

# **NORMAL LIFE**

Administrative Violence,  
Critical Trans Politics, and the  
Limits of Law

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SPADE**

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Chapter 1

**Trans Law and Politics  
on a Neoliberal Landscape**

IN ORDER TO EFFECTIVELY CONCEPTUALIZE POLITICAL AND ECONOMIC marginalization, shortened life spans, and an emergent notion of organized resistance among the set of gender rule-breakers currently being loosely gathered under a “trans” umbrella, and to raise questions about the usefulness of law reform strategies in this resistance, it is important to consider the context in which these conditions are embedded. The concept of neoliberalism is a useful tool for describing the context in which emergent forms of trans resistance are appearing. Scholars and activists have used the term “neoliberalism” in recent years to describe a range of interlocking trends in domestic and international politics that constitute the current political landscape. The term is slippery and imperfect. Neoliberalism is used to mean lots of different things by lots of different people, and it is sometimes used to refer to conditions that we could understand as not new at all, like state violence toward people of color, US military imperialism, and attacks on poor people. However, I find the term useful because it allows space for critical insight into the range of practices producing effects at the register of law, policy, economy, identity, organization, and affect. It helps us look at a set of things together and understand their interlocking relationships rather than analyzing them in ways that make us miss key connections.

Neoliberalism has not only shaped the larger social, economic, and political conditions that trans people find themselves in, but has also produced a specific lesbian and gay rights formation that trans politics operates in relation to. The concept of neoliberalism is useful both for raising concerns about the effects of the lesbian and gay rights formation on trans people, and for calling into question the usefulness of the lesbian and gay rights model for trans law reform efforts.

Neoliberalism has been used to conceptually draw together several key trends shaping contemporary policies and practices that have redistributed life chances over the last forty years. These trends include a significant shift in the relationships of workers to owners, producing a decrease in real wages,<sup>1</sup> an increase in contingent labor, and the decline of labor unions; the dismantling of welfare programs; trade liberalization (sometimes called "globalization"); and increasing criminalization and immigration enforcement. Neoliberalism is also associated with the rollback of the gains of the civil rights movement and other social movements of the 1960s and 70s, combined with the mobilization of racist, sexist, and xenophobic images and ideas to bolster these changes. Further, the emotional or affective registers of neoliberalism are attuned to notions of "freedom" and "choice" that obscure systemic inequalities and turn social movements toward goals of inclusion and incorporation and away from demands for redistribution and structural transformation.

At a broad level, the advent of neoliberal politics has resulted in an upward distribution of wealth.<sup>2</sup> Simply put, the rich have gotten richer and the poor have gotten poorer.<sup>3</sup> The real wages of Americans have not increased since the 1970s, and the bargaining power of workers trying to improve the conditions under which they labor has declined significantly. Today fewer workers are part of labor unions, and major law and policy changes have made it harder for workers to organize and utilize tools like labor strikes to increase bargaining power and push demands.<sup>4</sup> More workers have been forced into the contingent labor force, working as

"temps" of various kinds without job security or benefits. At the same time, these developments are lauded by proponents of neoliberalism as increased "flexibility" and "choice" in the job market, where workers are portrayed as having more of an entrepreneurial role in their own employment as independent contractors. In reality, workers have lost real compensation, in terms of both wages and benefits. These changes in the relationship between workers and owners, and the reduction in unionization in particular, have resulted in the loss of certain important benefits that were fought for—and won—by organized labor forces in some industries and for some employees. Benefits such as old age pensions and health care that many used to access through their jobs have disappeared as labor has been restructured. During the same period state programs to support poor people, people with disabilities, and old people have also been dismantled. As a result, more and more people have been left without the basic safety nets necessary to ensure their very survival.

At the same time, the already weakened welfare state has been steadily attacked, eliminating entitlement to basic safety nets for the poorest people. The real worth of already inadequate benefits has continuously decreased since the 1970s while the laws and policies governing these programs have simultaneously changed to exclude more and more people from eligibility. Lifetime limits, new provisions excluding immigrants, family caps limiting benefits for new children entering a family, and new regimes of work requirements imposed on those in need of benefits were introduced in the 1990s to "end welfare as we know it."<sup>5</sup> These drastic policy changes have left millions of poor people with less access to basic necessities: these changes have destroyed public housing projects, greatly reduced vital health and social services, and produced a significant increase in the number of people living without shelter.

Globally, the upward distribution of wealth has been aided by trends of trade liberalization combined with coercive rules imposed upon poor/indebted countries by rich/grantor countries.

Both of these elements create rules that reduce the ability of countries to protect their workers and natural environments from exploitation and build programs like education and health care systems that increase the well-being and security of their own people. Trade agreements like the North American Free Trade Agreement (NAFTA) and the Free Trade Area of the Americas Agreement (FTAA) are used by corporations to attack rules that protect workers or the environment, arguing that such rules are barriers to “free trade.” At the same time, organizations such as the International Monetary Fund (IMF) and the World Bank place limitations on what indebted countries can do, forcing them to focus on producing cash crops in order to make payments on debts instead of investing money in basic necessities and infrastructure within the country, or growing sustenance crops to feed their people. The structures of trade liberalization and coercive debt allow wealthy countries and corporations to perpetuate resource extraction against poor countries and their populations, leaving their people in peril. These conditions drastically impact the life spans of people in poor countries: deaths from preventable and treatable disease, hunger, and environmental damage are the direct result of economic arrangements that divest exploited nations of control over local human and natural resources.<sup>6</sup> These conditions also produce increased migration as people flee economic, political, and environmental disasters seeking safety and a means of survival. Many of these people risk enormous danger, and even death, when traveling to rich countries. And when—or if—they arrive, they then face racism, sexism, xenophobia, homophobia, transphobia, economic exploitation, and criminalization.<sup>7</sup>

These changes in global economic arrangements, such as the emergence of “free trade agreements” and debt schemes that replaced prior forms of colonialism with new ways of controlling countries, have also had significant impacts within the United States. Domestic job loss has resulted as corporations move their operations to places with more exploitable and unprotected workforces. As more and more working class people feel the effects of

economic restructuring that reduces their earnings and employment security, politicians and the media offer racist and xenophobic scapegoating to exploit this dissatisfaction, preventing the discontent from producing interventions on these economic agendas. As workers in the United States experience the impacts of their declining power, the media and government have shaped messages that channel frustration at these changes into policies of racialized control rather than economic reforms that might benefit those workers.

