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INTERVIEWS III

Toward a Critical Trans Politics

An interview with Dean Spade

Dean Spade is an associate professor at the Seattle University School of Law. In 2002 he founded the Sylvia Rivera Law Project, a non-profit collective that provides free legal help to low-income people and people of colour who are trans, intersex, and/or gender non-conforming and works to build trans resistance rooted in racial and economic justice. He is the author of Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law, published by South End Press in 2011.

How did you become politicized? What was that process like for you?

I developed an "outsider identity" as a kid because I was living in the South, I had a single mom, we weren't Christian, and we were poor. I was aware of being different and I struggled to pass in various ways. I organized my first protest when I was 11 and I experienced the thrill of standing up for something with others. During high school I became more aware of sexism and found feminism through the lyrics of Salt-N-Pepa. When I went to college, I met queer people and learned about queer politics. In the mid-'90s I was living in New York City and I started interning at the National Gay and Lesbian Task Force, Lambda, and other large gay organizations. They were doing a lot of marriage work and I often

assisted with those projects. But I also worked at the gay bookstore A Different Light, where I met trans people, drag queens, nightlife people, and people who had been in ACT UP. They had a critique of marriage and military-focused gay organizations and offered me a frame for my own observations about how the organizations I interned with were not taking a stand against the horrifying changes to national welfare and immigration policy. As I found alternative forms of queer resistance that matched my anti-capitalist and feminist values, I started to understand the divides in queer politics and dis-identify with the increasingly visible white gay agenda of marriage, military, and hate crimes law reform.

The period between 1995 and 1998 was especially important for my political development. I worked with a broad coalition of activists to stand up to the attacks that Mayor Giuliani was unleashing on vulnerable communities in New York City. We articulated a different queer politics than the marriage/military/hate crime agenda. We wanted to centre welfare, immigration, and resistance to criminalization, seek housing for people with AIDS, and increase access to public space. In 1998, I was part of a group of young people who created an event called Gay Shame at a queer space called Dumba in Brooklyn. The goal of Gay Shame was to expose and contest white, rich gay politics and provide an alternative to Gay Pride. Along with the event, we started a zine called *Swallow Your Pride* that was full of articles about anti-racist, feminist, anti-Giuliani, and DIY queer politics. It was an important time for me; I learned about grassroots queer political work, began to understand a critique of non-profits and what we now call homonormative and homonationalist gay politics, and discovered the kind of queer politics that I really wanted to be a part of.

A lot of your work is highly critical of the law and official legal institutions as mechanisms for progressive social struggle and change. For instance, the subtitle of your book makes reference to "the limits of law." What do you mean by this?

There is an idea in the US that liberation should be sought through legal change. It is especially grounded in a white supremacist national story about how Black people were liberated from slavery and apartheid by legal reform and how racism is now over. This story tells us that American law and the Constitution are neutral and colourblind, as long as we interpret them correctly, justice and freedom will prevail.

Many important critical intellectual traditions and social movements have exposed how the US was actually founded on genocide, land theft, and slavery, and how US law exists to codify and enforce colonization, racism, capitalism, and patriarchy. We can see the methods of enforcement changing over time: from slavery to apartheid to criminalization, for example. Legal reforms have, at times, changed the surface of the operations of colonization, white supremacy, and patriarchy, but they have not actually abolished them. These surface changes are cited as progress as the US declares "inequality" a thing of the past. Groups experiencing violence and marginalization today are encouraged to seek "equality" under the law to win liberation. As a result, we see a range of emergent movement formations like trans politics take up narrow demands for legal reform and for legislative declarations of inclusion and recognition. A central argument in my book is that the focus on law reform reduces our demands such that we cannot actually get relief from the conditions we experience. Law reform demands often shift movements away from constituents' needs for housing, health care, and relief from state violence, and toward demands for symbolic inclusion in the most violent institutions of governance: the military, policing and prisons, and the normative family. I don't think there's anything really novel about this argument, it just warrants repeating. The seduction of legal equality appears to be very significant in certain strains of LGBT politics, regardless of the availability of critical understandings of its limits.

