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Law and the Gendered Politics of Identity: Who Owns the Label “Lesbian”?

Elvia R. Arriola*

Several years ago, I was a member of a predominantly lesbian women’s support group. The group offered a “womanspace” for individuals who wanted to share their experiences, strength, and hope as survivors of rape and sexual abuse. On a weekly basis, anywhere from fifteen to thirty women of all racial, ethnic and social backgrounds, who knew each other only by first name, rented a meeting room from a community church and shared stories of sexual victimization and abuse, with the singular goal of healing themselves through mutual support.1 As women revealed long-buried traumatic events, they also reflected on how the low self-esteem caused by the sexual abuse had resulted in failed relationships, lost jobs, depression, workaholism, and repeated efforts to “get one’s life together.” The sharing often evoked emotional responses, as women recalled their own secrets of incest by fathers, brothers, uncles, and male cousins. Realizing the source of their conflicted lives, they learned to express long-repressed feelings concerning both their abusers and the families they had tried to protect or who had not believed them. Newcomers heard from women who had turned their lives around as they put an end to denial by ending abusive relationships, seeking therapy, or ending the alcohol or drug dependency they

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1. The group had adapted the 12-step program of Alcoholics Anonymous, which offers a spiritual basis for recovering from addictions such as alcoholism and other compulsive behaviors.
had used to cover up their pain. In the company of other survivors, the women felt safe enough, sometimes for the first time in their adult lives, to weep or get angry; for in this safe space they trusted that their companions would not mock, negate, or minimize their feelings. Of course, the critical sense of safety was ensured by the practice of someone standing guard at the door to make sure no man accidentally walked into the rented rooms. If that happened, all talk would suspend until the man was gone. This ground rule grew out of the plainly obvious fact that this was a meeting for women healing from sexual abuse by the men in their lives; only an all-women atmosphere could guarantee an emotionally safe environment.

Imagine, then, the turmoil created in this "womanspace" when one day a tall, quiet woman who had shown up regularly at meetings for several weeks suddenly came out to the group as a transsexual female. Not only that, she was a transsexual female who identified as a lesbian. Suddenly "Micki," who had simply appeared as an unusually tall, rather quiet and professionally dressed woman, looked very different to the group's members. Some of the women were too involved with their own issues to take in immediately what had just happened. In the following weeks, however, a few women, both lesbian and not, reacted strongly, sharing that they felt threatened by Micki's continued presence. Micki's feminine appearance bore witness to the wonders of modern medicine, but to some she was nothing but a fake. Her revelation explained at last the slightly masculine build around the shoulders and neck: this supposed woman was a man, or at least had been born male. Further, although she had given up her male identity, Micki's self-confident demeanor betrayed residual hints of her socialization as a privileged white male.

Her chosen identity as a lesbian posed another gender and sexuality enigma. Having castrated "his" penis while leaving "his" sexual orientation unscathed, to what label was she entitled? The choice of a lesbian identity to express her new identity as a "woman-loving-woman" communicated an unfamiliar sex and gender ambiguity. For some, the ambiguity only generated hostility and feelings of mockery for this once-man's appropriation of a label—lesbian—which they felt belonged only to "real women."

In the conflict and confusion that surfaced for several weeks after her coming out, Micki encountered both support and prejudice from fellow members of the incest survivors' group. A few sought out Micki's friendship, trying to assure her that she was welcome. Others kept their distance and in private conversations voiced their distrust and interest in removing Micki from the group. They felt abandoned by their group, angry and enraged that not everyone agreed that Micki should leave. Too many individuals supported Micki to force a formal demand that she leave and not come back. The resistors expressed a sense of betrayal by the group's un-

2. To preserve her anonymity, the name "Micki" appears as a pseudonym.
willingness to oust Micki, whose perceived crime was in once having had a penis and now being viewed as neither truly female, nor woman, nor lesbian. She was at best a not-man. Eventually, the conflict led to a split, as Micki's resisters formed their own group, with membership limited to women who had been born into a female body. Micki herself eventually left the group. She ultimately formed her own support group, focusing on gender identity and abuse issues.  

I have resurrected my memories of the events surrounding Micki's presence in the support group to introduce what has consistently been a controversial issue among lesbian/gay and feminist audiences—that it is a significant theoretical task for lesbian/gay and/or feminist scholars to connect their theorizing to the efforts of transgender scholars and activists who advocate the creation of a society without rigid categories of identity and desire.  

Micki's identity defied the socially created categories of identity and desire.

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3. Micki's group was one of the first 12-step groups dealing with gender identity and abuse issues in New York City. It evolved into a transgender support group and a gender identity project housed in New York's Lesbian and Gay Community Center. Telephone Interview with Lesbian and Gay Community Center Staff (Aug. 7, 1996).

4. I have previously used the term transgendered to signify an individual whose personal and/or political identity appears to undermine a fundamental premise of a gender polarized culture—that people exist on only one side or the other of a masculine/male and feminine/female identity split (e.g., bearded women, male cross-dressers), or whose identity (e.g., transsexuals), demeanor and/or behavior defies a social/moral/cultural gendered bipolar value system which enforces the belief that the two biological sexes, male or female, are allowed only two gender identities and roles: man or woman. These roles and identities are confined to limited expressions (embodying the ideals of "real manhood" or "real womanhood") in the areas of dress, social conduct, sexual behavior, or intimacy. The original thoughts which birthed an earlier essay and this paper grew out of a panel speech. See Elvia R. Arriola, I Feel Like A(n) (Un)Natural Woman: Transgenderism and Anti-Discrimination Law and Theory, Panel Speech at the Texas Journal of Women and the Law Symposium (Oct. 1994).

In a different but related vein, the term transgender is a political activist term which includes "male and female cross-dressers, transvestites, female and male impersonators, pre-operative and post-operative transsexuals, transsexuals who choose not to have genital reconstruction, and all persons whose perceived gender or anatomic sex may conflict with their gender expression, such as masculine-appearing women and feminine-appearing men." See Transgender Inclusion and the ENDA Bill, THE ICTLEP REP. (Int'l Conf. on Transgender L. & Employment Pol'y, Inc., Houston, Tex.), Nov. 1995-Jan. 1996, at 7 (citing Investigation Into Discrimination Against Transgendered People: Hearings Before the Human Rights Commission of the City and County of San Francisco (1994) (on file with author)). The term genderqueers also appears in transgender activist literature to capture the wide diversity of those who undermine the impact of gender bipolarity in the culture. See also infra notes 55 & 56 and accompanying text.

5. JEFFREY WEEKS, SEXUALITY AND ITS DISCONTENTS: MEANING, MYTHS AND SEXUALITIES 176-81 (1985). Weeks argues that the history of sexuality undermines any neat dichotomy between sex and society; rather the body, as a site of the deployment of power relations, has become the source of variant forms of sexual expression which, in theory, reflect one sexuality but which are really multiple sexualities, defined by class, religion, ethnicity, race, etc. He also argues that Western cultures obviously derive their views of legitimate and illegitimate eroticism and/or sexual identities from the hegemonic model of male heterosexuality. Id.
Her identity invited not only prejudice but also confusion, as women divided on questions of how one should impute the identity of "woman" in order to maintain group stability, whether to support or oppose Micki's presence, how to address the concerns of the outraged and fearful women, and how to determine what the group meant when it passed the ground rule "no men allowed." The group that had voiced intolerance of the opposition to Micki's continued membership argued that her opponents had become too possessive about the labels "lesbian," "woman," and "female." But this was not a space for theory. This was a space for the realm of emotions, which defy the logic of labels and categories. And yet the experience of that room, particularly the feelings of irrational fear and prejudice which split the group, illustrate in microcosm the societal confusion that is generated when, without warning, one is confronted by individuals who transgress society's gender laws and assumptions and force a re-examination of the meaning of such labels as "man," "woman," "lesbian," "female," "male," and so on.

Whether Micki ever really understood or even accepted as legitimate the view that some women could not feel safe in her presence is not the immediate focus of this inquiry. In this Article I am interested in exploring the unconscious beliefs and cultural attitudes that explain the resistance to including someone like Micki, despite the group's initial perception of her as a woman. Arguably, the increasing use of the personal narrative in legal scholarship has eroded the strict boundaries between emotion and logic. See Lynne N. Henderson, *Legality and Empathy*, 85 Mich. L. Rev. 1574, 1574-77 (1987) (describing empathy created by storytelling as a way of knowing that can explode the accepted knowledge of structures, categories and the relationship between the law and society). It is in the vein of providing the shock of new information that I offer my story, with its clear emotional packaging, as a way of exploring the difficult theoretical questions which surround the gendered politics of identity.

