



Trans Justice and the Law: From Then to Now, From There to Here: A Conversation between Dr. Viviane Namaste and Dalia Tourki

ON THE MARGINS OF LEGAL CHANGE PUBLIC CONFERENCE KEYNOTE*

Viviane Namaste and Dalia Tourki

The following is an edited transcription of the keynote presentation at the SSHRC-funded conference *On the Margins of Trans Legal Change*. This public conference was hosted by McGill University's Faculty of Law and Institute for Gender, Sexuality and Feminist Studies, in partnership with Thompson Rivers University's Faculty of Law. The keynote presentation was a conversation between Dr. Viviane Namaste and Dalia Tourki, where they asked each other questions.

Keynote Speakers

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Introduction

VN: We are really excited to be here tonight. Originally, two other women were going to be involved in this keynote, but they ultimately weren't able to participate.

* Many thanks to Stephanie Weidmann, Faculty of Law, Thompson Rivers University (2020) for her work on transcribing and revising the keynote into article format, and to Charles Girard for his translation of this article from English to French.

One is Jamie-Lee Hamilton, and the other is Nora Butler Burke. Even though they weren't able to be here, we're still going to talk about some of the important work they've done and are currently doing. Hopefully, we'll be able to inspire some reflections on what Jamie-Lee and Nora also bring to the table and the learning that they foster among us.

We want to use this opportunity to deepen our reflections and maybe even to ask some difficult questions. It's actually been quite exciting to listen to different critiques and questionings going on about trans legal reform and trans legal rights at this conference.

Our approach for this talk isn't necessarily going to be issue-based. We might not agree amongst ourselves, and I think that will actually be really nice. We want to take this opportunity to think about some of the current challenges concerning trans people and the law, and also what we can learn from the history of the trans rights movement.

Let's jump in.

DT: I want to add that the opinions that I'm going to express are my own, and do not reflect the views of the organization where I work, that is the Centre for Gender Advocacy.

Legacies of Trans Activism

DT: As Viviane said, Vancouver activist Jamie-Lee Hamilton was supposed to be part of this keynote. Unfortunately, she was not able to participate. Hamilton is a long-time activist in Vancouver, working on issues including Indigenous rights, the decriminalization of prostitution, housing, access to services for trans people, and democratic accountability.¹ We thought it would be constructive and important to speak about the legacies of her activism. *What are, according to you, Viviane, the legacies of Jamie-Lee Hamilton? What can we learn from these legacies, and why do they matter?*

VN: There are two things that I wanted to highlight for those of you who might not be familiar with Jamie-Lee Hamilton's work. The first is that in 1998 she was organizing around violence against sex workers in general. Jamie-Lee has an extended history living and working in Downtown Eastside Vancouver, and noticed, like other women in her community, that women who were working on the streets were disappearing. Not just one or two women but multiple women.

Jamie-Lee wanted some kind of accountability from the police and from the mayor's office, and she was continually shut down. I first met Jamie-Lee in 1994, and when we first met, she mentioned that there might be a serial killer targeting women in the Downtown Eastside. She couldn't get a meeting with the mayor.

¹ See, for example, Becki Ross and Jamie-Lee Hamilton, "Loss Must be Marked and it cannot be Represented: Memorializing Sex Workers in Vancouver's West End," *BC Studies* 107 (Spring 2018): 9–38; and Becki Ross, "Outdoor Brothel Culture: The Un/making of a Transsexual Stroll in Vancouver's West End, 1975–1984," *Journal of Historical Sociology* 25, no. 1 (March 2012): 126–50.

It can be one of the most frustrating things as activists when you can't even get in the door to have a conversation about institutional reform or accountability. So Jamie-Lee organized an action in 1998 where she dumped sixty-seven pairs of stiletto heels on the steps of city hall in Vancouver, to bring attention to missing and murdered Indigenous women. I think it's essential to begin with that action, because now in 2018 we see the National Inquiry into Missing and Murdered Indigenous Women and Girls happening. It is front-page news now, but in 1998 it wasn't.

There are two important lessons to take away from this. The first is that you have to think carefully about the tactics you will use to get those critical meetings to happen. You have to be deliberate in how you engage in media work, not just to represent yourself, but also to represent your political aims. In Jamie-Lee's case, she wanted a meeting with the mayor, so she decided to create a fuss so that he would be embarrassed and agree to have a meeting.

