

**C A P T I V E
G E N D E R S**

**Trans Embodiment and the
Prison Industrial Complex,
Expanded Second Edition**

- 18 Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 2012), 21.
- 19 RaeDeen Keahiolalo-Karasuda, "Carceral Landscape in Hawai'i: The Politics of Empire, the Commodification of Bodies, and a Way Home," in *Abolition Now!: Ten Years of Strategy and Struggle Against the Prison Industrial Complex*, ed. The CR10 Publications Collective (Oakland: AK Press, 2008).
- 20 Kauanui, *Hawaiian Blood*.
- 21 Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge, MA: South End Press, 2005), 25.
- 22 Ibid., 26.
- 23 Ibid.
- 24 Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1952), 13.
- 25 Read George Lipsitz's *Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 1998) for further analysis on the ways that whiteness structures modernity and concurrent ideas of ownership and belonging.

ROUNDING UP THE HOMOSEXUALS:

The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth

Wesley Ware

"Tell her the world is beautiful. It's different now." Those are the words that were passed through me from a formerly incarcerated 17-year-old queer youth to his 16-year-old trans friend still confined in a youth prison in Louisiana. His friend, a young transwoman, was still incarcerated in a "secure care" facility—a "boys" prison for kids.

Working with queer and trans/gender-non-conforming youth in the Deep South, I hear stories of state and personal violence from a wide range of people. There was the 16-year-old, black self-identified "stud" in detention after her mom referred her to family court for bringing girls to the house. Then there was the incarcerated white 16-year-old trans youth from a rural town of 642, whose access to transgender healthcare resided in the hands of one juvenile judge. I was told of a black trans-feminine

youth in New Orleans who was threatened with contempt for wearing feminine clothing to her court hearing. There was also the 12-year-old boy, perceived to be gay by his mother, who was brought into judge's chambers without his attorney and questioned about being gay before he was sentenced for contempt after being found "ungovernable." There was the public defender who refused to represent his gay client because the lawyer believed him to be "sick" and in need of the "services" offered by prison. And there was the black lesbian arrested over and over again for any crime where witnesses described the perpetrator as an African American "boyish-looking" girl. Nowhere is the literal regulation and policing of gender and sexuality, particularly of low-income queer and trans youth of color, so apparent than in juvenile courts and in the juvenile justice system in the South.

Understanding how the juvenile justice system operates and impacts queer and trans/gender-non-conforming youth requires a critical look at the history of youth rights and the inception of juvenile court. During the Industrial Revolution (1800–1840s), poor youth worked in factories, received no public education and were often arrested for the crime of poverty.¹ These youth, some as young as 7 years old, were incarcerated with adults and placed in prisons until they were 21.² Inspired by the belief that young people who committed crimes could be rehabilitated and shocked by the horrific treatment of white children in adult prisons, the juvenile justice system was developed. This new system was based on *parens patriae*, the idea that the role of the system was to place youth in the state's custody when their parents were unable to care for them. Later, in 1899, the first juvenile court was established, designed to "cure" children and provide treatments for them rather than sentences. Still rooted in a Puritan ideology, white young women were often sent to institutions "to protect them from sexual immorality."³

Black children, however, who were viewed as incapable of rehabilitation, continued to be sent to adult prisons or were sent to racially segregated institutions. In Louisiana, black youth were sent to work the fields at Angola State Penitentiary, a former slave plantation, until 1948 when the State Industrial School for Colored Youth opened.⁴ The facilities were not desegregated until the United States District Court ordered desegregation of juvenile facilities in 1969.⁵ More recently, the goal of juvenile justice reform has been to keep youth in their homes and in their communities whenever possible while providing appropriate treatment services to youth and their families.

However, with the juvenile justice system's intent to provide "treatment" to young people, many queer/trans youth inherit the ideology that they are "wrong" or in need of "curing," as evidenced by their stories. As sexual and gender transgressions have been deemed both illegal and pathological, queer and trans youth, who are some of the most vulnerable to "treatments," are not only subjected to incarceration but also to harassment by staff, conversion therapy, and physical violence.⁶ Moreover, with the juvenile justice system often housed under the direct authority of state correctional systems and composed of youth referred directly from state police departments, it should not be surprising that young people locked up in the state juvenile system, 80 percent of whom are black in Louisiana,⁷ are often actually destroyed by the very system that was created to intervene.

Worse than just providing damaging outcomes for youth once they are incarcerated, this rehabilitative system funnels queer and trans/gender-non-conforming youth into the front doors of the system. Non-accepting parents and guardians can refer their children to family court for arbitrary and subjective behaviors, such as being "ungovernable."⁸ Police can bring youth in for status offenses, offenses for which adults cannot be charged, which often become contributing factors to the criminalization of youth. Charges can range from truancy to curfew violations to running away from home. Like in the adult criminal justice system, queer and trans youth can be profiled by the police and brought in for survival crimes like prostitution or theft. Youth may be referred for self-defense arising from conflict with hostile family members or public displays of affection in schools that selectively enforce policies only against queer and trans youth.

Although youths' rights were greatly expanded in 1967 when the Supreme Court decided that the juvenile system was not operating according to its original intent,⁹ youth continue to struggle in the courts with fewer protections than adults. Defense lawyers for youth, who are sometimes the only advocates young people have in court, have at times confused their role, advocating for what they believe to be the "best interest" of the youth rather than defending their client's "expressed interest." Juvenile court judges with little accountability have similarly expanded their role with the intent to provide services, through incarceration, to every youth that comes through their courtrooms. In this effort to rehabilitate "deviant" children and without the right to a jury trial for delinquent offenses, the issue of guilt versus innocence can fall to the wayside. Further aggravated by the public's fear of youth sexuality and our desire to control

young people and their bodies, juvenile court presents a unique opportunity to destroy the lives of queer and trans/gender-non-conforming youth. The agenda of juvenile court then, for queer and trans youth at least, often becomes to “rehabilitate” youth into fitting heteronormative and gender-typical molds. Guised under the “best interest of the child,” the goal often becomes to “protect” the child—or perhaps society—from gender-variant or non-heterosexual behavior.

While not as explicit as the sumptuary laws (laws requiring people to wear at least three items of gender-appropriate clothing) or sodomy laws of the past that led to the Compton’s Riots and Stonewall Rebellion, the policing of sexuality and state regulation of gender has continued to exist in practice—perhaps nowhere more than in juvenile courts. In many ways, the system still mirrors the adult criminal justice system, whose roots can be traced to slavery, the commodification of bodies as free labor, institutionalized racism, and state regulation of low-income people of color, immigrants, and anyone deemed otherwise “deviant” or a threat to the political norm. Combined with the Puritan beliefs that helped spark the creation of juvenile courts, it becomes clear that, borrowing the words of Audre Lorde, queer and trans youth of color “were never meant to survive.”

In fact, one youth in a Louisiana youth prison responded to the number of queer and trans youth incarcerated by stating, “I’m afraid they’re rounding up the homosexuals.”

Once locked up, queer and trans youth experience the same horrors that their adult counterparts in the system do, but magnified by a system designed to control, regulate, and pathologize their very existence. In Louisiana’s youth prisons, queer and trans youth have been subjected to “sexual-identity confusion counseling,” accused of using “gender identity issues” to detract from their rehabilitation, and disciplined for expressing any gender-non-conforming behaviors or actions. Youth are put on lockdown for having hair that is too long or wearing state-issued clothing that is too tight. They are instructed how to walk, talk, and act in their dorms and are prohibited from communicating with other queer youth lest they become too “flamboyant” and cause a disturbance. They are excessively punished for consensual same-sex behavior and spend much of their time in protective custody or in isolation cells. In meetings with representatives from the Juvenile Justice Project of Louisiana, directors of youth jails have referred to non-heterosexual identities as “symptoms” and have conflated youth adjudicated for sex offenses with youth who are queer. In addition,

when advocates asked what the biggest problem was at a youth prison in Baker, Louisiana, guards replied, “the lesbians.”

Even more troubling, unlike the adult criminal justice system where individuals either “ride out their time” or work toward “good time” or parole, youths’ privileges in prison and eventual release dates are often determined by their successful completion of their rehabilitative programming, including relationships with peers and staff. Thus, youth who are seen as “deviant” or “mentally ill,” or who otherwise do not conform to the rules set forth by the prison, often spend longer amounts of time incarcerated and are denied their opportunity for early release. For queer and trans/gender-non-conforming youth, this means longer prison terms. In fact, in the last four years of advocacy on behalf of queer and trans youth in prison in Louisiana at the Juvenile Justice Project of Louisiana, not one openly queer or trans youth has been recommended for an early release by the Office of Juvenile Justice.

While protections afforded to youth in the juvenile justice system like a greater right to confidentiality are extremely important for youth, they can also be another strike against queer and trans youth seeking to access resources or support networks while inside. Like queer and trans adults in the criminal justice system who have difficulty receiving information that “promotes homosexuality,” youth are unable to access affirming information during a particularly formative time in their lives, which can already be plagued with confusion and questioning. The right to confidentiality for youth in prison can result in their being prohibited from communicating with pen pals or seeking services from community organizations. Other rights are afforded to adults but not to minors, such as accessing legal counsel to challenge the conditions of their confinement. Youth under 18 must rely on their guardians to assist with filing a civil complaint, despite the fact that many queer and trans youth have had difficulty with their families prior to their incarceration—and that those family members may have contributed to their entering into the system in the first place. This barrier also holds true for transgender youth who are minors and seeking healthcare or hormones. These youth may need the approval from a guardian or judge in order to access these services—or approval from a guardian in order to file a civil complaint to request them.

Meanwhile, as state institutions are placing queer and trans/gender-non-conforming youth behind bars and effectively silencing their voices, prominent gay activists are fighting for inclusion in the very systems that criminalize youth of color (such as increased sentencing for hate crimes)

under the banner of “we’re just like everybody else.” A far stray from the radicalism of the early gay rights movement, mainstream “gay issues” have become focused on the right to marry and “don’t ask, don’t tell” policies in the military, despite the fact that queer youth of color have consistently ranked these at the bottom of their list of priorities of issues that impact their lives.¹⁰ Likewise, the public “face of gay” as white, middle-class men has become a further detriment to queer and trans youth in prison, particularly in the South where queer youth of color are often not “out,” and individuals, like in all areas of the country, have difficulty discussing the two issues at the center: race and sexuality.¹¹ As a result of the invisibility of so many incarcerated queer and trans youth, especially youth of color, juvenile justice stakeholders in the South often mistake queer and trans youth to be white, vulnerable youth usually charged with a sex offense, if they acknowledge them at all. As a result, they assume that any concern for these youth to be coming from white advocates who believe that queer and trans youth have been funneled into a system made for “poor black children,” in other words, into a system that is “OK for some children, but not for others.” We must be clear about why we do this work—it is not because *some* children belong locked away at night and others do not—it is because *no* child should be behind bars.

Further, the data tells us that queer and trans youth in detention are equally distributed across race and ethnicity, and comprise 15 percent of youth in detention centers. So far, the data has been consistent among youth in different regions in the United States, including the rural South.¹² Since queer and trans youth are overrepresented in nearly all popular feeders into the juvenile justice system—homelessness, difficulty in school, substance abuse, and difficulty with mental health¹³—the same societal ills, which disproportionately affect youth of color—it should not be surprising that they may be overrepresented in youth prisons and jails as well.

