Introduction

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The McGill Law Journal has put together an interesting and diverse set of papers on sexuality and the law. My aim in this short introduction is to provide one pathway through the collection, which takes as its focus the problematic of juridically inscribed sexual equality. The special issue covers three broad, interconnecting areas: sexual identity, sexual practices, and sexual community. I will discuss each of them in turn.

Sexual Identity

Against a backdrop of ongoing struggles for formal equality internationally (e.g., Daniel Borillo and Thierry Pitois-Etienne as well as Carl Stychin), the weight of this collection is turned toward Canada as a place where direct legal discrimination against lesbians and gay men has largely been outlawed. Some mopping up remains; marriage, for instance, is not yet fully cleansed (see Martha Bailey); but, for many papers in this special issue, the larger question has become: where else is there for law to go (e.g., John Fisher, Robert Wintemute). In his paper, "Outlaws or In-laws?: Successes and Challenges in the Struggle for LGBT Equality", John Fisher argues that indirect discrimination constitutes the current battleground. He suggests that litigation has proven less successful where the law is neutral on its face but applied in a discriminatory way. Nicole LaViolette makes a similar point in relation to the discretionary application of immigration law to lesbian and gay applicants. Other contributors also remark on the difficulty, as well as the necessity, of challenging seemingly impartial laws whose impact on lesbian and gay citizens is both detrimental and disproportionate.

Yet, while some forms of indirect discrimination can be successfully tackled through the courts, contributors identify the difficulties and limits that confront the judicial pursuit of equality. Many of the arguments made here echo and confirm earlier critiques: for instance, the problem courts have in dealing with systemic forms of disadvantage; their difficulty in addressing multiple, intersecting inequalities;

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evidentiary biases; the legitimation of state power and violence; and the constitution of minorities as victims. But the papers also raise, albeit sometimes implicitly, other questions about how the law engages with sexual identity: namely, are all sexual identities to be protected and valorized; is being an "identity" reason enough to acquire juridical support; what, if anything, is particular or distinctive about being lesbian and gay; and does law have any legitimate role or place within the sexual arena, beyond supporting or enhancing difference?

The troubling character of the law's identity politics circulates through several contributors' discussion of indirect discrimination. For, if disproportionate impact is to be tackled, there needs to be a clear notion of when lesbians, gay men, or others are disproportionately harmed. If indirect discrimination occurs when our "differences" fail to be accommodated, we need to know what these differences are. While some contributors highlight non-monogamy, pornography, and enjoyment of collective sexual spaces, others emphasize the less heady differences that emerge in contexts where discrimination and oppression prevail. Yet, what also surfaces in attempting to pin down gay difference is methodological diversity. Where should we look to in identifying how sexual difference is lived: to theory, legal texts, cultural imaginings, qualitative research, or quantitative data? Can any of these, alone, provide sufficient guide to knowing when indirect discrimination has occurred? And what kinds of hybrid methodologies might offer a more satisfactory response to determining disproportionate impact?

Sexual Practices

Identifying a disproportionate effect is also not enough, for regulatory structures are premised on the notion that not all things should *be*, and certainly, that not all things should *be* equally. While some papers, particularly those of Brenda Cossman and Leslie Moran, adopt a more anti-hegemonic perspective, others in this collection positively affirm the place for limits and boundaries when it comes to practice. The relationship between practice and identity is not straightforward. In this issue, Rémi Samson's article addresses the nexus between beliefs and behaviour—between essence and existence. More generally, the complexity of the way identity and conduct shape each other has been subjected to extensive analysis by scholars in lesbian and gay and queer studies. Yet while gay identity may neither produce, nor be the effect of, gay conduct, and while what each term means is itself subject to ambiguity and dispute, we can, perhaps, state that the regulation of sexual identities is closely linked to the regulation of sexual practices. And sexual practices are regulated on account of, and through, their relationship to harm.

