

Transgender  
RIGHTS

*Paisley Currah*

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*Shannon Price Minter*

EDITORS

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## Introduction

*Paisley Currah, Richard M. Juang, and Shannon Price Minter*

**In the past thirty years**, the transgender movement in the United States has gained surprising visibility and strength. In the legislative arena, transgender advocates have successfully fought for inclusion in nondiscrimination and hate crime laws in several states and dozens of municipalities. More than two hundred employers, including some Fortune 500 companies, and more than sixty colleges and universities now include gender identity in their non-discrimination policies. In 2004, overturning decades of prior case law, a federal court of appeals ruled for the first time that transgender people who are discriminated against in the workplace are protected under Title VII of the Federal Civil Rights Act of 1964, which prohibits discrimination based on sex. Trans activists have formed hundreds of social service and advocacy organizations, such as the Transgender Law Center in California, the Sylvia Rivera Law Project in New York, and the International Foundation for Gender Education. In several cities, trans activists have created community gender identity centers and clinics to counterbalance the power of doctors, therapists, and psychiatrists. Every major LGB national organization has changed its mission statement to include transgender people. In higher education, trans people are no longer simply an “object” of study in abnormal psychology textbooks. Rather, transgender issues have become a topic of serious and respectful inquiry in virtually every scholarly field, from medicine to political theory, and scholarly works by trans authors are now widely available.

At the same time, violence and discrimination against transgender people persists in daily life. In 2003 Gwen Araujo, a transgender teenager from a small town in Northern California, was murdered by a group of young men who beat her to death with a shovel after discovering that she had male genitalia. The attorneys representing the young men argued that their clients' actions were justified by Gwen's "deception" in not disclosing her transgender identity to them. Far from an isolated event, Gwen's brutal murder was one of thousands of similarly lethal hate crimes against transgender people that have been documented by the community Web site, Remembering Our Dead. While this epidemic of actual violence goes largely unnoticed by the mass media, it is an ever-present reality for transgender people—and especially for transgender women, who are most often the victims of such crimes. This vulnerability is amplified in prisons and jails, where transgender prisoners typically are housed by their birth sex and where transgender women are particularly vulnerable to rape by both fellow prisoners and guards.

The legal status of trans people in other arenas is equally precarious. In the past few years, appellate courts in Texas, Kansas, Ohio, and Florida have ruled that transsexual people are prohibited from marrying; in three of these cases, the courts held that marriages of many years' duration were null and void, simply because one of the spouses in each case was transsexual. In 2002 a federal court in Louisiana ruled that it was not discriminatory for Winn-Dixie to fire Peter Oiler for occasionally cross-dressing outside work. In prior decisions, federal courts routinely have excluded transsexual people from any protection under federal nondiscrimination laws, thereby leaving employers free to fire transsexual workers at will. In many states, obtaining a driver's license or birth certificate that reflects one's new gender is extremely difficult; in some, it is impossible.

In short, while the gains won by the U.S. transgender movement are impressive, most transgender people still are deprived of any secure legal status. In the eyes of the law in most states, they are nonpersons, with no right to marry, work, use a public bathroom, or even walk down the street in safety.

### The Movement

What does transgender mean? Since about 1995, the meaning of *transgender* has begun to settle, and the term is now generally used to refer to individuals whose gender identity or expression does not conform to the social expectations for their assigned sex at birth. At the same time, related terms used to describe particular identities within that broader category have continued to evolve and multiply. As new generations of body modifiers and new social formations of gender resisters emerge, multiple usages coexist, sometimes

easily, sometimes with much generational or philosophical tension: *transvestite*, *cross-dresser*, *trannie*, *trans*, *genderfuck*, *genderqueer*, *FTM*, *MtM*, *trans men*, *boyz*, *bois*. Transgender is an expansive and complicated social category.

The term *transgender* offers political possibilities as well as risks. Any claim to describe or define a people or a set of practices poses the danger of misrepresenting them. The danger is not trivial; distorted representations lead readily to misguided advocacy. The term can, at times, mask the differences among gender nonconforming people and risks implying a common identity that outweighs differences along racial and class lines. Nonetheless, there is also considerable value in a term that can draw together people who believe that individuals should have a right to determine and express their gender without fear, stigmatization, marginalization, or punishment.

One particular area of tension is the inclusion of intersex people in the definition of transgender. Intersex activists argue, rightly we think, that being intersex is not the same as being transgender. Being intersex denotes, according to Alice Dreger, "a variety of congenital conditions in which a person has neither the standard male nor the standard female anatomy."<sup>1</sup> The attempt simply to assimilate intersex identities and political interests within a transgender rubric too often has meant ignoring the urgency of ending the surgical mutilation of intersex children. In this collection, we hope to make some connections visible without erasing the specific concerns of the intersex movement. So while this collection is titled *Transgender Rights*, we have included an important court decision about an intersex child and a critical introduction to the case. We do so on the grounds that, while transgender and intersex politics refer to different constituencies and have significant differences in their goals, the materials we are publishing here nonetheless grapple with questions of autonomy and gender self-determination. In doing so, we hope to acknowledge the specificity of intersex rights without abandoning an awareness of the interconnections between the interests of transgender and intersex peoples.

Ultimately, the effectiveness with which the transgender movement addresses the diversity of its constituents will depend less on finding a satisfactory vocabulary and more on how actual strategies for social change are implemented. The same is true for creating effective connections with people who do *not* see themselves as transgender. Put simply, the movement's effectiveness will depend heavily on who benefits from its successes.

Ultimately, *transgender* refers to a collective political identity. Whether we have psychological features in common or share a particular twist in our genetic codes is less important than the more pressing search for justice and equality. *This book is not concerned either with supporting or with refuting any*

*claims about why we exist.* It is a matter of fact that trans people conceive of themselves in many radically different ways: as transsexual women and men who have always known that they were female or male; as genderqueers living in an existential rebellion against the biopolitics of the dominant society; as butches who move complexly among lesbian and transgender identities and communities; as quietly androgynous femme boyz. Despite their profound differences, these groups all share a common political investment in a right to gender self-determination.

In practice, *transgender* is a useful term in many contexts, yet insufficiently inclusive or too imprecise in others. Many activists organize directly under the transgender rubric: the National Transgender Advocacy Coalition, the National Center for Transgender Equality, the Transgender Law and Policy Institute, and the Massachusetts Transgender Political Coalition. Other activists have embraced what appears to be a more universal term, *gender*: the International Foundation for Gender Education, Gender Education and Advocacy, the Gender Rights Advocacy Association of New Jersey, and Gender-PAC. Still other groups such as FTM International and American Boyz use more gender-specific labels to describe their constituencies. Nonetheless, when these groups seek justice and equality for people whose gender identity or expression contravenes social norms, they become facets of the same movement.

### The Work

This collection evolved out of the contributors' ongoing intellectual and activist projects. Responding to the realities of transgender political work, these essays implicitly reflect many of the goals and principles enunciated by the International Bill of Gender Rights (IBGR). Produced in 1993 by the International Conference on Transgender Law and Employment Policy, the IBGR offers an important public articulation of the aspirations of transgender people. Written in the discourse of civil and human rights, it begins by declaring that "all human beings have the right to define their own gender identity regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role." The IBGR goes on to call for the following freedoms and rights: freedom of gender expression; equal employment opportunities; freedom from involuntary psychiatric diagnosis and treatment; freedom to form sexual, familial, and marital relationships; freedom to control and change one's own body; access to competent medical and professional care; access to gendered space and activities; the right to have and adopt children; the right to nurture and have custody of children. We provide the full text of the IBGR in this book as an appendix.

To many nontransgender people, such aspirations might seem surprisingly ordinary. However, this collection implicitly argues that the radical dimensions of the transgender movement arise neither from simply claiming that trans people are "normal," which we certainly are, nor from claiming that we are "exceptional," which we also are, but from arguing that being transgender is eminently compatible with all else that comes with being human, the ordinary as well as the extraordinary.

### Law

Until recently, nondiscrimination laws did not define sex or gender. Consequently, it was left to the courts to decide whether discrimination against trans people should be recognized as a type of sex discrimination. The judiciary's record on this issue has been poor. The exemplary case in this area is *Ulane v. Eastern Airlines*, a 1984 case that is still binding precedent. In *Ulane*, a federal appellate court found that the plaintiff, a transsexual woman, was not discriminated against on the basis of sex. Rather, the court explained, "it is clear from the evidence that if Eastern did discriminate against Ulane, it was not because she is female, but because Ulane is a transsexual—a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear to be female."<sup>2</sup> The court's evasive logic has seemed weak even to people equipped with only a dictionary's definition of transsexuality; after all, it seems hardly an affront to reason to think that, if it is wrong to fire someone for being a woman, it is equally wrong to fire someone for becoming a woman. Nonetheless, this decision, and scores of others exactly like it, is symptomatic of the broader patterns of exclusion and misrepresentation faced by transgender people in the law.

Trans activists have put their energies into changing both laws and cultural perceptions. Perhaps the most visible strategy used to counter judicial hostility has been to ask legislatures to define sex, gender, or even sexual orientation within nondiscrimination laws so as to explicitly include trans people, or to add a new category, usually gender identity. At the same time, trans advocates have drawn on the tools provided by other civil rights movements to change the judiciary's understanding of who counts as a person deserving of protection. In "Gender Pluralisms under the Transgender Umbrella," Paisley Currah examines how, in both legislative work and litigation, trans advocates have worked to counter the dehumanizing legal decisions that construct the gender of trans people as outside the realm of legal protection. Trans advocates have made strategic choices, he argues, to frame rights for types of persons, rather than rights for particular practices (such as speech), in order to

place gender nonconforming people firmly within the compelling legal and cultural logics of the civil rights tradition.

Cases involving marriage and other gendered legal arrangements may demand other modes of advocacy. In “The Ties That (Don’t) Bind: Transgender Family Law and the Unmaking of Families,” Taylor Flynn observes that “we live in a highly gendered society where sex distinctions have significant legal consequences, particularly within the realm of the family—these distinctions affect issues including whom you can marry, whether you can inherit your spouse’s estate, or whether you provide an ‘appropriate’ role model for your children.” Taylor explains that in cases involving marriage and child custody, trans advocates largely have stayed within the bounds of the existing gender paradigm, arguing that trans men *are* men and that trans women *are* women, rather than attacking the state’s ability to define one’s legal gender.

In “The Roads Less Traveled: The Problem with Binary Sex Categories,” Julie A. Greenberg argues that the law’s role in gender assignment is multifaceted and contradictory. Reviewing both legal constructions of sex and current medical data, Greenberg argues that the legal assumption that sex is fixed and binary is fundamentally at odds with current medical knowledge and practice. Greenberg’s work lays the groundwork for reversing the commonly held assumption that the body provides a much simpler, more clear-cut, and secure foundation for legal sex classification than gender self-identification.

Challenging medical models in which differences are pathologized has been central to transgender politics. In doing so, activists have followed a critical path opened up by the disability rights movement. Jennifer Levi and Ben Klein provide a detailed exploration of that intersection in “Pursuing Protection for Transgender People through Disability Laws.” For decades, disability rights activists have suggested that the problem for people with disabilities lies not in their bodies but in the social architectures—legal, physical, normative—that turn a physical or cognitive difference into a disability. Similarly, transgender activists have targeted the physical, legal, and social structures—from sex-segregated bathrooms to legal sex-classification systems—that prevent trans people from functioning as equal economic, social, and civic actors. At the same time, some trans people and trans allies have felt profoundly uncomfortable with the use of disability rights laws for trans advocacy. This is a consequence, ironically, of having fallen prey to the stigmatizing discourse surrounding disability. Levi and Klein ask that trans persons reconsider their reluctance; while the fear of reinforcing our own pathologization is not to be dismissed lightly, such a fear stems from a fundamental misunderstanding of contemporary disability rights advocacy.

Workplaces can be precarious for trans people. Kylar Broadus, who was forced to leave his own job after transitioning in the workplace, explores the evolution of employment discrimination case law for transgender people from the vantage of both an attorney and an unsuccessful litigant in his own case. In addition to describing the emergence of a new judicial receptiveness to sex discrimination claims by transgender people, Broadus addresses the personal significance not simply of winning or losing but of finding one’s humanity either mirrored or occluded by the law. For transgender people, the law often has been a source of terrible disempowerment and loss; conversely, Broadus argues, the emergence of a new recognition and respect for transgender people in the courts can be a source of great political power.

