

## Introduction – Transnational Legal Feminism<sup>+</sup>

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Recent events remind us of the grave extent to which gender inequalities still persist across the world. Whether in the form of the political targeting of LGBTQ+ persons in the United States,<sup>1</sup> the ongoing oppression of Afghan women by the Taliban,<sup>2</sup> the police-sanctioned violence against women from Latin America to the United Kingdom,<sup>3</sup> veil bans targeting Muslim women from Switzerland<sup>4</sup> and France<sup>5</sup> to India<sup>6</sup>, or the ongoing struggle against sexual harassment and violence against women and marginalised genders as brought to public

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<sup>1</sup> See for example Chrissy Stroop, ‘“Don’t Say Gay”: Anti-Equality Legislation Spreading State by State in the US’ (*OpenDemocracy*, 4 March 2022) <<https://www.opendemocracy.net/en/5050/dont-say-gay-anti-equality-legislation-spreading-state-by-state-in-the-us/>> accessed 5 March 2022.

<sup>2</sup> See for example ‘International Women’s Day 2022: Afghan Women Under the Shadow of the Taliban’ (*Rukhshana Media*, 9 March 2022) <<https://rukshana.com/en/international-women-day-2022-afghan-women-under-the-shadow-of-the-taliban>> accessed 10 March 2022.

<sup>3</sup> See for example Diana Barrero Jaramillo, ‘How Latin American Feminists Shifted Global Understanding of Gender-Based Violence’ (*The Conversation*, 5 December 2021) <<https://theconversation.com/how-latin-american-feminists-shifted-global-understanding-of-gender-based-violence-173121>> accessed 4 January 2022; Damien Gayle, ‘Feminist Protesters Set off 1,000 Rape Alarms Outside London Police Station’ (*The Guardian*, 12 March 2022) <<https://www.theguardian.com/world/2022/mar/12/feminist-protesters-set-off-1000-alarms-outside-london-police-station>> accessed 12 March 2022.

<sup>4</sup> Michael Shields, ‘Swiss Agree to Outlaw Facial Coverings in “burqa Ban” Vote’ (*Reuters*, 7 March 2021) <<https://www.reuters.com/article/us-swiss-burqaban-idUSKBN2AZ07N>> accessed 4 January 2022.

<sup>5</sup> Elizabeth Pineau, ‘French Bill “democratising Sport” Moved to National Assembly’ (*Reuters*, 4 March 2022) <<https://www.reuters.com/world/europe/frances-bill-banning-hijabs-sports-events-moves-national-assembly-2022-02-16/>> accessed 12 March 2022.

<sup>6</sup> Rushda Fathima Khan, ‘Muslim Girls Wearing Hijab Barred from Classes at Indian College’ (*Al-Jazeera*, 18 January 2022) <<https://www.aljazeera.com/news/2022/1/18/india-karnataka-muslim-college-students-hijab-ban-udupi>> accessed 24 January 2022.

attention by the #MeToo movement.<sup>7</sup> When examining these injustices, it becomes clear that the ‘law’ plays a crucial role in perpetuating and reinforcing gender inequalities. As a result, feminist critiques retain their crucial significance in exposing how ‘gendered’ power asymmetries are made invisible, reinforced, or ignored by the law. The increasing cross-border nature of not only feminist ideas, but also legal actors, norms, and processes in this context calls for a consideration of the transnationalisation of both feminism and law.

The articles published in this special issue were presented at a symposium on Transnational Legal Feminism in March 2021, which intended to map the interaction between transnational feminism and transnational law. While both transnational law and transnational feminism have been developing separately for some time now, we believe that there is an increasing need for connecting the two fields under the rubric of the emerging discipline called ‘transnational legal feminism’ (TLF). Although TLF has not yet been fully defined as a field or even approach to law and feminism, a number of authors (including the editors) have begun to explore the interaction between transnational law and transnational feminism, whether implicitly or explicitly.<sup>8</sup> The Transnational Legal Feminism Symposium and this resulting special issue bring together some of the voices who have been contributing to shape the evolution of TLF from different localities and perspectives. Below we provide a brief overview of transnational law and transnational feminism and describe the similar concerns and trajectories they share as well as the potential for the benefits of engagement between the two bodies of literature. We conclude by explaining how the articles in this special issue forge a path towards that important engagement.