I realize that there may be a profound legal and moral/ethical distinction between an incest survivor's support group retaining some right to reject an individual like Micki, and large feminist organizations rejecting the membership of transsexual females (for instance, the Michigan Womyn's Music Festival, a situation on which I focused when I first explored this topic). Arguably, the success of an incest survivor's support group depends upon making certain discriminations which are not solely based on prejudice. From this angle, regardless of Micki's sense of self as a woman, one could argue that the phantom presence of her former male genitalia created an unacceptable tension between Micki's self-identity as a woman, and the group's "all-female/woman" identity. Thus the phantom penis may have triggered undesired memories and/or chilled the very talk the women needed in order to heal. Of course, not all women had such an experience, no doubt because the abuse patterns discussed in the group never fell into a clear gendered pattern of male versus female. Sometimes perpetrators were of both genders; sometimes they were...
both feminist and lesbian/gay organizations to include transgendered women and men in their political and legal activism. Observing the resistance to this movement strictly from my own experience, I devote my discussion to five issues: a) how Micki's story not only challenges the meaning of the feminist category "woman," but also how the resistance to people like her unduly narrows the meaning of "gender oppression;" b) the resistance to the topic of transgenderism by lesbians as an illustration of the interconnected meaning of oppression based on gender, sexuality, race/ethnicity or class; c) the potential for divisiveness in a non-inclusive politics of identity as illustrated by the resistance to transgenders; d) the meaning of sex/gender bipo­larity and the interconnections between feminism, homophobia and trans­gender discrimination; and e) an appeal for holism in the politics of identity.

I. WHO IS THE "WOMAN," IN THE QUEST TO UNDO GENDER OPPRESSION?

Looking back on the events surrounding Micki's revelation, I remember well how I too had seen a "woman" until she revealed her former "male" identity. Micki's looks and her demeanor said "woman." Other characteristics signaled education, white privilege and professionalism; timidity about the subject of incest, but a general tone of self-confidence in her speech. Once my perceptions did not match what I knew, I was left with my curiosity for identifying the gender ambiguities, the residual physical signs of the malehood Micki had given up some fifteen years prior. By leaving to form another support group, Micki opened the door for healing from incest and sexual abuse to other transsexual females. Yet, the women who separated from the original group never had to examine the source of their fears. No one thought to ask whether some of their reactions to Micki, based upon preconceived ideas about the meaning of sex, gender or sexuality, might have stemmed from the same hetero-patriarchal value system which accounted for their own sexual victimization. Certainly no one felt the need to

strictly female.

As mentioned above, Micki eventually formed her own support group, which obviously has the potential for a group therapy process conducive of the kind of consciousness-raising that feminists have urged for deconstructing gender oppression and politically empowering its victims.


9. Frank Valdes describes the components of a hetero-patriarchal value system as de­pendent on a conflated understanding of sex, gender and sexuality (sex = gender = sexual orientation). Gender, though often couched in masculine/feminine terms, is also cast officially and culturally in the hetero-patriarchal value system as resting on an active/passive paradigm. Because it also serves as the foundation of social order, the paradigm which conflates sex and gender also posits active roles for males/men and passive roles for fe­males/women, and sexual roles in which masculinity is active while femininity is passive.
understand or address the unique form of gender oppression that leads an individual to such a drastic measure as sex reassignment surgery (SRS). The fact that Micki’s recovery involved stories of how s/he had been shamed and traumatized from the time of his (her) childhood for engaging in gender-nonconforming behavior did not interest her opponents. Yet I wonder how the group never questioned the inclusion of “butchy” lesbians, some of whom dressed in very masculine attire, and who described similar childhood examples of abusive treatment for their own gender-nonconforming behavior. I have asked and answered my own question: it is all gender-based oppression.

In retrospect, the split-off group’s resistance seemed a mere continuation of the rigidity based on sex/gender polarization which had formed a part of Micki’s socialization as a male/boy born into this culture—that is, first to

The sexual/gendered scheme is androsexist both in positing men as superior and women as inferior, and by virtue of having evolved in Euro-American law and custom as a social/public and sexual/private ordering of human relations. Moreover, it is heterosexist in privileging heterosexuality over homosexuality. The combination of androsexism and heterosexism creates a social system which may be termed hetero-patriarchal. See Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society, 83 CAL. L. REV. 1, 36-44 (1995) [hereinafter Valdes, Queers, Sissies, Dykes and Tomboys].

Rape, incest (rape within the family), sexual abuse, and sexual harassment serve as essential enforcers of a hetero-patriarchal value system which encourages men to believe they are superior to women, children, lesbians, gays, bisexuals and transgenders. See generally RUS E. FUNK, STOPPING RAPE: A CHALLENGE FOR MEN 7-56 (1993). In American culture, male supremacy and white supremacy work together as interconnected political, economic, legal and educational belief systems which maintain white men in superior roles over women and people of color. Id.; see also Gloria Anzaldúa, Speaking in Tongues: A Letter to 3rd World Women Writers, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 165-73 (Cherrie Moraga & Gloria Anzaldúa eds., 1983).

10. Sex reassignment surgery (SRS) is chosen by people who want to conform their bodies to a known or felt gender identity which is at odds with the gender identity ascribed to them at birth. Information on male-to-female transsexuals is readily available. The literature on female-to-male transsexualism is small in comparison to both writings on the topic of transsexualism in general or the focus on the male-to-female experience. See Amy Bloom, The Body Lies, NEW YORKER, July 18, 1994, at 38, 38-49. It is important to note that transgender advocates seek the right to define one’s gender identity independent of any medical determination of their chromosomal sex, genitalia, assigned birth sex, or initial gender role. Transgender advocates do not demand a change in one’s physically assigned sex in order to adopt a transgender identity; rather, they advocate the right to choose and receive competent medical and professional care, which may include hormonal therapy and partial or full SRS for those persons who desire to create a physical gender identity that matches the gender identity they have defined for themselves. See ICTLEP, THE INTERNATIONAL BILL OF GENDER RIGHTS (1993) (on file with author).

11. I define gender polarization or gender bipolarity as a set of values based on the cultural belief that masculinity and femininity are the only conceivable gender roles available to males and females born in this culture. American culture is highly gender polarized, in contrast to various Native-American and Polynesian cultures which incorporate gender fluidity in the socialization patterns of young males and females. See WENDY KESSLER & SUZANNE McKENNA, GENDER: AN ETHNOMETHODOLOGICAL APPROACH 25 (1979) (discussing the history of the Berdache cultures of many Native-American groups).
deny and then to channel or re-direct a child’s experience of sex/gender dissonance with discipline, judgment and shaming. In the larger picture of Euro-American sex/gender socialization patterns, a girl’s “tomboyishness” seems more easily tolerated, allowing girls and young women to make transitions into adulthood by more freely exploring their masculinity. Meanwhile, boys are rarely encouraged to experiment with anything like the “sissy” behavior which is often derogatorily and incorrectly equated with the first signs of homosexuality. These cultural familiarities in childraising enforce two critical aspects of a hetero-patriarchal value system: a) the view that a “normal” correlation between sex, gender identity and gender-typed behavior is heterosexual and b) the view that “normal” people engage in gender-typed behavior specific to the male or female sex with which they were born. This same belief system undergirds the contemporary medical diagnosis of “gender identity disorder” which currently provides the latest medical conceptual framework for pathologizing homosexuality, as well as transvestism or transsexualism. Thus, Micki’s struggles arose from the

12. Holly Devor, Gender Blending: Confronting the Limits of Duality 65, 68-72 (1989) (case studies reporting mother-daughter conflicts which centered on turning a tomboy into a feminine girl by forcing her to wear skirts and dresses against her will); Sandra L. Bem, The Lenses of Gender: Transforming the Debate on Sexual Inequality 106-11 (1993) (discussing the 1970s flurry of treatment programs offered by doctors to prevent the onset of transsexualism in young children by using coercive behavior modification against “gender inappropriate” signs (e.g., limp wrists in boys)); Kessler & McKenna, supra note 11, at 91-95 (examining the punishment-reward aspects of common social learning techniques used by parents to turn their children into “good boys” and “good girls”). See also infra note 16.

13. Bem, supra note 12, at 150 (discussing the widespread social acceptance of women who incorporate male clothing, while men face stigmatization for dressing in female attire).

