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Article

***71 BE PROFESSIONAL!** [FN1]

Dean Spade [FN1]

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“After all, the subversive intellectual came under false pretenses, with bad documents, out of love. Her labor is as necessary as it is unwelcome. The university needs what she bears but cannot bear what she brings.” [FN1]

Dear Adrienne and Bob,

There is something so intimate about letters, isn't there? Perhaps especially for those of us who have been groomed into academic writing styles that gesture toward the very standards of neutrality and objectivity that our work critiques, the letter provides an escape from styles of argumentation that prevent certain things from ever being said. So I am responding to you in that form, in large part because the space that your letters created, the risky opening your exchange provides, is an invitation that feels so dangerous to accept that I am not sure whether I could do so in a more formalized form.

Why are your letters so relieving to read from my location? Let me clarify that location. I am at the beginning of my second year in a tenure-track law teaching job, and I am a white trans person who grew up poor and who was some kind of relatively radical activist (anti-capitalist, prison abolitionist-- these things seem quite radical in legal academia) before entering law or teaching. I am perhaps the first transgender person to get a tenure-track law professor job, or at least no one seems to know of any others, though our perpetual erasure makes me hesitant to claim this label. I started reading your piece during the first months of my first year in this new role after I had spent a year “on the market” being socialized into the role of law professor. Your piece challenges that socialization, especially three particular messages from that socialization. One, people with marginalized identities should point out marginalization only to the extent that it does not implicate the people to whom we are talking. Two, we should be sure to flatter them that they are enlightened and inoffensive and unoppressive in order to encourage them to tolerate and include us and to avoid the dangerous power they wield when defensive. Three, we should avoid making them uncomfortable or drawing too much attention to our difference. Reading *72 your piece brings up all the stories I have suppressed through that grooming, all the successful moments in which I obeyed these mandates in order to emerge victoriously hired into this role. The frank conversation about these taboo topics in your letters provides a relieving space in which I can reflect on the conditions that led me to this new location, this drastically different income and professional status, and this experience of being the “only one” of something-- an experience that so many others have known and still know.

Your letters also provide a different kind of space for thinking about the invitation to be institutionally recognized and included. What does it mean to be invited in? To be included, to be the first (or to appear to be the first)? What are the terms of that inclusion, its costs, its motives?

Three stories immediately come into my mind, all of which feel like things I should not share. [FN2] As part of 1L orientation last year, the first years were asked to read an autobiography that had a poverty theme. As the new Poverty Law professor on campus and someone whose work focuses on racial and economic justice, I was asked to share remarks that might help students see how the themes from the book would reflect in their coursework in law school. It was my first appearance in my new role before these 300 students and the many faculty, staff, and administrators in attendance. My co-panelist referred to me exclusively as “she” during the panel. I could see the moderator experience discomfort at the mistake, but she did not correct it or use my correct “he” pronoun afterward to help undo it. For trans people like me, this kind of mistake is embarrassing and extremely inconvenient. An entire community in which I was a new member, most of whom can be assumed to have little or no experience with trans people, and who likely have a mix of reactions to me based on visual cues as to whether to call me “he” or “she” had just mis-learned my pronoun. Such an incident breeds endless moments in which I must decide whether to correct each individual who “she’s” me from then on, knowing that the moment of being corrected is embarrassing and awkward for all parties, especially since it almost always occurs in front of at least one person since generally “he/she” pronouns are not used in direct address.

*73 The second story occurs a year later, at the first faculty meeting of my second year in this new role. The prior year I had met with the Dean, the University’s attorney, and some particularly sympathetic faculty to talk broadly about trans issues on campus. The law school had an out trans student at the time, and the undergraduate population also included trans students who had formed a Trans and Allies club for which I was asked to become the faculty sponsor. I had developed a list of key issues to address regarding trans awareness on campus, including things ranging from the discriminatory exclusions of trans healthcare in both employee and student health insurance plans [FN3] to issues related to accessing recreational facilities on campus. I also prepared a document about trans awareness in the classroom that the Dean disseminated at a faculty meeting and explained to the law faculty. It described easy ways for faculty to allow students to identify their own names and pronouns in the classroom on rosters or seating charts, including first names that might be different from the roster, before ever calling those names in class or referring to students as “Mr.” or “Ms.” or by gendered pronouns. It explained why students might be discouraged from participating if they could not count on faculty to get their name and pronoun right and anticipated the humiliation or group mis-education that happens when faculty get it wrong. I had already heard from a transgender student about struggles with professors getting his pronoun right and how that encouraged his classmates to continue getting it wrong as well. When the new school year rolled around, I wanted to address these issues again in the first faculty meeting, both to refresh the faculty and inform new members. The first year class had new trans students, and I had learned from the admissions office that many transgender students had applied and/or been admitted this year, no doubt in part because my presence at the school offers something unique for those interested in trans law issues. I had already heard from one of the new trans students in the 1L class about a terrible experience he had on the first day of classes. His professor had made name placards for students based on the roster, and called each student to the front of the room to pick up their placard. He consistently made jokes to male students as they approached, pretending to give them placards with female names. The trans student goes by a shortened version of his given name that can be masculine or feminine, but the professor called the longer feminine name that is on the roster. When he went up to get the placard, the professor did not believe he was the same person since he appears male and the name *74 was female. The incident was exceptionally embarrassing for the student, especially in the context of gender-joking that the professor had created.