Activisms with an "s"

VN: The second lesson from Jamie-Lee Hamilton's work is fundamentally about addressing the realities of trans workers in the Downtown Eastside. Her action wasn't organized under the banner of trans, it wasn't organized under the banner of gender identity, but it's still a significant legacy in the history of trans activism and trans organizing.

Another example of Jamie-Lee's work directly addressing the realities of trans workers in the Downtown Eastside is that in the late 1990s she opened what she called "Grandma's House." It was a safe place for sex workers in the neighbourhood to hang out during the day, but they could also bring their clients and do their dates there.

Jamie-Lee was charged by the Crown for running a bawdy house. Once the Crown realized the terrible optics, they dropped the charges. If you read the *Bedford*² decision around the decriminalization of prostitution in 2013, it refers to Grandma's House and cites it as a kind of model example of community organizing. Again, she fundamentally organized around questions of violence and questions of labour and created a place for trans women to survive economically.

DT: Jamie-Lee's activism is activism with an 's'. She also fought for tenants' rights, for the right to disagree with rent increases and for poor residents to stay in their homes and not be expelled. Add to that, workers' rights. At one point, Jamie-Lee even owned a clothing store that was also a food bank. That clothing store/food bank was, in addition, a drop-in place where trans sex workers could meet and even bring their dates there.

² *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101[*Bedford*].

Note, too, that on April 4, 2018, she gave a testimony during the National Inquiry into Missing and Murdered Indigenous Women and Girls, where she brought forth both her experience and other sex workers' experiences with violence. In her testimony, she insisted that the justice system, especially the Vancouver police, hadn't only failed workers in the sex trade but was also complicit and even a perpetrator of that violence. She insisted that sex workers, whether women, trans and cis, two-spirited, or boys, were considered "disposable" and "throwaways" and that representatives of the justice system itself continue to target the most vulnerable, especially Indigenous women and girls in the sex trade. Her testimony and the work she has done shows the extent to which her activism goes beyond advocating for trans women under the banner of gender identity or inclusion. Her activism is mainly, to me at least, the epitome of how solidarities between communities happen and how expansive and intersectional activism and advocacy can be.

VN: I mentioned earlier that one of the things we hope to reflect on is questions of history and how that can help our thinking in the current context. With that in mind, **Dalia**, *I wanted to ask you what you consider to be particular historical events, campaigns or key issues that might help us think about what is happening in the current moment regarding trans people and the law.*

DT: The first example that comes to mind is relatively similar to Jamie-Lee Hamilton dumping those 67 stiletto heels in front of the Vancouver city hall. In 2015, Jennicet Gutierrez interrupted Barack Obama in the White House by shouting "stop the deportation of trans women and release LGBTQ migrants from detention centres."³ She did it during a meeting that was supposed to be celebratory, a lot of people from the LGBTQ community had gathered at the White House to celebrate the legalization of gay marriage. Interrupting the President of the United States at such a meeting was a radical action, a "wild antic" as Jamie-Lee would put it. It brought a lot of media attention to the cause, the same way Jamie-Lee did when she dumped those stiletto shoes.

Those kinds of actions have the power to force us to reflect on those still marginalized communities that can be left out of the conversation when the law advances. In the case of Gutierrez, it was specifically the case of queer and trans migrants left out of lesbian and gay legal advances, and we'll definitely come back to this topic later.

There are other examples of key historical events we need to be aware of while reflecting on what is happening in the current moment regarding trans people and the law. ASTTeQ (Action Santé Travesti(e)s

³ Matthew Weaver, "Transgender woman heckles Barack Obama at White House gay pride event," *The Guardian*, June 25, 2015. <https://www.theguardian.com/us-news/2015/jun/25/barack-obama-heckled-transgender-woman-gay-pride-white-house>

et Transsexuel(le)s du Quebec) was co-founded by a woman whose trans friend was denied access to three different detoxification programs and eventually died because of this. This woman decided to create a trans health advocacy and support organization and do the work that needed to be done. Once again, this gets us thinking about those who are usually outside or at the margins of legal change.

While we are talking about this, I think it is crucial that we don't forget about the Civil Rights Movement and how that influenced the current state of minority rights and the acquisition thereof. The Civil Rights Movement was really the genesis of many marginalized people speaking out and saying that we need legal protection and equal legal rights before the law. We owe a lot to the Civil Rights Movement, as much as we owe to the racialized and sex-worker trans women who started what is called today "the gay liberation movement." Those are a few different examples, one from the 50s and two that are more recent. To me, all of them are pivotal when thinking about the current legal climate and those who are left out of many of the activist discussions.