14. Gender dissonance in early childhood is likely not a predictor of one’s acquiring a gay or lesbian sexual orientation, although one study of women who had experienced strong gender dissonance as young girls showed that a majority of the study group did indeed become lesbians. See Devor, supra note 12, at 89-105; see also Susan J. Bradley & Kenneth J. Zucker, Gender Identity Disorder and Psychosexual Problems in Children and Adolescents, 35 Can. J. Psychiatry 477 (1990) (arguing that gender identity disorders in children are strong precursors to the emergence of transsexualism and homosexuality).

15. See Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9.

16. Although gays and lesbians have consistently lauded the American Psychiatric Association’s declassification of homosexuality as a mental disorder in 1973, they are naive in believing that the established psychiatric profession by any means supports the healthy development of a gay or lesbian identity. In 1980, the Diagnostic and Statistical Manual of Mental Disorders (DSM), the official manual of the psychiatric profession, introduced the “new” diagnosis of Gender Identity Disorder (GID), providing a new conceptual framework for categorizing homosexuality as a “sickness.” The diagnosis in children of GID is used to identify gender nonconforming behavior, which becomes the focus of psychiatric treatment intended to “prevent” (rather than cure) signs of “pre-homosexuality” and “pre-transsexualism.” See DSM-IV, § 302.9 (1994 ed.). In practice, the availability to parents of a GID diagnosis and insurance-funded treatments is just another way of engaging in abusive conversion or reparative therapy. See Shannon Minter, From Homosexuality to Gender Identity Disorder: How Psychiatry Pathologizes Lesbian, Gay, Bisexual and
ashes of a painful past, in both personal and societal terms, where a stern father harshly reacted to Micki’s unconventional interest in “girl things” and demanded, with verbal, physical, and sexual abuse, that he “be a man and not a sissy.” The young Micki had internalized his father’s repeated disappointments in his development as a “normal” boy; it was as though he had committed a crime by feeling and wanting to do that which was reserved for one born into a female body. The sum of painful events—from trying to heal her own conflicts with the role she had never fulfilled by being born and typed “male,” to her presently being labeled “not a ‘real woman’”—forced Micki to find (create) another place to heal from her personal traumas: a transgender support group for individuals whose lives defied the ideology of sexual dimorphism and gender polarization. 17 Society had provided the science to attempt to heal her past by changing her sexual identity, but it failed to provide a supportive environment for living with that new identity amidst the various kinds of prejudice Micki might confront, including the kind she did in fact face in her first incest survivors’ group.

I have often wondered what would have happened in that group if Micki had not left. In the few weeks she was there, did it make any difference for someone like Micki, who had been raised as a boy and had become a man, to hear the depth of anger experienced by women who had survived male rape or incest and who now felt desperate at being unable to escape even a hint of residual male energy in a transgender female? Was it unreasonable for the women—from-birth to see Micki as a burden, rather than as someone who might help their healing by vouching as a once-man for the reality of abusive male power, and affirming to them, “yes, this is what men do and you were unjustly violated?” Could either side have seen the source of their fears and their unjust experiences as rooted in societal attitudes based on male power and privilege which continue to induce heightened levels of female sexual victimization, 18 or which so oppress some boys/men that their only escape is to castrate the physical signs of the male gender identity they were assigned

Transgender Youth 7-8 (1995) (unpublished manuscript, on file with author); Daphne Scholinski, I was Never Meant to Survive, NCLR NEWSLETTER (Nat’l Ctr. for Lesbian Rights, S.F., Cal.), Spring 1996, at 11.

17. The sex/gender paradigm of sexual dimorphism is synonymous with the concepts of gender bipolarity I introduced in supra note 4. It posits that the division between male and female arises from sex differentiated chromosomal typing, levels of hormones, reproductive systems and mental natures, all of which are assumed to develop “naturally” and prenatally. The data supporting the existence of such a neat dimorphic reality in all human beings has been severely undermined. See KESSLER & MCKENNA, supra note 11; see generally MARTINE ROTHBLATT, THE APARTHEID OF SEX (1995).

18. As discussed briefly in the introduction, the meetings were intended as a kind of self-therapy based on 12-step spiritual principles, and not at all a forum for exploring the politics of sex. Nevertheless, they produced clear examples of the “parade of horrors” long described by feminists as the proof of women’s sexual victimization. The meetings also induced greater self-empowerment in the women, long deemed a worthy end goal by feminists. For a discussion of the latter, see generally CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 220-21 (1991).
WHO OWNS THE LABEL “LESBIAN”? at birth?

II. THE ALLEGED INVASIONS OF LESBIAN SPACE: TRANSGENDERISM, RACE, CLASS AND PROGRESSIVE POLITICS

The topic of transgenderism may seem odd for a feminist lesbian scholar. Some may question why I choose to focus on the plight of mere “not-men” whose dress, demeanor, and behavior sometimes takes on the appearance of rather conventional-looking women. Although the resistance to my academic inquiry on this topic has been quite forceful, I am undaunted by my critics; this essay is an attempt to refine the basis of my inquiry. As a Latina and lesbian scholar interested in exploring the outer reaches of gender, sexuality, and race from a feminist perspective, my theoretical interest in the plight of the transsexual under current approaches to law and the politics of identity (especially at conferences discussing lesbian legal theory) has been greatly confused with my lobbying on behalf of transgenderism. But I see my inquiry as an example of what Ruthann Robson calls the “hard cases,” in which theorizing about those who claim the label “lesbian” forces not only a re-examination of our assumptions about what a lesbian is, but also forces us to consider how deeply the sense of

19. My assessments regarding appearance derive strictly from personal interactions over the years with a few male-to-female transsexuals, including Micki, and from photographs of leading activists whose gender identity switching has included complete role reversal, at least with respect to gendered appearances as either a woman or man. Many transsexuals reach the point of living like the opposite sex “full time,” which means in the full dress and regalia of a woman, if they were born and socialized male, and vice-versa, and which includes hormonal therapy and readiness for surgery, but which does not necessarily include taking the final step of SRS. Phyllis R. Frye, Out of the Closet for Fifteen Years and Making It In Houston, Texas, 59 TV-TS TAPESTRY J. 65 (1991). Transgender lobbyists often dress conservatively, distinctly dressing cross-gendered when they approach legislators on Capitol Hill. See Randolph Frye, Success on Capitol Hill, THE ICTLEP REP. (Houston, Tex.), Nov. 1995-Jan. 1996, at 6 (on file with author). Having attended the Fifth Transgender Conference in Houston in July 1996, however, I can no longer generalize on the appearance of transgender females or males. Their diversity in physical dress and appearance abounds.

20. The resistance I experienced concerning this topic at the Lavender Law Conference in October 1994 in Portland, Oregon, was especially interesting in terms of the racial and ethnic patterns of the disagreement in the room over whether I had inappropriately invaded lesbian space by introducing the subject of transgenderism. I truly wish I did not have to sound the voice of criticism (and experience) against the white middle-class lesbian resistance to exploring any level of inclusiveness or interconnected theorizing between issues of race, class, sexuality and gender. I discuss this problem more fully below.


22. Even the phrase, “a lesbian is a woman who says she is,” presents interesting connotations when deconstructed, because one assumes the phrase is being uttered by a woman. Yet what exactly is a woman is precisely at issue when one explores the meanings and assumptions we make about sexual identity in discussing transgndered individuals. The quote is by Cheryl Clark. Id. at 21.
who we are or who others are, or should be, is affected by our living in a
gendered culture. Although some theorists may disagree with the role of the
topic or the perspective, I approach the subject of transsexualism,\(^{23}\) or trans-
genderism, as a feminist and see it as a useful subject to the efforts of les-
bian/gay or feminist legal theorists to deconstruct the impact of male patri-
archy.\(^{24}\) The reactions to someone like Micki also illustrates for me another
volatile aspect of the social revolution inspired over the past two decades by
feminism, the movement for gay and lesbian civil rights, and the burgeoning
politics of identity: the growing demand that theory and politics recognize
the interconnections not only between sex, gender identity\(^{25}\) and sexuality,
but also between race, ethnicity, class, and any of the above categories.\(^{26}\)

Ironically, it was at a panel on lesbian legal theory, where I introduced
the subject of transgenderism as a vehicle for exploring the outer reaches of
gender-based discrimination, and was so fiercely questioned for doing so,
that I witnessed the failure of progressive scholars and lawyers who inveigh
against the evils of racism, sexism, homophobia and classism to “practice
what they preach.” I was the only lesbian-of-color speaker on a panel called
“lesbian legal theory.” Upon concluding my presentation, in which I ex-
plored transgender discrimination as a means to examine the parallel think-
ing undergirding antilebianism, a few members of the audience commented
that my topic “offended them,” because this was “our panel—for lesbians
only.” I immediately felt a familiar loneliness I have often experienced over
the past decade as the sole racial/ethnic minority at lesbian/gay events. This
time, however, it grew out of my belief in the need and right of a scholar
who incorporates the personal narrative into her teaching and scholarship to
think, write, and speak inclusively on issues of discrimination.\(^{27}\) I suddenly
felt like an “outsider” having to justify my project before a quickly growing
collective of angry white middle-class lesbians who had seemingly never
traveled between the multiple worlds of class/race/gender/sexual orientation,

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23. Transsexuals are those who use SRS to conform their bodies to their felt gender
identity. Transgenders, on the other hand, include transsexuals as well as people who will
never choose any form of transsexualism, hormonal or surgical, to express their noncon-
forming gender identity. See supra note 4 and accompanying text.

