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Panel II: A Look at the Current Legislation & Litigation Involving the Lesbian/Gay Community

Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion in the Gay Rights Movement

Shannon Minter*

“‘Is this testing whether I’m an android,’ Rachel asked tartly, ‘or whether I’m homosexual?’ The gauges did not register.”¹

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.²

“[W]e can’t even get it clear among ourselves what we’re talking about when we use the words ‘homosexual’ and ‘gay’.”³

Should the gay rights movement expand its borders to include transgender people?⁴ In the past few years, gay organizations have

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¹ PHILIP K. DICK, *DO ANDROIDS DREAM OF ELECTRIC SHEEP?* 49 (1968).

² Janet Halley, *Introduction* to Symposium, *Intersections: Sexuality, Cultural Tradition, and the Law*, 8 *YALE J.L. & HUMAN.* 93, 96 (1996).

³ See Bruce Bawer, *Confusion Reigns*, in *BEYOND QUEER: CHALLENGING GAY LEFT ORTHODOXY* 174, 175 (Bruce Bawer ed., 1997) [hereinafter *BEYOND QUEER*].

⁴ Throughout this article, I use “transgender” as an umbrella term including transsexuals, transvestites, cross-dressers, drag queens and drag kings, butch and

been obliged to confront this question in multiplying contexts.⁵ Should transsexual women be permitted to attend lesbian events?⁶ Should gay legal organizations represent transgender clients?⁷ Should proposed legislation to protect gay people from discrimination be drafted to protect transgender people as well?⁸ Should gay advocacy groups broaden their missions to include transgender issues?⁹ More generally, does it make sense to group gay and trans-

femme lesbians, feminine gay men, intersexed people, bigendered people, and others who, in Leslie Feinberg's words, "challenge the boundaries of sex and gender." See LESLIE FEINBERG, *TRANSGENER WARRIORS: MAKING HISTORY FROM JOAN OF ARC TO RUPAUL X* (1996). For an overview of current debates about terminology within the transgender community, see *id.* at 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.

⁵ See, e.g., Chrissy Cada, *Issue of Transgender Rights Divides Many Gay Activists, Transgender Activists Seek A Greater Voice*, THE BOSTON GLOBE, April 23, 2000 at A8.

⁶ See, e.g., ZACHARY & NATAF, *LESBIANS TALK TRANSGENDER* 35–53 (1996) (presenting a variety of perspectives on the controversy over whether transsexual women should be included in women only spaces). See also FEINBERG, *supra* note 4, at 109–19 (critiquing the stereotype that "[t]ranssexual women are . . . a Trojan horse trying to infiltrate women's space").

⁷ 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*, 30 HASTINGS L.J. 1131 (1979). 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*, 101 COLUM. L. REV. 392 (2001).

⁸ See, e.g., PAISLEY CURRAH & SHANNON MINTER, *TRANSGENDER EQUALITY* (2000) (arguing that gay groups should include transgender people in legislative initiatives), available at www.transgenderlaw.org. See also Paisley Currah & Shannon Minter, *Unprincipled Exclusions: The Struggle to Achieve Judicial and Legislative Equality for Transgender People*, 7 WM. & MARY J. WOMEN & L. 37 (2000) (describing the need for legislation to protect transgender people).

⁹ At the national level, 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 commitment 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* 451 (John D'Emilio, William B. Turner, & Urvashi Vaid eds., 2000).

gender 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.¹⁰ 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.¹¹

In contrast, many transgender people, myself included, consider the gay community to be their only viable social and political home.¹² In part, this is because a sizable percentage of transgender people also identify as lesbian, gay, or bisexual.¹³ More fundamen-

¹⁰ For an unusually forthright articulation of this perspective, see Bawer, *supra* note 3, at 140–41 (noting that bisexual and transgender people “deserve all kinds of freedom, but . . . [a]re 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).

¹¹ See, e.g., 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 “[o]ur freedom and civil rights should not be curtailed based upon who we love”).

¹² See, e.g., Stephen Whittle, *Gender Fucking or Fucking Gender?*, in BLENDING GENDERS: SOCIAL ASPECTS OF CROSS-DRESSING AND SEX-CHANGING, 196, 201–02 (Richard Ekins & Dave King eds., 1996) (noting that “[m]any transgendered individuals have made their home in . . . the homosexual community” and that “[l]esbians and gay men have often provided a safe and welcoming space for transgendered people”) [hereinafter BLENDING GENDERS].

