



The State of Transgender Rights in the United States of America

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This paper was created as part of a collection of papers from centers in four global regions: Africa, Asia, South America, and the United States, which were all presented at a meeting in New York City on 17 April 2008. At that meeting, discussants approached the topic of global dialogs on transgender rights. This paper serves as a starting point from the perspective of transgender activism in the United States. To address the question of “transgender rights” in the United States, as well as the relationship of those rights to social justice struggles elsewhere in the world, some preliminary attention to the definition and contextualization of the term “transgender” is first required.

I. What do we mean when we say "transgender"?

“Transgender” is a term that came into vogue in the United States in the early 1990s, though it has a somewhat longer history. According to the most recent historical research, the earliest recorded uses of “transgender” in the United States appear in the late 1960s, among communities of predominantly white, middle-class, male-bodied individuals who persistently expressed feminine comportment, identities, and dress. Such people, notably Ari Kane in New England and Virginia Prince in Southern California, began describing themselves as “transgenderal,” as “transgenderists,” or as practicing “transgenderism” (Hill, 2007). Their aim in doing so was to resist medical, psychiatric, or sexological labeling as either “transvestites,” (which connoted episodic

cross-dressing, primarily for reasons of erotic gratification), or as “transsexuals,” which connoted medicalized somatic transformations of sex-signifying bodily attributes, and which thereby facilitated a legal change of social gender. “Transgender,” on the other hand, connoted a sense of persistent identification with, and expression of, gender-coded behaviors not typically associated with one’s sex at birth, and which were reducible neither to erotic gratification, nor psychopathological paraphilia, nor physiological disorder or malady. The self-applied term was meant to convey the sense that one could live non-pathologically in a social gender not typically associated with one’s biological sex, as well as the sense that a single individual should be free to combine elements of different gender styles and presentations, or different sex/gender combinations. At one level, the emergence of the “transgender” category represented a hair-splitting new addition to the panoply of available minority identity labels; at another level, however, it represented a resistance to medicalization, to pathologization, and to the many mechanisms whereby the administrative state and its associated medico-legal-psychiatric institutions sought to contain and delimit the socially disruptive potentials of sex/gender non-normativity. Having an intelligible social identity is the means by which an individual body enters into a productive relationship with social power. Thus “identity politics,” the struggle to articulate new categories of socially viable personhood, remains central to the consideration of individual rights in the United States, and to the pursuit of a more just social order. The emergence of “transgender” falls squarely into the identity politics tradition.

Until the early 1990s, the term “transgender” was largely confined to middle-class, white, male-bodied individuals who lived fully or partially as women, without

benefit of “sex-change” surgery or legal changes in their gender status. Holly Boswell made an important contribution towards the expansion of the term with her 1991 article “The Transgender Alternative,” published in the community-based journal *Chrysalis Quarterly*. In that piece, she claimed “transgender” as a word that “encompasses the whole spectrum” of gender diversity, that lumps together rather than splits apart the many sub-groups within a large, heterogeneous set of gender-variant communities, identities, and practices. Socialist activist Leslie Feinberg gave this expansive sense of “transgender” a potent political charge in the influential 1992 pamphlet, *Transgender Liberation: A Movement Whose Time Has Come*. Feinberg, who must be considered one of the chief architects of the new transgender sensibility, took an explicitly Marxist approach to the question of the social, political, and economic oppression of all non-normative expressions of gender. Feinberg called for a “transgender” movement, or what might be called with more technical precision a pan-gender movement, that would link many struggles and specific gender-based oppressions together into one radical current for social change. This new sense of “transgender” as a catch-all term for gender variation, which resonated with the contemporaneous repurposing of the word “queer” as a term signaling a new politics of dissident sexuality, was consolidated by the mid-1990s. Since that time, “transgender” has served as a handy label for a rapidly expanding assortment of variously gendered people, who all have been brought into political alignment with one another not only by their local and national social justice agendas, but also through the greater sense of global interconnectedness fostered since the mid-1990s by the internet and the World Wide Web.