VN: I just want to offer a bit of history regarding ASTTeQ. I am not the sole founder of ASTTeQ. A lot of people think I founded it by myself, but that isn't the case. It was co-founded. The woman I worked with to create ASTTeQ was so affected by what happened to her friend that she came to me and said that we have to do something. I told her that I knew how to write grants, and that's where it started.

The right to be loved—both by one's self and by others (and the fundamentals of organizing)

VN: I want to segue here Dalia, because you referred to gay community movements and often in talking about trans people and the law, there's a comparison with lesbian and gay movements. *People sometimes claim that trans people are 25 years behind the lesbian and gay movement. Homosexuality was de-pathologized in 1973, but gender identity disorder is still pathologized to a certain extent. To that end, I was wondering what you think of those comparisons and analogies.*

DT: When comparing the trans movement with the gay and lesbian movement, there is a very important element that is almost always forgotten; trans people have a special relationship with doctors and the medical field. That relationship is vital for a great majority of the trans community. Unlike the rest of the LGBTQ community, trans people need the medical assistance or collaboration, or solidarity, or whatever you want to call it, that doctors bring into the equation. That is one of the significant differences between trans existence and the existence of lesbian, gay, and bisexual people.

Another difference to be kept in mind is that at the heart of the gay liberation movement was the fight to love freely. However, *when we talk about trans people, we are mostly talking about the right to be loved*

at all, by both one's self and by others who are around you. Those are major differences that encapsulate different needs and trajectories: the relationship to the medical field and whether the advocacy is more oriented towards freely loving others, or loving and accepting one's self and being loved at all.

VN: I want to add that when you look at the history of lesbian and gay movements, before the 1980s, in the writings, in the organizing, people spoke about lesbian and gay *liberation*. It was absolutely a kind of left, counter-cultural movement. If that's the community with which there are lessons to be learned in solidarity, that's great, I'm down for that.

But as of the 1990s, lesbian and gay communities and the focus of their organizing and legal reforms were about state recognition that facilitates the legal transfer of property. By that, I mean gay marriage, pensions, and things like that. All of that is important. Equality before the law, it is absolutely essential. But Dalia referred to the founding of ASTTeQ being about women who could not access detoxification services for drug use. Well, I don't hear a national lesbian organization clamouring for equal access for the addicts in their community. I'm going to really go out on a limb and say lesbian and gay communities don't have any lessons to give trans communities in that regard. Our own trans organizing has always sprung from questions of poverty. Some lesbians and gay men have a long history of activism around poverty, but I don't think it's the current tenor of the gay and lesbian rights movement.

DT: That actually brings me back to the legacy of Jamie-Lee Hamilton and how the first people that she worked with and for were actually the poor. Her work started from the concrete realities that poverty created within marginalized communities.

Learning from the past: Beyond state recognition

DT: The next question is related to a challenge to the *Civil Code of Québec*⁴ that the Centre for Gender Advocacy and co-plaintiffs have brought against the government of Quebec. As it stands currently, the *Civil Code of Québec* discriminates against trans and non-binary migrants by refusing to legally recognize name and gender changes until a person has been a Canadian citizen and domiciled in Quebec for at least one year. The Civil Code also requires parents to check either the mother or father box on birth certificates and doesn't allow for any changes if a parent transitions or is non-binary.

With that in mind, discussions about trans people and the law often consider the specific problems or barriers to full equality and what

⁴ *Civil Code of Québec*, CQLR c CCQ-1991.

strategies, legal and otherwise, will improve the situation. But analysis of these issues does not usually reflect on what can be positive about a situation in which legal recognition or equality is not possible. ***In your view, is there actually something that could be deemed positive or productive regarding the absence of legal recognition? What if we think about legal unrecognition, could there be moments of positivity or a good impact or outcome to not actually having legal recognition?***

VN: That question brings to mind my experiences doing front-line work in the 1990s, providing trans people with access to information and services. To give you a bit of historical context, in the 1990s, a trans person could not legally change their name and or sex before surgery in Quebec. But one needed to demonstrate social integration, through employment or at school, to access surgery. So, people were caught in situations where they didn't have identity papers, but they needed jobs.