Since incarcerated youth have so few opportunities to speak out, it is critically important for individuals and organizations doing this work to keep a political analysis of the failings of the system at the forefront of the work—particularly the inherent racial disparities in the system—while highlighting the voices of those youth who are most affected and providing vehicles through which they can share their stories.

Despite the targeting and subsequent silencing of queer and trans/gender-non-conforming youth in youth prisons and jails across Louisiana, young people have developed creative acts of resistance and mechanisms

for self-preservation and survival. By failing to recognize the ways that young people demonstrate their own agency and affirm each other, we risk perpetuating the idea of vulnerable youth with little agency; victims rather than survivors and active resisters of a brutal system.

Perhaps the most resilient of all youth in prison in Louisiana, incarcerated queer and trans youth have documented their grievances, over and over again, keeping impeccable paper trails of abuse and discrimination for their lawyers and advocates. When confronted by the guards who waged wars against them, one self-identified gay youth let it be known, “You messin’ with the wrong punk.”

Although prohibited from even speaking publicly with other queer youth in prison, queer and trans youth have formed community across three youth prisons in the state, whispered through fences, and passed messages through sympathetic staff. They have made matching bracelets and necklaces for one another, gotten each other’s initials tattooed on their bodies, and written letters to each other’s mothers. They have supported each other by alerting advocates when one of them was on lockdown or in trouble and unable to call.

Trans-feminine youth have gone to lockdown instead of cutting their hair and used their bed sheets to design curtains for their cells once they got there. They have smuggled in Kool-Aid to dye their hair, secretly shaved their legs, colored their fingernails with markers, and used crayons for eye shadow. When a lawyer asked her trans-masculine client to dress more “feminine” for court, knowing that the judge was increasingly hostile toward gender-non-conforming youth, her client drew the line at the skirt, fearlessly and proudly demanding that she receive her sentence in baggy pants instead.

Queer and trans/gender-non-conforming youth have made us question the very purpose of the juvenile justice system and holding them behind bars in jails and prisons made for kids. By listening to their voices it becomes apparent that until we dismantle state systems designed to criminalize and police young people and variant expressions of gender and sexuality, none of us will be free. And to my younger client recently released from a youth prison, yes, the world is more beautiful now. Welcome home.

NOTES

1. M. Larrabee-Garza, *Youth and the US Justice System* (W. Haywood Burns Institute, 2009).

2. Ibid.
3. Ibid.
4. P. Adams, "The History of Louisiana's Juvenile Justice System: Juvenile Justice Policy from 1968 to Present," University of Louisiana at Lafayette, September 21, 2010. <http://www.burkfoster.com/juvenile.html>.
5. Office of Juvenile Justice. "History of Juvenile Justice in Louisiana," September 21, 2010. <http://www.ojj.la.gov>.
6. W. Ware, "Locked Up and Out: Lesbian, Gay, Bisexual, and Transgender Youth in Louisiana's Juvenile Justice System," Juvenile Justice Project of Louisiana, 2010.
7. Office of Juvenile Justice. "Demographic Profiles of the Secure Youth Population," September 1, 2010. <http://www.ojj.la.gov>.
8. The Louisiana Children's Code Article 728(5) defines "ungovernable" as "the child's habitual disregard of the lawful and reasonable demands of his caretakers and that the child is beyond their control."
9. *In Re Gault*, 387 US 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).
10. FIERCE! "Coming Out, Stepping Up: Organizing to Build the Power of LGBTQ Youth," 2010, 11.
11. E. Bridges, "The Impact of Homophobia and Racism on GLBTQ Youth of Color," Advocates for Youth, 2007.
12. Angela Irvine, "'We've Had Three of Them': Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Non-Conforming Youth in the Juvenile Justice System," *Columbia Journal of Gender and Law*, Vol. 19, 2010 (forthcoming).
13. K. Majd, J. Marksamer, and C. Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts," The Equity Project, 2009.

HOTEL HELL:

With Continual References to the Insurrection

Ralowe Trinitrotoluene Ampu

In 1997 I had to move out of my girlfriend's studio in Daly City. She'd tempted me away from suburbia with the gift of San Francisco, the gift of not being in Ventura, the gift of gay San Francisco—something that I barely understood then, couldn't imagine, but desired. I was 21 years old, had never lived on my own, and had never successfully held a job for more than three months: I found residence hotels. A lot of residence hotels in San Francisco extort you for shelter charging per hour or night; mine is operated more like a housing project. No hourly rentals here. There's a substantially long waiting list.

The first residence hotel, or SRO (which stands for "Single Resident Occupancy"), that I lived in was the National Hotel. Wait—no, that's not true. I spent two horrible nights at Jefferson Hotel in a room with little

HOW TO MAKE PRISONS DISAPPEAR:

**Queer Immigrants, the Shackles of Love,
and the Invisibility of the Prison
Industrial Complex**

Yasmin Nair

Before I knew it, I was handcuffed and taken away like a criminal. I was put in a van with two men in yellow jumpsuits and chains and searched like a criminal, in a way that I have only seen on television and in the movies.

—Shirley Tan

Shirley Tan was describing her experience of being woken up early one morning in her Pacifica, California, home by Immigration and Customs Enforcement (ICE) agents for violating a court order for her deportation.¹ She was speaking to a special congressional hearing United States Senate Committee on the Judiciary about the need for the Uniting American Families Act (UAFSA), legislation meant to secure the right of lesbians and gays to sponsor their partners for immigration.²

By any standards, Tan's testimony was a unique moment in the history of the Senate. Facing a row of Senators, including Committee chairman Patrick Leahy, and surrounded by portraits of former presidents, Tan, a lesbian and an undocumented immigrant, appeared in a court-like setting with her twin sons and very butch-looking partner, Jay Mercado.³

Tan's account of what she felt was clearly a violation and disruption of her life was strategically meant to drive home the point that she, an exceptional and all-American immigrant, had done everything necessary to deserve citizenship and nothing to deserve the treatment meted out to her—except for the slight wrinkle of her legal status. According to her, the ankle bracelet that the state made her wear worsened her experience. So ashamed was she of the bracelet, she told the Senators, that she went out of her way to hide it from her children.

As Tan delivered her testimony, a different case was unfolding in Chicago. Rigo Padilla was fitted with an ankle bracelet and served an order of deportation in early 2009, but, unlike Tan's story, his received comparatively little sympathy until the late fall of 2009 when he was finally able to corral public support for his case.

Padilla was brought to the United States in 1994, at the age of six, by his undocumented Mexican parents. In January 2009, he was stopped on a traffic violation and was also charged with driving under the influence of alcohol. He had no driver's license and his only form of identification was from the Mexican consulate; he was taken to Chicago's Cook County Jail. Once there, he met with a public defender who asked him about his immigration status (a question that had no bearing on the DUI case and that the defender had no right to ask). After finding out that Padilla was undocumented, the defender left. Minutes later, Immigration and Customs Enforcement (ICE) agents entered the room and took him to a federal prison. All of this happened despite the fact that Chicago claims to be a "sanctuary city" where city employees are legally barred from enforcing federal laws.

Padilla was informed that his best chance was to seek voluntary departure. It took him weeks to find an attorney to represent him. He even wrote an open letter to Illinois Senator Dick Durbin, asking for clemency until the Dream Act might come into effect (the Act would grant relief to the undocumented children of immigrants).⁴ But the fact that he had been apprehended under a DUI appeared to have turned people off the case. A friend of Padilla told me that Durbin's office made a categorical statement to this effect: "We only work with the good immigrants, the ones who don't break laws."

Served with an order to leave the country in December, Padilla and his friends set about drumming up public support for him. Finally, at the last minute and after a long and sustained media campaign, with the help of thousands of individuals and many activist groups, including Gender JUST (of which I am a member), Padilla gained a one-year deferment of his deportation. If deported, he would have had to return to a country he had not visited since his departure and be separated from his parents and siblings. If he had resisted deportation, he would have been arrested and detained, possibly indefinitely, or flown out of the country.

In contrast, Tan brought her citizen partner (Mercado is originally from the Philippines but a naturalized citizen) and her two sons, native-born US citizens, to the hearing. They were even featured in a *People* magazine two-page spread, which included photos of the family in their comfortable Pacifica home (Mercado works in the information technology industry, and the family is well off). Padilla, worried about his undocumented parents, did not and does not discuss them. In an interview, he politely declined to tell me anything about them, concerned that the slightest detail might provide ICE with clues as to their whereabouts. While the coverage about Tan emphasized the possible pain of separation from her family, little was said about the pain that Padilla's family might feel at seeing him taken away from them. Tan, despite her undocumented status, garnered enough attention that Senator Diane Feinstein sponsored a private bill in her name. Illinois US State Representative Jan Schakowsky also introduced a private bill for Padilla, but this came much later, in the fall of 2009.⁵

How do we account for two such diametrically opposed accounts and experiences of undocumented immigrants? How is it that Padilla, who is not queer, was treated with disdain, at least initially (and he still elicits the ire of many), while Tan, an out lesbian with a significantly butch and consequently gender-non-conforming partner was able to fly to Washington, D.C. and address a bevy of senators? If we are to follow the established logic of the heteronormative state, it is Tan who should have been vilified as a lesbian *and* undocumented immigrant. Why did she instead get the kind of special treatment accorded to her?

The exceptional treatment accorded to Shirley Tan is symptomatic of the ways in which the issue of LGBT immigration separates some gay and lesbian identities (and to a much lesser extent trans people), the kind that are recognizable as synonymous with class and privilege, from immigrant identities. In addition, this separation renders prison invisible. Tan's shock

at being lumped with inmates in yellow jumpsuits reflects the ways in which the realities of prison have been dematerialized for gay and lesbian immigrants like her. That dematerialization is furthered by the discourse around LGBT immigration, which only emphasizes what the UFAA already did up front, and the bonds of “love,” and erases the reality that gays and lesbians are also workers.⁶

At the time of this writing, immigration activists of all stripes are calling for much-needed reform to the current immigration system. But increasingly these calls for reform are being made within affective calls to reward the bonds of immigrant families instead of emphasizing the truth that most Americans seem unwilling to confront: that the crisis in immigration will not go away as long as we enable the severe exploitation of immigrants that enables America’s neoliberal—and severely worsening—economy. The excessive priority given to Shirley Tan and her family signals a neoliberal state that strategically deploys sexual identities and the affective discourses around them as tools with which to build up new categories of exclusion while erasing the realities of the exploitation of labor that enables the status quo.