“Transgender” has thus, in the U.S. context, been a primarily political term, a

term for movement-building, and for invoking an “imagined community” that celebrates gender diversity and the ability to express one’s sense of gender without fear of punishment, rather than a term with specific policy applications or legislative salience. In academic contexts, especially in the humanities and social sciences, and within the emerging interdisciplinary field of transgender studies, “transgender” has tended to refer to any phenomenon that disrupts, denaturalizes, or tends to reveal the socio-culturally constructed quality of the links we normatively establish between biological sex, social gender role, subjective gender identity. That is to say, “transgender” is not in itself an identity term, but rather a descriptive label for those moments or places of being “differently gendered” that illuminate the variability, contingency, and complexity of gender systems for everybody. As such, “transgender” has become analytically useful for exploring the regulatory relationships between “gender normativity” and the smooth functioning of the administrative state, as well as for examining the great many social mechanisms (many of them coercive) for normalizing or eliminating the perception of gender deviance.

In spite of such specialist uses, “transgender” functions in the vernacular as a minoritizing identity label. It has become a category for containing and absorbing all imagined forms of gender non-normativity, thereby preserving the gender normativity of all other identity categories. This conceptualization of “transgender” as a special kind or type of person buttresses the misguided perception that “transgender people,” who are observed to exist in very small numbers, are a peculiarly vulnerable or stigmatized population having “special needs” which large societies can ill afford to meet. In transnational contexts, particularly with regard to international NGO funding that

emanates from the United States and addresses such needs as HIV education and AIDS prevention, “transgender” has become a rubric that threatens to subsume non-Western configurations of self, sexuality, and gender within a newly imposed category of social deviance, while remaining deaf to local cultural, political, or socio-economic differences.

In bringing the United States to the table for a global conversation about “transgender rights,” our goal is not to impose a U.S.-centric model of gender variance on the rest of the world. It is, rather, to resist the reductive use of the “transgender” label to create a new minority class. We seek instead to preserve and amplify the political and analytical dimensions of the term’s history of use within the United States. Our goal is to use “transgender” as a lens for examining the relationship between specific forms of oppression experienced by particular kinds of “transgendered” people due to the specific kinds of gender atypicality that prejudices state and society against them, and to link those specific instances of oppression to systemic injustices within the operation of social power.

II. What do we mean by “transgender rights” in the U.S.?

Municipalities in the United States began passing ordinances prohibiting cross-gender dressing in the 1840s—suggesting that the production of heteronormatively gendered embodiment, and the concomitant coercive regulation of dissident gender expression, has been a concern of government for more than 150 years. By the 1890s, in what currently appears to be the earliest example of a transgender political sensibility, a group of self-styled “androgynes” in New York had organized a “little club,” the “Circle Hermaphroditos,” in order to “to unite for defense against the world’s bitter persecution.”

In 1952, just prior to the spectacular media attention given to Christine Jorgensen’s “sex change” in Copenhagen, which made her an international celebrity and called the world’s attention to transgender issues in a new way, a group of transgender individuals in California established *The Society for Equality in Dress*. By the 1960s, transgender people from coast to coast in the United States were participating in civil rights protests, as well as sometimes engaging in violent resistance to their social oppression. The current wave of transgender activism, which dates to the early 1990s, thus represents merely the latest phase of a persistent struggle to improve the quality of life for people whose gender expression or identity has brought them into conflict with the regulatory norms of gender through which society routinely operates.