Of course, the situation has changed now, and that's absolutely a good thing, so please don't misinterpret what I'm saying. But something that was actually fantastic was that it allowed me as a front-line worker to very clearly set out the lay of the land. At that time, working with trans people was about helping them figure out how to live their reality. If you were someone born male and you wanted to live and socially function as a woman, but you were not interested in genital surgery, then you would never have identity papers. I could tell them that they would need to get their sense of validation and affirmation of self from themselves. Not from the state. Not from the bank. Not from going to the video club. From themselves. And if they couldn't do that, that was okay. It didn't mean they weren't trans, it meant that they were living in a social context in which they made the decision not to transition. We all make decisions about how to avoid inflicting violence on our lives.

This situation created trans people who were so strong. It created trans people who learned very quickly that recognition from the other doesn't matter. There are moments when I actually yearn for those days because so much of the focus right now in the media and on social media are stories about washrooms or the use of pronouns. It is about people and their need for recognition *in the moment*. What was great about a context in which there was no state recognition is that I could say to some people that they would never be recognized. That signing up for this often meant a life of profound marginalization. I could tell them that the chances of living in poverty were high. But those who would go down that path were incredibly strong.

That meant understanding that people would misgender them and that they would never have the right documentation. But they also figured it out. It didn't stop them from flying and getting on a plane. It didn't stop them all from enrolling in school. It didn't stop them all from getting a job.

We shouldn't go back to that time when trans people couldn't change their papers. But there is something instructive about a social context which required people to gather enough strength to live without the expectation of recognition in the immediate moment. Many trans people I see now, have that expectation. They want that recognition *now*. That's okay. It's a different world.

DT: It is okay, and it reminds me of a trans woman that I met a couple of months ago who actually said to me that she didn't want to change her identity papers. As you know, migrants who are not Canadian citizens yet are still not able to change their ID in Quebec. She told me that even if the law changes, she will not change her ID. Every time she shows them to a service provider, that person looks at her and asks her whether it really is her in the photo. She gets euphoric and amused by the situation, and she confidently affirms "yes, that's me." She isn't willing to give up those moments.

I also know another woman who still refuses to change her ID because she doesn't want to lose her legal identity in her country of origin. She still goes back to her country of origin—her father is a rich man—she wants to legally inherit from her father and have her inheritance. If she does change her ID, she might not have access to that inheritance.

There are many situations where one might choose to not change their ID. For some, there are positive outcomes to not wanting to have that legal recognition. But yes, as you said, legal recognition is still important for a majority of trans people, and that's also why we have brought a lawsuit against the Quebec government. Keep in mind though that, in the examples I gave, I was speaking about exceptions to the rule.

“There are washrooms for people like you...”

DT: The next question. As you all know, some people, perhaps especially those who are not affiliated with specific activist communities, have reservations about policy and law rooted in a concept of beyond the gender binary.

Briefly, *some transsexuals argue that they have worked hard to obtain recognition within the binary. They see certain strategies which promote the non-binary as setting a dangerous precedent for trans people in which the law and policy-making see all trans people, including transsexuals, as part of a third or 'other' category. Do you, Viviane, have any thoughts on this issue? What would be your recommendation of things to keep in mind when these issues are addressed in law and social policy?*

VN: My short answer is, it's complicated. My longer answer is actually a shout out to the organizers of this conference because I think this is precisely the kind of venue we need, where we can get together as trans people and have conversations, including difficult conversations,

about what are the appropriate legal strategies. I come from a community of transsexual women, not all of whom want or wanted genital surgery, but who will refer to themselves as transsexuals, who don't want to be asked what their preferred pronoun is. They want people to call it like they see it and find being asked their pronouns quite violent. These are transsexual women who have no affiliation to queer, and who literally threw themselves under a car if they saw a cop coming down the street. They worked really hard to have a gendered position within a gender binary. For me, that's part of a legacy and a history that I can't renounce, and I don't want to renounce.

It was interesting doing the work around the lawsuit against the government of Quebec.⁵ When I worked with the lawyers, I told them that we need to have a long conversation around the use of my expertise. There was discussion around using the term 'parent' as an option for non-binary gender people. I told them that if it's framed as an option and the judge understands that, then fantastic, great, I'm good with that. The concern that many transsexual women with whom I'm in contact articulate is that, certain political strategies advocate for a recognition of "trans" as separate, but they can foreclose recognizing trans people, simply, as men or women. People I work with are concerned, then, that with such strategies, people will say to them, "Well, there are bathrooms for people like you." Or "Well, there's an 'X' now so put that X on your passport."

