



Foreword

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This special issue continues an ongoing process of thinking and doing trans legal studies in Canada. The project started with a panel, “On the Margins of Trans Legal Change,” organized at the Law and Society Association 2018 annual conference in Toronto and chaired by Brenda Cossman. Building on the panel’s conversations about those on the margins of recent trans law reform, four of the panellists, Nora Butler Burke, William Hébert, Ido Katri, and Samuel Singer, began the work of bringing together community advocates, lawyers, and scholars to discuss recent trans legal changes and their limitations.

From that panel emerged the idea for a public conference, an academic workshop, and a subsequent special issue of the *Canadian Journal of Law and Society* that forefronts advocates and scholars who centre the voices of trans people at the margins. William Hébert chaired the conference organizing committee, which was able to secure a SSHRC Connection grant through its applicant Robert Leckey and co-applicant Samuel Singer. In May 2019, the three-day symposium, “On the Margins of Trans Legal Change,” was held at McGill’s Faculty of Law, in partnership with McGill’s Institute for Gender, Sexuality, and Feminist Studies and Thompson River University’s Faculty of Law.

The symposium launched with a public lecture by Samuel Singer on trans legal issues in Canada, which included an update by Dalia Tourki, Advocate and Public Educator from the Centre for Gender Advocacy in Montreal. The following day featured roundtable conversations between academics, policymakers, community

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workers, trans leaders, artists, thinkers, and community members. The public conference concluded with a keynote discussion on Trans Justice and the Law by Viviane Namaste and Dalia Tourki. The keynote is included in this special issue, printed in English and accompanied by a French translation. On the third day of the symposium, invited scholars gathered for a closed academic workshop in preparation for submitting to this special issue. Participants exchanged feedback on their draft papers and received comments from academic mentors Brenda Cossman, Robert Leckey, and Viviane Namaste.

The symposium brought together scholars, advocates, and community members for a critical discussion about trans people and the law aimed at promoting change from the margins inward. This special issue continues that work.

Long before the law and legal movements gained interest in recognizing and protecting gender diversity, trans movements around the world were led by the voices of those most affected by the anti-trans distribution of resources and opportunities, those whose lives have been shaped by racialization, colonialism, poverty, ableism, and trans misogyny. Sylvia Rivera stormed the stage at the 1973 Christopher Street Liberation Day Rally in New York City, demanding that the emerging gay and lesbian movement stand beside their siblings, both on the street and in prisons.²

In Canada, Jamie Lee Hamilton's work to fight violence against sex workers included creating a safe indoor space for sex work and demanding the investigation of missing and murdered women. Hamilton passed away on December 23, 2019. As the keynote discusses, her twenty-five years of ground-breaking activism for Indigenous rights, the decriminalization of sex work, access to housing, and services for trans people focused on improving the daily lives of people in Vancouver's Downtown Eastside. We hope that the discussions at the Symposium and in this special issue honour her work.

The histories of trans movements are histories of advocating for tangible change in marginalized people's lives and of resisting the power of the law to exclude those who are marked as other. In the past decade, the global visibility of trans movements has grown immensely. Shifting from the periphery of critical and legal debates to centre stage, legal reforms addressing trans rights have swept across Canada and numerous other countries. In Canada, the rise of trans legal advocacy has led to a number of achievements in trans legal recognition and equality, including increased access to changing identity documents, and amendments adding explicit protections of gender identity and gender expression to Canadian human rights instruments. Yet, despite the surge in trans visibility, many trans people continue to live at the margins, with little change in their daily experiences of exclusion, poverty, and discrimination. At the same time, public policy and legal debates about trans people have been accompanied by an anti-trans backlash,

² Sylvia Rivera, "Y'all Better Quiet Down" 1973 Gay Pride Rally NYC (Original Authorized Video by LoveTapesCollective, 2019), online.

pushed forward by arguments that trans recognition violates freedom of expression rights,³ the interests of women,⁴ or the protection of minors.⁵

Some trans people have achieved significant legal recognition and inclusion through formal equality.⁶ Some trans advocates are no longer only engaged in grassroots activism but are part of mainstream NGOs, the legal world, and academia, both domestically and internationally.⁷ This is the time to question who is occupying those positions, and who continues to be left out. This is also a moment when trans legal movements need to account for the power they hold. Trans legal scholarship has not sufficiently acknowledged that discussions about trans legal equality often present trans movements and issues as homogenous, as though all trans people have the same needs, legal and otherwise, and as though they are all similarly situated.

