

- 21 See Hortense Spillers, "Interstices: A Small Drama of Words," in *Black, White and In Color: Essays on American Literature and Culture* (Chicago, IL: University of Chicago Press, 2003): 168. The essay was originally published in Carole Vance's controversial volume *Pleasure and Danger* in 1984 (London: Routledge and Kegan Paul).
- 22 Ibid., 168.
- 23 Ibid.

## Methodologies of Trans Resistance

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### Introduction

In the past ten years, trans issues and activism have emerged with a new level of energy and visibility that crosses the legal, cultural, and activist realms. Trans rights protections in the law are growing at a fast pace, with seven US states now explicitly naming gender identity and/or expression discrimination as a forbidden category of discrimination in statewide protections.<sup>1</sup> While only 5.3 percent of the US population was covered by gender-identity-explicit anti-discrimination law in 2000, 28 percent is as of 2005.<sup>2</sup> At the same time, trans representations in the media have been expanding, and trans characters are moving out of the typical roles of criminal and murder victim (think *Boys Don't Cry* and *Law and Order*) and into new, if not uncontroversial depictions like *Transgeneration* and *Transamerica*. More importantly local, state, and national trans activism is changing the status of trans people in activist movements. Organizations traditionally focused on sexual orientation issues have added trans-inclusive language to their mission statements and sometimes organization names, and organizations that serve communities in which trans people are included are, in some cities, increasingly adding trans-inclusive language to intake forms, surveys, and other tools. In general, trans activists and our allies are raising questions about trans people's access to basic necessities and participation in political movements in settings that range from needle exchanges and free health clinics to universities, community centers, and grassroots activist meetings and events.

At the same time, despite these apparent gains, discrimination and violence against trans communities are still rampant. A 2003 study by the National Center for Lesbian Rights and the Transgender Law Center found that nearly one in every two respondents has experienced gender-identity-based employment discrimination; more than one in three respondents had suffered from gender-identity discrimination in a place of public accommodation; nearly one in every three respondents had been the victim of gender-identity discrimination in housing; over 30 percent of respondents had been discriminated against while trying to access health care; more than one in four respondents had been harassed or abused by a police officer; one in every five respondents had suffered discrimination while attempting to access services from a social service provider; and 14 percent of respondents had suffered from discrimination in jail or prison.

Further, many areas of trans rights are facing severe rollbacks with little discussion or attention being paid. Changes in regulations concerning identity documents and increased surveillance that have emerged since the advent of the Bush Administration's "War on Terror" threaten to undermine the ability of trans people to change our gender on our identity documents, a form of access key to working and living safely. In addition, as I discuss in greater depth below, recent changes in immigration law have made it more difficult for trans people to immigrate to the US when facing persecution in their home country. Further, the major law and policy changes around the country that have endangered poor people and people targeted by the criminal justice and immigration systems, such as "welfare reform," the 1996 changes to federal immigration laws, the advent of "three-strikes" laws, and the tactics of the "War on Drugs" have had disproportionate effects on trans people due to our disproportionate poverty and overexposure to police violence and arrest. These and other conditions related to increasingly conservative, racist, anti-immigrant, and anti-poor initiatives from the federal government have had continuing detrimental effects on the most vulnerable trans communities in the last decade.

In this complex, contradicting context in which trans people are targets of protection, violence and representation, many controversies that are familiar from other social movements emerge and re-emerge. These controversial questions include: Who is included in the term "trans"? What is the relationship between social-change work focused on gender identity and expression oppression and sexual-orientation oppression? What narratives about trans identity should we use in our activist work? How is analysis of racism and white supremacy being incorporated or not being incorporated into work on trans issues? What is the relationship between gender identity and expression, anti-oppression work and feminism? With whom should we be allied? How should we prioritize different areas of our work, and the multiple constituencies included in any definition of "trans communities"? What approach should we have to legal and medical regulation of gender, and specifically of trans people, as we seek change? What incremental changes should we push for, and what incremental changes should we avoid because they further entrench our oppression?

These questions frequently become organized around debates about "movement vision." As has been noted by many other scholars and activists, the rising tide of conservatism in the US over the last 25 years has expunged the public imagination of the understandings of alternatives to current power relations and racial and economic structures.<sup>3</sup> The national political conversation has become dominated by a Christian conservative version of morality and the public narratives against the continued attacks on civil liberties, poor people, civil rights, and immigrant rights have increasingly articulated only a reactionary position that requests "don't take this away" but very little affirmative vision of the power-redistributed world we want to live in. Within movements, this has often meant a shift toward a conservative agenda.<sup>4</sup> This agenda is often seen as necessary by those promoting it, but is frequently noted by critics to exclude issues most central to the most marginalized people affected by a given issue.<sup>5</sup> Within the controversies that arise, questions often center on the scope and priorities of the work as well as the legitimacy of the leadership and decision-making within movements.

In this essay, I want to look at these questions of vision and strategy as they apply

to social-change work focused on gender identity and expression. I approach these questions as an activist and a lawyer working on reducing and eliminating state regulation and coercion of gender through a variety of strategies. Here I explore existing tensions and controversies in order to propose a vision and method of analysis for examining the complex day-to-day negotiations that come up in the work of individuals and organizations engaged in resistance to gender regulation and oppression. Such proposals are always inadequate and perspective-based, but without attempting to build such shared analysis we only end up inheriting conservative norms that yield narrow relief.

The difficulties attendant on fighting for basic survival, safety, and political participation for a population that is severely marginalized, criminalized, and routinely brutalized often deprive us of opportunities to step back and question our vision and our methods of achieving it. Too often, I fear, trans activism has borrowed strategies from the most well-funded, well-publicized lesbian and gay rights work with an assumption of its success and a blindness to its shortcomings in our attempts to take up opportunities to forward our work. Drawing on existing analyses about movement frameworks for guiding work toward concrete anti-oppression visions, I hope to propose some compass points to navigate through the thorny territory in which we engage work that is vital for the survival of trans people.

In my analysis, I borrow from the framework laid out by Chela Sandoval in *Methodology of the Oppressed*.<sup>6</sup> Utilizing Sandoval's analysis of five forms of consciousness that have emerged as useful tactics in social justice movements in the last half century, I examine how her suggestion that "differential consciousness" is the paradigm that best allows movements to draw on the strength of other narratives of resistance and utilize these effectively while guided by a concrete commitment to anti-oppression. I focus on three examples relevant to current struggles engaged by trans activists: the 2005 passage of the Real ID Act, the push for gender identity to be included in the Local Law Enforcement Enhancement Act (passed by the Senate with gender identity included in 2005), and the current (2006) negotiations taking place in New York City to eliminate the city's practice of placing transgender women in men's homeless shelters. Using these three examples as starting points, I propose a set of criteria for trans activists, that combined with the development of clear visions of what we want the world to look like, can help to assess the anti-oppression potential of various political acts and campaigns which can be approached using the differential tactic.

#### Four Forms of Oppositional Consciousness

In *Methodology of the Oppressed*, Sandoval identifies the desire of subordinated classes to find subjective forms of resistance other than those determined by the social order itself (54). Sandoval provides a useful analytical framework for understanding the various forms of resistance-consciousness engaged commonly by social movements in the US. She outlines four forms or tactics used by social movements, describing how fractures within movements often come from battles between groups utilizing one form or another and seeing it as the exclusive strategy that should be used (44). She then articulates a fifth form, "differential consciousness," that she sees practiced

in US third-world feminism and that shifts the paradigm, recognizing the usefulness of all of the other forms without privileging any one. She suggests that differential consciousness provides a new model for social-movement work that opens up new possibilities for effective coalitional work that is essential for resistance movements operating in a climate of postmodern transnationalization (54).

Sandoval seeks to create a science of oppositional ideology, identifying forms of "ideology in opposition that can be generated and coordinated by those classes self-consciously seeking effective liberatory stances in relation to the dominant social order" (43, 44). Her theory builds on the work of Althusser, acknowledging that the citizen-subject always speaks from within ideology, but can also learn to "identify, develop, and control the means of ideology . . . [to] marshal the knowledge necessary to 'break with ideology'" (44). Her analysis identifies five principal categories around which oppositional consciousness is organized, which movements use to transform power relations, which she calls "equal rights," "revolutionary," "supremacist," "separatist," and "differential" (44). For her central example, she focuses on feminist movements during the 1970s and 1980s to elucidate the five forms of consciousness, but contends that all US liberation movements active during the latter half of the twentieth century included expression of these five.

