

BOOK REVIEW

Alexandra St. Pierre*

Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of the Law. By Dean Spade. Cambridge, MA. South End Press (2011). 256 pages.

Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of the Law takes a radical view of the current movement for trans and gender nonconforming rights. Dean Spade not only questions the current trajectory of the trans right movement, but also the effectiveness and widespread use of rights-based law reform in general. Spade critiques the condition of current state-based inequality and discrimination in all forms throughout the United States and calls for a return to the more grassroots-based organizations of the 1960s and 70s, where the movements were spearheaded by members of the discriminated group and the goal was transformative change. The language in *Normal Life* is somewhat provocative, for example using “criminal punishment system” instead of “criminal justice system.”¹ Combined with the radical positions espoused, the book will not convince anyone who is not already in agreement with Spade’s views—and Spade is probably fine with that. Nevertheless, even without subscribing to Spade’s far-reaching ideas, one can see that there is a lot of work to be done in the area of trans rights and that current reform strategies are not sufficient by themselves to address existing problems.

This book review will first consider Spade’s discussion of the politics of neoliberalism and its effect on the formation of institutions and creation of laws, setting the foundation for his later arguments about rights-based strategies. It will then discuss Spade’s argument about the ineffectiveness of these strategies and other factors that have contributed to a disconnect between the needs of the community and the efforts at reform. The review then outlines Spade’s reframing of the pertinent issues and the application of this new framing to current laws. Lastly, this piece walks through some of the solutions Spade offers, specifically member-based

* J.D. Candidate, Harvard Law School, Class of 2013.

¹ DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF THE LAW* 90 (2011).

organizations. This review ultimately concludes that *Normal Life* is more informative than truly persuasive, at least for those who do not come to this book already conceptualizing rights-based reform as ill-equipped to effect true reform.

I. NEOLIBERALISM

Normal Life begins with a discussion of the rise of “neoliberalism” in the United States. Spade uses the term to mean the trend in U.S. “policy changes like privatization, trade liberalization, labor and environmental deregulation, the elimination of health and welfare programs, increased immigration enforcement, and the expansion of imprisonment.”² This chapter is quite expansive in scope, including a short yet broad criticism of U.S. free trade agreements,³ media and governmental policies of racialized control,⁴ the increase in private non-profits,⁵ and the rise in the number of people imprisoned in the United States as a result of the creation of new criminal laws and enhanced sentencing.⁶ According to Spade, these changes have resulted in a decrease in real wages and redistribution of wealth that expanded the gap between rich and poor.⁷ This disparity and resulting lack of opportunities helps provide the basis of his later claims that, as activists for social change, advocates for trans rights need to recognize that values have shifted. Thus, they should demand a change in, or even abolishment of, the institutions that perpetuate these unfair circumstances.⁸

However, if the reader is not already convinced of the violence and oppression that occurs at the hand of the state, the discussion here of neoliberalism likely will not convince her. While Spade provides a lot of factual support for the claims about imprisonment from which his claims seem logically drawn, many of Spade’s sources for information about free trade agreements and the non-profit industrial complex come from self-described radical organizations that create their own media to help spread their story.⁹ While I in no way mean to impugn the journalistic integrity of these organizations or of Spade’s book, I simply mean to point out that the story he is telling comes from a positional view and is supported by others

² *Id.* at 33–34.

³ *Id.* at 52–53.

⁴ *Id.* at 53.

⁵ *Id.* at 59–61.

⁶ *Id.* at 53–54.

⁷ *Id.* at 50.

⁸ *Id.* at 69.

⁹ *Id.* at 72 n.6 (citing books published by INCITE! Women of Color Against Violence); *id.* at 73 n.15 (citing an article published by Toward Freedom).

with similar views and, as a result, is less likely to persuade those who are not already like-minded. This is unfortunate because, as Spade mentions, trans issues are often lumped into the same category as lesbian and gay issues, and the lesbian and gay movement has focused on a rights-based strategy. A more neutral story-telling device might have convinced new minds that a structural problem exists and that change is necessary on this other level, furthering the debate even more.

II. THE PROBLEM WITH CURRENT LEGAL REFORM MOVEMENTS— SPECIFICALLY THE LGBT MOVEMENT

As told in *Normal Life*, in the fight for trans equality, the most common legal struggle has been to secure two types of legislation: antidiscrimination and hate crime laws aimed at protecting people based on their gender identity and/or expression.¹⁰ However, Spade points out that these laws have been ineffective at ending negative behavior and attitudes towards people of color, women, lesbians and gays, and people with disabilities; he sees no reason why such laws would be, or even have been, effective for trans people.¹¹ With respect to race and antidiscrimination laws, he calls into question the constitutional framework of equal protection doctrine that advances what Critical Race Theorists call a “perpetrator perspective,” “imagining that the fundamental scene is that of a perpetrator who irrationally hates people on the basis of their race and fires or denies service to or beats or kills the victim based on that hatred.”¹² In promoting a perpetrator perspective of racism, a number of problems occur with the antidiscrimination laws that inherently promote such a view, including disallowing programs aimed at remedying discrimination, such as affirmative action, ignoring conditions that “stem from and reflect long-term patterns of exclusion and exploitation” rather than individual conscious bias, and reinforcing the status quo by requiring claims to be framed in such a way that the plaintiff complaining of discrimination is exactly the same as the discriminating party, save for one characteristic that is different and gives rise to the discrimination.¹³ These ideas are not new, as evidenced by their adoption by Critical Race Theorists, and they have

¹⁰ *Id.* at 79.