At the first faculty meeting, I was given a bit of time to go over the handout again and remind the faculty about how these basic suggestions could prevent embarrassing mistakes that burden trans students. Three re-

sponses to this struck me. First, in the meeting, a professor raised his hand to share that a trans student had come to him before classes started to tell him about his pronoun and name preference. He suggested that was the best way to do it, and he would like me to tell all the trans students to do so. I tried to respond as diplomatically as I could that I do not meet with all the trans students before they start classes (am I expected to know them all or assumed to have some kind of location where we all meet?) and that the goal of the recommendations I had shared was to prevent students from having the burden of reaching out to each professor before classes started, a burden which may be difficult for students who are more shy or concerned about how professors might respond to such a request. However, after the meeting another professor stopped by my office to second the recommendation of his colleague that the students should reach out to the professors individually before classes start. I was surprised that this seemed a reasonable thing to expect of nervous and overwhelmed LL's, especially trans people who know they are entering a likely hostile environment and may be terrified to have this be their first contact with a new professor. Later that day, I rode the elevator with a third senior colleague who wanted to talk about what I had presented. He wanted to share his surprise that so many "people like that" existed, letting me know that he thought "it was a very rare thing, though of course we have you right in front of us." His perception of the numerical insignificance of the transgender population may be an underlying factor in all three responses. [FN4] The idea that transgender experience is a rarity, and perhaps even that it is a strange and bizarre rare medical condition, is a common misperception. It is part of the construction of the sensationalist invisibility/hypervisibility that contributes to trans subjection. These professors were operating from a framework rooted in this rarity belief. It is what allowed them to justify expecting trans people to request special accommodation rather than to understand the ways that their classroom practices assume*75 and reproduce gender norms in ways that exclude participation by trans people. It is the same thinking that allows people to be careless about pronouns or to feel inconvenienced by having to learn new ways of perceiving and communicating gender that depart from traditional expectations in which trans people should not, cannot, do not exist. The logic goes, "we shouldn't have to change how we do things, those rare people for whom our ways don't work can just individually approach us and tell us how to accommodate them."

The third story is from the 2008 LatCrit conference. [FN5] The conference was, in general, a wonderful experience for me. The culture of the conference seems to have developed to specifically resist the limitations of academic culture, replacing individualism with community, insecurity with generosity, and suspicion with support in the context of a feminist/racial justice/pro-queer environment. I attended the session on work/life balance at which several professors presented compelling talks that reflect some of the themes from your letters. They discussed experiences of getting paid less than white colleagues, race and gender-based negative evaluations from students, and the specific pressures placed on women professors balancing parenting and academia. I felt my guard come down, my defenses soften in a room where such honesty was being brought to an open discussion of various vectors of subjection shaping academic career experiences. And then the room reached a cathartic moment in which I could not participate. In a conversation about the stresses and pressures facing participants, and the ways in which those pressures manifest as internalized rigid standards, someone brought up how they "clean before the cleaning lady comes." It was the moment the room came together and erupted--people audibly agreeing and laughing, sharing this common experience of self-policing and experiencing relief at naming this example of the pressure they are under from within and without. My response was different. I started cleaning other people's houses around age nine and cleaned offices and houses throughout my childhood with my mom and sister. I got my first cleaning job without my mom when I was eleven and worked cleaning and painting vacant low-quality rental apartments during the summer between sixth and seventh grade. I cannot fully account for the moment of disjuncture that I experienced in that room where I had been feeling a certain kind of connection*76 and trust that I longed for after the alienation of the job market socialization process--what it

meant to be reminded of class difference in these ways, to realize that my colleagues have servants. Immediately it was clear that I should expect they do, but the difference of my own experience causes me to forget.

