

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

EDITORS

TRANS GENDER

RIGHTS

"A cutting-edge book full of new
information and ideas."

—PATRICK CALIFIA

Transgender RIGHTS

Paisley Currah

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Shannon Price Minter

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11. Compliance Is Gendered: Struggling for Gender Self-Determination in a Hostile Economy

Dean Spade

I think capitalism is not just inequalitarian, not just full of maldistributions of wealth, not just wasteful of certain kinds of human energies and natural resources, not just producing for profit rather than human need, but also that it's a form of political economy that is fundamentally undemocratic, that it is full of forms of domination which prevent us from being able to organize the possibilities of our own lives.

—Wendy Brown, *The Anti-Capitalism Reader*

Since the emergence of poor-relief programs in sixteenth-century Europe, governments have developed varying strategies of social welfare to quell resistance among those who inhabit the necessary lowest level of the capitalist economy: the pool of unemployed whose presence keeps wages low and profit margins high.¹ Throughout their history, relief systems have been characterized by their insistence on work requirements for recipients, their vilification of recipients of relief, and their ability to paint the necessary failures of the economic systems they prop up as moral failures of the individuals who are most negatively affected by those systems.²

Feminist theorists have provided vital insight into how public relief systems have also operated through moralistic understandings of sexuality and family structure to force recipients into compliance with sexist and heterosexist notions of womanhood and motherhood. The creation of coercive policies

requiring this compliance have usually been mobilized by appeals to white supremacist notions of white motherhood and racial purity, as well as depictions of black women as oversexualized, lazy, and morally loose. Feminist theorists have provided a picture of how the day-to-day surveillance of low-income people and the rigid and punitive rule systems used in social services create a highly regulated context for the gender expression, sexuality, and family structure of low-income women who often rely on these systems to get out of economically dependent relationships with men. This fits into a broader analysis of how gendered models of citizenship, and gender and race hierarchies in the economy, operate to dominate the lives of low-income people most forcefully and directly affect the ability of all people to determine and express our gender, sexuality, and reproduction.

Unfortunately, this analysis has not yet been applied to examine how gender regulation of the poor applies to those who face some of the most dire consequences of a coercive binary gendered economy, those who transgress the basic principles of binary gender. Much feminist analysis of binary gender transgression has focused on the pathologizing medical discourses that have defined popular understandings of gender role distress to reinscribe meaning into rigid notions of "male" and "female."³ However, as transgender liberation movements proliferate, and feminist analysis of gender transgression becomes more nuanced and sophisticated, it is essential that we bring along the feminist analysis of gender regulation in work and public assistance systems in order to account for the extreme economic consequences that gender-transgressive people face because of our gender identities and expressions.

Similarly, many lesbian, gay, and bi activists and theorists have tended to miss the vital connection between economic and anticapitalist analysis and the regulation of sexual and gender expression and behavior. The most well-publicized and well-funded LGB organizations have notoriously marginalized low-income people and people of color, and framed political agendas that have reflected concern for economic opportunity and family recognition for well-resourced and disproportionately white LGB populations. Feminist, anticapitalist, and antiracist analysis has been notably absent from mainstream discourses about LGBT rights, and low-income people, people of color, and gender-transgressive people have been notoriously underrepresented from leadership and decision-making power in these movements.⁴

This is particularly distressing given the economic realities that people who transgress gender norms face. Economic and educational opportunity remain inaccessible to gender transgressive people because of severe and persistent discrimination, much of which remains legal,⁵ but for low-income

people caught up in the especially gender-regulating public relief systems and criminal justice systems that dominate the lives of the poor, the gender regulation of the economy is felt even more sharply.

Many trans people start out their lives with the obstacle of abuse or harassment at home, or being kicked out of their homes because of their gender identities or expressions. Some turn to foster care, but often end up homeless when they experience harassment and violence at the hands of staff and other residents in foster care facilities (most of which are sex segregated and place trans youth according to birth sex designation).⁶ The adult homeless shelter system, similarly, is inaccessible because of the fact that most facilities are sex segregated and will either turn down a trans person outright or refuse to house them according to their lived gender identity.⁷ Similarly, harassment and violence against trans and gender nonconforming students is rampant in schools, and many drop out before finishing or are kicked out. Many trans people also do not pursue higher education because of fears about having to apply to schools and having their paperwork reveal their old name and birth sex because they have not been able to change these on their documents. Furthermore, trans people face severe discrimination in the job market and are routinely fired for transitioning on the job or when their gender identities or expressions come to their supervisor's attention.⁸

Trans people also have a difficult time accessing the entitlements that exist, though in a reduced and diminished format, to support poor people. Discrimination on the basis of gender identity occurs in welfare offices, on workfare job sites, in Medicaid offices, in Administrative Law Hearings for welfare, Medicaid, and Social Security Disability benefits. These benefit programs have been decimated in the last ten years and are generally operated with a punitive approach that includes frequent illegal termination of benefits and the failure to provide people their entitlements. For most people seeking to access these programs consistently during a time of need, the availability of an attorney or advocate to help navigate the hearings process has been essential to maintaining benefits. Unfortunately, most poverty attorneys and advocacy organizations are still severely lacking in basic information about serving trans clients and may reject cases on the basis of a person's gender identity or create such an unwelcoming environment that a trans client will not return for services. Based on community awareness of this problem, many trans people will not even seek these services, expecting that they will be subjected to humiliating and unhelpful treatment. The resulting lack of access to even the remaining shreds of the welfare system leaves a disproportionate number of trans people in severe poverty and dependent on criminalized work such as prostitution or

the drug economy to survive. This, in turn, results in large numbers of trans people being entangled in the juvenile and adult criminal justice systems where they are subjected to extreme harassment and violence.

Given these conditions, the need for an understanding of the operations of gender regulation on gender-transgressive people in the context of poverty is urgent. In this chapter, I want to begin to suggest how we could reexamine what we know from feminist and LGB analysis of gender, sexual, and reproductive regulation, to see how this applies to the lives of low-income transgender, transsexual, intersex, and other gender-transgressive people. I come to these questions as a poverty lawyer working for these populations, and I want to use feminist, queer, and anticapitalist analysis of the operation of poverty alleviation programs and other methods of controlling and exploiting poor people to contextualize case studies from the day-to-day lives of my clients. I want to begin a conversation about what it means that almost all of the institutions and programs that exist to control and exploit poor people and people of color in the United States are sex segregated, especially in a context where membership in a sexual category is still determined with regard to access to medical technologies that are prohibitively expensive to all but the most well-resourced gender-transgressive people. It is my hope that by inviting such analysis we can begin to think about how emergent movements for gender self-determination can avoid the pitfalls of mainstream gay and lesbian rights movements by centralizing the concerns of those who face the most extreme consequences of gender and sexual regulation: those who face manifestations of institutionalized racism and bear the brunt of capitalism while struggling against coercive binary gender systems. It seems that now, as gender rights movements increasingly institutionalize and gain broader visibility, we should take stock of the possibilities for real alliances and collaborations with feminist, welfare rights, and antiprison advocates, and see how those allies can extend the scope of their inquiries to include gender-transgressive people.