In exploring what counts as harm, contributors to this collection focus on two kinds of practice. These are individual and collective acts, and the distribution and consumption of cultural texts. Drawing on examples that range from popular mainstream cinema (Brenda Cossman), to gay pornography (Christopher Kendall), and procreative sexual activity among adults with learning difficulties (Kristin Savell), the perspectives offered on harm, domination, and protection cover a wide

spectrum—analytically as well as normatively. Alongside divergent opinions on the role of law and, in particular, the consequences of progressive state protectionism, how courts should respond to sexual acts is underpinned by a lack of consensus on three elements: the power and impact of practices; the nature of injury; and the norms and values that ought to be affirmed.

The first cleavage is most apparent in the divergence Brenda Cossman and Christopher Kendall show towards erotic texts. These two papers, read together, raise a number of questions about the impact texts have on readers, on those persons the readers come into (sexual) contact with, and on wider society. They also ask us to consider why sexual texts leave an impression or indentation. Is it their sexual quality that renders them particularly productive and that makes the meanings they convey so seductive? Do disruptive or troubling meanings—with their inbuilt, and in turn constitutive, assumptions about what is the status quo—amplify a text's impact? Addressing these questions also requires us to think about textual reception. Work in cultural, literary, and media studies has long complicated notions of how texts are experienced and understood, rejecting the idea that there is a single message that becomes lodged in the mind of every reader or viewer. But if people's engagements with sexual texts are more complex and negotiated, does this mean that texts that eroticize relations of inequality and prejudice do not *necessarily* harm? Is harm, again, something that requires demonstrating or proving? And through what methods can such determinations productively, if not conclusively, be made?

The complexity of thinking about harm emerges in Kristin Savell's article on the sterilization of people with learning difficulties where injury to the reproductive subject, their offspring, and wider society are all thrown into the judicial mix. Savell's analysis, alongside those of Cossman and Kendall, together demonstrate how disputes over harm are underpinned by disputes over value. For instance, how central are dignity, parity, and esteem to what counts as good sex, and can good sex only ever be found in good, sexual, reproductive relationships? Is it, following Kendall's discussion, harmful to be "turned on" by the subjugation of a feminized man? And who, or what, is injured by the erotic simulation of rape?

These and similar questions have been batted backwards and forwards for some decades. At their most general, the dissensus and tensions they foreshadow is foundational to Western, liberal courts' current engagement with sexuality. For, if overt legal discrimination in nations, such as Canada, is largely tackled, delving deeper arguably depends on a shared conception of the problem that remains for the courts to tackle. But is this problem sexual conservatism, the discrimination faced by "new" sexual "minorities", neo-liberal values, or something else?

Sexual Community

The question of identifying the norms and values underpinning the courts' legitimate response to sexual diversity asks us to think about the relationship between sexual minorities and the wider polity or community. Several papers in this collection

directly address this theme. In doing so, their focus ranges from the global and national to local community standards. Global, transnational, and cross-border dimensions are addressed by Carl Stychin, Martha Bailey, and Nicole LaViolette. While Bailey and LaViolette offer close readings of recent developments in Canadian law, Stychin's contribution provides an account of lesbian and gay equality's recently acquired role in transnational arenas. In particular, Stychin's discussion addresses the way certain human rights measures, such as decriminalizing homosexual conduct, have come to provide a litmus test for global standards of national development. This process has not been an easy and uncontested one as Stychin, Borillo and Pitois-Etienne, and others address. It also has not engaged with all aspects of lesbian and gay discrimination equally—prioritizing negative rather than positive freedom, and sex acts rather than other social, interpersonal, or economic concerns. Stychin asks why lesbian and gay agenda have acquired this particular, international role. He finds one answer in their easy convergence with the broader discursive politics of human rights—a claim that resonates with an earlier generation of work that focused on the compatibility between lesbian and gay civil rights demands and modern, liberal anti-discrimination paradigms, with their shared emphasis on a non-chosen and largely immutable personal status.