Sexist, racist, and xenophobic images and ideas have been mobilized in the media and by politicians to transform growing economic loss and dissatisfaction into calls for “law and order.”<sup>8</sup> Increasingly, social problems rooted in poverty and the racial wealth divide have been portrayed as issues of “crime,” and increased policing and imprisonment have been framed as the solution.<sup>9</sup> The last thirty years has seen a massive growth in structures of law enforcement, both in the criminal punishment and immigration contexts, fueled by the rhetorical devices of the War on Drugs and the War on Terror. Numerous law changes have criminalized behaviors that were previously not criminalized and drastically enhanced sentences for existing crimes. Mandatory minimum sentences for drug violations have severely increased the significance of drug convictions, despite an overall reduction of drug use in the United States during this period.<sup>10</sup> “Three strikes” laws, which create a mandatory extended prison sentence for people convicted of three crimes listed as “serious,” have been adopted by almost half the states in the United States, contributing to the drastic growth in imprisonment. Behaviors associated with being poor, such as panhandling, sleeping outdoors, entering public transit without paying the fare, and writing graffiti have also been increasingly criminalized, resulting in many poor and homeless people ending up more entangled in the criminal system.<sup>11</sup> Many cities have taken up “quality of life” policing strategies that target for arrest people in the sex trade, homeless people, youth, people with disabilities, and people of color as part

of efforts to make cities comfortable for white gentrifiers.<sup>12</sup> The result of these trends has been a rapid growth of imprisonment such that the United States now imprisons one in 100 people.<sup>13</sup> With only 5 percent of the world's population, the United States now has 25 percent of the world's prisoners. Over 60 percent of US prisoners are people of color; and one in three Black men now experience imprisonment during their lifetimes.<sup>14</sup> Native populations also experience particularly high rates of imprisonment; at a rate of 709 per 100,000, the imprisonment rate for Native populations is second only to the rate of imprisonment for Black people, estimated at 1,815 per 100,000.<sup>15</sup> Women are the fastest growing segment of the imprisoned population. The rate of imprisonment for women has increased at nearly double the rate of men since 1985 and there are now more than eight times as many women locked up in state and federal prisons and local jails as there were in 1980. "War on Drugs" policy changes account for much of this shift—40 percent of criminal convictions leading to incarceration of women in 2000 were for drug crimes.<sup>16</sup> Two-thirds of women imprisoned in the United States are women of color.<sup>17</sup>

Such trends have prompted many commentators to observe that imprisonment of communities of color is an extension of systems of chattel slavery and genocide of indigenous people.<sup>18</sup> Angela Davis has described the historical trajectory that formed the criminal punishment system as a response to the formal abolition of slavery. As she and others have pointed out, the Thirteenth Amendment's abolition of involuntary servitude includes a very important caveat: "except as punishment for crime, whereof the party shall have been duly convicted." As Davis traces, in the years following the abolition of slavery, southern prisons drastically expanded and went from being almost entirely white to primarily imprisoning Black people. New laws were passed—the Black Codes—that made an enormous range of behaviors (e.g., drunkenness and vagrancy) criminal solely if the accused was Black. These legal schemes permitted the newly freed slaves to

be recaptured into a new system of forced labor, control, and racial violence. The nature of imprisonment changed during this time, taking on the methods of punishment common to slavery, such as whipping, and implementing the convict leasing system that allowed former slave owners to lease the labor of prisoners who were forced to work under conditions many observers have suggested were even more violent than those of slavery.<sup>19</sup> The contemporary criminal punishment system finds its origins in this racially targeted control and exploitation of people of color, and its continuation of those tactics can be seen in its contemporary operations. As Davis asserts,

Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment. . . . The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex.

The specific origins of the criminal punishment system in relation to chattel slavery has not limited the targets of that system to Black people. While Black people continue to be the primary targets, other people of color and poor white people are also profoundly impacted by caging and policing, both through the criminal punishment system and the immigration enforcement system. In the last decade, the War on Terror has prompted a massive growth in immigration enforcement, including imprisonment, significant law changes reducing the rights of people imprisoned in immigration facilities,<sup>20</sup> and an overhaul of the administrative systems that govern identification in ways that

lock immigrants out of basic services and make them more vulnerable to exploitation. In the last decade law changes at both the state and federal level have made it more difficult to get ID and government benefits. Some of these changes have been fueled by well-publicized campaigns such as the 1994 campaign to pass Proposition 187 in California, a proposed law that aimed to ensure that undocumented immigrants could not use public services such as health care, education, and other social services. The 2005 REAL ID Act, passed by Congress, focused on changing how states issue drivers licenses in order to prevent undocumented immigrants from obtaining ID. Many other law and policy changes that garnered less attention similarly reduced access to key services and ID for undocumented people. During the same period, the federal government has increased its enforcement of immigration laws, imprisoning and deporting more people and creating new programs, like the controversial "Secure Communities" program,<sup>21</sup> that increase the use of state and local criminal justice enforcement resources for targeting immigrants.

Law and policy changes that have increased criminalization and immigration enforcement have been implemented through the utilization of some important reframings. In the wake of the political upheaval of the 1960s and 70s, where strong social justice movements' demands for redistribution and transformation gained visibility and were then systemically attacked and dismantled by the FBI's Counter Intelligence Program (COINTELPRO) and other governmentally orchestrated operations, conservatives regrouped using racist, sexist, and xenophobic scapegoating.<sup>22</sup> Movement organizing and social protest became "crime" and increasingly "terrorism," justifying the imprisonment of political activists from effective organizations and the ongoing surveillance and criminalization of dissent. Additionally, the War on Drugs changed how drug use is perceived, flooding the culture with racist images of dangerous, violent drug users and dealers. Understandings of drug addiction as a health issue, to the extent that they existed, were replaced by the framing of drug abuse as a

criminal issue, with punishments for drug possession increasing significantly. The War on Drugs resulted in massive prison expansion to accommodate a growing mass of drug offenders serving increasingly long sentences. New laws like the Americans with Disabilities Act (ADA) of 1990 specifically identified drug users as people to be excluded from protections aimed at eliminating stigma from health impairments.<sup>23</sup> Even though drug abuse declined precipitously in the United States starting in the mid 1970s, confinement of people based on drug convictions in state and federal prisons increased 975 percent between 1982 and 1996.<sup>24</sup> With the advent of the War on Terror in 2001, an enormous range of law and policy changes resulting in locking up immigrants was justified through a new framing of all immigration policy issues as "terrorism prevention." This criminalizing framework extends to the realm of social welfare policies. The notion of people defrauding welfare and Social Security Disability benefits systems was popularized by media "exposés" on the topic, contributing to the racist portrayal of the poor as criminal and supporting policies reducing poverty alleviation programs and enhancing punishment systems. At the same time, law changes dealing with drug use or possession included eliminating eligibility for college financial aid and public housing for people with drug convictions and enhancing the barriers to employment, credit, and social services for communities targeted by increased policing and imprisonment.<sup>25</sup> Fueled by racist, sexist, and xenophobic scapegoating, the last four decades have seen simultaneous slashes to social services and massive growth of state capacities to surveil, police, and imprison, suggesting a disingenuity to the "small government" credos of politicians in power during the past four decades.<sup>26</sup>