Padilla’s experiences are more typical of what happens to undocumented immigrants caught by ICE. Not only are ankle bracelets par for the course, but most undocumented immigrants are raided in their workplaces or homes and hunted down brutally and “disappeared.” Until 2007, undocumented parents and children were incarcerated at the infamous Texas Hutto Center, where children were threatened with separation from their families as a disciplinary measure. Tan, in contrast, was able to return to her suburban home and family. Padilla’s arrest was predetermined by a history of the state’s surveillance and instant deportation of undocumented people; his DUI arrest formally made him a “bad” immigrant, but his personal history as a young Mexican had already marked him as such.⁷

Many undocumented people, for instance, become such by simply living here on expired visas, and, for that reason, what many describe as a “broken system” is in fact an advantage for those who need to remain under the radar. At the same time, the lack of access to benefits like healthcare and the real dangers of being exposed while traveling or working make the life of an undocumented person fraught with peril on a daily basis. The undocumented “alien” is always a prospect for arrest, by sheer dint of the multiple webs of laws and surveillance mechanisms that exist primarily to make the presence of the undocumented visible. But all this can be significantly alleviated by circumstances of class and access,

making the experiences of undocumented immigrants vastly different depending on factors like education and job history. In effect, the two ankle bracelets stood in for different things. By Tan’s account, the bracelet was a horrifying aberration, a wrinkle in her self-described “almost perfect” existence. In Padilla’s case, the bracelet was an inevitability, not something that he expected but something that no one would question.

Tan’s Story, or, How We Got Here

Tan first came to the United States from the Philippines in the mid-1980s on a vacation designed as a graduation present from her father, who accompanied her. Once here, she met and fell in love with Jay Mercado and returned when her six-month tourist visa expired. Upon returning to the Philippines, she found out that the man who had murdered her sister and mother ten years ago had been released; her fear of him compelled her to go to Jay, to a place “where [she] knew [she] would be safe.” In 1995, she hired an attorney to apply for asylum and legalize her stay in the US. Then, she claims, “When my application was denied, my attorney appealed the decision. I did not know it, but my appeal had also been denied. All the while Jay and I went about building our lives together.”

Tan emphasized the harmony of their lives and how they fit into every (stereotypical) image of the all-American family: “Our family has always been like every American family and I am so proud of Jay and the twins.” The American-ness of the family was further highlighted by its religiosity: “The boys attended Catholic school through sixth grade and are now in Cabrillo Elementary School.... I am a Eucharistic minister at Good Shepherd Church, where Jay and I both sing in the Sunday Mass choir.” According to Tan, they were such exemplary parents that, even as lesbians, they never felt stigmatized, saying that, “We have never felt discriminated against in our community” and “our friends, mostly heterosexual couples, call us the model family. And even said we are their role models. We try to mirror the best family values and attribute the fact that our children are so well adjusted to the love, security, and consistency that we as parents have been able to provide.”

Coming to the point of her presentation, she described her arrest in these terms: “Our lives, I can say without any doubt, were almost perfect until the morning of January 28, 2009. That morning at 6:30AM, Immigration and Customs Enforcement officials showed up at my door. The agents showed me a piece of paper, which was a 2002 deportation letter, which I informed them I had never seen.”

Tan went on to describe how ICE agents took her away “like a criminal.” She continued with her account of her concern for her family: “All the while, my family was first and foremost the center of everything on my mind. How would Jay work and take care of the kids if I was not there? Who would continue to take care of Jay’s ailing mother—the mother I have come to love—if I was not there? Who would continue to take care of my family if I was not there? In an instant, my family—my American family—was being ripped away from me.”

As Tan told her story, she received constant support and affirmation from Senator Leahy. At one point, when Tan’s son showed visible signs of anguish, the senator stopped the proceedings to ask if the child needed to go into another room, saying, “I have a grandson the same age,” and “Young man, I want you to know your mother is a very brave woman.” Tan went on to plead to the UAFB with these words, “We have a home together. Jay has a great job. We have a pension, mortgage, friends, and a community. We have everything together and it would be impossible to [re-]establish elsewhere. We have followed the law, respected the judicial system, and simply want to keep our family together.”

Tan’s emphasis on the American-ness of her family was obviously strategic, even if she was also sincere in her emotions. A plea for clemency to an inherently conservative immigration process that values an adherence to American values cannot deconstruct the very foundation upon which that process rests. But it’s also inarguable that the lengths she went to paint herself as not a criminal also threw into relief the figure of the “illegal alien,” a figure that is the flashpoint of so much contentious debate. Or, as Rachel Tiven, executive director of IE put it to *People* magazine with no subtlety, “They are exactly the kinds of immigrants you want in this country” [emphasis mine].

Tan’s version of her story also made it appear that her status as an undocumented person did not define her existence but that, instead, her brush with ICE was simply a minor blip in an otherwise “almost perfect life,” in which she moved about in complete freedom, blissfully unaware of her status. In fact, despite her assertion of having “respected the judicial system,” it’s unlikely that the lawyer she hired did not tell her that her application had been rejected. Given her access to legal expertise and her partner’s career in Information Technology, a field filled with highly educated foreign nationals and immigrants, she had to be aware of the rudiments required for an extended stay in the United States. It’s also unlikely that she would not have inquired into getting a green card, or wondered

what documentation she was to use from there on—especially since without such, she would not have been able to travel outside the country, or even within it under some circumstances. It is not unusual for people to ignore the letters of deportation and simply not show up for their departure.

My point here is not to expose Tan as a liar. The current immigration system is set up to exploit and terrorize the undocumented who are here in such large numbers because the US economy is sustained on and encourages the development of a pool of exploitable and cheap labor. The system is set up so that people like Tan and others are compelled to lie and obfuscate their origins in order to survive. In this context, defining some immigrants as more or less honest than others does nothing to address the fact that it is the state, with its willingness to dehumanize and exploit those it deems expendable, that commits atrocities beyond mere lies.

I’m pointing to the fact that even under senatorial scrutiny, the verifiable truth of her account was less important than the construction of a supposedly authentic narrative about her honesty and uprightness as a citizen—unmarred except for the fact that she was not a citizen. That authenticity involved purging the possibility of prison or any evidence of wrongdoing, of not having “respected” the judicial system. It also involved explicating her lesbianism within contained terms (by clarifying that most of their friends were heterosexual couples) and demonstrating her adherence to the kind of gender roles that could legitimize her family. Where ordinarily her partner’s butch self-presentation might have proved a liability, in this case they were able to use it as an advantage. Mercado emerged as the manly figure who protected Tan, supported her financially, and provided food and shelter for the family. At the same time, like the stereotypical male, Mercado was declared unable to perform basic household chores while also working—this, despite the fact that she was clearly socialized as female.⁸

Tan’s version of what happened to her hides the brutal reality of undocumented life, transmogrifying it into an ethereal suburban paradise shattered only by the unexpected visit from ICE. But for millions of day laborers and factory workers, and countless trans/queer sex workers, life is a constant climate of fear and surveillance, with exploitative jobs for which employers can underpay, threatening to turn them over to ICE if they complain about wages or mistreatment.

Tan’s testimony is quite typical of the discourse around LGBT immigration, which has, in recent years, been distilled down to just one issue: that of lovelorn US citizens or permanent residents needing to be with

their foreign partners. In addressing the need for the Uniting American Families Act, proponents describe the situation of bi-national couples in excessively melodramatic terms, going so far as to describe US citizens and permanent residents who might leave the country to be with their partners as "exiles," as if a romantic partnership were akin to the trials of Pablo Neruda. The shackles of love replace the reality of the very real shackles that await many thousands of undocumented aliens, queer and otherwise, who are swept up and disappeared from their neighborhoods and then detained in often inhumane conditions before being deported. But, as Tiven emphasizes, gays and lesbians like Tan are not to be confused with the criminals in yellow jumpsuits.

Sexuality and the State

But what then of the relationship of queers to the state? The history of queer immigration to the United States has been a fraught one. The current emphasis on UFAA provides the illusion that the entrance of queers/LGBTs into the United States has been determined entirely by their status *as* queers/LGBTs, but in fact queer immigration has always been interlinked with the history of immigrant labor and has always been affected by the gendering of that labor.

Until 1990, gays and lesbians were barred from entry as immigrants.⁹ That might seem shockingly recent until we remember that *Bowers v. Hardwick* was only repealed in 2003. Over the years, especially beginning in the mid-1990s, the "gay rights movement" has become a perfect replica of the neoliberal state. Marriage, Don't Ask Don't Tell, and hate crimes legislation have taken over the agenda. None of these are anything but rank conservative issues, and the last in particular simply adds to the number of those detained by the legal system. Despite the obvious conservatism of these issues and the fact that far greater issues—like poverty and the lack of healthcare—affect millions of gays and straights, the average American assumes that "gay rights" are automatically left/progressive issues.

Through the gay marriage movement, gays and lesbians are now mostly conceived of in terms of their relationships and, within that context, it is only natural that UFAA should be seen as *the* immigration issue for gays and lesbians. Given the history of illegality of the queer body in the United States, and how clearly that has been a construct and until how recently, we might imagine that queers of all people would be suspicious of any attempt to collude with the state. Yet, as the push for UFAA shows,

many gays and lesbians have bought wholesale into the idea that the state can and should affirm their identities, and they have sought to engage the process of normalization as much as possible.¹⁰

The dilemma now facing advocates for queer immigrants is, How do we make queer visible? And what does that visibility look like? In cases of appeals for asylum on the grounds for sexual orientation, for instance, lawyers are compelled to prove the sheer brutality and repression of home cultures. This strategy comes with its costs. It is certainly true that queer life in some countries is subject to violent repression, but the one-sided portrayal of "other" cultures as sexually repressive helps to efface the reality of queer life in the United States, where both normative and non-normative homosexuality are continually policed and brutalized. In addition, asylum seekers are often held up to cultural stereotypes, with asylum officers refusing admission on the grounds that applicants don't "look" or "act" gay/lesbian enough.

In this context, where queer immigrants must fit into fictional narratives that seek a pre-determined authenticity, family and love become the only modes by which queers can assert themselves *as* queer. They are to be either connected to families or hounded by them. In addition, the fact that immigration reform efforts are still bound by the idea of "family reunification," despite every indication that addressing labor issues would be more worthwhile. Queer immigrants in particular are harmed by an emphasis on family reunification because their families of origin may, in many cases, prove dangerous to them; many queers, including non-immigrants, leave their birth homes in their teens for these very reasons.

Gender, Sexuality, and Labor

Gender and reproduction have been interlinked with labor in US immigration law, which has, historically, been concerned with the literal and metaphorical reproduction of the state. This emphasis on reproduction is linked to the principle of "family reunification," which dictates that immigration law should be designed to enable families to stay together. However, this is applied only when convenient. When Mexicans and other Latin Americans reproduce, they are accused of having "anchor babies," a term that implies that families use their native-born children to gain permanent residence in this country. Immigration has also been intensely racialized and that racialization has been about surveilling and controlling the reproduction of non-white foreigners. For instance, the 1857 Page Act effectively banned Chinese women from immigrating, on the grounds of

prostitution, but the ban was meant to prevent Chinese men from forming families here. The anti-immigrant fervor of recent years has brought about a backlash against “chain migration” and calls for revoking natural birth citizenship from the children of “illegal aliens.” The paranoia about “anchor babies” adds to this backlash. All of this is, of course, clearly a class-inflected paranoia—nobody has anything to say about well-paid professionals who have babies in the US

UAFA, which is being endorsed as a part of “family reunification,” replicates the problematic construction of the gendered family by insisting that same-sex partners of US citizens and permanent residents demonstrate their financial dependence. By law, the sponsoring partner must be able to demonstrate that he or she can support the other and provide 125 percent of the income required for a single-family unit. In addition, they are legally bound to agree to support their partners for a period of ten years; the notion of “interdependence” mapped out by UAFA is, in fact, dependence. UAFA reproduces the ultimate class fantasy of the immigrant, as made visibly evident through Tan: a suburban home, a place in the church, two suburban soccer-playing kids, and a dominant partner to take on the financial burdens of the household.