¹³ 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, e.g., Ann Bolin, *Transcending and Transgendering: Male-to-Female Transsexuals, Dichotomy and Diversity*, in THIRD SEX, THIRD GENDER: BEYOND SEXUAL DIMORPHISM IN CULTURE AND HISTORY 447, 460 (Gilbert Herdt ed., 1993) (“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”); ZACHARY & NATAF, *supra* note 6, at 32 (“My research showed that of the FTMs

tally, it is because homophobia and transphobia are tightly intertwined, and because anti-gay bias so often takes the form of violence and discrimination against those who are seen as transgressing gender norms. Gender non-conforming people have consistently 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.”¹⁴

From this perspective, the question that calls for an explanation is not whether transgender people can justify their claim to gay rights, but rather how did a movement that was launched by bull daggery, 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 histories 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, at the same time, completely illogical to many others? Why have trans-

that responded 33 per cent identified as bisexual, 40 percent as heterosexual, 2 per cent as asexual and 25 percent as gay men”) (citing Stephen Whittle); MARTIN S. WEINBERG ET AL., *DUAL ATTRACTION: UNDERSTANDING BISEXUALITY* 59–65 (1994) (attempting to account for the higher incidence of homosexuality and bisexuality among transsexual people); FEINBERG, *supra* note 4, at 92 (noting that the “sexuality of some trans people [cannot] be easily classified”); Shadow Morton, *Perspective*, in *ANYTHING THAT MOVES*, No. 13, Spring 1997, at 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.”).

¹⁴ John D’Emilio, *After Stonewall*, in *MAKING TROUBLE: ESSAYS ON GAY HISTORY, POLITICS, AND THE UNIVERSITY* 234, 240 (1992). *See also* FEINBERG, *supra* note 4, at 97 (noting that visibly transgender people have often borne the brunt of anti-lesbian and anti-gay violence and discrimination, and suggesting that “it was no accident that gender outlaws led the Stonewall Rebellion”).

gender 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 intra-community battles that have periodically derailed the lesbian and gay movement in recent years.¹⁵ 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."¹⁶ 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 have suddenly wandered into gay politics by mistake,¹⁷ or as the long awaited vanguard of a radical new politics of gender transgression.¹⁸ In either case, the novelty of transgender issues is greatly overstated.

While some of the specific issues raised by transgender people may be new, conflict over the relationship between gay identity and gender non-conformity is surely not new. Changes in the social meaning of gayness have been entangled with changes in the social

¹⁵ For a concise account of these internal battles, see D'Emilio, *supra* note 14, at 256–71. See also URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF LESBIAN & GAY LIBERATION* 274–306, 346–72 (1995) (describing conflicts over issues of racial and gender diversity in the gay movement).

¹⁶ D'Emilio, *supra* note 14, at 235–36.

¹⁷ See, e.g., Bawer, *supra* note 3, at 140–41.

¹⁸ See, e.g., Gabriel Rotello, *Transgendered Like Me*, *ADVOCATE*, Dec. 10, 1996, at 88 (arguing that "an emerging definition of all gay people as transgendered is the wave of the future").

meaning of gender for at least the past hundred years.¹⁹ 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.²⁰ The 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 since it began.

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 I, I argue that 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 II traces this paradox to the emergence of an expressly non-transgender, or gender-normative, model of gay identity in the twentieth-century. Part II 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 the formation of 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 III 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

¹⁹ See *infra* notes 39–72 and accompanying text.

²⁰ VAID, *supra* note 15, at 274–306; D’Emilio, *supra* note 14, at 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, *supra* note 3 (accusing lesbian feminists of mounting a “siege against gay male culture”).

from the mainstream gay movement, as described in Part II, as well as to the recognition of transsexualism as a medical condition and the availability of hormone therapy and sex-reassignment surgeries.

Part IV is a critical examination of attempts on the part of some gay and transgender theorists to outflank gay resistance to transgender inclusion by re-defining 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.

I. ANCESTORS BUT NO LONGER KIN: THE ANOMALOUS
POSITION OF TRANSGENDER PEOPLE IN
CONTEMPORARY LESBIAN AND GAY
SCHOLARSHIP AND ADVOCACY

This summer, hundreds of thousands of lesbians and gay men will gather in New York City to celebrate the twenty-fifth anniversary of the Stonewall riots The riots have become a universal symbol for a gay movement largely divorced from those whose arrests actually set off the riots. This summer, keynote speakers will admonish their audiences to remember that drag queens, hustlers, and people of color were there “at the beginning.” They will not, however, call for the movement to make the rights of transvestites or commercial sex workers a priority.²¹

“[E]very day can’t be Stonewall.”²²

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.”²³ 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

²¹ Editors, *Introduction*, 29 HARV. C.R. – C.L. L. REV. 277, 278 (1994).

²² Bruce Bawer, *Notes on Stonewall*, in HOMOSEXUALITY: DEBATING THE ISSUES 23, 24 (Robert M. Baird & M. Katherine Baird eds., 1995)

²³ D’Emilio, *supra* note 14, at 235.

of survival and resistance from the turn of the twentieth century through the decades prior to Stonewall.²⁴ 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.²⁵

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:

[o]ne 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.²⁶

Similarly, one of the ways 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 exis-