While trans advocates argue for the centrality of gender self-determination, intersex activists are engaged in a related struggle to give intersex people the right to self-determination and to resist surgical mutilations that attempt to produce, as the intersex activist Cheryl Chase notes, “normatively sexed bodies and gendered subjects through constitutive acts of violence.”<sup>3</sup> At present in the United States, there is no substantive right to bodily autonomy and integrity for intersex infants and children. In a groundbreaking 1999 decision, however, Colombia’s highest court ruled that the interests of intersex infants and children should be weighed. We publish here, for the first time, selections in English of this decision, translated by Nohemy Solórzano-Thompson. Morgan Holmes frames these selections with her essay “Deciding Fate or Protecting a Developing Autonomy? Intersex Children and the Colombian Constitutional Court” and outlines the significance of the decision’s emphasis on autonomy and consent. Holmes also reckons with the limitations of the precedent, observing that “the ruling does not actually recognize intersexuality as an integral feature of one’s being.” What remains to be affirmed is a substantive right to bodily autonomy and integrity.

### History

Transgender civil rights struggles arise within a complex historical context in which the transgender movement is visible as both an important social movement in itself and part of a broader fabric of struggles. In “Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion,” Shannon Price Minter reminds us of the historical interdependence of transgender and lesbian, bisexual, and gay communities. He identifies the key question raised by our interlocking histories to be “not whether transgender people can justify their claim to gay rights, but rather how did a movement launched by bull daggers, drag queens, and transsexuals in 1969 end up viewing transgender people as outsiders less than thirty years later?”

In “Transgender Communities of the United States in the Late Twentieth Century,” Dallas Denny, the founder of several major transgender organizations, traces an often-overlooked genealogy of formal and informal community building by gender nonconforming people. In an effort to track the emergence of transgender self-identification and community, Denny offers a portrait of tumultuous interactions, from uneasy compliance to the outright refusal by trans people of pathologizing and criminalizing discourses. In Denny’s essay, the development of a medical understanding of transsexuality is only one branch, and by no means the dominant one, of transsexual and transgender history. Her work makes visible a fuller palette of networks, writings, groups, and gatherings.

Transgender organizations develop in the midst of larger social changes: Willy Wilkinson offers an account of community organizing around the AIDS crisis. The vulnerability and marginalization of trans people in the public health arena were brought into stark relief by the epidemic’s disproportionate impact on trans women. It became an epidemic that demanded a community response. In “Public Health Gains of the Transgender Community in San Francisco: Grassroots Organizing and Community-Based Research,” Wilkinson offers a case study of how trans people successfully engaged with non-trans researchers and policymakers to document the specific health-care needs of trans people and create changes in service provision.

### Politics

Transgender discrimination is not simply a consequence of private distastes; individual acts, from instances of employment discrimination to hate crimes, are made possible and channeled by public ideologies and a host of social and economic structures. In turn, the politics of the movement must address broader structural realities. Dean Spade, in “Compliance Is Gendered: Struggling for Gender Self-Determination in a Hostile Economy,” expands the work of feminist theorists who have explored the impact of welfare regulation on women and shows how such regulations enforce gender conformity and magnify the economic marginalization of trans people. Spade notes that mainstream LGB organizations have tended to focus too narrowly on the needs of middle-class constituents. An effective trans movement, he argues, must be grounded on antipoverty work, the widening of economic opportunity and redistribution, and the decriminalization of poverty.

Similarly, in “Transgendering the Politics of Recognition,” Richard M. Juang argues that discrimination against people of color and discrimination against transgender people are, in fact, “two faces of one ideological coin.” Through an analysis of the rhetoric associated with two historically pivotal

deaths, Tyra Hunter and Vincent Chin, Juang argues for the importance of a politics of recognition that addresses both racial and gendered forms of discrimination.

While this collection cannot fully represent the political concerns of transgender people across the globe, it is important to note that the United States is neither alone nor at the “forefront” of transgender activism. Indeed, a rich critical dialogue has emerged in national and transnational settings in which the United States is only one locale among many. Many U.S. activists are aware of the recent decision of the European Court of Human Rights in *Goodwin & I v. United Kingdom*, which held that the UK’s refusal to permit transsexual people to obtain new birth certificates or to marry in their new gender violated the European Convention on Human Rights. As a result, the UK passed in 2005 the Gender Recognition Act, which allows transsexual people to apply for legal recognition of their new gender, including the issuance of new birth certificates.<sup>4</sup> The development of transgender rights in countries outside the United States and Western Europe may be much less familiar to activists here. In an effort to bridge that gap, in “(Trans)Sexual Citizenship in Contemporary Argentina” Mauro Cabral and Paula Viturro analyze the ideological conditions within which transsexual and transgender people have emerged into legal visibility in Argentina. To an extent, the compromised status of “(trans)sexual citizenship” that Cabral and Viturro identify in Argentina is similar to the constraints faced by trans people in the United States. However, Cabral and Viturro also explore the specific and in many respects quite unfamiliar legal and ideological demands placed on transsexual and transgender persons within the context of Argentinian law.

Drawing the collection to a close, Judith Butler and Ruthann Robson explore the meaning and risks of a politics of normalcy. As Butler observes in “Undiagnosing Gender,” the diagnosis of gender identity disorder (GID) remains one of the primary interfaces between service providers and trans persons, particularly transgender children and youth. Butler asks, what is the price demanded by the diagnosis in terms of the autonomy it constrains and the behavioral and psychological norms it imposes, even as it appears strategically useful to gain access to resources and recognition? The design and structure of GID diagnosis creates, she argues, a paradoxical situation in which “it is possible to say, necessary to say, that the diagnosis leads the way to the alleviation of suffering, and it is possible, necessary, to say that the diagnosis intensifies the very suffering that requires alleviation.”

In “Reinscribing Normality? The Law and Politics of Transgender Marriage,” Robson highlights the assimilationist tendencies of transgender marriage litigation. The discourse concerning transgender marriage, Robson

argues, “too often serves to recapitulate and reinscribe the most traditional visions of marriage and heterosexuality.” Marriage is not simply a private emotional union but a state-sponsored mechanism for the distribution or denial of economic resources. In short, Robson asks the thought-provoking question, how “normal” do we want to be and who bears the costs of that normalcy?

Many of the scholars—-independent or institutionally located—who contributed to this collection are also, often primarily, advocates for trans people. By foregrounding the political concerns and efforts of trans people, we hope this collection helps shift the center of gravity for intellectual work about transgender people. There is a substantial body of literature in the law, social sciences, and humanities in which trans people appear; however, in much of this work, we tend to be used as exciting examples of the subversion or reification of gender, the undiscovered edges of legal discourse, or some hot new cultural underground. That we are persons with a complex or unacknowledged relationship to state and civil society is often forgotten. This collection strives to be an act of intellectual production that does *not* situate trans people as a means to an end or an intellectual curiosity but considers the well-being of trans people as an end in itself.

These essays bring trans people’s activism into view, articulate the specific civil rights challenges we face, and offer a range of concrete perspectives and strategies. While the essays in this collection do not address every type of discrimination faced by transgender people, we hope they provide a real sense of the many types of activism propelling the transgender rights movement. This collection also reflects the current state of the transgender movement and of civil rights activism generally. The essays here generally express a liberalism and a humanism that prize individualism, freedom, and autonomy. Almost certainly, this is not a sufficient political agenda. For the moment, it is a necessary one.

### Foundations and Futures

If we return to foundational questions, perhaps the most important one to ask is, simply, “why rights?” For some, the rolling back of the gains of the traditional civil rights movement and the critique of identity-based movements as insufficiently inclusive and incapable of addressing nonidentitarian concerns such as class and poverty lead to a belief that activists and theorists must find a better focus of political practice. Nonetheless, rights discourse remains the commonsense of politics in the United States. The idea of rights provides a familiar, and thus quietly powerful, lexicon through which to challenge injus-

tice. This is particularly the case when violence and exclusion are clearly targeted at particular *kinds* of persons.

What needs to change? Protections on paper are, of course, inadequate. The legal recognition of trans people is meaningful only when it is part of a larger cultural transformation. For example, although Minnesota has included trans people in its nondiscrimination law since 1993, that state’s highest court ruled in 2001 that Julie Goins had not been discriminated against when her employer told her she could not use the women’s bathroom. The judges in that decision understood quite clearly that the law prohibited discrimination on the basis of “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” Nonetheless, it seemed nonsensical to them that Goins should have access to women-only space. The success of rights-based arguments depends on creating a culture in which trans people are not just a curiosity or a perversion of nature. At the same time, struggles organized around civil rights are also a form of cultural work. For example, including transgender people in hate crime laws does not create change by enhancing penalties but by educating legislators, the media, the police, and the courts about the violence faced by trans people and by asking the public at large to side with the victims rather than the perpetrators of hate.

Why *transgender* rights? Feminism already has established the ethical and legal basis for gender equality. The idea of gender equality includes transgender people, and so it may seem redundant to argue for the specific inclusion of transgender persons in nondiscrimination legislation. Logically, transgender people already should be covered by existing gender nondiscrimination laws; discrimination on the basis of gender nonconformity is, by its very nature, gender discrimination. In practice, however, courts, civil society, and the mass media typically have failed to apply the principle of gender equality to transgender people. One reason for this broad failure of logic and imagination is that trans people have been seen as examples of sexual “deviants,” in the same way that homosexuals have been cast as gender inverts. As a consequence, the transgender movement, as Shannon Price Minter notes in this collection, has continued to be affiliated more strongly with the LGB movement than with the feminist movements that began in the 1960s and 1970s, despite significant conflicts. In the legal arena, the transgender rights movement has striven to expand the inclusivity of the term *gender* beyond its current cultural and legal boundaries; similarly, our political goals also have the potential to close the significant gaps created by the institutional separation between LGB and women’s rights advocacy.

The transgender movement is a highly accelerated and fragile reality. In thirty years, trans people have moved from meeting in secret to lobbying Congress, from being arrested for cross-dressing to mobilizing public protests against transphobic violence. We are optimistic that the goals articulated in this book will be achieved. But in reaching our goals, transgender people will not disappear as a constituency or identity. Instead, transgender political work will take on different forms and become reoriented toward other projects and goals. Achieving equality will not be an end for trans people, but the start of a dramatic widening of the cultural and social imagination. What such a new world will look like, and what the transgender generations who live in it will make of their world, remains as yet unwritten.

### Notes

1. Dreger complicates this definition: "In fact, because of ever-more discoveries of sexual variation and ever-more developments in sexual politics, medical and lay definitions of 'male' and 'female' have changed repeatedly and continue to change" (Alice Domurat Dreger, "A History of Intersex: From the Age of Gonads to the Age of Consent," in *Intersex in the Age of Ethics*, ed. Alice Domurat Dreger [Hagerstown, MD: University Publishing Group, 1999], 5–6).

2. *Ulane v. Eastern Airlines*, 742 F.2d 1081 (7th Cir. 1984), *cert. denied*, 471 U.S. 1017 (1985).

3. Cheryl Chase, "Hermaphrodites with Attitude," *GLQ* 4, no. 2 (1998): 189–211.

4. Stephen Whittle, "*Goodwin & I v. United Kingdom: What Does It Mean?*" <http://www.pfc.org.uk/legal/gimeans.htm>. See also the Gender Recognition Act information page, <http://www.gra-info.org.uk/>.

## PART I. LAW

## 8. Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion

*Shannon Price Minter*

"Is this testing whether I'm an android,"  
Rachel asked tartly, "or whether I'm homosexual?"  
The gauges did not register.

—Phillip K. Dick, *Do Androids Dream of Electric Sheep?*

The questions "what is homosexuality" and "who is homosexual" are profound questions, the answers to which have a history and an ever-evolving politics. If discussion of racial, sexual, and economic-class stratification can posit "real" answers to similar questions, . . . nothing of the kind is possible in arguments about sexual orientation. The definitional ground of study constantly reasserts itself as a source of uncertainty.