In fact, family reunification, far from being solely about bringing families together, disguises the realities of gendered labor that are a part of immigration and that can and do exist, even in lesbian relationships; and it avoids the stigma faced by millions of families who are deemed unworthy of rights. Families like Padilla’s are constructed as labor units by immigration but ignored as families when convenient. The neoliberal reality of a world devastated by economic “free” trade acts like NAFTA is that entire families are compelled to move across borders to seek better lives because their own economies have been laid to waste and cannot sustain them. In the process, some families are held up as more ideal than others. Those that can adhere to the heteronormative ideal of a sole breadwinner assuming responsibility for the entire family have their filial emotions validated. Those that must remain invisible because they don’t present themselves as ideal (for example, undocumented adolescents whose labor cannot yet be exploited, at least legally) are considered less than human, and their filial relationships and emotions are erased. In the strategic deployment of family reunification, Tan was hailed as the ideal citizen-to-be, but there was little public concern about Padilla’s parents losing their son to deportation. One family’s tragic loss is seen as another’s punishment for being illegal in the first place.¹²

Caught in the Vectors

Traveling back home to Chicago in the Spring of 2009, Juan (out of concern for his parents, he does not want his full name used), an out queer student, dozed off on the Greyhound bus and slept through it stopping. He woke up to find ICE agents making their way toward him, the only Latino on the bus. They demanded to see his papers. Juan, brought here as a child by his parents, does not have an American passport and records indicated his undocumented status. He was apprehended and placed in detention for weeks while his parents, working-class Chicagoans, scraped together the \$8,000 required to get him out of jail. At the time of this writing, Juan is awaiting an indefinitely postponed series of trials. When I asked him how his queerness might have affected his experience, he described what happened when he was allowed to make a phone call. Overcome with emotion, he began to cry on the phone. “I’m not afraid to be emotional,” explained Juan, attributing this to his queerness. When he turned around after the call, he saw ICE agents laughing at him and mimicking him.

Perna Lal is a Fijian immigrant who came here with her parents and two sisters when her father came to the United States for graduate studies. Their original plan was for everyone in the family to gain citizenship through her grandmother, but through a complicated series of setbacks and delays, Lal ended up being the only person in her family to remain undocumented, a situation that she has written about publicly quite often (she’s a co-founder of the DREAM activist network). Her life has also been marked by significant amounts of physical and emotional abuse, and she was put to work in the family business while still a student at San Francisco State University.

Lal came out as queer in high school, and her father sent her to a counselor because he refused to believe that she was “normal.” During a counseling session, Lal revealed that her father beat her, and her revelation resulted in child protective services showing up at her high school and home, prepared to take her away and arrest her father. At the time, her father, in between his school years and in the process of getting his green card, was undocumented. Lal, afraid that the family breadwinner would be deported, eventually retracted her story of abuse.

Both Juan and Lal’s stories reveal that queer immigrants come from backgrounds infinitely more complex and different than the “almost perfect” suburban ideal held up by Tan. As Lal put it to me in a telephone interview, her family’s travails and her own undocumented status were in

large part due to their lack of cultural capital. Although her father was here as a student, their class status as working-class Fijian immigrants precluded their access to the kinds of legal and cultural expertise required to maneuver through the complicated and labyrinthine processes required for citizenship. Within her family, her status as a lesbian put her in physical and emotional danger on two fronts: an abusive parent who clearly saw her as abnormal, and child protective services that could recognize the physical danger to her but could do nothing about her invisible status as the undocumented child of an undocumented man.

The stories of Juan and Lal reveal the contradictions in which immigrants find themselves. When I asked Juan what he considered suitable solutions for people like him, he was quick to say that UAFA would help queer immigrants. But when I asked him how that was supposed to help uncoupled queers, he confessed that he hadn't considered that marriage/coupledness was not the ideal solution. Lal publicly supports UAFA and gay marriage, even joining the board of Immigration Equality in 2010, which is bewildering given the extent to which the legislation and the marriage movement reinforce exactly the kinds of gendered and sexualized dependencies and family formations that made her vulnerable in the first place. The fact that people like Lal and Juan echo support for measures that contradict the realities of their existence only proves the power of the discursive frameworks within which such immigrants must operate.

Conclusion

To consider a case where queerness intersected with immigration and where neither framework provided any safety, we could look at the life and horrific death of Victoria Arellano. Arellano was a 23-year-old, transgender Mexican immigrant who died of complications from AIDS while in the custody of the Department of Immigration and Customs Enforcement in a San Pedro, California, facility. Arellano had been in this country since the age of six and had been caught entering the United States for the second time in May 2007.

While in detention, she was denied medication and medical attention despite her diagnosis of HIV. After a particularly brutal relapse resulting from not having access to proper medications (her fellow inmates took turns tending to her and walking her to the bathroom), Arellano was only prescribed amoxicillin, a standard drug prescribed for common bacterial infections. She was eventually taken to a San Pedro hospital but was returned to the prison the next day. When her condition worsened, she was

taken out again and placed in the intensive care unit of Little Company of Mary Hospital in San Pedro. There, she was handcuffed to her bed while immigration agents watched the door. She died there on July 20, 2007.

Arellano's story is a common one, and hers happens to be one of the few that garnered some media attention. While the mainstream gay community focuses on UAFA, it ignores cases like Arellano's. But what happened to her is far more typical for transgender and queer immigrants than what happened to Shirley Tan. Her gender identity and her undocumented status caused her death by willful negligence within a system designed to brutalize a non-conforming body, one that could not be interpolated into normative discourses about perfect assimilationist families.¹³

How do we remedy matters so that the issues facing people like Padilla, Juan, and Arellano are brought to the forefront? The strategy engaged by so-called progressive and left immigration-rights activists so far has been to render immigrants' stories in palatable terms by discussing the pathos and vulnerability of their lives. This strategy has failed miserably except in individual cases. Victories like Padilla's constitute short-term wins for individuals, but they do nothing to cease the systemic problems with the system. Padilla's success and the intense campaign around it galvanized an already vibrant undocumented-youth movement, and various groups of students have been engaging in acts of civil disobedience across the country in order to gain support for the DREAM Act (Development, Relief, and Education for Alien Minors). This federal legislation is designed to provide a path to citizenship for anyone brought here as an undocumented minor under the age of 16. But while the DREAM Activists, as they call themselves, provide poignant reasons why the legislation should pass, their rhetoric echoes the same problematic kinds of exclusion as used by Shirley Tan and the supporters of UAFA.¹⁴ Over and over, these youth describe themselves as exceptional immigrants, pointing to their academic achievements and exemplary citizenship. One of the chief ironies of the DREAM Act is that it requires such students to rhetorically turn against their own parents. One of the requirements of the DREAM Act is that qualified students either attend college or join the military for two years. Given that so many of the youth who would benefit from the DREAM Act are of color and from families for which college might be a hardship, it's likely that a great number of them will be compelled to join the army and become fodder for one of the endless and meaningless wars being waged by the United States. In this way, they will join the ranks of the millions of youth of color who have been coerced into war.

In order to create real change, we have to center the violence at the heart of these experiences, to speak and write of them *as* experiences with the brutal power of the state, not as narratives about good versus bad immigrants. If we are to undo the prison industrial complex and interrogate its relationship to racialized immigration, gender, and sexuality, we need to first make manifest the violence that marks immigration from the start: the violence at the border, the sexualized brutality, the psychic and epistemological violence at the heart of the family that compels children and women in particular to remain silent, the violence of gender normativity, and the crushing force that dehumanizes and kills immigrant detainees. We need to recover the discourse on violence instead of relying on the notion of love in order to rematerialize the specter of the prison. Paradoxically, this is what it will take to make it vanish forever.

The current discourse on queer immigration presents an idealized and bourgeois version of transgender and queer immigrants, a discourse that makes the reality of the prison industrial complex completely invisible. If we are to seek an end to the nightmare of the PIC and the disaster that is "immigration reform" in this country, we need to reintegrate an analysis of the violence of the PIC back into the discourse on immigration and queers. We need to abolish the walls of prison and the discourse of normative attachment, a discourse that only succeeds in making prison disappear under the fog of love.

NOTES

1. At the same time, the mainstream gay and lesbian community only pays attention to queer immigrants in terms of their relationships (as in its concern for UAFA) in the midst of the push for gay marriage, or in terms that can pathologize them, as in the issue of asylum on the grounds of sexual orientation. Gay organizations like Immigration Equality are quick to support UAFA but have nothing to say about, for instance, the issue of no-match letters, except when necessary to gain entry into immigration rights circles.

The marriage issue brings with it narratives about legitimacy and illegitimacy. The gay and lesbian mainstream wants a bourgeois identity, to march onward in its attempts to gain respectability. Within this relentless search, the only clarity comes within the demarcation of the good and bad immigrant, the documented and the undocumented. Mainstream gay activists seek to legitimize the bourgeois gay subject as one that will not contest the state or unsettle its hierarchies. This is a deeply conservative and neoliberal agenda that neither changes the structure nor makes it more equitable. Instead, it simply wants

- to expand the category of the bourgeois heteronormative subject to include women like Tan. <http://www.youtube.com/watch?v=9cTojNqjnP4>.
2. Gay and lesbian activists for UAFA are pushing for the law on the grounds that it would grant same-sex couples the same rights as married straight couples, claiming that the legislation is especially needed since they cannot marry under federal law.
 3. Mercado's appearance as a butch woman would be a significant, even if unacknowledged, factor in the press coverage and the pair's attempts to drum up sympathy for their cause (visibly aided by Immigration Equality).
 4. <http://www.dreamactivist.org/rigoberto-padilla-fights-deportation-open-letter/>.
 5. A private bill is often inserted as a section of a larger piece of legislation and used to further the case of an individual. These rarely pass.
 6. In the case of Tan and Mercado, the latter's job placed her in a field that is already dematerialized to the extent that the IT industry still functions as a virtual job sphere, despite the fact that it increasingly requires millions of overworked and underpaid temp workers to sustain it.
 7. A further complication in the Tan-Mercado case, which cannot be ignored, is that they were from the Philippines. The United States' relationship with the Philippines has always been one between colonizer and colonized and, as is typical of such relationships, has been a gendered one. The Philippines have historically been cast as a feminine Other in relation to the United States, as the sexual and sensual willing handmaiden to the strong, masculine imperial force of the US. The fact that the Philippines' biggest export is its labor in the form of domestic workers and nurses, whose remittances form an important part of the country's economy, estimated at nearly 17 billion in 2009, further lends to this historical feminization. The gendering of the Tan-Mercado relationship, of an outwardly butch and femme lesbian couple, played into this gendering.

