



## Introduction

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**Brenda Cossman and Robert Leckey**

This special issue, *From the Margins of Trans Legal Change*, gathers nearly a dozen texts. Many of the contributors are scholars with longstanding engagements with trans communities. There are significant contributions from emerging scholars and prominent scholars in trans studies in Canada. A number of the articles were workshopped during the symposium by the same name that took place at McGill in 2019. Collectively, the papers are striking for the intellectual and activist energy they exude. By centring the lives and experiences of trans people, they invite us to think differently about law—its oppression and violence, but also its potential to improve the conditions of trans people and others. The diversity of the papers' subject matter reflects a challenge for trans legal activists: law's interaction with trans people—to use a neutral term—is diffuse and distributed. It runs across areas of federal and provincial jurisdiction. It ranges across areas that include criminal law, family, health, education, and immigration. Despite this diversity and variety, the papers share a number of themes or sensibilities.

The contributors manifest a shared consciousness that they are undertaking research and activism in a moment that follows fast, substantial legal reform. The legal landscape for trans people has changed drastically in the past decade, even just in the last five years. Some of the most basic needs of trans people are much better recognized in law than they were, particularly access to identity papers. As the articles show, some questions for trans legal studies thus bear on how legal subjects—official and unofficial—operate in the reconfigured space that follows formal legal reform. Other questions considered arise from legal notions such as accommodation, including whether new inclusions generate fresh exclusions. At the same time, there is a sense that, although much has changed in the statute book and case law, the difficult material conditions of trans people collectively have not been equivalently ameliorated. Access to employment, to education, and to adequate medical care remains uneven or illusory for many trans people. The articles' sensitivity to such material conditions aligns with the focus of activists such as Jamie-Lee Hamilton on poverty and addiction, among others, and with a broader tradition of trans activism that attends to poverty within marginalized communities more than the gay and lesbian movement often has.

We see a recurring commitment to the concrete, the quotidian, and what is experienced or felt, including affect. The authors know their Butler and other touchstones of queer theory, but several of them appear less interested than

previous cohorts of, say, queer scholars in the high theory of poststructuralism and postmodernism. There is some attention to legal sources as literary and social texts, but even this ties back to law's concrete effects, which, for many trans people, are violent. There is attention to the nitty gritty of trans people's everyday life, for example, in prison, in the labour market, and in schools. Though not all authors in the special issue are legally trained, there is repeated engagement with legal texts that directly affect people's lives—be it the Civil Code of Québec, decisions around parenting, or the toolkit of litigation strategies. Several papers engage with storytelling. The symposium from which most of these papers issue similarly embodied the authors' commitment to law in the everyday lives of trans people, combining closed sessions to workshop the papers with public events, including a public lecture for lawyers, advocates, and community members to provide an update on recent trans legal changes in Canada.

The essays are located at numerous intersectionalities. Many explore the ways in which trans identity intersects with other identities and axes of power. In several cases, the work is informed explicitly by critical race theory and black feminism. The papers engage with issues of disability, aging, youth, and indigeneity, with the different bodies of scholarship developed around these issues, and with their particular intersections with trans identities.

The trans legal studies developed in this collection refuse both simple dichotomies and stable identities. There are moments of refusal described in the collection. In the keynote, Dalia Tourki mentions a woman who refuses to change her ID to avoid losing her legal identity in her country of origin. Without wanting to go back, Viviane Namaste draws lessons from the pre-reform context, which required people to find the strength to live without expecting state recognition. There is a refusal of law's centrality but equally of its insignificance. The essays refuse this either/or, as well as the dichotomy of inclusion versus transformation. The essays similarly refuse stable identity categories, exploring instead the contingencies of sex and gender categories, as well as the many other intersecting identity categories of trans people. There is tension between the essays' criticism of stable identities and activist efforts to secure legal space for trans people through changes of names and sex designations, additions of a third gender, or the elimination of the requirement to declare a legal gender. Trans people were already protected under the category of sex, before the legislative reforms specifically recognized trans people in antidiscrimination statutes, by adding new legal boxes in the form of gender identity and gender expression. The essays raise questions of meaning and implications of state recognition while unsettling legal categories.

The essays engage in a robust interdisciplinarity or transdisciplinarity. They engage with law, but several of them do not centre law. Indeed, there is stringent critique of law: how it collaborates in unequal distributions of goods and life chances, how assumptions that trans people can and should deploy legal instruments can rest on ableist assumptions about who can use those instruments (and perhaps on neoliberal ideas of personal responsibility). The collection is located in a tradition of critical analysis of law, building on the insights of law's limitations. Like the critical legal studies, critical race studies, feminist legal studies, and queer legal studies that have come before, the collection develops trans legal studies in a way

that explores the contradictory nature of law reform and legal rights. Formal legal rights, while not insignificant, are interrogated for what and whom they leave out. The papers offer an analysis of law from the perspectives of the many trans people who remain vulnerably located at its margins. In so doing, the project decentres law and its institutions. The focus is not on legislatures and courts, but rather on the ways law is granular and quotidian, dispersed and tentacular. Law is elsewhere, acquiring meaning in everyday locations, from schools and university residences to care facilities. These participants in trans legal studies are not as anchored to specific legal fields, notably criminal law and family law, as much as gay and lesbian activism and scholarship was, at least for a time. As Dalia Tourki remarks, too, that a significant difference between trans existence and lesbian, gay and bisexual people's existence is the former's reliance on the collaboration or solidarity of doctors and others in the medical field.

Just as queer theory took longer to insinuate itself into legal scholarship than it did in the humanities, trans studies have perhaps moved further in other areas than in the legal academy. Its arrival in law is kinetic and transformational. Trans legal studies may be informed by the insights of critical legal movements that have gone ahead, but it is asking new sets of questions, unearthing long naturalized assumptions, and demanding that we look at law anew.

The work of the scholars featured here, including emerging ones—and the superb keynote conversation between Viviane Namaste and Dalia Tourki—gesture to the potential for trans legal studies to continue its development. The upshot of this work will prove stimulating and beneficial to legal scholars far beyond trans constituencies. We might add, cautiously, that much as the collection shares, there are hints that trans legal studies, like feminist and queer studies before it, will need to navigate tensions and disagreements. Indeed, the category of “trans” risks homogenizing internal differences. Of course, as Viviane Namaste mentions at the outset of the keynote, it's possible to welcome difficult conversations in which participants disagree with one another. As hinted in the keynote, over time, the field will likely grapple with tensions between the voices and relative privilege of trans men versus trans women and with the relation between those who advance a trans non-binary identity and those who find it violent to be asked their pronoun. Trans studies will also need to further address the urgent issues of race and poverty. While many of the essays take up various intersectionalities, further disarticulation of the homogeneous category of “trans” may be required. The high rates of violence against trans women of colour need to be centred, alongside the very real challenges of access to health care for poor and low-income trans women and men. As suggested in the keynote, for trans migrants and indigenous women, trans activism will need to account for the intersectionalities that may focus on very different legal priorities, such as immigration law and sex work decriminalization. Perhaps the very way in which trans legal studies has so far refused stable categories may provide some way forward. In any event, don't adjust your set.

Far be it for us—two older white, queer, cis scholars—to predict where trans legal scholars will go next. We are honoured to be able to support the emerging scholars featured in this collection from the sidelines, seeking where we can to open some academic doors, to encourage their scholarship, and otherwise to cheerlead

these brave and brilliant new voices. We have learned tremendously from each of our interactions with the contributors—in some cases over a number of years, in others during the symposium—and from their essays. As this collection demonstrates, the future of trans legal studies is in excellent hands.

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