This period also saw a major rollback in the law reform gains of the civil rights movement. The dismantling of Jim Crow laws and the implementation of policies aimed at integrating school systems and workplaces to redistribute economic opportunity and leadership had only a brief life before legislatures and

courts eliminated them.<sup>27</sup> The civil rights movement succeeded in changing US law to eliminate explicit racial segregation and exclusion laws, but courts responded by creating a new doctrine of “colorblindness” that took the teeth out of these law changes and preserved the racial status quo. One way that this was accomplished was by making affirmative action programs and school desegregation programs illegal because of their race consciousness.<sup>28</sup> Another key tactic was creating a doctrine of anti-discrimination law that makes it almost impossible to prove discrimination.<sup>29</sup> These two elements allow the United States to continue to espouse racial equality as the law of the land while blaming wealth inequalities on populations whose “failure” to thrive under these purportedly equal conditions must be their own fault. This also serves to ensure that the law is an ineffective tool for addressing ongoing racism that results in racially disparate access to wealth, education, housing, health care, and social services. These methods also mirror the general trend in neoliberal politics of denying that unequal conditions exist, portraying any unequal conditions that do exist as natural or neutral, and suggesting that key access/resource issues are a matter of individual “freedom” and “choice.” The deep inequality of education between public school systems that falls along race and class lines, courts tell us, is a matter of the choices of parents to move to particular areas and cannot be addressed by courts.<sup>30</sup> Workers are now “free” to move between workplaces, working temporarily and flexibly, without those cumbersome relationships to long-term employers accompanied by things like meaningful rights to organize, pensions, health insurance, and job security. Through these lenses, systemic inequality has become increasingly unspeakable and the long-term myth of meritocracy in the United States, coupled with the renewed rhetoric of “personal responsibility,” suggests that those benefiting from the upward distribution are doing so because of their moral fitness, and, respectively, that those on the losing end are blameworthy, lazy, and, of course, dangerous.

The changes in conditions and the ideas undergirding the neoliberal project have also significantly impacted what social movement politics look like in the United States.<sup>31</sup> The conservative turn has been reflected in social movement politics, where the radical projects of the 1960s and 1970s that were targeted for dismantling by the FBI were replaced by a growing nonprofit sector.<sup>32</sup> Emerging nonprofit organizations both filled the gaps left as the government abandoned key social and legal services designed to assist poor populations, and created a new elite sector of law and policy reform funded by wealthy philanthropists. This new sector differs significantly from the more grassroots and mass-based social movements of earlier eras. Its reform projects reflect the neoliberal shift toward the politics of inclusion and incorporation rather than redistribution and deep transformation. The newly expanded nonprofit sector is most concerned with services and policy change. Traditional strategies of mass-based organizing have been underfunded and systematically dismantled, as funders prefer to channel resources toward project-oriented programs with short timelines for quantifiable outcomes. In this context, social justice has become a career track populated by individuals with specialized professional training who rely on business management models to run nonprofits “efficiently.” The leadership and decision-making come from these disproportionately white, upper-class paid leaders and donors, which has significantly shifted priorities toward work that stabilizes structural inequality by legitimizing and advancing dominant systems of meaning and control rather than making demands for deeper transformation.

The legal reform work that currently operates under the rubric of lesbian and gay rights (or sometimes LGBT rights) is an example of this shift from a more transformative social movement agenda to an inclusion- and incorporation-focused professionalized nonprofit legal reform project. Countless scholars and activists have critiqued the direction that lesbian and gay rights activism has taken since the incendiary moments of the late 1960s when criminalized gender and sexual outsiders fought

back against police harassment and brutality at New York City's Stonewall Inn and San Francisco's Compton's Cafeteria.<sup>33</sup> The activism that arose during that period started as street resistance and unfunded ad hoc organizations, initially taking the form of protests and marches, utilizing strategies that were mirrored across a range of movements, resisting police brutality and militarism, and opposing patriarchal and racist norms and violences. This emerging sexuality/gender-focused resistance was institutionalized in the 1980s into nonprofit structures led by white lawyers and other people with class and education privilege. Critics of these developments have used a variety of terms and concepts to describe the shift, including charges that the focus became assimilation;<sup>34</sup> that the work increasingly marginalized low-income people,<sup>35</sup> people of color,<sup>36</sup> and transgender people;<sup>37</sup> and that the resistance became co-opted by neoliberalism<sup>38</sup> and conservative egalitarianism. Critics have argued that as the gay movement of the 1970s institutionalized into the lesbian and gay rights movement in the 1980s—forming such institutions as Gay and Lesbian Advocates and Defenders (GLAD), the Gay and Lesbian Alliance Against Defamation (GLAAD), the Human Rights Campaign (HRC), Lambda Legal Defense and Education Fund, and the National Gay and Lesbian Task Force (NGLTF)—the focus of the most well-funded, well-publicized work on behalf of queers shifted drastically.<sup>39</sup>

From its roots in bottle-throwing resistance to police brutality and the claiming of queer sexual public space, the focus of lesbian and gay rights work moved toward the more conservative model of equality promoted in US law and culture through the myth of equal opportunity. The thrust of the work of these organizations became the quest for inclusion in and recognition by dominant US institutions rather than questioning and challenging the fundamental inequalities promoted by those institutions. The key agenda items became anti-discrimination laws focused on employment (e.g., the federal Employment Non-Discrimination Act [ENDA], as well as equivalent state statutes),

military inclusion, decriminalization of sodomy, hate crime laws, and a range of reforms focused on relationship recognition that increasingly narrowed to focus on the legal recognition of same-sex marriages.