### *Transnational Law, Transnational Feminism, and their Intersections*

The fields of transnational law and transnational feminism have both been engaged with the increasing interconnectedness of relations and processes as well as emerging cross-border nature of different actors and norms. Transnational law, first coined by Philip Jessup in 1956, was originally to serve as a term that ‘include[s] all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories.’<sup>9</sup> Today, transnational law has advanced beyond Jessup’s initial conception to engage more broadly with the changing nature of law in light of the ever-increasing interconnectedness of social, political, legal, and economic relations. As part of that, transnational law is particularly concerned with understanding, and where necessary challenging, the actors, norms, and processes that create the current legal landscape and global governance structures (than foregrounding the role of formal law or the nation state). As a result, one conceptualisation of transnational law has

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<sup>7</sup> See for example Farnush Ghadery, ‘#Metoo—Has the “Sisterhood” Finally Become Global or Just Another Product of Neoliberal Feminism?’ (2019) 10 *Transnational Legal Theory* 252.

<sup>8</sup> See for example Ratna Kapur, ‘Transnational Law and Feminist Legal Theory’ in Peer Zumbansen (ed), *The Oxford Handbook of Transnational Law* (Oxford University Press 2021); Sital Kalantry, *Women’s Rights and Migration: Sex-Selective Abortion Laws in India and the United States* (University of Pennsylvania Press 2017); Sital Kalantry, ‘The French Veil Ban: A Transnational Legal Feminist Approach’ (2017) 46 *University of Baltimore Law Review* 201; Farnush Ghadery, ‘Contextualization as a (Feminist) Method for Transnational Legal Practice’ in Peer Zumbansen (ed), *Oxford Handbook of Transnational Law* (Oxford University Press 2020).

<sup>9</sup> Philip C Jessup, *Transnational Law* (Yale University Press 1956) 2.

characterised it as a framework for legal inquiry in today's world. As Peer Zumbansen explains, 'transnational law appears less as a legal field per se, but as a framework, consisting not only of elements of legal doctrine with immediate practical relevance, but also of a methodological architecture that allows for both a conceptual and a socio-legal engagement with law in this, irreversibly and irreducibly global, context.'<sup>10</sup> As demonstrated by the articles in this special issue, it is as this framework that transnational law can serve as an important tool that allows for a deeper understanding of the socio-legal realities of law in light of the growing cross-border nature of norms, institutions, activism, movements, and knowledge. Transnational law particularly offers the opportunity for a contextualisation of law within not only its locality of operation but also its histories. As discussed in more detail below, this carries with it an in-depth engagement with epistemic hegemonies that have dominated law and legal scholarship. By building on critical legal theory, socio-legal theory, and legal anthropology, transnational law aims to provide a space, or framework, that enables a deeper critique of law in today's interconnected world.<sup>11</sup>

The increasing ability to connect beyond one's own community or even country, also led to feminist praxis becoming more international (referring to the internationalisation of feminist thought as part of international law) as well as transnational (referring to the increase in cross border feminist movements). Within feminism, the effect of globalisation can best be seen in the emergence of 'global feminism' in the 1980s. An offspring of Western liberal feminism, global feminism is marked by ideas such as the 'global sisterhood', a phrase coined by Western feminist Robin Morgan in the 1980s, global feminism suggests the existence of a nexus between all women in the world based on their mutual oppression at the hands of patriarchy.<sup>12</sup> Through this bond of 'sisterhood,' women were meant to address gender inequalities and resist the patriarchy.

The critical feminist scholarship and practice in the years that followed, however, brought to light that the idea of a 'global sisterhood' was predominantly based on white Western women's experiences, needs, and priorities. Black, post-colonial, and transnational feminism were particularly significant in challenging such mainstream white and Western approaches to feminism.<sup>13</sup> Nonetheless, the Western ethnocentric universalisation of women and their experiences quickly made its way up to the international legal level. As reflected by developments such as the United Nations 'Women's Rights Are Human Rights' agenda, international human rights law has been struggling with the monolithic conceptualisation of women's rights and gender equality as rooted in liberal theory.<sup>14</sup>

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<sup>10</sup> Peer Zumbansen, 'Transnational Law: Theories and Applications' in Peer Zumbansen (ed), *Oxford Handbook of Transnational Law* (Oxford University Press 2020) 5.

<sup>11</sup> *ibid* 16.

<sup>12</sup> Robin Morgan (ed), *Sisterhood Is Global* (Anchor Press 1984).

<sup>13</sup> See for example Angela P Harris, 'Race and Essentialism in Feminist Legal Theory' (1989) 42 *Stanford Law Review* 583; Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1984) 12 *boundary 2* 333; Vasuki Nesiah, 'Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship' (1993) 16 *Harvard Women's Law Journal* 189; Vasuki Nesiah, 'The Ground Beneath Her Feet: "Third World" Feminisms' (2003) 4 *Journal of International Women's Studies* 30.