I want to de-centre law reform as a goal of trans resistance without ignoring the law or legal systems. My experience as a poverty lawyer underscored the violence that legal systems like criminal and immigration enforcement and welfare or disability benefit eligibility verification processes inflict on vulnerable people. Trans resistance needs a legal strategy, but not one focused on passing legislation that declares us equal but that does not address the daily violence and poverty produced by transphobia. Trans politics must contend with legal systems, since they violently enforce racialized gender norms and shorten trans people's lives every day. However, there is a difference between law reform as our goal – assuming that we can get the law to say "good" things about us and that this will bring relief – and understanding that we need to use law reform as a tactic to dismantle systems of state violence. Instead of focusing on passing hate crime legislation and holding onto the fantasy of getting law enforcement to

protect trans people, we need to launch campaigns to close prisons and jails, to decriminalize sex work and drugs, and to prioritize other strategic engagements aimed at disrupting the pathways to criminalization that are devouring trans populations. Legal advocacy and reform are tactics that can be used to help people survive and to dismantle apparatuses of state violence, but law reform work also risks neutralizing transformative demands, co-opting movement messages and aims, and dividing constituencies between those who can benefit from an incremental reform and those who continue to be left out. I want to shift our focus away from law reform interventions sold under the rubric of "equality law" – hate crime laws and anti-discrimination laws – and towards the legal and administrative systems that actually operate in extremely violent and targeted ways. What the law says about us is far less important than what it is doing to us.

Critical race theorist and prison abolitionist Ruth Wilson Gilmore defines racism in terms of "the state sanctioned and/or extra-legal production of group differentiated vulnerability to premature death." Can you explain why you think Gilmore is so instructive here and how you use her analysis of "premature death?"

I like that definition because it draws our attention to conditions and systems of distribution rather than intentions. We think about racism far too frequently as a question of intentions – whether or not somebody intentionally left someone out or did something harmful because of their biased racist beliefs. The focus on individual racists with bad ideas hides the reality that racism exists wherever conditions of racialized maldistribution exist. Law reforms in the US, ostensibly enacted to prohibit racism, have proven ineffective because they focus on bad intentions of individuals and fail to comprehend population-level conditions. When we are forced to find an individual who is responsible and prove their discriminatory intent, it becomes very difficult to prove that racism has actually happened. This is part of why Civil Rights law reforms have not eradicated racism, and why, during the period when racism has apparently been prohibited in the US, we've seen a growing racial wealth divide and drastically growing apparatuses of state violence targeted at people of colour.

We cannot address broad conditions of racialized maldistribution with laws focused on finding bad individuals with racist intentions. The story about racism that legal

discrimination frameworks establish justifies these conditions and declares them neutral. It names attempts to remedy them, like affirmative action programs, as "racist" because taking race into account is forbidden. Having wildly racially segregated school systems in the US with drastically lower resources in schools with students of colour does not violate the law, but creating a program that considers students' race for purposes of placement in order to desegregate is illegal. This absurd and perverse "colourblindness" has been heavily critiqued by critical race theorists.

This narrow way of thinking about racism through the "discrimination principle" justifies the national story that racism is over and any people or groups who experience poverty, criminalization, or other marginalization have only themselves to blame. Gilmore's approach turns this entire framework on its head. In order to prove racism's existence, we need not identify an individual racist perpetrator and prove his racist intent – we need only identify that conditions of racialized maldistribution are shortening some people's lives. People of colour have less access to health care, education, income, healthy food, and housing. They are disproportionately exposed to police violence, criminalization, immigration enforcement, pollution, and the most dangerous forms of labour. We need not find a mastermind behind each of these conditions to identify racism or justify intervention.

Can you explain and expand upon what you mean by administrative violence?

The term "administrative violence" draws attention to the ways in which systems that organize our lives in seemingly ordinary ways – determining what ID we carry, what government records exist about us, how roads or schools or garbage pick-up are organized – produce and distribute life chances based on violent forms of categorization. The entire framework of US administrative law is that we have agencies – whether it's the Department of Homeland Security or the Food and Drug Administration or the Environmental Protection Agency or the Bureau of Indian Affairs – run by experts. These experts invent and deploy categories that manage and sort people, substances, buildings, curricula, human capacities, diseases, financial instruments, streets, soils, vehicles, and more. These administrators need not be elected; the basis of their authority, and thus the authority of the administrative system, is neutral expertise. Critical movements have questioned the neutrality of those ways of knowing and