¹¹ *Id.* at 81–83, 94 n.7 (listing cases that have interpreted restrictive behavior, such as limiting bathroom use for trans people to the bathroom corresponding to their birth sex, as nonviolative of antidiscrimination laws protecting trans individuals).

¹² *Id.* at 84, 95 n.11 (citing Alan David Freeman, *Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine*,” in *CRITICAL RACE STUDIES: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 29–45 (Kimberlé Crenshaw ed., 1996)).

¹³ *Id.* at 86–88.

been advanced by feminist scholars as well.¹⁴ In this tradition, Spade argues that not only would discrimination laws be ineffective if applied in the same manner to trans individuals, this past history of failure makes it unreasonable to think it would have more than a marginally beneficial effect on trans individual's lives, given that trans people usually have "more complicated relationships with marginality."¹⁵

Spade's arguments against hate crime laws are slightly more unconventional, and also slightly less persuasive. His first argument is that hate crime laws have no deterrent effect.¹⁶ While this seems intuitively true on the basis of the fact that "people do not read law books before committing acts of violence and choose against bias-motivated violence because it carries a harsher sentence,"¹⁷ Spade provides no statistics or other type of support to reinforce this point. His next argument decries the strengthening and legitimization of the criminal punishment system that he claims hate crime laws necessarily entail.¹⁸ I understand the legitimization argument in the abstract sense that advocating for laws that entrust the existing criminal punishment system to recognize trans and gender nonconforming individuals and defend them is essentially adopting the position that the system itself is trustworthy and capable. However, the fact that hate crime laws actually strengthen the criminal punishment system is not as clear. In the case of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, a federal hate crime law that specifically addresses violence against trans people, it provided "enormous resources to the criminal punishment system."¹⁹ I agree that bestowing additional resources on the criminal punishment system increases its clout generally and reinforces the idea of the system as a legitimate authority, a frightening possibility if one believes "the criminal punishment system is the most significant perpetrator of violence against trans people."²⁰ But Spade does not discuss whether all hate crime laws come with similar funding structures or whether the funds have any specific restrictions on them in terms of how they can be used. Absent such resources, the argument that

¹⁴ See Catharine A. MacKinnon, *Substantive Equality: A Perspective*, 96 MINN. L. REV. 1, 6 (2011) ("The point is, because sex is conceived as a difference, and equality is understood as based on sameness in the Aristotelian approach of 'likes alike, unlikes unlike,' the worse the inequality gets, the more disparate its social reality becomes, the less this legal approach can do about it, hence the more equal protection doctrine operates to institutionalize it.").

¹⁵ *Id.* at 87.

¹⁶ *Id.* at 82, 87.

¹⁷ *Id.* at 87.

¹⁸ *Id.* at 87–89.

¹⁹ *Id.* at 162.

²⁰ *Id.* at 90.

the system is strengthened by such laws is less persuasive when the only real change is enhanced sentences for violators of statutes that supposedly are underenforced.

According to Spade, the rise of the non-profit industrial complex has contributed to this misplaced emphasis on certain types of legal reform.²¹ In Spade's narrative, the shift in politics during the growth of neoliberalism and the dismantling of governmental service programs in the 1960s and 1970s led to an increase in non-profits, whose leadership was made up of white, upper-class individuals who, with their specialized graduate degrees, focused on business management models and efficiency.²² As a result, there was a significant shift in priorities toward stabilizing "structural inequality by legitimizing and advancing dominant systems of meaning and control rather than making demands for deeper transformation."²³ This has the effect of "marginalizing or overtly excluding the needs and experiences of people of color, immigrants, people with disabilities, indigenous people, trans people, and poor people."²⁴ This shift to a focus on inclusion and incorporation into the mainstream led to the focus on marriage equality for same-sex couples as a way to provide more benefits and services to their constituencies; however, Spade argues that it "ignores how race, class, ability, indigeneity, and immigration status determine access to those benefits and reduces the gay rights agenda to a project of restoring race, class, ability and immigration status privilege to the most privileged gays and lesbians."²⁵

Spade seems to strongly disapprove of organizations such as Gay and Lesbian Advocates & Defenders and the Gay and Lesbian Association Against Defamation; however, even after reading *Normal Life* I am not ready to decry the work of such organizations nor dispose of the current non-profit model altogether. Nevertheless, I found the critique of the non-profit sector refreshing. There is a tendency in the public interest community at large to assume that efficient, well-run non-profits that secure considerable grant funding are automatically providing beneficial services. Spade's assessment offers an important reminder that non-profits exist to help the people who are marginalized and that it is *their* experiences that should inform the running of the organization, regardless of who is in charge and what their background entails. Spade also provides some interesting ideas about new ways to structure non-profits, discussed below, that demonstrate promise.