For more than 15 years, as the contemporary transgender rights movement in the United States has continually sought redress at the federal level, activists nevertheless understood that grass-roots efforts in cities, counties, and states would be necessary to create the momentum for the “heavy lifting” required to enact any meaningful federal statutes. So far, a handful of states and dozens of localities in the United States have passed nondiscrimination legislation inclusive of gender identity; courts have begun to rule that transgender people should be treated equally; educational institutions, large corporations, and even small businesses are beginning to include gender identity and gender expression in their nondiscrimination policies. The term *transgender* has moved into mainstream discourse with increasingly positive representations of trans lives in the media—from countless local newspaper articles on transgender people and their transitions, to respectful mentions in (some) political candidates’ speeches, to the ongoing appearance of trans characters in soap operas. This achievement has been

accomplished by growing numbers of trans people from all walks of life who have been willing to make themselves visible in the face of ignorance and fear, who have been willing to show themselves to be human, and to confront the rampant stereotypes that others have held about gender-variant people.

However, while we have chipped away, within some geographic areas and policy arenas, at unjust limitations to the scope of our aspirations and abilities, for the most part our problems still remain. People who do not fit easily within the norms of gender that regulate public life are often unable to engage in everyday activities, such as renting an apartment or buying groceries, without confronting bias and discrimination, or becoming targets of violence or threats of violence. Other groups who face these challenges have addressed their situation by articulating their differences from the norm—based on religion, race, disability, ethnicity, and (non-transgender) gender, for example—and invoked statutes such as the Federal Civil Rights Act of 1964 and the Americans with Disability Act of 1990. While these claims, sometimes cast as “minority rights,” are now litigated in increasingly hostile federal courts, in most parts of the U.S., trans people cannot even turn to the legal system for protection from discrimination in employment, housing, public accommodations, or other areas of life.

Articulating transgender grievances against social oppression in terms of a minority discourse promises only limited success. Constituting transgender concerns as a “minority interest” may be useful for consolidating a lobbying voice or political pressure group, but the numbers of transgender people remain too small to be significant as factor in electoral politics beyond the local level. Even sympathetic members of society who disavow anti-transgender prejudice or discrimination may well assume that there simply

isn't a significant enough transgender population to merit changing the massive bureaucracies and entrenched standard practices whose routine functioning might unfortunately enact an anti-transgender bias. Additionally, while the civil rights era saw some notable successes, overall the rights framework has not been shown to be an effective mechanism for eradicating discrimination. And in the case of transgender people, it is not clear from the jurisdictions that have enacted legislation that explicitly includes gender identity and expression—the statutory language most commonly used to include transgender people—that those laws are having any substantial effect for the lives of many. The vast majority of the ordinances have passed at the municipal level (cities, towns, counties), have few enforcement mechanisms, and impose only small punitive measures or fines on discriminators.

A strategy with greater prospects for improving the situation of transgendered lives would address systemic inequalities such as lack of access to housing, employment, or a clean environment from the standpoint of basic civil rights, or universal human rights. Framing the issue structurally would enhance organizing efforts already underway that explore the linkages between different forms of oppression. While narratives focusing on individual stories of prejudice and discrimination can be deployed to incite public sympathy and educate the media, policymakers, and legislators about transgender lives, we should not assume the rhetorical power of “unfairness” can overcome the limits of a non-discrimination paradigm based on the idea of recognizing difference. We also need to challenge systems that organize opportunity structures and distribute resources based on social differences, including gender.

III. What specific issues should a transgender civil rights movement address?

While it is not possible in the limited space available to extensively detail the all the injustices suffered by transgender people, the following “bullet points” suggest the scope of the issues involved:

Policy Issues

- ❑ Lack of safe and equal access to social services such as homeless shelters, rape crisis centers, and/or medical clinics that acknowledge and respect one’s gender identity
- ❑ Lack of access to education or job training
- ❑ Heightened vulnerability to hate-motivated violence
- ❑ Fear of repercussion or reprisal in retaliation for exerting one’s ordinary rights, such as speaking out in public
- ❑ Chronic unemployment or underemployment
- ❑ Abusive treatment by law enforcement personnel
- ❑ Public humiliation, derision, ridicule, marginalization and exclusion
- ❑ Denial of housing
- ❑ Denial of employment
- ❑ Denial of access to public accommodations such as shops, restaurants, and public transportation