Participatory forms of organizing, such as nonprofessional membership-based grassroots organizations, were replaced by hierarchical, staff-run organizations operated by people with graduate degrees. Broad concerns with policing and punishment, militarism, and wealth distribution taken up by some earlier manifestations of lesbian and gay activism were replaced with a focus on formal legal equality that could produce gains only for people already served by existing social and economic arrangements.<sup>40</sup> For example, choosing to frame equal access to health care through a demand for same-sex marriage rights means fighting for health care access that would only affect people with jobs that include health benefits they can share with a partner, which is an increasingly uncommon privilege.<sup>41</sup> Similarly, addressing the economic marginalization of queer people solely through the lens of anti-discrimination laws that bar discrimination in employment on the basis of sexual orientation—despite the facts that these laws have been ineffective at eradicating discrimination on the basis of race, sex, disability, and national origin, and that most people do not have access to the legal resources needed to enforce these kinds of rights—has been criticized as marking an investment in formal legal equality while ignoring the plight of the most economically marginalized queers. Framing issues related to child custody through a lens of marital recognition, similarly, means ignoring the racist, sexist, and classist operation of the child welfare system and passing up opportunities to form coalitions across populations targeted for family dissolution by that system. Black people, indigenous people, people with disabilities, queer and trans people, prisoners, and poor people face enormous targeting in child welfare systems. Seeking “family recognition” rights through marriage, therefore, means seeking such rights only for queer and trans people who can actually expect to

be protected by that institution. Since the availability of marriage does not protect straight people of color, poor people, prisoners, or people with disabilities from having their families torn apart by child welfare systems, it is unlikely to do so for queer poor people, queer people of color, queer prisoners, and queer people with disabilities. The quest for marriage seems to have far fewer benefits, then, for queers whose families are targets of state violence and who have no spousal access to health care or immigration status, and seems to primarily benefit those whose race, class, immigration, and ability privilege would allow them to increase their well-being by incorporation into the government's privileged relationship status. The framing of marriage as the most essential legal need of queer people, and as the method through which queer people can obtain key benefits in many realms, ignores how race, class, ability, indigeneity, and immigration status determine access to those benefits and reduces the gay rights agenda to a project of restoring race, class, ability and immigration status privilege to the most privileged gays and lesbians.

The following chart provides some examples of the framings and demands developed by the most visible and well-resourced lesbian and gay organizations for addressing key problems facing queer and trans communities and compares them to alternative framings offered by queer and trans activists and organizations who center racial and economic justice.<sup>42</sup> Each of these examples makes visible the centering of formal legal equality demands, and the limited potential of those demands to transform the conditions facing highly vulnerable queer and trans people. This chart does not aim to be exhaustive, only to illustrate some of the concerns raised and alternative approaches proposed to the "official" gay and lesbian law reform agenda.

These questions of issue framing and prioritization came to the forefront during the welfare reform debates and subsequent policy changes of the mid-1990s; social justice activists criticized lesbian and gay rights organizations for not resisting the elimination of social welfare programs despite the fact that these policy changes

<i>The Big Problems</i>	<i>The Official Lesbian &amp; Gay Solutions</i>	<i>Critical Queer and Trans Political Approaches</i>
Queer and trans people, poor people, people of color, and immigrants have minimal access to quality health care	Legalize same-sex marriage to allow people with health benefits from their jobs to share with same-sex partners	Medicaid/Medicare activism; fight for universal health care; fight for transgender health care; protest deadly medical neglect of people in state custody
Violence against queer and trans people	Pass hate crime legislation to increase prison sentences and strengthen local and federal law enforcement; collect statistics on rates of violence; collaborate with local and federal law enforcement to prosecute hate violence and domestic violence	Develop community-based responses to violence that support collective healing and accountability; join with movements addressing root causes of queer and trans premature death: police violence, imprisonment, poverty, lack of health care and housing
Queer and trans people experience violence and discrimination in the military	Eliminate bans on participation of gays and lesbians in US military	Join with movements to oppose racist, sexist, imperialist military actions abroad and at home; demand reduction/elimination of defense budget
Unfair and punitive immigration system	Legalize same-sex marriage to allow same-sex international couples to apply for legal residency for the immigrating spouse	Oppose the use of immigration policy to criminalize people of color, exploit workers, and maintain deadly wealth gap between the US and the Global South; support current prisoners; engage in local and national campaigns against "Secure Communities" and other federal programs that increase racial profiling and deportation

<i>The Big Problems</i>	<i>The Official Lesbian &amp; Gay Solutions</i>	<i>Critical Queer and Trans Political Approaches</i>
Queer and trans families are vulnerable to legal intervention and separation from the state and/or nonqueer and nontrans people	Legalize same-sex marriage to provide a route to "legalize" families with two parents of the same sex; pass laws banning adoption discrimination on the basis of sexual orientation	Join with other people targeted by family law and the child welfare system (poor families, imprisoned parents, native families, families of color, people with disabilities) to fight for community and family self-determination and the rights of people to keep their kids in their families and communities
Institutions fail to recognize family connections outside of heterosexual marriage in contexts like hospital visitation and inheritance	Legalize same-sex marriage to formally recognize same-sex partners in the eyes of the law	Change policies like hospital visitation to recognize a variety of family structures, not just opposite-sex and same-sex couples; abolish inheritance and demand radical redistribution of wealth and an end to poverty

had devastating effects for low-income queers.<sup>43</sup> Similar critiques have been made of the efforts to pass hate crime laws, arguing that the aim of enhancing penalties for assaults perpetrated because of anti-gay animus directs resources to criminal punishment agencies, a move that is deeply misguided and dangerous.<sup>44</sup> Queer activists focused on opposing police brutality and mass incarceration of low-income people and people of color in the United States have argued that hate crime laws do nothing to prevent violence against queer and trans people, much of which happens at the hands of employees of the criminal punishment system, a system to which hate crime laws lend more resources.<sup>45</sup> The shift in focus from police accountability to partnering with the criminal punishment system and aiming for increased penalties represents a significant

betrayal of the concerns of low-income queer and trans people and queer and trans people of color, who are frequent targets of police and prisons. This move centers the perspective and experience of white, economically privileged queers who may feel protected by the police and criminal punishment systems. Those who feel protected and are not directly impacted by the violence of imprisonment and policing are less likely to see the urgent need for a fundamental shift away from relying on that system.

Overall, the lesbian and gay rights agenda has shifted toward preserving and promoting the class and race privilege of a small number of elite gay and lesbian professionals while marginalizing or overtly excluding the needs and experiences of people of color, immigrants, people with disabilities, indigenous people, trans people, and poor people. The institutionalization of lesbian and gay rights that started in the 1980s and produced a model of leadership based on educational privilege and a model of change centering elite strategies and law reform facilitated the abandonment of social justice struggles that concern the most vulnerable queer and trans people in favor of the advancement of narrow campaigns to include the most privileged queers in dominant institutions. As the leading lesbian and gay rights organizations emerged, they were (and remain) primarily funded and staffed by white gay people with professional degrees and/or wealth. These organizations operate through hierarchical models of governance, concentrating decision-making power in board members and senior staff who are even more likely to be white, wealthy, and have graduate-level educations.