—Janet Halley, "Intersections: Sexuality, Cultural Traditions, and the Law"

We can't even get it clear among ourselves what  
we're talking about when we use the words  
"homosexual" and "gay."

—Bruce Bawer, "Confusions Reigns"

**Should the gay rights movement** expand its borders to include transgender people?<sup>1</sup> In the past few years, gay organizations have been obliged to confront this question in multiplying contexts.<sup>2</sup> Should transsexual women be permitted

to attend lesbian events?<sup>3</sup> Should gay legal organizations represent transgender clients?<sup>4</sup> Should proposed legislation to protect gay people from discrimination be drafted to protect transgender people as well?<sup>5</sup> Should gay advocacy groups broaden their missions to include transgender issues?<sup>6</sup> More generally, does it make sense to group gay and transgender people together for the purposes of social, political, and legal advocacy? In almost every case in which a dispute over transgender issues has emerged, those on different sides of these questions have approached each other with different (in some instances wildly different) assumptions about what is at stake. Lesbian and gay leaders who oppose transgender inclusion tend to assume that transgender people are outsiders with no intrinsic connection or claim to gay rights. Those who hold this view may acknowledge that transgender people suffer discrimination and deserve legal protections, but they do not consider transgender people to be part of the gay community.<sup>7</sup> From this perspective, lumping transgender issues with gay issues is like mixing apples with oranges: it is a category mistake that can lead to nothing but confusion and a loss of focus and effectiveness for all concerned.<sup>8</sup>

In contrast, many transgender people consider the gay community to be their only viable social and political home.<sup>9</sup> In part, this is because a sizable percentage of transgender people also identify as lesbian, gay, or bisexual.<sup>10</sup> More fundamentally, it is because homophobia and transphobia are tightly intertwined, and because antigay bias so often takes the form of violence and discrimination against those who are seen as transgressing gender norms. Gender nonconforming people consistently have been among the most visible and vulnerable members of gay communities—among the most likely to be beaten, raped, and killed; among the most likely to be criminalized and labeled deviant; among the most likely to end up in psychiatric hospitals and prisons; among the most likely to be denied housing, employment, and medical care; among the most likely to be rejected and harassed as young people; and among the most likely to be separated from their own children. Perhaps because of these vulnerabilities, transgender people were also, as it turned out, the most likely to fight back at Stonewall—that “moment of explosive rage in which a few transvestites and young gay men of color reshaped gay life forever.”<sup>11</sup>

From this perspective, the question that calls for an explanation is not whether transgender people can justify their claims to gay rights, but rather how did a movement launched by bull daggers, drag queens, and transsexuals in 1969 end up viewing transgender people as outsiders less than thirty years later? How did transgender people become separated at the birth of gay liberation? These are not meant to be rhetorical questions. Why do many lesbian and gay leaders view transgender issues as unrelated to gay rights? What his-

tories have we lost or failed to map in arriving at a place where transgender inclusion in the gay movement seems like a self-evident necessity to many gay people and completely illogical to many others? Why have transgender people emerged as a visible, self-identified constituency at this particular point in queer history? How is the controversy over transgender inclusion related to earlier, but still unresolved, controversies over the place of lesbians, bisexuals, people of color, working-class people, and others who have been marginalized within the mainstream gay movement? Finally, what would meaningful inclusion of transgender issues entail? Would it entail a drastic reformulation of gay politics and gay identity, as those on both sides of the question have tended to assume? Or is this assumption a symptom of the overly polarized manner in which the debate has been framed?

Despite the complexity of these questions, addressing them is important if we hope to avoid a reprise of the vitriolic intracommunity battles that periodically have derailed the lesbian and gay movement in recent years.<sup>12</sup> John D’Emilio has emphasized the dangers of treating each new controversy within the gay movement as an unprecedented crisis, with no connection to the debates or struggles of the past. “The dilemmas we face today are not new. Yet, because we have not done a very good job of keeping alive our history of political resistance, we often seem to act as if we were inventing the alphabet of movement building.”<sup>13</sup> This warning seems especially pertinent to the debate over transgender inclusion. Depending on one’s perspective, transgender people have been depicted as misguided interlopers who suddenly have wandered into gay politics by mistake,<sup>14</sup> or as the long-awaited vanguard of a radical new politics of gender transgression.<sup>15</sup> In either case, the novelty of transgender issues is greatly overstated.

While some issues raised by transgender people may be new, conflict over the relationship between gay identity and gender nonconformity is not. Changes in the social meaning of gayness have been entangled with changes in the social meaning of gender for at least the past hundred years.<sup>16</sup> Similarly, dissension over the relationship between sexual orientation and gender has been a central feature of gay politics since the homophile movement of the 1950s.<sup>17</sup> The current controversy over transgender inclusion is a direct product of these long-standing struggles and concerns. No matter how startling or novel transgender issues may initially appear, they are rooted in conflicts and tensions that have divided and sometimes polarized the gay movement from the beginning.

In what follows, I examine the current debate over transgender inclusion in this broader historical context, with the goal of moving beyond the short-term, zero-sum, all-or-nothing framework that has dominated prior discussions.

In part 1, I argue that some gay scholars and advocates have appropriated cross-gendered identities as part of "gay" history without acknowledging that these identities might just as plausibly be considered "transgender," and without being willing to acknowledge any affiliation between gay and transgender people in the present. Paradoxically, in other words, gay scholars have claimed transgender people as ancestors, but not as contemporary kin.

Part 2 traces this paradox to the emergence of an expressly nontransgender, or gender-normative, model of gay identity in the twentieth century. Part 2 also examines the class- and race-based divisions that gave rise to this model and that continue to underlie it. Class- and race-based animosities played a central role in forming a gender-normative model of gay identity, and they continue to play a central role in the ongoing devaluation of gender-variant and transgender people in the contemporary gay movement.

Part 3 identifies these divisions as a significant motivating factor in the birth of the contemporary transgender movement. At least in part, the transgender movement has arisen in direct response to the exclusion of cross-gendered lesbians and gay men from the mainstream gay movement, as described in part 2, as well as to the recognition of transsexualism as a medical condition and the availability of hormone therapy and sex reassignment surgeries.

Part 4 is a critical examination of attempts on the part of some gay and transgender theorists to outflank gay resistance to transgender inclusion by redefining gay people as a subset of the transgender community. While acknowledging the power and appeal of this approach, I argue that it is more useful as a thought experiment or tool for exposing the limitations of a rigidly gender-normalizing model of gay identity than as the foundation for a radical new approach to gay rights.

#### **Ancestors but No Longer Kin: The Anomalous Position of Transgender People in Contemporary Lesbian and Gay Scholarship and Advocacy**

Although the 1969 riots at the Stonewall Inn in New York City have long been recognized as the symbolic birth date of the contemporary gay rights movement, "movements for social change do not spring full blown into existence, like Athena from the head of Zeus."<sup>18</sup> Numerous recent histories have dispelled the myth that the modern gay movement in the United States sprang out of nowhere at Stonewall. These histories have uncovered a wealth of evidence that lesbian and gay people were building communities, organizing, theorizing, and engaging in a variety of everyday forms of survival and resis-

tance from the turn of the twentieth century through the decades prior to Stonewall.<sup>19</sup> It would be a mistake to suppose that the contemporary transgender movement is any more likely to have sprung out of nowhere, or that transgender people do not have a history that is equally varied and complex.<sup>20</sup>

Commenting on the efforts of gay intellectuals who "sought to construct a gay historical tradition" at the turn of the century, George Chauncey has observed:

One of the ways groups of people constitute themselves as an ethnic, religious, or national community is by constructing a history that provides its members with a shared tradition and collective ancestors. . . . By constructing historical traditions of their own, gay men defined themselves as a distinct community. By imagining they had collective roots in the past, they asserted a collective identity in the present.<sup>21</sup>

Similarly, one way that contemporary lesbians and gay men have constructed themselves as a community and fostered a sense of social and political legitimacy is by documenting the existence of gay people in the past. These efforts have been especially important in the wake of the U.S. Supreme Court's devastating decision in *Bowers v. Hardwick*, which characterized same-sex acts (and, by extension, lesbians and gay men) as antithetical to the very foundations of Western civilization.<sup>22</sup> Following *Bowers*, opponents of gay civil rights redoubled their efforts to disparage homosexuality as a deviant behavior rather than a minority status and to depict the gay rights movement as a radically new, dangerous, and illegitimate development, with no connection to history or to established legal principles.<sup>23</sup> Gay advocates have responded to these attacks by marshalling historical evidence that lesbians and gay men are a legitimate minority, a "distinct community" with "collective roots in the past . . . [and] a collective identity in the present."<sup>24</sup>

In constructing a usable past, gay scholars have not hesitated to lay claim to a wide range of cross-gender identities and to label these identities as unambiguously "gay" or "lesbian," with little or no acknowledgment that, in many cases, they might just as plausibly or even more plausibly be termed "transgender." To mention one of many possible examples, William Eskridge's scholarship on same-sex marriage and Leslie Feinberg's history of the transgender movement cover much of the same historical ground, but where Eskridge sees same-sex couples, Feinberg sees transgender people.<sup>25</sup> Similarly, Patrick Califia has documented the extreme lengths to which many gay historians and anthropologists have gone to claim cross-gendered identities within Native American cultures as gay while vehemently rejecting any comparison with transgender people.<sup>26</sup> The same disdain for contemporary transgender

people is evident in many of the accounts of “passing women” featured in numerous gay histories.<sup>27</sup> With few exceptions, gay historians have claimed these historical figures as lesbian forebears, with little or no room for discussion, ambiguity, or debate as to whether some of these individuals would be described more accurately as transgender.<sup>28</sup>

From a practical perspective, the necessity for gay advocates to draw on the same historical material claimed by transgender people is clear. Gender variance is a deep and recurring theme in gay culture and gay life—from the mollies of eighteenth-century London,<sup>29</sup> to the lesbian and gay artists of the Harlem Renaissance,<sup>30</sup> to contemporary queer performers such as kd lang and RuPaul. Given the predominance of these ostensibly cross-gendered ways of expressing same-sex desire and of being lesbian or gay throughout much of the past, to deny any historical affiliations with transgender people would be to sever contemporary lesbians and gay men from a rich and varied history and to strand gay rights advocates with little in the way of a citable or usable past.

Unfortunately, however, the practical necessity of incorporating cross-gendered identities in constructing a gay past has not often translated into a recognition that transgender people are an important or legitimate part of gay life in the present. Disturbingly, in fact, some lesbians and gay men appear to have taken a page from their own right-wing opponents by characterizing contemporary transgender people as upstarts and newcomers who have appeared on the scene with no roots in the past and no connection to gay history or gay life. Thus, while lesbian and gay scholars have been willing to lay claim to transgender ancestors to refute the argument that contemporary gay people “came out of nowhere,” they sometimes have been complicit in launching the same “came out of nowhere” attacks on the newly emerging transgender movement. In the first edition of their casebook on sexuality, gender, and the law, for example, the gay scholars William Eskridge and Nan Hunter discussed transsexualism almost exclusively as a contemporary medical phenomenon and appeared to suggest that transsexual people literally emerged from a Johns Hopkins laboratory in the 1950s.<sup>31</sup> Similarly, in the legislative arena, gay advocates who are reluctant to include transgender people in gay rights legislation often argue that as a “new” group, transgender people must wait their turn and cannot expect to “piggyback” or “ride on the coattails” of the gay movement.<sup>32</sup> From the perspectives of many transgender people, however, these arguments fail to acknowledge that transgender people have been present in gay liberation and gay rights struggles from the beginning. In the words of Riki Wilchins, the executive director of the Gender Public Advocacy Coalition, “It’s not even a valid question to ask if [transgender people] should

be included, they are and always have been part of the movement.” Saying the transgender movement “isn’t part of the gay movement is like saying water isn’t part of the earth.”<sup>33</sup>

### From Gender Inversion to Sexual Object Choice: The Class- and Race-Based Origins of Modern Gay Identity

In the United States, the exclusion of transgender people from the mainstream gay movement is rooted in the expressly nontransgender, or gender-normative, model of gay identity that has dominated gay rights advocacy since the transition from the nineteenth-century model of homosexuality as gender inversion to the dominant contemporary model of sexual object choice. In the nineteenth century, most people understood lesbian and gay identity primarily in terms of gender inversion: only masculine lesbians were seen as truly lesbian, and only feminine gay men were seen as truly gay.<sup>34</sup> Today, in contrast, most people take for granted that being lesbian or gay is primarily about same-sex desire: lesbians are assumed to be women who are sexually attracted to other women, and gay men are assumed to be males who are sexually attracted to other males, regardless of their gender presentation.