That is why I think the organization of this event is so important, and why I wanted to take part. It allows us to have those difficult conversations and ask how we can put this together. How do we work with communities, many of whom, if you listen carefully over the past day, talk about a conjunction of trans as LGBTQ?

If you enter into the trans world, you're not part of the gay world. That's just how it's organized historically in the context of Quebec. That then raises conceptual but also pragmatic questions around how you organize your law reform and how you organize your policy.

I think that we can actually find solutions that are going to work for everyone. But I think we need to have those difficult conversations, because we might end up in a situation in which culturally, socially and even at the level of policy and law, trans people who are deeply invested in a binary are somehow inscribed as *not* in a binary.

You can hear it in the language we use. People will say, "we welcome men and women and trans people," as though trans people aren't men and women. If you are a transsexual woman listening to that, you will be alienated. I'll tell you, many women I know, who are not here today, that's their response to these kinds of remarks.

⁵ See *Centre for Gender Advocacy c Québec (Attorney General)*, 2015 QCCS 6026; *Centre de lutte contre l'oppression des genres (Centre for Gender Advocacy) c Québec (Procureure générale)*, 2016 QCCS 5161.

DT: Non-binary people have existed for centuries. Specifically, in Quebec and amongst First Nations, there are concrete historically documented examples of the existence of people who are considered to be either a third gender or outside the binary or fluid in their gender. However, when it comes to legally recognizing these identities it might be helpful in these difficult discussions we're having to consider when the non-binary identity came to exist theoretically in our time and to what extent it is related to queer theory. It may also be helpful to examine the extent to which it is sometimes—I'm not saying all the time—rooted in wanting to make a statement on gender.

Many transsexual women and transsexual men, people who generally define their gender identities within the binary, in their definition and representation of who they are, do not want to make a political statement on gender. And you know what, it is okay to just want to be able to go to the post office, take your parcel and be seen, addressed and recognized as a woman and go back home and have no interest whatsoever in any self-reconceptualization, reworking, and re-embodiment of gender other than being a woman, in its most traditional definition. Many among us have fought for their right to be recognized as men and women, and should not feel alienated because of not wanting to challenge the binary.

Saving the Trans Child: Allyship Beyond Trans Youth

VN: *In recent years, we have seen an inordinate amount of interest in trans youth—evidenced in popular culture, institutional policies, and research. Dalia, I'm wondering if you have any particular thoughts on this interest in trans youth specifically.*

DT: Unfortunately, it's only when trans youth are in the picture that people tend to become invested in a debate or a conversation about trans people. In that debate, on the one hand, you have trans people and allies who fervently advocate for "saving the child" by supporting and affirming trans youth's identities and journeys. On the other hand, you have anti-trans people who also want to "save the child," but to save them from trans people and from the so-called "trans agenda." What the two sides agree on is that the child needs to be saved.

The questions that I ask are: where were all the supporters and the allies when the child was out of the picture? Where were that allyship and solidarity before trans youth became the face of the trans movement? Trans history tells us that there have been—and still are—other faces to trans existence. For a long time, trans sex workers were the face of the movement. Other times, although stereotypically and in an effort by the media to ridicule trans women, trans women who don't pass have been the face of the trans existence. However, it seems to me that allyship and solidarity from cis people did not happen until—unless?—trans youth became centred.

The other question to ask is, who is this child? Most of the trans youth that we meet, see in the media, or read about in studies and research reports, are youth who come from privileged backgrounds. In many research projects centring trans youth experiences in Canada, one of which I used to coordinate, socio-demographic data shows that many of these youth had parental support and were pretty much okay. Some of them even came from academic milieu where they got to read and study gender and sexuality. Many of them were children of well-off parents. Shouldn't we maybe then ask where the other youth are? The racialized youth? The Indigenous youth? The immigrant youth? The poor youth? Why don't we see them and hear from them? Unfortunately, the results of a lot of research are going to be impacted by the fact that those youth we talk about, and are allies with, are relatively, sometimes very, privileged youth.

VN: From a researcher's perspective, I think the interest around trans youth is a really great opportunity to think about what a field of scholarship does. How does a particular object come into being? How does it circulate and why? For those of you in the room who are doctoral students or who would like to do that, the threshold of doctoral scholarship is creating original knowledge. If there is a lot of trans scholarship work right now around trans youth, what can you do that is different? Certainly, there are trans youth that are suffering, you can do research that alleviates suffering, I'm not opposed to that. But there's an occasion to do a zoom out and to ask what it could look like to work on trans issues that don't begin with that as an object of study. What might that produce?