Now is the time to recognize that no project of gender and sexual self-determination will be meaningful if it fails to engage resistance to an inherently violent and hierarchical capitalist economic system that grounds its control over workers and the poor in oppressive understandings of race, sex, gender, ability, and nationality.⁹ To address homophobic and transphobic domination in pursuit of a better world, we need to start from an understanding of the experiences of those who face the intersection of multiple oppressions, centralize the analysis that this intersectionality fosters, and think concretely about what strategies a movement dedicated to these principles would engage.

Capitalism, Access to Income, and the Use of Social Welfare Policies to Regulate Gender and Sexuality and Promote White Supremacy

Access to participation in the U.S. economy has always been conditioned on the ability of each individual to comply with norms of gendered behavior and expression, and the U.S. economy has always been shaped by explicit incentives that coerce people into normative gender and sexual structures, identities, and behaviors. At the same time the U.S. economy has, since its inception, been structured to recognize and maintain access to wealth for white people and to exploit the labor, land, and resources of native people, immigrants, and people of color. Property ownership itself has been a raced and gendered right throughout U.S. history, and an individual's race, gender, and sexuality have operated as forms of property themselves.¹⁰ Similarly, interventions that would appear to seek to remedy the exploitative and damaging outcomes of our economic system have often been structured to control gendered behavior and expression and incentivize misogynist and heterosexist family norms. These interventions have typically been mobilized by white supremacy and the desire to benefit white workers and families to the disadvantage of people of color and immigrants. For example, the first wage and hour laws in the United States were passed under a notion of protectionism for women, the logic being that since women really did not belong in the workplace anyway, if they had to work outside the home, it was the state's role to intervene in their labor contracts to protect them from exploitation.¹¹ Similarly, since the inception of poor relief in the United States, programs have been structured to support gendered divisions of labor and promote heterosexual family structure and have been mobilized by discourses of racial purity.¹² As Gwendolyn Mink describes, the first social welfare program in the United States, the pension system for Union Army veterans, emerged out of notions of American citizenship that were grounded in "independence, industry and virtue" and rewarded military service to the republic.¹³ These notions of citizenship were overtly gendered, with male citizenship reliant on civic participation, and women's citizenship defined by their marriages to men who had rights to civic participation that they lacked, including suffrage, the right to serve on juries, and the right to claim American nationality independent of marital status.¹⁴ The first legal advancements in women's civil status, such as the Married Women's Property acts and maternal child custody preference, were intimately tied to the construction of women's roles as mother, wife, and caregiver of children.¹⁵ The cultural understanding of female citizenship, Mink further articulates, was also intimately tied to the assertion that white women

were protectors of white American racial purity. The first relief programs were shaped by the concern that the woman citizen be supported in her role as the ensurer of the "well-being of the race."¹⁶ The formation of U.S. social programs was shaped around maintaining existent power structures with regard to gender and race despite the fact that these were changing because of the influences of industrialization and immigration.

The gender-biased social welfare innovations of the pre-New Deal period tackled problems of poverty through a focus on dependent motherhood and sought solutions to dilemmas of ethnic and racial diversity in the regulation of motherhood. The interweaving of race and gender during the process of the welfare state's formation gendered citizenship, produced paternalist policies that benefited some women, opened the state to other women, and allowed the assimilation of "lesser races" into the system while assuring their continued subordination within it. It created a welfare state that tied the woman citizen to women's place and that institutionalized political ambivalence toward universal social citizenship.¹⁷

Anyone who has lived through the last ten years of "welfare reform" rhetoric in the United States will notice that racist and sexist rhetoric and policy in the realm of welfare is still strongly with us. Such rhetoric is still being used to formulate welfare policies that control the gender and sexual behavior and expression of women and firmly tie economic survival and advantage to racial status. The most recent well-publicized massive overhaul of the welfare system, the "welfare reform" of the mid-1990s, was motivated, structured, and sold to the American public through racist and sexist understandings of poverty, work, and family structure. Its results have lived up to its intentions, with poor women of color suffering horribly under the new system.¹⁸ Holloway Sparks writes about how the changes in welfare policy in the mid-1990s were based on a concept of contractual citizenship in which low-income people needed to be obligated to work and meet certain moral standards in order to earn their rights to public benefits.¹⁹ Public benefits recipients were cast in the media as pathological, amoral people caught in a "cycle of dependency." Welfare mothers were depicted as people who couldn't stop having more and more children and committing welfare fraud.²⁰ The media uproar focused on racist and sexist images of black "welfare queens" and irresponsible teenage mothers. The mobilization of these images was an essential part of the creation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).²¹

The purpose and result of vilifying welfare recipients and focusing on sexual morality and gender role transgression is the creation of coercive policies designed to force poor people to obey rigid gender and family norms. Marriage incentives and requirements that mothers disclose the paternity of their chil-

dren are only the most explicit examples of how the moral performance on which benefit receipt is conditional is fundamentally a requirement that poor women rigidly obey conservative notions of gender role and family structure. As countless critics have pointed out, these requirements create horrendous obstacles to women struggling with domestic violence who cannot safely disclose paternity or comply with other aspects of the "maintenance and sustenance of two-parent families" dictated by welfare policy.²² Additionally, for lesbian mothers the rigidity with which family structure is viewed and regulated by welfare policies and rules makes benefits inaccessible or dependent on remaining closeted.²³

Perhaps the most insidious problem with the "work + morality = rights" view of contractual citizenship through which the "welfare reform" attacks on welfare were justified is that it is a selectively applied contract.²⁴ While conservatives portray care-giving work that poor mothers do at home as not being work at all, and demand that as a condition of receiving welfare, mothers engage in workfare programs where they are assigned to work outside the home, gendered home-based work is given value as "real work" for upper-class women. The same week that the PRWORA was passed, Congress granted stay-at-home wives the right to establish IRAs, essentially giving a tax break to nonpoor women who work in the home and recognizing this work as work.²⁵ Similarly, Sparks points out that the Survivor's Insurance program has provided unstigmatized and far more generous benefits to mothers with children than AFDC/TANF benefits.²⁶ SI benefits support the decision of a widowed mother to work inside the home caring for children, while the welfare benefits we have seen decimated under the PRWORA utterly devalue this work and characterize it as pathological laziness. As Mink observes, it is no coincidence that SI recipients have been disproportionately white and AFDC/TANF participants have been disproportionately black.²⁷ The proper performance of gendered citizenship and work for upper-class and disproportionately white women is measured by a different standard than that of poor and disproportionately nonwhite women.

The example of the PRWORA passage, as well as more recent activity around reauthorizing PRWORA, which has included increasing discussion of "healthy marriage promotion,"²⁸ demonstrates that social welfare programs are explicitly designed to promote oppressive and racialized understandings of gender, sexuality, and family structure. The depiction of the lives of poor women that motivated the PRWORA, and behind which both Democrats and Republicans rallied, made it clear that poor women were responsible for their poverty and that the only remedy was to coerce them into marriage and work. These morality-based understandings of poverty play out in the

day-to-day operation of social services programs that emphasize surveillance and gender regulation of poor people.