24. See Robson, supra note 21, at 19-22 (arguing against the view that lesbian legal
theory should be equated with the efforts of feminist or queer legal theorists, but at the
same time recognizing that the effort to develop a lesbian legal theory confronts the “rule
of law,” or “rule by men,” a common and essential basis of feminist and queer theorizing).

25. Katherine Franke, The Central Mistake of Sex Discrimination Law: The Disaggre-
gation of Sex from Gender, 144 U. Pa. L. Rev. 1 (1995); see also Elvia R. Arriola, Gend-
ered Inequality: Lesbians, Gays and Feminist Legal Theory, 9 BERKELEY WOMEN’S L.J.
103 (1994).

26. See, e.g., Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9, at 359.

27. See Patricia J. Williams, The Alchemy of Race and Rights: Diary of a Law
Professor 92-94 (1991) (discussing the risks of teaching or writing with a personal style
and the “kowtow[ing]” to power accomplished by academic writing which negates feelings
and experience).
or who simply lived their lives blithely assuming that everyone’s experiences as a lesbian are (or should be) exactly like their own.

The rejection of my topic appeared as an indirect effort to exclude the interests of anyone who was not a “real lesbian,” and to ensure that the theorizing be confined to “real lesbian legal theory.” From either perspective, I cannot help but view such reactions as nurturing a belief very damaging for these times—the idea that our various “progressive” movements are (and should be) disconnected from each other. If these are the premises that underlie the politics of identity, then the legacy of our activism is nothing but divisiveness. If divisiveness underlies our activism, whether as progressive lawyers or scholars, should we be surprised by the reinforcement of such thinking in the legal system? Is it any surprise that the courts continue to divide and categorize, putting limits, for example, on interpreting statutory terms like “sex” to cover antigay prejudice, or on acknowledging “intersectional” claims of discrimination (e.g., racist sexism)? Has the oppressor in fact conquered us by dividing us?

How then does theorizing about intersectionality or about the failures of an inclusive politics of identity become relevant to heated debates over a “not-man” showing up in an all-women space or seemingly appropriating the “lesbian” identity label? My concern here is to identify how and why we create the boundaries for social categories (e.g., race, sex, class) when we do so

28. The resistant audience members had as much trouble with this Latina lesbian speaking on the subject of transgenderism as with the presence of a Latino gay man, Professor Frank Valdes, who argued for interconnectivity between queer and lesbian legal theories. Valdes’ experience is discussed in his essay, Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities, 5 S. Cal. Rev. L. & Women’s Stud. 25, 36-38 (1995).

29. See, e.g., Goluszek v. Smith, 697 F. Supp. 1452 (N.D. Ill. 1988) (rejecting a claim of sexual harassment by a sexually shy and unmarried man living with his mother against male co-workers on grounds that the conduct at issue was not intended to be covered by the term “sex” in Title VII of the Civil Rights Act); De Santis v. Pacific Tel. & Tel., 608 F.2d 327 (9th Cir. 1979) (rejecting claim that Title VII’s prohibition against sex discrimination extends to include homosexuality); see also Underwood v. Archer Management Serv., 857 F. Supp. 96 (D.C. Cir. 1994) (disallowing claim for firing because of transsexuality under Title VII’s prohibition against sex-based discrimination); compare Mogilefsky v. Superior Court, 20 Cal. App. 4th 1409 (1993) (allowing claim for same-sex harassment between men under California law).

30. The theory of intersectionality or multiple intersectionality asserts that some individuals’ legal claims of discrimination should be defined by more than a singular characteristic (e.g., race, sexuality), and that courts should allow for the introduction of evidence which validates that particular identity (e.g., Black woman) whose experience of discrimination embodies a more complex and interdependent functioning of factors (e.g., racist sexism or homophobic racism). Legal theorists need to explore ways of recognizing the “compound claim of discrimination” which may address the issues of exclusion and injustice raised by the intersectional identity. See Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. LEGAL F. 139. See generally Margarret Montoya, Mascaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding: Latina Stories and Legal Discourse, 15 Chicano L. Rev. 1 (1994).
also know that their definitions and their usefulness depend not only upon social and self-constructions but also on the potential interrelationship of singular factors with one or more other factors. As Frank Valdes has recently argued, progressive theorizing has reached a point where scholars need to confront the full meaning of intersectionality and begin to practice a theory and politics of "interconnectivity" between the movements we know as race/crit, fem/crit or queer theory.31 I would enhance Valdes' theory of interconnectivity by arguing that if one of the goals of the politics of identity is to promote nondiscrimination, then the representatives of such a political agenda or activism should be guided by an ethics of inclusion. For I am continually puzzled by the rhetoric of supposed advocates against racism, sexism, or homophobia who overwhelmingly emphasize an exclusivity which appears fear-based, self-centered, and discriminatory. In the same way that feminist scholars were charged with exclusion and insensitivity because they neglected the cause of lesbians and women of color, it is patently inconsistent for feminist, lesbian/gay, or queer legal theorists not to explore the outer reaches of gender nonconformism, as illustrated by the transgendered victim of violence and discrimination.32 Exclusionary tactics in progressive activism, which induce exclusive theorizing, cannot possibly create a world which tolerates difference and diversity, whether based on sex, gender, race, creed, sexuality, national origin, class, age, or physical ability.33 Theorists like Adrienne Rich34 and bell hooks35 similarly argued that the struggle of feminists to deconstruct patriarchal power could not be separated from the struggle against homophobia and racism. Thus, for example, when a major women's organization would rather fight inclusion, under the banner of feminist idealism, than risk the discomfort of working against exclusion and for coalition, its members give value to discrimination.36

31. See Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9, at 372.
32. In some countries, including the U.S., the level of human rights abuses of transgendered and gay or lesbian individuals has reached a level of psychological terrorism which induces depression and suicide. These are formidable hurdles which a few women and men have survived and documented. See Human Rights Violations Based on Gender Identity and Sexual Orientation, in THE INTERNATIONAL TRIBUNAL ON HUMAN RIGHTS VIOLATIONS AGAINST SEXUAL MINORITIES 18-23 (Oct. 17, 1995) (on file with author).
33. See Arriola, supra note 25.
36. The second example of exclusionary reactions to transsexual females which I witnessed occurred in the summer of 1993, when I attended the internationally renowned Michigan Womyn's Music Festival and became aware that a group of separatist lesbians had threatened the "men" with physical violence if they tried to camp on the grounds with the thousands of women "legitimately" born into female bodies. As campers exited the Festival grounds, they were greeted by transsexual females who had camped outside the gates and displayed their placards in protest of the Festival policy. For a news account, see Barbara Brotman, A Utopian World for Women Only: The Michigan Womyn's Music Festival Draws Thousands to Celebrate All that is Female, CHI. TRIB., Aug. 26, 1993, at
III. THE POTENTIAL FOR DIVISIVENESS IN THE POLITICS OF IDENTITY

Those feminists or lesbians who would resist including a transgender female in their group value discrimination by making the possessiveness and control of the labels and categories by which people can be described (e.g., lesbian) more important than the potentially deconstructive role these labels play in helping describe the multiple aspects of a single personal identity (e.g., religion, race, sexuality, age, gender, etc.). I imagine many of us feel in our gut that our personal identities unite an infinite number of social, environmental and physical traits, none ever singularly describing "who I really am." Yet the urge to hinge an identity on the basis of a single factor is strong.\(^{37}\) After all, identity politics provide one with a sense of membership in a community with others who validate our membership in a chosen group identity. But because everyone's identity reflects a convergence of factors, the potential for multiple group identities is also present in everyone. On the same day that I identify as lesbian and feel validated in my attending a lesbian dance, I might also attend an AA meeting and know that most of its attendees will not also go to the lesbian dance, but instead will reflect a wide cross-section of the non-lesbian or gay community of the town in which I live. Similarly, when I attend a social event in which, through ritual, music, language or foods, I celebrate my being Latina, the lesbian and AA-member aspects of my identity are greatly submerged and in tension with my gendered role in Latino culture. Yet each of those criteria, and many others I use to describe my identity, are strong and important to the definition of "who I really am." Each alone does not condition my need or right to be a member of the other group identity. The choice is ultimately mine, because the sense of my identifying with the particular group is largely based on my personal experience with the community. Also, the criteria for membership is usually very easily met—stating that I am a lesbian (and am familiar with and respect the lifestyle and identity of lesbians in my community)\(^{38}\) or I am a recovering alcoholic (and am familiar with the conditions of being in a support group for people who wish to live their lives sober from alcohol and drugs).