The gay rights agenda, then, has come to reflect the needs and experiences of those leaders more than the experiences of queer and trans people not present in these elite spaces. The mostly white, educationally privileged paid leaders can imagine themselves fired from a job for being gay or lesbian, harassed on the street (often by an imagined assailant of color),<sup>46</sup> excluded from Boy Scouts, or kept out of military service. They do not imagine themselves as potentially imprisoned, on welfare, homeless, in the

juvenile punishment and foster care systems, in danger of deportation, or the target of continuous police harassment. Because such figures shaped and continue to shape the “gay agenda,” those issues do not receive the resources they warrant and require. Furthermore, these paid nonprofit leaders come out of graduate schools more than from transformative, grassroots social movements of people facing centuries of state violence. Because of this, they do not possess the critiques of notions such as formal legal equality, assimilation, professionalism and equal rights that are developed through grassroots mobilization work. Even relatively popular feminist critiques of the institution of marriage could not trump the new call for “marriage equality”—meaning access for same-sex couples to the fundamentally unequal institution designed to privilege certain family formations for the purpose of state control.<sup>47</sup>

Where the money for this lesbian and gay rights nonprofit formation comes from, and how it is distributed, is also an area of significant concern. The largest white-founded and white-led organizations doing lesbian and gay rights work have generated much revenue through both foundation grants<sup>48</sup> and sponsorship by corporations such as American Airlines, Budweiser, IBM, and Coors. These partnerships, which include advertising for the corporations, have been criticized by queers concerned about the narrow framework of organizations willing to promote corporations whose labor and environmental practices have been widely critiqued. These partnerships have furthered the ongoing criticism that lesbian and gay rights work has become a “single-issue politics” that ignores vital social justice issues, promoting a political agenda that concerns gays and lesbians experiencing marginalization through a single vector of identity only—sexual orientation. Such a politics excludes queer and trans people who experience homophobia simultaneously with transphobia, poverty, ableism, xenophobia, racism, sexism, criminalization, economic exploitation, and/or other forms of subjection.

Lesbian and gay organizations have also generally followed a model of governance and efficacy based on private sector norms rather than social justice values. The most well-funded organizations have pay scales similar to the private sector, with executive directors often making three to four times the salaries of the lowest paid employees. Pay often correlates to educational privilege, which again means that the greatest share of resources goes to white employees from privileged backgrounds while the least goes to employees of color and people without educational privilege. Furthermore, these organizations for the most part do not provide health benefits that include gender-confirming health care for trans people, despite the fact that this social justice issue is an essential one for trans politics. These organizations also have a record of not prioritizing the development of racial justice within their work. Many have consistently refused direct requests for meaningful anti-oppression training and development work within the organizations. Their refusal to devote resources to the development of internal anti-racist practices reflects the broader marginalization of issues important to people of color in these agendas.

Overall, the most well-funded lesbian and gay rights organizations provide stark examples of the critiques made by activists from across a wide range of social justice movements regarding the shift from the transformative demands of the 1960s and 70s to the narrow focus of the grant-funded “social justice entrepreneurs” of today. Lack of community accountability, elitism, concentration of wealth and resources in the hands of white elites, and exploitative labor practices have become norms within these organizations, creating and maintaining disappointing and dangerous political agendas that fail to support meaningful, widespread resistance to violent institutions in the United States—and sometimes even bolstering them. Through the rise of the nonprofit form, certain logics that support criminalization, militarism, and wealth disparity have penetrated and transformed spaces that were once locations of fomenting resistance to state violence.<sup>49</sup> Increasingly, neoliberalism means that social issues

taken up by nonprofits are separated from a broader commitment to social justice; nonprofits take part in producing and maintaining a racialized-gendered maldistribution of life chances while pursuing their “good work.”

As trans activism emerges and institutionalizes, there is often an assumption that following the strategies of lesbian and gay rights organizations, with their strong focus on law reforms including hate crime and anti-discrimination laws, is our surest path to success. Yet, the picture of economic marginalization, vulnerability to imprisonment, and other forms of state violence that trans communities are describing suggests that the “successes” of the lesbian and gay rights organizations do not have enough to offer in terms of redistribution of life chances—and that their strategies will in fact further endanger the most marginalized trans populations. If formal legal equality at best opens doors to dominant institutions for those who are already closest to inclusion (i.e., they would be included if it wasn't for this one characteristic), very few stand to benefit. Given the context of neoliberal politics, in which fewer and fewer people have the kind of racial and economic access necessary to obtain what has been cast as “equal opportunity” in the United States, and where populations deemed disposable are abandoned to poverty and imprisoned only to be released to poverty and recaptured again, we face serious questions about how to formulate meaningful transformative demands and tactics. Specifically, because changing laws is too often the assumed method of changing the lives of marginalized people, we have to take into account the ways in which law reform has been both ineffective and co-optive in the context of neoliberalism and the nonprofitization of resistance. We have to carefully consider the limitations of strategies that aim for inclusion into existing economic and political arrangements rather than challenging the terms of those arrangements. We must endeavor to create and practice a critical trans politics that contributes to building a political context for massive redistribution. A critical trans politics imagines and demands

an end to prisons, homelessness, landlords, bosses, immigration enforcement, poverty, and wealth. It imagines a world in which people have what they need and govern themselves in ways that value collectivity, interdependence, and difference. Winning those demands and building the world in which they can be realized requires an unyielding commitment to center racial, economic, ability, and gender justice. It also requires thoughtful, reflective strategizing about how to build leadership and mobilization in ways that reflect those commitments. Our demands for redistribution, access, and participation must be reflected in our resistance work every day—they can't be something we come back for later.

#### NOTES

1. “The decline in real wages over the past two generations also has made unpaid leave impractical for a large majority of American families. Average hourly earnings were \$8.03 in 1970 but fell to \$7.39 by 1993, while average weekly earnings fell from \$298 to \$255 over the same time period. The median income for American families was \$300 less in 1986 than in 1975. The purchasing power of the dollar (measured by consumer prices) was \$4.15 in 1950 but only \$0.69 in 1993. By 1985, it took two incomes to maintain the same standard of living that was possible with one income in the 1950s.” Arielle Horman Grill, “The Myth of Unpaid Family Leave: Can the United States Implement a Paid Leave Policy Based on the Swedish Model?” *Comparative Labor Law Journal* 17 (1996): 373, 383–390; citing Patricia Schroeder, “Parental Leave: The Need for a Federal Policy,” in *The Parental Leave Crisis: Toward a National Policy*, eds. Edward F. Zigler and Meryl Frank (New Haven, CT: Yale University Press, 1988), 326, 331; and Bureau of the Census, US Department of Commerce, *Statistical Abstract of the United States*, 114th ed. (Washington, DC: US Department of Commerce, Bureau of the Census, 1994), 396. See also Pew's Economic Mobility Project, “Economic Mobility: Is the American Dream Alive and Well?,” 2009. [www.economicmobility.org/assets/pdfs/EMP\\_American\\_Dream\\_Key\\_Findings.pdf](http://www.economicmobility.org/assets/pdfs/EMP_American_Dream_Key_Findings.pdf); and US Bureau of the Census, *Measuring*

*50 Years of Economic Change Using the March Current Population Survey* (Washington, DC: US Government Printing Office, 1998). [www.census.gov/prod/3/98pubs/p60-203.pdf](http://www.census.gov/prod/3/98pubs/p60-203.pdf).