Failing to Comply

The climate of vilification of the poor and pathologization of the conditions and consequences of poverty produce and operate through day-to-day punitive and coercive structures within poverty service provision. These programs often focus on notions of "compliance" and "noncompliance" among participants. Feminist theorists have provided helpful analysis in this area, examining the ways that access to homeless and domestic violence shelters is mediated through punitive processes where those looking for assistance are treated as morally and intellectually deficient and subjected to humiliating violations of privacy as an integral part of the disincentification of receiving services.²⁹ Navigating benefits systems, shelter systems, essential medical services, and entanglement with the criminal justice system that is now a central aspect of low-income existence in order to survive is increasingly tied to the ability of each person to meet highly gendered and raced behavioral and expression requirements.³⁰ While feminist analysis has exposed the hidden agendas of poverty policies to shape women's work and family structure and inhibit the ability of women to be economically independent and escape violent relationships, this analysis has not extended to examine the effects of this system on poor people who also transgress the coercive binary gender system that maintains sexism.

The following two stories from my work with low-income gender-transgressive people illustrate the particular ways in which the incorporation of rigid binary gender expectations into social service provision and the criminal justice system operate in the lives of gender-transgressive people.

Jim's Story

Jim is an intersex person.³¹ He was raised as a girl, but during adolescence began to identify as male. To his family, he remained female identified, but in the world he identified as male. The stress of living a "double life" was immense, but he knew it was the only way to maintain a relationship with his family, with whom he was very close. When Jim was nineteen, he was involved in a robbery for which he received a sentence of five years' probation. During the second year of that probation period, Jim was arrested for drug possession and was sentenced to eighteen months of residential drug treatment. Jim was sent to a male residential facility. In a purportedly therapeutic environment, Jim discussed his intersex status with his therapist. His confidentiality was broken, and soon the entire staff and residential population were aware that

Jim was intersex. Jim was facing such severe rape threat with no support or protection from staff that he ultimately ran away from the facility. I met Jim after he had turned himself in, wanting to deal with his criminal justice status so that he could safely apply to college and get on with his life. Jim was in a Brooklyn men's jail, again facing severe rape threat because the jail refused to continue his testosterone treatments, which caused him to menstruate, and when he was strip-searched while menstruating other inmates and staff learned of his status. Jim and I worked together to try to convince the judge in his case that Jim could safely access drug treatment services only in an outpatient setting because of the rape threat he continually faced in residential settings. Even when we had convinced the judge of this, though, we faced the fact that most programs were gender segregated and would not be a safe place for Jim to be known as intersex. When I contacted facilities to find a place for Jim, staff at all levels would ask me questions like "Does he pee sitting or standing?" and "Does he have a penis?" indicating to me that Jim would be treated as a novelty and his intersex status would be a source of gossip. Even the few lesbian and gay drug treatment programs I identified seemed inappropriate because Jim did not identify as gay and was, in fact, quite unfamiliar with gay and lesbian communities and somewhat uncomfortable in queer spaces. Eventually, the judge agreed to let Jim try outpatient treatment, but on a "zero tolerance" policy, where a single relapse would result in jail time. Jim was under enormous stress, engaged in treatment where he was always afraid he might be outed and where his participation in the daily hours of group therapy required hiding his identity. He relapsed and was sentenced to two years in state prison. When I went before the judge to request that Jim be placed in women's prison because of his well-founded fear of sexual assault in men's facilities, the judge's response was "He can't have it both ways." Once again, Jim's intersex status, and his inability to successfully navigate the gender requirements of the extremely violent system in which he was entangled because of involvement in nonviolent poverty-related crimes, was considered part of his criminality and a blameworthy status.

Bianca's Story

Bianca is a transgender woman. In 1999 she was attending high school in the Bronx. After struggling with an internal understanding of herself as a woman for several years, Bianca eventually mustered the courage to come out to her peers and teachers at school. She and another transgender student who were close friends decided to come out together, and arrived at school one day dressed to reflect their female gender identities. They were stopped at the front office and not allowed to enter school. Eventually, they were told to leave

and not come back. When their parents called the school to follow up and find out what to do next, their calls were never returned. They were given no referrals to other schools, and no official suspension or expulsion documents. Because of their families' poverty and language barriers, they were never able to successfully get documentation or services from the schools. I met Bianca three years later. She had been trying to find an attorney to take the case and had never found one, and when I met her and began investigating the possibility of bringing a lawsuit, I discovered that the statute of limitations had run out, and she no longer had a claim. When I met Bianca, she was homeless and unemployed and was trying to escape from an abusive relationship. She was afraid to go to the police both because of the retaliation of her boyfriend and because she rightly feared that the police would react badly to her because of her transgender status. Her IDs all said her male name and gender, and there would be no way for her to seek police protection without being identified as transgender. As we searched for places for Bianca to live, we ran up against the fact that all the homeless shelters would only place her according to birth gender, so she would be a woman in an all-men's facility, which she rightly feared would be unsafe and uncomfortable. Women's shelters for domestic violence survivors were unwilling to take her because they did not recognize her as a woman. When Bianca went to apply for welfare she was given an assignment to attend a job center to be placed in a workfare program. When she tried to access the job center, she was severely harassed outside, and when she entered she was outed and humiliated by staff when she attempted to use the women's restroom. Ultimately, she felt too unsafe to return, and her benefits were terminated. Bianca's total lack of income also meant that she had no access to the hormone treatments that she used to maintain a feminine appearance, which was both emotionally necessary for her and kept her safe from some of the harassment and violence she faced when she was identifiable as a trans woman on the street. Bianca felt that her only option for finding income sufficient to pay for the hormones she bought on the street (it would have been more expensive from a doctor, since Medicaid would not cover it even if she could successfully apply for Medicaid) was to engage in illegal sex work. This put her in further danger of police violence, arrest, and private violence. Additionally, because she was accessing injectable hormones through street economies, she was at greater risk of HIV infection and other communicable diseases.

These two cases are typical of my clients in that almost everyone who comes to the Sylvia Rivera Law Project for services is facing serious consequences of failing to fit within a rigid binary gender structure in multiple systems and

institutions: welfare, adult or juvenile justice, public education, voluntary or mandated drug treatment, homeless services, and mental and physical health care. "Compliance" is a central issue that my clients face in these systems. They are unable to "comply" or "rehabilitate" because to do either means to match stereotypes associated with their birth genders. Some are kicked off welfare because they fail to wear birth-gender appropriate clothing to "job training" programs that require them to.³² Others are labeled "sex offenders" in juvenile justice simply because of their transgender identities despite the fact that their criminal offenses were not sex-related, and forced to wear sex offender jumpsuits while locked up and attend sex offender therapy groups. If they cannot or will not remedy their gender transgressions, they cannot complete the rehabilitation process required for release. Some clients lose housing at youth or adult shelters because staff argue that their failures to dress according to birth gender means they are not seriously job hunting, a requirement of the program to maintain housing. The ways that these systems apply rigid gendered expectations to poor people, which are notably not applied to nonpoor people, are manifold, because these systems operate through detailed surveillance coupled with extensive discretion on the part of individual caseworkers and administrators. I find my clients serving the role of example, particularly in adult and juvenile justice contexts, by being humiliated, harassed, or assaulted because of their gender transgressions in a way that communicates clearly to others entangled in those systems exactly what is expected of them. For many transgender, transsexual, or intersex people, this violence results in long-term severe injuries and in death.³³