the categories they produce, identifying white supremacist, ableist, colonial, and patriarchal norms. Critiques of the racially disparate impact of drug sentencing laws regarding crack and powder cocaine are a popular example of this kind of intervention. I am interested in paying attention to systems of explicit state violence, like criminal and immigration enforcement systems, as well as systems that many consider benign, such as those that determine and record the "facts" about people's births. Distinctions and norms produced by these systems assign categorizations such as gender and produce deadly consequences for those who fail to conform to their assigned category. My work has looked specifically at the interactions between sex classifications on documents and records like driver's licenses, birth certificates, and in social security programs, as well as the sex segregation used in criminal and immigration prisons, juvenile punishment facilities, and homeless shelters.

The work of identifying violence in the administration of systems that declare themselves race and gender neutral but are actually sites of extreme racial and gender violence is central to many social movements. Dorothy Roberts' work, for example, analyzes the child welfare system in the US and how it targets Black families. She argues that the system is a continuation of the natal alienation enforced during slavery. A lot of prison abolitionist scholarship also critiques the purported scientific neutrality of policing, criminal trials, sentencing, and rehabilitation schemes that actually constitute ongoing anti-Black terror.

How do you conceive of a distinctive intervention of critical trans politics?

In the 1990s, trans resistance became increasingly visible, but it obviously wasn't new: there's been resistance to gender norms by various kinds of gender rule breakers wherever and whenever there have been gender norms. The contemporary moment of trans resistance is often expected to follow in the footsteps of the gay and lesbian rights framework and make some of the same demands. At the most basic level, identifying critical trans politics is about finding a way to talk about a trans politics that isn't interested in military service, marriage, hate crime legislation, or other elements of today's nightmarishly conservative gay and lesbian rights agenda. Instead, it centres transformative resistance to systems that are the most harmful to trans people. It is part of critical political resistance that raises demands like an end to wealth and

poverty, an end to immigration enforcement, and the abolition of all forms of imprisonment (immigration, criminal punishment, medical, and psychiatric). What critical trans politics has to offer left social movements more broadly is a particular frame for understanding how processes of gendered racialization are congealed in violent institutions. This line of thinking and organizing is informed by critical race theory's critiques of legal reform and specifically anti-discrimination law and has important links to analyses developed by fat politics and disability politics, where norms about body and health are identified and critiqued.

What does it mean that gender segregation is utilized as a method of control in prisons, juvenile punishment facilities, shelters, and psychiatric institutions – where poor people and people of colour are concentrated? In these places, people who are difficult to classify, who contest their classification, or who live at edges of the classification system are targets of particular forms of violence. Trans politics has, in some ways, extended feminist analysis about the gender enforcement that takes place in these spaces and institutions by examining the problems with gender binarism itself. Trans peoples' experience and our articulation of resistance can be a location for articulating the political implications of classification processes. Exposing the complexity of gender category enforcement and the relationship of various forms of gender identification and surveillance to state projects of identity surveillance that have expanded under the "War on Terror" has been an important contribution of trans studies and trans activism.

Earlier we were talking about violence and how transphobic violence is often imagined as individual "hate crimes" against trans people. However, conceptualizing "hate violence" as the biggest singular threat to trans life dangerously misunderstands early death among trans people. Trans people are dying from the daily violence of not being able to get basic necessities because systems are organized in ways that require everyone to be gendered in a particular way. Trans people die because of exposure to police violence and criminalization. Trans people die early because we often live with serious untreated health conditions when health care systems won't treat people whose gender makes them incomprehensible to that system. Transphobic violence isn't constituted only in individual acts by intentional perpetrators, but in the enforcement of gender norms broadly on everyone, shaping everyone's field of action, existence, and self-

understanding. Trans studies and trans activism makes these purportedly neutral and sometimes invisible systems of control visible and political. It also helps us consider why, if we wanted to stop the murders of trans women of colour, we wouldn't waste our time trying to enhance policing and prosecution with hate crime laws; we would make sure that trans women in poverty had safe housing and income and abolish the immigration and criminal laws that make their lives particularly dangerous.