Sandoval articulates the first four forms of resistance consciousness:

- 1 Equal rights form: This form says, "we are the same as you." "Aesthetically, the equal rights mode of consciousness seeks duplication, politically it seeks integration, psychically, it seeks assimilation" (56). This form of consciousness articulates that differences between the oppressed group and the dominant group have been over-emphasized, and that the oppressed group should be given an opportunity to access citizenship as it is currently defined within the dominant system.
- 2 Revolutionary form: This form argues that assimilation of differences is not possible within the confines of the present social order. It articulates a need to restructure society to change what is affirmed and valued at a deeper level than the equality form. Its ultimate aim is to move society away from domination/subordination power axes.
- 3 Supremacist form: In this form, oppressed groups assert that their differences have provided them access to a higher evolutionary level, and an elevated ethical and moral position than those who hold social power.
- 4 Separatist form: The goal of this form is "to protect and nurture the differences that define its practitioners through their complete separation from the dominant social order" (56).

The equal rights form and the revolutionary form have more publicly vied for attention and created more oft-repeated conflicts among activists challenging heterosexism. The marriage and military inclusion debates are both useful examples of these splits. The best funded, national, legal and legislation-focused gay and lesbian<sup>7</sup> organizations have supported these two central agenda items, focused on a notion that gays and lesbians should be included in the institutions of marriage and the military. Arguments have centered on the fact that "our families are just like yours" or "we can perform military service honorably just like straight people." The benefits laid out by

advocates of these positions have focused on how inclusion in these institutions would provide gays and lesbians with both economic opportunity (employment in the military or access to shared insurance benefits and other economic trappings of marriage) as well as signify a symbolic shift in the perception of gays and lesbians. Marriage and military service are seen as keys to full citizenship recognition, allowing gays and lesbians to claim citizenship equally through military service and to be recognized in family formations viewed as equal to heterosexual marriages.

Activists working to end sexual-orientation oppression but opposed to these agendas have utilized the revolutionary form, arguing that the institutions of marriage and the military themselves perpetuate heteronormativity and demanding that "queer" activist vision be expanded to end state sanctioning of certain family forms (and its converse punishment of others) and to overturn the traditionally masculinist and heterosexist institution of the military.<sup>8</sup> These activists argue that seeking inclusion in these institutions further legitimizes the institutions and enhances the marginalization of those who remain excluded,<sup>9</sup> undermines opportunities to make coalition with other communities harmed by these institutions in order to seek out broader change, and sells out the broader promise of queer disruption of hetero norms that operate to oppress queers and other oppressed groups.

The debates between those utilizing an equality-focused oppositional consciousness and those utilizing a revolutionary-focused oppositional consciousness have been central to internal discussions in lesbian and gay activist spaces regarding these two agenda items, and have highlighted essential differences in vision that have often coincided with race, gender, and class differences. The equality vision was perhaps best articulated in Andrew Sullivan's controversial statement "After we get gay marriage and a few other things, let's pack up the whole movement and go home."<sup>10</sup> This vision sees a world where sexual-orientation differences are downplayed, and state policies do not differentiate between gays and lesbians and straight people. The "queer" consciousness vision includes a deeper set of changes, including an end to state privileging of certain sexual and familial relationships over others such that people can form families and have sex how they want without certain financial penalties or incentives ensuing. It also includes an undermining of militarism, and an end to a military-industrial complex that has included tactics of sexual violence both within its ranks and through sexual exploitation and abuse of people targeted by the US around the world. In recent years, publicity about these debates, even in lesbian and gay circles, has receded with increased pressure to present a unified front in the face of successful counter-moves by the Right wing that have increased expulsions of lesbians and gay men (particularly lesbians of color<sup>11</sup>) from the military and resulted in ballot measures that not only preemptively bar recognition of same-sex marriage but, in some cases, undermine existing parental rights of same-sex partners.<sup>12</sup> However, the underlying tension between strategies focused on accessing institutions key to current understandings of citizenship, and strategies focused on restructuring society to eliminate oppressive hierarchies, remain central to debates about issue priorities for eliminating heterosexism.

## The Fifth Form: Differential Consciousness

The four forms described above, according to Sandoval, have been utilized successfully by US social movements for the last fifty years. However, they have also created divisions within movements, like those described in the marriage/military examples, because groups within movements have believed that these forms are mutually exclusive, and battled bitterly over which form is appropriate. Sandoval offers the “differential” form as the alternative.

Sandoval describes that the “differential consciousness” form is different from the others, and operates as a kaleidoscope of the others, “a kinetic motion that maneuvers, poetically transfigures, and orchestrates while demanding alienation, perversion, and reformation in both spectators and practitioners.” For Sandoval, it is the new subject position suggested by Althusser that can function both within and beyond dominant ideology (44). Sandoval finds the expression of differential consciousness in the US third-world feminism of the 1970s and 1980s.

Sandoval paints the history of feminists of color responding to the white feminist movement of the 1970s and 1980s with critical analysis about the homogeneity demanded by a movement that exclusively examined gender as a vector of oppression. She describes how feminists of color named this phenomenon by articulating that the experiences of women of color were neither like those of white women nor those of men of color, and suggesting that women of color existed in the “interstices between normalized social categories” or as another gender category altogether. This analysis “insist[s] on the recognition of a third, divergent, and supplementary category for social identity” which Sandoval calls an “in-between space,” and a “third gender category” (46–7). The push for “unity” by white feminists, focusing exclusively on their oppression as women and denying any intersectional analysis, erased the significance of racism and white supremacy. The challenges women of color brought to this erasure were often ignored, their analysis dismissed as merely descriptive of their experience but not as a paradigm shift in oppositional consciousness (47). The white feminist movement’s “inability to reconcile in any meaningful way the challenges lodged by US feminists of color indicated a structural deficiency within feminist praxis” (50).

To explore how women of color developed differential consciousness as a new form of oppositional consciousness, Sandoval turns to Aida Hurtado and Cherrie Moraga’s work. Hurtado and Moraga contend that women of color are like guerrilla fighters trained by doing everyday battle with the state apparatus to survive (59–60). This struggle requires constant evaluation of whom to trust and ally with, what to say and do, utilization of sometimes contradictory strategies and narratives to survive. The connections between women of color articulated by these writers, which are connections across culture, language, race, sexual orientation, and class, are ones that do not require similar solutions to the problems of oppression, but rather see all tactical positionings as, in the words of Audre Lorde “a fund of necessary polarities between which our creativities spark like a dialectic.” In this differential form, the various ideological stands are viewed as “potential tactics drawn from a never-ending interventionary fund, the contents of which remobilizes power” (60). Differential consciousness emerges from the survival skill of

being able to commit to a well-defined structure of identity for one hour, day, week, month, year; transform that identity according to the requisites of another oppositional ideological tactic if readings of power’s formation require it; . . . to recognize alliance with others committed to egalitarian social relations . . . when these other readings of power call of alternative oppositional stands. (60)

Differential consciousness undermines the paradigm upon which the other four forms rest, in that it privileges none of these forms, but instead creates “consciousness-in-resistance” which Sandoval argues is “particularly effective under global late-capitalist and postmodern cultural conditions” (55). Without the kind of analysis provided by the differential form, which

shatter[s] the construction of any one ideology as the single most correct site where truth can be represented, . . . any “liberation” or social movement eventually becomes destined to repeat the oppressive authoritarianism from which it is attempting to free itself, and become trapped inside a drive for truth that ends only in producing its own brand of dominations. (59)

The differential is a “tactical subjectivity,” utilizing various forms to move power. The differential is about traveling across worlds of meaning, shuttling between systems of understanding identity, and engaging narratives strategically with an underlying ethical commitment to equalize power between social constituencies as its guide (61). Differential consciousness sees all four tactics, equality, revolutionary, supremacist and separatist consciousness, as technologies of power to be utilized, as “transformable social narratives that are designed to intervene in reality for the sake of social justice” (61). It abandons the quest for a single narrative of identity and power, and engages non-narrative, whereby “narrative is viewed as only a means to an end – the end of domination” (63). Sandoval argues that the differential form opens new possibilities for coalitional consciousness, allowing “affinities inside of difference [to] attract, combine, and relate new constituencies into coalitions of resistance” (63).