Legal Issues

- ❑ Challenges to legal status as a man or a woman, and denial of the rights and responsibilities specifically accruing thereto
- ❑ Inability to marry partners of any sex
- ❑ Greater vulnerability to unwanted divorce, including state dissolution of marriage contracts that both partners have voluntarily agreed to and seek to maintain
- ❑ Greater risk of losing custody of one’s children, and an inability to adopt children
- ❑ Greater risk of being denied inheritance, and of having wills and trusts voided.
- ❑ Greater restrictions on immigration and heightened vulnerability to border-control surveillance.
- ❑ Employment discrimination
- ❑ Denial of access to public and private health benefits
- ❑ Lack of protection from hate violence
- ❑ Inability to change identity papers and records (name change, driver’s license, birth certificate, passport, school transcripts, work history)
- ❑ Criminalization of sex-work

- ❑ Incarceration in gender-inappropriate correctional facilities

Medical Issues

- ❑ Pathologization of transgender identity
- ❑ Denial of medical treatment
- ❑ Ridicule and mistreatment by providers
- ❑ Inability to obtain ongoing, routine medical care
- ❑ Exclusion of transition-related services under Medicaid, Medicare (government-sponsored healthcare provision programs) and private health insurance plans
- ❑ Lack of medical insurance coverage for transgender-related needs such as genital surgeries, chest reconstruction, or electrolysis.
- ❑ Inability to obtain or privately pay for hormone therapy and sex reassignment surgeries

Transgender people routinely experience discrimination and barriers to obtaining medical services from hospitals, clinics, and private practitioners. Many providers treat trans people only with great reluctance, sometimes pointedly harassing them and embarrassing them in waiting rooms, or condoning harassing behavior on the part of other patients or clients. Many transgender people avoid seeking medical assistance, even in the most dire circumstances, for fear of humiliation or rejection.

Transsexual people in particular can have difficult relationships with the medical system because once they are diagnosed as transsexual, insurance companies discriminate against them by excluding them from coverage for the necessary treatments and procedures and for any complications or conditions that may arise from these treatments and procedures. In addition, these exclusionary policy statements are often so broad in scope that they may effectively condone the denial of *any* medical treatment to a transsexual person. Stories abound of trans people being denied emergency (or non-emergency) care for conditions not even remotely related to transsexualism. Ignorant or prejudiced providers often assume that any adverse medical condition is a direct result of transsexualism or transgender identity. Stories of sub-standard care and neglect are easy

to find at almost any transgender support group meeting or online discussion. Moreover, professionals who could serve the transgender community may also become stigmatized by their peers for their association with transgender people, and this stigmatization, or fear of it, often prevents them from serving transgender patients.

Because the ability to obtain or retain a job is generally a prerequisite for obtaining housing and health care, and for being able to support oneself and one's family, employment-related discrimination is a particularly critical issue for trans people, who are currently unprotected against such discrimination at the federal level and in all but 12 states. This situation is made even more desperate given that access to quality health care in the United States is predicated, to a significant degree, on employer-sponsored private medical insurance. While every day more and more trans employees are open about their identities, and an increasing number of employers are willing to value their trans employees and establish policies and practices that allow for them to be productive on the job, it is still true in most of the United States that disclosing one's transgender identity or transitioning on the job results in automatic and often permanent unemployment.

Basic civil rights protections for trans people ensure their ability to live and work as productive members of society. The social cost of discrimination is much greater in the long run than the cost of inclusion. Anti-trans discrimination forces trans people into poverty, unemployment, illegal trade, and drug abuse, while subjecting them to hate violence.

Transgender rights, therefore, must be included under the rubric of human rights, based on the recognition that transgender and transsexual people are human beings deserving of common respect and dignity, regardless of their appearance or physical

abilities, and regardless of their choices about how to manage the transgender aspect of their lives.