Nonetheless, the urge to attach the significance of social power or even legal categorization to a single factor is tempting, especially since the poli-

\(^{37}\) See, e.g., ROBSON, supra note 21, at 15-26.

\(^{38}\) The policing of identities is not unfamiliar to the lesbian community. In the seventies, the femme look in hair, jewelry, facial make-up and dress were grounds for doubting someone's true lesbian identity, because of both the feminist lesbian emphasis on a politically correct androgynous and declassef look and appearance, and the disdain for any semblance of the old butch/femme roles. See LILLIAN FADEMAN, ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH-CENTURY AMERICA 230-31 (1991).
tics of identity can sometimes affect important legal battles involving unfair discrimination (e.g., Colorado’s Amendment 2). But it is also true that the law is slow to recognize that people’s identities do not come in neat singular categories. Rather, many people live at the margins of complex and ambiguous identities, experiencing the intersection of familiar categories like “Black,” “female,” or “lesbian,” or even “woman.” Thus I return to the story of Micki who, having lived “as a woman” for fifteen years, certainly presented an ambiguous identity, and felt she belonged in a women’s support group not only because she felt female and lesbian, but also because she needed a safe space where she could talk about the sexual abuse she experienced at the hands of her father when she was a boy.

This conflict—over who gets to self-identify as “woman,” or “lesbian,” or “Black,” or whatever—must be seriously questioned. Allowed to exist, it will hamper our progressive idealism by accepting the male-dominated cultural belief that the only path to a liberated world is one which uses the male-defined categories, labels and paradigms which have defined our identities and our places in the old power structure. That is a belief system which also creates hierarchies and relationships of power between various categories and labels. That belief system, created to maintain men and Anglo-European whites in power, unfortunately also portrays human beings as being unable to change their minds or their paradigms about gender and sex, or about race or sexuality. It prevents us from considering more visionary paradigms where sexual (or racial) identity reaches far beyond the limited dimorphism of male/female, heterosexual/homosexual, or white/black categories.

The experience of transgender females who have been kicked out of more public feminist and lesbian-inspired “womanspaces” illustrates how easily we internalize the values of a white male and heterosexist culture which teaches competition, domination, control, and fear of “The Other.” Our first instinct is to align with our oppressors’ values and to exclude those who differ from us, rather than to include them in our cause. Unconscious of our internalized fears, we perpetuate beliefs which allow sex, gender, race, and class to become the strongest tools for dividing and weakening

41. See supra notes 7 and 36 (discussion of the difference between the rejection of transgender females by a support group versus their rejection by the organizers and participants of a public event like the Michigan Womyn’s Festival).
42. See supra notes 3 and 7.
those who are already oppressed. Acting from that unconscious fear and prejudice, we then rally, in theory, for a progressivism which too often turns into an exercise of jealously guarding "our own special cause" (e.g., lesbians, women, Blacks, chicanos) and resisting coalition with "those others" whose situation cannot be envisioned as a reflection of ourselves.

Some may argue that I greatly misunderstand the well-meant effort to oust an ambiguous identity like Micki's in order to preserve the empowering atmosphere of a womanspace. On a social and political level, the need by some women generally (using an appeal to feminism) and by some lesbians to reject the male-to-female transsexual (MTF) strikes me as based purely on the fear that including a not-woman/former man in womenspaces affects a loss for women. The argument made is appealing. As it is stated: a man without a penis, even one with the massive dosages of estrogen hormones required to soften the body, 43 to make it "womanish," does not rid that individual of the socialization patterns ingrained from the time of birth. Thus, the not-man, though appearing female, and even possibly having been around female energy throughout "his" life, has experienced childhood and adult life as a boy/man. The source of the distrust and fear can of course be supported by the social reality that, generally, men are different from women—less sensitive, stronger, more aggressive and competitive, less nurturing, etc. (Of course, these always remain no more than gross generalizations about people's identities.) Therefore, as a former man, "the s/he" could never identify with women's issues or their fears regarding acquaintance and date or stranger rape. The s/he may experience discrimination as a transgender, of being treated as a freak, but does not know the deeply ingrained messages that encourage girls and women from birth to be subservient, nurturing, more feelings-oriented, and obsessed with the need to be sexually appealing to men. Instead, as a once-man, the s/he is more comfortable with a personal identity that first knew the privilege of being presumed more intelligent, better able, worthy, individualistic, and emotionally stable, just for having been born with a penis. Arguably, as a once-man, the s/he has a personality which will always draw upon the experiences of someone who had and felt the power of being male. Thus (according to this argument), despite the hormones, the cross-dressing, and the SRS, a transsexual female will never be a woman, but will always be a former man, at best an in-between woman who barely "passes" as female. Other feminists argue that supporting MTFs who claim they are "trapped" in men's bodies is akin to supporting the offensive conformity to sex-role stereotyping. 44

43. Estrogen therapy is designed to achieve partial castration and hormonal feminization, results which do not last without long-term treatment intended to achieve testicular atrophy and gynecomastia. Hormonal therapy is not permanent. Harry Benjamin, The Transsexual Phenomenon 92-93 (1966); see also Robert J. Stoller, Presentations of Gender 152-70 (1985).
44. This statement depends upon the unfortunate stereotyping of all people who struggle
Rather than standing behind the MTFs’ notion of “woman,” they claim these men need consciousness-raising, not surgery.45

Despite the long list of reasons for distrusting the motives of the male-to-female transsexual, I wonder whether there isn’t another connection between the need of some straight women and lesbians to exclude all MTF transsexuals as former “men” and the unconscious need to believe in biological essentialism.46 Does an individual’s socialization as either a man or woman stop at a point of no return, such that even the most sincere candidate for undoing his “maleness,” for trying to understand woman’s pain, can never be trusted in support groups or in all-womanspaces like the Michigan Womyn’s Festival47 because of lingering effects of the testosterone in his blood and the socialization of his youth? Formally and rationally excluded from the support groups “because they’ve never known women’s pain,” the s/he is stigmatized for having had a penis and enjoying (or enduring) the privileges of being socialized as a male.

By never giving the not-man an opportunity to learn or understand women’s pain, feminist activism on behalf of women appears narrow—focusing only on getting angry for the victimization—and avoids any situation which may force creativity in the search for a liberated human politics.48 I question whether anger should be seen as the only option for healing from

with their assigned gender identity as feeling “trapped” in a man or woman’s body. The transgenderist culture is rather diverse in its quest for acceptance in a gender bipolar society; many seek a peaceable manner of expressing gender ambiguity, some of which may include hormonal therapy and cross-dressing while making the final step of SRS an optional feature. KATE BORNSTEIN, GENDER OUTLAW 121 (1995). Martine Rothblatt forcefully argues that “[m]anhood and womanhood can be life-style choices open to anyone, regardless of genitalia. It is law and custom, not biology that makes birth order, birth parents, skin tone, or genitals relevant to one’s ability to choose a culture, perform a job, or adopt a life-style. Liberated from legal constraints and archaic stereotypes, our social identity can flow from our soul and our experiences, not from our anatomy and our birth status.” ROTHBLATT, supra note 17, at 3-4.


46. The appearance of feminist discourse in the 1980s arguably displaying a biological essentialist tone was a response to 1960s and ‘70s feminist rhetoric casting women’s oppression in either victimizing or falsely neutral terms. Works like Carol Gilligan’s In A Different Voice (1982) tried to explore the danger of making women’s traits and qualities invisible, but in doing so fired off an internal equality versus difference debate in which the feminist differences approach, despite its efforts to celebrate women’s positive traits, has been charged as giving rebirth to beliefs grounded in gender polarization and nineteenth century concepts of the biologically determined destiny of men’s and women’s identities.