2. Lisa Duggan, *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston: Beacon Press, 2004).

3. In 2009, inequality was at the highest level since the US Census began tracking household income in 1967. The top 1 percentile of households took home 23.5 percent of income in 2007, the largest share since 1928. Emily Kaiser, "How American Income Inequality Hit Levels Not Seen Since the Depression." *Huffington Post*, October 22, 2010. [http://www.huffingtonpost.com/2010/10/22/income-inequality-america\\_n\\_772687.html](http://www.huffingtonpost.com/2010/10/22/income-inequality-america_n_772687.html).

4. Some important cases and laws that limit the bargaining power of workers include *Labor Board v. MacKay Radio & Telegraph Co.*, 304 US 333, 345 (1938) (finding that "it [was not] an unfair labor practice [under the National Labor Relations Act (NLRA)] to replace the striking employees with others in an effort to carry on the business"); *Emporium Capwell Co. v. Western Addition*, 420 US 50 (1975) (finding that the NLRA does not protect Black workers picketing their employer over issues of employment discrimination, because they are only allowed to bargain through their union); *American Ship Building Co. v. Labor Board*, 380 US 300 (1965) (holding that an employer did not commit an unfair labor practice under either § 8(a)(1) or § 8(a)(3) of the NLRA when it shut down its operations and hired replacement workers after an impasse had been reached in labor negotiations in order to exert economic pressure on the union); *N.L.R.B. v. Local Union No. 1229, IBEW*, 346 US 464, 477-78 (1953) (holding the discharge of workers for distributing handbills critical of the company during a labor dispute was lawful under the NLRA); and See § 8(b)(4)(ii)(B) of the National Labor Relations Act, 61 Stat. 141, as amended, 29 U.S.C. § 158(b)(4). Labor historians also commonly point to the 1981 Air Traffic Controllers strike as a key turning point in US labor history marking the attack on workers' bargaining power. On August 5, 1981, following the workers' refusal to return to work, President Ronald Reagan fired the 11,345 striking air traffic controllers and banned them from federal service for life. Their union, the

Professional Air Traffic Controllers Organization, was decertified from its right to represent workers by the Federal Labor Relations Authority.

5. This phrase was one of President Bill Clinton's 1992 campaign promises. The law changes he supported have indeed proven to have severely weakened public benefits systems, throwing many people off benefits and into more severe poverty. "Research show[s] that one in five former recipients ultimately became totally disconnected from any means of support: They no longer had welfare, but they didn't have jobs. They hadn't married or moved in with a partner or family, and they weren't getting disability benefits. And so, after a decline in the late 1990s, the number of people living in extreme poverty (with an income less than half the poverty line, or below about \$8,500 for a family of three) shot up by more than a third, from 12.6 million in 2000 to 17.1 million in 2008." Peter Edelman and Barbara Ehrenreich, "Why Welfare Reform Fails Its Recession Test," *The Washington Post* (Washington, D.C.), December 8, 2009. <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/04/AR2009120402604.html>; "According to the think tank Center on Budget and Policy Priorities, federal aid to poor families supported 84 percent of eligible households in 1995, but 10 years later, Temporary Aid for Needy Families [TANF] reached just 40 percent. Serving a shrinking percentage of needy people means the program has 'become less effective over time' at countering extreme poverty, or those living below half the poverty level." Michelle Chen, "It's Time to Restore the Social Safety Net," *Centre Daily Times* (State College, PA), June 23, 2010; "By 2008, the number of children receiving TANF had fallen to only 22 percent of the number of poor children, down from 62 percent under Aid to Families with Dependent Children [AFDC] in 1995. Eligibility criteria in some states is set at subpoverty levels, making many poor children ineligible, and barriers to access have blocked many poor children who are eligible from actually getting assistance. The percentage of eligible families receiving benefits has declined precipitously under TANF, falling from 84 percent in AFDC's last full year in 1995 to 40 percent in 2005, the most recent year for which the federal government has provided estimates of the number of families eligible for but not receiving TANF. TANF benefit levels are grossly inadequate for the

families the program does reach, and have been eroded by inflation or only minimally increased in most states since 1996. In July 2008, TANF benefit amounts were far below the official poverty guideline in every state." Deepak Bhargava et al, *Battered by the Storm: How the Safety Net Is Failing Americans and How to Fix It* (Washington, DC: Institute for Policy Studies, the Center for Community Change, Jobs with Justice, and Legal Momentum, 2009), [www.ips-dc.org/reports/battered-by-the-storm](http://www.ips-dc.org/reports/battered-by-the-storm); "Nearly 16 million Americans are living in severe poverty, the McClatchy Washington Bureau reported recently. These are individuals making less than \$5,080 a year and families of four bringing in less than \$9,903 a year, hardly imaginable in this day and age. That number has been growing rapidly since 2000. And, as a percentage, those living in severe poverty has reached a 32-year high. Even more troubling, the report noted that in any given month only 10 percent of the severe poor received Temporary Assistance for Needy Families and only 36 percent received food stamps." "Tracking Poverty: Continue Survey of Program Effectiveness," *The Sacramento Bee*, March 12, 2007.

6. Ha-Joon Chang, *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (London: Bloomsbury Press, 2007); Nirmala Erelles, "Disability in the New World Order," in *Color of Violence: The INCITE! Anthology*, ed. INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006), 25–31; Silvia Federici, "War, Globalization, and Reproduction," in *There Is an Alternative: Subsistence and Worldwide Resistance to Corporate Globalization*, ed. Veronika Bennholdt-Thomsen, Nicholas Faraclas, and Claudia von Werthof (London: Zed Books, 2001), 133–145; Vijay Prashad, "Debt," in *Keeping Up with the Dow Joneses: Debt, Prison, Workfare* (Cambridge, MA: South End Press, 2003), 1–68; Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Picador, 2007).