IV. What tactics and strategies have worked to achieve the rights we've won so far?

A. Litigating in the courts

Beginning with the first wave of social change related to transgender phenomena in the 1960s, courts in some state jurisdictions recognized the rights of individuals who had undergone sex-reassignment surgery to marry and to change name and sex designation on some state-issued identification documents. The number of such states expanded in the 1970s and 1980s, although not without setbacks. In the 1990s, primarily in the context of efforts to define marriage as legitimately existing only between “one man and one woman,” courts in some states ruled that it was impossible to change biological sex.

Transgender people occasionally have looked to the courts in other matters as well, specifically to laws prohibiting discrimination based on sex or sexual orientation (and in some cases, disability), to achieve redress against discrimination, particularly to combat employment discrimination. In practice, however, most courts have interpreted laws that prohibit discrimination on these bases to exclude transgender people. Many legal scholars believe these judicial decisions are wrong, and many legal advocates are working to persuade courts to interpret existing anti-discrimination laws to protect transgender people. Recently, transgender rights attorneys have seen some progress in litigating employment cases under the federal Title VII law and analogous state laws. Over the next decade, they expect the trend will continue as more and more federal courts

move toward interpreting “sex discrimination” to include discrimination against transgender plaintiffs.

B. Passing laws

Because achieving civil rights protections through the courts has proven to be a long and arduous undertaking, and transgender activists and allies have therefore turned with increasing frequency to the legislative branches of government to secure basic civil rights protections.

Minnesota was the first state (1993) to enact an anti-discrimination law that includes express protections for transgender and gender variant people in employment, housing, education, and public accommodations, as well as enhanced penalties for hate crimes committed against transgender and gender variant people. California became the second state (1998) to amend its state hate crimes statute to include transgender and gender variant people. As of December 2007, 38% of the U. S. population was covered by a transgender-inclusive nondiscrimination law¹. This includes 13 states (California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia. In addition, at least 103 cities and counties across the country have adopted trans-inclusive non-discrimination ordinances or statutes. Hawaii’s law covers housing and public accommodations only; employment is not covered in that state.

A significant advantage to pursuing legislative victories is that through the very act of fighting for our rights in a public forum, we educate our communities about the

¹ See appended documents: *Jurisdictions with Explicitly Transgender-Inclusive Nondiscrimination Laws*, and *Scope of Explicitly Transgender-Inclusive Anti-Discrimination Laws* from the National Gay & Lesbian Task Force and the Transgender Law & Policy Institute.

discrimination that trans people face. When our campaigns are successful, politicians at other levels of government and in other parts of the country can see that communities took a stand against this kind of discrimination. Even when our campaigns fail, other transgender people, including isolated transgender youth, may realize that they are not alone. Employers and other “discriminators” may learn that discrimination against individuals because of their gender identity or expression is wrong. And legislators may learn that transgender people are a part of their constituency and may be more receptive to the needs of that constituency the next time around.

Drafting legislation is a highly skilled art. To be useful, civil rights statutes must be worded carefully. Such legislation has to accomplish two things at once: It has to be clear and specific enough to make it obvious that the purpose of the law is to prohibit discrimination against transgender people, and, at the same time, the language used to define transgender people has to be flexible and general enough to ensure that the full range of transgender identities are protected. Also, the placement of the definition of transgender people is subject to strategic decisions based on other factors in the local environment. One city or county or state may choose to add transgender people as a new protected category (e.g., gender identity or expression, gender variance), while another may include transgender people within the definition of sexual orientation, yet another may include trans people within the definition of the terms “gender” or “sex.” All three of these strategies have been used successfully. Finally, legislative advocates must work closely with litigators to ensure they are not working at cross-purposes. Litigators arguing that discrimination against a transgender person should be categorized as a kind of sex discrimination under existing law can be undermined by advocates trying to “add”

gender identity to current non-discrimination laws: judges can ask, “If you think this law already should be interpreted to cover transgender people, why are your colleagues at the statehouse pushing legislation adding gender identity to the non-discrimination law?” Legislative statements noting that the amendment is meant “clarify” the law can help alleviate this problem.