George Chauncey’s history of gay male culture in New York City between 1890 and 1940 offers one particularly illuminating example of how the current tensions between gay and transgender people grew out of this definitional shift.<sup>35</sup> Disputing the misconception that gay people prior to Stonewall were uniformly closeted and invisible, Chauncey documents the previously unknown existence of a “highly visible . . . gay male world” that flourished in working-class African American and immigrant communities in New York City from the turn of the century through the decades prior to World War II.<sup>36</sup> Within these urban communities, lesbians and gay men were a conspicuous and integral part of everyday social life:

Fairies drank with sailors and other workingmen at waterfront dives and entertained them at Bowery resorts; “noted faggots” mixed with other patrons at Harlem’s rent parties and basement cabarets; and lesbians ran speakeasies where Greenwich Village bohemians—straight and queer alike—gathered to read their verse.<sup>37</sup>

The dominant understanding of what it meant to be gay in these settings was not based on same-sex behaviors or desires, as it is today, but on one’s gender presentation or gender status.

The fundamental division of male sexual actors in much turn-of-the-century working class thought . . . was not between “heterosexual” and “homosexual” men, but

between conventionally masculine males, who were regarded as men, and effeminate males, known as fairies or pansies, who were regarded as virtual women, or, more precisely, as members of a "third sex" that combined elements of the male and female.<sup>38</sup>

Chauncey concludes that it was not until after World War II that a "new dichotomous system of classification, based on sexual object choice rather than gender status, superseded the old."<sup>39</sup> He attributes this shift, at least in part, to a white middle-class backlash against the growing visibility of gay culture in working-class immigrant and African American communities.<sup>40</sup> In the decades prior to World War II, visibly gay men were subjected to increasingly brutal repression by police, antvice squads, and other "social purity" forces, under the aegis of solicitation, sodomy, prostitution, cross-dressing, disorderly conduct, and similar statutes.<sup>41</sup> This antigay backlash was part of a much broader middle-class social reform movement, which sought to police working-class culture more generally and, in particular, to combat what middle-class reformers perceived as the degenerate influence of urban immigrant communities, stigmatized as hotbeds of alcoholism, prostitution, homosexuality, and other forms of "un-American" unruliness, disorder, and vice.<sup>42</sup>

Convinced that the survival of the family and the dominance of white culture were at stake, these reformers were determined to impose white middle-class norms about gender and sexuality on immigrant working-class communities.<sup>43</sup> In particular, the reformers sought to counter "the threat . . . posed by men and women who seemed to stand outside the family," including

the men . . . who gathered without supervision in the "dissipating" atmosphere of the saloons; the women whose rejection of conventional gender and sexual arrangements was emblemized by the prostitute; the youths of the city whose lives seemed to be shaped by the discordant influences of the streets rather than the civilizing influences of the home; and . . . the gay men and lesbians who gathered in the niches of the urban landscape constructed by these groups.<sup>44</sup>

As any visible deviation from middle-class gender norms became a lightning rod for criminal sanctions and police brutality,<sup>45</sup> white middle-class gay men increasingly "blamed anti-gay hostility on the failure of fairies to abide by straight middle-class conventions of decorum in their dress and style."<sup>46</sup> "I don't object to being known as a homosexual," noted one such man in the mid-1930s, "but I detest the obvious, blatant, made-up boys whose public appearance and behavior provoke onerous criticism."<sup>47</sup> Seeking the protection of invisibility, growing numbers of white middle-class gay men rejected the appellation of *fairy* in favor of the term *queer*, in an effort to dissociate their

sexual desires for men from any connotation of deviation from an otherwise "normal" masculine identity.<sup>48</sup> Queers "maintained that their desire for men revealed only their 'sexuality' (their 'homosexuality'), a distinct domain of personality independent of gender. Their homosexuality, they argued, revealed nothing abnormal in their gender persona."<sup>49</sup>

In sum, the demise of gender inversion as the dominant model of gay identity was not due to the emergence of a more enlightened understanding of same-sex desire, as many contemporary gay people tend to assume,<sup>50</sup> but rather to the growing "class antagonism" between fairies and queers.<sup>51</sup> In significant part, our modern understanding of homosexuality as based on same-sex desire rather than on gender status was a product of white middle-class gay men's embattled efforts to dissociate themselves from the dangerous visibility of working-class gay culture and to salvage the safety and status to which they felt entitled as a matter of race and class. "As the cultured, distinguished, conservative Jew or Negro loathes and deplores his vulgar, socially unacceptable stereotype, plenty of whom unfortunately are all too visible," explained one of the white middle-class gay men who began to forge this new conception of gay identity in the 1920s and 1930s, "so does their homosexual counterpart resent his caricature in the flaming faggot. . . . The general public [makes no distinction], and the one is penalized and ostracized for the grossness and excesses of the other."<sup>52</sup>

In citing this history, I do not mean to suggest that Chauncey has pinpointed the precise historical moment at which gender inversion gave way, once and for all, to sexual object choice as the dominant model of gay identity.<sup>53</sup> On the contrary, one of the most striking features of Chauncey's account of the tension between "fairies" and "queers" is the remarkable extent to which it resonates with contemporary gay debates.<sup>54</sup> As Urvashi Vaid has rightly remarked, many of the queer men in Chauncey's history sound "a lot like gay conservatives today."<sup>55</sup>

One can recognize the resonance of these "queer" sentiments not only in contemporary gay conservatism but, more generally, in the persistence and centrality of conflict over gender norms throughout recent gay history. In fact, what might now be called "transgender" issues repeatedly have been at the core of shifts and tensions in the meaning of modern gay identity and, in particular, at the center of class- and race-based stratifications within the gay movement. Lillian Faderman, for example, has described how profoundly conflicts over gender norms divided working-class and middle-class lesbians in the 1950s and 1960s.<sup>56</sup> While many working-class lesbians identified as butch or femme<sup>57</sup> and adopted the same highly differentiated masculine and feminine styles characteristic of working-class culture generally,<sup>58</sup> many white

middle-class lesbians adopted professional feminine attire<sup>59</sup> and cringed at the sight of butches “with cigarettes rolled in their sleeves” and “their overdressed femmes with too much lipstick and too high heels.”<sup>60</sup> The political interests of many working-class lesbians lay in fighting for the right to be visibly lesbian on the streets, at work, and in other public spaces. In contrast, the interests of many white middle-class lesbians lay in the opposite direction. For example, a primary goal of the Daughters of Bilitis, which was founded in 1955 as the first lesbian political organization in the United States, was “advocating [to lesbians] a mode of behavior and dress acceptable to society.”<sup>61</sup> Like the white middle-class gay men chronicled by Chauncey, the Daughters of Bilitis sought to distance themselves from “the kids in fly front pants and with butch haircuts and mannish manner [who were] the worst publicity we can get.”<sup>62</sup>

Class-based conflicts over gender have continued to be a source of internal conflict in the post-Stonewall era. In the 1970s, for example, many middle-class lesbian-feminists condemned working-class butch and femme lesbians for “imitating” oppressive heterosexual “roles” and perpetuating “stereotypical” images of lesbian identity.<sup>63</sup> As Joan Nestle, Cherríe Moraga, Lyndall MacCowan, Esther Newton, Minnie Bruce Pratt, Bidy Martin, and others have noted, these attacks were “old class putdowns, clothed in new political sanctity.”<sup>64</sup>

These class-based conflicts are also apparent in the increasing invisibility of transsexuals, cross-dressers, and drag queens in the decades after Stonewall, as “gay liberation” gave way to “gay rights” and to an emphasis on “dispelling the stereotypes” that lesbians and gay men are all bull dykes and flaming fairies. In an important sense, the mainstream gay rights movement defined itself and emerged as an organized political and legal movement by embracing an explicitly nontransgender, or gender-normative, model of gay identity.<sup>65</sup> Over time, the increasing hegemony of this gender-normative model has resulted in the increasing isolation of gender-variant lesbians and gay men within the mainstream movement, and increasing tensions between gay and transgender people. Eventually, these tensions permitted gender-variant people to emerge as a distinct constituency, or as what is now known as the “transgender” movement.

### **Where Do Transgender People Come From? The Birth of the Transgender Movement**

Lesbian and gay scholars have documented the shift from an older model of homosexuality as gender inversion to the dominant contemporary model of sexual object choice; for the most part, however, they have not acknowledged

contemporary transgender people or questioned whether all those fairies and other gender inverters running around in “gay” history were really gay. To the contrary, as described in part 1, many gay historians have appropriated ostensibly cross-gendered figures from the past and labeled those figures as gay while renouncing any affiliation between gay and transgender people in the present. The emergence of a self-identified transgender movement has made it possible for transgender people to reclaim much of this inverted “gay” history as their own. More important, the transgender movement has made it possible to say that transgender is not just a marginalized or anachronistic way to be gay, but a distinct identity.

What has allowed this to happen? What has prompted transgender people to come out of the closet, both as a self-conscious constituency within the gay world and as a relatively autonomous movement at this particular point in time?

There surely is no single explanation or cause, but it seems safe to say that the recognition of transsexualism as a medical phenomenon in the 1950s and the relatively widespread access to hormones and sex reassignment surgeries in the 1960s and 1970s were necessary, if not sufficient, conditions for transgender people to emerge as a self-conscious social and political group.<sup>66</sup> By identifying and labeling transsexual people as a distinct group, the acknowledgment of transsexualism as a medical condition and the availability of hormones and surgeries paved the way for a politicized transgender movement.<sup>67</sup>

As a medical identity, however, transsexualism initially was defined in rigid, heterosexist terms, and access to sex reassignment was conditioned on compliance with overtly homophobic and sexist standards.<sup>68</sup> Until very recently, for example, transsexual people who also are lesbian, gay, or bisexual—that is, male-to-female transsexuals who are sexually attracted to women or female-to-male transsexuals who are sexually attracted to men—were denied access to sex reassignment because they were not seen as “real” transsexuals.<sup>69</sup> Similarly, only transsexual people who conformed to stereotypical gender norms and who were deemed capable of “passing” in their new sex were able to obtain treatment.<sup>70</sup> More generally, the ability of transsexual people to gain access to medical services and to legal recognition and protection has depended on how successfully they could hide their transsexual status and approximate a “normal” heterosexual life, with the result that those who are unable or unwilling to comply with these oppressive standards have had little or no protection at all.