7. David Bacon, *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants* (Boston: Beacon Press, 2008), 51–82; Jennifer M. Chacón, "Unsecured Borders: Immigration Restrictions, Crime Control, and National Security," *Connecticut Law Review* 39, no. 5 (July 2007): 1827; In the year that NAFTA was implemented, 1994, there was an average of 6,000 people in US immigration prison each day.

By 2001, the number had grown to 20,000 per day. In 2008, there was an average of 33,000 people in immigration prison on a daily basis. Anil Kalhan, "Rethinking Immigration Detention," *Columbia Law Review* 110 (2010): 42, 44.

8. Duggan, *The Twilight of Equality?*

9. Loïc Waquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham, NC: Duke University Press, 2009).

10. Ruth Wilson Gilmore, "Globalisation and US Prison Growth: From Military Keynesianism to Post Keynesian Militarism," *Race & Class* 40, no. 2–3 (March 1999): 171–188, 173; Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003).

11. Alex Vitale, *City of Disorder: How the Quality of Life Campaign Transformed New York Politics* (New York: NYU Press, 2008).

12. Vitale, *City of Disorder*.

13. The PEW Center on the States, *One in 100: Behind Bars in America 2008* (2008), [www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf).

14. Thomas P. Bonczar, Prevalence of Imprisonment in the US Population, 1974–2001, NCJ197976 (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2003); William J. Sabol and Heather Couture, Prisoners at Midyear 2007, NCJ221944 (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2008).

15. Greg Guma, "Native Incarceration Rates are Increasing" (*Toward Freedom*, May 27, 2005), [www.towardfreedom.com/home/americas/140-native-incarceration-rates-are-increasing-0302](http://www.towardfreedom.com/home/americas/140-native-incarceration-rates-are-increasing-0302).

16. American Civil Liberties Union, "Facts about the Over-Incarceration of Women in the United States" (2007), [www.aclu.org/womens-rights/facts-about-over-incarceration-women-united-states](http://www.aclu.org/womens-rights/facts-about-over-incarceration-women-united-states).

17. Correctional Association of New York, Women in Prison Project, "Women in Prison Fact Sheet" (March 2002), [www.prisonpolicy.org/scans/Fact\\_Sheets\\_2002.pdf](http://www.prisonpolicy.org/scans/Fact_Sheets_2002.pdf).

18. Davis, *Are Prisons Obsolete?*; Andrea Smith, "Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing," in *Color of Violence: The INCITE! Anthology*, ed. INCITE!

Women of Color Against Violence (Cambridge, MA: South End Press, 2006), 66–73.

19. Davis, *Are Prisons Obsolete?*, 29.

20. I intentionally use the term “imprisonment” rather than “detention” and “incarceration” when possible for two reasons. First, I fear that those two terms euphemize the practice of caging people and contribute to how that practice becomes ordinary or a matter of course in American culture. Second, I believe we should analyze the rise in both criminal punishment and immigration enforcement uses of imprisonment as connected concerns and avoid terms that make immigration imprisonment seem more temporary or less violent than it is. While “immigration detention” is often portrayed by immigration enforcement officials as short-term and somehow less concerning because it is officially a part of civil rather than criminal law enforcement, in reality it is marked by the same features as criminal punishment imprisonment: racially disproportionate; characterized by sexual assault and medical neglect; arbitrary and often indefinite in its duration; and distributed at the population level hidden behind a rationalization of individual culpability and individual rights.

21. Secure Communities is a program where participating jurisdictions submit the fingerprints of everyone they arrest to federal databases for an immigration check. As of October 2010, 686 jurisdictions in 33 states were participating. Immigration Policy Center, *Secure Communities: A Fact Sheet* (Washington, DC: Immigration Policy Center, November 4, 2010), [www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet](http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet). Activists around the country are waging campaigns to stop the jurisdictions they live in from joining the program. See Center for Constitutional Rights, *Tell Governor Cuomo: Stop Secure Communities in New York* (New York: Center for Constitutional Rights), <http://www.ccrjustice.org/nyscomm>; American Friends Service Committee, *Stop “Secure Communities” in Massachusetts*, (Philadelphia: American Friends Service Committee, February, 2011), [afsc.org/event/stop-secure-communities-massachusetts](http://afsc.org/event/stop-secure-communities-massachusetts); Lornett Turnbull, “State Won’t Agree to National Immigration Program.” *Seattle Times* (Nov. 28, 2010), [seattletimes.nwsource.com/html/localnews/2013545041\\_secure29m.html?prmid=obinsite](http://seattletimes.nwsource.com/html/localnews/2013545041_secure29m.html?prmid=obinsite).

22. Gilmore, “Globalisation and US Prison Growth.”

23. This was a change from the ADA’s predecessor, the Rehabilitation Act, which did not exclude current drug users from the group of people who might claim disability discrimination.

24. Gilmore, “Globalisation and US Prison Growth.”

25. Erevellas, “Disability in the New World Order.”

26. Wendy Brown, *States of Injury* (Princeton, NJ: Princeton University Press, 1999); Waquant, *Punishing the Poor*.

27. Alan David Freeman, “Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine,” in *Critical Race Studies: The Key Writings That Formed the Movement*, ed. Kimberlé Crenshaw, Neil Gotanda, Garry Peller, and Kendall Thomas (New York: The New Press, 1996), 29–45.

28. See *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 US 701 (2007), where the US Supreme Court refused to allow a school district to assign students to public schools for the sole purpose of achieving racial integration, declining to recognize racial balancing as a compelling state interest; *Milliken v. Bradley*, 418 US 717 (1974), where the US Supreme Court held that busing students across district lines for the purpose of racial integration was only permissible with the existence of evidence showing that the school districts had deliberately promoted segregation; and *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), where the Fifth Circuit Court of Appeals held that the University of Texas School of Law could not use race as a factor when evaluating applicants.

29. See *Washington v. Davis*, 426 US 229 (1976), where the US Supreme Court ruled against two African American men who alleged that the Washington, DC, police department used racially discriminatory hiring procedures by requiring applicants to take a verbal skills test. The court held that under the Fifth Amendment Equal Protection Clause, “[an] official action will not be held unconstitutional solely because it results in a racially disproportionate impact.”

30. *Parents Involved in Community Schools*, 551 US 701; *Milliken*, 418 US 717; Angela P. Harris, “From Stonewall to the Suburbs? Toward a Political Economy of Sexuality,” *William and Mary Bill of Rights Journal*

14 (2006): 1539–1582.