47. See supra notes 7 and 36.

48. See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 612 (1990) (arguing against feminist essentialist definitions of woman as victim, which nurture images of ourselves as passive, acted-upon individuals who are unable to shape our own lives through creative action).
the victim role growing out of gender oppression. I question whether treating a s/he with a biological essentialist attitude, premised on some unarticulated belief in sexual dimorphism, doesn’t perpetuate the heteropatriarchal values which created the gender roles of the “privileged male” and “subordinate female” in the first place. Although quite plainly people’s sex and gender identities are not and have never been “either/or,” the failure to deconstruct the conflation of sex and gender (or sexual orientation) perpetuates the paradigms of androcentrism and heterosexism which in turn feed homophobia and transphobia.

IV. THE IMPACT OF SEX/GENDER BIPOLAR THINKING: FINDING THE CONNECTIONS BETWEEN FEMINISM, HOMOPHOBIA AND TRANSGENDERISM

On a broader level, I wonder if the deep distrust in the outcome of gender identity switching rests in the pervasiveness of a gender value system which equally supports sexism, homophobia and transphobia by enforcing the belief in sexual dimorphism or gender polarization. This sex/gender ideology conditions people to see an unbroken link from physical sex at birth to gender status, to gender role, to a totalistic, all-encompassing sex-determined social structure. All human situations are then governed by an ideology in which sex/gender bipolarity, or a binary matrix of male/female

49. See generally Marianne Williamson, A Woman’s Worth (1993) (an appeal to the modern woman that she reflect on the strength and survival aspects of her gender identity, in working towards self-empowerment and personal growth).

50. See generally Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9.

51. The historical data abounds with examples of sex and gender nonconformists for whom SRS was not an option, and whose way of defying contemporary sex and gender norms could not be easily categorized under what we call today “lesbian” or “gay.” See generally Jonathan N. Katz, Gay/Lesbian Almanac (1983). (1994).

52. Androcentrism is the ideological foundation of male patriarchy. It is a view of the human scheme as being not only gendered (male/female, man/woman, masculine/feminine), but also as male dominated. Androcentrism simply posits that men are dominant and women are subordinate. In an androcentric culture, the underlying assumption is that what is important is male, what is trivial is female; what is positive is male, what is negative is female; what is powerful is male, what is weak is female; man is autonomous while woman is relative. Androcentrism serves as the basis for a sociological theory of sexual inequality which illustrates the various ways in which the man always surfaces as the subject and the absolute, while the woman always emerges as the unimportant appendage or “the other.” See Bem, supra note 12, at 39-79.

53. See supra note 9.


55. Gender theorist Holly Devor defines the framework of gender polarization (which I also call gender bipolarity or sexual dimorphism) as a belief system shared by most members of society which asserts that there are two and only two sexes (female and male); that every person,
and masculine/feminine, dictates how people should see others, how they should see themselves, and how to give themselves and others gendered cues of appropriate behavior. An ingrained belief that all human beings exist only within the framework of sexual dimorphism or gender polarization manifests itself in the social conviction that no one can (or should) ever depart from the roles and cues which accompany each sex/gender. An exclusionist reaction to the MTF transsexual obviously illustrates the pervasiveness of this gender-bipolar belief system. For no matter how an individual might change her/his gender identity, whether through behavior and attire, or through hormones and surgery, or even the consciousness-raising of a women’s support group, the transition is viewed as untrustworthy and unacceptable.

Reflected in this resistance must be some deep commitment to biological essentialism, for alternative paradigms in which gender and/or sexual identity are viewed as byproducts of our belief systems and of everyday social construction consistently recede into the background. A commitment to biological essentialism, conscious or not, must not be used to justify the continued oppression of individuals for whom sex and gender identities, like race/ethnicity, are continuous and not bipolar. Yet one could characterize the resistance by feminists and the gay and lesbian community to including

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most animals, and many things must be either one or the other; and that one cannot be both male and female, cannot be neither male nor female, and cannot change sex without the aid of surgery. Concomitant with this is the belief that there are two and only two genders (girls/women and boys/men), and that whatever a woman does will somehow have the stamp of femininity on it, while whatever a man does will likewise bear the imprint of masculinity.

DEVOR, supra note 12, at vii.

56. The ideology I call gender bipolarity or sexual dimorphism is comprised of other relevant concepts: 1) gender assignment, the special case of gender attribution imposed by society through doctors and midwives at the time of birth; 2) gender identity, which is the self-attrition of a gender (e.g., I am a woman); 3) gender role, which is the set of expectations about behaviors deemed appropriate for people of one gender (e.g., women wear facial make-up); 4) masculine, which designates the expression of culturally approved attire and conduct for males; 5) feminine, which is the expression of culturally approved attire and conduct for females; and 6) effeminate, a term often used to designate men who caricature stereotyped images of feminine behavior (although even men who do not intend to caricature are nonetheless thus labeled). KESSLER & MCKENNA, supra note 11, at 8-18. As noted earlier, gender dissonance is a departure from the norms of gender bipolarity. See supra notes 11-12 and accompanying text.

57. One of the most careful and nuanced studies making the argument that our cultural beliefs and “scientific evidence” supporting the fixed duality of the human body are all socially constructed remains Wendy Kessler and Suzanne McKenna, Gender: An Ethnomethodological Approach (1978). Martine Rothblatt argues for a radical view of sex and sexual identity as existing on a continuum allowing each person to develop a unique sexuality. She refers to this as “unisexuality,” a non-bipolar sexual world would have to rid itself of terms like heterosexual, homosexual, or bisexual, which are based on the either/or framework for defining body types and sexual partner choices. See ROTHBLATT, supra note 17, at 140-48.
transgenders in their causes as resting on a kind of essentialism about sex and gender. While feminists have successfully questioned the use of "woman's nature" to justify various social and economic inequities, they have insufficiently questioned the relationship between the beliefs we have about gender and the beliefs we have about sex. Instead, societal and scientific notions about physical sex, as existing only in a dimorphic framework, remain largely unchallenged.\footnote{We unquestionably accept that there are only two sexes. Thus government is afforded the power to differentiate on the basis of sex in allocating rights and duties (e.g., exclusion of women from ground combat\footnote{Women in Combat: Hearing Before the Military Forces and Personnel Subcomm. of the House of Representatives Comm. on Armed Services, 103rd Cong., 1st Sess. (1993).}), maintaining social order (e.g., ordinances banning cross-dressing\footnote{See, e.g., CHICAGO, ILL., MUN. CODE § 192-8, cited in City of Chicago v. Wilson, 389 N.E.2d 522, 523 (Ill. 1978.).}), and identifying members of society (e.g., census). But we fail to challenge whether there are truly only "two sexes,"\footnote{Consider intersexuality, for instance. The transgender movement defines intersexed individuals as those who have successfully crossed the sex and gender boundaries through SRS or people who have been born with the signs of two sexes (traditionally known as "hermaphrodites") and who chose to live as one gender without ever having the signs of the other physical sex surgically removed. Natalie Angier, Hermaphrodites Struggle to Find Identity in Bodies with Ambiguous Genitalia; Newly Formed Group Prefers to be Known as Intersexuals, OTTAWA CITIZEN, Feb. 4, 1996, at D8.} whether such divisions do indeed serve society, and whether it isn't time to question the belief in a genetic basis for sexual identity.

The basis of the cultural need to perceive and/or discriminate against someone for their failure to conform to the governing sex/gender rules comprises at least eight different elements:

1) there are two, and only two, sexes/genders (female and male);

2) one's sex/gender is invariant (if you are female/male, you always were female/male, and you will always will be female/male);

3) genitals are the essential sign of sex/gender (a female is a person with a vagina; a male is a person with a penis);

4) any exceptions to two sexes/genders are not to be taken seriously;

5) there are no transfers from one sex/gender to another without masquerade;

6) everyone must be classified as a member of one sex/gender or
another (there are no cases where sex/gender is not attributed);

7) the male/female dichotomy is a "natural" one (males and females exist independently of scientists' or anyone else's criteria for being male or female); and

8) membership in one sex/gender or another is "natural," (one's being female or male is not dependent on anyone's deciding who you are). 62

The above sex/gender rules infuse the belief system of a hetero-patriarchal culture. Scholars like Frank Valdes have forcefully argued that hetero-patriarchy as a belief system depends upon the conflation or confusion of physical sex with gender. The confusion is compounded further by society's tendency to equate sexual conduct with sexual orientation. The latter are also conflated with sex and gender. Together, the blurred meanings of these terms—sex, gender, and sexual orientation—sustain a belief system in which one's physical sex determines gender, gender determines the social dimension of sex, and sexual orientation is the sexual dimension of gender. 63 In practice, the conflation of sex, gender and sexual orientation—which themselves depend upon the belief in sexual dimorphism and gender bipolarity—induces powerful cultural attitudes about the relationship between human beings. Another example of the societal confusion that stems from the premises of sexual dimorphism and gender bipolarity has been called the "disaggregation" of sex, gender and sexual orientation. 64 Either view of how society tends to interpret the relationship between sex, gender and sexual orientation produces a distorted logic which sustains the sexual dimorphic framework I described above.