In contrast, Mexico, in the imagination and political reality of the United States, has always been marked as nothing more than a cheap source of expendable migrant labor. Metaphorically, Mexico has been cast as the houseboy of the United States, while the Philippines are cast as its eternal concubine. In more recent iterations of her statement, Tan has begun to state that ICE agents gained entry into her home by pretending to be looking for a "Mexican girl." This detail was absent from her earlier versions of her story, including the videotaped testimony in front of US senators and has only recently begun to surface. It does appear in a written form of her testimony on the Web site of the United States Senate Committee on the Judiciary—but even this is, as far as I can tell, a relatively recent addition; the statement was not on the Web site for much of 2009. In the context of the family's increasing efforts to appear as "good," this new

- detail appears to be a way to distance Tan from the “bad” Mexican immigrants.
8. The *People* article also reported that they had even considered the possibility of Mercado transitioning as male so that they could get married as a heterosexual couple—presumably with the hope that it would be easier for Mercado to sponsor Tan as a spouse.
 9. See “Eithne Luibhéid and Bridget Anderson—Gendering Borders: An Exchange,” *Re-Public: Re-imagining Democracy*. <http://www.re-public.gr/en/?p=471>.
 10. See also Karma Chavez’s “Border (In)Securities: Normative and Differential Belonging in LGBTQ and Immigrant Rights Discourse,” *Communication and Critical/Cultural Studies* 7, No. 2 (2010): 136–155. See also Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002).
 11. The Social Security Administration sends “no-match” letters when the names or Social Security numbers on an employer’s W-2 do not match SSA’s records. Ostensibly a measure to track fraudulent SSNs, the system is in fact so unreliable that the Department of Homeland Security rescinded its “no-match” rule in late 2009. For instance, this system cannot detect human errors such as misspellings of names. Furthermore, although the SSA clearly states that the letter cannot be used as proof that an employee intentionally provided misinformation, unscrupulous employers can use it to fire or intimidate workers who complain about workplace conditions. http://www.nilc.org/immseplymnt/ssa-nm_toolkit/index.htm.
 12. Also left out of the picture, via the lesbian domesticity of the Tan-Mercado family, is the more threatening and potential spectacle of a same-sex male couple. It is clear that the gendered relationship between Tan and Mercado also facilitated their acceptance—and it is highly unlikely that the sight of two gay men, invoking the more threatening vision of gay sex, would have been as reassuring to the senators or to the general public. In other words, the reassurance provided by Tan and Mercado is a fragile one and does nothing to erase the fact that homosexuality and the state are still considered incompatible.
 13. Immigrants and especially queer immigrants with HIV/AIDS face multiple threats to their safety and health. The United States instituted a bar against travelers and immigrants with HIV in 1987, and that had a dangerous effect on both the spread of the epidemic and the health of the immigrant population. The ban was lifted in 2009, but there is little information about how that the government is going out of its way to now reach out to HIV-positive immigrants and encourage them to come forward for testing and treatment. Furthermore, with states like Arizona enacting virulent anti-immigrant measures that will, along with other measures, cut off social and health services to the undocumented

- (and position every brown-skinned person as an “illegal” who needs to prove his or her status), it’s unlikely that HIV rates among immigrants will go down significantly. That burden will be left to social service agencies. Without proper counseling or outreach, immigrants with HIV are likely to go undiagnosed until the late stages of the disease, and then they are likely to go underground. They are likely to be among the most exploited workers in the economy, given their fear of exposure to or by employers. They face the greatest risk to their health, given that most states deny healthcare to the undocumented. Even when states, like Illinois, do provide treatment without asking questions about documentation, most HIV-positive immigrants are not aware of these services given the stigma of their communities and the fear of being outted to ICE.
14. Interestingly, several of the DREAM Activists are openly queer. They include Mohammad Abdollahi and Prerna Lal, co-founders of the DREAM Web site.

IDENTITIES UNDER SEIGE:

Violence Against Transpersons of Color

Lori A. Saffin

Within the war we are all waging with the forces of death, subtle and otherwise, conscious or not—I am not only a casualty, I am also a warrior.

—Audre Lorde¹

As news reports and statistical data have shown, one of the more egregious realities that many transpersons encounter is that of violence. From the schoolyard to street harassment to brutal murders, transgender people are the targets of many of the most vicious and blatant forms of violence. The National Coalition of Anti-Violence Programs reports that in 2009 transgender victims represented 17 percent of the violence enacted against LGBT persons nationally.² However, transgender persons do not occupy

one homogenous category of identity, but instead occupy multiple subjectivities across race, class, nationality, and ability. For example, transgender women were disproportionately targeted for hate-motivated violence, representing roughly 65 percent of the reported violence against transpersons in 2009, and of the twenty-two anti-LGBTQ murders reported, people of color accounted for 79 percent of these murders, and 50 percent of those murdered were transgender women.³

Most current discussions of transgender issues separate out transphobia, heterosexism, and misogyny from racism, ethnocentrism, and Eurocentrism.⁴ In examining transgender identities in isolation, a white, middle-class transgendered subject is assumed. By analyzing anti-transgender violence as separate from race and class, the lived experiences and specificity of transpersons of color are ignored. Moreover, examination of violence against transpersons in isolation is myopic because it fails to connect anti-transgender violence to other systems of oppression, such as poverty and racism.

The interconnection of racism, classism, and transphobia propels many transpersons of color into positions that put them at an increased risk for violence. Due to rejection from the lesbian and gay community, as well as the structural realities of racism, many transpersons of color who are victims of violence have limited support systems in place and thus, for survival purposes, often have to consider performing dangerous work. For example, many turn to sex work out of economic necessity, or work long hours in minimum-wage jobs because they have been forced to quit school or leave home, resulting in a lack of social, economic, and emotional resources. By foregrounding violence enacted against transpersons of color while also demonstrating that this violence is not individual or random, but part of a much larger structure of racism, classism, and trans/homo-phobia, a more complex, multilayered way of understanding identity and the interlocking systems of oppression and violence can be mapped.

Barbara Perry argues that hate crimes are assaults against the community to which an individual appears to belong and are significantly oriented toward creating a spectacle of subordination, as well as physical harm.⁵ Hate crimes, Perry argues, are intended to send a message to the communities who bear witness, as well as to the immediate victims, to get back "in their place."⁶ Even though the bulk of hate crimes are not committed by hate groups, acts of transphobic or racist violence are nonetheless attempts to turn beliefs in transgender "deviance" or white

supremacy into concrete realities.⁷ One of these concrete realities was the brutal death of Jessica Mercado. Jessica was a 24-year-old, Latina transwoman who lived in New Haven, Connecticut. In May 2003, firefighters and police found Jessica's body riddled with stab wounds, draped over a mattress, and set ablaze.⁸ Fire investigators determined that the mattress was purposefully set on fire and police suspected that the killers ignited it, hoping to cover all evidence of the crime.⁹ Police classified the death as a homicide because under current law, Connecticut does not have hate crime penalties for attacks based on *gender* identity.¹⁰ In September 2004, four sentences appeared in the local New Haven paper in an article entitled "Arrest Made in Transvestite Murder." Michael Streater plead guilty to murder and arson and was sentenced to thirty years in prison.¹¹

The New Haven queer community held no marches or candlelight vigils following Mercado's murder. Not one person took to the street in protest. The *Hartford Advocate* interviewed multiple members of the LGB community to understand why queers were not expressing a public outcry. Several suggested that it was Jessica's occupation as a prostitute that prevented many from caring about her brutal death. Some gay community members claimed that her role as a sex worker pointed to a motive—the rage of an unsuspecting client, surprised to learn that she was anatomically male.¹²

However, this silence from the queer community is not an anomaly. Like Jessica, several other anti-transgender deaths from hate-motivated violence reveal glaring similarities. For example, Shelby Tracey Tom was a 40-year-old Asian transsexual and sex worker who was murdered in North Vancouver twenty-two days after Jessica. Her body was discovered in a shopping cart behind a Laundromat.¹³ Although the police waited several days to announce Tracey's death, there was still no newspaper or media record of her murder and no public outrage or grief from the LGB community.¹⁴ Another transgender victim, Donathyn J. Rodgers, a 19-year-old African American transwoman and sex worker from Cleveland, Ohio, was shot multiple times and killed in November 2005.¹⁵ Although she was active in the Lesbian-Gay Community Service Center of Greater Cleveland, the center published no memorial or information about her death, and her case remains unsolved. Similarly, Selena Álvarez-Hernández was a Latina transwoman who worked in a meatpacking plant in Omaha, Nebraska, and was found stabbed several times and unconscious on the lawn of a house in Council Bluffs, Iowa, in 2003.¹⁶ She was pronounced dead a short time after being found, and there is little to no information available

on possible suspects. Additionally, Christina Smith was a 20-year-old African American transwoman who had been evacuated from New Orleans following the aftermath of Hurricane Katrina.¹⁷ She relocated to Houston, Texas, and was found shot in the head on the patio of her apartment in October 2005. Her murder remains unsolved.

These brutal murders were not isolated incidences: From 2003 to 2009, there has been an average of eighteen reported LGBTQ-identified persons killed each year, and transgender persons have disproportionately been the target of the most brutal and vicious forms of hate-motivated violence.¹⁸ Most recently, Caprice Curry, a 31-year-old black transgender woman was assaulted and stabbed to death in January 2009 in San Francisco's Tenderloin District. Kelly Watson and Terri Benally, both Navajo transwomen, were fatally assaulted in Albuquerque, New Mexico, in June 2009. Tyli'a Mack, a black transgender woman, was attacked and stabbed to death while walking into a Washington, D.C. drop-in center in broad daylight in August 2009. Dee Green, a black transgender woman, was found unconscious, stabbed in the heart, and left dead on the street in Baltimore in October 2009.

These cases, among many others, are clearly not aberrations, and as the National Transgender Advocacy Coalition asserts, murders and violence against transgendered individuals across the country averages to more than one per month.¹⁹ However, this statistic most likely does not capture the true number of crimes enacted against transgender persons due to the distrust and fear of revictimization within a largely transphobic criminal justice system.²⁰ Certainly the heinousness and brutality surrounding all of these murders would merit a public outcry and point to the level of queer hatred exuded not just by particular individuals, but also embedded within larger social systems. It is the structural connectedness of racism, classism, and heterosexism that produces a disproportionate number of transpersons of color as hate crime victims and also contributes to the silence and apathy surrounding mobilization efforts.

The countless reported and unreported victims of hate-motivated violence point to several structural intersections. Most of the victims of gender-based violence are people of color. Black and Latino/a individuals account for 85 percent of the known victims of gender-based violence.²¹ This suggests that the intersection of race and gender-non-conformity is crucial to increasing a person's vulnerability to fatal assault. Richard Juang argues that anti-transgender discrimination and violence are often accompanied by racial and ethnic discrimination, and conversely, that situations

interpreted as instances of racial and ethnic injustice often also involve a policing of gender and sexual boundaries.²²

Moreover, most of the hate crime victims of anti-transgender violence are poor. They have been forced out of school, out of homes, and out of jobs, resulting in the interconnection of poverty and gender-non-conformity in many of these fatalities. Victims are disproportionately from economically disadvantaged communities and are forced to rely on low-paying jobs (such as that of Álvarez-Hernández who worked in a meatpacking plant), or because of other mitigating factors, such as Christina Smith's forced uprooting and temporary homelessness after Hurricane Katrina.

