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INTRODUCTION



Introduction: gender, sexuality, and the law

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This issue of *Global Discourse* is the product of a multidisciplinary scholarly collaboration focused on questions related to gender, sexuality, and the law. As editors, we sought to foster a scholarly collaboration that integrated principles of gender equity into the process of developing this issue. This collaboration began with a workshop held at Drake University during October 2018.¹ We invited scholars representing multiple disciplines from different global regions. Contributing scholars also are at different stages in their academic career. We are pleased that our efforts to diversify contributing scholars has helped produce a special issue with a rich set of contributions, though we acknowledge that the special issue would offer an even more valuable perspective had we succeeded in recruiting an even more diverse set of contributing scholars from a broader range of disciplinary backgrounds and geographic regions. Much work remains to be done to ensure broad, inclusive scholarly discussions about gender, sexuality, and the law.

Throughout the research process, we asked contributors to engage in robust, productive scholarly exchange. At our fall workshop, we placed papers in research clusters focused on specific dimensions of gender, sexuality, and the law. Research Cluster 1, with papers by Baldez (2018a, 2018b), Bunting (2018a, 2018b) and DeLaet (2018a, 2018b) focus primarily on international law as a mechanism for addressing women's rights and gender equity. The papers by Camminga (2018a, 2018b) and Mills (2018a, 2018b) in Research Cluster 2 explicitly examine global issues related to sexuality and gender equity. In Research Cluster 3, papers by Cramer (2018a, 2018b), Cote Hampson (2018a, 2018b) and McNulty (2018a, 2018b) focus on national law and policies related to gender equality. Although all participants in the workshop offered feedback on each paper, scholars in each research cluster took primary responsibility for reviewing and providing critiques of the other papers in their cluster. We asked contributors to put their pieces in conversation with each other, explicitly identifying and engaging in discussion around common themes, points of tension or disagreement, and lingering questions raised by each article considered collectively. The productive nature of these purposeful efforts to foster scholarly dialogue is evident in the articles and replies published here. We also sought to model a scholarly process with an emphasis on equity by including undergraduate students in the scholarly collaboration. Numerous Drake students participated in the fall workshop at Drake and had opportunities to observe the scholarly conversations and to offer their own critiques to the presented papers. A select few of these written student replies are included in the special issue.

This special issue represents the culmination of the scholarly discussions we began at the workshop at Drake in October 2017. Subsequent to our in-person discussions at the workshop, we continued to engage in discussions and to offer feedback on questions related to gender, sexuality, and the law. Although each contributor offers different conclusions about the relative value of the law, the contributions here reflect synergy about the challenges of exclusively relying on a top-down conception of the law as a tool for pursuing social and political change around women's rights and gender equity. The rule of law is an essential part of functioning democracies, and reliance on law and legal claims-making is standard practice for advocates in international and domestic contexts across a range of issues. However, it is not at all clear that formal legal rules and venues are the best places for human rights and equity to be achieved.

For women's rights and gender equity in particular, reliance on formal legal rules may be problematic, as law itself is critiqued as patriarchal, hierarchical, and rigidly formal in ways that do violence to women's claims, as well as the claims of LGBTQ people. Indeed, many feminist scholars note a marked failure of law to achieve the goals laid out in legislation, international treaties, and constitutional articulations of rights.

Yet, rights and law are important – incredibly so – and often useful in given contexts. They provide aspirational norms that can be mobilized to hold institutions accountable and to provide material benefit to those excluded from systems of power. The fundamental questions, then, involve how, and when, formal law is useful for attaining gender equity in international and domestic law. And, when is it limited in utility? The contributions to this special issue offer divergent answers to these questions. In conversation with each other, the pieces help to advance our understanding of both the limitations and the potential of law as a tool for advancing democratic participation, rights, and justice around issues related to gender and sexuality.