The transgender activist and theorist Ki Namaste has aptly described the oppressiveness of these medical and legal standards:

At gender-identity clinics, transsexuals are encouraged to lie about their transsexual status. They are to define themselves as men or women, not transsexual men and women. Individuals are encouraged to invent personal histories in their chosen genders; female-to-male transsexuals, for example, should speak about their lives as little boys. Furthermore they are to conceive of themselves as heterosexuals, since psychiatry cannot even begin to acknowledge male-to-female transsexual lesbians and female-to-male transsexual gay men. This elision of transsexual specificity has profound political implications.<sup>71</sup>

Politically, this sexist and heterosexist legacy has had a profoundly negative impact on transgender people. The medical model of transsexual identity, with its overriding emphasis on the requirement that transsexual people should “disappear” and blend into mainstream society, has made it difficult for transsexual people to mobilize politically around being transsexual or to create a transsexual movement. As Kate Bornstein has observed, “the dynamic of transsexualism today is the dynamic of an oppressed people faced with no alternative to forced assimilation into a culture that would rather see them dead.”<sup>72</sup> Or, in the words of Sandy Stone, “it is difficult to generate a counter-discourse if one is programmed to disappear.”<sup>73</sup>

Historically, the recognition of transsexualism as a medical condition has also complicated and in certain respects embittered the relationship between gay and transsexual people. As James Green has noted,

To gain access to medical treatment, transsexual people had to censor their own experiences and beliefs and, in particular, had to renounce any similarity to or affiliation with lesbians and gay men. This coercive dynamic perpetuated many inaccurate stereotypes about trans people, including the widespread misconception (which is unfortunately shared by many GLB people) that transsexual people are homophobic and reactionary and have no political goals other than being accepted as “normal” heterosexuals.<sup>74</sup>

Part of the impetus behind the emergence of the transgender movement is precisely the strongly felt desire to create a less-restrictive social and political space in which it is possible to be openly transsexual, as well as to regain some autonomy and control over the personal meaning of transsexual identity and over access to medical care. This includes recognition of the freedom to be transsexual as a civil and human right, not just as a clinical decision made by medical authorities.<sup>75</sup> This relatively new self-consciousness of transsexualism as having a political, as well as medical, dimension has led many transsexual people to question the old medical directive to “disappear” after transi-

tioning and to reject the clinical definition of transsexuals as categorically separate and distinct from gay people, transvestites, and other gender-benders. Instead, growing numbers of transsexual people are refusing to conceal their personal histories or to consider transsexualism a shameful secret that should be hidden at all costs. They are also recognizing their common political cause with cross-dressers, drag queens, butch and femme lesbians, feminine gay men, intersex people, and other gender-variant people.<sup>76</sup>

In short, the politics of transsexual identity have undergone a fairly radical evolution in an astonishingly short period of time. After being defined as a distinct group, in part, by the sexist and homophobic standards used to regulate access to sex reassignment, transsexual people have burst the boundaries of clinical categories and emerged to play a leading role in mobilizing gender-variant people, both within and outside the gay community, into a self-consciously new transgender movement. They have played a key role in challenging the mainstream gay movement’s gender-normalizing model of gay identity and its marginalization of gender-variant lesbians and gay men.<sup>77</sup>

#### Do Gay People Dream of Transgender Rights?

Not surprisingly, established gay groups have not responded to the sudden emergence of a “transgender” constituency with immediate understanding or acceptance. At least in the first instance, many gay leaders and groups have been inclined to view transgender people as outsiders and to greet the suggestion that transgender people are an integral part of the gay community with astonishment and anger. At its worst, this reaction stems from a visceral and phobic antipathy to transgender people. More commonly, however, I believe this resistance reflects genuine confusion and concern about how to reconcile transgender issues with the modern, nontransgender model of gay identity that has dominated legal and political advocacy on behalf of lesbians and gay men for several decades.

Although usually unspoken, I believe some gay leaders also feel resentment and fear that transgender people will co-opt or derail the hard-won resources and political power that gay people have worked so long to achieve. This fear is most pronounced in the legislative and legal arenas, where gay activists and civil rights litigators feel a responsibility to coordinate a coherent, long-term strategy based on a model of incremental progress toward greater equality and acceptance within the mainstream. From this perspective, the sudden emergence of a transgender constituency demanding inclusion in the gay movement might well appear to be a destabilizing and potentially threatening element.

In response to this resistance and, in particular, in response to the repeated argument that gay and transgender issues are completely unrelated, those in favor of transgender inclusion frequently have sought to justify transgender people's claims to membership in the gay movement by subsuming gay identity under the transgender umbrella. They have argued that lesbians and gay men are discriminated against because same-sex relationships undermine traditional gender roles and gender hierarchy, not because of their sexual behaviors or desires per se. Kate Bornstein, for example, has argued that "when a gay man is bashed on the street, . . . it has little to do with imagining the man [engaging in sexual conduct with another man]. It has a lot to do with seeing that man violate the rules of gender in this culture."<sup>78</sup> Accordingly, she has suggested that "it's the transgendered who need to embrace the lesbians and gays, because it's the transgendered who are in fact the more inclusive category."<sup>79</sup>

Similarly, Gabriel Rotello, a gay man, has argued that "homophobes don't hate us for how we make love. They hate how we make love because it violates our expected gender roles."<sup>80</sup> "When I was 10 and was taunted for throwing the ball 'like a girl,'" he notes, "I don't think those school-yard bullies suspected me of actually sleeping with men."<sup>81</sup> Rotello concludes that "all gay and transgendered people occupy places on a continuum between the two main genders" and that "the root of our difference is not merely how we make love but the larger fact that we exist between the two genders in a variety of ways, some sexual and some not."<sup>82</sup> "This idea," he continues, "has immense implications—because if the ultimate cause of our oppression is gender transgression, then shouldn't it also be the focus of our identities and our movement? Shouldn't we stop being the les-bi-gay-trans-whatever movement, with a new syllable added every few years, and simply become the trans movement?"<sup>83</sup>

As a strategy for gaining entrance where one is not welcome, the argument that all gay people are on a transgender continuum and the characterization of transgender people as the vanguard of a new queer movement is strikingly reminiscent of the analogous strategy used by some lesbian-feminists to argue for lesbian inclusion in the mainstream feminist movement in the 1970s. Initially, Betty Friedan, the founder of the National Organization for Women, and other mainstream feminist leaders refused to recognize lesbianism as a legitimate feminist issue or to include lesbians as a legitimate constituency within the women's movement.<sup>84</sup> Friedan, most notoriously, disparaged lesbians as a "lavender menace" and feared that including lesbians in the feminist movement would fatally undermine its credibility.<sup>85</sup> In response,

lesbian-feminists undertook what one scholar has termed a "stunningly efficacious re-visioning . . . of same-sex desire as being at the very definitional center of each gender. . . . Women who loved women were seen as more female . . . than those whose desire crossed boundaries of gender."<sup>86</sup> This strategy rejected the dominant perception of lesbianism as a deviant sexual practice and redefined it as the touchstone of radical feminist identity. Instead of a marginalized and unwelcome minority within the feminist movement, lesbians became "women-identified-women" and argued that all women were on a "lesbian continuum."<sup>87</sup> From this new perspective, lesbianism became "the feminist solution" to male oppression,<sup>88</sup> a political expression of solidarity with other women, and a symbol of "the rage of all women condensed to the point of explosion."<sup>89</sup>

This kind of deconstructive reversal can be an effective political strategy, but it can also be dangerous if used to replace one monolithic and exclusionary version of identity with another. At least in the case of certain versions of lesbian-feminism, what began as a way to counteract the homophobia of mainstream feminism, and to underscore the connections between lesbians and other women, turned into an increasingly rigid and essentialist theory that defined lesbian-feminism solely in opposition to men, with little regard for the impact of race or class. This led some lesbians to misfocus their anger on other oppressed groups—heterosexual and bisexual women who "collaborated with the enemy" by sleeping with men;<sup>90</sup> working-class lesbians who identified as butch or femme;<sup>91</sup> gay men, who were deemed to be even more "male" and thus even "more loyal to masculinity and to male supremacy" than other men;<sup>92</sup> and, above all, transsexual women.

Janice Raymond and Mary Daly, among other lesbian feminist theorists, demonized transsexual women as the epitome of misogynist attempts to invade women's space and appropriate women's identity. Describing transsexualism as equivalent to necrophilia and rape, Raymond and Daly launched a full-scale political attack on clinics that provided medical services to transsexual people and played a significant role in the closing of many of those clinics in the late 1970s and early 1980s.<sup>93</sup> Raymond's and Daly's disparaging views of transsexual people were picked up by young feminists, discussed in feminist support groups and on college campuses, and eventually came to permeate much of lesbian culture. To this day, the analyses of transsexualism that Raymond and Daly put forward continue to inform many lesbians' perceptions of transgender people and particularly of transsexual women.<sup>94</sup>

The damage caused by this essentialist vision of lesbian identity has not been limited to transsexual women. To the contrary, the idea that lesbians

are “women-identified-women” and other arguments originally developed to defend lesbians against mainstream feminist attacks have been used subsequently to disparage lesbians who do not conform to a largely white, middle-class model of acceptable gender norms.<sup>95</sup> Lesbians who are seen as “too masculine” have had their legitimacy as feminists and their place in lesbian culture called into question,<sup>96</sup> as have those who are seen as “too feminine.”<sup>97</sup> Even today, lesbians who strongly identify as butch or femme are likely to be marginalized within middle-class lesbian settings and to be viewed as misguided or “backward.” Lillian Faderman, for example, has expressly chastised “working-class lesbians [who] . . . identify as butch or femme in the 1980s with the same deadly seriousness that characterized many women of the 50s.”<sup>98</sup>

As these examples of the damage that can be done to real people in the name of identity politics should remind us, making a place for transgender issues in the gay movement need not require the undifferentiated assimilation of all queer people under the rubric of a new gender-based movement. In fact, given how persistently the devaluation of cross-gendered expression has been tied to the devaluation of working-class, African American, and immigrant people within queer history, it seems dangerous to assume that gender is necessarily the only or even the most important frame of reference for understanding transgender issues. Historically, for example, focusing on gender alone—without reference to class, race, or nationality—would provide only a very partial and inadequate account of the antagonism between “fairies” and “queers” in the pre-World War II era, the exclusion of masculine lesbians and drag queens from the homophile movement of the 1950s, or the controversy over butch-femme relationships among lesbians in the 1970s. Gender alone is equally inadequate for understanding transgender issues today, as evidenced, for example, by the growing body of scholarship on the importance of gender-variant and transgender identities in contemporary queer communities of color.<sup>99</sup>

Moreover, while the claim that gay people are a subset of the transgender community is a powerful antidote to antitransgender bias and a powerful lens for illuminating the connections between antigay and antitrans oppression, those who have qualms about this approach also surely are right to insist on the continued importance of sexual orientation as a specific social and political category. They are also right to insist on the need to recognize sexual orientation and gender as at least relatively distinct frames of reference. Homophobia and sexism undoubtedly work hand in hand; few lesbian or gay scholars today would dispute this. But simply conflating them altogether may obscure the particular forms of sexism faced by women,<sup>100</sup> just as it may fail to capture

the particular animosity directed at same-sex practices and desires or the specific social and legal vulnerabilities of lesbian, gay, and bisexual people.

More pragmatically, the gay rights movement has worked too hard to gain recognition of gay people as a distinct minority in need of specific civil rights protections to reverse course in midstream and abruptly subsume gay identity under the transgender umbrella. If the controversy over transgender inclusion is framed as a choice between these two mutually exclusive extremes—either excluding transgender people altogether or redefining all gay people as gender nonconforming—then we are bound to adopt a position that is unworkable and that disregards the complexity of real people and real lives.

Fortunately, there is no reason to frame the issue in these polarized terms or to view these as the only choices.<sup>101</sup> Getting real about transgender issues means moving beyond this zero-sum frame. We need not disregard the complexities of our communities or of our individual lives to engage in collective political action.

While arguments that claim to identify the singular cause of antiequeer oppression can be exhilarating and compelling, they are also dangerous and patently untrue.<sup>102</sup> This warning applies equally to analyses focused only on sexual orientation, as well as to analyses that attempt to supplant this narrow model with an equally unidimensional model based on gender. Gender-based arguments underscore the impossibility of drawing any bright line between transgender and gay, and illuminate the connections between sexist and homophobic oppression in powerfully new ways. These analyses do not, however, provide a reliable foundation for launching an affirmative new politics based on subsuming gay people under the transgender umbrella, and they do not eliminate the need for multidimensional analyses that recognize the multiplicity of specific issues and constituencies within queer communities.<sup>103</sup> At the end of the day, there is no single term or frame of analysis—whether it be gay, transgender, or queer—that can eliminate the need for multiple strategies and multiple frames of reference.<sup>104</sup>

The inescapability of this multiplicity militates strongly in favor of fully integrating and incorporating transgender issues within the gay movement. Despite the fears of some gay people, this incorporation need not entail the erasure of gay identity or jeopardize existing legal protections for lesbians and gay men. Although it will require a significant expansion of the gay rights agenda and a significant broadening of vision, this expansion is not an all-or-nothing proposition, any more than broadening the gay rights agenda to include the specific needs and concerns of lesbians or of people with HIV and AIDS has been an all-or-nothing proposition. For example, the gay movement

has addressed issues of child custody and parenting despite the fact that, until quite recently, these issues have been far more important to lesbians than to gay men. Similarly, the gay movement has fought to secure health care and nondiscrimination protections for persons with HIV and AIDS, despite the fact that these issues are not directly about sexual orientation per se. In exactly the same way, the gay movement can and should address issues affecting transgender people, regardless of whether these issues affect all gay people or fall under the rubric of sexual orientation in the most narrow sense of the term.