The other vitally important component to the inability of gender-transgressive poor people to access benefits and services is the fact that gender segregation remains a central organizing strategy of systems of social control. Employed people with stable housing are subjected to far fewer gender-segregated facilities on a daily basis than poor or homeless people. While we all must contend with bathrooms or locker rooms that are gender segregated, those of us with homes and jobs may even be able to avoid those a good deal of the time, as opposed to homeless people who must always use public facilities that are likely to be segregated and highly policed. Additionally, all the essential services and coercive control institutions (jails, homeless shelters, group homes, drug treatment facilities, foster care facilities, domestic violence shelters, juvenile justice facilities, housing for the mentally ill) that increasingly dominate the lives of poor people and disproportionately of people of color use gender segregation as a part of the gendered social control they maintain.³⁴ For the most part, these institutions recognize only birth gender, or rely on identity documents such as birth certificates to determine gender. In every

state in the United States that allows people to change their gender markers on their birth certificates, evidence of sex reassignment surgery is required.³⁵

As I have written elsewhere,³⁶ the reliance on medical evidence in all legal contexts in which transgender and other gender-transgressive people struggle for recognition or rights is highly problematic. Whether seeking to prove our marriages valid so that we can keep our parental rights or access our spouse's estate,³⁷ or attempting to change our names and gender on our identity documents so that we can apply for educational or employment opportunities,³⁸ or when attempting to access sex-segregated facilities of various kinds,³⁹ medical evidence remains the defining factor in determining our rights. This is problematic because access to gender-related medical intervention is usually conditioned on successful performance of rigidly defined and harshly enforced understandings of binary gender,⁴⁰ because many gender-transgressive people may not wish to undergo medical intervention, and because medical care of all kinds, but particularly gender-related medical care, remains extremely inaccessible to most low-income gender-transgressive people.⁴¹

The combination of the disproportionate poverty of gender-transgressive people resulting from widespread discrimination, the overincarceration of the poor, the inaccessibility of social services and alternatives to incarceration to gender-transgressive people because of a gender segregation of these services and sex designation change requiring medical evidence of inaccessible procedures, and the heightened danger of criminal justice entanglement for those who cannot or will not comply with the gender coercion of criminal justice systems is especially deadly when coupled with the utter lack of individual or policy advocacy for low-income gender-transgressive people. Surviving on public assistance, using social services, and dealing with criminal justice system entanglement increasingly requires access to legal services.⁴² For gender-transgressive people, finding a legal advocate can be especially difficult. My clients consistently report experiencing extreme disrespect when attempting to access legal services, having their cases rejected or ignored by the agencies they turn to, and feeling so unwelcome and humiliated that they often do not return for services. Non-LGBT social/legal services agencies, for the most part, are completely unprepared to provide respectful or effective advocacy to gender-transgressive people.⁴³ At the same time, LGBT organizations typically do not provide these services.

Asking for More

The most well-funded organizations in the lesbian and gay movement do not provide direct legal services to low-income people, but instead focus their resources on high-profile impact litigation cases and policy efforts. Most of these

efforts have traditionally focused on concerns central to the lives of nonpoor lesbian and gay people and have ignored the most pressing issues in the lives of poor people, people of color, and transgender people. The "gay agenda" has been about passing our apartments to each other when we die, not about increasing affordable housing or opposing illegal eviction. It has been about getting our partnerships recognized so our partners can share our private health benefits, not about defending Medicaid rights or demanding universal health care. It has been about getting our young sons into Boy Scouts, not about advocating for the countless/uncounted queer and trans youth struggling against a growing industry of youth incarceration. It has been about working to put more punishment power in the hands of an overtly racist criminal system with passage of hate crimes laws, not about opposing the mass incarceration of a generation of men of color, or fighting the abuse of queer and trans people in adult and juvenile justice settings.

The debates about gender identity inclusion in the federal Employment Non-Discrimination Act (ENDA)⁴⁴ or the exclusion of gender identity protection from New York State's Sexual Orientation Non-Discrimination Act (SONDA)⁴⁵ are only the most blatant examples of the mainstream lesbian and gay movement's lack of commitment to gender-transgressive populations, but the failure of "LGBT" dollars, services, and resources to reach the lives of low-income people is even more widespread. What it means in the lives of low-income gender-transgressive people is that not only do they lack essential legal protections, they cannot find effective advocacy to access the fair treatment, services, or benefits they are entitled to. Unfortunately, the trend in gender rights litigation toward the recognition of gender identity change only in the context of medicalization maintains this imbalance. The history of gender rights litigation seems to be progressing with increasing recognition of membership in the "new" gender category, but only for those transgender people who have undergone medical intervention. The vast majority of gender-transgressive people who will either not want or not be able to afford such intervention remain unprotected. No doubt, the structure of our legal system is partially responsible for this result. Lawyers, in general, will pick the most favorable plaintiff for any case they want to bring, and bring the most conservative claims they can to win for the client they are representing. In fact, it is a part of our ethical obligation to represent the interests of our client above all else, including above our obligations to a movement or to a broader set of plaintiffs who will not be served if gender expression rights are made reliant on medical intervention.

On a broader level, though, the distribution of resources (services, policy and legislative advocacy, direct representation) is something that our

movements can be more responsible about than they have been. Transgender and gender-transgressive movements are at a moment of building and expansion, and in some senses institutionalization. We are increasingly forming organizations, we are seeking funding, we are forming a growing national and international conversation seeking an end to the inequality and oppression we have struggled against. It is in this moment that it is most urgent for us to examine where our resources have been going, and what unintentional consequences may result from following the model of the lesbian and gay rights movement. Inevitably, given the context of capitalism in which transliberation activism occurs, and the economic/educational privilege that usually accompanies the ability to secure paid "movement leader" jobs in nonprofits and to raise money to start and maintain movement organizations, the voices of low-income people and people of color will remain underincluded without a serious commitment to intervention.⁴⁶ As long as our agendas are determined by those with access to these resources, and those individuals prioritize struggles in which they can see themselves (i.e., employment discrimination for white-collar workers, private health-care discrimination, housing discrimination in the private market, inheritance issues relating to marriage rights) while ignoring or marginalizing struggles that are not a common part of their lives and the lives of those of their class status (welfare, Medicaid, incarceration, police brutality, illegal eviction, institutionalization for mental illness), we will fail to see meaningful change in the lives of those who suffer the most acute effects of the coercive binary gender system. A central concern must be the balancing of resources between legislative efforts, impact litigation, and direct legal representation and advocacy and organizing.