The lack of money and resources forces many victims, like Jessica Mercado, Donathyn Rodgers, and Shelby Tracey Tom, to trade temporary sex work for food and shelter, increasing their vulnerability to assault from a client and police. Most of these victims of gender-based violence are ignored by the media and oftentimes also ignored by the mainstream lesbian and gay communities. According to a recent GenderPAC report on violence against queers, only eleven victims generated sustained media coverage, and then only when an arrest and public trial was involved.²³ The thirty-two non-trial murders averaged only a single 500-word article, and 24 percent of victims received no coverage at all.²⁴

Most of the victims of gender-based violence suffered multiple stab or bullet wounds, or a combination of strangling, stabbing, and beating. In a number of cases, victims appeared to have been shot, stabbed, or bludgeoned, even after death. The extreme violence used by assailants suggests that the attacks were motivated by intense rage and that the purpose of these attacks was not simply to terminate life, but to punish and torture for gender-non-conformity. Furthermore, most of the murders of transpersons of color are often unsolved and unrecognized not just by the nation and mainstream presses, but also by the communities in which these individuals resided.

Queer Racism

Many transpersons of color cannot seek refuge in the larger LGBT community because of racism.²⁵ Racism in the queer community is nothing new, as numerous historical examples illustrate pervasive racism, from the white-run gay bars and clubs of 1950s, where gays and lesbians of color were not welcome, to the multiple forms of identification still needed from queers of color to get into bars. Even the celebration of Stonewall as

the “birth” of the gay and lesbian movement often denies the existence of queers of color as historical participants shaping LGBT politics and policies.²⁶ Charles Nero contends that the exclusion of black gays from full participation in queer culture is widespread.²⁷ Similarly, Brian Freeman, a member of the performance art group Pomo Afro Homo, remarks in the 1997 documentary *The Castro* that black gay men are unwanted, unseen, and invisible within San Francisco’s “gay mecca.”²⁸ More recently, the Human Rights Commission issued a report in 2005 on *SF Badlands*, a club within the Castro district, stating that the bar’s employees had engaged in racist business practices, including referring to African American patrons as “non-Badlands customers” and often requiring African Americans to produce extra forms of ID at the door.²⁹ Accounts such as these are all too familiar to queers of color, and many LGBT persons of color feel excluded, exploited, and patronized by the dominant white gay organizations. Furthermore, the lack of presence, visibility, participation, and leadership of people of color within the LGBT community points to structural racism embedded in queer communities and organizations.

Since the Civil Rights Movement of the 1960s, ideological and legal discourses have taken a “colorblind” approach to conceptualizing race. Violent racism becomes a phenomenon of history’s past, and now the United States has entered a post-racial moment.³⁰ With social systems premised on liberalism, multiculturalism (tokenism), and universal subjectivity, racism has been deemed by many as no longer an issue. However, when most queer organizations are run by whites, national political agendas, such as gay marriage, are fronted by white gay men, and the visibility and voices of queers of color are rarely a central focus, it is difficult to deny the marginalized positioning of LGBT persons of color.³¹ As Dean Spade contends,

The most well-publicized and well-funded LGB organizations have notoriously marginalized low-income people and people of Color, and framed political agendas that have reflected concern for economic opportunity and family recognition for well-resourced and disproportionately white LGB populations. Low income people, people of Color, and gender-transgressive people have been notoriously underrepresented from leadership and decision-making power in this movement.³²

When racism is relegated to the periphery of a white-dominated gay agenda, politics, and community, finding safety and empowerment in this space is typically bleak for most queers of color.

Racism within the LGBT community, together with possible ostracism from one’s own ethnic community, puts transpersons of color in a very precarious position as outsiders among the margins, forced to differentiate between identities that both communities deem as conflicting. This becomes particularly damaging as binaries become reinscribed, where the queer body equals a white body, and the brown or black body equals a heterosexual body. Rigidly constructing and reinforcing the boundaries of identity erase the lived realities of transgendered persons of color. As a result, when brown or black queer folks, like Jessica Mercado, Shelby Tracey Tom, Christina Smith, Selena Álvarez-Hernández, or Donathyn Rodgers are violently killed, their bodies are marked as “unknown” or “unidentified,” and it is the silence from both the LGBT community and racial communities that mark their deaths. Yet, the murder of any queer person of color sends a message loud and clear to both the LGBT community *and* to racial communities: structural violence remains a lived reality.

Homophobic Sentiments Within Communities of Color

Communities of color are no more homophobic or transphobic than whites; however, accusations of homo- or transphobia are generalized to an entire community, despite the pervasiveness of homophobia cross-culturally. Queer persons of color, like whites, are still frequently rejected from their families or communities because of homo- or transphobia. Keith Boykin contends that “unfortunately in the Black community at large, homophobia and heterosexism reach all demographic groups...and are frequently seen not as prejudices but survival skills for the Black race or the Black individual.”³³ Sometimes, queers of color are associated with the decline of the community whereby queerness is seen as an outgrowth of white racism or as a by-product of the breakdown of the family.

Queerness is also viewed as a threat to the continued existence of the heterosexual family and community, consequently justifying homophobia and forcing many queers of color to separate their racial identities from their (homo)sexuality. Joseph Beam demonstrates this struggle with identity as well as his frustrations with homophobia purported by the black community in stating,

I know anger. My body contains as much anger as water.... I am angry because of the treatment I am afforded as a Black man. That fiery anger is stoked additionally with the fuels of contempt and despal shown to me by my community because I am gay. I cannot go home

as who I am. When I speak of home, I mean not only the familial constellation from which I grew, but the entire Black community.... I am most often rendered invisible, perceived as a threat to the family, or I am tolerated if I am silent and inconspicuous. I cannot go home as who I am and that hurts me deeply... I dare myself to dream of a time when I will pass a group of brothers on the corner, and the words "fuckin' faggot" will not move the air around my ears.³⁴

Stephan Lee Dais shares similar frustrations with homophobia in the black community. He argues that

two of the most difficult aspects of being Black and gay are the lack of acceptance and affirmation shown to me by my community. I want to serve my community as a man, a gay man, and a member of the Black community. By dismissing Black gays, the Black community denies a considerable portion of its identity. The Black community that needs me, won't let me serve it; unless, I hide my identity, my values, my beliefs, and my self.³⁵

Although Beam and Dais both discuss accounts of homophobia from the late 1980s, homophobia within the black community persists. In their article "Talking About It: Homophobia in the Black Community," Barbara Smith and Jewelle Gomez suggest that "one of the challenges we face in trying to raise the issues of lesbian and gay identity within the Black community is to try to get our people to the place where they see that they can indeed oppress someone after having spent a life seeing themselves as being oppressed."³⁶ Moreover, Kelly Brown Douglas connects current discourses of homophobia within the black community to the influences of conservative shifts in politics and religion at the beginning of the twenty-first century.³⁷ Even Democratic Presidential candidate Barack Obama told worshippers at Atlanta's Ebenezer Baptist Church, where Martin Luther King, Jr. once preached, that, "If we are honest with ourselves, we'll acknowledge that our own community has not always been true to King's vision of a beloved community. We have scorned our gay brothers and sisters instead of embracing them."³⁸ The assertions made by these various authors suggest that ostracism from friends, family, and community can have very damaging affects. Consequently, many queers of color are forced into the closet in order to be accepted within the larger racial or ethnic community.

Expressing homophobic sentiments within political mobilization efforts also has extremely dangerous consequences. In addition to many queer people of color being outcast from their families or rejected by the larger community, queerness is considered a threat to the unity of a racialized political group. Black political leaders, such as Amiri Baraka, Eldridge Cleaver, and Haki Madhubuti view "homosexuality negatively and fear that it will become pervasive within the Black community."³⁹ Keith Boykin details a number of political leaders who have used homophobia to rally members of racial or ethnic communities into action.⁴⁰ However, by politically challenging and organizing only around racism, many communities of color re-inscribe relations of domination because they rely on heterosexist and patriarchal agendas. Homophobia, then, becomes a scapegoat for the survival of a race in a white-dominated and white supremacist society.

The above discussion on homophobia in communities of color centers particularly on the black community. However, homophobia is rampant across racial and ethnic lines. Nayan Shah discusses his feelings of queer invisibility within his own South Asian community stating that "homosexual relationships are labeled a white disease whereby the politics of race are used to condemn lesbians and gay men. They perceive queer identities as a threat to the cultural integrity of South Asian immigrants. The rhetoric is lethal, and well understood."⁴¹ Similarly, Surina Khan relays her own experiences with homophobia, resulting in Khan cutting ties with her Pakistani community, including her family.⁴² Although the experiences of queers of color attempting to navigate within immigrant communities and black communities have obvious differences, what remains painfully similar is the frequent rejection by family and community members. Furthermore, across racial and ethnic lines, queers of color encounter the pressure to bifurcate their identities, often forced to choose between primarily identifying with their race or with their sexuality.

Economic Inequality

Economically, raced-based inequalities result in a disproportionate number of people of color living in poverty. According to the 2008 US Census Press Release, the poverty rate for people of color was drastically higher than—and in fact, almost triple that of—whites. Blacks had a poverty rate of 33 percent, Asians 20 percent, "Hispanics" 31 percent, and American Indians 23 percent, compared to whites, whose poverty rate was estimated at about 12 percent.⁴³ These numbers indubitably demonstrate that gross

economic disparities exist for people of color. Although studies suggest that poverty has decreased among blacks and “Hispanics” in recent years, issues of food, housing, and employment hardships have remained.⁴⁴ These economic inequalities have forced many people of color into low-paying, dangerous jobs that subject them to economic, physical, and emotional vulnerability.

Racialized economic inequity is important to consider when looking at the hate-motivated violence affecting communities of color. Wealth affords access to institutions of power, including educational systems, the media, community resources, and political systems. Economics shapes whose story is told, how a community can afford to respond, what legal action is taken, and the ways in which the media can be used to publicize issues of hate or violence within local communities. When families cannot afford food or adequate healthcare and are competing for the limited resources available to them, challenging violence or legislating protection may not be a first priority for community action: survival is. Because of the effects of racist economic inequities from a white-dominated capitalist system, many people of color are denied access to these larger systems of power, perpetuating silence surrounding hate crimes within poor communities of color.

However, access to resources becomes compounded when examining people of color who are queer. Without community or familial support, many queers of color are pushed into even more economic vulnerability, with no family to fall back on in times of crisis or community to provide emotional support. Coupling racial economic inequity with homophobic attitudes leaves many queers of color in insecure, isolating conditions. The perceived gender transgression by many transpersons of color can cause serious consequences, ranging from daily abuse or harassment at home to being banished from their families and communities. As a result, many transpersons often end up homeless. Adult homeless shelters are inaccessible because of the fact that most facilities are sex-segregated and will either turn down a transgender person outright or refuse to house them according to their lived gender identity.