²⁴ See, e.g., SUSAN STRYKER & JIM VAN BUSKIRK, *GAY BY THE BAY: A HISTORY OF QUEER CULTURE IN THE SAN FRANCISCO BAY AREA* (1997); ELIZABETH LAPOVSKY KENNEDY & MADELINE DAVIS, *BOOTS OF LEATHER, SLIPPERS OF GOLD: THE HISTORY OF A LESBIAN COMMUNITY* (1993); ALLAN BERUBE, *COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR II* (1990); HIDDEN FROM HISTORY: RECLAIMING THE GAY & LESBIAN PAST (MARTIN DUBERMAN, MARTHA VICINUS, & GEORGE CHAUNCEY, JR. EDs., 1989) [hereinafter HIDDEN FROM HISTORY]; JOAN NESTLE, *A RESTRICTED COUNTRY* (1987); WALTER L. WILLIAMS, *THE SPIRIT AND THE FLESH: SEXUAL DIVERSITY IN AMERICAN INDIAN CULTURE* (1986); JOHN D’EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940–1970* (1983); JONATHAN KATZ, *GAY/LESBIAN ALMANAC: A NEW DOCUMENTARY* (1983); AUDRE LORDE, *ZAMI: A NEW SPELLING OF MY NAME* (1982); LILLIAN FADERMAN, *SURPASSING THE LOVE OF MEN: ROMANTIC FRIENDSHIPS AND LOVE BETWEEN WOMEN FROM THE RENAISSANCE TO THE PRESENT* (1981).

²⁵ See, e.g., FEINBERG, *supra* note 4 (tracing transgender history from Joan of Arc to the present); VERNON AND BONNIE BULLOUGH, *CROSS DRESSING, SEX, AND GENDER* (1993) (documenting the history of cross dressing); Dallas Denny, *Transgender in the United States*, 27 *SIECUS REPORT* 8 (1999) (noting that “many societies have had formal and often honored social roles for transgender men and women”).

²⁶ See GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890–1940*, 285–86 (1994).

tence of gay people in the past. These efforts have seemed especially important in the wake of the 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.²⁷ Following *Bowers*, opponents of gay civil rights have 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.²⁸ 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."²⁹

In the course of 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 acknowledgement 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

²⁷ *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986) (noting that proscriptions against homosexual conduct have "ancient roots"). See also *id.* 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).

²⁸ See, e.g., Hadley Arkes, *Homosexuality and the Law*, in *HOMOSEXUALITY AND PUBLIC LIFE* 157 (Christopher Wolfe ed., 1999) (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* 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*, 29 *HARV. C.R.-C.L. REV.* 283 (1994) (describing and analyzing right-wing arguments that gay rights are "special rights").

²⁹ See, e.g., Halley, *supra* note 2, at 97 (noting that some gay legal scholars have "have picked up a historiographical gauntlet thrown down" by the Court in *Bowers*).

transgender people.³⁰ 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.³¹ The same disdain for contemporary transgender people is evident in many of the accounts of “passing women” featured in numerous gay histories.³² With few exceptions, gay historians have claimed these historical figures as lesbian forbears, with little or no room for discussion, ambiguity or debate as to whether some of these individuals would be more accurately described as transgender.³³

From a practical perspective, the necessity for gay advocates to draw upon 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,³⁴ to the lesbian and gay artists of the Harlem Renaissance,³⁵ to contemporary queer performers such as k.d. Lang and RuPaul. Given the predominance of these ostensibly cross-

³⁰ See William N. Eskridge, Jr., *A History of Same-Sex Marriage*, in *FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT: THE CASE FOR SAME-SEX MARRIAGE* 15, 27–30, 37–39 (1996) (discussing “the berdache [i.e., two-spirit] tradition” and marriages involving “women passing as men” as examples of same-sex relationships). See also FEINBERG, *supra* note 4, at 21–29, 83–89 (discussing two-spirit people and female-bodied people who lived their lives as men as examples of transgender people).

³¹ PATRICK CALIFIA, *SEX CHANGES: THE POLITICS OF TRANSGENDERISM* (1997).

³² “Passing women” refers to women who wore male clothing and otherwise lived their public lives as men. See, e.g., JONATHAN NED KATZ, *GAY AMERICAN HISTORY: LESBIANS & GAY MEN IN THE U.S.A.* 209–79 (1992) (describing passing women from 1782 to 1920).

³³ See, e.g., *id.* at 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* 134, 137–42 (Martin Duberman ed., 1997) (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”).

³⁴ See, e.g., Randolph Trumbach, *The Birth of the Queen: Sodomy and the Emergence of Gender Equality in Modern Culture, 1660–1750*, in *HIDDEN FROM HISTORY: RECLAIMING THE GAY & LESBIAN PAST* 129 (Martin Duberman, et al. eds., 1989) (describing the emergence of a subculture of feminine gay men known as “mollies” in eighteenth century London) [hereinafter *HIDDEN FROM HISTORY*].

