the point of mimicry and parody, offers the potential to challenge the authority of the purported author of the original citation.¹²⁶ Taking and *bending* these representations of law has transformative and emancipatory potential.

However, the language of decision-making in RPDR does not extend to challenging RuPaul's conceptions of drag hierarchy. Some of RuPaul's language is more legal or speaks to process, such as descriptors of 'track record'. This mirrors practices in criminal justice, when considering lenient sentencing for those convicted of first offences, or mitigating sentences for good behaviour.¹²⁷ Notably, this language is adopted by contestants themselves in All Stars, especially when the winning contestants of the week talk with those up for elimination, with negotiations about track record, consistency, and who is the biggest competition. Language therefore is part of

¹²³MM Umphrey, 'Law in Drag: Trials and Legal Performativity' [2011] 21(2) *Columbia Journal of Gender and Law* <<https://doi.org/10.7916/cjgl.v21i2.2638>> accessed 18 April 2024.

¹²⁴Tracey Owens Patton and Julie Snyder-Yuly, 'Roles, Rules, and Rebellions: Creating the Carnavalesque through the Judges' Behaviors on America's Next Top Model' (2012) 63 (3) *Communication Studies* 364.

¹²⁵RPDR S8E5.

¹²⁶Butler (n 45).

¹²⁷Ian K Bellan and Mandeep K Dhimi, 'The Role of Character-Based Personal Mitigation in Sentencing Judgments' (2024) 21(1) *Empirical Legal Studies* 208.

the 'performance', or coming into being, of adjudication.¹²⁸ The judicial language of RPDR becomes self-enforcing: the social scripts are internalized and repeated, and through this, judgement is performed by both judges and contestants alike. This also normalizes judicial language on decision-making and its associated processes – by reiterating these phenomena, the queens engage in the practice of 'become[ing] knowing and knowable, recognized and recognizable to others',¹²⁹ and conforming to social control within the jurisdiction of RPDR. It closely reflects social hierarchy and control in judicial processes external to the competition – in part because of how reality television is set up, and in part due to the queens' own performance adjudication. Again, we see a limitation on the show's capability to effectively disrupt these norms of judicial decision-making through a deeper register of queering.

The language around deliberation in RPDR can be highly camp. Rather than referring to each other as 'learned colleagues', RuPaul uses language such as 'just between us squirrel friends'¹³⁰ and similar variants ('us girls', 'girlfriends') in every episode. This intimates that the deliberations are confidential, like judicial deliberations. Yet the audience is invited into this apparently clandestine process – we are party to the in-joke, not only in hearing the deliberations, but also in knowing and expecting this ritualized language, a humorous 'gayspeak' that might be expected in playful social contexts.¹³¹ These examples demonstrate a complex discourse around processes and decision-making in RPDR, with careful consideration to uphold, clarify, and embellish language given by judges.

With these examples, we can further think of drag as a means of estranging law and legal processes. For Shklovskii, art is a way to 'estrangle' everyday or familiar concepts, process, or images. This in turn allows us to see and understand them in a new light.¹³² In RPDR, the mainstage is a queer synthesis of the ballroom scene, of reality television judgement panels, and of a sort of unusual trial process. It is queer not only through its participants, and the nature of drag itself, but through its bending and distorting of legal functions such as giving reasons, passing judgement, making appeals, and so forth. RPDR in a way 'estranges' law through its queering of it.

As such, what we call 'dragging up' can be framed as a synthesis of both queering and estranging, but through the medium of drag as a creative method or technique. A drag competition 'drags up' (queers and estranges) adjudication. A lipsync for your life drags up adversarial procedures. A judge

¹²⁸Umphrey (n 123).

¹²⁹Valocchi (n 16) 1.

¹³⁰For example, S13E2. Part of the pun, purportedly, is that squirrels hide their nuts.

¹³¹Joseph J Hayes, 'Gayspeak' (1976) 62(3) *The Quarterly Journal of Speech* 256.

¹³²Viktor Shklovskii, 'Art as Device/ Technique' in Viktor Shklovskii, *Theory of Prose* (Benjamin Sher tr, Dalkey Archive Press 1990) 5–6.

in a beehive rather than a horsehair wig drags up the judiciary. It presents a novel (fabulous and/or parodic) alternative to those familiar legal phenomena, which is entertaining but also opens possibilities to re-examine and re-imagine those phenomena. By looking at the exaggerations of costuming, shouting, and campy that drag artists bring to their performances of law, we gain insight into their own queer phenomenology of legality – or how they interpret the law through their everyday encounters of it through reality television, public discourse, and their own lived experience.¹³³

While dragging up can operate across multiple registers of queering, however, it is evident that the legal system of RPDR engages principally in lighter registers in doing so. Its use of aesthetics facilitates parody, and it does engage in some deeper registers by mocking the courtroom as a place of formality and sombreness. But it fails to go much deeper. It reinforces normative approaches to judicial authority by separating judge and artist, and reinforcing the presumed hierarchy of authority over what counts as ‘good drag’. Wordplay and campy do not themselves undermine the notion of a coercive hierarchy. Demanding the queens stand to attention, for example, is curiously analogous to requesting that the defendant stand before a verdict. RuPaul never invites other judges to share her power on the same level, does not tolerate other drag artists on her judging panel, and by excluding a variance of opinion, narrows and reinforces an aesthetics of drag that is highly feminized and exudes wealth and individualism. We argue that this is not enough. There is ‘no single modality of embodiment that stands for straight-ness or queer-ness. Rather, there is openness, fluidity, flux; an endless possibility of de-determination and re-citation’.¹³⁴ As Heller puts it, queerness is the ‘very quality of being undefined, unnamed, and unintelligible ... [that] makes queer performance queer’.¹³⁵