Critical trans politics relies heavily on tools developed by different strains of women of colour feminism that question the racialized deployment of the category "woman" and developed critical reflective anti-hierarchical and solidarity-based practices and processes for resistance. Trans politics has raised critical analyses of things like gender markers on ID and gender segregation in jails and prisons, but also things like "women-only" spaces in feminist communities. Like women of colour feminisms, it provides a chance to look at the enforcement and deployment of certain kinds of norms in the broader harmful systems that currently distribute well-being, but also in the alternative spaces we create to cultivate our resistance and survival. What does it mean to try to produce resistance practices that contend with norm enforcement not only in government agencies, schools, welfare offices, prisons, and health departments, but also in our own resistance formations? As activists seeking transformative change, we also produce norms about health and the body that perpetuate an inability to deal with difference, and a desire for standardization. It's a mistake to assume that the problems of normalization and population management are only "out there" in the apparatuses of state violence that activists are struggling with and working to dismantle. In fact, because we are producing alternative systems of distribution, we also deploy categories of identity, narratives of authenticity and deservingness, and notions of enemies, threat, and danger. Trans politics has critiqued these conditions in certain feminist formations that have produced trans people as enemies – traitors, dupes, or invaders – drawing harsh and violent gender lines to create supposedly "safe" spaces. This kind of analysis draws our attention to issues of intra-group difference, enemy production, and normalization that, in my opinion, all activists must perpetually engage with. Women of colour feminisms show how rigorous, continuous processes of critical reflection are warranted in response to these patterns.

Can you explain what you mean by "gendered racialization?"

A basic point in my work is that nations constitute themselves through processes of creating and deploying gendered racial categories and racialized gender categories. The reason I say those two terms together is because they're always operating together. There aren't universal gender categories – they are enforced differently on differently racialized people. For example, there is no singular norm of femininity or womanhood in the US, but rather particular norms that are enforced on particular people based on race, class, nationality, ability, and other social positions. So processes of racialization and gendering – processes of creating those categories and enforcing them – always happen together. Processes of racialization always include gendering and invent and enforce gender categories while inventing and enforcing racial categories. These processes are fundamental to producing the nation state itself, so they are critical for us to study and understand. A great example of work that exposes these processes is Andrea Smith's scholarship about the enforcement of heteropatriarchal norms as part of North American colonization. Thinking about race and gender categorization together helps keep our attention on simultaneity and avoids the kind of single-vector analysis that falsely universalizes the experiences of white people or men.

Tell me a little bit about the Sylvia Rivera Law Project (SRLP) and how your work there fits into a larger picture of radical social movements, law, and trans activism.

SRLP is a law collective in New York City and it provides free legal help to intersex, trans, and gender non-conforming people who are low-income and/or people of colour. We're trying to approach trans politics and law in a way that centres the day-to-day harmful interactions with law enforcement and administrative systems faced by people who break certain gender norms, particularly those who face the most violent enforcement of gender norms because they have the most contact with apparatuses of state violence. In order to be politically engaged and build the movements we want, we also need to survive; it's about trying to provide people the basic things they need and advocating for people in danger as part of a pathway to survival and political action.

The organization is committed to the idea that survival services should be provided by and for populations being served, and should be governed by people who are receiving the services. The organization operates collectively and has a structure that centres people of colour governance and governance by intersex, trans, non-conforming, and low-income people. It operates very differently than most legal services, where disproportionately white, upper class professional lawyers provide services to low-income people and people of colour, under the supervision of a white, wealthy board of directors. SRLP sees service provision as a pathway to mobilization – survival services should help people get together to make transformative change. Too often they are instead a means of maintaining the status quo by providing limited, temporary, pathologizing help for a few people deemed “deserving.”

If we are actually going to see change we want, it will be because there are significant social movements that attack the root causes of the violence and exploitation that characterize contemporary life. Trans people who come to SRLP for help are extremely marginalized and endangered and need direct advocacy when they're facing police harassment, sexual violence in prison, deportation, homelessness, and/or denial of health care and welfare benefits. Our work is driven by a belief that we should centre highly vulnerable people and do politicized and politicizing survival work, building social movement infrastructure that's accountable to the people who are at the centre of the impacted communities.