## Equality and Revolutionary Consciousness in Trans Politics

It is difficult to study the law and have radical politics, or be a radical lawyer, without bumping up against difficult questions about reforming systems of oppression versus overturning them. Frequently, legal rights-focused work within anti-oppression movements centrally articulates the equality form discussed above, utilizing long-critiqued formal legal understandings of “discrimination” to attempt to remedy oppression.<sup>13</sup> Critical race theorists have provided extensive analysis of the limits of formal legal equality approaches to white supremacy for achieving meaningful redistribution of power. The history of the eroding of the legal gains of the civil rights movement, the women’s movement, and the disability rights movement over the last few decades demonstrates the limited reach of formal legal equality to remedy the racism, sexism and ableism that are still rampant in the US.<sup>14</sup> Movement activists commonly note that US law’s structure focuses on individual plaintiffs, is often incapable of conceiving oppression that occurs against whole communities or populations, and usually

results in remedies that provide the narrowest possible framework of change. Additionally, the legal profession is dominated by white people with economic privilege in positions of power, and legal recourse remains mostly inaccessible to poor people due to the expense of legal representation and the continued cuts to free legal services.

As trans activists build resistance strategies and organize resources for change, we need frameworks for asking essential questions about how to go about our work in the current cultural and political conditions. I come to these questions with a strong critique of the limited vision of the equality framework offered up by the most visible and well-funded lesbian and gay organizations, and with a belief that for trans activists to be effective we should use the history of the lesbian and gay rights movement as instructive but not as a roadmap for our activist work. I am interested in thinking about how we can identify the places where utilizing narratives derived from equality consciousness can be helpful, and also recognize the limits of restricting ourselves to the vision allowed by that framework. This conversation can disrupt the false division that exists frequently in arguments between activists utilizing the four different tactics described by Sandoval, which often posit equality frameworks as the only “viable” approach to social change and suggest that any stronger claims or more radical visions of the world are idealistic and impossible. I would suggest, instead, that while equality narratives have a central role in strategies for social change in the current political climate, without a vision for broader change and a commitment to avoid “reforms” that violate that vision, we stand to gain nothing more than a retrenchment of current systems of domination with slight adjustments to increase inclusion of only the most privileged and least vulnerable people affected by homophobia and transphobia.

A central critique leveled at the equality tactic’s use in the feminist movement has been that its singular focus on gender-universalized white women’s experience as “women’s experience” (45). Feminist writers of color suggested that if gender were the only category of oppression under analysis, a “female-dominated white America”<sup>15</sup> was the vision being promoted by white feminism, a vision deeply unsatisfactory to feminists of color (46). Critiques of the universalization of white womanhood were often met with charges that women of color were being “divisive” of the movement.

Similar critiques of single-vector politics have consistently been leveled at the lesbian- and gay-rights movement, and those offering critiques have frequently been called divisive as well. Ian Barnard’s provocative 1996 article, “Fuck Community or Why I Support Gay-Bashing” discusses this phenomenon. Barnard identifies lesbian and gay politics as well as queer politics as white-centered, noting

Any US politics, no matter how coalitional its compass, that identifies itself in terms of gender and/or sexual orientation only (“lesbian separatism,” “Queer Nation,” “Lesbian and Gay Studies”) will be a white-centered and dominated politics, since only white people in this society can afford to see their race as unmarked, as an irrelevant or subordinate category of analysis.<sup>16</sup>

Barnard expresses rage at the charges of divisiveness leveled at anyone who critiques the unifying narrative of white lesbian/gay/queer experience. He illustrates this approach with a quote from a white trans woman writing about queer politics in a San Diego gay newspaper. Connie Norman writes:

All right folks, don’t you think it is just about time that we started circling the wagons? And I don’t really give a shit if “indigenous peoples” object to my use of the phrase “circle the wagons” or not. I don’t give one whit if that phrase comes from the dominating white imperialist culture and therefore is racist in connotation and is the tool of language that western culture has used to dominate and oppress people of color and on and on and politically correct this and multiculturalism that, I’m just sick of it!

When in the hell are we going to come together as a community and start fighting our real enemy, *homohatred!*<sup>17</sup>

No doubt Norman’s opinion that an analysis of racism and imperialism is irrelevant to the unity needed by queer and trans communities to fight oppression is more explicit than what usually gets said. However, the essence of her message, and the questions it raises about the breadth of the vision of movements focused on ending oppression against queer and trans people, is all too familiar. These conversations have continually emerged regarding what the priorities of LGBT organizations should be;<sup>18</sup> what our requirements for endorsement should be of candidates who vote for anti-discrimination laws or family recognition for queer families but otherwise vote for oppressive policies;<sup>19</sup> what categories of discrimination we will or won’t include in legislation;<sup>20</sup> what relationships our organizations should have to corporations that do harmful things in the world;<sup>21</sup> who should be in leadership of sexual-orientation or gender-identity-focused organizations;<sup>22</sup> and whether or not poor, homeless and youth populations of queer and trans people should have access to space in the “gayborhood.”<sup>23</sup>

A central question that critiques of single issues LGBT politics have raised is “Who benefits from the victories of a single-issue queer and/or trans politics?” Critics have argued that the limits of the vision of gay and lesbian (and sometimes bi and trans) equality espoused by single-issue activism can only yield benefits that can be accessed by those who already possess racial and economic privilege. Because the agenda fails to challenge a broader realm of oppressions affecting queer and trans poor people, people of color, immigrants, and others targeted by state violence and maldistribution of wealth and power, it is only a quest for people who possess privilege but for their sexual orientation and/or gender identity to become equal with others who possess those same privileges. It has been framed as a quest for those with adequate access to housing and employment to maintain it despite being queer or trans, for those with access to private health insurance to be able to share it with their same-sex partners, for those with citizenship status to be able to share with their same-sex partners, for those who feel protected by the criminal justice system to have access to its processes to punish those who harm them, etc.<sup>24</sup> Given the conditions of late capitalism under which we live, where wealth continues to become more concentrated and poverty more widespread domestically and globally, the wisdom of a strategy that wins rights and protections for a shrinking class of securely housed, employed, and state-protected queer and trans people remains dubious at best.<sup>25</sup>

This critique of the limits of the formal equality sought by single-vector movements has a great deal of resonance for current discussions of trans politics, and the questions I outlined at the beginning regarding the scope of the vision of trans liberation.

I want to examine three examples of where these issues emerge from recent trans political history in order to trace how the questions Sandoval raises about the shortfalls

of single-vector politics are playing out in trans contexts, and to examine the utility of the differential tactic for work to end the coercive systems of gender.

## The Local Law Enforcement Enhancement Act of 2005

In 2005, trans activists lauded as a major victory the House passage of the Local Law Enforcement Enhancement Act of 2005 (LLEEA). This legislation would put in place a federal hate crimes law, and activists celebrated the fact that the version passed by the House included gender identity in its laundry list of categories of bias motivation targeted by the law.<sup>26</sup> This law would provide grants to states to enhance their investigations and prosecutions of bias-motivated crimes and make it possible for the federal government to investigate and prosecute hate crimes that they determine are not being adequately investigated by local authorities.<sup>27</sup> For proponents of the law, namely the National Center for Transgender Equality and the Human Rights Campaign (HRC), its significance lay both in its actual purpose and in the fact that, if passed, it would be the first federal legislation explicitly extending the protection of oppressed groups to include gender identity as a category.

Queer and trans activists and organizations who oppose hate crimes legislation have offered a critique of this approach, suggesting that hate crimes laws enhance the punishing power of the criminal justice system, which targets people of color and poor people and disproportionately punishes queer and trans people.<sup>28</sup> According to this analysis, placing reliance on the criminal justice system to resolve violence against queer and trans people misunderstands the operation of this violence in our culture by focusing attention on individual perpetrators rather than the systemic conditions of oppression that result in widespread violence against our communities at the hands of the state, especially those who are targeted by police or who are incarcerated. This reframing of the question of violence suggests that enhancing the power of the criminal justice system further endangers, rather than protects, sexual and gender outsiders, especially since there is no evidence to suggest that hate crimes laws operate as a deterrent to crimes motivated by bias. Further, the campaigns to pass these laws promote the idea that homophobic and transphobic violence is primarily an issue of individual violent people, rather than systemic conditions that endanger the survival of queer and trans people. Critics have suggested that it is specifically a white perspective that has prioritized hate crimes laws as a primary strategy in queer and trans politics, informed by the experiences of white and upper-class people who see the criminal justice system and the police in a favorable light and seek protection through them. Conversely, queer and trans people of color and poor people, who may be targeted by police and experience the violence of the criminal justice system in their personal lives or through family or loved ones, are less likely to view the enhancement of this system as a means to safety from violence.