The push for inclusion in anti-discrimination or the fight to remove all legal barriers for sex reclassification often require a kind of imagined homogeneity, which obscures disparities related to race, class, ability, Indigeneity, citizenship, and gender within trans communities. These disparities within trans communities are associated with differences in social and economic power. Who is interested in securing trailblazing positions within academia and who is fighting for daily survival? Repeatedly, the needs and aspirations of those on the margins, those living in poverty, in the streets, in prisons, in hostile families, as colonized, racialized, disabled people, are shoved aside in the transgender push towards inclusion. We have learned from critical race theory, feminist legal studies, and queer legal studies that declaring marginalized people equal under the law does little to improve their daily lives or create equal access to resources and opportunities.⁸

This special issue turns our critical, legal, and emotional gaze toward those trans people at the margins, placing their lived realities as the epistemological cornerstone of inquiry and action. The articles in this special issue share an interest in lived experience as an essential methodology. The centering of the experiences and analytical perspectives of trans people, communities, and movements is a key

³ Brenda Cossman, "Gender Identity, Gender Pronouns, and Freedom of Expression: Bill C-16 and the Traction of Specious Legal Claims," *University of Toronto Law Journal* (2018) 68:1 37.

⁴ Alex Sharpe, "Will Gender Self-Declaration Undermine Women's Rights and Lead to an Increase in Jarms?" *The Modern Law Review* (2020) 84:3 539.

⁵ Kelley Winters et al., "Learning to Listen to Trans and Gender Diverse Children: A response to Zucker (2018) and Steensma and Cohen-Kettenis (2018)," *International Journal of Transgenderism* (2018) 19:2 246.

⁶ Having access to state, a state-like, or state-affiliated power. We borrow this term from the work of Janet Halley and others on Feminist Governance (see Janet Halley, "Introducing Governance Feminism," in *Governance Feminism: An Introduction* ed. Janet Halley, Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir (Minneapolis: University of Minnesota Press, 2018) at ix-x).

⁷ Notably many of these positions are held by masculine of centre trans people, as Viviane Namaste and Dalia Tourki rightfully noted during their joint keynote speech at the "On The Margins of Trans Legal Change" symposium, which is included in both French and English in this special issue.

⁸ Robert Leckey, ed., *After Legal Equality*, 1st ed. (London: Routledge, 2015), 3–6; Dean Spade, *Normal life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Duke University Press, 2015) at 40–44.

scholarly contribution of this special issue and perhaps of trans legal studies more broadly. Trans experiences and identities were, and are still, used as theoretical standpoints without accounting for the materiality of trans lives, especially of those on the margins.⁹ In response, trans studies have invested in deconstructing theory by bringing forth the worldviews of its subjects of inquiry.¹⁰ Inspired by Dean Spade's call to stop believing that "what the law says about itself is true and what the law says about us is what matters,"¹¹ this special issue is attuned to ways the law contributes to everyday experiences of exclusions, while acknowledging the protections it may grant in some circumstances.¹²

Trans legal studies is a global movement, and while this special issue places itself within that wider academic community, it also focuses its gaze on the Canadian context, carving out a space to reflect on trans law reforms in Canada and their limitations. The special issue starts with an introduction by Brenda Cossman and Robert Leckey followed by the keynote discussion at the "On the Margins of Trans Legal Change" symposium by Dalia Tourki and Viviane Namaste. It centres Canadian scholars from diverse disciplines who study law and society in both English and French: Dan Irving and Nathan Hoo untangle the dynamics of employment discrimination; William Hébert looks at the realities of trans people's lives in Canadian prisons; Kyle Kirkup, Lee Airton, Allison McMillan, and Jacob DesRochers assess how human rights protections of gender identity and expression are implemented within Ontario schools; Leon Laidlaw explores university students' experience of gender-segregated spaces; Samuel Singer argues for agile, pragmatic, and intersectional legal strategies for trans justice that go beyond human rights law; Florence Ashley unpacks the limitations of the Quebec trans legal subject; Jake Pyne juxtaposes the autistic and trans legal subject in relation to conversion therapy, and Alexandre Baril and Marjorie Silverman consider end of life planning for trans people with dementia.

Still, this special issue is only the beginning of a much longer and much needed conversation accounting for the colonial history of Canada and reflecting on the limits of the law's ability to allow trans emancipation in the absence of Indigenous and Black self-determination. We hope that the scholarship presented in this special issue helps redirect the focus of trans legal studies towards the needs of those most affected by systemic anti-trans violence and discrimination. Following the critical legacies of Sylvia Rivera, and Jamie Lee Hamilton, we hope that the theoretical and methodological contributions of this special issue help encourage trans movements to reach out and (re)connect with other groups, communities, and individuals whose lives are systematically marginalized. At this pivotal moment of formal trans equality amidst continued marginalization for many trans people, trans legal studies has the

⁹ Viviane Namaste, *Invisible Lives: The Erasure of Transsexual and Transgendered People* (University of Chicago Press, 2000) at 18–20.

¹⁰ Susan Stryker, "An Introduction to Transgender Studies," *The Transgender Studies Reader 1* (2006) at 3–4.

¹¹ Spade, *supra* note 6 at 71.

¹² Namaste, *supra* note 7 at 113–120.

potential to interrogate the power of law to exclude in ways that go far beyond the scope of gender identities and experiences.

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