I could share a hundred more stories like these. What are these stories? They are the moments of identity management and discord that are the specific burden of those with tenuous relationships to the purportedly neutral, meritocratic, multicultural, inclusive terrain of white, straight, hetero, cisgender, [FN6] bourgeois male legal academic culture. My experiences of being trans and my experiences of having a welfare class background emerge sometimes in different moments, sometimes simultaneously, [FN7] but always require this management. The teaching market socialization was the first place I began to fully grasp this. Wonderful, generous queer mentors with their own critical analysis of legal academia socialized me through well-meaning but brutal advice. I took all of it smiling, remembering that I was supposed to network at all costs, to thank people for the abuse. Don't seem like an activist. Don't make people uncomfortable. Don't wear a tie. [FN8] When you give your job market talk (which focused on the hundreds of conflicting rules about when trans people can change their gender in various administrative systems, many of which require various types of medical intervention), don't talk about genitals. Don't appear to be advocating for a community. *77 Talk about the issues as if you are not impacted. There were also comments that seemed to suggest transphobia would have no impact on my job market prospects. One senior professor, after telling me that she did not believe people could change sex, told me that I would be seen on the market as "a nice girl" and had nothing to worry about. Several remarked that I would get "diversity points" even though, to my knowledge, no law schools track their transgender hires, no affirmative action programs include transgender people as a category, nor do most people see transgender identity as a vector of systemic oppression since, as I mentioned before, it is usually framed as a rare/fascinating medical condition.

Some of this conditioning came from well-meaning people with other marginalized identities who, in their anticipation of the policing and discrimination I might receive, policed me, and some came from those who dismissed the notion that I would face any difficulty at all, assuming, I suppose, that the absence of trans people in legal academia is a coincidence. Beyond these elements of conditioning, there was the general grooming toward the competitive, individualistic, politically neutralizing culture of legal academia. As someone coming from a grassroots activism perspective where collaboration, co-authorship, and redistribution of power and expertise are principles that ground my work, the demands of framing my work to meet legal academic standards were and remain perplexing. I have received ample advice that writing a book or publishing in interdisciplinary peer-reviewed journals is "risky" --that my work should be framed to fit the footnote-counting, law review-only standards of tenure committees. I write from within and about social movements and my writing is based in a passionate desire for change, so my priority is to write in places where my work can be most available to people with cross-disciplinary investments in transformative change. Managing the fear-based advice against my own sense of purpose about my work is a struggle. It is ironic that the more privileged and secure I get in terms of class and profession, the more I am encouraged not to take risks and to tread the most conservative path possible. From my perspective, as someone whose survival felt unguaranteed at many points, whose employment was always less luxurious and less secure than it is now, who is keenly aware of my extreme security compared with the rest of the world, choosing to keep my head down and follow rules at this particular moment seems absurd. If I, someone who is paid to write and read and think, someone who is in line for a lifetime appointment, am supposed to be afraid to do my work in the ways that I desire, who isn't?

So many elements of your letters were relieving to read--the extra work of being an "only one," of struggling to make myself and my area of inquiry legible enough, the zillions of articles and student papers from around the country that I feel pressured to review in order to do damage control as increasing numbers of students and

professors get “fascinated” by the topic of trans people and our legal problems. The ways that “passing *78 lunch” [FN9] requires me to do Trans 101 workshops that, prior to this job change, I would have refused to do for an audience of less than fifty because of how especially and cumulatively exhausting that kind of educative performance is. The ways that even when colleagues do grasp some idea of my identity, it is always a narrow and usually inaccurate one that I must decide whether to contest or not, and it rarely comprehends my intersecting identities and investments. [FN10] The labors of this identity management are many.

At the same time, however, I am acutely aware that getting to be the “only one” is really a testament to my privilege. What can make people tolerate something that has, until now, been intolerable? If legal academia has not been able to see another openly trans person as a law professor before, why me? What about me makes that leap possible? Your letters attest the answers. Whiteness, “unaccented” English, being able-bodied. Perhaps even to the extent that others can see me as fitting certain norms of attractiveness, which you suggest come with privilege in this setting, [FN11] I benefit from that. Of course, I am mindful that in our culture trans people are archetypically unattractive, monstrous, considered un-dateable to the point of being murdered by those who unknowingly partner with us. [FN12] However, *79 maybe that professor was right and I can be seen as some kind of “nice girl,” enough to capitalize on any symmetrical features I have. But it is particularly race privilege that is most glaring to me when I look at my experience so far in legal academia and, more broadly, in law. I can count the trans lawyers of color in the US on one hand, and those who are paid to do trans work are the minority among them. Like other areas of the legal profession, trans legal advocacy is dominated by white people--that is who gets the paid roles despite the extensive critique of those conditions. [FN13] I am well aware that what has made me palatable when I have managed to be so, what has made it possible for people to fund my work, to vote me onto a faculty, is the same thing that made my elementary school principle personally visit the administrators of my middle school to say that I should not be tracked to the bottom like other kids from my (poor, black [FN14]) elementary school: whiteness. My ability to command any authority, to make trans politics and law into questions that can be understood as academic, to get people past my fascinating identity and allow them to imagine me in the desired role all depend deeply on my race privilege.