Wendy Brown's recent writing on the role of notions of tolerance in civil rights struggles is helpful here. Brown describes how

tolerance involves a retreat from larger justice projects on the part of liberals and leftists. . . . Tolerance as a primary political virtue involves a very thin notion of citizenship, a passive notion of co-existence. More importantly, it casts differences as given—not as products of inequality or domination, but as intrinsic and something we have to bear in the social and political world; also as something we would rather not bear—you only tolerate that which you wish you didn't have to. Tolerance is also part of a complex shell game that liberalism plays with equality and difference—tolerance is extended by the state whenever equality is refused or attenuated.⁴⁷

As Brown articulates, tolerance is a far lesser demand than equality and is based on a shallower analysis of how hierarchy and oppression operate than a

demand for equality is. It obscures the meaning of oppression and hierarchy and replaces it with a power-neutral concept of difference that makes characteristics of social organization like race, gender, or ability into personal qualities that should be tolerated. It erases the possibility of a systemic understanding of power and eclipses the possibilities of more meaningful systemic remedies. Similarly, tolerance enters our civil rights struggles at some points as a struggle merely for nondiscrimination, not for actual equality. In the context of gender expression rights, the demand for nondiscrimination operates as a lesser demand than gender self-determination, and the shortcomings of this demand can be seen in the lives of those who are supposedly legally protected against gender identity discrimination but still suffer extreme oppression because of their gender transgressions. Even in those jurisdictions that have nondiscrimination policies that cover a variety of contexts such as employment, education, housing, and public accommodations, this coverage frequently offers no assistance to gender-transgressive people in the context of sex-segregated facilities, either because of preexisting carve-outs for sex-segregated facilities in the law,⁴⁸ or because judges refuse to enforce nondiscrimination when sex-segregated facilities are at issue.⁴⁹ Beyond that, nondiscrimination policies do not speak to the day-to-day struggles that gender-transgressive people, and in particular low-income gender-transgressive people, face with sex segregation and the gendering of legal identity. For the most part, they do nothing to resolve issues like incarceration according to birth gender, the requirement of proving genital surgery in order to get birth certificate sex designation changed, or incorrect placement in gender-segregated facilities such as homeless shelters, group homes, bathrooms, and locker rooms.⁵⁰ While nondiscrimination policies may provide remedies in some important contexts, they do not address the broader problem that prevents gender self-determination and creates daily dangerous and deadly situations for poor, gender-transgressive people: the existence of legal gender classification. The choice to pursue nondiscrimination policies (to the extent that LGBT movements have included gender identity in the nondiscrimination legislation they have drafted at all) rather than to pursue a strategy of deregulating gender in state agencies, with service providers, and with regard to government-issued identification suggests an adoption of this lesser demand. This choice, most importantly, ignores the daily struggles that disproportionately impact low-income gender-transgressive people and fails to meaningfully oppose the state regulation of gender that, as I mentioned above, tends to make room only for those gender-transgressive people who can afford medical intervention to bring them into line with the state's construction of male or female gender.

The notion that we should put our movement resources into a struggle for gender identity nondiscrimination in employment, but not concern ourselves with the fact that there is no one to represent struggling gender-transgressive people being harassed on workfare jobsites or raped in prisons or falsely arrested for prostitution, indicates a problem in terms of the depth and breadth of liberation we are seeking. LGBT movement activists have the power to determine whether the liberation we pursue will follow a tolerance model, making room for those who can access private employment and housing to not experience discrimination there because of their gender identities (and possibly conditioned on medical intervention), or we can quest for a broader liberation that demands gender self-determination for all people regardless of their positions in capitalist economies. To make the latter real, we need to strategize beyond a notion that if we win rights for the most sympathetic and normal of our lot first, the others will be protected in time. Instead, we should be concerned that the breadth of our vision will determine the victories we obtain. If we want to end oppression on the basis of gender identity and expression for all people, we need to examine how the rigid regulation of binary gender is a core element of participation in our capitalist economy, how the hyperregulation of poor people's gender and sexuality has propped up that system, and how this has resulted in disproportionate poverty and incarceration for poor, gender-transgressive people. Starting from that analysis, we can undertake strategies to combat these problems and make sure that our activism does not further entrench this regulation by relying on pathologization and medicalization to articulate gender rights.

Is it politically viable to work toward gender self-determination rather than just nondiscrimination? Yes. Policy change toward gender self-determination requires many of the same strategies as nondiscrimination. We need to change law and policy state by state to reduce medical evidence requirements for changing gender designation on birth certificates and drivers' licenses, and work toward eliminating gender markers on these documents altogether. We need to prioritize sex-segregated facilities in our nondiscrimination laws, explicitly stating that as part of nondiscrimination, no one can be forced to use facilities that do not comport with their gender identities. We need to expand resources for trainings and build political alliances so that domestic violence shelter providers and activists, homeless shelter providers and activists, welfare rights activists, the prison abolition movement, and others whose work is intimately tied to the fates of poor, gender-transgressive people come to understand gender self-determination and the elimination of sex segregation as a core component of the equality and justice their work seeks.

Even more broadly, we need to transfer resources toward direct services for low-income people struggling with systems that have been unremarked on by a mainstream gay and lesbian rights movement that has focused too much attention toward equality for middle- and high-income people. Our political agendas come from what our leaders know about our communities and communicate to media and decision makers. To make those agendas meaningfully inclusive of those most marginalized by the sexual and gender regulation that dominates our lives under capitalism, we need to change where that knowledge is coming from. This requires changing who our leaders are and combating the race, education, gender, and class privilege that operates to make paid and resourced LGBT activism predominately white, upper-class, nongender transgressive, nonimmigrant, able-bodied, and educationally privileged. It also requires putting resources toward directly assisting those most in need, so that we can have as full an understanding as possible of the obstacles they are facing and the strategies that justice requires.

Single-issue politics has left people who struggle against connecting and overlapping oppressions out in the cold for too long. It is not too much to ask that anticapitalist movements engage principles of gender and sexual deregulation and antiracism in their analysis and activism, and prioritize those who face extreme consequences of a capitalist system that they fall to the bottom of because of heterosexism, binary gender rigidity, and racism. At the same time, movements focused on heterosexism and transphobia must be held accountable to those who struggle with systems motivated by antipoor and racist cultural understandings. Sexual and gender liberation will never be meaningful if it is contingent on economic privilege, racial privilege, or genital status.

Times are no doubt changing. The consolidation of global capital and the boldness of imperial conquests are rising to new heights. At the same time, the number of people distressed and endangered by these trends grows daily, and with that the potential for victorious resistance. Gender-transgressive people are part of the majority of people worldwide who are disserved and endangered by the economic arrangements designed to siphon resources away from the masses for the benefit of the few. Our analysis, and our power, should come from the understanding of our position within that majority and within that resistance. Our struggles and concerns have been marginalized and forgotten too often when we have depended on purported allies whose failure to engage questions of racial and economic oppression exclude us from reaping benefits from their work. Now is the time to forge new alliances, demand accountability from movements that purport to represent us, and create and pursue a broad, daring vision of the change we are seeking.

Notes

Many people generously provided editorial advice for this chapter. Thanks to Craig Willse, Paisley Currah, Danny McGee, Franklin Romeo, Jenny Robertson, Bridge Joyce, and Richard M. Juang for their help. The asterisks that appear with page numbers in these notes refer to screen page numbers from a database.