31. Portions of the rest of the text in this chapter are adapted from Dean Spade and Rickke Mananzala, “The Non-Profit Industrial Complex and Trans Resistance,” *Sexuality Research and Social Policy: Journal of NSRC* 5, no. 1 (March 2008): 53–71.

32. Dylan Rodríguez, “The Political Logic of the Non-Profit Industrial Complex,” in *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, ed. INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007).

33. The Stonewall Rebellion is often understood to be a key incendiary moment for contemporary resistance to sexual and gender norms. The Compton’s Cafeteria Riot was far less discussed until Susan Stryker’s 2005 documentary, *Screaming Queens: The Riot at Compton’s Cafeteria* introduced scholars and activists to the important events that unfolded in 1966 when gender and sexual rule-breakers responded to the constant onslaught of police harassment and violence in San Francisco’s Tenderloin neighborhood.

34. Ian Barnard, “Fuck Community, or Why I Support Gay-Bashing,” in *States of Rage: Emotional Eruption, Violence, and Social Change*, eds. Renée R. Curry and Terry L. Allison (New York: New York University Press, 1996), 74–88; Cathy J. Cohen, “Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics,” *GLQ: A Journal of Lesbian and Gay Studies* 3, no. 4 (1997): 437–465; Mattilda Bernstein Sycamore, ed., *That’s Revolting! Queer Strategies for Resisting Assimilation* (Brooklyn, NY: Soft Skull Press, 2004); Ruthann Robson, “Assimilation, Marriage, and Lesbian Liberation” *Temple Law Review* 75 (2002): 709.

35. 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.

36. Kenyon Farrow, “Is Gay Marriage Anti-Black?” (2004), <http://kenyonfarrow.com/2005/06/14/is-gay-marriage-anti-black/>; Sycamore, *That’s Revolting!*; Darren Lenard Hutchinson, “‘Gay Rights’ for ‘Gay Whites’? Race, Sexual Identity, and Equal Protection Discourse,” *Cornell Law Review* 85 (2000): 1358.

37. Shannon P. Minter, “Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion,” *Transgender Rights*, ed. Paisley Currah, Richard M. Juang, and Shannon P. Minter (Minneapolis: University of Minnesota Press, 2006), 141–170; Sylvia Rivera, “Queens in Exile, the Forgotten Ones,” in *Genderqueer: Voices from Beyond the Sexual Binary*, ed. Joan Nestle, Riki Wilchins, and Clare Howell (Los Angeles: Alyson Books, 2002), 67–85; Dean Spade, “Fighting to Win,” in *That’s Revolting! Queer Strategies for Resisting Assimilation*, ed. Mattilda Bernstein Sycamore (Brooklyn, NY: Soft Skull Press, 2004), 31–38.

38. Harris, *From Stonewall to the Suburbs?*; Duggan, *The Twilight of Equality?*

39. Harris, *From Stonewall to the Suburbs?*; Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Random House, 1996).

40. Dean Spade and Craig Willse, “Freedom in a Regulatory State?: Lawrence, Marriage and Biopolitics,” *Widener Law Review* 11 (2005): 309.

41. Paula Ettlebrick, “Since When Is Marriage a Path to Liberation?” *Out/Look: National Lesbian & Gay Quarterly* 6 (Fall 1989): 14–16; Spade and Willse, “Freedom in a Regulatory State?”

42. This chart is excerpted from Morgan Bassichis, Alex Lee, and Dean Spade, “Building an Abolitionist Trans Movement with Everything We’ve Got,” in *Captive Genders: Transembodiment and the Prison Industrial Complex*, ed. Nat Smith and Eric A. Stanley (Oakland, CA: AK Press, 2011).

43. Blum, Perina, and DeFilippis, “Why Welfare Is a Queer Issue.”

44. Laura Magnani, Harmon L. Wray, and the American Friends Service Committee Criminal Justice Task Force, *Beyond Prisons: A New Interfaith Paradigm for Our Failed Prison System* (Minneapolis: Fortress Press, 2006); Dean Spade, “Methodologies of Trans Resistance,” in *Blackwell Companion to LGBT/Q Studies*, eds. George Haggerty and Molly McGarry (London: Blackwell Publishing, 2007), 237–261; Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice* (Boston: Beacon Press, 2011); Katherine Whitlock, *In a Time of Broken Bones: A Call to Dialogue on Hate Violence and the Limitations of Hate Crime Laws*

(Philadelphia: American Friends Service Committee, 2001).

45. Dean Spade and Craig Willse, "Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique," *Chicano-Latino Law Review* 21 (2000): 38.

46. Christina Hanhardt describes how early gay vigilante groups aimed at preventing homophobic bashing often took up such work with racist perceptions of bashers in mind, partnering with police to target men of color, often in gentrifying neighborhoods where white gays and lesbians were displacing people of color. Christina Hanhardt "Butterflies, Whistles, and Fists: Gay Safe Streets Patrols and the 'New Gay Ghetto' 1976-1981," *Radical History Review* 100 (Winter 2008): 61-85.

47. Ruth Colker, "Marriage Mimicry: The Law of Domestic Violence," *William and Mary Law Review* 47 (2006): 1841; Katherine M. Franke, "The Politics of Same-sex Marriage Politics," *Columbia Journal of Gender and Law* 15 (2006): 236.

48. According to a 2000 study, 66 percent of foundation board members are men and 90 percent are white. Christine Ahn, "Democratizing American Philanthropy," in *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, ed. INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007), 63-76.

49. Rodríguez, "The Political Logic of the Non-Profit Industrial Complex."

## Chapter 2

### What's Wrong with Rights?

*Rights discourse in liberal capitalist culture casts as private potentially political contests about distribution of resources and about relevant parties to decision making. It converts social problems into matters of individualized, dehistoricized injury and entitlement, into matters in which there is no harm if there is no agent and no tangibly violated subject.*

—Wendy Brown, *States of Injury*

AS THE CONCEPT OF TRANS RIGHTS HAS GAINED MORE CURRENCY in the last two decades, a seeming consensus has emerged about which law reforms should be sought to better the lives of trans people.<sup>1</sup> Advocates of trans equality have primarily pursued two law reform interventions: anti-discrimination laws that list gender identity and/or expression as a category of nondiscrimination, and hate crime laws that include crimes motivated by the gender identity and/or expression of the victim as triggering the application of a jurisdiction's hate crime statute. Organizations like the National Gay and Lesbian Task Force (NGLTF) have supported state and local organizations around the country in legislative campaigns to pass such laws. Thirteen states (California, Colorado, Hawaii; Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington) and the District of Columbia currently have laws that include gender