*80 This question of how race privilege buys my ticket into the ever-increasing “inclusion” tent of the neoliberal university (and more broadly the neoliberal economy) gets to the heart of what is so complex about the position of outsiders inside, marginalized people brought in tenuously, perhaps sometimes wanted for our disruption but still punished for it. Our experiences are an account of how the university transforms to preserve the status quo, how its increasing diversity rhetoric has not eliminated the race/gender tenure divide. As critical legal scholars, we are familiar with the window dressing of anti-discrimination, familiar with the mask of “equal opportunity” that legitimates the violence of markets. The special cleverness of neoliberal co-optation, of its call to diversity, multiculturalism, inclusion, and recognition, has been that the liberal progress narratives it invokes, especially that of legal equality, only thinly and sporadically paper over the growing racial wealth divide, the militarization of criminal and immigration enforcement, and the duality of abandonment and detention that are its hallmarks. This game, this bait and switch, creates a subpopulation of those who have been included, those of us who have squeaked into the buffer zone. [FN15] Our very existence affirms the fairness of the system of distribution, the openness of the university, the progress that has been made since those “bad old days.” [FN16] Our bodies are screens for the myth of meritocracy to project itself upon. Meanwhile, the internal disciplining of the university tames and neutralizes us sufficiently to make sure we are less trouble than we are worth. [FN17]

*81 We watch neoliberalism unfold on the university even as the university has been a key infrastructural component of the development of neoliberalism. [FN18] The informalization of university labor, the privatization and the abandonment of public education systems, the end of affirmative action, the increased reliance on

standardized testing, and the viewing of students as consumers are shifts that can be observed both from the university as a place of employment and the university as a site of a distribution of security that shifts and changes in the twilight of the Keynesian welfare state. [FN19] At the same time, the university as a site of knowledge production has, and continues to, generate the rationalizations, justifications, plots, and plans of neoliberal shift. The very ways of knowing the subjects and objects of neoliberalism--efficiency, flexibility, choice, freedom--are produced through the often colonial relationship of researcher to object (population) of study. What is an ethical relationship to the positions of marginal or critical academics, given these conditions and our roles as sites of legitimization and discipline?

On the one hand, we are called into reform projects. We can join more committees, provide more support, expose more contradictions. We have insight into the false neutrality existing at every level--admissions, hiring, tenure, evaluation, planning, community relations, professional development. We are aware that our students are frozen with fear over their debt, that they work so many hours outside school to get by that their school *82 participation is harmed, [FN20] that many live in fear of their own or a family member's deportation, that the standards by which we evaluate them (just like those by which we ourselves are evaluated) reproduce race, gender, and class hierarchies. There is so much to do to intervene on all this. I feel this call, I join this call. I want to see specific changes even while I see the pacifying and co-optive project that terms such as "public interest" and "social justice" play in the context of legal education. [FN21] I also recognize the expanse of this project, the possibility that all of one's time could be poured into reforming the university to the exclusion of all other political engagements. [FN22]

*83 Fred Moten and Stefano Harney offer a different relationship to the university, one not based in reform efforts, stating instead that "the only possible relationship to the university today is a criminal one":

[T]his much is true in the United States: it cannot be denied that the university is a place of refuge, and it cannot be accepted that the university is a place of enlightenment. In the face of these conditions one can only sneak into the university and steal what one can. To abuse its hospitality, to spite its mission, to join its refugee colony, its gypsy encampment, to be in but not of--this is the path of the subversive intellectual in the modern university. [FN23]

Harney and Moten suggest a more overtly antagonistic relationship between "subversive intellectuals" and the university while noting how critical engagement itself is already co-opted by the university to reproduce and hide the social and political conditions they call "conquest" and "war." [FN24] Their critique is likely beyond the comfort zone of most (even critical) legal academics, but the shock value of their statements suggests something of what is hard to speak about the severity of the "outsider inside" experiences your letters address. [FN25] The pressures of being illegible, unspeakable, constantly misread, and constantly managing projected interpretations wears thin. The demand of this experience is to produce some form of legibility, to translate that illegible politics or identity into the readable language, and/or to disappear. The conditions of this choice are conditions of coercion masquerading as (academic) freedom. For those of us who see that disciplines discipline, who see that formal recognition and classification bring new efficiencies to violence, and who are critical of the role of knowledge production in producing terms of citizenship that necessarily mark some bodies for life and others for death, [FN26] this position is perplexing.