³⁵ See Eric Garber, *A Spectacle in Color: The Lesbian and Gay Subculture of Jazz Age Harlem*, in *HIDDEN FROM HISTORY*, *supra* note 34, at 318–31 (describing

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 as a means of 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 have sometimes been complicit in launching the same “came out of nowhere” attacks on the newly emerging transgender movement. In their casebook on *Sexuality, Gender, and the Law*, for example, gay scholars William Eskridge and Nan Hunter discuss transsexualism almost exclusively as a contemporary medical phenomenon and appear to suggest that transsexual people literally emerged from a Johns Hopkins laboratory in the 1950s.³⁶ 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.³⁷ From the perspective of many transgender people, however, these arguments fail to acknowledge that transgender people have been present in

the strong association between cross-gender behavior and homosexuality among lesbian and gay artists and performers in the Harlem Renaissance).

³⁶ WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, *SEXUALITY, GENDER, AND THE LAW: TEACHER'S MANUAL* 42 (1997) (“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.”).

³⁷ See, e.g., Cada, *supra* note 5, at A9 (“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).

gay liberation and gay rights struggles from the beginning. In the words of Riki Wilchins, the executive director of the Gender Public Action 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."³⁸

II. FROM GENDER INVERSION TO SEXUAL OBJECT CHOICE: THE CLASS- AND RACE-BASED ORIGINS OF MODERN GAY IDENTITY

*I really don't like androids. Ever since I got here from Mars my life has consisted of imitating the human, doing what she would do, acting as if I had the thoughts and impulses a human would have. Imitating, as far as I'm concerned, a superior life-form.*³⁹

In the United States, the exclusion of transgender people from the mainstream gay movement is rooted in the expressly non-transgender, 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.⁴⁰ 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.⁴¹ Disputing the misconception that gay people prior to Stonewall were uniformly closeted

³⁸ Cada, *supra* note 5, at A10.

³⁹ DICK, *supra* note 1, at 134 (android Luba Luft).

⁴⁰ See, e.g., KENNEDY & DAVIS, *supra* note 25, at 323–26.

⁴¹ See CHAUNCEY, *supra* note 26.

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.⁴² 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.⁴³

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.⁴⁴

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.”⁴⁵ He

⁴² See CHAUNCEY, *supra* note 38, at 1.

⁴³ See CHAUNCEY, *supra* note 38, at 355.

⁴⁴ See CHAUNCEY, *supra* note 38, at 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.” *Id.* at 97.

⁴⁵ See CHAUNCEY, *supra* note 38, at 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,

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.⁴⁶ In the decades prior to World War II, visibly gay men were subjected to increasingly brutal repression by police, anti-vice squads, and other “social purity” forces, under the aegis of solicitation, sodomy, prostitution, cross-dressing, disorderly conduct, and similar statutes.⁴⁷ This anti-gay 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.⁴⁸

Convinced that the survival of the family and the dominance of white culture was at stake, these reformers were determined to impose white middle-class norms about gender and sexuality on immigrant working-class communities.⁴⁹ 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

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.” *Id.* at 13.

⁴⁶ CHAUNCEY, *supra* note 38, at 326–27 (“By the 1920s, gay men had become a conspicuous part of New York City’s nightlife. They had been a 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.”).

⁴⁷ See CHAUNCEY, *supra* note 38, at 131–49 *passim*.

⁴⁸ See CHAUNCEY, *supra* note 38, at 131–49, 179–205 *passim*. 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.” *Id.* at 172.

⁴⁹ CHAUNCEY, *supra* note 38, at 203.

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.⁵⁰

As any visible deviation from middle-class gender norms became a lightning rod for criminal sanctions and police brutality,⁵¹ 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.”⁵² “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.”⁵³ 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 desire for men from any connotation of deviation from an otherwise “normal” masculine identity.⁵⁴ 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.”⁵⁵

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,⁵⁶ but rather to the growing “class antagonism”

⁵⁰ CHAUNCEY, *supra* note 38, at 172.

⁵¹ As Chauncey notes, “[o]nly 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.” CHAUNCEY, *supra* note 38, at 346.

⁵² See CHAUNCEY, *supra* note 38, at 105.

⁵³ See CHAUNCEY, *supra* note 38, at 103.

⁵⁴ See CHAUNCEY, *supra* note 38, at 101.

⁵⁵ See CHAUNCEY, *supra* note 38, at 100.

⁵⁶ 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

between fairies and queers.⁵⁷ 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 deplures 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 '30s, "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."⁵⁸

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.⁵⁹ On the contrary, one of the most striking features of Chauncey's account of the tension between

gender nonconforming (not to mention those who still are) were suffering from a kind of false consciousness, based on their susceptibility to cultural stereotypes. See, e.g., GILBERT HERDT, *SAME SEX, DIFFERENT CULTURES* 54 (1997) ("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* 60 (1991) ("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.").

⁵⁷ CHAUNCEY, *supra* note 26, at 106.

⁵⁸ See CHAUNCEY, *supra* note 38, at 105–06.