It is a logic which finds full support in the law and medical sciences. For example, courts might acknowledge that people can change the outward appearance of their physical sex and might even allow a name-change to match a new identity, 65 but they often resist changing the official designation of one's sex on a birth certificate. 66 Yet, in a case illustrating the absolute

62. KESSLER & MCKENNA, supra note 11, at 113-14 (summarizing the views of HAROLD GARFINKEL, STUDIES IN ETHNOMETHODOLOGY 122-28 (1967)).
63. Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9, at 20-33.
64. See Franke, supra note 25, at 1-2 (defining disaggregation as the failure of courts to recognize the relationship between the concepts "sex" and "gender" by arbitrarily separating their meanings from each other in ways which perpetuate rather than undermine sex discrimination).
65. The common law view of name-changing has usually been to allow it as long as the person bears no intent to defraud or interfere with the rights of third parties. See In re Anonymous, 314 N.Y.S.2d 668, 668 (Civ. Ct. 1970) (allowing name change for transsexual who appeared female after SRS).
66. Anonymous v. Weiner, 270 N.Y.2d 319, 323 (Sup. Ct. 1966) (holding that separation of powers prevents court from compelling city health department to change sex desig-
conflation of sex with gender, a court acknowledged a sex-change operation (and upheld an allegedly fraudulent marriage) only because the wife "walked and talked like a woman," and physically, her new vagina resembled that of a "real woman." Courts rely on conflated and disaggregated thinking when they reject claims of same-sex harassment because, they argue, sexual orientation has nothing to do with sex or gender, or they assume that the only victims of sexual harassment are women harassed by men. In a similar fashion, conflated thinking explains the case of the gay man who was fired for wearing an earring but could not claim sex-based discrimination—in spite of the fact that he had transgressed gender rules by flouting the rule of virility for men/males by appropriating the effeminate trappings ascribed to women/females. The same sex/gender logic frowns upon a mother seeking custody of a child because she has defied heterosexist norms of sexual behavior by engaging in active lesbianism.

The need to enforce the rigid belief in only two sexes and genders has similar support in the medical sciences. For example, parents today may seek medical treatment for a boy child who displays "pre-sissy" behavior, such as excessive cross-dressing with jewelry and dresses, or playing with girls' toys (and vice-versa for girls), or otherwise shows the early signs of homosexuality, transvestism or transsexualism.

The judicial aversion to the exploration of a different gender identity from that assigned at birth is firm. When, after an extended leave, Kenneth Ulane returned to work as Karen Ulane, she was fired and unable to sue her employer United Airlines (UA) for sex discrimination. Both the court and UA conflated Karen's birth sex with her gender (once born "male" then always a "man"). The court was also guilty of disaggregated thinking when it separated out the question of disapproval for acquiring a female identity from the legal notion of sex-based discrimination for men.

68. See Dillon v. Frank, 952 F.2d 403 (6th Cir. 1992) (finding that male plaintiff taunted and ostracized by co-workers who believed he was homosexual had no claim for sexual harassment under Title VII); McWilliams v. Fairfax County Bd. of Supervisors, 72 F.3d 1191, 1195-96 (4th Cir. 1996) (holding that male plaintiff's alleged harassers were heterosexual and therefore the harassment was not "because of sex").
69. See De Santis v. Pacific Tel. and Tel., 608 F.2d 327 (9th Cir. 1979).
70. Strailey v. Happy Times Nursery Sch., Inc., 608 F.2d 327, 328, 333 (9th Cir. 1979).
71. Bottoms v. Bottoms, 457 S.E.2d 102, 108-09 (Va. 1995) (denying custody to lesbian mother and ruling that although lesbians are not per se unfit parents, sexual orientation is an "important consideration").
73. Ulane v. Eastern Airlines, 742 F.2d 1081, 1087 (7th Cir. 1984).
74. Id. at 1087.
who depart from their assigned sex/gender identities and roles. It could not accept the possibility that one’s gender identity or sexual identity might not have a genetic basis at all. The result was a convoluted ruling holding that Karen had no claim for the unprotected category of transsexualism because such a claim bore no relationship to Kenneth’s originally ascribed sex and gender identity.75

Individuals who do not conform to the heterosexist normative principles of sex/gender bipolarity do suffer “sex-based discrimination” for their gendered non-conformism to the social limits placed on their biological sex, whether it be in the workplace,76 family life77 or love relationships.78 The impact of such an all-encompassing framework of beliefs about sex and gender is vast. People who depart from their assigned sex and gender identities,79 roles, cues, and values experience discrimination because they un-

75 Id.; see also James v. Ranch Mart Hardware, Inc., 881 F. Supp. 478 (D. Kan. 1995) (dismissing Title VII claim by transsexual who was fired because she wanted to begin reporting to work as a female).
79 The medical establishment is very committed to gender polarization (i.e., heterosexuality as the norm). The true transsexual is presumed to want a sexual orientation which will accommodate the new gender. Thus a MTF transsexual should want sex with men, and a FTM transsexual should desire sex with women. KESSLER & MCKENNA, supra note 11, at 118. Doctors are known to pressure married candidates for a sex change to seek divorce from their spouses, a practice which is opposed by transgender activists. See Health Law Standards of Care for Transsexualism, The ICTLEP REP. (Houston, Tex.),
dermine the notions of biology which thoroughly infuse the dominant gender scheme. In that scheme, “normalcy” becomes a rigid set of gender identities and roles for the female/male sexed body. Discounting the reality of people born with ambiguously sexed bodies,80 the bipolar gendered ideology upholds the image of the masculine “real man” and the feminine “real woman.” Departures from the gendered norms become the stuff of social and legal discriminations: two women in a relationship being discouraged from serving as committed parents to an adoptive child,81 two men or two women not being able to marry in most states,82 a surgical female not being able to marry a man,83 openly gay or lesbian soldiers not being able to serve in the military,84 effeminate men being freely sexually harassed by macho men,85 and so on. It is in this sense that the discrimination arising from one’s failure to conform to society’s basic rules of sex and gender must be viewed as nothing but sex- or gender-based discrimination.86 Individuals who depart from those norms, whether willfully or not, are therefore “transgendered,” or

Aug. 1993 (“If the patient is married, the surgeon may not require divorce but may require the spouse to sign a waiver of liability form.”) (on file with author). Notably, if an already-married, heterosexual candidate for a sex change refuses to get a divorce after the surgery, and the wife/husband stays in the relationship, these individuals would subsequently be in a legally valid same-sex marriage! This adds an ironic twist to the debate on same-sex marriage generated by passage of the Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419 (1996), which grew out of the conservative reaction to the Baehr decision, 852 P.2d 44.

80. This essay does not explore intersexuality, although it is still widely documented in significant numbers. The medical establishment has dealt with this and other forms of sexual ambiguity at birth by encouraging parents to choose a gender identity for the child which is then anatomically “corrected” to fit the choice. See JOHN MONEY, SEX ERRORS OF THE BODY AND RELATED SYNDROMES: A GUIDE TO COUNSELING CHILDREN, ADOLESCENTS, AND THEIR FAMILIES 6 (1994). A study of twin intersexuals who were assigned different genders before they were four years old, who then successfully became a “boy” and “girl,” is often relied upon to argue that biology plays a very limited role in contributing to the development of a particular gender identity. See KESSLER & MCKENNA, supra note 11, at 68-72.


82. See generally Baehr v. Lewin, 852 P.2d 44.  
83. In re Ladrach, 513 N.E.2d 828 (Ohio P. Ct. 1987) (holding that, despite sex reassignment surgery, a male-to-female transsexual remains a male because of original gender attribution at birth).

84. See Able v. United States, 847 F. Supp. 1038 (E.D.N.Y. 1994) (issuing injunction against enforcement of the “Don’t Ask, Don’t Tell” military policy on First and Fifth Amendment grounds).