This is the location in which I find myself, ambivalent and insecure in my new position, trying to resist and survive various disciplining forces and to support and to make space for others to do the same. When my first big bar-tested course was over, Bob read all of my course evaluations for me, *84 carefully marked the nice comments I should read and the things I should never read, helped me think through the important takeaways

and prevent the hurtful blows. That act of solidarity, the seriousness and rigor of that attention to vulnerability, is the best guidance I have gotten so far about what to do from this location. Perhaps, as we outsiders inside navigate the daily decisions about what to keep and what to let go of in the wind tunnel of professionalization, we can offer one another moments of respite and shared experience. Your letters are a version of that, a space in which to observe the unobserved, to speak the secret experiences that we are taught to manage into hiding. I am grateful for them.

Respectfully,

Dean

[FN1]. This title is stolen from a zine of comics made by Mimi Martin in 1998 depicting experiences of job assignments obtained through a temp agency. Mimi Martin, **Be Professional!** (1998) (on file with author).

[FN2]. **Dean Spade** is an assistant professor at Seattle University School of Law. He is grateful to Bob Chang, Travis Sands, Chandan Reddy, and Craig Willse for their feedback on this writing.

[FN3]. Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, 22 *Soc. Text* 101, 101-02 (2004).

[FN4]. The fear of sharing them in part comes from my awareness that the common mistakes that make so many settings uncomfortable or inaccessible for trans people are, for the most part, entirely unintentional. The ways that binary gender norms structure subjecthood and material reality make well-meaning people into gender police and agents of transphobia, and it is both tiring and risky to point out these conditions given the fear of labels of intolerance or offensiveness in a culture that has constructed things like racism, homophobia, and transphobia as exceptional, unusual, the realm of evil perpetrators. Resistance movements understand these systems of meaning and distribution as ongoing, self-reproducing, beyond the realm of intention, and requiring ongoing critical reflective practice. However, pointing out such moments still invokes a dangerous dynamic of name calling, stigmatization, and defense. My intention here is to avoid that dynamic and instead to offer stories that demonstrate manifestations of systemic transphobia so that fellow legal academics and other readers might come to learn such reflective practice since it remains sadly uncommon knowledge.

[FN5]. For more information on issues related to exclusion of trans health care from both public and private health insurance, see Pooja S. Gehi & Gabriel Arkles, *Unraveling Injustice: Race and Class Impact of Medicaid Exclusions of Transition-Related Health Care for Transgender People*, 4 *Sexuality Res. & Soc. Pol'y: J. NSRC* 7, 11 (2007); R. Nick Gorton, *Transgender Health Benefits: Collateral Damage in the Resolution of the National Health Care Financing Dilemma*, 4 *Sexuality Res. & Soc. Pol'y: J. NSRC* 81, 85-89 (2007).

[FN6]. He also asked me a question I hear all the time, “How many transgender people are there?” Of course, there is no reliable data about to answer this question since trans people are an administrative impossibility in the government and commercial systems that count people for various purposes. Further, the perceived need for such data, the desire to count trans people, is one that I think should be examined critically for at least two reasons. One is that the process of creating an administrable category of transness would no doubt do the same violence that other forms of identity categorization do, establishing criteria that inevitably fail in their universality as all such criteria do. Secondly, the desire to “be counted” should be examined in light of the relationship between identity surveillance and the distribution of security and insecurity. For more on this, see **Dean Spade**,

[Documenting Gender: Incoherence and Rulemaking](#), 59 *Hastings L.J.* 731 (2008), awarded the 2008 Dukeminier Award and reprinted in *UCLA J. Sexual Orientation & Gender Identity L.* (forthcoming 2010).

[FN5]. Emerging from the legal academy of the United States following a 1995 colloquium in Puerto Rico on Latina/o communities and critical race theory, “LatCrit theory” is a relatively recent genre of critical “outsider jurisprudence,” a category of contemporary scholarship including critical legal studies, feminist legal theory, critical race theory, critical race feminism, Asian American legal scholarship, and queer theory. That cumulative record has served as LatCrit's point of departure, and our basic twin goals since 1995 have been: (1) to develop a critical, activist, and inter-disciplinary discourse on law and policy towards Latinas/os, and (2) to foster both the development of coalitional theory and practice as well as the accessibility of this knowledge to agents of social and legal transformation. See *Latina and Latino Critical Legal Theory, Inc.*, <http://www.latcrit.org/> (last visited Nov. 18, 2009).

[FN6]. Cisgender is a word commonly used in trans and allied communities and in trans scholarship for people who are not transgender. For more information on the origins of the term, see Julia Serano, *Whipping Girl FAQ on cissexual, cisgender, and cis privilege*, <http://juliaserano.livejournal.com/14700.html> (May 14, 2009, 05:46 EST).