The most recent and highly publicized failure of the legislative approach took place in the fall of 2007, when Congressman Barney Frank, the lead sponsor of the Employment Non-Discrimination Act, excised gender identity from the sexual orientation non-discrimination legislation he introduced—despite the opposition of “United ENDA,” a coalition of over 300 LGBT groups.

C. Policy advocacy

Many of the most significant successes thus far have been the result of fine-grained policy work, as advocates work with policymakers and officials to change rules, regulations, and practices that have had disproportionately negative effects on transgender individuals. From working with a local school board to educate them about gender non-conforming youth to getting a sex-segregated institution to create safe spaces for transgender residents to educating state department of motor vehicles officials at their annual meetings to working in coalitions challenging the worst aspects of the draft regulations of the REAL ID act, these quiet negotiations have done much to improve the lives of transgender individuals. Taking place outside of the legislative process and the media spotlight and most often at the local level, the effectiveness of this type of advocacy is inversely related to the publicity it receives.

D. Direct service provision

Providing direct services to transgender people should also be seen as a form of advocacy. Work like that of organizations such as the Sylvia Rivera Law Project (New York City) and the Transgender Law Center (San Francisco, California) is premised on the assumption that transgender people cannot effectively mobilize for social change unless they have access to basic services. By helping individuals with immigration, housing, and name change cases, to specify some of the issues public interest legal advocates address, direct services enable transgender people to become agents for change. And when they represent clients in the juvenile and criminal justice systems, these organizations advocate not only for their clients, but for policy change as well. In addition, the provision of direct services recognizes that transgender people are not just “transgender” but also embedded in other systems of social organizations that produce disparities based on race, class, gender, disability, and immigration status.

Health care advocacy and job training programs are also pressing concerns where direct service providers such as individual physicians and social service agencies have made distinct progress against adverse discrimination. These efforts, while powerful and inspiring, to date have not been institutionalized to the extent necessary to ensure full social equality. However, every individual success helps to break down the barriers to large scale social change.

E. Organizing for social justice in coalition

One of the most fruitful approaches to transgender rights involves moving beyond the identity politics model and working in coalitions to address issues not based on identity categories. For instance, one post 9/11 policy shift has involved using the technologies of “dataveillance” to compare records databases across jurisdiction and level of government. While the purported targets of these policies are terrorists and undocumented workers, those whose gender records are anomalous are also implicated. For example, the New York State Division of Motor Vehicles cross-checked drivers’ records with their records in the Social Security Administration database. Those whose information did not match were sent suspension letters. Instead of invoking a simple identity politics argument and pointing out that the policy inadvertently and wrongly caught transgender people in its net and should be amended, transgender advocates at the Sylvia Rivera Law Project worked with immigrant rights groups to challenge the legal and ethical bases for the entire policy. Similarly, at the federal level, the National Center for Transgender Equality has worked quietly behind the scenes in coalition with the ACLU and other groups to challenge the extension of federal power in policing individual identity. Working with other groups to advocate for universal health is another example of this approach.

V. Resources and key institutions in the effort to realize transgender rights in the U.S.

The most active organizations working on transgender rights issues in the U.S. are:

- National Center for Transgender Equality, Washington, D.C.
- National Gay & Lesbian Task Force, Transgender Civil Rights Project, Washington, D.C.

- Transgender Law & Policy Institute, New York, NY
- Sylvia Rivera Law Project, New York, NY
- Transgender Law Center, San Francisco, CA
- Gay & Lesbian Advocates & Defenders, Boston, MA
- National Center for Lesbian Rights, San Francisco, CA, Washington, D.C
- Lambda Legal, Washington, D.C., Atlanta, GA
- American Civil Liberties Union (LGBT Rights Project and various chapters)

There are also a number of transgender attorneys, policy advocates, and legal scholars across the country who collaborate frequently, share information, and discuss strategies through conferences, an informal transgender law roundtable, and a secure email group.