We're going to switch gears and talk a little bit about the potential challenges, even difficulties of primarily lesbian and gay organizations that are seeking funding to work on trans issues. I'm thinking here particularly in the context of Quebec about the inclusion of trans women in women spaces and the Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel (RQCALACS). I'm wondering if you can give us your thoughts on that.

DT: Currently, there are many projects that are being funded. Usually, it's LGBTQ organizations that get the funding to work on issues impacting trans people. What happens in those cases is that, from the moment when they decide to apply for a grant and get the money to work on a project, they do not involve trans communities. They do not consult with trans communities. The result ends up being a project that is actually harmful to trans communities and goes against the very purpose of working to make the lives of trans people better.

Definitely, one of the major problems right now is the absence of consulting with trans experts on these projects. Not all trans people are experts when it comes to certain realities, especially the realities that we are talking about here. For those who do not know what the word CALACS stands for, it refers to organizations that are largely funded

by the government and work with survivors of sexual violence, they work with cis women, and now they're evaluating their accessibility and their programs in the hope of including trans women as well. However, these CALACS are known for their abolitionist positions, for being extremely anti-sex work, and they also have positions against trans women.⁶

I also want to add, before we move to the next question, that when it comes to LGBTQ organizations getting funding for projects for and about the trans community, we are so mired in this idea of capitalist productivity. What seems to matter to those organizations is getting the funding and doing the project without necessarily thinking about the results and the quality of these projects. I see, and I hear about, so many organizations that applied for this grant and did this project, and now the project is over. And I rarely hear about any positive results that the project brought forth. Currently, what these organizations think about is how to get the money and actually doing the project without thinking about how to do it and the actual result or output. It's more about productivity and getting funded than about the product and what true changes and notable benefits can come out of it.

Privatized Access to Sex Reassignment Surgeries

Trans policy and legal work often works at the juncture of law and medicine. We often have an impression that when trans people can access health services, it is either because barriers do not exist or because they have been broken down. Yet access to health services for trans people like others is embedded in the broader web of policy relations on health. What is an example of this, and why do we need to consider it? Specifically, I'm thinking of access to private partnership in Quebec when it comes to covering sex reassignment surgery.

VN: The Régie de l'assurance maladie du Québec (RAMQ) is the Quebec provincial health insurance agency. Historically, the law stated that as of the late 1970s when it came into place, sex reassignment surgery was recognized and funded. The policies required that individuals have their surgery recommended and performed at one of two recognized institutions—either the Montreal General Hospital or the Hôtel Dieu de Montréal. In the early 1980s, there was not good access, but that improved a little bit in the late 1980s. In the 1990s, that access nearly

⁶ A few months after this point was raised during the keynote presentation, six trans organizations based in Montreal, including the Centre for Gender Advocacy and ASTT(e)Q, publicly criticized the RQCALACS for wanting to include trans women in their spaces while still opposing and advocating against sex work and sex workers' autonomy and rights. See Centre for Gender Advocacy, "Position par rapport aux CALACS," July 8, 2019. An article written in French by Dalia Tourki (July 2019), and signed by the six trans organizations, was published online to reinforce the point that trans inclusion is indissociable from solidarity with sex workers. See Dalia Tourki, "L'inclusion trans ne peut se faire en se positionnant contre l'industrie du sexe," *Huffington Post*, July 8, 2019. https://quebec.huffingtonpost.ca/entry/l'inclusion-trans-ne-peut-se-faire-en-se-positionnant-contre-l'industrie-du-sexe_qc_5d23568be4b0f3125687b271

disappeared entirely. It disappeared not because the law changed, the law provided access. It disappeared because the policy said someone has to be operated on at one of these two institutions. Hôtel Dieu didn't even have a surgeon associated with them, so they were out. Montreal General had a Gender Identity Clinic that would evaluate people and recommend them for surgery, but they had no surgeon who would do that work, partly because the surgeon said the amount that the RAMQ provided to surgeons was insufficient, or they couldn't get access to the operating rooms.

In the 1990s, access was quite intermittent until some trans people formally organized and met with people and reminded them that they had a right to this surgery, but on the ground, it wasn't happening. For a while, trans people were sent to Czechoslovakia for their operations there.