1. Frances Fox Piven and Richard Clower, *Regulating the Poor* (New York: Vintage, 1993).
2. Ibid.
3. Janice Raymond, *The Transsexual Empire* (New York: Teachers College Press, 1994); Dwight B. Billings and Thomas Urban, "The Socio-Medical Construction of Transsexualism: An Interpretation and Critique," *Social Problems* 29 (1982): 266, 276. Billings and Urban are engaged in an anticapitalist critique of the gender-regulating process of sex reassignment therapy and the adoption of norm-supporting narratives by patients seeking medical interventions. However, rather than focusing on the problems of a coercive system that demands the performance of rigid gender norms by people seeking body alteration, they vilify transgender people for performing these narratives. The resulting analysis paints trans subjects as clueless gender upholders, who are buying our way out of our gender distress and ruining any radical potential for disrupting gender norms. For more on the strategic uses of medical narratives by trans subjects, and the attribution of oppressive medical understandings of gender to trans people, see Dean Spade, "Mutilating Gender," *makezine* (spring 2002), <http://makezine.org/mutilate.html>.
4. Theorists and activists who produce intersectional and multi-issue queer and trans analysis and activism continually critique these failures. See, for example, Eli Clare, *Exile and Pride* (Cambridge, MA: South End, 1999); Amber Hollibaugh, "Queers without Money," *Village Voice*, June 2001; Cathy Cohen, "Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?" *GLQ* 3 (1997): 437; Craig Willse and Dean Spade, "Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique," *Chicano-Latino Law Review* 21 (2000): 38–49; Sylvia Rivera, "Queens in Exile, the Forgotten Ones," in *Genderqueer: Voices from Beyond the Binary*, ed. Joan Nestle et al. (New York: Alyson, 2002), 67–85; Richard E. Blum, Barbara Ann Perina, and Joseph Nicholas DeFilippis, "Why Welfare Is a Queer Issue," *NYU Review of Law and Social Change* 26 (2001): 207.
5. According to the National Gay and Lesbian Task Force, 76 percent of the U.S. population lives in jurisdictions that are not covered by antidiscrimination laws that include prohibitions on gender identity discrimination. See L. Mottet, "Populations of Jurisdictions with Explicitly Transgender Anti-Discrimination Laws" (Washington, DC: National Gay and Lesbian Task Force, 2003), <http://nglft.org/downloads/TransIncPops.pdf>. Even those who are covered may find these laws ineffectual when they try to enforce their rights before biased judges. See *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001) (finding that an employer's refusal to allow a transgender employee access to the women's bathroom was not gender identity discrimination); *Hispanic AIDS Forum v. Bruno*, 792 N.Y.S. 2d 43 (2005). Further, even for those who live in jurisdictions where gender identity discrimination is prohibited, seeking redress may be difficult because of a lack of attorneys willing to take cases with transgender

plaintiffs and because of the failure of city governments to enforce these provisions. See *Local Laws of the City of New York* 3, 2002, http://www.council.nyc.ny.us/pdf_files/bills/law02003.pdf; Duncan Osborne, "Trans Advocates Allege Foot-Dragging," *Gay City News*, June 17, 2004; Cyd Zeigler Jr., "Trans Protection Compromised?" *New York Blade*, May 28, 2004.

6. *Doe v. Bell*, 2003 WL 355603 at *1–2 (N.Y. Sup. Ct. 2003) (finding that group home's policy forbidding transgender youth from dressing in skirts and dresses was illegal).

7. L. Mottet and J. Ohle, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* (Washington, DC: National Gay and Lesbian Task Force, 2003). In 2006 transgender advocates succeeded in winning a written policy in the Department of Homeless Service of New York City addressing the rights of transgender people seeking shelter in the city's facilities. The policy explicitly states that transgender people may not be placed in shelters that do not comport with their self-identified gender and may not be forced to wear clothing associated with their birth gender. Years of advocacy were required to put this policy, which is not yet being enforced as of this writing, in place. A handful of cities in North America, including Boston, San Francisco, and Toronto, have policies addressing the discrimination and exclusion transgender people face in shelter systems. For more information on these policies, see www.srlp.org.

8. *Oiler v. Winn-Dixie Louisiana, Inc.*, 2002 WL 31098541 at *1 (September 16, 2002) (where a grocery store loader and truck driver was fired for cross-dressing off the job).

9. I use the term *gender self-determination* throughout this chapter, and more broadly in my political work, as a tool to express opposition to the coercive mechanisms of the binary gender system (everything from assignment of birth gender to gender segregation of bathrooms to targeting of trans people by police). I use this term strategically while also recognizing that any notion of self-determination is bound up in understandings of individuality that support capitalist concepts like individual "freedom to sell labor" that obscure the mechanisms of oppression we are seeking to overcome. While I want to think past and reconceptualize articulations of individuality and replace them with understandings of community-centered change, mobilizing around ending coercive gender within a political framework where we still experience ourselves through heavily entrenched concepts of individuality and freedom requires strategic employment of ideas like self-determination.

10. See Cheryl I. Harris, "Whiteness as Property," in *Critical Race Theory Reader*, ed. Kimberlè Crenshaw, Neil Gotanda, Garry Peller, and Kendall Thomas (New York: New Press, 1996), 276–91. Harris traces the racial origins of property ownership, both in terms of how race has defined property status—with one's ability to own property or to be property of another determined by race—and in terms of how racial identity itself has been attributed a property status through libel and slander laws. She argues that racial identity still has property value recognized and protected by American law. Gender and sexual orientation have also, at times, had property status protected in various ways in the law. In the case of gender, clearly the right to own property has, at times been a gender-based right, and, additionally, we see value being assigned to sexuality in tort claims of Loss of Consortium, typically brought by spouses claiming

that they have been damaged by the loss of sexual service from their spouses because of whatever tort was committed. Additionally, defamation cases regarding false accusations of homosexuality similarly indicate a legal protection of heterosexual identity. See E. Yatar, "Defamation, Privacy, and the Changing Social Status of Homosexuality: Re-Thinking Supreme Court Gay Rights Jurisprudence," *Law and Sexuality* 12 (2003): 119–56.

11. The court decisions establishing protection for women laborers are based on this protectionist logic: "It is manifest that this established principle is peculiarly applicable in relation to the employment of women in whose protection the state has a special interest. That phase of the subject received elaborate consideration in *Muller v. Oregon* (1908) 208 U.S. 412, 28 S.Ct. 324, 326, 52 L.Ed. 551, 13 Ann.Cas. 957, where the constitutional authority of the state to limit the working hours of women was sustained. We emphasized the consideration that 'woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence' and that her physical well being 'becomes an object of public interest and care in order to preserve the strength and vigor of the race.' We emphasized the need of protecting women against oppression despite her possession of contractual rights. We said that 'though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right.' Hence she was 'properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained'" (*West Coast Hotel v. Parrish*, 57 S.Ct. 578, at 583 [upholding Washington State's minimum wage law for women]).

12. Gwendolyn Mink, "The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State," in *Women, the State, and Welfare*, ed. Linda Gordon (Madison: University of Wisconsin Press, 1990), 92–122.

13. *Ibid.*, 94. ;

14. *Ibid.*

15. *Ibid.*, 97.

16. *Ibid.*, 99.

17. *Ibid.*, 114.

18. See J. Heinz and N. Folbre, *The Ultimate Field Guide to the U.S. Economy: A Compact and Irreverent Guide to Economic Life in America* (New York: New Press, 2000).

19. Holloway Sparks, "Queens, Teens, and Model Mothers: Race, Gender, and the Discourse of Welfare Reform," in *Race and the Politics of Welfare Reform*, ed. Sanford F. Schram, Joe Soss, and Richard C. Fording (Ann Arbor: University of Michigan Press, 2003), 188–89.