Interestingly, when it came time for the LLEEA to go to the vote in the Senate, back-room brokering between the Human Rights Campaign and the bill's Senate sponsors resulted in the elimination of "gender identity" from the bill. This was not an enormous shock to trans advocates. Given HRC's long history of excluding gender identity from the Employment Non-Discrimination Act, many questioned the depth

of HRC's commitment to trans inclusion. In fact, battles about whether or not gender identity should be included in bills that address sexual orientation issues have been a divisive issue in many places, with gay-run groups often arguing that cutting out gender identity is the only way to get a bill passed and displacing blame onto elected officials, and trans people asking why this is a legitimate bargaining chip and whether there is another strategy that could yield different results.<sup>29</sup>

The story of the LLEEA, including the analysis of its critics and the ultimate exclusion of gender identity provide a location to examine the applicability of Sandoval's model to trans politics. The critique of hate crimes laws articulated above highlights the equality form vs. revolutionary form divide examined by Sandoval. The proponents of hate crimes laws utilize an equality framework in choosing to seek these laws as their solution to violence. The message of the campaigns for hate crimes laws is "We're human, we deserve to be protected from what the culture has defined as violence as much as anyone else." The campaigns typically focus attention on white victims of hate violence, like Matthew Shepard and Brandon Teena, and draw on sympathy from those outside the community who can recognize the pain of these victims who are oh-so-similar to them *but for* their sexual orientation or gender identity.

Opponents of hate crime laws demand a broader reform, suggesting that oppression cannot meaningfully be undermined within the current understanding of violence and crime propagated by the criminal justice system. They see homophobic and transphobic violence as inherent to the current criminal justice system and broadly practiced by the state in other realms, and they promote a vision of change informed by the experiences of those most vulnerable to the multifaceted oppression of the state.

The divide between these two forms of oppositional consciousness, as Sandoval explains, yields charges of "divisiveness" in part because each viewpoint sees its own position as mutually exclusive of the other. From the perspective of proponents of hate crime laws, this kind of incremental change, having gender identity named in a federal law and having federal law recognize the humanity of trans people and name us for protection, is an essential step toward other changes. Changing the whole system is unrealistic, and especially in the current political climate it makes sense to align with the popularity of "law and order" approaches to social problems to win any gains. From the revolutionary perspective, buying into racist, sexist, homophobic, and transphobic criminal justice approaches to transphobia and homophobia stands both to hurt individual queer and trans people and to strengthen a system that oppresses us, while offering no relief from the violence we suffer.

The ultimate exclusion of trans people from the LLEEA I would ascribe to the political expediency that is often a feature of the equality form, as has been repeatedly demonstrated by the HRC. Their primary concern remains centered on issues of sexual orientation, and the battles over "inclusion" of people who experience society's wrath and repulsion because of our violations of gender norms in addition to norms of sexual orientation (or as conflated by culture with violation of norms of sexual orientation) have not yet expanded their narrow single-issue politics. Their agenda focuses on the narrow issue of whether gays and lesbians are equally human with straight people, and their continued exclusion of trans people underscores their wavering commitment to the humanity of trans people. The rhetoric again focuses on incrementalism and expediency – we should take our chance to get *something* passed now,

we'll come back for you later. Interestingly, the HRC has actually never passed a single federal law, despite being the most well-funded LGB organization in the country, which begs the question of whether political expediency is, in fact, being served.

## The Real ID Act

A second location through which to view the operation of these forms of resistance consciousness in queer and trans politics is the passage of the Real ID Act in 2005. This new law is part of a slew of "War on Terror" law and policy changes targeted to further marginalize and criminalize immigrants. It was passed amid a flurry of news coverage about how terrorists could use false information to get driver's licenses. The Real ID Act accomplishes two major feats worth mentioning here. First, it increases barriers to asylum applications. The Real ID Act changes the asylum process to allow asylum officers to demand that an applicant get corroborating evidence of their persecution from their home government. It also reduces the ability of judges to question the asylum officers' judgment of an applicant's credibility, thereby making it harder for an applicant who has been treated unfairly to successfully appeal.<sup>30</sup> Additionally, the Real ID Act functionally accomplishes the creation of a national identification card, a move too politically unpopular to approach directly. It does this by creating uniform standards for Departments of Motor Vehicles (DMVs) across the country, demanding that all states make their DMV IDs the same in order to have those IDs be treated as "federal ID" for the purposes of entering federal buildings, boarding planes, etc. The law creates federal standards for what type of documents may be used to support an application for an ID and requires that states make electronic copies of all the documents used to support the application. These electronic copies will then be part of a national database available to law enforcement officials.

The implications of these changes for queer and trans people are especially significant. Asylum is an important avenue of immigration for many queer and trans people who come to the United States after facing more severe violence and persecution in their home countries based on sexual orientation or gender identity. Further, changes in ID that reduce states' ability to make their own rules and require the collection of documentation into a national database may have a very significant effect on transgender people. Currently, DMV policies vary widely across the country regarding sex designation change, often based on what kinds of state and local activism transgender advocates have been able to accomplish. In some states, persons can change their gender on their DMV ID only if they can demonstrate that they have undergone genital surgery. In others, they may change their ID if they can show that they've changed a birth certificate. In others, only a letter from a doctor is required stating that they are transgender and their license should be changed to reflect their current gender. This patchwork of policies is unfair and arbitrary, and it endangers the safety and well-being of many transgender people. However, it is far better than a national policy that, depending on how it is implemented, might roll back rights and establish a national standard that comports with the current worst state standards, or worse yet forbids sex designation change altogether.<sup>31</sup> Further, the placement of documents used in an application for a state driver's license into a national database stands to have

significant implications for trans people, who often submit letters about very private medical treatment as well as documents that list former identities as part of these application processes. For example, a person seeking a driver's license might submit a birth certificate that bears their old name and birth gender, a name change decree from a court, and a letter from a medical provider or surgeon discussing why their license should reflect a different gender than their birth certificate reflects. Having all of this available to any state or federal agent who can swipe the magnetic strip on the back of a license greatly increases the vulnerability of trans people and reduces our ability to determine to whom we want to disclose our transgender identities or histories. For many, the police are the people we would be most afraid to know this information about us.<sup>32</sup>

Using the analysis laid out above regarding single-vector politics in the LGBT context, we can examine how the passage of the Real ID Act, which was a focus of much concerted political resistance by many movements on the Left, failed to emerge as a "gay issue" in 2005. Post-passage there has been some response to and discussion of the Act, in the form of a few conference panels in some queer political spaces. However, overall, this was never and remains not a concern of queer politics nationally, as embodied in the well-resourced gay political agendas of the major organizations.

Analysis about the failure of the best resourced gay and lesbian organizations to take up issues of central concern to trans people, people of color, poor people, immigrants, and others who are most highly vulnerable to state homophobia and transphobia is not new. It has been applied to the long gay silence surrounding welfare reform, the occupation of Iraq, the expansion of the prison industrial complex, homelessness, and countless other issues. Divides have emerged around these issues, particularly when they become highly visible marginalizations such as the rejection of plans for a queer youth homeless shelter in San Francisco's gayborhood, the Castro, or the expulsion of queer and trans youth of color from the Christopher Street piers in New York by a coalition of gay, lesbian and straight upper-class residents.

Choices about what to put on the "gay agenda" are actually choices about who the constituency of the gay rights movement is and about the ultimate visionary goals of this movement. The revolutionary consciousness-minded critics of a gay politics that is silent (with a little dash of patriotism thrown in for flavor) on these issues argue that the vision of the gay rights movement articulated by the marriage/hate-crimes-statutes/military/ENDA agenda is fundamentally unsatisfying, because its strategies interrogate only articulations of "discrimination" on the basis of sexual orientation, but have no deeper redistributionist aim. This single-vector politics fails to make a broader or more disruptive claim than "our identity group is human."

## Possibilities of Differential Consciousness for Trans Politics

The moment in national trans politics framed by 2005's stories about the Real ID Act and the LLEEA provides an illustration of the operations of equality consciousness (the dominant strategy being pursued by the most well-resourced LGB(T?) organizations) and its revolutionary consciousness-minded critics. While on the national stage, public debate about the strategies and tactics of the LGB(T?) rights movement

has all but disappeared, with equality tactics becoming the dominant framework, within movement spaces and among theorists of queer and trans politics the divides are all too visible. Within trans politics, specifically, these questions are emerging with great force, as trans struggles become increasingly institutionalized and familiar questions about priorities, leadership, and exclusion come to the fore.