There's now a kind of central administrative wicket established, so someone can have all of their appropriate medical documentation, they have their psychologist and sexologist letters put together and presented to this wicket and then access surgery through a local Montreal clinic. It's kind of great because once again, trans people have access to surgery, so I don't want to say I'm totally against this.

But what actually paves the way for that is the privatization of healthcare, opening the law so that private clinics can work with the public system. On the one hand, I think we are in a complicated situation, collectively, where we need to celebrate improved access to healthcare in Quebec. But we also need to recognize that that actually happens under public-private partnerships. That same logic is one in which you have to pay for your own bandages, or you have to pay for your ambulance, or you have to pay for whatever thing they decide is an ancillary fee. I'm not sure that's actually going to serve trans people well in the long term. I think it's important that when we think about access and law and policy, we think carefully about those kinds of issues. It's a situation where it's a businessman who works with the community, and I think they do good work, and their heart is in the right place, but they are a businessman. That isn't really then about our demands on the state. Are we okay with that? Is that, strategically, what we need to do? I don't know if we've had that conversation, collectively, as a community.

Trans Migrants Advocating on the Margins

VN: You've done lots of work around questions of migration, and *I'm wondering if you could share with us some of the ways working on issues of migration impacts trans rights or trans people and the law.*

DT: When I think about how I got involved in trans advocacy, the very beginning of this journey started with advocating for the rights of the community that I was part of and am still part of, which is the community of migrant trans people. That doesn't mean that I'm not part of other communities, of course. The important idea here is that when we started

advocating for the rights of trans migrants here in Quebec, we were a very small community of directly-affected people and allies.

I was appalled to see how many years it took to get the attention, first of people who pretend to be our allies within the same LGBTQ community, and then the attention of those who are in the positions of power and decision-making. That was one of the significant barriers, it's one of the problems that, again, pushes a lot of people to be on the margins of legal advances and trans legal progress.

In your work on transsexuals and transvestites who worked in cabarets, Viviane, there are references to at least one migrant trans woman who used to be part of that scene. Paradoxically, it took such a long time to actually centre trans migrants and include them in trans advocacy. Even today, as we see legal advances, we see the continuous marginalization of trans migrants. That needs to be thought of in relation to other communities that are part of the trans community, but are still not represented well or are still not at the centre of the current advocacy work. Nora Butler Burke's research, which explores how migrant trans women who sell sex find themselves shut out from a conjuncture of immigration law and criminal law, is a rare example of work that places migrant trans at the centre of analysis.

Another example of the marginalization of trans migrant issues is that during the trial for the lawsuit that we have against the government of Quebec, I noticed that there was a tendency in the LGBTQ community to speak mostly about youth and non-binary people, whereas initially one of the major claims for which we had initiated this trial was to finally get migrant non-citizens the legal recognition that they need to be fully integrated into society. For some reason, there was this discourse that appropriated the lawsuit to centre youth and non-binary people while erasing trans migrants and trans parents. So again, we see how certain communities get marginalized, even from initiatives that aim to centre them.

Feminism, Trans Men in Academia, and the Gender Imbalance

DT: The next question is going to be controversial.

VN: Maybe!

DT: *If we observe the work on trans issues in recent years, whether by cultural producers, policymakers or academics, we may notice that, in many cases, the vast majority of it is enacted by trans men. Of course, this is not an absolute rule, and one could certainly find instances of impressive women scholars in trans studies. But is there a gender imbalance in terms of the production of knowledge on trans issues right now in the academy and in policy or legal circles? If so, what might be necessary to intervene in this imbalance?*

VN: I'm happy to share some thoughts around this. I think that it's actually a very fascinating moment. I am a historian, and sometimes historians

wonder what we will say about something in 40 years. What will we look back on? Part of my thoughts and comments are inviting us to actually ask that question. What are we going to say about the current moment?

I'll limit myself to a somewhat specific, more academic context, meaning academic support and, dare I say it, enthusiasm around trans research and work in relation to trans issues. Much of that is located within feminist studies programs, women's studies programs, and gender/sexuality studies programs. This is not targeting individuals, I'm super happy that individual trans men have been able to find a way to survive in the capitalist system of the university. I certainly know the challenges around eking out a living in the university in which decent working conditions for a full-time worker are very difficult to obtain. That said, I think that in the current moment, if one zooms out, one sees women's studies and gender studies and sexuality studies programs have created an opportunity to teach and research around trans issues. And that it has primarily been done, and is being done, by men.