20. See Susan James and Beth Harris, "Gimme Shelter: Battering and Poverty," in *For Crying Out Loud: Women's Poverty in the United States*, ed. Diane Dujon and Ann Withorn (Boston: South End, 1996), 57–66.

21. Sparks, "Queens, Teens, and Model Mothers," 171. Then senator John Ashcroft utilized the contractual view of citizenship described by Sparks during one of the final debates on welfare reform in the 104th Congress: "I think it is time for us to limit the amount of time that people can be on welfare. It is time for us to provide

disincentives to bear children out of wedlock. It is time for us to provide powerful incentives for people to go to work. It is time for us to say that, if you are on welfare, you should be off drugs. It is time for us to say that, if you are on welfare, your children should be in school. . . . You have to be responsible for what you are doing. We are not going to continue to support you in a way in which you abdicate, you simply run from, you hide from, your responsibility as a citizen" (quoted in Sparks, "Queens, Teens, and Model Mothers," 190).

22. Sparks, "Queens, Teens, and Model Mothers," 189.

23. See Blum, Perina, and DeFilippis, "Why Welfare Is a Queer Issue," 207.

24. Sparks, "Queens, Teens, and Model Mothers," 190.

25. Gwendolyn Mink, *Welfare's End* (Ithaca, NY: Cornell University Press, 1998), 134.

26. Sparks, "Queens, Teens, and Model Mothers," 191.

27. Mink, *Welfare's End*, 28.

28. Current Republican proposals for the reauthorization include an increase in work requirements to forty hours a week and \$200 million in federal grants plus \$100 million in state matching grants for marriage promotion programs. See Jonathan Riskind, "House Set to Revisit Welfare Reform This Week: Legislators to Vote on Bill Very Similar to One Passed in May," *Columbus Dispatch*, February 12, 2003. See also Sharon Tubbs and Thomas C. Tobin, "When Government Wants Marriage Reform," *St. Petersburg Times*, February 8, 2003; Sharon Lerner, "Marriage on the Mind: The Bush Administration's Misguided Poverty Cure," *The Nation*, July 5, 2004.

29. See Roofless Women's Action Research Mobilization, "A Hole in My Soul: Experiences of Homeless Women," ed. Marie Kennedy, in Dujon and Withorn, *For Crying Out Loud*, 41–56.

30. I recently participated in a bar association panel about queer and trans youth in juvenile justice and foster care at which a youth service provider smilingly described continued efforts to not let the transgender youth leave the residence she supervised looking like "hos." Her determination that an aspect of receiving housing at her facility should include compliance with particular expressions of femininity, and her use of a racialized term to indicate the prohibited expression, exemplifies the type of race/gender expression management that typically becomes the concern of poverty service providers measuring compliance.

31. Intersex people are people who have physical conditions that make their bodies difficult to classify under current medical understandings of what constitutes a "male" or "female" body. Intersex activists are working to stop the infant and childhood surgeries that intersex people are frequently subjected to as doctors attempt to bring their bodies into line with medical expectations of what a male or female body should look like. For more information on intersex conditions and intersex activism, see the Web site of the Intersex Society of North America, www.isna.org.

32. Blum, Perina, and DeFilippis, "Why Welfare Is a Queer Issue," 213.

33. See Remembering Our Dead, <http://www.rememberingourdead.org>.

34. A common response to questions about the wisdom of sex segregation in jails, prisons, shelters, and other contexts is a concern for women's safety and a suggestion that sex segregation exists to prevent violence against women. While women's safety should be of paramount concern to service providers and corrections staff, there is not

sufficient evidence that sex segregation policies are motivated by concern for women's safety or that women are safe in these institutions. In fact, systemic sexual assault and violence against women are more often than not a fundamental part of the coercive control exercised over poor women in these institutions. Examining the violence against women and gender-transgressive people in these settings should be a project that advocates for women's safety are deeply engaged in with advocates for gender self-determination, as these two populations are frequently targets for related violence. The first step may be to acknowledge that control of low-income people, not safety, is the aim of these institutions. See R. Ralph, "Nowhere to Hide: Retaliation against Women in Michigan State Prisons," *Human Rights Watch* 10 (1998), <http://hrw.org/reports98/women/>.

35. See *Ala. Code* § 22-9A-19 (2002) (order of court of competent jurisdiction and surgery required); *Ariz. Rev. Stat.* § 36-326 (2001) (change may be made based on sworn statement from licensed physician attesting to either surgical operation or chromosomal count, although registrar may require further evidence); *Ark. Code Ann.* § 20-18-307 (2002) (order of court of competent jurisdiction and surgery required); *Cal. Health & Safety Code* § 103425, 103430 (2002 Supp.) (court order and surgery apparently required); *Colo. Rev. Stat. Ann.* § 25-2-115 (2002) (same); *D.C. Code Ann.* § 7-217 (2002) (same); *Ga. Code Ann.* § 31-10-23 (2002) (same); *Haw. Rev. Stat.* § 338-17.7 (2002) (physician affidavit and surgery required; registrar can require additional information); 410 *Ill. Comp. Stat.* 535/17 (2002) (same); *Iowa Code* § 144.23 (2002) (physician affidavit and surgery "or other treatment"); *La. Rev. Stat. Ann.* § 40:62 (2002) (order of court of competent jurisdiction and surgery required); *Mass. Ann. Laws* chap. 46, § 13 (2002) (same); *Mich. Comp. Laws* § 333.2831 (2002) (affidavit of physician certifying sex reassignment surgery); *Miss. Code Ann.* § 41-57-21 (2001) (registrar may correct certificate that contains incorrect sex on affidavit of two persons having personal knowledge of facts; not clear whether restricted to initial error in certificate or includes gender change); *Mo. Rev. Stat.* § 193.215 (2001) (order of court of competent jurisdiction and surgery required); *Neb. Rev. Stat.* § 71-604.1 (2002) (affidavit of physician as to sex reassignment surgery and order of court of competent jurisdiction changing name required); *N.J. Stat. Ann.* 26:8-40.12 (2002) (certificate from physician attesting to surgery and order of court of competent jurisdiction changing name); *N.M. Stat. Ann.* § 24-14-25 (2002) (same); *N.C. Gen. Stat.* 130A-118 (2001) (affidavit of physician attesting to sex reassignment surgery); *Or. Rev. Stat.* § 432.235 (2001) (order of court of competent jurisdiction and surgery required); *Utah Code Ann.* § 26-2-11 (2002) (order of Utah District Court or court of competent jurisdiction of another state required; no specific requirement of surgery); *Va. Code Ann.* § 32.1-269 (2002) (order of court of competent jurisdiction indicating sex has been changed by "medical procedure"); *Wis. Stat.* § 69.15 (2001) (order of court or administrative order) cited in *Matter of Heilig*, 2003 WL 282856 at *15 n.8 (Md. 2003). See also Lambda Legal Defense and Education Fund, Resources: Transgender Issues, <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1162> (November 12, 2002) (accessed March 30, 2003).