⁵⁹ 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." *Id.* at 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

“fairies” and “queers” is the remarkable extent to which it resonates with contemporary gay debates.⁶⁰ As Urvashi Vaid has rightly remarked, many of the queer men in Chauncey’s history sound “a lot like gay conservatives today.”⁶¹

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 have repeatedly 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 ’60s.⁶² While most working-class lesbians identified as butch or femme⁶³ and adopted the same highly differentiated masculine and feminine styles that were characteristic of working-class culture generally,⁶⁴ most white middle-class lesbians adopted professional feminine attire⁶⁵ and cringed at

much a part of what it means to be lesbian or gay are somehow “backward” or reactionary.

⁶⁰ See, e.g., MARSHALL KIRK & HUNTER MADSEN, *AFTER THE BALL: HOW AMERICA WILL CONQUER ITS FEAR & HATRED OF GAYS* 379 (1989) (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, *supra* note 22, at 24 (defending the decision to exclude transgender people from the title of Stonewall 25 on the grounds that “gay American [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.”).

⁶¹ VAID, *supra* note 15, at 43 (1995).

⁶² LILLIAN FADERMAN, *supra* note 56, at 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.”).

⁶³ *Id.* (“Being neither butch nor femme was not an option if one wanted to be part of the . . . working-class lesbian subculture.”).

⁶⁴ LILLIAN FADERMAN, *supra* note 56, at 169 (noting that “butch/femme style of dress was not much different from working-class male and female style”).

⁶⁵ LILLIAN FADERMAN, *supra* note 56, at 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 counter-

the sight of butches “with cigarettes rolled in their sleeves” and “their overdressed femmes with too much lipstick and too high heels.”⁶⁶ The political interests of 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 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.”⁶⁷ Like the white middle-class gay men chronicled by Chauncey, the Daughters of Bilitis sought to distance themselves from “[t]he kids in fly front pants and with butch haircuts and manish manner [who were] the worst publicity we can get.”⁶⁸

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.⁶⁹ As Joan Nestle, Cherrie Moraga, Lyndall Mac-

parts 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.” *Id.* at 181.

⁶⁶ LILLIAN FADERMAN, *supra* note 56, at 182 (citing a middle-class lesbian recalling her reaction to working-class lesbians in an Omaha bar in the 1950s). *See also* CHAUNCEY, *supra* note 26, at 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”).

⁶⁷ LILLIAN FADERMAN, *supra* note 56, at 180.

⁶⁸ *Id.* (citing *The Ladder* (Journal of the Daughters of Bilitis 1956)). *Cf.* STRYKER & VAN BUSKIRK, *supra* note 24, at 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, *supra* note 24, at 101–02 (explaining that “[t]he 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.”).

⁶⁹ *See, e.g.,* LESLIE FEINBERG, *STONE BUTCH BLUES* 135 (1993) (dramatizing the characterization of butch lesbians as “male chauvinist pigs” by some lesbian feminists); Joan Nestle, *The Fem Question*, in *PLEASURE AND DANGER: EXPLOR-*

Cowan, Esther Newton, Minnie Bruce Pratt, Biddy Martin, and others have subsequently noted, these attacks were “old class putdowns, clothed in new political sanctity.”⁷⁰

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 non-transgender, or gender-normative, model of gay identity.⁷¹ 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 created the sociopolitical situation in which gender-variant people have emerged as a distinct constituency, or as what is now known as the transgender movement.

ING FEMALE SEXUALITY 232, 236 (Carole S. Vance ed., 1991) (“The message to fems throughout the 1970s was that we were the Uncle Toms of the [lesbian feminist] movement.”) [hereinafter PLEASURE AND DANGER]; Rose Jordan, *A Question of Culture: Mirror Without Image*, in LAVENDER CULTURE 445, 450 (Karla Jay & Allen Young eds., 1978) (criticizing butch/femme identities as “role-playing in which one person is dominant and the other subservient”).

⁷⁰ Esther Newton and Shirley Walton, *The Misunderstanding: Toward a More Precise Sexual Vocabulary*, in PLEASURE AND DANGER, *supra* note 73, at 242, 249 See also NESTLE, *supra* note 24, at 100–09 (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 299 (Joan Nestle ed., 1991) (analyzing the anti-working-class bias in popular lesbian-feminist texts of the ’70s and ’80s); CHERRIE MORAGA, *LOVING IN THE WAR YEARS* 120 (1983) (analyzing the racism implicit in the lesbian-feminist rejection of butch-femme roles).

⁷¹ See Paisley Currah, *Defending Genders: Sex and Gender Non-Conformity: The Civil Rights Strategies of Sexual Minorities*, 48 HASTINGS L. J. 1363 (1997) (describing the historical exclusion of gender-variant people, practices, and identities from mainstream gay rights advocacy).

III. WHERE DO TRANSGENDER PEOPLE COME FROM? THE BIRTH OF THE TRANSGENDER MOVEMENT

[T]he problem of transsexualism would best be served by morally mandating it out of existence.⁷²

Although 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, they have not for the most part 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 I, many gay historians have appropriated ostensibly cross-gendered figures from the past and labeled those figures as gay, while simultaneously 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 re-claim much of this inverted “gay” history as their own. More importantly, 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 of its own.