### Conclusion: Getting Real about Transgender Inclusion

Do transsexual people dream of gay rights? Ultimately, what both gay and transgender people aspire to is neither “gay rights” nor “transgender rights” but simply human rights. As the U.S. Supreme Court recognized in *Romer v. Evans*,<sup>105</sup> there is nothing “special” about the legal protections gay people seek and nothing ersatz about the damage inflicted by laws that exclude gay people from equal participation in social and political life:

We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.<sup>106</sup>

Similarly, in *Baker v. State*, the Vermont Supreme Court recognized that extending basic civil rights to gay people is not a radical step but rather, “simply, when all is said and done, a recognition of our common humanity.”<sup>107</sup> Most recently, in *Lawrence v. Texas*, the U.S. Supreme Court expressly rejected the notion that gay people may be excluded from fundamental human rights.<sup>108</sup> Reversing its prior decision in *Bowers v. Hardwick*, the Court struck down laws criminalizing same-sex intimacy. More important, the Court resoundingly affirmed the full humanity of gay people and their entitlement to the same liberty guaranteed to others in “choices central to personal dignity and autonomy.”<sup>109</sup>

Matt Coles, a leading gay rights strategist and attorney, has commented on the shortsightedness of excluding transgender people from gay rights bills:

To be sure, there are differences between gay people and transgendered people. . . . But our commonalities far outweigh our differences. Often it is nearly impossible to distinguish between discrimination based on gender identity and sexual orientation, because so much of it turns on ideas of how men and women should act. We

have more to gain by taking on this sort of bias in a way that addresses all of its manifestations than we do by trying to parse out who the target is, and choosing who to protect.<sup>110</sup>

In deciding whether to include transgender people in the gay movement, gay rights advocates would do well to keep this expansive perspective in mind. Historically, clinging to a narrow and exclusive conception of gay identity has not only marginalized transgender and gender-variant gay people, it also has exacerbated divisions based on race and class. To the extent gay and transgender people are capable of learning from our shared queer past, the challenges posed by transgender inclusion offer an opportunity to build a less fractured and more humanistic movement.

### Notes

1. Throughout this chapter, I use *transgender* as an umbrella term including transsexuals, transwestites, cross-dressers, drag queens and drag kings, butch and femme lesbians, feminine gay men, intersex people, bigendered people, and others who, in Leslie Feinberg’s words, “challenge the boundaries of sex and gender.” See Leslie Feinberg, *Transgender Warriors: Making History from Joan of Arc to RuPaul* (Boston: Beacon, 1996), x. For an overview of current debates about terminology within the transgender community, see *ibid.*, ix–xi. I use *gay* when referring to the dominant contemporary model of homosexuality as a discrete status defined exclusively by sexual object choice, with no intrinsic relation to gender, race, or class. I use *queer* to refer to lesbian, gay, bisexual, and transgender people.

2. See, for example, Chryss Cada, “Issue of Transgender Rights Divides Many Gay Activists, Transgender Activists Seek a Greater Voice,” *Boston Globe*, April 23, 2000.

3. See, for example, Zachary Nataf, *Lesbians Talk Transgender* (London: Scarlet, 1996), 35–53 (presenting a variety of perspectives on the controversy over whether transsexual women should be included in women-only spaces). See also Feinberg, *Transgender Warriors*, 109–19n4 (critiquing the stereotype that “transsexual women are . . . a Trojan horse trying to infiltrate women’s space”).

4. For an early and remarkably prescient analysis of this question, see Mary C. Dunlap, “The Constitutional Rights of Sexual Minorities: A Crisis of the Male/Female Dichotomy,” *Hastings Law Journal* 30 (1979): 1131. For a more recent exploration of why gay rights groups should advocate on behalf of transgender people, see Taylor Flynn, “Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality,” *Columbia Law Review* 101, no. 2 (2001): 392.

5. See, for example, Paisley Currah and Shannon Minter, *Transgender Equality* (Transgender Law and Policy Institute, 2000), <http://www.transgenderlaw.org>, arguing that gay groups should include transgender people in legislative initiatives. See also Paisley Currah and Shannon Minter, “Unprincipled Exclusions: The Struggle to Achieve Judicial and Legislative Equality for Transgender People,” *William and Mary Journal of Women and the Law* 7, no. 1 (2000): 37, describing the need for legislation to protect transgender people.

6. The National Lesbian and Gay Law Association and the National Gay and Lesbian Task Force were among the first national gay organizations to formally acknowledge their commitments to transgender people. Since then, a number of others have followed suit, including Parents, Families, and Friends of Lesbians and Gays and, most recently, the Human Rights Campaign. For a description of some of the lobbying efforts and political struggles underlying these changes, see Phyllis Randolph Frye, "Facing Discrimination, Organizing for Freedom: The Transgender Community," in *Creating Change: Sexuality, Public Policy, and Civil Rights*, ed. John D'Emilio, William B. Turner, and Urvashi Vaid (New York: St. Martin's, 2000), 451.

7. For an unusually forthright articulation of this perspective, see Bruce Bawer, "Confusion Reigns," *Advocate*, October 18, 1994, 140-41n3 (noting that bisexual and transgender people "deserve all kinds of freedom, but . . . are these people in any reasonable sense gay or lesbian? Are their issues ours? Do they experience discrimination on the basis of sexual orientation? . . . No") (internal quotations omitted).

8. See, for example, Christopher Cain, "'T' time at the Human Rights Campaign," *Southern Voice*, April 11, 2001, expressing concern that including transgender people in gay civil rights advocacy will confuse and dilute the message that "our freedom and civil rights should not be curtailed based upon who we love."

9. See, for example, Stephen Whittle, "Gender Fucking or Fucking Gender?" in *Blending Genders: Social Aspects of Cross-Dressing and Sex-Changing*, ed. Richard Elkins and Dave King (New York: Routledge, 1996), 196, 201-2 (noting that "many transgendered individuals have made their home in . . . the homosexual community" and that "lesbians and gay men have often provided a safe and welcoming space for transgendered people").

10. Although medical authorities initially assumed that all transsexual people are heterosexual, there is growing evidence that many transsexual people are lesbian, gay, or bisexual. See, for example, Ann Bolin, "Transcending and Transgendering: Male-to-Female Transsexuals, Dichotomy and Diversity," in *Third Sex, Third Gender: Beyond Sexual Dimorphism in Culture and History*, ed. Gilbert Herdt (New York: Zone Books, 1993), 447, 460 ("Of my sample, only one person was exclusively heterosexual, three of the six exclusive lesbians were living with women who themselves were not self-identified as lesbian, one bisexual was living with a self-identified lesbian, and two male-to-female transsexuals were living with one another"); Nataf, *Lesbians Talk Transgender*, 32 ("My research showed that of the FTMs that responded 33 percent identified as bisexual, 40 percent as heterosexual, 2 percent as asexual and 25 percent as gay men," citing Stephen Whittle); Martin S. Weinberg et al., *Dual Attraction: Understanding Bisexuality* (Oxford: Oxford University Press, 1994), 59-65 (attempting to account for the higher incidence of homosexuality and bisexuality among transsexual people); Feinberg, *Transgender Warriors*, 92 (noting that the "sexuality of some trans people [cannot] be easily classified"); Shadow Morton, "Perspective," *Anything That Moves* 13 (spring 1997): 14 (describing his experience as a gay FTM and noting that "I've been a gay activist for eighteen of my 35 years—first as a lesbian, later as a gay man").

11. John D'Emilio, "After Stonewall," in *Making Trouble: Essays on Gay History, Politics, and the University* (New York: Routledge, 1992), 234, 240. See also Feinberg,

*Transgender Warriors*, 97 (noting that visibly transgender people often have borne the brunt of antilebian and antigay violence and discrimination, and suggesting that "it was no accident that gender outlaws led the Stonewall Rebellion").

12. For a concise account of these internal battles, see D'Emilio, "After Stonewall," 256, 271. See also Urvashi Vaid, *Virtual Equality: The Mainstreaming of Lesbian and Gay Liberation* (New York: Anchor Books, 1995), 274-306, 346-72 (describing conflicts over issues of racial and gender diversity in the gay movement).

13. D'Emilio, "After Stonewall," 235-36.

14. See, for example, Bawer, "Confusion Reigns," 140-41.

15. See, for example, Gabriel Rotello, "Transgendered Like Me," *Advocate*, December 10, 1996 (arguing that "an emerging definition of all gay people as transgendered is the wave of the future").

16. See notes 39-72 and accompanying text.

17. Vaid, *Virtual Equality*, 274-306; D'Emilio, "After Stonewall," 246-71 (describing how profoundly conflicts over gender have shaped the lesbian and gay movement in the post-Stonewall era). For an indication of how vitriolic conflicts between lesbians and gay men can still become, see Stephen H. Miller, "Gay White Males: PC's Unseen Target," in *Beyond Queer: Challenging Gay Left Orthodoxy*, ed. Bruce Bawer (New York: Free Press, 1996), 24-37 (accusing lesbian feminists of mounting a "siege against gay male culture").

18. D'Emilio, "After Stonewall," 235.

19. See, for example, Susan Stryker and Jim Van Buskirk, *Gay by the Bay: A History of Queer Culture in the San Francisco Bay Area* (San Francisco: Chronicle Books, 1997); Elizabeth Lapovsky Kennedy and Madeline Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993); Allan Berube, *Coming Out under Fire: The History of Gay Men and Women in World War II* (New York: Free Press, 1990); Martin Duberman, Martha Vicinus, and George Chauncey Jr., eds., *Hidden from History: Reclaiming the Gay and Lesbian Past* (New York: New American Library, 1989); Joan Nestle, *A Restricted Country* (Ithaca, NY: Firebrand Books, 1987); Walter L. Williams, *The Spirit and the Flesh: Sexual Diversity in American Indian Culture* (Boston: Beacon, 1986); John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (Chicago: University of Chicago Press, 1983); Jonathan Katz, *Gay/Lesbian Almanac: A New Documentary* (New York: Harper & Row, 1983); Audre Lorde, *Zami: A New Spelling of My Name* (Trumansburg, NY: Crossing, 1982); Lillian Faderman, *Surpassing the Love of Men: Romantic Friendships and Love between Women from the Renaissance to the Present* (New York: Morrow, 1981).

20. See, for example, Feinberg, *Transgender Warriors* (tracing transgender history from Joan of Arc to the present); Vernon and Bonnie Bullough, *Cross Dressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, 1993) (documenting the history of cross-dressing); Dallas Denny, "Transgender in the United States," *Siecus Report* 8 (1999): 27 (noting that "many societies have had formal and often honored social roles for transgender men and women").

21. See George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 285-86.

22. *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986) (noting that proscriptions against homosexual conduct have “ancient roots”). See also *ibid.* at 196–97 (“Condemnation of [homosexual] practices is firmly rooted in Judeo-Christian moral and ethical standards. . . . To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching”) (Burger, J. concurring). In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court backtracked from this sweeping historical condemnation, acknowledging that “the historical grounds relied upon in *Bowers* are more complex than the majority opinion and the concurring opinion by Chief Justice Burger indicate. Their historical premises are not without doubt and, at the very least, are overstated” (at 571).

23. See, for example, Hadley Arkes, “Homosexuality and the Law,” in *Homosexuality and Public Life*, ed. Christopher Wolfe (Dallas: Spence, 1999), 157 (referring to “the new thing among us, the public controversy over homosexuality” and invoking *Bowers* for the proposition that homosexuality is contrary to sexual morality); Michael Pakaluck, “Homosexuality and the Common Good,” in *Homosexuality and Public Life*, ed. Christopher Wolfe (Dallas: Spence, 1999), 179, 181 (defending laws criminalizing same-sex intimacy on the ground that such laws are “a link with the past”). See also Jane S. Schacter, “The Gay Civil Rights Debate in the States: Decoding the Discourse of Equivalents,” *Harvard Civil Rights–Civil Liberties Review* 29 (1994): 283 (describing and analyzing right-wing arguments that gay rights are “special rights”).

24. See, for example, Janet E. Halley, “Intersections: Sexuality, Cultural Tradition, and the Law,” *Yale Journal of Law and the Humanities* 8 (1996): 97–98 (noting that some gay legal scholars “have picked up a historiographical gauntlet thrown down” by the Court in *Bowers*).