VI. What remains to be done?

In advocating for transgender rights, activists have been continually plagued by a dearth of readily useable theoretical frameworks, as well as by a lack of empirical research on people affected by gender variance. For example, how does one's gender variance impact one's life? How do trans people obtain health care? What impact does the lack of identity documents that correspond to one's gender presentation have on one's daily life? How does transgender status intersect with the criminal justice system? And the constant refrain of journalists and policymakers alike: How many trans people are there? If there are not enough trans people, the category is not worth their attention; and if there are too many trans people they will over-burden the system with their demands.

Of course, there is no shortage of social-scientific research that reproduces pathologizing narratives about transgender people (Billings & Urban, 1982; Hausman,

1995; Raymond, 1979), but relatively little that seeks to provide the kind of data that could be useful for a civil rights activist agenda, outside the (somewhat) funded area of HIV prevention research (Bockting & Avery, 2005). An intellectually exciting body of gender theory has taken shape within the academy over the past two decades, but it has thus far proven difficult to translate these theoretical insights into effective policy positions. In some instances, academic work of this sort that characterizes gender as a superficial, voluntaristic, or “socially constructed” aspect of personhood, rather than a fixed, unchosen and “essential” attribute of the self, can actually work at cross purposes with a needs-based activist argument for transgender social justice, to the extent that it reinforces attitudes among lawmakers and jurists that transgender is a “lifestyle” without redeeming social value. A more productive dialog is thus called for between pragmatic policy-oriented strategies, and a critical theorizing that helps explain the complex pathways of gender identity development, the processes through which identities become somaticized and socially intelligible, the mechanisms and rationales by means of which state and society operate coercively on transgendered bodies, and new ethical and moral frameworks for recognizing the value of transgender lives. Perhaps even more importantly, transgender critical theory can critique and restructure the very forms of knowledge that give certain socially authorized speakers (such as medical doctors, judges, or psychiatrists) the power to speak “objectively” about transgender issues, while simultaneously dismissing as “merely subjective” what transgender people themselves know from living in their own bodies.

Transgender rights advocacy is most productively grounded in a human rights framework. This framework may be articulated differently depending on the particular

viewpoints of the advocates, or on the particular social and historical context in which such advocacy takes place, but the human rights framework's general features are (a) that individuals whose gender identity or gender expression is not traditionally associated with their birth sex should not be denied any rights or resources because of that difference, and (b) that one's subjectively perceived gender identity (not one's birth sex) determines one's legal gender. These principles were first enunciated in early versions of the International Bill of Gender Rights in 1991 (Frye, 2006) and have since been included in the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), the new international standard for discourse on sexual orientation and gender identity rights.

From the perspective of transgender rights advocates who are challenging unjust laws or policies—in meetings with legislators; in litigation before the courts; in policy discussions with government officials; in negotiations with insurers, employers, and social service providers—merely enunciating these principles should be sufficient. Ideally, regarding transgender issues, meetings should be no more than five minutes long, lawyers' briefs should be limited to two or three pages, and the validation of experts should never be called for. But, of course, we do not find ourselves in this world of *shoulds*: Simply articulating a human rights claim based on gender identity or gender expression will have little, if any, short-term impact. In challenging the commonsense knowledge and social and legal systems that currently structure gender arrangements, transgender rights advocates are in desperate need of expert knowledge to back up trans people's demands. The transgender community needs the most readily digestible kinds of empirical data that can be used as evidence in reports and testimony, and a cohort of

experts who will testify, submit affidavits, or otherwise lend legitimating support to advocates' claims. Without these supports, it becomes impossible to topple the supposed expertise of bureaucrats who can stand beside the fact that discriminatory policies must be right simply because of their ubiquity. Transgender activists and advocates also need to engage with ethicists, artists, historians, rhetoricians, cultural theorists, and others who can help reframe what counts as evidence, or expand the range of who can be considered an expert, or show how a hostile or disengaged audience can be moved toward transgender justice, in ways that are not subject to empirical falsification.