[FN7]. Certainly, your discussion of clothing comes to mind here. Robert S. Chang & Adrienne D. Davis, [Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom](#), 33 *Harv. J.L. & Gender* 1, 2-11 (2010). Anti-consumerism and personal wealth redistribution is an important part of my political practice, yet I feel the pressures you discuss to create a professional appearance. See **Dean Spade**, *The Dirty Details of My New Salary, Enough*, Apr. 26, 2009, <http://www.enoughenough.org/?p=218> (discussing personal modes of wealth distribution and outstanding questions about how to approach salary and redistribution). Doing so is further complicated by my class-based feelings of alienation regarding both professional attire and shopping and by my negotiation of other people's perception of my gender. I experience the cultural pressure on trans people to make our appearances gender-typical for the gender we live in, i.e. to be especially traditionally masculine or traditionally feminine. See **Dean Spade**, *Mutilating Gender*, in *The Transgender Studies Reader* 315 (Susan Stryker & Stephen Whittle eds., 2006). The pressure to assert a very one-dimensional, traditionally masculine exterior does not fit with my self-understanding as a radical queer person nor match my internal understandings of the kinds of masculinity that I wish to emulate. The queer fashion sense I wear outside of work in the context of communities that I feel can comprehend my gender clashes with the pressure to bring a particular kind of legibility to my body and gender in the professional world.

[FN8]. I think that what was being suggested in this advice was that I should somehow try to pass as a non-trans woman, since certainly every male candidate wears a full suit and tie in a context as formal as these interviews. The suggestion seemed to be that I could or should change my gender (even though the Faculty Appointments Register form already said “male” on it) or reduce the masculinization of my appearance to be more palatable.

[FN9]. See Chang & Davis, *supra* note 7, at 35.

[FN10]. The most common example of this is the assumption of my colleagues that same-sex marriage must be an issue I am invested in, care about, and follow closely. The association of this single legal struggle with “LGBT” politics (which rarely actually includes any comprehension of “T”) leads people to assume both that I am pro-same sex marriage and that I am an expert in it. In reality, I am part of a large queer and trans feminist left that opposes all marriage, and critiques the investment of resources into the narrow and conservative same-

sex marriage agenda instead of the many more pressing issues confronting low-income queer and trans people and queer and trans people of color. For more on this debate, see generally **Dean Spade** & Craig Willse, *I Still Think Marriage Is the Wrong Goal, Make*, www.makezine.enoughenough.org/prop8.html (last visited Nov. 11, 2009). See generally *Beyond Same-Sex Marriage: A New Strategic Vision for all our Families & Relationships* (2006), <http://www.beyondmarriage.org/BeyondMarriage.pdf>; Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 *Colum. J. Gender & L.* 236 (2006); Angela P. Harris, *From Stonewall to the Suburbs?: Toward a Political Economy of Sexuality*, 14 *Wm. & Mary Bill Rts. J.* 1539 (2006); Craig Willse & **Dean Spade**, *Freedom in a Regulatory State?: Lawrence, Marriage and Biopolitics*, 11 *Widener L. Rev.* 309 (2005).

[FN11]. Chang & Davis, *supra* note 7, at 30 (discussing “a recent study about the relationship between the physical attractiveness of instructors, student evaluations, and implicit labor market outcomes (salaries, promotions, and awards)”).

[FN12]. Murders of trans people are a common occurrence in the United States. Estimates of the trans murder rate vary, but one figure is that the murder of trans people is seventeen times higher than the murder rate of non-trans people. *Transsexual Road Map*, Los Angeles Transsexual Day of Remembrance, <http://www.tsroadmap.com/los-angeles/day-of-remembrance.html> (last visited Nov. 18, 2009). Another study suggests that transgender people have a one in twelve chance of being murdered while non-transgender people have a one in eighteen thousand chance. *How Do Transgender People Suffer from Discrimination?*, Hum. Rts. Campaign, <http://www.hrc.org/issues/1508.htm> (last visited Nov. 18, 2009). Although these figures clearly do not account for race, age, class, immigration, disability, and other factors that increase certain trans people's vulnerability significantly, they do provide some sense of the level of violence facing trans people. Stories of trans people's murders filter through trans and allied communities with great regularity, and the scenario that is most often described is that of the trans person who is murdered by a date or trick upon disclosing his or her trans identity. This cultural panic around trans people's gender is reflected in law as well. The most obvious example in U.S. law is certainly the “trans panic” defense; California recently passed a law to bar defendants from using this defense. See *Assemb. B. 1160*, 2005-2006 Leg., Reg. Sess. (Cal. 2006), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_1151-1200/ab_1160_bill_20060928_chaptered.pdf; see also Victoria L. Steinberg, *A Heat of Passion Offense: Emotions and Bias in “Trans Panic” Mitigation Claims*, 25 *B.C. Third World L.J.* 499 (2005); Human Rights Campaign Statement on “Trans-Panic” Defense in Murder of Angie Zapata, Hum. Rts. Campaign, Aug. 4, 2008, <http://www.hrc.org/10945.htm> (explaining that “Angie's alleged killer is using her gender identity in an attempt to justify” her murder). Professor Andrew Sharpe's work examines how this logic entered U.K. law in the form of an annulment provision in the U.K.'s Gender Recognition Act (“GRA”). Sharpe explains how even though the GRA appears to offer trans people, regardless of surgical status, full recognition in their current gender, certain elements of the legislation expose ongoing anxieties about trans identities and undermine the promise of the law. Andrew N. Sharpe, *Endless Sex: The Gender Recognition Act 2004 and the Persistence of a Legal Category*, 15 *Feminist Legal Stud.* 57, 80-82 (2007). Specifically, he notes, a new element was added to the law of annulment in the U.K. when the GRA was passed, allowing persons to seek annulment if they find out that their partner is a transgender person who had previously registered their new gender with the state and married without their partner's knowledge of their transgender history. *Id.* at 76. While people who find out that their spouse hid infertility, prior marriages, prior children, financial problems, or several other potentially important characteristic are required to divorce and cannot seek annulment, annulment is granted for a hidden transgender history. *Id.* at 78.