<sup>14</sup> See for example Ratna Kapur, *Gender, Alterity and Human Rights - Freedom in a Fishbowl* (Elgar Publishing 2018); Inderpal Grewal, "'Women's Rights as Human Rights": Feminist Practices, Global Feminism, and Human Rights Regimes in Transnationality' (1999) 3

In line with transnational and post-colonial feminism, transnational legal feminism challenges and critiques Western ideas of ‘global’ or ‘international’ feminism and exclusionary conceptualisations of gender equality, as found in the current international legal framework. Instead, it argues for cross-border feminist and legal praxis that considers the different subjectivities and ideas of individuals, as influenced by distinctive cultural, historical, and social contexts. Western hegemonies, which have come to permeate large parts of the feminist literature from the Global North, are questioned and contested as part of this paradigm. In the words of Inderpal Grewal and Caren Kaplan, key voices in the development of transnational feminism, ‘postmodern articulations of difference and global connections can be used to reify dominant social relations, or they can be used to oppose the hegemony of Western imperial culture.’<sup>15</sup> Transnational legal feminism, as interpreted as part of this special issue, aims to contribute to the realisation of the latter. Influenced by the powerful work undertaken by Global South feminists and by feminisms developed in the Global South, we regard transnational legal feminism as an opportunity for scholars and practitioners to widen their sites of knowledge production beyond the hegemony of the West.

The potential for a methodological alliance between transnational law and feminist theory is therefore evidenced in this epistemic inquiry undertaken by both fields, indicative of self-reflection. Asking ‘bigger picture’ questions, transnational legal scholarship has been interrogating its own epistemological bases, particularly with reference to postcolonial theory.<sup>16</sup> Learning from critical approaches to international law, such as Third World Approaches to International Law,<sup>17</sup> transnational law encourages the acknowledgement of colonial legacies and other Western hegemonies of international law and its epistemic foundations.<sup>18</sup> As discussed, through a process of self-reflection as well as critique, feminist theory has also been invested in the consideration of ‘a broader set of questions about the production of knowledge.’<sup>19</sup> Engaging with Foucault’s understanding of critique, Judith Butler asks ‘[w]hat is the relation of knowledge to power such that our epistemological certainties turn out to support a way of structuring the world that forecloses alternative possibilities of ordering?’<sup>20</sup> Both feminist theory and transnational law have been attempting to engage in such

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Citizenship Studies 337; Inderpal Grewal, *Transnational America - Feminisms, Diasporas, Neoliberalism* (Duke University Press 2005).

<sup>15</sup> Inderpal Grewal and Caren Kaplan, ‘Introduction: Transnational Feminist Practices and Questions of Postmodernity’ in Inderpal Grewal and Caren Kaplan (eds), *Scattered Hegemonies: Postmodernity and Transnational Feminist Practices* (University of Minnesota Press 1994) 7.

<sup>16</sup> Peer Zumbansen, ‘Transnational Law as Socio-Legal Theory and Critique: Prospects for “Law and Society” in a Divided World’ (2019) 67 *Buffalo Law Review* 909, 932.

<sup>17</sup> For an introduction to TWAIL see Makau Mutua and Antony Anghie, ‘What Is TWAIL?’ (2000) 94 *Proceedings of the Annual Meeting (American Society of International Law)* 31; James Thuo Gathii, ‘TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography’ (2011) 3 *Trade, Law and Development* 26.

<sup>18</sup> Zumbansen, ‘Transnational Law as Socio-Legal Theory and Critique: Prospects for “Law and Society” in a Divided World’ (n 20) 949–950.

<sup>19</sup> Brenda Cossman, ‘Feminism in Hard Times’ in Ashleigh Barnes (ed), *Feminisms of Discontent* (Oxford University Press 2015) 7.

<sup>20</sup> Judith Butler, ‘What Is Critique? An Essay on Foucault’s Virtue’ in David Ingram (ed), *The political: Blackwell readings in continental philosophy* (Blackwell Publishers 2002) 214.

an epistemological inquiry into the relationship between knowledge and power.<sup>21</sup> Based on this mutual call for critique, and consequently a greater engagement with alternative epistemic communities, transnational legal feminism presents the opportunity to interrogate and challenge the dominant epistemic foundations of both international law and feminism, and crucially of their intersections.