Differential consciousness can offer us an alternative to a repetition of the familiar equality–revolutionary debates that often emerge as incrementalism and political expediency versus idealism, as it is framed by equality advocates, or legitimization of oppressive institutions versus deep meaningful reform, as it is framed by revolutionary advocates. An example of this type of debate is the ongoing discussion about reforming health care systems to include coverage of trans health. In her recent book *Sex Change, Social Change*, as well as in a speech to the 2005 Gay and Lesbian Medical Association Conference in Montreal, Viviane Namaste offered her critique of efforts by trans advocates to secure the inclusion of trans health care in insurance benefits.<sup>33</sup> Namaste looked at the successful 2001 campaign by San Francisco trans activists to get the city to cover transgender health care in the health benefits provided to city employees. Namaste charges that the celebration of the victory of this campaign, as discussed in a 2001 article by James Green, an activist working for the change, undermines struggles for universal health care, and is a strategic mistake because it only reifies a system of health care in which a narrow segment of the population has access to health insurance through employment.<sup>34</sup> For Namaste, viewing the campaign through the revolutionary consciousness framework, fighting for a change in the terms of health insurance policies that protect a few people only strengthens a system that deprives health care to most people, and represents a mis-prioritization of American trans activists, who would better spend time joining the fight for universal health care that will benefit those with least access to health care of all kinds.

For activists engaged in struggles to include trans health care in health insurance programs, Namaste's critique misses the multiple benefits of this incremental step. Nick Gorton, a trans medical expert and physician working on similar campaigns nationally, has argued that the real victory of the San Francisco campaign is not in the admittedly limited number of people who benefit from this policy, but rather in its role as an essential instance of government recognition of the legitimacy of trans health care.<sup>35</sup> Dr Gorton identifies himself as a proponent of universal health care and also as an activist focused on access to health care for poor people and people in state custody. Dr Gorton sees victories like that of the San Francisco advocates as essential to building an ongoing case that the state should be responsible for providing this care, a point still hotly contested in a context where states have explicit exclusions of trans health care from Medicaid coverage and most trans prisoners, foster youth, and juvenile offenders are still routinely denied access to hormones and other gender-related care. Each victory, in his view, contributes to building a case for the inclusion of this kind of health care in various existing programs now, and, increases the possibility that when the US adopts a universal health care system, trans care will be included, a battle still being fought in many Canadian provinces and EU nations.<sup>36</sup>

Debates like this are occurring across trans politics on many familiar questions: Should gender identity disorder be removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) because it pathologizes gender variance or is it a vital tool

for trans health coverage? Should attorneys utilize disability discrimination claims in trans cases because they are more readily received by courts than gender discrimination claims, or should they be avoided because they rely on medical evidence that depicts gender identity in a way that excludes many trans people's experiences? Should attorneys fight for recognition of marriage rights for heterosexual couples involving one trans partner, or work toward abolishing marriage laws that privilege some trans people in areas of immigration, health care access, and family recognition? Should trans activists fight for prison reforms to increase the safety of incarcerated trans people, or focus energies solely on prison abolition because all reform strengthens the prison system and directs more resources toward the creation and maintenance of prisons?

Differential consciousness as a mode of analysis offers us an option beyond the either/or of equality vs. revolutionary, and hopefully could move us beyond the “sell-out/unrealistic idealist” name-calling game. The differential offers a possibility for engaging in tactical resistance that releases activists from overcommitment to the various truth claims underlying the other four positions outlined by Sandoval, instead focusing on an underlying commitment to anti-oppression. Differential consciousness is particularly appealing given the conditions of trans survival and trans activism that create conditions for shared analysis with US third-world feminists. Trans people battle consistently against state violence, which both causes and results from our disproportionate poverty and incarceration. As gender outsiders, trans people face lack of recognition by the government, inability to access ID and other basic necessities that permit employment, and misclassification in the shelters, group homes, jails and prisons in which we are overrepresented.

The history of our resistance shows continual rejection from our communities of origin and activist movements, being labeled as sexists with “male privilege” by some wings of white feminism,<sup>37</sup> being marginalized and erased as unassimilable by the mainstream gay and lesbian rights movement; and facing continued interaction with a medical establishment that seeks to disappear us either by denying us trans health care or providing it on condition that we strive to pass as non-trans people post-transition.<sup>38</sup> Trans survival necessitates the utilization of multiple narratives about our identities, our beliefs regarding gender and our bodies, our sexual practices and proclivities, our relationships to family, and the other information that culture continually demands or forces we alternately disclose and deny. We may be read as male on the subway, female at the welfare office, male at the airport, female at the clinic, freakishly gendered in the prison, dangerously gendered in the shelter. To survive our day-to-day interactions with the various institutions of power that classify us differently and respond to us with simultaneous sexism and transphobia, in addition to the racism, xenophobia, ableism, and ageism that the most vulnerable trans people face, we are often required to alternate between varying and contradictory narratives about our own experience and identity as needed. Sandoval describes how the differential emerges from the experiences of women of color facing violence at the hands of the state and deftly resisting by utilizing multiple forms of consciousness. These conditions resonate in many trans experiences, particularly the experiences of those who are most overexposed to police and state violence and control: poor people, people of color, immigrants, and incarcerated people.

Differential consciousness also fits into a broader picture of trans survival in the

context of activism. While differences regarding how gender should be viewed and discussed, why people are transgender, and how transgender people should approach our lives and our stories exist and manifest in much conflict in trans communities, trans activists are also familiar with working together across these differences with other trans people who share common goals. I have worked in dozens of trans activist spaces and campaigns where people who understood their identity through a post-modern gender deconstructive frame worked closely with others who experienced being trans as a mental-health impairment as well as others who understood their trans identity to be a genetic trait. The differences in these views (and so many others) can certainly cause irreparable conflict on some issues, but frequently trans people with varying understandings of gender and their own lives have been able to agree to a shared narrative and strategy for accomplishing a goal that stood to benefit all trans people, such as medical access, ID access, or increasing sensitivity and awareness in a key institution. Additionally, we frequently are able to utilize these varying and conflicting views as tactics to achieve the changes we seek.

One recent example of the differential at work in trans policy reform negotiations occurred in the campaign for homeless shelter access for trans people in New York City. New York City's Department of Homeless Services (DHS) has no written policy about the placement of transgender people in its shelters.<sup>39</sup> It consistently places trans people according to birth gender, and transfers trans people to shelters that comport with their birth gender if they pass well enough to get through intake in their current gender and then are discovered to be trans later. Former shelter residents, particularly trans women, report rape and sexual harassment in men's shelters where they are placed. The result is that many trans homeless people are afraid to enter the shelter system, and remain street homeless and ineligible for DHS' longer-term housing programs. Activists have been drawing the city's attention to this problem for at least a decade, without achieving policy change. In 2003, a new coalition of activists began a negotiation with DHS, with the goal of establishing a policy that would make self-identification and safety of trans people the basis for determining placement in the shelter system. Meetings between representatives from the Sylvia Rivera Law Project, the New York City Lesbian, Gay, Bisexual, Transgender Community Services Center, Queers for Economic Justice, and DHS occurred over the next two years, often under hostile conditions with DHS vacillating between refusal to ever change its practices or create a formal policy and suggesting it might do so. The counterarguments of DHS were the predictable ones: (1) non-trans women will be uncomfortable if trans women who haven't had genital surgery or "look like men" are in shelters with them and we have to respect their rights; (2) we won't be able to tell who is really trans and who is faking it in order to be in women's shelters; (3) this isn't really a problem; (4) our computer system is old and gender cannot be changed on it. At times they would suggest that they might be willing to allow trans women into women's shelters based on how feminine their appearances were or based on genital surgery.

The coalition took apart DHS' position again and again, describing that surgical status was irrelevant and created a class bar that homeless people could rarely pass, that homeless people frequently had few opportunities to feminize their appearances, that it was unethical to allow misunderstandings about trans women on the part of other women in shelters to determine the access of trans women, and that fraudu-

lent or sexually violent intentions of some people should not determine a policy for a highly vulnerable group of homeless people. The underlying issue in the negotiations was usually stalling and mistrust, sometimes resulting in outright discussions between DHS' attorneys and myself about the fact that they fundamentally did not believe we could ever win a lawsuit on the issue and therefore were unwilling to make a change.