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 is surely 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 70s were necessary, if not sufficient, conditions for transgender people to emerge as self-conscious social and political group.⁷³ By identifying and labeling transsexual people as a distinct group, the acknowledgement of transsexualism as a medical condition and the availability of hormones and surgeries paved the way for a politicized transgender movement.⁷⁴

⁷² Lesbian-feminist author JANICE RAYMOND, *THE TRANSEXUAL EMPIRE: THE MAKING OF THE SHE-MALE* 178 (1979).

⁷³ Cf. Ann Bolin, *supra* note 13, at 447; Dave King, *Gender Blending: Medical Perspectives and Technology*, in *BLENDING GENDERS*, *supra* note 12, at 79.

⁷⁴ In recognizing the importance of the recognition of transsexualism as a medical condition, I do not mean to endorse the facile and unfortunately still all

As a medical identity, however, transsexualism was initially defined in very rigid, heterosexist terms, and access to sex reassignment was conditioned upon compliance with overtly homophobic and sexist standards.⁷⁵ Until very recently, for example, transsexual people who are also 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.⁷⁶ 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.⁷⁷ 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.

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

too common notion that transsexuals are the unwitting dupes of reactionary medical authorities. See, e.g., RAYMOND, *supra* note 72; Dwight Billings & Thomas Urban, *The Socio-Medical Construction of Transsexualism: An Interpretation and Critique*, in BLENDING GENDERS, *supra* note 12, at 99 (purporting to “show that transsexualism is a socially constructed reality which only exists in and through medical practice”).

⁷⁵ 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, *supra* note 25, at 9–10.

⁷⁶ See LOU SULLIVAN, INFORMATION FOR THE FEMALE TO MALE CROSS DRESSER AND TRANSSEXUAL 78–83 (1990) (describing his life long 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, *supra* note 25, at 10.

⁷⁷ See Denny, *supra* note 25, at 9–10.

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.⁷⁸

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 very difficult for transsexual people to mobilize politically around being transsexual or to create a transsexual movement. As Kate Bornstein has observed, “[t]he 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.”⁷⁹ Or, in the words of Sandy Stone, “it is difficult to generate a counter-discourse if one is programmed to disappear.”⁸⁰

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 reaction-

⁷⁸ Ki Namaste, *Tragic Misreadings: Queer Theory's Erasure of Transgender Subjectivity*, in *QUEER STUDIES* 183, 197 (Brett Beemyn & Mickey Eliason eds., 1996).

⁷⁹ KATE BORNSTEIN, *GENDER OUTLAW: ON MEN, WOMEN, AND THE REST OF US* 121 (1994).

⁸⁰ Sandy Stone, *The Empire Strikes Back: A Posttranssexual Manifesto*, in *BODY GUARDS: THE CULTURE POLITICS OF GENDER AMBIGUITY* 280 (Julia Epstein & Kristin Straub eds., 1991).

ary and have no political goals other than being accepted as 'normal' heterosexuals.⁸¹

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.⁸² 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 transitioning 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, intersexed people, and other gender variant people.⁸³

In short, transsexual identity has undergone a fairly radical political evolution in an astonishingly short period of time. After being obliged to conform to extremely sexist and homophobic standards to obtain access to sex reassignment, transsexual people have burst the boundaries of clinical categories and emerged to play

⁸¹ Jamison Green, *Introduction to TRANSGENDER EQUALITY*, *supra* note 8, at 7.

⁸² See *International Bill of Gender Rights*, INT'L CONF. ON TRANSGENDER L. & POL'Y, ITCLEP Rep. 7 (Aug.-Oct. 1995).

⁸³ See Dallas Denny, *Transgender: Some Historical, Cross-Cultural, and Contemporary Models and Methods of Coping and Treatment*, in GENDER BLENDING 33, 39 (Bonnie Bullough, Vern L. Bullough, & James Elias eds., 1997) (describing the "paradigm shift" from a psychiatric model that defines transsexuals and transvestites as discrete clinical entities to a unified transgender sensibility); Bolin, *supra* note 13, at 460-82 (noting the emergence of a politicized transgender community that "has supplanted the [previous] dichotomy of transsexual and transvestite"); STRYKER & VAN BUSKIRK, *supra* note 24, at 126-27 (noting that "the old divisions between drags, butches, transsexuals, and transvestites [have melded] into a provocative 'transgender' style"); BORNSTEIN, *supra* note 79, at 118-121 (rejecting a narrow medical definition of transsexualism); FEINBERG, *supra* note 4, at 98 (emphasizing the diversity of identities within the transgender movement).

a leading role in mobilizing gender variant people, both within and outside the gay community proper, into a distinctively and self-consciously transgender movement. As such, transsexual people 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.⁸⁴

IV. DO GAY PEOPLE DREAM OF TRANSGENDER RIGHTS?

Do I look transgendered? By the standard definition of the term, probably not. Yet I increasingly believe that I am transgendered. What's more, I believe that if you are lesbian or gay or bisexual, you are too.⁸⁵

*"This test you want to give me." Her voice, now, had begun to return. "Have you taken it?"*⁸⁶

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, as I noted at the beginning of this piece, 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 equal parts of 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 to recognizing transgender people as part of the gay community reflects genuine confusion and concern about how to reconcile transgender issues with the modern, non-transgender model of gay identity of that has dominated legal and political advocacy on behalf of lesbians and gay men for several decades.