Similarly, harassment and violence against transpersons is rampant in schools, and many drop out or are kicked out before finishing. This leads to less opportunity in a job market that already severely discriminates against transpersons.⁴⁵ Many transgender persons are fearful of applying to jobs because paperwork or other documents might reveal their old name or birth sex. They also might be fired for transitioning on the job

or when a transperson's gender identity comes to the attention of a supervisor.⁴⁶ These fears, coupled with transphobia in employment, leave many transpersons with few opportunities to live economically secure lives.

Discrimination against transpersons also permeates access to government benefits, such as welfare, Medicaid, and Social Security. Those transpersons who do seek social services to assist them out of homelessness, poverty, or drug addiction, or aid in accessing services or resources will oftentimes have difficulty finding advocates to assist them.⁴⁷ The resulting lack of access to social services and resources leaves a disproportionate number of transgender persons in severe poverty and dependent on criminalized work such as sex work or the drug economy to survive.

Sex Work: Working on the Margins

As in the cases of Jessica Mercado, Shelby Tracey Tom, and Donathyn Rodgers, economic *need* and limited avenues of support propels many transgender persons of color into sex work. With few sources of social support compounded by economic inequality, sex work becomes, perhaps, the *only* means for survival. This not only puts queers of color at high risk for violence, such as exploitation, rape, robbery, and physical threats, but also endangers their health from increased exposure to HIV and STIs. Economic and class position influences a sex worker's ability to screen out undesirable clients and to refuse dangerous services. Sex workers with little class privilege working in low-status positions are generally afforded the least respect and are considered the most “deserving” of abuse by clients, the police, and the public.⁴⁸ Queers of color—specifically transgender women—who are poor and who work as sex workers are under constant surveillance from police and frequently subject to ongoing harassment and violence.

Viviane Namaste interviews several transgender and transsexual sex workers to explore some of the additional healthcare and social service concerns required for this specific population that is often rendered invisible.⁴⁹ One of her first assertions is that many transgender persons obtained their hormones on the streets through an underground market. Some transgender individuals obtained multiple prescriptions and then sold the hormones to interested persons. Many transpersons in her study found it extremely difficult to find a doctor who was willing to prescribe hormones. This creates a situation in which transgender persons buy their hormones on the street even though they would like to secure them through a doctor and have their health monitored. Research in the field

of HIV/AIDS education has suggested that in the context of American inner-city trans communities, transgender persons may share needles with their lovers and friends in order to inject their hormones. This practice puts transpersons at an increased risk of contracting HIV as well as other health complications.

Namaste recounts stories of police harassment, intimidation, and verbal abuse against transpersons. She maintains that

verbal abuse consisted of uniformed police officers yelling "faggot" and "queers" at sex trade workers in areas known for TS/TG prostitution. In addition to such insults, police officers would harass the prostitutes in a variety of ways. Participants reported that police officers would stand right next to them on the street corner where they were working, thus preventing any client from approaching. Officers would also follow prostitutes down the street in their cars, keeping pace with them as they walked. Some officers would also take Polaroid photographs of prostitutes, telling them that they would keep their picture on file.⁵⁰

The interactions between the police officers and transgender prostitutes offer additional evidence of police harassment. Transgender sex workers who had been assaulted said that the police officers they sought on the street often refused to take a report of the incidents. Sex workers were also told that violence against prostitutes was not important enough to file a report. In addition to scorn, ridicule, and harassment, police officers may intimidate transgender sex workers with whom they come in contact, resulting in many transgender persons not reporting incidents of violence. Moreover, many transgender persons of color decide not to turn to other social services out of fear of harassment. In this manner, various social institutions intersect to further marginalize transgender individuals from services greatly needed.⁵¹

In the United States, almost all forms of sex work are currently illegal, but prostitution remains widely practiced throughout the country. Expensive attempts to control commercial sex through prohibition have been extremely inefficient in curbing the practice. And, as we can see from the queer community's apathetic response to Jessica's murder and the absence of *any* response to Tracey and Donathyn's murders, the demonization of sex work effects the mobilization efforts following a hate crime and blames the victim for the violence perpetrated against them. By claiming

that sex work is simply "immoral," social systems that force many queers of color into sex work for mere survival and that maintain inequalities based on race, class, gender, and sexuality are erased. Similarly, the criminalization of sex work forces many queers of color to remain silent about violence committed against them for fear of legal indictment. LGBT persons of color often feel isolated and vulnerable because of the ongoing violent relationship between their communities and police departments due to racism, community policing in poor areas, and anti-gay violence at the hands of law enforcement. Criminalization thus leaves sex workers more vulnerable and subject to greater exploitation, violence, and harm.

Jessica Mercado, Shelby Tracey Tom, Christina Smith, Selena Álvarez-Hernández, and Donathyn Rodgers are just a few examples among the countless transgender victims of color that are frequently unnamed, unknown, or their murders unsolved. Gender transgression and material and economic conditions enable a disproportionate amount of violence to occur against transpersons of color. Racism within the LGBT community, homophobia within communities of color, and racialized economic inequality, force transgender persons of color into extremely vulnerable and volatile positions, lacking access to resources, social services, and oftentimes pushed into streets, where homelessness, sex work, and drugs become the only means for survival.

Hate Crimes Laws = Emancipation for Whom?

In theory, hate crimes legislation has been created to protect the rights of individuals who have been victimized by hate-motivated violence. However, this legislation also enforces extremely narrow, binary views of identity. Because of the interconnectedness of racism, classism, and heterosexism, hate crimes against queers of color are not individual acts of violence but larger structural inequities that disproportionately target specific *groups* of people. Hate crimes do not just affect the individual who is attacked, but also generate a message of violence that spreads community-wide. When transpersons of color are murdered, the effects of these crimes do not just spread within the racial or ethnic population or the queer community, but through both, including the various ways in which these communities intersect.⁵²

The legal system enacts its own form of violence against LGBT persons of color, and this has direct implications on how hate crimes are tried and which cases are publicized. Andrew Sharpe highlights how one of the major theoretical problems in transgender legal reform is determining the

exact moment at which legal recognition, and legal rights, will be afforded to a transgender person who has adopted a new gender role.⁵³ In almost all jurisdictions, Sharpe points out, both statute and case law determine the only possible point of change to be genital surgery. As a result, transgender persons who cannot afford, do not wish to undergo, or do not have access to genital surgery will never be recognized as their chosen identity. Likewise, the legislative separation of gender identity from sexual identity limits the individuals who can be included under these umbrellas, and enacts another form of violence.

It is the structural interconnection of racism, classism, forced gender conformity, and heterosexism that allows violence to continue against transpersons of color and also contributes to the apathy exuded by communities of color and the lesbian and gay community. Although the last decade has witnessed an increase in discursive material produced about gender and sexuality, the ways in which queerness and transgender identities intersect with race, political economy, and the law are often ignored. When transpersons are subject to violence, how communities respond to violence and how hate crimes are exposed is predicated on the economic status, race, and gender of the victim.

Hate crimes have become an important focus in contemporary US lesbian and gay politics. National LGBT organizations, such as the Human Rights Campaign (HRC), the National Gay and Lesbian Task Force (NGLTF), and the Lambda Legal Defense and Education Fund, have successfully lobbied for the inclusion and protection of sexual orientation and gender identity under the Local Law Enforcement Hate Crime Prevention Act, also known as the Matthew Shepard Act, and have asserted the need for increased research, reporting methods, and social services for victims of hate crimes. This law—which gives the federal Justice Department the ability to aid state and local jurisdictions with investigations and prosecutions of violent criminals motivated by bias—was recently ratified under the Obama Administration in October 2009.⁵⁴ Together with local LGBT groups, HRC, NGLTF, and Lambda Legal have urged the mainstream press to more frequently cover hate crimes, thereby increasing public awareness of violence against gays and lesbians, garnering support and sympathy from the heterosexual majority while also opening up avenues for prosecuting violent crimes committed against LGBT individuals.⁵⁵

One way that this hate crimes organizing is limited is that it seeks inclusion and equality within existing social structures. While arguing for the basic legal protection for queer persons against hate-motivated

violence is necessary and crucial to attaining rudimentary civil rights, rights-based discourses are often procedural rather than substantive.⁵⁶ However, adjudication of “equality” and the upholding of basic constitutional rights and protections are dependent on the legal system—the same legal system that has historically ignored, condemned, and failed to protect LGBT persons. “Equality,” then, is enacted at the discretion of white heterosexual males who preside over the legal system. Moreover, because the legal system relies on precedent, the historical erasure and deprecation of queer persons is significant because the courts continue to rely on and enforce previously flawed interpretations of the law.⁵⁷ In doing so, heterosexism and homophobia are built into the structures of the law, and the legal system only permits reforms to those laws.

Hate crimes activism maintained by national LGBT organizations also renders acts of violence as individual acts of prejudice instead of macroscopically connecting anti-queer violence to other structural inequalities. Hate crimes are usually only named as such when extreme acts of violence are enacted by a perpetrator who specifically targets individuals because they represent a particular identity category. In contrast, the ordinariness of subtler, more covert experiences of homophobia and heterosexism that remain outside of legal adjudication are ignored. By failing to connect hate-motivated violence to larger social structures, the articulations made by HRC, NGLTF, and Lambda Legal render hate crimes as individual acts of explicit violence that reflect an anomaly. When only the most egregious forms of violence are legally recognized, the ways in which homophobia and transphobia play out as everyday, covert forms of spirit murder are erased.

Rights-based discourses construct hate crimes as irrational, aberrational, individual acts of violence perpetrated by homophobic people: they do not connect anti-queer hate crimes to larger structures of heterosexism. While seeking equality and legal protection from violence is an essential component to civil rights, it remains inadequate because it ignores the ways in which structural violence is perpetrated against queers. Arguing for the inclusion of sexual orientation and gender identity in state hate crimes laws will ultimately end in limited social *reform* because “equality” within the existing social system only accounts for and remedies the most blatant forms of injustice. The remedies, then, proposed by the National Gay and Lesbian Task Force, the Human Rights Campaign, and Lambda Legal simply hope to target and punish the individual perpetrators of homophobic and transphobic violence, failing to link the individual acts of violence to

larger a system of heteronormativity. Hate crimes legislation and protection maintained by these national LGBT organizations in the end settles for access into a heterosexist system, thereby marginalizing the connection between individual hate crimes, historical legal precedent, and institutional violence. As a result, these groups espouse conservative, myopic political strategies and reject the opportunity for a more revolutionary and transformative politic that centers on broader conceptions of social justice.

By not taking into consideration the ways in which the criminal justice system regulates, pursues, controls, and punishes the poor and communities of color, LGBT hate crimes initiatives reproduce harm and do not end it. Calling for an increased role of the criminal justice system in enforcing hate crimes legislation is insular in that it assumes a white, gay, wealthy subject while also soliciting victims of hate-motivated violence to report into a penal system without regard for the fact that people of color and the poor are disproportionately punished. By ignoring racism and economic inequality in their arguments for hate crimes statutes, national gay rights organizations assume an assimilationist stance that reinforces the status quo at the expense of communities of color and the poor.