In 2005 the coalition broadened its reach, meeting with a variety of LGBT and poverty organizations and drafting a letter to the mayor about the continued failure of DHS to make change on an issue that had been identified by the mayor as significant. Miraculously, this letter prompted immediate action from DHS, who took all the model policies the coalition had provided from jurisdictions in the US and Canada and drafted a very conservative version. At our next meeting, they read us the prime points of their draft policy in a defensive tone, letting us know that they felt their trust had been violated by us going above them, and that they were not interested in working together on the policy. The policy included some of the more anti-trans and anti-homeless elements from the sample policies we had shared. These included putting in some version of the language used by San Francisco's policy that states "Clients may not go back and forth in gender identification for the sole purpose of obtaining shelter space."<sup>40</sup> During the meetings, the coalition members utilized varying arguments to counter the resistance to change presented by DHS that sometimes could be categorized as equality consciousness positions and sometimes revolutionary consciousness positions. Frequently DHS staffers would state that because DHS had long ago issued a Request for Proposals for an LGBT shelter, and no one had yet come along with the resources to build and run such a shelter, they had done enough. In those instances, coalition members would make equality arguments, stating that providing a special shelter that could only accommodate a fraction of the trans homeless population was not satisfying, and that a policy was required that would make the entire system include appropriate placements for trans people. We pointed out that not all trans people desire to be placed in LGBT shelters or primarily identify as LGBT or even trans, and that opening a LGBT shelter, while a beneficial thing to do, would not resolve the issues we were there to discuss. At other times, our arguments more explicitly focused on the problems with the system as a whole, utilizing a revolutionary consciousness framework to point out that having a shelter system that is entirely bifurcated based on binary gender creates fundamental obstacles to trans homeless people that the city is obligated to address. In these instances, we would talk about the city creating an alternative to their current system of shelter intake which requires male residents to do intake at certain facilities and females residents to do intake at others.

For most trans homeless people, who lack identity documents that verify their current gender due to the obstacles that exist to changing gender on these documents the intake system alone entails being forced to a gender-inappropriate intake facility. Our arguments about the obstacle that this bifurcated intake and placement system presents borrowed in part from the language contributed by the disability rights movement, which initiated a conversation about "access" that suggests that "the way things are" entails artificial barriers to the full participation of people who could, given fair changes, participate in activities and privileges from which they are currently excluded. This vision moves past an equality model and into revolutionary consciousness because it demands that changes be made to the way the world operates

in order to cure oppression. Instead of merely requiring that people terminate practices of denying job opportunities or housing to people based on their bias against people with disabilities, this vision insists that housing or employment conditions be restructured to remove obstacles to access for people with disabilities. The demand for access to shelters built on these understandings, stated that the shelters are inaccessible to trans people even if they don't turn people away at the door, because they place trans people inappropriately and endanger our safety and well-being. Switching between equality and revolutionary tactics was key during our negotiations in educating DHS staff about the issues, providing a range of arguments they could bring back to the superiors they had to convince of change, justifying the specific policy options we sought, and having ready responses to their stalling and defense strategies.

When DHS returned to us with their draft policy ideas, it was very centrally focused in an equality framework. The deputy commissioner opened his remarks with a statement that they were committed to placing trans people based on self-identity and creating a policy applicable to the entire system because they knew that "separate but equal is not equal." It was no surprise to us that they had clung to our more conservative arguments, and the most fraud-presuming anti-homeless passages from the sample policies we had provided that they could find. Their draft policy focused heavily on making sure that trans people did not "flip flop" genders and that identity-based placement had to be a firm commitment. Having achieved a major long-sought-after victory of getting their commitment to create a written policy and to honor self-identity rather than birth gender, appearance, or genital status for placement purposes, the coalition could now bring a focus to the conversation about what full access to the shelters, given the bifurcated system, would really mean for trans people. We brought up a variety of issues, including that some trans men may not feel comfortable in men's shelters, that people need to be able to transition while in the shelter system and come to an individualized decision about if and when they are ready to move to a facility that matches their new gender, that some people identify outside of binary gender and need to be supported in making decisions about the available shelter options that will be safe and appropriate for them. We insisted on more meetings to iron out these policies together and engage in planning for training DHS staff.

The use of differential consciousness in this process accounts for its success, because it allowed the coalition members to make a variety of arguments that won us commitments from the city in stages moving us toward the achievement of our very clear shared goal. Members of the coalition have varying tactical approaches and commitments which are reflections of the different forms of resistance consciousness outlined by Sandoval. In terms of the shelter work, these differences included different levels of commitment to achieving shelter access for people who identify outside the gender binary, varying ideas about the viability and desirability of having a trans-specific shelter in NYC, and varying beliefs about how aggressively to approach city government. However, our shared belief that birth-gender placement is not acceptable and that winning an identity- and safety-based placement policy was essential to the survival of trans homeless people in NYC enabled us to engage differential tactics together to navigate the transphobic and change-resistant bureaucracy, providing them frameworks for understanding and supporting our position while applying pressure for change from a variety of angles.

## Conclusion

Sandoval's model helps to highlight key strands of consciousness that frequently divide activists working on similar or overlapping issues. In the realm of queer and trans politics, the most frequent conflicts occur between equality and revolutionary tactics, and often include equality-side activists arguing about the necessity of gradual change and incremental steps, and revolutionary-side activists pointing out that those steps frequently exclude the most vulnerable people (people of color, homeless people, youth, trans people, incarcerated people, poor people) and further legitimate oppressive systems (marriage, military participation, privatized health care, the criminal justice system). Sandoval's analysis opens up space for us to inquire about alternatives to this conflict, and it invites trans activists to imagine our resistance as not having to inherit the limits and conflicts of the gay rights movement but to instead build on the skills that trans people often utilize to survive by mobilizing multiple tactics with a clear vision of anti-oppression as our goal.

Sandoval describes the use of multiple tactics toward the goal of anti-oppression as being what holds the differential tactic together. For the purposes of focusing this analysis for trans activists, I would like to further elaborate what that commitment to anti-oppression might look like, proposing criteria for evaluating decisions regarding issue prioritization and tactics in trans activism. The key first step I propose is the need for a clear vision of what we want the world to look like, knowing that this image is most useful if it reaches broadly and addresses multiple issues, but also knowing that issues will inevitably arise about which individuals, organizations, or movements have not yet formulated a vision. At the bare minimum, it seems key to have clear understandings of vision regarding issues central to the survival and well-being of trans people and other targets of gender enforcement, and key emergent social-justice issues on the national and global horizons. This vision would almost certainly include principles and positions regarding law and policy reform related to discrimination and its enforcement, the effects of the War on Terror and the War on Drugs, the immigration system, the criminal justice system, poverty and the welfare system, taxation and the redistribution of wealth, the right to vote and the electoral system, allocation of health care, "free-trade" agreements and global issues of labor and environmental safety. Trans-specific issues that would require clear vision might be explored by answering: What should gender look like? No gender categories? Binary with the option to change? More than two gender categories? Optional gender? Infinite gender categories? Gender as expression but untracked and unregulated by the state and coercive institutions? What relationship should medical authority have to trans and gender non-conforming people? How, if at all, should prevailing norms about sex-segregated facilities (bathrooms, locker rooms, shelters, group homes, prisons, dormitories) be changed? Should gender identity disorder be considered a mental impairment? What relationship should trans people have to feminist movements? What should leadership in trans organizations and the trans movement look like in terms of creating a multi-gendered and multi-racial movement?

With a shared vision in mind that includes all or some of the issues above, organizations or coalitions can approach the criteria below for measuring engagement with

political action. In order to determine engagement, trans activists can ask the following questions:

- 1 What effect would this campaign or action have on the most vulnerable individuals in our community or constituency?
- 2 Does anyone suffer exclusion if we pursue this goal or strategy? Is any portion of our community marginalized by this strategy, framing, or rhetoric?
- 3 How does it fit into the overall vision of what we want the world to look like or what we want the specific system that this campaign engages with to look like? In this question we examine the reform/revolution question: Is this strategy legitimizing an oppressive system? If so, is that concern offset by immediate gains in terms of survival and political participation for our constituency, such that making the reform is worthwhile because it will significantly strengthen the ability of our most vulnerable community members in leading change that more deeply opposes the oppressive institution in question?

These questions, utilized in combination with a broad vision for the trans movement, may help flesh out the underlying commitment to anti-oppression that can guide discussions regarding engagement in various political actions and move us into a principled engagement with political action rather than an inherited or reactionary engagement.

To exemplify the utilization of these criteria, let us look at the examples focused on in this section: hate-crimes laws, the Real ID Act, the inclusion of trans health care in existing health-insurance systems, and access to homeless-shelters for trans people. According to these criteria, campaigns for hate-crimes laws would not fit within a trans anti-oppression campaign. They increase the vulnerability of trans people who are already targets of the criminal justice system, especially people of color and poor people who are overexposed to police violence and criminal punishment. They provide no immediate survival relief to trans people, because they have never been proven to prevent hate crimes, but they increase resources to the criminal justice system which currently endangers trans people's survival.

The Real ID Act, however, would make sense as a target of trans activism, because opposing it would benefit many of the most vulnerable trans people, immigrants and those for whom lack of access to ID results in the most severe consequences: youth, undocumented people, homeless people, poor people, and people of color. Because this legislation endangers the safety and survival of many highly vulnerable trans people, because it comports with a vision of reduced surveillance and increased privacy of trans people's medical histories, and because it is about repealing this legislation but not institution-building or legitimizing, it emerges as a wise priority for trans activists.