It is not enough to say that, as a drag reality show, there is only so much one can demand of RPDR to engage in more radical queering. The legal aesthetics of RPDR, particularly in how it presents judicial decision making, *could* destabilize this epistemic drag hierarchy *and* the hierarchical authority of the court simultaneously. First, power could be shared with judges other than RuPaul, handing over responsibility for decision-making, and collaborating on alternative means of appraising drag. Other drag reality shows, like *Dragula*, demonstrate how judgement could be shared among plural judges, whilst also conscientiously inviting experts on drag from outside the show to share and showcase their expertise.¹³⁶ This engages with queering as a more critical practice, exposing the limitations and biases of binary

¹³³Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (Duke University Press 2006).

¹³⁴Mona Lloyd, ‘Performativity, Parody, Politics’ (1999) 16 (2) *Theory, Culture & Society* 195.

¹³⁵Heller (n 44) 197.

¹³⁶Dilermando Gadelha, Yasmim Maia and Regina Lucia Alves de Lima, ‘Drag, Glamour, Filth: Gênero e monstrosidade em Rupaul’s Drag Race e Dragula’ (2021) 61 *Cadernos PAGU* 1.

thinking and hierarchies.¹³⁷ This extends to challenging the binaries of authority versus subject, or knowing judge versus unknowing contestant. Relatedly, RPDR could deconstruct the artificial hierarchy between judges and contestants, treating them as peers. Simple things could advance this: allowing contestants to sit comfortably would alter the courtroom geography of the runway, and the hierarchy this represents, whilst also treating contestants with dignity and respect. But deconstructing the barriers of language, race, and culture in the Snatch Game, and creating trans-inclusive fora, would go even further. This aligns with the ‘radical potential of queerness to challenge and bring together all those deemed marginal and all those committed to liberatory politics’.¹³⁸ RPDR, as an international, highly successful television show that benefits from the labour of drag artists and the support of queer audiences, can make greater efforts towards anti-normativity and deeper queering through drag, rather than seeking to constrain this potentiality.

Concluding remarks

This is the first theoretical framing of RPDR as its own legal system, with rules and procedures of adjudication. We have shown how it replicates legal processes and aesthetics, both through its competition procedures but also specific instances of parodying the American legal system. It ‘drags up’ law, showing us an accentuated and comical interpretation of it. In this way, RPDR explores how legal culture and aesthetics are received by queer people in media: it shows a perspective of how law is interpreted through a queered lens, being farcical, judgmental, and prone to parody. RPDR also adapts legal norms and principles, such as equality and liberty, and makes some attempt to queer their application. Yet, through our novel analysis of light and deeper registers of queering, we have shown that it does not go further in helping to develop a more radical queered approach to principles of justice. It reproduces neoliberal logics, often failing to address systemic sources of stigma and disadvantage. While RPDR certainly challenges heteronormativity, and allows (some) queer people to be recognized as objects of law and justice, RPDR replicates, rather than challenges, patriarchal and neoliberal norms.

It may appear unfair to demand that RPDR, as a reality show, engage in more revolutionary queering. Again, we recognize that queering operates at different registers, from lighter, more superficial parodying of gender, down to destabilizing systems of hierarchy: and indeed there are times where RPDR *does* demonstrate radical potential. Double-saves hint at the possibilities of destabilizing winner-loser binaries prevalent in western legal systems; the

¹³⁷This is distinguished from, for example, Doty’s use of the term ‘queering’ in which an audience implies queer or sexualised meanings regardless of the intention of the author: Alexander Doty, *Making Things Perfectly Queer: Interpreting Mass Culture* (University of Minnesota Press 1993).

¹³⁸Cohen (n 14) 440.

arrival of trans artists demonstrates that RPDR can aspire towards more inclusive and liberatory politics. But it misses opportunities to go deeper, notwithstanding the reality format of the show. RPDR could go further in deconstructing female beauty standards by altering its focus on cinched, hairless bodies. It could democratize decisions about advancement in the show, beyond delegation systems found only on All Stars series. It could take a more active stance in challenging norms of whiteness, both in terms of its aesthetics and its challenges. As a potential site of disidentification – a counterpublic in which queer individuals negotiate through, while refusing to assimilate within, prevailing oppressive norms – RPDR could act as a platform in which to advocate for a more radical counternormativity.¹³⁹

RPDR does not encapsulate the totality of drag, nor the transformative potential of ‘dragging up’. Other drag shows, like the unashamedly subversive *Dragula*, may help us explore alternative methods of adjudication by sharing power across multiple judges, and demonstrate that drag competitions can eschew the stifling cisnormativity of RPDR.¹⁴⁰ Texts like Khubchandani’s *Decolonize Drag* reveal how, by celebrating different bodies, forms of dress, and counternormative performances, drag artists can ‘break, bust, shatter, unsettle and undo the binary structures put in place by Euro-American empires’.¹⁴¹ We can explore drag as it is lived and performed in venues internationally, discovering how drag and law intersect in greater depth.¹⁴² There is a wealth of drag activism that could lead us to reconsider notions of legal personhood, gender, equality, and freedom, through drag’s greater transformative potential. There is a new and exciting world of possibilities, then, in terms of what drag can teach us about the law.

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¹³⁹Muñoz (n 18).

¹⁴⁰Gadelha, Maia and Lucia (n 136).

¹⁴¹Khubchandani (n 55) 7.

¹⁴²Parslow (n 89).