The first three articles in this issue examine international law as a potential mechanism for advancing women's rights and gender equality. Within this cluster of articles, the first article, by Debra DeLaet (2018a), points to the failure of international human rights law (with a specific focus on the *Convention on the Elimination of Discrimination against Women*) to generate systemic change globally. In her examination of Cuba's participation in the *Convention on the Elimination of Discrimination against Women* in the next article, Lisa Baldez (2018a) offers a relatively more positive assessment of the potential for international human rights law to transform human rights outcomes Baldez when states participate in treaty reporting processes. Annie Bunting (2018a), in the third article in this cluster, examines Ugandan victim survivors' views on the prosecution of crimes against humanity at the International Criminal Court. Bunting offers a mixed perspective, whereby international criminal trials may provide political space for meaning-making and historical documentation even if they do not provide for restorative justice, healing, or gender equality.

The second set of pieces in this special issue focus specifically on gender, sexuality, and the law. In their examination of asylum law, transgender identity, and sexual orientation in South Africa, B Camminga (2018a) considers the tensions that arise when a person is seen as transgender or presumed to be transgender while not self-identifying as transgender during the process of asylum-seeking. Elizabeth Mills (2018a) focuses on embodied experiences of inequality under the wall through an examination of the ways in which international discourses and institutions shape domestic legal frameworks governing gender and sexuality, particularly in determining which bodies are made visible, effaced, or entirely ignored.

The final articles in this issue closely examine the law and policy-making in domestic contexts.

In her examination of midwife assisted homebirth in the United States, Renée Cramer (2018a) points to the limits of law in securing reproductive freedoms due to the gap between doctrine and legislation, and implementation as well as the contingent and constitutive relationships between law and transformational change. Sarah Cote Hampson's (2018a) piece, the next in this research cluster, looks at 'family friendly' policies in the United States, such as maternity leave, and concludes that these policies create and reinforce stereotypes that exacerbate rather than alleviate tensions around work/life balance. In the final piece, Stephanie McNulty (2018a) examines state-mandated participatory budgeting in Peru and concludes that the political spaces meant to empower all citizens actually (re)produce fundamental gender inequities.

Each of the articles in this special issue point to the limitations of the law as a tool for generating transformative change in support of women's rights and equality. Yet, contributors acknowledge, to varying degrees, that law has important symbolism and may be used as a lever to mobilize change. At the same time, other pieces offer cautionary notes about the potential downside risks and unintended consequences of relying upon law in pursuit of women's rights and gender equity.

The scholarly conversation in this special issue indicates that several fundamental questions remain. What is the role of law in creating social change? Are the role and efficacy of law different in the particular cases related to gender and sexual equality? If so, why? Are pragmatic approaches to gender equality too piecemeal to be effective? Does law meet its promise most fruitfully, in incremental and gradual approaches that allow cultural change to catch up to more progressively-minded policies? Or, does culture more usefully lead in areas where transformational change is desired – creating a groundswell for better practices, that law later formalizes?

Clearly, law alone is insufficient to drive change in support of the expansion of women's rights and gender equity. Yet, the authors in this issue offer divergent viewpoints about the extent to which law is necessary or potentially beneficial towards these aims and whether alternative strategies that circumvent formal law are more promising. In doing so, these articles demonstrate the usefulness of having practitioners, scholars, and those impacted by policies in conversation with each other, especially as part of a process of clarifying goals and assessing results. They point to the promise of additional research on how those meant to benefit from law and policy are impacted by particular rules and laws. And, these articles indicate a disjuncture between policy-makers and legislators, and the on-the-ground reality of the policies and laws in action. In the disjuncture between the promise and expectation of legal reform, and the lived experience of those laws, scholars might also find creative approaches and workarounds implemented by the people, whose hopes may have been disappointed by legal change.

It is quite likely that law is more than one thing, to all of those involved in using it to achieve gender and sexual equality. Indeed, these articles show us that law is a tool, a lever, a symbol, a word to mobilize around, a strategy to mobilize with, a disappointment, and, a victory.

Note

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