The Gorton–Namaste debate can also be run through these criteria. While Namaste's critique articulates a strong revolutionary vision, when examined with these criteria in mind, Gorton's reasoning for pursuing trans health care inclusion for city employees make more sense. For Gorton, building the case for trans health-care inclusion now is essential to preparing for its inclusion when universal health care is achieved. Doing so strengthens arguments that this health care is legitimate and should be required to be included in health care for Medicaid recipients, prisoners, foster youth, and others

for whom trans health becomes most unattainable when it remains "elective" and uncovered by insurance. Doing so does not legitimate existing health-care systems nor strengthen an argument that universal health care is unnecessary. It is, in fact, an essential precursor step to achieving universal health care that includes trans health care.

Similarly, focusing on trans access to shelters emerges as a clear priority when examined through these criteria. Even if the coalition or organization in question has a long-term vision of a world in which wealth is redistributed and everyone lives in safe permanent housing, accessing shelters and escaping homelessness clearly benefits highly vulnerable trans people and is essential to their survival and ultimate ability to participate and take up leadership in movements for housing equity.

It is likely that these criteria are incomplete, but my hope is that they might be a starting place from which US trans activists engaging in any variety of strategies and coalitions at the local, state, or national level might begin to formulate clear principled understandings and analysis about why we pursue various campaigns and political actions. Working from a clear vision of what we want the world to look like, utilizing differential consciousness, and examining questions of inclusion and exclusions, reform and revolution can move us beyond repetitive conflicts about "incrementalism and idealism" and toward meaningful change that increases political participation and survival for those suffering the most severe consequences of coercive gender systems.

#### Notes

- 1 Lisa Mottet, Remarks at Creating Change Conference 2005, 10 November 2005, Oakland, CA. Seventy-nine cities and counties have gender-identity-specific anti-discrimination laws. See, [thetaskforce.org/downloads/trans/PopulationsJurisdictionsVerticalMar06.pdf](http://thetaskforce.org/downloads/trans/PopulationsJurisdictionsVerticalMar06.pdf).
- 2 Ibid.
- 3 See Robin D. G. Kelley, *The Black Radical Imagination* (Boston, MA: Beacon Press, 2002); see also Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Durham, NC: Duke University Press, 2003).
- 4 See William Saletan, *Bearing Right: How the Conservatives Won the Abortion Debate* (Berkeley, CA: University of California Press, 2004). This book tells how abortion rights activists – people who desired social change, women's equality, and broader access to health care – have had their message co-opted in a culture of privacy and limited government, with more conservative strains of the pro-choice movement taking leadership and changing frameworks. Importantly, the book explores how, as abortion has been recast as a privacy issue, the reproductive rights of young people and low-income people have been left without defenders.
- 5 Ibid.
- 6 Chela Sandoval, *Methodology of the Oppressed* (Minnesota, MN: University of Minnesota Press, 2000). In the discussion that follows, page numbers given in the text refer to this work.
- 7 I use this term intentionally, rather than mirroring the recent nominal inclusion of bisexual and transgender people in the names and/or mission statements of these organizations because, for the most part, these efforts at inclusion have not gone far beyond lip service yet and, at this writing, many of these organizations still employ no or very few transgender people, usually not in leadership, and the issues faced by trans constituencies remain under-attended in their agendas.

- 8 "I am enraged that many lesbian and gay activists are begging for admission into the US military apparatus that executes genocidal cultural, economic and political imperialisms all over the world. Should we be celebrating the day it becomes legal for queers to kill? The placards I like read 'cruise queers, not missiles,' 'extend the ban to heterosexuals,' 'demilitarize masculinity,' and 'ban the military.'" Ian Barnard, "Fuck Community, or Why I Support Gay Bashing," in *State of Rage: Emotional Eruption, Violence, and Social Change*, eds. Renee R. Curry and Terry L. Allison (New York: New York University Press, 1996): 74–90. See also the work of the American Friends Service Committee regarding LGBT youth and militarization, at [www.afsc.org/lgbt/YM/default.htm](http://www.afsc.org/lgbt/YM/default.htm).
- 9 "While same-sex marriage redresses an inequality between gays and straights, it reinforces inequality between married people and unmarried people. It will force homosexuals, as it now forces heterosexuals, to sign on to a particular state-sponsored, religion-based definition of their legal relationship if they want full rights as parents and members of households. The desire for recognition and 'normality' that motivates many of its proponents inescapably implies that the relationships of the unmarried and those that do not conform to conventional 'family values' are less worthy of respect." Ellen Willis, "Can Marriage Be Saved?" *The Nation*, July 5, 2004, 16.
- 10 Alisa Solomon, "State to Church: I Want a Divorce, By the Power Vested in Us: Civil Unions for All – Gay or Straight. Blessings Optional," *Village Voice*, March 3–9, 2004.
- 11 According to the Servicemembers Legal Defense Network, African American women have been discharged at a rate of almost three times their percentage in the military, and Latinas have been discharged in numbers disproportionate to their overall force. See Servicemembers Legal Defense Network, "Conduct Unbecoming: The Ninth Annual Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'" (2003): 43–4.
- 12 In 2004, Ohio passed a state constitutional amendment banning recognition of same-sex marriage as well as "legal statuses" that "approximate" marriage. Advocates are concerned that such a law will undermine recognition of non-marital agreements between same-sex couples with children. Interestingly, at this writing a legal battle is ensuing in Ohio regarding whether criminal laws regarding domestic violence can apply to defendants who are accused of battering a same-sex partner, or whether courts will interpret such application as giving a legal status that approximates marriage. See "Lambda Legal Will Urge Ohio Courts to Reverse Domestic Violence Rulings," May 18, 2005, available at [www.lambdalegal.org/cgi-bin/iowa/news/press.html?record=1701](http://www.lambdalegal.org/cgi-bin/iowa/news/press.html?record=1701).
- 13 The failures of formal legal equality to address systemic maldistribution of power have been well-articulated by critical race theorists. See A. D. Freeman, "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," in *Critical Race Theory: The Key Writings that Formed the Movement*, eds. K. Crenshaw, N. Gotanda, G. Peller, and K. Thomas (New York: New Press, 1996): 29–45; C. I. Harris, "Whiteness as Property," in *ibid.*, 276–91.
- 14 See Freeman's (*Critical Race Theory*: 29–45) discussion of recent attacks on abortion access, including the 2006 passage of an abortion ban in South Dakota, available at [www.naral.org](http://www.naral.org); Wendy E. Parmet, "Plain Meaning and Mitigating Measures: Judicial Interpretations of the Meaning of Disability," *Berkeley Journal of Employment and Labour Law* 53 (2003): 25; Symposium, "Backlash Against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies," *Berkeley Journal of Employment and Labour Law* 1 (2000): 21.
- 15 Velia Hancock, "La Chicana, Chicano Movement and Women's Liberation," *Chicano Studies Newsletter*, University of California, Berkeley (February–March 1971): 3–4.
- 16 Barnard, "Fuck Community," 77.
- 17 Quoted in *ibid.*, 77.
- 18 This is the current acronym being used by many of the most well-resourced organizations working on lesbian and gay rights issues, and, to some degree, bisexual and transgender issues. I use it with hesitation, noting that the relatively recent inclusion of trans in the acronym is still, in many instances, an unfulfilled promise. See Dean Spade, "Fighting to Win," in *That's Revolting: Queer Strategies for Resisting Assimilation*, ed. Mattilda Sycamore (New York: Softskull, 2004): 31–8.
- 19 There are many well-discussed stories in the recent gay rights history about controversial endorsements of conservative, Republican elected officials by gay rights organizations who determined it in the best interest of the narrow political issues they were pushing forward. The Human Rights Campaign's decision to endorse Republican Al D'Amato for New York Senate in 1998, and the Empire State Pride Agenda's decision to endorse Republican George Pataki for New York State Governor in 2002 in exchange for a promise to sign the Sexual Orientation Non-Discrimination Act (which excluded coverage for transgender New Yorkers) are two of the better-known examples. See Duncan Osborne, "Anger on Eve of Victory, As Gay Rights Vote nears, SONDA and Pride Agenda Have Critics," *Gay City News*, December 13–21, 2002, available at [www.gaycitynews.com/gcn29/anger.html](http://www.gaycitynews.com/gcn29/anger.html); Michaelangelo Signorile, "A Boost for D'Amato Brings Headaches," *New York Observer*, October 28, 1998, available at [www.signorile.com/articles/nyoamato.html](http://www.signorile.com/articles/nyoamato.html); Charles Kaiser, "The Best Man?" *New York Magazine*, October 5, 1998, available at [newyorkmetro.com/nymetro/news/politics/columns/citypolitic/3148/](http://newyorkmetro.com/nymetro/news/politics/columns/citypolitic/3148/). GenderPac's Coors-sponsored reception for a Republican senator at their 2004 Annual Conference on Gender added a highlight from the highest-funded gender-focused organization to the history of this strategy.
- 20 Ongoing controversies about whether "gender identity" should be included as a category of anti-discrimination in legislation pursued by lesbian- and gay-rights organizations have created significant divides in the last decade. The Human Rights Campaign only recently, after years of pressure from transgender activists and our allies, agreed to push for the federal Employment Non-Discrimination Act to include coverage for people experiencing gender-identity discrimination. A similar push for inclusion was unsuccessful in New York State, where the Empire State Pride Agenda successfully passed a version of the Sexual Orientation Non-Discrimination Act in 2002 that excludes coverage for transgender people. See Andy Humm, "Unity Eludes SONDA Activists, Gender Identity Protection Divides Duane, Pride Agenda," *Gay City News*, December 13–21, 2002, available at [www.gaycitynews.com/gcn29/unity.html](http://www.gaycitynews.com/gcn29/unity.html).
- 21 Discussions regarding how non-profits committed to social change should interact with corporations have consistently emerged in lesbian- and gay-rights-focused work. The San Francisco LGBT Center's relationship with American Airlines, GenderPac's relationships with IBM and Coors, and the National Gay and Lesbian Task Force's choice to hold its 2005 Creating Change Conference at the Oakland Marriott are recent examples of such discussions. See Gay Shame, "Are You Ready for Direct Action? Gay Shame, A Virus in the System," 2005 (on file with author).
- 22 The disproportionate whiteness, educational and class privilege of the leadership (executive directors, managers, attorneys) of LGBT organizations at both the state and national levels are undisputable and are helpful in understanding how those organizations can continue to fail to include anti-racist and anti-poverty analysis in their work.
- 23 Controversies regarding who should have access to historically or politically queer spaces continue to rage across the country. In 1999, residents and merchants in San Francisco's gay neighborhood, the Castro, waged strong opposition to the opening of a shelter for homeless youth. See Jason B. Johnson, "Gay Youth Shelter Meets Resistance Castro Residents, Merchants Oppose Plan for Homeless," *San Francisco Chronicle*, February 5,