As a feminist, I do have to ask how that happened. This all came out of feminism and the glass ceiling. Are we going to look back in 40 years and be happy that we did a lot of work around trans issues, and facilitated a professional university academy for some trans people, but we facilitated that for the men? And we did it under the banner of feminism! We said we would ask some difficult questions and that is one of the difficult ones we need to ask.

But again, this is beyond individuals, this is about discovering whether there are lessons to be learned from feminism in this regard. I will go out on a limb and say that given the history of women's studies and the importance of women's studies anchored in women's lives, to have trans people and most of those people to be trans men talking about trans issues in women's studies, that doesn't cut the mustard. There's still gender imbalance and inequity there. Again, I'm happy for those trans guys who are getting jobs, I'm super happy for you, I will write you letters, if I'm not your friend. Send me your tenure file, I will review it with glee. I will do the necessary ally support, but we've got some lessons to take from the feminists. The cisgender, transphobic feminists. We've got to learn some things from them.

Beyond human rights

DT: That question brings us to the current moment, and the next question is going to bring us to the current location, which is Quebec. ***We work, at some level, in Quebec, and discussions of trans issues in English often do not consider the specificity of Quebec with its own legal tradition as well as unique protection of human rights of trans people since the early 1980s. What are some of the issues to think about with regards to trans people and the law in Quebec, and why do people outside of Quebec need to think about them?***

VN: There's a long tradition of human rights protection for trans people in Quebec, the earliest case goes back to 1982, under the ground of civil status. Another hallmark case from 1998 was on the basis of sex.

Recently, there was a big media push around C-16, which was about how trans people, trans people in Quebec don't have human rights protection. It's not true. When you say that, you are actually saying that you don't know the context of human rights law in Quebec. It's not true. Sorry if I'm doing my schoolmarm thing, usually when I'm teaching I would say "that lacks nuance, I'd like you to bring some more contradiction to this. Perhaps you might bring another perspective." But no, it's just wrong. It's just wrong. I think that's not only interesting but essential for us to think about. For those of you working in the context of Quebec, if you are working in a context around human rights work, then name sex as a ground of discrimination, there's great case law. Name civil status as a ground of discrimination.

For those outside of Quebec, it actually provides a very interesting point of comparative analysis. Often, people working on these issues in an anglophone context say "sex can't count" as the basis for a human rights or discrimination complaint. But actually, it can. There's lots of anglophone case law that demonstrates that it can. There's lots of case law which show that sex isn't just about biological sex, it's about how someone is treated based on their biological sex. It's about companies saying, "we're not going to hire you because you could get pregnant, and we don't want you to go on maternity leave." It's not just about having a uterus, it's about the institutional treatment of that person with a uterus. That's really useful, and I'm a big fan of comparative analysis, so I think people outside of Quebec should look at different models around law reform that can actually open up some different legal strategies.

We are almost out of time. Dalia, may I ask you to offer a very quick overview of some of the most important issues to think about when we consider trans people and the law?

DT: Very briefly, solidarity with migrants' rights is very important. Solidarity with sex workers is very important too. Let's not forget that the history of trans people is intrinsically tied to the history of sex workers. Policing trans migrant sex workers in Canada has created criminalized subjects who endure both criminal and immigration law enforcement, resulting in a cycle of violence and precarity.⁷

The other thing is, maybe we need to move away from those human rights-based cases—once we win ours. Focus on other areas such as employment law, immigration law, or access to social benefits.

Speaking from experience, a lot of people will come to the organization where I work seeking legal help, but unfortunately, the law, even

⁷ Nora Butler Burke, "Double Punishment: Immigration Penalty and Migrant Trans Women who Sell Sex," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Muelen, and Chris Bruckert (Vancouver: UBC Press, 2018), 203–12.

though it protects our communities, is still not accessible. We need to ask, to whom is it accessible? Who can actually get a lawyer and who actually has the strength and the endurance to go to court and stand up for their rights? That, too, needs to be thought about, especially with the increasing number of trans people who go to community organizations trying to find that legal help and who, unfortunately, can't respond or fight back—sometimes because of a lack of expertise and sometimes due to a lack of capacity. A big question to tackle is how to make the law accessible to people and not only on a theoretical level but also in daily life experiences.