36. Dean Spade, "Resisting Medicine, Re/modeling Gender," *Berkeley Women's Law Journal* 18 (2003): 16-26.

37. *In re Estate of Gardiner*, 42 P.3d 120 (Kan. 2002); *Kantaras v. Kantaras*, Case No. 98-5375CA (Circuit Court of the Sixth Judicial Circuit, Pasco County, Florida, February 19, 2003).

38. See, for example, *In re Rivera*, 165 Misc.2d 307, 627 N.Y.S.2d 241 (Civ. Ct. Bx. Co. 1995); *Application of Anonymous*, 155 Misc.2d 241, 587 N.Y.S.2d 548 (N.Y. City Civ. Ct., August 27, 1992); *Matter of Anonymous*, 153 Misc.2d 893, 582 N.Y.S.2d 941 (N.Y. City Civ. Ct., March 27, 1992); but see, *In re Guido*, 2003 WL 22471153, 2003 N.Y. Slip Op. 23821 (N.Y. Civ. Ct., October 24, 2003).

39. See Jody Marksamer and Dylan Vade, "Gender Neutral Bathroom Survey," http://www.transgenderlawcenter.org/documents/safe_WC_survey_results.html (2001) (accessed March 30, 2003). See Dean Spade, "2 Legit 2 Quit, Piss & Vinegar," <http://www.makezine.org/2legit.html> (accessed March 14, 2003).

40. See Spade, "Resisting Medicine," 16-26, for a broader discussion of the gender regulation accomplished by medical approaches to gender role distress.

41. Most states in the United States still explicitly exclude "sex reassignment related care" from Medicaid coverage, and most medical insurance companies still exclude this care from coverage. See *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001) (reversing district court's ruling and holding that Iowa's rule denying coverage for SRS was not arbitrary or inconsistent with the Medicaid Act); *Rush v. Parham*, 625 F.2d 1150 (5th Cir. 1980) (reversing district court's ruling that Georgia's Medicaid program could not categorically deny coverage for SRS); 18 NYCRR § 505.2(l). See N.Y. St. Reg. (March 25, 1998) at 5; Ill. Admin. Code tit. 89 at 140.6(1); 55 Pa. Code at 1163.59(a)(1); Alaska Admin. Code tit. 7, at 43.385(a)(1); Medicare Program: National Coverage Decisions, 54 Fed. Reg. 34555, 34572 (August 21, 1989); 32 C.F.R. at 199.4(e)(7) (excluding sex reassignment surgeries from the Civilian Health and Medical Program of the Uniformed Services); but see *J.D. v. Lackner*, 80 Cal. App. 3d 90 (Cal. Ct. App. 1978).

42. In the context of welfare reform, illegal termination of benefits has been a significant strategy on the part of government agencies looking to "slash the rolls." When benefits are illegally terminated, recipients are entitled to a hearing. In New York City, these hearings, ironically called "fair hearings," are estimated to average less than two minutes, and recipients without representation typically are not permitted to utter a word before the hearing is over. With representation, however, these hearings can frequently be won because the basis for these terminations and the procedures for them are usually executed in violation of federal and state regulations and city policies. In this context, maintaining benefits for any period of time, and sometimes even just getting through the application process, will require access to an advocate who knows the applicable law and can argue on behalf of a wronged recipient. Similarly, accessing basic social services, including housing programs, often requires outside advocacy. My clients are frequently rejected from housing programs on the basis of their gender identities, and only through advocacy can a facility be convinced that this is illegal discrimination. In the criminal justice context, my clients consistently report that their assigned attorneys are blatantly transphobic toward them, refuse to return their calls, advocate against their interests in situations where they are facing sentencing to sex-segregated facilities of one kind or another, and are generally very disrespectful.

43. A good example of this ineffective advocacy came from one of my trainings for criminal attorneys. An attorney who attended described an incident in which she was representing two transgender women that, after sitting through most of the training, she was concerned she had handled badly. She said that she had never spoken to her clients about their gender identities, although she was aware that they were transgender, because she did not know how. When they came before the judge, he asked her what gender her clients were, and she said, "I don't know." The court clerk piped in that they were male according to their criminal records. The judge told the lawyer that he wanted to sentence them to women's drug treatment because they appeared to be women, and asked what the lawyer thought of this. The lawyer responded that she did not think he could do that. Clearly, the fact that she had never discussed gender identity with her clients, or addressed the fact that they were facing sentencing in sex-segregated facilities, caused her to miss a rare opportunity to work with a judge who may have provided her clients with a safer option than they ultimately got. In fact, her input seems in this anecdote to have harmed her clients' chances at a beneficial determination by the judge. I hear stories like this repeatedly in trainings, suggesting that even well-meaning providers are so unprepared to assist gender-transgressive clients that they may actually harm their clients.

44. See L. Mottet, *Partial Equality* (Washington, DC: National Gay and Lesbian Task Force, 2003), <http://www.nglftf.org/library/partialeq.htm>.

45. H. Humm, "Unity Eludes SONDA Advocates, Gender Identity Divides Duane, Pride Agenda," *Gay City News*, December 13, 2002, <http://www.gaycitynews.com/gcn29/unity.html>; K. Krawchuk, "SONDA Bill Heads to Senate," *Capital News 9* (Albany, NY), 2002, <http://www.capitalnews9.com/content/headlines/?SecID=33&ArID=7580>.

46. Significant inequalities in access to education persist. In 1997 less than 75 percent of African Americans and less than 55 percent of Latinos had completed four years of high school, and less than 14 percent of either group had completed four years of college. Cuts in financial aid for college students have reinforced a decline in the percentage of low-income high school graduates going to college (Heinz and Folbre, *Ultimate Field Guide to the U.S. Economy*, 74). Further, the end of affirmative action policies in higher education and new rules making people with drug convictions ineligible for federal financial aid have reduced access to higher education for poor communities and communities that are overexposed to police enforcement.

47. Charlie Bertsch, "Interview with Wendy Brown," in *The Anti-Capitalism Reader: Imagining a Geography of Opposition*, ed. Joel Schalit (New York: Akashic Books, 2002), 209.

48. In New York City, while we have celebrated the success of the passage of Local Law 3 expanding protection of the city's Human Rights Law to include gender identity discrimination, we have also been very concerned about our ability to use this law effectively when trans people face discrimination in sex-segregated housing, because of a preexisting carve-out in section 8-107 of the city's administrative code. It reads: "(k) Applicability; dormitory-type housing accommodations. The provisions of this subdivision which prohibit distinctions on the basis of gender and whether children are, may be or would be residing with a person shall not apply to dormitory-type

housing accommodations including, but not limited to, shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children." No doubt, many other jurisdictions will face similar problems with carve-outs that preexist gender identity protection but seriously impair the ability of advocates to argue that gender-transgressive people should be able to access sex-segregated facilities according to our lived genders rather than birth gender. The existence of these carve-outs may undermine the effectiveness of these laws in circumstances that are among the most dire for many transgender people, such as homeless shelters, group homes, and assisted-living facilities.

49. *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001).

50. In Boston, activists achieved a rare victory regarding sex-segregated facilities with the passage of an antidiscrimination ordinance that protects the rights of transgender people to access facilities in accordance with gender identity rather than birth gender. See Gay and Lesbian Advocates and Defenders, http://glad.org/Rights/Boston_TG_Ordinance.pdf.