⁸⁴ See, e.g., Whittle, *supra* note 12, at 202 ("[D]uring 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 & VAN BUSKIRK, *supra* note 24, at 126-27 (describing the "shifting status of transgender identities and practices in the contemporary gay and lesbian community" and noting that "[t]ranssexuals in particular quickly seized the political opportunities they saw in the midst of . . . boundary-collapses within queer culture").

⁸⁵ Rotello, *supra* note 18, at 88.

⁸⁶ Dick, *supra* note 1, at 101 (android Luba Luft questioning bounty hunter Rick Deckard).

Although usually unspoken, I believe that 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 long and hard 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 slow but steady 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 have frequently sought to justify transgender people's claim 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."⁸⁷ 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."⁸⁸

Similarly, Gabriel Rotello, a gay man, has argued that "[h]omophobes don't hate us for how we make love. They hate how we make love because it violates our expected gender roles."⁸⁹ "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."⁹⁰ 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

⁸⁷ See, e.g., BORNSTEIN, *supra* note 79, at 104.).

⁸⁸ See BORNSTEIN, *supra* note 79, at 135. See also Frye, *supra* note 9, at 451 (arguing that sexual orientation is a subset of gender identity).

⁸⁹ Rotello, *supra* note 18, at 88.

⁹⁰ *Id.*

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.”⁹¹ “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?”⁹²

As a strategy for gaining entrance where one is not particularly 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 adamantly refused to recognize lesbianism as a legitimate feminist issue or to include lesbians as a legitimate constituency within the women’s movement.⁹³ Friedan, most notoriously, disparaged lesbians as a “lavendar menace” and feared that including lesbians in the feminist movement would fatally undermine its credibility.⁹⁴ 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 [W]omen who loved women were seen as *more* female . . . than those whose desire crossed boundaries of gender.”⁹⁵ 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 move-

⁹¹ *Id.*

⁹² *Id.* 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.” *Id.* 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* (1992).

⁹³ For a recent account of this history, see KARLA JAY, *TALES OF THE LAVENDAR MENACE, A MEMOIR OF LIBERATION* (1999).

⁹⁴ *See id.*

⁹⁵ EVE KOSOFSKY SEDGEWICK, *THE EPISTEMOLOGY OF THE CLOSET* 36 (1990).

ment, lesbians became “women-identified-women” and argued that all women were on a “lesbian continuum.”⁹⁶ From this new perspective, lesbianism became “the feminist solution” to male oppression,⁹⁷ a political expression of solidarity with other women, and a symbol of “the rage of all women condensed to the point of explosion.”⁹⁸

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;⁹⁹ working-class lesbians who identified as butch or femme;¹⁰⁰ gay men, who were deemed to be even more “male” and thus even “more loyal to masculinity and to male supremacy” than other men;¹⁰¹ and, above all, transsexual women.

⁹⁶ ADRIENNE RICH, *Compulsory Heterosexuality and Lesbian Existence*, in *WOMEN, SEX, AND SEXUALITY* 62 (Catherine R. Stimpson & Ethel Spector Person eds., 1980).

⁹⁷ See JILL JOHNSTON, *LESBIAN NATION: THE FEMINIST SOLUTION* (1974) (arguing that all women are potential lesbians and that lesbianism is the ultimate feminist solution to sexism).

⁹⁸ Radicalesbians, *The Woman-Identified-Woman*, reprinted in *OUT OF THE CLOSETS: VOICES OF GAY LIBERATION* 172 (Karla Jay & Allen Young eds., 1977) (originally published as a manifesto by the New York Radicalesbians in 1970) [hereinafter *OUT OF THE CLOSETS*].

⁹⁹ See, e.g., Gay Revolution Party Women’s Caucus, *Realesbians and Politicalesbians*, reprinted in *OUT OF THE CLOSETS*, *supra* note 98, at 177–78, 180 (1971) (condemning heterosexual women for “seeking a personal solution to a political problem” and bisexual women for “retain[ing] their definition by men and the social privileges accruing from this”).

¹⁰⁰ See, e.g., MINNIE BRUCE PRATT, *S/HE* 18–19 (1995) (describing the disapproval directed at butch and femme lesbians by some lesbian feminists).

¹⁰¹ See, e.g., 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* 129, 130–32 (1983) (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”).

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 major role in the closing of many of those clinics in the late '70s and early '80s.¹⁰² 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.¹⁰³

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.¹⁰⁴ Lesbians who are seen as "too masculine" have had their legitimacy as feminists and their place in

¹⁰² See Raymond, *supra* note 72, at 149 (describing sex-reassignment as "science at the service of a patriarchal ideology of sex-role conformity"); Denny, *supra* note 25, at 10 (describing Raymond's campaign to deny transsexuals the right to hormone therapy and sex-reassignment surgeries).