Transnational feminism and transnational law further share their concern with the transnationalisation of social, political, economic, and legal relations and the effects of these developments for different communities and societies across the world. When originally devising the theory of transnational feminism, Grewal and Kaplan noted how increasing transnational economic links at the time made ‘multilocational and multinational approach’ to feminist theory imperative.<sup>22</sup> Since then, the transnationalisation of not only economies but also other spheres of life, ranging from the legal to the social and cultural, has increased; not least illustrated by the cross-border reach and effect of movements such as #MeToo. As such, the need to acknowledge the effects of increasing global order on questions of gender and feminist theory has been highlighted by transnational and post-colonial feminists.<sup>23</sup> The increasing attention given by transnational feminism to the changing global governance landscape further points to commonalities with transnational law.

Highlighting the contribution that transnational law can make to understanding ‘law and its connections with ongoing investigations into local and global forms, institutions and processes of governance,’ transnational legal scholars have called for ‘an inquiry into the role of law in context’ through the consideration of the diverse actors, norms, and processes that both legal scholarship and practice are faced with as a result of globalisation.<sup>24</sup> Thus, the increasing cross-border nature of various actors, norms, and processes, as triggered by the transnationalisation of social, political, economic, and legal relations, has featured prominently in the work of both transnational feminists and transnational legal scholars, and therefore, presents further opportunities for an interdisciplinary inquiry under the heading of TLF.

We have identified some of the ways in which transnational law and transnational feminism have been interacting and overlapping with each other. We have also proposed new paths for more cross-fertilization of the two bodies of literature. As the contributions to this special issue demonstrate, there are a variety of different ways in which the emergence of ‘transnational legal feminism’ can be observed and interpreted. Consequentially, the contributors approach

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<sup>21</sup> See for example Ratna Kapur, ‘In the Aftermath of Critique We Are Not in Epistemic Free Fall: Human Rights, the Subaltern Subject, and Non-Liberal Search for Freedom and Happiness’ (2014) 25 *Law and Critique* 25; Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Duke University Press 2003); Zumbansen, ‘Transnational Law as Socio-Legal Theory and Critique: Prospects for “Law and Society” in a Divided World’ (n 20); Cossman (n 23).

<sup>22</sup> Grewal and Kaplan (n 19) 3.

<sup>23</sup> See for example Mohanty (n 25) 10.:

‘My intellectual preoccupations in the 1980s focused on the way the “West” colonizes gender, in particular, its colored, racial, and class dimensions. Now, almost two decades later, I am concerned with the way that gender matters in the racial, class, and national formations of globalization.’

<sup>24</sup> Peer Zumbansen, ‘Transnational Law, Evolving’ in Jan Smits (ed), *Encyclopedia of Comparative Law* (2nd edn, Elgar Publishing 2012).

TLF from different angles and diverse perspectives, while also demonstrating common themes that run through their articles.

### *Overview of Articles in Special Issue*

The articles in this special issue raise important debates and themes arising from transnational legal feminism. First, several authors engage with the limitations of international law and legal discourse. Cheah W.L. critiques the Tokyo Women's Tribunal commitment to positivist law, including human rights, in its judgment on the sexual enslavement of 'comfort women' during the Second World War. Farnush Ghadery shines a light on the limitations of international human rights law by drawing attention to alternative feminist resistance practices rooted in music as part of contextualised struggles for gender equality. Second, several contributions highlight the importance of contextualising feminist legal solutions and strategies. Sital Kalantry and Shireen Moti point out the ways in which the Istanbul Convention universalizes legal solutions as it relates to 'honour crimes' instead of designing strategies that are context-specific. Josipa Šarić reminds us of the importance of understanding feminist movements in their locality of operation through the example of the #MeToo movement's manifestation in Croatia. Third, the authors challenge the persisting colonial legacies within international law and its consequences for questions of gender equality, as highlighted by Siobhan Yorgun in the context of the International Refugee Convention. Fourth, the contributors illustrate how the analysis of newly emerging legal phenomena can benefit from an interdisciplinary approach that connects transnational law with transnational feminism. Thus, Miriam Bak McKenna and Maj Grasten connect transnational labour law with decolonial feminist theory to examine the outsourcing of domestic care work to female migrant workers in Denmark.

A common thread connecting the articles in this special issue is a discontent with the firmly established Western hegemony within both international legal and feminist praxis. The contributors demonstrate how international law and scholarship can benefit from an increasing engagement with post-colonial, anti-imperial, decolonial, and transnational feminist scholarship in its attempt to grasp law and legal phenomena that surpass national or even international boundaries. By identifying the limitations of current international law scholarship and practice, the aim of the Transnational Legal Feminism Symposium and the articles published in this special issue is to chart a path towards the potential that an interdisciplinary approach building on transnational feminism and transnational law can have for the study, research, and practice of law in today's world.