Political Failings—Sustaining the Prison Industrial Complex

Hate crimes legislation proposed by national LGBT organizations like the Human Rights Campaign, the National Gay and Lesbian Task Force, and the Lambda Legal Defense and Education Fund is fundamentally flawed. Hate-motivated violence is an important issue, but one that must be examined through the lens of “oppressive violence” and contextualized within intersecting systems subordination, including racism, classism, sexism, and heterosexism. As Cathy Cohen writes, “We must...start our political work from the recognition that multiple systems of oppression are in operation and that these systems use institutionalized categories and identities to regulate and socialize.”⁵⁸ When national LGBT organizations place anti-gay violence at the center of analysis without regard for how their legislation is dependent on a punitive criminal justice system; the marginalization of communities of color and the poor; static, uncomplicated, and myopic versions of identity; and assimilation into existing systems of domination, they are refusing to acknowledge their own complicity in maintaining systemic oppression.

When national LGBT groups rely on political projects that further hate crimes legislation, they are feeding the prison industrial complex. Hate crimes legislation is punitive in that it is only enacted after someone

is harmed or murdered. This does not tackle the structural roots of transphobia or homophobia but simply puts people who are found guilty of committing these crimes behind bars. As numerous studies have shown, prison systems are ineffectual at “reforming” criminals, deterring or decreasing crime, and reconciling the victims of crime.⁵⁹ Therefore, hate crimes legislation does not benefit anyone. Passing hate crimes legislation to protect queer folks after they have been harmed is only feeding a racist, classist, and transphobic/homophobic industry that disproportionately targets and punishes those with the fewest resources. Moreover, relying on a punitive system to hold an individual accountable for their crime promotes more oppressive violence: Individuals are simply locked up, not actively educated about or engaged in repairing the harm they have created; they are further divided from their families and support networks, perpetuating more damage, isolation, and devastation within their communities; and the system upholds the legacy of racism and classism that is and has been so prevalent throughout all aspects of the criminal justice system. Acknowledging, targeting, and punishing perpetrators of anti-transgender violence is necessary but must also be placed within a larger context of the growing prison industrial complex.

Given the lack of access to support and resources due to transphobia, classism, and racism, as well as the disproportionately high rates of violence directed toward transpersons, making connections between broader systems of oppression and hate-motivated violence is imperative. A broader, systemic approach to problems of violence and oppression could involve cross-community coalitions opposing police brutality; local commitments to resist the processes of gentrification that criminalize homelessness and drive out poor, immigrant families; coalition work between sex deviants who frequently face criminal justice consequences, such as sex workers and people who engage in public sex, and those who face such consequences less often.⁶⁰ Addressing the unequal distribution of wealth and structures of inequality, including racism, alongside of transphobic and homophobic violence would challenge the uncritical reproduction of marginalization and open up sites of resistance and activism that all queers could collaborate in, benefit from, and support.

NOTES

1. Audre Lorde, “The Transformation of Silence into Language and Action,” in *Sister Outsider: Essays and Speeches by Audre Lorde* (Trumansburg, N.Y.: Crossing Press, 1984), 41.

2. National Coalition of Anti-Violence Programs, "Hate Violence Against the Lesbian, Gay, Bisexual, Transgender, and Queer Communities in the United States in 2009." <http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb.pdf>.
3. Ibid.
4. Richard Juang, "Transgendering and the Politics of Recognition," *The Transgender Studies Reader* (New York: Routledge, 2006), 707.
5. Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (New York: Routledge, 2001).
6. Ibid., 38.
7. Juang, "Transgendering and the Politics of Recognition," 713.
8. Jessica Mercado, "Remembering Our Dead." <http://www.rememberingourdead.org/JessicaMercado> (accessed June 6, 2008).
9. Chris Harris, "We're Here, We're Queer, Who Cares?" *The Hartford Advocate*, August 28, 2003.
10. LLEGO (National Latina/o Lesbian, Gay Bisexual, and Transgender Organization), "LLEGO Urges Full Investigation into Possible Hate Crime in Murder of Transgender Latina," *Seattle Gay News*, May 23, 2003.
11. GPAC, "50 Under 30: Masculinity and the War on America's Youth: A Human Rights Report." <http://iambecausewear.files.wordpress.com/2007/05/50u30.pdf>.
12. Harris, "We're Here, We're Queer, Who Cares?"
13. Shelby Tracey Tom, "Remembering Our Dead." <http://www.rememberingourdead.org/ShelbyTraceyTom> (accessed June 6, 2008).
14. Jeremy Hainsworth, "Trans Prostitute Killed," *Xtra! West*, June 12, 2003.
15. Donathyn J. Rodgers, "Remembering Our Dead." <http://www.rememberingourdead.org/DonathynJRodgers>, (accessed June 6, 2008).
16. Selena Alvarez Hernandez, "Remembering Our Dead." <http://www.rememberingourdead.org/SelenaAlvarezHernandez> (accessed June 6, 2008).
17. Christina Smith, "Remembering Our Dead," <http://www.rememberingourdead.org/ChristinaSmith> (accessed June 6, 2008).
18. According to the NCAVP, the number of reported anti-LGBTQ murders is as follows: 2003: 18; 2004: 13; 2005: 10; 2007: 21; 2008: 29; 2009: 22. <http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb.pdf>.
19. National Transgender Advocacy Coalition, <http://www.ntac.org/> (accessed June 6, 2008).
20. According to the most recent reports by the NCAVP, survivors and victims of hate-motivated violence report to the police approximately 25 percent of the time. Complaint refusals, survivor arrest, and police responses that may range

- from indifferent to abusive are often deterrents from reporting hate-motivated violence to police. <http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb.pdf>.
21. Gender Public Advocacy Coalition, "Masculinity and the War on America's Youth." <http://files.meetup.com/80123/5030.pdf>.
22. Richard Juang, "Transgendering and the Politics of Recognition," 706.
23. GenderPAC classifies "sustained media coverage" as three or more articles in Top-100-ranked newspapers. Gender Public Advocacy Coalition, "Masculinity and the War on America's Youth." <http://files.meetup.com/80123/5030.pdf>.
24. Ibid.
25. I am referencing a generalized LGBT community here, including trans communities, which are often led and organized by white transgendered persons.
26. The Stonewall Inn was historically a white, working-class bar. As Thomas Langan-Schmidt recounts, "[We were] the sons and daughters of postal workers, welfare mothers, cab drivers, mechanics and nurse aids.... We all ended up together at the Stonewall." Quoted in Molly McGarry and Fred Wasserman's *Becoming Visible: An Illustrated History of Lesbian and Gay Life in Twentieth-Century America* (New York: New York Public Library and Penguin Studio, 1998), 4–5. The authors also support the claim that queers of color were often turned away from Stonewall. Jeremiah Newton states, "The Stonewall was not without very serious problems. If you were black, Puerto-Rican or even Chinese, it was next to impossible to get in. To be a woman or a drag queen was as bad. That peephole would open and close like the shutter of a lens and that was that" (5). More recent accounts involving the "celebration" of the Stonewall Inn and the Stonewall Riots erase the presence of working-class gays and lesbians, drag queens, and queers of color, viewing it instead as that "a mainstream gay riot that brought the community together" (19).
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31. Keith Boykin, "Gay Racism in the Castro," *In Sexuality*. http://www.keith-boykin.com/arch/2005/05/04/gay_racism_in_t, (accessed June 6, 2008); Keith Boykin, "Gay Racism," *One More River to Cross: Black and Gay in America* (New

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 33. Keith Boykin, "Black Homophobia," *One More River to Cross: Black and Gay in America* (New York: First Anchor Books, 1996), 167.
 34. Joseph Beam, "Brother to Brother: Words from the Heart," *In the Life: A Black Gay Anthology* (Boston: Alyson Publications, 1986), 230–39.
 35. Stephan Lee Dais, "Don't Turn Your Back on Me," *In the Life: A Black Gay Anthology* (Boston: Alyson Publications, 1986), 60–62.
 36. Jewelle Gomez and Barbara Smith, "Talking About It: Homophobia in the Black Community," *Feminist Review*, No. 34, (1990): 48.
 37. Kelly Brown Douglas, "Breaking the Chains: Homophobia in the Black Community," *The Other Side*, September 2000. See also Dwight A. McBride, "Can the Queen Speak?: Sexuality, Racial Essentialism, and the Problem of Authority," *Why I Hate Abercrombie and Fitch: Essays on Race and Sexuality* (New York: New York University Press, 2005), 203–226.
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 39. Boykin, "Black Homophobia."
 40. Ibid.
 41. Nayan Shah, "Sexuality, Identity and the Uses of History," *Social Perspectives in Lesbian and Gay Studies* (New York: Routledge, 1998), 484.
 42. Surina A. Khan, "The All-American Queer Pakistani Girl," *Women's Lives: Multicultural Perspectives* (New York: McGraw-Hill, 2006).
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 45. Dean Spade, "Compliance is Gendered," 219.
 46. Ibid., 219–228.
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 50. Ibid., 170.
 51. Ibid.
 52. Darren Lenard Hutchinson, "Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics," *Buffalo Law Review* 47 (Winter 1999): 1–116.
 53. Andre Sharpe, "From Functionality to Aesthetics: The Architecture of Transgender Jurisprudence," *The Transgender Studies Reader* (New York: Routledge, 2006), 621.
 54. Human Rights Campaign, "The Local Law Enforcement Hate Crimes Prevention Act." http://www.hrc.org/laws_and_elections/5660.htm. The LLEHCPA provides the Justice Department with the ability to prosecute violent crimes in which a perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The LLEHCPA also makes grants available to state and local communities to combat violent crimes committed by juveniles, to train law enforcement officers, or to assist in state and local investigations and prosecutions of bias-motivated crimes.
 55. For a discussion on the importance of hate crime politics and activism, see AnnJanette Rosga, "Policing the State," *Georgetown Journal of Gender and Law*, Inaugural Issue (Summer 1999): 153.
 56. See Kimberlé Crenshaw, et al., "Introduction," *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press, 1995), xxiii; Alan Freeman, "Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press, 1995), 29–45.
 57. Precedents, in order to make the law efficient, reliable, and less subjective, hold courts to previous decisions made in similar cases because the past cases are assumed to be reasonable. See Howard Abadinsky, *Law and Justice: An Introduction to the American Legal System* (Chicago: Burnham, Inc., 1995), 38.
 58. Cathy J. Cohen, "Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?" *Gay and Lesbian Quarterly* 3 (1997): 458.
 59. See Angela Y. Davis, "The Prison Industrial Complex," *Colorlines*, Fall 1998; Eric Schlosser, "The Prison Industrial Complex," *Atlantic Monthly*, December 1998;

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Joel Dyer, *The Perpetual Prisoner Machine—How America Profits from Crime* (Boulder, Co.: Westview Press, 2000); Critical Resistance, "Not So Common Language." <http://www.criticalresistance.org/article.php?id=49>.

60. Dean Spade and Craig Willse, "Confronting the Limits of Gay + Hate Crimes Activism," 50–51.

WALLED LIVES

CONSOLIDATING DIFFERENCE,
DISAPPEARING POSSIBILITIES