Yet in considering the expanding hegemony of lesbian and gay rights, we need to ask: what statuses and positions, what ideologies and perspectives, have been written out as a result. In this collection, Bruce MacDougall focuses on the exclusion of the young. His argument weaves together age-based and sexual orientation inequality to argue that even when issues relating to gay sexuality and youths are addressed, this tends to take place in the context of adults' needs. Beyond this collection, the issue of exclusion has proved topical in relation to the promotion of gay marriage and spousal status. While critical work has addressed the marginalization of "deviant" or non-respectable sexual lifestyles, equally important is the broader exclusion of the lesbian and gay poor, particularly those without social and cultural capital, who fail to be lauded as the pioneers of inner city gentrification.

The argument has been made that giving rights and respectability to some lesbians and gay men goes hand in hand with the squeezing out of others. This bifurcated political strategy is a common one, witnessed in relation to sexual orientation regulation at many times and places. One way of reading such normative adjustments is through the resettlement and consolidation of "community standards". As both a legal term and political metaphor, this concept weaves its way through the collection. Thus, Kristin Savell explores the threat seen to be posed to the social order through the sexual acts and reproductive practices of people with learning disabilities; John Fisher addresses the application of "community standards of tolerance" in the courts' interpretation of bawdy house provisions; Robert Wintemute considers the collision between lesbian and gay community standards and those of other constituencies, particularly religious ones; and Carl Stychin argues that in different national disputes over the cultural encoding of "our way of life", the presence as well as the absence of gay rights has come to function as a key emblematic standard.

Conclusion

While many contributors adopt a positive approach to gay rights' growing domestication, as witnessed by the resettlement of national and community sexual standards, Leslie Moran offers a more skeptical reading. His analysis explores how the designation of homophobically motivated violence as a hate crime, in Britain, has incorporated lesbians and gay men into the articulation and disavowal of juridical emotion. Although Moran does not use the language of community standards, his paper raises questions about whose hate has become outlawed, and whose hate legitimized, in the production of new institutionally inscribed social norms. While Moran worries about the punitive state agenda to which lesbian and gay rights have become linked, more generally, this collection, in addressing community standards, looks two ways. While some contributors, such as Kendall, are concerned with critical and normative standards within the lesbian and gay community, others scrutinize national standards, in the light of Canada's increasingly consolidated status at the vanguard of developing lesbian and gay formal, legal equality.

At the same time, the papers, not always explicitly, raise other, more critical questions: about race, class and poverty, about transgender and intersex concerns. These issues have been explored in the Canadian context and this collection, to the extent it offers up a picture of Canada, needs to be read alongside them. It also needs to be read alongside scholarship that imports other intellectual trajectories and debates into legal scholarship, and which, in the process of doing so, also works to problematize law.

Contributors to this collection address judicial (as well as parliamentary) ambivalence about engaging with sexual orientation inequality, alongside a portrayal of law's limitations in engaging in this field. Yet, the constraints of law, and, even more, its productive bias—generating and facilitating certain statuses, desires, norms, and relations of power, while depressing others—ask us to consider where else to look for innovation and social change. How have institutional, community, technological, and social relations evolved since the pioneering "sexuality and law" scholarship of the 1980s and 1990s, and what implications do these changes have for analysis in this field?

As Carl Stychin's contribution on international human rights usefully reveals, embarking on such an analysis brings a series of normative concerns in its wake. In this collection, such concerns surface in relation to thinking about equality, authority, boundaries, and transgression. More specifically, they emerge in the ambivalence and divergence of opinion that circulates about what constitutes the good society beyond the formal, legal inscription of sexual orientation equality. While such variation allows the papers to be read alongside and, in some cases, against each other, the collection also works, as a sutured whole, to identify a particular historical and spatial juncture: that of the liberal, Western polity at the turn of the twenty-first century. It is a juncture in which, as represented by this Special Issue, echoes and tracings of past reforms and legal scholarship confront the fracturing norms of the emergent status

quo. And it is in the dissenting responses to this new sexual settlement that alliances, articulations, and cleavages outside the terms of liberal gay equality will—indeed are—being forged.