[FN13]. For a discussion of the dynamics of non-profitization that have led social movements to be increasingly professionalized and decreasingly led by people who are not those mostly affected by the issues the movements

address, see generally *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex* (INCITE! Women of Color Against Violence ed., 2008); Rickke Mananzala & **Dean Spade**, *The Nonprofit Industrial Complex and Trans Resistance*, 5 *Sexuality Res. & Soc. Pol'y* 53 (2008).

[FN14]. I grew up in rural Virginia where, even in the 1980s, people referred to my elementary school as “the black school” even though we were well past formal integration, and where my school bus was still segregated (“to prevent fighting”) with black students sitting in the back and white in the front.

[FN15]. In his article, *Social Service or Social Change? Who Benefits from Your Work*, Paul Kivel describes how, in the face of a massive wealth divide in which a tiny minority owns most of everything and most people suffer poverty and indignity, a “buffer zone” must be created to legitimize the status quo. Paul Kivel, *Social Service or Social Change? Who Benefits from Your Work*, in *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, supra note 13, at 129. One way it does this is by “keeping hope alive by distributing opportunities for a few people to become better off financially.” *Id.* at 135.

[FN16]. See Roderick Ferguson, *Administering Sexuality; or The Will to Institutionalality*, 100 *Radical Hist. R.* 158, 160-62 (2008). Ferguson asks, “[m]ight the university intersect with corporate capital not only through self-congratulatory categories such as ‘excellence’ but also through the attempt to incorporate and thereby neutralize difference?” *Id.* at 160.

[FN17]. See Moten & Harney, supra note 1, at 104-05 (2004). Moten and Harney write,

Introducing this labor upon labor, and providing the space for its development, creates risks. Like the colonial police force recruited unwittingly from guerrilla neighborhoods, university labor may harbor refugees, fugitives, renegades, and castaways. But there are good reasons for the university to be confident that such elements will be exposed or forced underground. Precautions have been taken, book lists have been drawn up, teaching observations conducted, invitations to contribute made. Yet against these precautions stands the immanence of transcendence, the necessary deregulation and the possibilities of criminality and fugitivity that labor upon labor requires. Maroon communities of composition teachers, mentorless graduate students, adjunct Marxist historians, out or queer management professors, state college ethnic studies departments, closed-down film programs, visa-expired Yemeni student newspaper editors, historically black college sociologists, and feminist engineers. And what will the university say of them? It will say they are unprofessional. This is not an arbitrary charge. It is the charge against the more than professional. How do those who exceed the profession, who exceed and by exceeding escape, how do those maroons problematize themselves, problematize the university, force the university to consider them a problem, a danger? The Undercommons is not, in short, the kind of fanciful communities of whimsy invoked by Bill Readings at the end of his book. The Undercommons, its maroons, are always at war, always in hiding.

Id.

[FN18]. See Ferguson, supra note 16, at 160-62. Ferguson calls the modern university the “sometimes sycophant of globalization.” *Id.* at 161.