25. See William N. Eskridge Jr., “A History of Same-Sex Marriage,” in *From Sexual Liberty to Civilized Commitment: The Case for Same-Sex Marriage* (New York: Free Press, 1996), 15, 27–30, 37–39 (discussing “the berdache [i.e., two-spirit] tradition” and marriages involving “women passing as men” as examples of same-sex relationships). See also Feinberg, *Transgender Warriors*, 21–29, 83–89 (discussing two-spirit people and female-bodied people who lived their lives as men as examples of transgender people).

26. Patrick Califia, *Sex Changes: The Politics of Transgenderism* (San Francisco: Cleis, 1997).

27. “Passing women” refers to women who wore male clothing and otherwise lived their public lives as men. See, for example, Jonathan Ned Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* (New York: Meridian, 1992), 209–79 (describing passing women from 1782 to 1920).

28. See, for example, Katz, *Gay American History*, 252 (summarily rejecting the suggestion that Edward Prime Stevenson, born Anna Mattersteig, might have been transsexual). See also Nan Alamilla Boyd, “Bodies in Motion: Lesbian and Transsexual Histories,” in *A Queer World: The Center for Lesbian and Gay Studies Reader*, ed. Martin Duberman (New York: New York University Press, 1997), 134, 137–42 (discussing scholarly battles over how to identify passing women and noting that “lesbian and transgender communities construct a usable past around the recuperation of many of the same historical figures”).

29. See, for example, Randolph Trumbach, “The Birth of the Queen: Sodomy and the Emergence of Gender Equality in Modern Culture, 1660–1750,” in Duberman, Vicinus, and Chauncey, *Hidden from History*, 129 (describing the emergence of a subculture of feminine gay men known as “mollies” in eighteenth-century London).

30. See Eric Garber, “A Spectacle in Color: The Lesbian and Gay Subculture of Jazz Age Harlem,” in Duberman, Vicinus, and Chauncey, *Hidden from History*, 318–31 (describing the strong association between cross-gender behavior and homosexuality among lesbian and gay artists and performers in the Harlem Renaissance).

31. William N. Eskridge Jr. and Nan D. Hunter, *Sexuality, Gender, and the Law: Teacher’s Manual* (Westbury, NY: Foundation, 1997), 42 (“Reconstructive surgery such as that pioneered at Johns Hopkins has literally created a class of persons . . . transsexuals are a medical creation in a more literal way than homosexuals or transvestites are”).

32. See, for example, Cada, “Issue of Transgender Rights” (“I have a problem with the transgendered movement riding on the coattails of the gay-rights movement when the two actually have very little in common. . . . We try to be politically correct and include everybody, and as a result lose our focus as a movement. And, as much as I hate to say it, there is a freak factor with transgendered individuals that sets us back as a movement,” quoting Lyn Raymond, a lesbian activist in Colorado).

33. Cada, “Issue of Transgender Rights.”

34. See, for example, Kennedy and Davis, *Boots of Leather*, 323–26.

35. See Chauncey, *Gay New York*.

36. *Ibid.*, 1.

37. *Ibid.*, 355.

38. *Ibid.*, 48. “Men’s identities and reputations simply did not depend on a sexuality defined by the anatomical sex of their sexual partners. Just as the abnormality of the fairy depended on his violation of gender conventions, rather than his homosexual practices alone, the normality of other men depended on their conformity to those conventions rather than on an eschewal of homosexual practices which those conventions did not require” (97).

39. See Chauncey, *Gay New York*, 21. Chauncey’s primary conclusion is that “the hetero-homosexual binarism, the sexual regime now hegemonic in American culture, is a stunningly recent creation. Particularly in working class culture, homosexual behavior per se became the primary basis for the labeling and self-identification of men as queer only around the middle of the twentieth century; before then, most men were so labeled only if they displayed a much broader inversion of their ascribed gender status” (13).

40. *Ibid.*, 326–27 (“By the 1920s, gay men had become a conspicuous part of New York City’s nightlife. They had been visible since the late nineteenth century in some of the city’s immigrant and working-class neighborhoods, since the 1910s in the Bohemian enclave of Greenwich Village. But in the 1920s they moved into the center of the city’s most prestigious entertainment district [Broadway and Times Square], became the subject of plays, films, novels, and newspaper headlines, and attracted thousands of spectators to Harlem’s largest ballrooms”).

41. See Chauncey, *Gay New York*, 131–49.

42. *Ibid.*, 131–49, 179–205. The disorderly conduct law, for example, “was one of the omnibus legal measures used by the state to try to impose a certain conception

of public order on the city's streets, and in particular, to control the large numbers of immigrants from Ireland and southern and eastern Europe, as well as African-American migrants from the South—the so-called 'dangerous classes' many bourgeois Anglo-Americans found frightening" (172).

43. *Ibid.*, 203.

44. *Ibid.*, 172.

45. As Chauncey notes, "Only people who had not been successfully normalized by the dominant gender culture, such as gay men or lesbians (though not limited to them, but including, in different ways, for instance, working-class or minority men or women) were likely to face the more overt and brutal policing that occurred at the boundaries of the gender order, because only they came close to these boundaries" (*Gay New York*, 346).

46. *Ibid.*, 105.

47. *Ibid.*, 103.

48. *Ibid.*, 101.

49. *Ibid.*, 100.

50. In fact, the assumption that our contemporary understanding of homosexuality is self-evidently "enlightened" and "true" has become so pervasive that lesbian and gay scholars routinely assert that lesbians and gay men who were in fact gender non-conforming (not to mention those who still are) were suffering from a kind of false consciousness, based on their susceptibilities to cultural stereotypes. See, for example, Gilbert Herdt, *Same Sex, Different Cultures* (Boulder, CO: Westview, 1997), 54 ("It may be hard for us, looking back, to see to what extent the public refused to accept that people who seemed so 'normal and natural' in every other respect, especially their gender roles, could be homosexual. This refusal was no doubt due to the strength of the inversion stereotype left over from the nineteenth century—a magical belief so powerful that many gays and lesbians had learned it and made the belief part of their self-concepts"); Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in the Twentieth Century* (New York: Columbia University Press, 1991), 60 ("Perhaps these theories [about 'inversion'] even seemed accurate to women who desired to be active, strong, ambitious, and aggressive and to enjoy physical relationships with other women; since their society adamantly identified all these attributes as male, they internalized that definition and did indeed think of themselves as having been born men trapped in women's bodies").

51. Chauncey, *Gay New York*, 106.

52. *Ibid.*, 105–6.

53. Nor does Chauncey make this claim for himself: "The transition from the world of fairies and men to the world of homosexuals and heterosexuals was a complex, uneven process, marked by substantial class and ethnic differences. Sex, gender, and sexuality continued to stand in volatile relationship to one another throughout the twentieth century, the very boundaries between them contested" (*Gay New York*, 127). In fact, it is probably misleading to describe our dominant contemporary model of homosexuality as "modern," if this is taken to imply, as it often is, that cultures, communities, and individuals for whom gender status is still very much a part of what it means to be lesbian or gay are somehow "backward" or reactionary.

54. See, for example, Marshall Kirk and Hunter Madsen, *After the Ball: How America Will Conquer Its Fear and Hatred of Gays* (New York: Doubleday, 1989), 379 (proposing a "marketing strategy" to overcome homophobic prejudice by consistently projecting the public image that lesbians and gay men are "just like everyone else" and that we "look, feel, and act just as they [i.e., heterosexual people] do"); Bawer, "Notes on Stonewall," 24 (defending the decision to exclude transgender people from the title of Stonewall 25 on the grounds that "gay America [should not] continue to be defined largely by its fringe" and concluding that "many of the people who were at the Stonewall bar on that night twenty-five years ago represent an anachronistic politics that largely has ceased to have salience for gay America today").

55. Vaid, *Virtual Equality*, 43.

56. Faderman, *Odd Girls and Twilight Lovers*, 168 ("Despite heterosexuals' single stereotype of the 'lesbian,' lesbian subcultures based on class . . . not only had little in common with each other, but their members often distrusted and even disliked one another. The conflict went beyond what was usual in class . . . antagonisms, since each subculture had a firm notion of what lesbian life should be and felt that its conception was compromised by another group that shared the same minority status").

57. *Ibid.* ("Being neither butch nor femme was not an option if one wanted to be part of the . . . working-class lesbian subculture").

58. *Ibid.*, 169 (noting that "butch/femme style of dress was not much different from working-class male and female style").

59. *Ibid.*, 175–87. Faderman notes that the rules governing appropriately feminine attire "were as vital to the middle-class lesbian subculture as the rule of butch/femme was to their working class counterparts. . . . It was crucial in the middle-class subculture to behave with sufficient, though never excessive, femininity and never to call attention to oneself as a lesbian in any way" (181).

60. *Ibid.*, 182 (citing a middle-class lesbian recalling her reaction to working-class lesbians in an Omaha bar in the 1950s). See also Chauncey, *Gay New York*, 106 ("one source of middle-class gay men's distaste for the fairy's style of self-presentation was that its very brashness marked it in their minds as lower class—and its display automatically preempted social advancement").

61. Faderman, *Odd Girls and Twilight Lovers*, 180.

62. *Ibid.* (citing *The Ladder* [Journal of the Daughters of Bilitis, 1956]). Cf. Stryker and Van Buskirk, *Gay by the Bay*, 41 (noting that "the pages of the DOB journal *The Ladder* were filled with advice on how women who loved women could attain middle-class respectability if they gave up butch/femme styles associated with the more working-class lesbian bar culture"). See also Nestle, *Restricted Country*, 101–2 (explaining that "the writing in *The Ladder* was bringing to the surface years of pain, . . . giving a voice to an 'obscene' population in a decade of McCarthy witch hunts. To survive meant to take a public stance of societal cleanliness. But in the pages of the journal itself, all dimensions of Lesbian life were explored including butch-femme relationships. *The Ladder* brought off a unique balancing act for the 1950s. It gave nourishment to a secret and subversive life while it flew the flag of assimilation").

63. See, for example, Leslie Feinberg, *Stone Butch Blues* (Ithaca, NY: Firebrand Books, 1993), 135 (dramatizing the characterization of butch lesbians as "male

chauvinist pigs" by some lesbian feminists); Joan Nestle, "The Fem Question," in *Pleasure and Danger: Exploring Female Sexuality*, ed. Carole S. Vance (London: Pandora, 1991), 232, 236 ("The message to fems throughout the 1970s was that we were the Uncle Toms of the [lesbian feminist] movement"); Rose Jordan, "A Question of Culture: Mirror without Image," in *Lavender Culture*, ed. Karla Jay and Allen Young (New York: Jove Publications, 1978), 445, 450 (criticizing butch/femme identities as "role-playing in which one person is dominant and the other subservient").

64. Esther Newton and Shirley Walton, "The Misunderstanding: Toward a More Precise Sexual Vocabulary," in Vance, *Pleasure and Danger*, 242, 249. See also Nestle, *Restricted Country*, 100–109 (arguing that lesbian-feminists' vilification of butch and femme women was rooted in middle-class norms of respectability); Lyndall MacCowan, "Re-collecting History, Renaming Lives: Femme Stigma and the Feminist Seventies and Eighties," in *The Persistent Desire: A Femme-Butch Reader*, ed. Joan Nestle (New York: Alyson Publications, 1991), 299 (analyzing the anti-working-class bias in popular lesbian-feminist texts of the 1970s and 1980s); Cherríe Moraga, *Loving in the War Years* (Boston: South End, 1983), 120 (analyzing the racism implicit in the lesbian-feminist rejection of butch-femme roles).

65. See Paisley Currah, "Defending Genders: Sex and Gender Non-Conformity: The Civil Rights Strategies of Sexual Minorities," *Hastings Law Journal* 48 (1997): 1363 (describing the historical exclusion of gender-variant people, practices, and identities from mainstream gay rights advocacy).

66. Cf. Bolin, "Transcending and Transgendering," 447; Dave King, "Gender Blending: Medical Perspectives and Technology," in Ekins and King, *Blending Genders*, 79.