- 1999, available at [www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/02/05/MN92016.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1999/02/05/MN92016.DTL). In New York, ongoing struggles between West Village residents and merchants and the queer and trans youth of color who find community on the piers and streets in that neighborhood have exposed race and class divides that fracture queer communities. See, generally, the website for FIERCE!, the youth organization fighting gentrification and police harassment in the West Village, at [www.fiercenyc.org/about\\_fierce/press.html](http://www.fiercenyc.org/about_fierce/press.html). In 2005, TransJustice, an organizing group of the Audre Lorde Project of trans and gender non-conforming people of color, raised similar critiques at the New York City LGBT Community Services Center, where they alleged harassment and exclusion of trans people of color. Ongoing discussions regarding the exclusion of low-income queer and trans people from expensive Pride celebrations, and inaccessibility to queer spaces for community members with disabilities, have also opened up these key questions about who queer space is for.
- 24 See Dean Spade and Craig Willse, "Freedom in a Regulatory State?: *Lawrence*, Marriage and Biopolitics," *Widener Law Review*, 11:2 (2005): 309–29.
  - 25 United for a Fair Economy reports that the United States is now the most unequal society in the industrialized world, with an enormous wealth gap that has only grown with conservative tax legislation continuing to reduce the few redistribution-focused measures we still have. See United for a Fair Economy, "The Wealth Gap: A Second Gilded Age?" available at [www.faireconomy.org/estatetax/ETWealth.html](http://www.faireconomy.org/estatetax/ETWealth.html). The UN has reported that the global wealth gap is continuing to widen, and has called for immediate action. "Global Wealth Gap Still Widening Says UN," ABC News, Friday August 26, 2005, available at [www.abc.net.au/news/newsitems/200508/s1446402.htm](http://www.abc.net.au/news/newsitems/200508/s1446402.htm).
  - 26 See National Center for Transgender Equality, [www.nctequality.org/Hate\\_Crimes.asp](http://www.nctequality.org/Hate_Crimes.asp).
  - 27 Ibid.
  - 28 See Katherine Whitlock, "In a Time of Broken Bones: A Call for National Dialogue on Hate Violence and the Limitations of Hate Crimes Legislation," An American Friends Service Committee Justice Visions Working Paper, available at [www.afsc.org/community/hatecr.pdf](http://www.afsc.org/community/hatecr.pdf); Testimony from the National Prison Rape Elimination Act Commission Hearings, August 19, 2005, available at [www.ncrights.org/releases/prison\\_testimony\\_081905.htm](http://www.ncrights.org/releases/prison_testimony_081905.htm) (detailing prison conditions faced by LGBT youth and adults in criminal justice settings); Dean Spade, Remarks on "Identity Victim" panel at the Eighth Annual Gender, Sexuality and the Law Symposium, "Sex, Gender and Crime: The Politics of the State as Protector and Punisher" *Georgetown Journal of Gender and the Law*, 7: 255–85, March 2005.; Amnesty International, "Stonewalled – Still Demanding Respect: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the USA," 2005, available at [www.amnestyusa.org/outfront/document.do?id=ENGAMR510262006](http://www.amnestyusa.org/outfront/document.do?id=ENGAMR510262006).
  - 29 Two examples of well-publicized battles for trans inclusion in anti-discrimination laws occurred with the Sexual Orientation Non-Discrimination Act, passed in New York State in 2002, and the Federal Employment Non-Discrimination Act which has not been passed. See "NYAGRA's Response to ESPA's Open Letter to New York's LGBT Community on SONDA 25 February 2002" available at [www.nyagra.com/law/SondaOpnLtr020225.html](http://www.nyagra.com/law/SondaOpnLtr020225.html); Matt Foreman, "Enda As We Know It Must Die," August 2004, available at [www.thetaskforce.org/downloads/OpEdENDAAug2004.pdf](http://www.thetaskforce.org/downloads/OpEdENDAAug2004.pdf).
  - 30 "The Real ID Act: Bad Law for Our Community," by the National Center for Transgender Equality and the Transgender Law Center, available at [nctequality.org/realid.pdf](http://nctequality.org/realid.pdf).
  - 31 It is not my intention to raise an unnecessary alarm. At this writing we do not know how this policy will be implemented and what effects it will have on the range of state gender change policies that currently exist. However, federal attention to issues of trans identity over the last few years in the context of homeland security raises cause for concern.
- Since September 11, 2001, trans activists have reported a number of concerning events. The Department of Homeland Security issued a warning to airports to watch out for "men in dresses." The Department of Transportation issued a memo to state DMV's recommending that they tighten regulations regarding driver's license gender change. The federal immigration agency (formerly known as INS), changed the rules regarding marriage recognition for immigration purposes, replacing the former policy which recognized heterosexual marriages involving trans people if the couple lived in a state that recognized their marriage with a new policy that does not recognize any heterosexual marriages involving trans people for purposes of immigration. These changes suggest that while major policy changes like the Real ID Act are certainly primarily targeted at immigrants, the federal government may be aware of and in support of effects on trans people as well.
- 32 For more information on the police brutality commonly faced by LGBT people, see Amnesty International, "Stonewalled."
  - 33 September 2005 GLMA Conference, Montreal, Canada; Viviane Namaste, *Sex Change, Social Change: Reflections on Identity, Institutions and Imperialism* (Toronto: Women's Press, 2005).
  - 34 Ibid., 107.
  - 35 Discussions with Dr Nick Gorton, June–December 2005.
  - 36 See website of the Universal Health Care Action Network, [www.uhcan.org/](http://www.uhcan.org/).
  - 37 See Janice Raymond, *The Transsexual Empire: The Making of a She-Male* (London: Women's Press, 1980).
  - 38 See Dean Spade, *Resisting Medicine, Remodeling Gender*, 18 Berkeley Women's L.J. 15 (2003).
  - 39 After this essay was drafted, in January, 2005, the trans community won a significant victory with the finalization of a new policy from DHS regarding transgender access to homeless shelters. The policy includes a commitment to house transgender residents based on gender identity and safety rather than birth gender, and makes it explicit that residents cannot be forced to wear clothing that comports with their birth gender. The policy is available online at [www.srlp.org](http://www.srlp.org).
  - 40 Carolyn Plybon, "Transgender Policy for City-Funded Shelters," San Francisco Department of Human Services, October 23, 2003, on file with the author.