[FN19]. Scholars have argued that the neoliberal turn has changed the method of stabilizing the economy. Although a racialized provision of certain benefits attendant to full-time work (e.g., pensions, health care, vacation) combined with a racialized provision of safety programs once operated to maintain capital, under neoliberalism, the erosion of these features, the deindustrialization of the economy, and the stagnation of wages requires new forms of governance to maintain stability. See generally Frances Fox Piven & Richard Cloward, *Regulating*

the Poor: The Functions of Public Welfare (2d ed. 1993) (describing the racialized provision of welfare benefits); United for a Fair Economy, Closing the Racial Wealth Divide Training Manual (2006) (describing the production and maintenance of the racial wealth divide through the racialized provision of benefits such as the GI Bill, housing and business loans, and Social Security and the taxation of work rather than wealth). Ruth Wilson Gilmore's work is particularly helpful for thinking about how the changes in economic arrangements in the last forty years, including reduced bargaining power for workers, the dismantling of welfare programs, and the informalization of work, relate to the rise of criminalization as a method of utilization and control of surplus people, finance capital, and land produced by these shifts. See Ruth Wilson Gilmore, Globalisation and US Prison Growth: From Military Keynesianism to Post-Keynesianism Militarism, 40 Race & Class 171 (1999).

[FN20]. Vijay Prashad, Teaching by Candlelight, 25 Soc. Text 105, 106-08 (2007) (noting “[t]he increased level of student indebtedness and the pressure to work during college years structure students' experiences” and “the problem of debt in the context of jobless growth inhibits all but the most intellectually driven students, and this debt consciousness contributes to the nihilism felt by many toward our social institutions ...”).

[FN21]. Moten and Harney argue that the university plays a particular role in denying the “Conquest,” to use Foucault's term. See Moten & Harney, *supra* note 1, at 113-14. This is visible in legal education where critical analysis is allowed only in small, marginal moments while the charge of teaching students to “think like a lawyer” is primarily one of establishing the neutrality of American Law in ways that obscure not only, most plainly, the basis of the American nation state in slavery and genocide/land theft, but also the centrality of private property and extraction to that system. To the extent that “public interest” and “social justice” come to mean any work that is not overtly in the private sector working for business, such that the category includes criminal prosecution and defense on equal terms, or deportation and deportation defense on equal terms, it affirms legality alone as justice, erases the political relations (which Foucault would call “war”) that structure the distribution of life chances. Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-76*, at 15 (Mauro Bertani et al. eds. & David Macey trans., Picador 2003) (1997). To the extent that we are considered “radical” and disciplined if we teach anything that suggest that current legal systems are not just, the scope of discussion in law schools is extremely contained.

[FN22]. Vijay Prashad also raises the idea that being the bearer of oppositional politics on campus allows its own co-optive moment, “the idea of the ‘campus radical,’ the domesticated rabble-rouser who provides the academy with its illusion of ideological diversity concerned me. As long as the radical is in a minority, as long as the radical is unable to drive campus culture, nothing is threatened.” Prashad, *supra* note 20, at 105. Prashad argues that many of the reform projects focused on the university are so narrow that they affirm the underlying arrangements that produce the educational disparities that are being contested. For example, Prashad writes,

The debate over affirmative action ... is impoverished because all sides accept the neoclassical assumption that educational access is a matter of scarcity and resource allocation. Since there are not enough seats, the colleges have to make some choices of whom to accept. But what if there were enough seats nationwide for all those who wanted to go to college, and what if no one had to compete with anyone else for grants? Colleges would still have to choose their own student body based on a variety of contested factors, but at the very least the applicants would not be barred from entry into campus because of a lack of spaces. In other words, racism and antiracism is not solved by the displacement of neoclassical constraints, but the debate over prejudice will be healthier if it does not occlude the structural problems of scarcity driven by profit-centered and social Darwinist capitalism.

Id. at 113.

[FN23]. Moten & Harney, *supra* note 1, at 102.

[FN24]. *Id.* at 113.

[FN25]. See Chang & Davis, *supra* note 7, at 5-6, 20-22.

[FN26]. See 1 Michel Foucault, *The History of Sexuality: An Introduction* 138-40 (Robert Hurly trans., Vintage Books 1990) (1976) (discussing the shift from the sovereign's right to take life to the biopower's capacity to foster life or "disallow it to the point of death"); Foucault, *supra* note 21, at 256; see also Mitchell Dean, *Governmentality: Power and Rule in Modern Society* 98-112 (1999) (describing Foucault's theory of biopolitics and discussing state racism taken up in "defence of the life and welfare of the population against internal and external enemies"); Mariana Valverde, *Genealogies of European States: Foucauldian Reflections*, 36 *Econ. & Soc'y* 159, 175-77 (2007) (describing biopolitics); Mariana Valverde, *Review Essay: Society Must Be Defended: Lectures at the College de France 1976-77*, 1 *L., Culture & Human.* 119, 123 (2005) (describing the importance of racism to the exercise of biopolitics as it marks those internal or external enemies who need to be killed to foster the life of the population).

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