We were heavily influenced by INCITE!'s conference and anthology, *The Revolution Will Not be Funded*. When we started SRLP, we researched collectives throughout the US and Canada, especially women of colour organizations, many of which work with survivors of domestic violence. We found models for groups who politicize service provision and build their organizations horizontally instead of having an executive director who tells everyone what to do. Building our collective in this way allows us to imagine the kinds of conditions we want to produce in the world as we go. It centres the needs and leadership of people facing some of the most life-threatening conditions of transphobia and racism, recognizing that our work must include survival services, political education, leadership development, and horizontal infrastructure.

INCITE!'s work has sparked important conversations in activist movements in the US about the impact of non-profitization and the influence of philanthropists on organizations. SRLP is influenced by this work and it maintains an ongoing critical dialogue about funding

sources; we pour immense energy into developing grassroots funding strategies that we believe are more sustainable and accountable to communities. Our funding includes grants from foundations and we operate as a non-profit, but we believe we have also created an organizational infrastructure focused on defying the norms that non-profitization and philanthropy create. Refusing to structure our organization hierarchically, having a flat payscale, focusing on governance by trans people of colour, and focusing on grassroots fundraising are part of this. Our work is very experimental and our collective is engaged in constant critique, revision, and reinvention. It is complicated to try to create something so drastically different from what poverty legal service organizations typically look like, to serve populations facing severe and mounting crises, and to build structures that seek to dismantle deep cultural and structural hierarchies. We have been doing it for 10 years now and we are still experimenting and reinventing as we learn.

In some of your writing on social justice you use the metaphor of trickle up and trickle down. What does this mean to you in practical terms?

I use these terms to criticize some key problematic assumptions and arguments often made by supposedly social justice-oriented organizations. The first assumption is that we should win rights for the people who are the easiest for the (fictional/imagined/conservative) public to believe deserve rights – in other words, the whitest, richest, non-criminalized citizens. This assumption tells us that we need to find the “best spokesperson,” which means the people most assimilable to violent norms; everyone else is “too complicated.” According to this line of thinking, it's a good strategy to talk about queer and trans issues by using the stories of white gay and lesbian professionals who face discrimination at work, or gay and lesbian couples who want marital recognition because they love weddings, tax breaks, real estate, and raising kids in a monogamous home; or trans people who are white and wealthy former military or law enforcement leaders. These organizations anchor their talking points in representations of deserving “hard workers,” “patriots,” and “tax-paying citizens.” They thus participate in reproducing the shadow images of these figures, those who are perpetually cast outside as “undeserving.”

The second assumption is that the best way to win gains for queer and trans people is through legislation reform lawsuits that, at best, will provide increased access to harmful institutions

(marriage, military, police) for a small sector of least-vulnerable people in the constituency. These assumptions tell us who to centre in the work (start at the top and hope for a trickle down) and how to do the work (with white lawyers, lobbyists, and corporate media professionals at the centre framing the issues). They tell us that grassroots work, the leadership and demands of people of colour, poor people, people with disabilities, criminalized people, and immigrants is idealistic, unrealistic, not politically viable, and far too complicated.

My hope for queer and trans resistance is that we can take the model I've just discussed and turn it upside down, which means prioritizing people who face the most dangerous manifestations of transphobia and homophobia first. This is an ethical stance – in the face of enormous violence it is only right to start with those under the worst and most dangerous conditions. It is also strategic. We have seen again and again that when those who are the least vulnerable of the targeted constituency are prioritized, the declared victories do not trickle down. Winning policy reform that allows a gay person with a high-level corporate job to share their health insurance plan and pass their inheritance to their partner does absolutely nothing to address the experience of trans women being denied adequate food and medicine as they face daily sexual violence in immigration and criminal punishment prisons. In fact, slight alterations to include and recognize the least impacted of the impacted tend to legitimize and shore up existing conditions – a stamp of “equality” is placed on harmful systems, even as those systems continue their murderous work. On the other hand, if we solved the problems facing people who are experiencing the worst manifestations of violence, it would inevitably solve the problems of those at the top.