67. In acknowledging the importance of recognizing transsexualism as a medical condition, I do not mean to endorse the facile and unfortunately still-all-too-common notion that transsexuals are the unwitting dupes of reactionary medical authorities. See, for example, Janice Raymond, *Transsexual Empire* (Boston: Beacon Press, 1979); Dwight Billings and Thomas Urban, "The Socio-Medical Construction of Transsexualism: An Interpretation and Critique," in Ekins and King, *Blending Genders*, 99 (purporting to "show that transsexualism is a socially constructed reality which only exists in and through medical practice").

68. For example, a transsexual was by definition not a drag queen or a transvestite or a self-loathing homosexual but a "normal" heterosexual woman or man "trapped" in the wrong kind of body. See Denny, "Transgender in the United States," 9–10.

69. See Lou Sullivan, *Information for the Female to Male Cross Dresser and Transsexual* (Seattle: Ingersoll Gender Center, 1985), 78–83 (describing his lifelong battle to convince medical providers that some female-to-male transsexuals are gay men). Even now, in fact, some transsexual people who are married are required to get a divorce as a prerequisite for obtaining medical treatment (Denny, "Transgender in the United States," 10).

70. See Denny, "Transgender in the United States," 9–10.

71. Ki Namaste, "Tragic Misreadings: Queer Theory's Erasure of Transgender Subjectivity," in *Queer Studies*, ed. Brett Beemyn and Mickey Eliason (New York: New York University Press, 1996), 183, 197.

72. Kate Bornstein, *Gender Outlaw: On Men, Women, and the Rest of Us* (New York: Routledge, 1994), 121.

73. Sandy Stone, "The Empire Strikes Back: A Posttranssexual Manifesto," in *Body Guards: The Culture Politics of Gender Ambiguity*, ed. Julia Epstein and Kristin Straub (New York: Routledge, 1991), 280.

74. Jamison Green, introduction to Currah and Minter, *Transgender Equality*, 7.

75. See International Bill of Gender Rights, International Conference on Transgender Law and Policy, ITCLEP Rep. 7, August–October 1995.

76. See Dallas Denny, "Transgender: Some Historical, Cross-Cultural, and Contemporary Models and Methods of Coping and Treatment," in *Gender Blending*, ed. Bonnie Bullough, Vern L. Bullough, and James Elias (Amherst, MA: Prometheus Books, 1997), 33, 39 (describing the "paradigm shift" from a psychiatric model that defines transsexuals and transvestites as discrete clinical entities to a unified transgender sensibility); Bolin, "Transcending and Transgendering," 460–82 (noting the emergence of a politicized transgender community that "has supplanted the [previous] dichotomy of transsexual and transvestite"); Stryker and Van Buskirk, *Gay by the Bay*, 126–27 (noting that "the old divisions between drags, butches, transsexuals, and transvestites [have melded] into a provocative 'transgender' style"); Bornstein, *Gender Outlaw*, 118–21 (rejecting a narrow medical definition of transsexualism); Feinberg, *Transgender Warriors*, 98 (emphasizing the diversity of identities within the transgender movement).

77. See, for example, Whittle, "Gender Fucking or Fucking Gender?" in Ekins and King, *Blending Genders*, 202 ("During the 1990s many [transgendered people], including those who have apparently made the transition successfully and would not consider themselves to be lesbian or gay in their new gender-role, are staking a claim as actually belonging to and being a part, and an essential part at that, of the gay community"); Stryker and Van Buskirk, *Gay by the Bay*, 126–27 (describing the "shifting status of transgender identities and practices in the contemporary gay and lesbian community" and noting that "transsexuals in particular quickly seized the political opportunities they saw in the midst of . . . boundary-collapses within queer culture").

78. See, for example, Bornstein, *Gender Outlaw*, 104.

79. *Ibid.*, 135. See also Frye, "Facing Discrimination," 451 (arguing that sexual orientation is a subset of gender identity).

80. Rotello, "Transgendered Like Me," 88.

81. *Ibid.*

82. *Ibid.*

83. *Ibid.* Rotello bases much of his argument on "the growing body of research into the 'cause' of sexual orientation" and the hypothesis that homosexuality and transgenderism have some common biological or genetic propensity to "exhibit 'sex-atypical' characteristics" (*ibid.*). For a critique of research purporting to find a biological basis for gender-typed behavior and a compelling analysis of the reactionary political implications of this type of research, see Ann-Fausto Sterling, *Myths of Gender: Biological Theories about Women and Men* (New York: Basic Books, 1992).

84. For a recent account of this history, see Karla Jay, *Tales of the Lavender Menace: A Memoir of Liberation* (New York: Basic Books, 1999).

85. See *ibid.*
86. Eve Kosofsky Sedgwick, *The Epistemology of the Closet* (Berkeley: University of California Press, 1990), 36.
87. Adrienne Rich, "Compulsory Heterosexuality and Lesbian Existence," in *Women, Sex, and Sexuality*, ed. Catherine R. Stimpson and Ethel Spector Person (Chicago: University of Chicago Press, 1980), 62.
88. See Jill Johnston, *Lesbian Nation: The Feminist Solution* (New York: Simon and Schuster, 1974) (arguing that all women are potential lesbians and that lesbianism is the ultimate feminist solution to sexism).
89. Radicalesbians, "The Woman-Identified-Woman," reprinted in *Out of the Closets: Voices of Gay Liberation*, ed. Karla Jay and Allen Young (New York: Douglas, 1977), 172 (originally published as a manifesto by the New York Radicalesbians in 1970).
90. See, for example, "Gay Revolution Party Women's Caucus, Realesbians and Politicalesbians," reprinted in Jay and Young, *Out of the Closets*, 177-78, 180 (condemning heterosexual women for "seeking a personal solution to a political problem" and bisexual women for "retaining their definition by men and the social privileges accruing from this").
91. See, for example, Minnie Bruce Pratt, *S/HE* (Ithaca: Firebrand Books, 1995), 18-19 (describing the disapproval directed at butch and femme lesbians by some lesbian feminists).
92. See, for example, Marilyn Frye, "Lesbian Feminism and the Gay Rights Movement: Another View of Male Supremacy, Another Separatism," in *The Politics of Reality: Essays in Feminist Theory* (Trumansburg, NY: Crossing, 1983), 129, 130-32 (rejecting any political affiliation between lesbians and gay men and concluding that "gay men generally are in significant ways, perhaps in all important ways, only more loyal to masculinity and male supremacy than other men").
93. See Raymond, *Transsexual Empire*, 149 (describing sex reassignment as "science at the service of a patriarchal ideology of sex-role conformity"); Denny, "Transgender in the United States," 10 (describing Raymond's campaign to deny transsexuals the right to hormone therapy and sex reassignment surgeries).
94. Halley, "Intersections," 103 (questioning whether there can be a political alliance between gay people and transsexuals and maintaining that "transsexuals—particularly male-to-female transsexuals—have . . . insisted that gender is conflated with bodily sex"); Judith Butler, *Bodies That Matter* (New York: Routledge, 1993), 124-33 (disagreeing with Janice Raymond's belief that gay male drag is inherently misogynist but concurring that transsexualism, at least in the case of the particular transsexual women she analyzes, attributes "false privilege" to women and amounts to "an uncritical miming of hegemonic norms"); Donna Minkowitz, "On Trial: Gay? Straight? Boy? Girl? Sex? Rape?" *OUT* 26 (1995): 99, 100 (describing Brandon Teena, a female-to-male transsexual who was raped and murdered in Nebraska after local authorities disclosed his transgender identity, as a self-hating butch lesbian).
95. See, for example, Stryker and Van Buskirk, *Gay by the Bay*, 58 ("The consolidation of a feminist alliance between lesbians and straight women depended on a gender ideology that regarded gender itself as inherently oppressive. . . . One of the

repercussions . . . was the marginalization of traditional butch/femme roles in the lesbian community and the disparagement of drag among gay men").

96. Esther Newton, "The Mythic Mannish Lesbian: Radclyffe Hall and the New Woman," in Duberman, Vicinus, and Chauncey, *Hidden from History*, 281 ("Thinking, acting, or looking like a man contradicts lesbian feminism's first principle: The lesbian is a 'woman-identified woman'"); Pratt, *S/HE*, 19 ("Often a lesbian considered 'too butch' was assumed to be, at least in part, a male chauvinist. She might get thrown out of her lesbian collective for this, or refused admittance to a lesbian bar").

97. Pratt, *S/HE*, 19 ("Frequently, a lesbian who was 'too femme' was perceived as a woman who had not liberated her mind or her body").

98. Faderman, *Odd Girls and Twilight Lovers*, 267. For a critical response to Faderman's disdain for contemporary butch and femme identities, see Sherric Innes and Michele E. Lloyd, "G.I. Joes in Barbie Land," in *Queer Studies: A Lesbian, Gay, Bisexual, and Transgender Anthology*, ed. Brett Beemyn and Mickey Eliason (New York: New York University Press, 1996), 9-34.

99. See, for example, William G. Hawkeswood, *One of the Children: Gay Black Men in Harlem* (Berkeley: University of California Press, 1996); Leon E. Pettitway, *Honey, Honey, Miss Thang: Being Black, Gay, and on the Streets* (Philadelphia: Temple University Press, 1996).

100. Cf. Michael P. Jacobs, "Do Gay Men Have a Stake in Male Privilege?" in *Homo Economics: Capitalism, Community, and Lesbian and Gay Life*, ed. Amy Gluckman and Betsy Reed (New York: Routledge, 1997), 178 (arguing that while feminism and gay liberation overlap substantially, "gay activism should neither be conflated with, nor attempt to substitute for, a strong political movement that confronts women's subordination in all its forms").

101. As Kate Bornstein has rightly remarked, "The choice between two of something is not a choice at all, but rather the opportunity to subscribe to the value system which holds the two presented choices as mutually exclusive alternatives" (*Gender Outlaw*, 101).

102. This does not mean we should never use umbrella terms like *gay* or *transgender*, but it does mean that we should not mistake any of them for "the" new truth about the unilateral source of our oppression.

103. See, for example, Darren Lenard Hutchinson, "'Gay Rights' for 'Gay Whites'? Race, Sexual Identity, and Equal Protection Discourse," *Cornell Law Review* 85 (2000): 1358, 1365 (arguing that gay rights advocates must adopt a multidimensional perspective that is "attuned to the racial and gender dimensions of heterosexist structures").

104. *Ibid.* See also Darren Lenard Hutchinson, "Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse," *Connecticut Law Review* 29 (1997): 561.

105. *Romer v. Evans*, 517 U.S. 620 (1996) (striking down Amendment 2, a proposed amendment to the Colorado Constitution that would have repealed all local and state laws or policies prohibiting antigay discrimination and prohibited the enactment of any such laws or policies in the future).

106. *Ibid.*, 631.

107. *Baker v. State*, 744 A. 2d 864, 889 (Vt. 1999) (holding that same-sex couples must be afforded all of the rights and benefits given to married couples under Vermont state law).

108. *Lawrence v. Texas*, 539 U.S. 558 (2003).

109. *Ibid.* at 574.

110. Matt Coles, "Making the Case for Transgender Inclusion," *Southern Voice*, April 26, 2001.

## 9. Transgender Communities of the United States in the Late Twentieth Century

*Dallas Denny*

From prehistoric times to the present, individuals whom today we might call transgendered and transsexual have played prominent roles in many societies, including our own.<sup>1</sup> It is only in the second half of the twentieth century, however, that previously distinct and disparate segments within the transgendered and transsexual population began to write and organize around their mutual oppressions. By the end of the century and the close of the millennium, these various communities had merged—or were at least communicating—and had established a political voice and begun to achieve limited political victories.

What were the historical roots of these transgender communities, and how did they arise and grow so quickly? What kept these communities apart for so many years, and what eventually brought them together?

### A Community of Cross-Dressers

By the late 1950s small numbers of male cross-dressers were secretly meeting in Los Angeles and the northeastern United States.<sup>2</sup> These cross-dressing clubs consisted exclusively of heterosexual men and, when they could be convinced to participate, their female partners. Charles (later Virginia) Prince was the founder of Los Angeles's Hose and Heels Club, which was perhaps the first formal support group in the United States for heterosexual cross-dressers. Prince also founded the Foundation for Full Personality Expression (FPE), a national organization for heterosexual cross-dressers, and was co-founder of Tri-Ess, the Society for the Second Self, which replaced FPE. She