¹⁰³ Halley, *supra* note 2, at 103 (questioning whether there can be a political alliance between gay people and transsexuals and maintaining that "transsexuals — particularly male-to-female transsexuals — have . . . insist[ed] that gender is conflated with bodily sex"); JUDITH BUTLER, *Bodies that Matter* 124-33(1993) (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?*, 26 *OUT* at 99, 100 (1995) (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).

¹⁰⁴ See, e.g., STRYKER & VAN BUSKIRK, *supra* note 24, at 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.).

lesbian culture called into question,¹⁰⁵ as have those who are seen as “too feminine.”¹⁰⁶ 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.”¹⁰⁷

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-WII 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

¹⁰⁵ Esther Newton, *The Mythic Mannish Lesbian: Radclyffe Hall and the New Woman*, in *HIDDEN FROM HISTORY*, *supra* note 24, at 281 (“Thinking, acting, or looking like a man contradicts lesbian feminism’s first principle: The lesbian is a ‘woman-identified woman.’”); PRATT, *supra* note 100, at 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.”).

¹⁰⁶ PRATT, *supra* note 100, at 19 (“Frequently, a lesbian who was ‘too femme’ was perceived as a woman who had not liberated her mind or her body.”).

¹⁰⁷ FADERMAN, *supra* note 56, at 267. For a critical response to Faderman’s disdain for contemporary butch and femme identities, see Sherrie Innes & Michele E. Lloyd, *G.I. Joes in Barbie Land*, in *QUEER STUDIES: A LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ANTHOLOGY* (Brett Beemyn & Mickey Eliason eds., 1996).

scholarship on the importance of gender-variant and transgender identities in contemporary queer communities of color.¹⁰⁸

Moreover, while the claim that gay people are a subset of the transgender community is a powerful antidote to anti-transgender bias and a powerful lens for illuminating the connections between anti-gay and anti-trans oppression, those who have qualms about this approach are also surely 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,¹⁰⁹ 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 — of either excluding transgender people altogether or of re-defining all gay people as gender non-conforming — 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.¹¹⁰ Rather, getting real about transgender issues means moving beyond this zero

¹⁰⁸ See, e.g., WILLIAM G. HAWKESWOOD, *ONE OF THE CHILDREN: GAY BLACK MEN IN HARLEM* (1996); LEON E. PETTIWAY, *HONEY, HONEY, MISS THANG: BEING BLACK, GAY, AND ON THE STREETS* (1996).

¹⁰⁹ Cf. Michael P. Jacobs, *Do Gay Men Have a Stake in Male Privilege?*, in *HOMO ECONOMICS: CAPITALISM, COMMUNITY, AND LESBIAN AND GAY LIFE* 178 (Amy Gluckman & Betsy Reed eds., 1997) (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”).

¹¹⁰ As Kate Bornstein has rightly remarked, “[t]he 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.” BORNSTEIN, *supra* note 79, at 101.

sum frame. The notion that we must disregard the complexities of our communities or of our individual lives to engage in collective political action is a fiction.

Thus, while arguments that claim to identify *the* singular cause of anti-queer oppression can be exhilarating and compelling, they are also dangerous and patently untrue.¹¹¹ This warning applies equally to analyses that are 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. Arguments which show that even the most gender-normative version of gay identity can still be understood as transgender are useful insofar as they underscore the impossibility of drawing any fixed or principled line between transgender and gay, and insofar as they illuminate the profound 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.¹¹² 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.¹¹³

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

¹¹¹ 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.

¹¹² See, e.g., Darren Lenard Hutchinson, “*Gay Rights*” for “*Gay Whites*”?: *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358, 1365 (2000) (arguing that gay rights advocates must adopt a multidimensional perspective that is “attuned to the racial and gender dimensions of heterosexual structures”).

¹¹³ *Id.* See also Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997).

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 non-discrimination 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.

IV. 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 United States Supreme Court recognized in *Romer v. Evans*,¹¹⁴ 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.¹¹⁵

Similarly, in *Baker v. State*, the Vermont Supreme Court recognized that extending basic civil rights to gay people is not a radical

¹¹⁴ *Romer v. Evans*, 517 U.S. 620 (1996) (striking Amendment 2, a proposed amendment to the Colorado that would have repealed all local and state laws or policies prohibiting anti-gay discrimination and prohibited the enactment of any such laws or policies in the future).

¹¹⁵ *Id.* at 631.

step, but rather “simply, when all is said and done, a recognition of our common humanity.”¹¹⁶

Matt Coles, a leading gay rights strategist and attorney, has commented on the shortsightedness of excluding transgender people from local or state 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.¹¹⁷

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, but it has also exacerbated divisions based on race and class. To the extent that 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.

¹¹⁶ *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).

¹¹⁷ Matt Coles, *Making the Case for Transgender Inclusion*, SOUTHERN VOICE, April 26, 2001, at 1.