We also turn this model upside down when we recognize that justice is never going to come from courtrooms, legislatures, or the corporate media. All we get from them, at best, is new window dressing to shut us up. Meaningful change is built from the bottom up and requires us to do three things: help people survive existing conditions, dismantle harmful institutions and systems, and build alternatives to create the world we want to live in. We have to do all three at the same time. What's liberating is that we don't have to hire lobbyists or convert our messages into something that corporate media outlets are willing to publish – we just need to start where we are. Our work can be very local and can accomplish real change that helps the people we love survive. I see trans

activists working to address the violence and transphobia occurring in homeless shelters in their towns, working in coalitions to stop their local criminal punishment systems from adopting new federal programs designed to enhance immigration enforcement, working to decriminalize sex work, or to build meaningful access to health care. These kinds of local projects can build relationships and facilitate leadership by the people most directly impacted by these systems. These projects give us a chance to create models of how we want to work together: horizontally, thoughtfully, and reflectively, while prioritizing the leadership of people of colour, immigrants, people with disabilities, and poor people. And they can provide actual relief from violent conditions, rather than veneers for harmful systems.

Let me describe two models of large-scale social transformation. I'll call the first a traditional revolutionary model. This model aims at overturning a system of power by seizing the main apparatus of power and replacing it. The second model, an immanent one, is more resonant with certain anarchist communities who frequently talk about trying to “starve the state” or displace it internally. These visions can be antagonistic, both at the level of theory and also in terms of activism. Historically, they have often hinged on a means/ends distinction and debates about violence, democracy, and hierarchy. How do you position yourself in this debate?

I have been trying to figure out whether that distinction is as real as we think it is. When we look at problems inherent in the idea of taking over the state, we could argue that the state is a problem regardless of who is running it. If the contemporary nation-state form relies on border enforcement and imprisonment, then I don't want it – no matter who is running it. We need to attend to forms of governance and organization that we believe are irredeemable. Having said that, it's important for us to consider how many of the features of government that we complain about are reproduced in our resistance spaces. If I'm working with a shelter or an activist group that kicks people out – that uses exile as a solution to behavioral or political differences – I'm reproducing the logics of deportation and imprisonment. Our spaces of resistance are full of normalization and domination processes; the dangerous capacities of stateness can exist in institutional forms, even if they are run

by people who identify as anarchists. What I think we're really trying to do is build political practices that attend to questions of participation, normalization, and the production of a falsely universal citizen subject.

It seems like people all over are taking up various strategies that try to facilitate increased participatory governance within existing state forms and build alternatives to those forms. Right now I'm focused on studying these different approaches: what they accomplish under various circumstances, what happens when people are taking them up at the same time in the same place, and whether or not autonomous groups hold those seizing state power accountable. In the Law and Social Movements class I teach, we spend time talking about the people's budget process in Porto Alegre the same week that we study how the Zapatistas have created independent municipalities. Putting these strategies, both of which aim for greater transparency and participation in decision-making using very different approaches and levels of engagement with existing recognized government structures, side by side is useful. It allows us to consider what kinds of strategies might be useful in a particular location, or on a particular issue, when we are trying to increase people's ability to determine what happens in their lives. I am not interested in absolutes, but rather experimentation and analysis.

I'm also trying to think through the extent to which the dichotomy between seizing state power and starving the state is possibly false. We often build organizations with administrative capacities that resemble stateness. I wonder whether that administrative capacity, the quality we might call stateness, which seems to require the production and administration of certain kinds of categories, is inherent to any activity that seeks to redistribute things (land, money, food, services, care). Another way I think about this question is to consider whether, when we do redistributive projects, we are always engaged in what Foucault would call "state racism" because we are trying to cultivate the life of the population. To do that, we have to conceptualize the population and determine the administrative categories through which we will redistribute. We create ideas of deservingness and undeservingness, of safety and threat, and end up producing processes of normalization. For me, being part of SLRP brings up questions about our attempts to really be horizontal while constantly recognizing the existing power dynamics within any group of people. SLRP, like many other organizations

working for deep transformation, tries to produce a different way of being together – ways of relating that differ from our training as consumers, competitors, and people at various places in various hierarchies. We are trying to be people who we were never trained to be after socialization in violent spaces like families, schools, health care systems, and police states – all under white supremacy and colonialism. We attempt this very imperfect and sometimes bewildering experimentation because we want to connect and help each other survive. We have no alternative but to create something new because the current conditions are intolerable. However, unlike some movements and activists who have a very clear picture of their future revolutionary society, we are critical of the limits of our current imaginings, more interested in creating maximally participatory processes in hopes that our many brains and experiences will be more critical and creative than any of us can be on our own, assuming consistent failures, setbacks, and reorientations. ★