A more expansive approach to questions of legitimization can, in fact, bridge the perceived incommensurability between the normative human rights framework that is the foundation of transgender rights advocacy, and the descriptive social science paradigm that plays such an important role in transgender rights advocacy. It is vital for us as researchers, as advocates, and as researcher-advocates to understand this conflict between expert discourses and human rights claims. It should no longer be necessary for advocates to invoke the authority of medical experts to demedicalize regulations governing trans identities, for example, (Currah & Moore, 2007) nor should litigators and policy advocates find it strategically effective to cite data and research based on assumptions with which they fundamentally disagree (Levi, 2006; Green, 2004; Spade, 2003).

Perhaps the most basic difference between the goals of transgender advocates and the normativizing aim of much social-science research centers on disagreements over theories of gender. In a system governed by the logic of universality (with repeatable, verifiable results), researchers in the natural and social sciences seek to discover a unified

totalizing truth, one that fits all the many pieces—body parts, normalizing ideologies, medical technologies, the role of socialization, and biological etymologies— into the grand jigsaw puzzle that will ultimately reveal the answer to the riddle of gender. The aggregate approach of transgender activists, however, centers on the idea of an agnostic gender pluralism, and does not seek to discover the perfect theory (Currah, 2003; Green, 2000). In fact, any unified theory purporting to describe the so-called “right” relationship between body parts, gender identities, and gender expressions would entail the imposition of a new hegemonic norm—one that would not be true to many people’s experience of gender and that would exclude many from the opportunities that legal gender recognition brings. For the transgender movement in the United States, there is no overarching desire to make the many communities, practices, and identities fit under any unified theory: All of the constituent (and often discordant) elements of this movement add up to nothing greater than the sum of the parts.

To be specific, transgender rights advocates and policy reformers must contest the social-scientific legitimizing of policies and practices that assign transgender people to an inappropriate legal sex, for example, based on some supposed “truth” of what “actually” constitutes gender. We must counter the suggestion that transgender people cannot be good parents because of a moral framework that considers transgender people to have intrinsically flawed characters. We must resist administrative rationales that categorize gender nonconforming youth merely as problems to be solved, or dismiss the provision of transgender health care needs as cost-ineffective. In short, in order to effectively advance a legal and policy-oriented civil rights agenda for transgender people, transgender rights

advocates have to engage in a kind of theoretical as well as empirical intellectual activism that asserts our difference while refusing to surrender our full humanity.

The real impact of discrimination against transgender individuals is to be found in the cracks and crevices of the modern regulatory state, in the agency rules administered by particular state actors that exclude trans people. Significantly, low-income people have much more contact with particular disciplinary arms of the state—social service providers, Medicaid systems, and the criminal justice system, for example—than do other individuals. Because these state actors also define and regulate gender, and distribute benefits based on gender, the more contact people have with these state agencies, the more they are pressured—or forced, in the case of those in the criminal justice system and residential settings for youth—to comply with traditional gender norms (Spade, 2006). Thus, participatory policy research and advocacy is of vital importance to the most vulnerable transgender communities—youth, people of color, and low-income populations. It is relatively easy to find out that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 has generally not been found to apply to transgender people; it is much more difficult and labor intensive—not to mention risky—to research administrative rules and policies and their application to vulnerable communities. Yet that is what we must do if we are to understand the impact of gender-rigid policies and practices, and to develop strategies to help mainstream society understand and desire to repair the injustices such policies and practices have imposed. Thus, too, the state of transgender rights in the U.S. fundamentally remains in a formative stage, developing with relentless energy, but far less advanced than our theory or our capacity to dream. Our movement is far less monolithic than the notion of “America” that reverberates—for

good or ill—beyond our shores. We welcome a global dialog and the deeper human understanding we believe transgender people from all cultures can actualize together.

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