²¹ *Id.* at 59.

²² *Id.* at 59–60.

²³ *Id.* at 59.

²⁴ *Id.* at 65.

²⁵ *Id.* at 62.

III. A NEW WAY OF THINKING

So if marriage equality, hate crime laws, and antidiscrimination legislation are not the answer, where should the trans movement turn to effect changes in the lives of trans individuals? Citing Michel Foucault, Spade argues that we should look to laws and policies that effect “disciplinary” and “population management” modes of power to identify ways to create more transformative change.²⁶ Disciplinary modes of power enforce norms that create notions about different types of people and how they should behave.²⁷ “Population management” modes of power have to do with the distribution of services and opportunities to a particular swath of the community that give one a better chance at life.²⁸ According to Spade, the analysis as applied to trans issues occurs less often at the population level, and looking at the governmental institutions and policies in this way opens up a new analytical framework and exposes many questionable practices.²⁹

One such question that arises after reevaluating the laws and policies at a population management level, as filtered through a viewpoint of trans concerns, is the collection of gender data in almost every type of government and commercial setting where identity verification is necessary.³⁰ Conflicts arise when the identification document of a trans person varies from the outward manifestation of their sexual identity or a separate identification document.³¹ These conflicts occur despite the fact that almost every state and federal agency has slightly different requirements for how or whether one can change their different identification documents to accord with their understanding of themselves.³² The effort to classify them into one category or another makes trans people vulnerable when exposed to gender segregated facilities and when attempting to access health care.³³ However, these kinds of problems are less susceptible to rights-based reform and the “emergence of politics and resistance strategies that understand the expansion of identity verification as a key facet of racialized and gendered maldistribution of security and vulnerability” are necessary.³⁴

²⁶*Id.* at 105.

²⁷*Id.* at 104.

²⁸*Id.* at 110.

²⁹*Id.* at 128.

³⁰*Id.* at 142.

³¹*Id.* at 144–45.

³²*Id.*

³³*Id.* at 146–50.

³⁴*Id.* at 154.

It is hard to imagine a society where we are not asked to provide our gender to fly on planes, get a driver's license, and apply to college; declaring our gender has become such a pervasive part of our everyday experience that we have stopped questioning why the information is really necessary. Even when not required to give the information, we provide it at every opportunity, from decorating our children in colors that—per societal constructs—designate their gender to correcting people via email when they mistakenly use the dis-preferred pronoun of Mr. instead of Ms., and vice versa. Spade recommends a wholesale reevaluation of the need of the government for gender identifying information, but I am curious as to which instances, if any, Spade believes it is appropriate to require someone to disclose such information. Even though in the end the exercise will still essentially be one of line-drawing, an examination of the reasoning behind the line will provide insight into our views about gender and their place in society.

IV. THE SOLUTION

The last segment of the book is where *Normal Life* is at its best. In this portion of the book, Spade (somewhat) stops reiterating the problems with non-profits and reform strategies he has outlined so far and offers concrete solutions and changes to the rights-centered law reform stance. He advocates for a culture of non-profits that are willing to recognize multiple areas of need and collaborate where necessary to meet those needs, including advocating for policy change at the legislative and institutional levels, changing public opinion through the creation of independent media and educating the public, and providing critical services such as food, legal assistance, and medical and mental health care.³⁵ The most important recognition the non-profit community needs to make is that community power and autonomy is the only way to ensure that the community's needs are not forgotten and sacrificed to the ideals of the current leaders of the movement.³⁶

Most of Spade's suggestions involve mobilizing the trans community, beginning by getting people in touch with others who have similar stories and backgrounds. The most interesting of his solutions was the creation of membership-based organizations.³⁷ These organizations offer leadership development models and programs to members to teach them community activism and help them become effective advocates in

³⁵ *Id.* at 180–81.

³⁶ *Id.* at 181.

³⁷ *Id.* at 188–89.

their own lives and the community in general.³⁸ While I am sure this model might be too radical for some, it seems to me like a unique way to empower members of the community to help themselves and each other. The model also allows the community itself the ability to reevaluate the impact and desirability of the organization's efforts on the lives of those who it aims to assist.

V. CONCLUSION

Regardless of whether one buys into Spade's radical reframing of the current state of inequality in the United States, there are obviously many issues surrounding discrimination against trans individuals, and these conditions are exacerbated by the intersection of multiple vectors of race, poverty, and disability. The reform strategies in place today to eradicate such barriers are at least to some degree ineffective and yet perpetuated on a regular basis. Again, this book is not likely to convince anyone that prisons should be abolished; to the extent that Spade is looking first to promote awareness and empowerment in his constituency of trans and gender nonconforming people who are poor, disabled, and/or of color, I think he is unbothered by that result. However, *Normal Life* highlights many problems with the current rights-based model and provides some forgotten and unique solutions, none of which needs to be taken wholesale to be informative or effective.

³⁸ *Id.* at 190–91.