85. See cases cited supra notes 68-69.  
86. See generally Franke, supra note 25; Valdes, Queers, Sissies, Dykes and Tomboys, supra note 9.
“gender rebels,”87 when their dress, attitudes, behavior and/or identity step out of the governing masculine/male-feminine/female identity framework and into a context in which gender ambiguity sets the norm. Yet, as long as we value gender bipolarity or sexual dimorphism over the concept of gender as a product of social construction, we limit our freedom to express our sexual identity.88 The fear of Micki, for example, was premised on the belief that s/he could presumably never be a woman because s/he, though quiet, demure and feminine, betrayed her experience as a man by displaying a self-confident demeanor not typical of women.89

To put this theoretical discussion into more concrete terms, consider the following. At the fifth annual Transgender Conference in Houston, Texas, in July 1996, a speaker identified himself as James Green, an FTM who had lived as a lesbian in the San Francisco community for several years before taking the step to use hormones and eventually become a female-to-male transsexual. For Green, who stayed with the same lesbian lover of ten years after the surgery, use of the label and category “lesbian” suddenly becomes complicated. Does his partner lose her lesbian status because her former partner was once a woman and is now a man? Martine Rothblatt poses a series of interesting questions in this regard:

Is the lovemate of a person with a vagina who uses a strap-on dildo gay or straight? Does it matter if that lovemate has a vagina or a penis when the other partner feels as if she is a male? Are they still lesbians if the partner lives, dresses, and thinks of “herself” as a man? Are they still lesbians if the partner has had a hysterectomy to eliminate “her” period? What if “she” also had a voluntary breast

87. The ultimate gender rebel is one who, after a sex change operation, insists on making him(her)s elf the member of a “heterosexual” couple for the purposes of enjoying such privileges reserved exclusively for gender conformists as the right to marry. See In re Ladrach, 513 N.E.2d 828, 832-33 (refusing to issue marriage license to a man and a postoperative male-to-female transsexual on grounds that petitioner was still male since a person’s “true sex” is that assigned to them at birth).

88. The term “sexual identity” has been freely used in gay and lesbian literature to capture the hybrid physiological and political aspects of adopting a “gay” identity. As defined by John De Cecco and Michael Shiveley, sexual identity is comprised of 1) biological sex (assigned at birth); 2) one’s conviction of being female or male (gender identity); 3) femininity or masculinity (according to social norms); and 4) sexual orientation (which is not just erotic interests, but also includes emotional affect and sexual behavior). John P. De Cecco & Michael G. Shiveley, From Sexual Identity to Sexual Relationships: A Contextual Shift, in ORIGINS OF SEXUALITY AND HOMOSEXUALITY 1-26 (John P. De Cecco & Michael G. Shively eds., 1985).

89. Of course, such conclusions seriously undermine the feminist project of convincing our male-dominated society that the biological differences between men and women neither explain nor limit women’s social contributions, except in limited ways during pregnancy. See Sylvia A. Law, Rethinking Sex and the Constitution, 132 U. PA. L. REV. 955, 1007-13 (1984) (favoring “special treatment” model for sex-specific conditions, but stressing that classifications based on “women’s differences” must be carefully scrutinized to avoid perpetuating unfair gender stereotypes).
removal operation to give “her” a malelike chest? At what point are
the couple no longer lesbians but instead just having unique sex?90
These questions should encourage us to consider the creation of transition
vocabulary which is non-stereotyping and respectful of sex and gender
identity choices.

V. SEEING THE WEB OF OPPRESSION IN A HETERO-
PATRIARCHAL SOCIETY: AN APPEAL FOR HOLISM IN THE
POLITICS OF IDENTITY

My goal in this essay has been only to glimpse at the roots of activism
and theorizing which appear unduly committed to bipolar and essentialist
thinking in matters of sex and gender, paralleling the bipolarism of
White/Black in race relations which infuses this nation.91 Bipolarism can
never reflect the diversity of the world in which we live. In the area of race
categories, for example, bipolarism encourages us to ignore our being sur-
rounded by individuals who do not neatly fit into the paradigm of
Black/White. Racially, there are African-Americans who pass for white,
Hispanics with Anglo or European names and faces, Black Asians, and
White Native-Americans, as well as European-Americans whose ancestry
has been subsumed under the catchall label “white.” The same blurring of
boundaries is found along male/female and heterosexual/homosexual lines.
There are intersectional queers who experience discrimination as Black gay
men, Latina lesbians, and Black or Hispanic transgendered queers. Al-
though the boundaries of categories like race, gender and sex are quite
blurred when we look beyond the experience of the mostly white and/or het-
erosexual people who have dominated the legal discourse, our activism and
our social theorizing have nonetheless not allowed for race or gender ambi-
guity.92 Nor has our experience in the courts. Not surprisingly, plaintiffs in

90. ROTHBLATT, supra note 17, at 143-44.
91. See Charles R. Lawrence III, The Epidemiology of Color-Blindness: Learning to
92. The impact of the arbitrary analysis of race and sex affecting contemporary social
and legal discourse is illustrated by the inconsistent policies of government entities which
have tried to implement much needed affirmative action policies. Efforts have been typi-
cally made only to increase the representation of Blacks and Hispanics, and to enforce
the false notion that Asians don’t need affirmative action and don’t experience invidious dis-
crimination.

This “model minority” image of Asians, based on notions of racial stratification and
blatant stereotypes, has been severely critiqued. See Neil Gotanda, Asian American Rights
and the “Miss Saigon Syndrome,” in POWER, PRIVILEGE AND LAW 106 (Leslie Bender &
Daan Braveman eds., 1995). Such stereotyped rhetoric discourages the recognition of
blurred or intersectional racial identities. For example, Black Asians, who might want to
identify themselves with more than one racial/ethnic group, are often discouraged from
marking more than one identity box on an application form. Thus, official policy often re-
fects muddled perspectives which unwittingly perpetuate racial stratification/splitting and
racial ideologies which encourage people to believe that some persons will “naturally”
discrimination suits are discouraged from introducing dual or compound factors to explain their discriminatory treatment, even where the facts would sustain an interrelated function of the categories (e.g., race and sexual orientation).\textsuperscript{93}

The feminist and lesbian/gay communities thus need to connect their theorizing to the transgenderists' developing discourse on gender oppression. In the late twentieth century, this topic is not just about adding another aspect to the burgeoning politics of sexual identity. It is as important to feminist theory as it is to critical race theorists, who are seeking to deconstruct and interconnect the roles of race and class oppression in American culture. We need to see all aspects of the sex/gender gender/sexual orientation or the race/color/ethnicity question from the perspective that our beliefs can dangerously be affected by essentialist attitudes, whether they are about the sexed or racialized body.\textsuperscript{94} If you are lesbian, gay, a woman, or heterosexual, the transgendered experience may not be your experience, but the thinking that undergirds their discrimination must be made our experience.

In reflecting on the diversity of our lesbian, gay and bisexual community, we should be reminded of the historical presence of the transgendered individual—as once having been the cross-dressers of the nineteenth century, the drag queens of the fifties,\textsuperscript{95} and having become the partially or fully queer/transgender FTMs or MTFs of today.\textsuperscript{96} White and middle-class lesbi-

\begin{itemize}
\item because of [presumptively homogenous] color, class, race) gravitate to the top and others to the bottom.
\item The recent spate of efforts to undo affirmative action in the universities is one expression of this ideology, which fuels divisiveness among minorities and which prevents the coalitional activism needed to create a truly diverse and compatible co-existence of multicultural and multi-racial/gendered Americans. See Norimitsu Onishi, \textit{Affirmative Action: Choosing Sides}, N.Y. TIMES, Mar. 31, 1996, at Education Life 26-35; see also Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) (affirming right of white plaintiffs who charged University of Texas School of Law admissions policy as racially discriminatory to be admitted under an admissions program which does not use race to a) obtain a diverse student body, b) alter the school's reputation in the community, c) combat the school's perceived hostile environment toward minorities, or d) remedy the present effects of past discrimination by actors other than the law school).
\item 93. See, e.g., Williamson v. Edwards & Sons, 876 F.2d 69 (8th Cir. 1989), cert. denied, 493 U.S. 1089 (1990) (dismissing Title VII claim of race-based sexual orientation discrimination by Black gay man on grounds that harassment was based more on homosexuality than race, and therefore not prohibited under the statute; court thereby ignored possibility that discrimination for membership in one social group may be compounded by membership in another).
\item 96. Although they exist in smaller numbers, female-to-male transsexuals (FTMs) engender as much curiosity as butch lesbians, particularly in their search for an identity which accommodates their never having felt female but also never having felt a part of the lesbian separatist movement. See Deva, \textit{FTM/Female-to-Male: An Interview with Mike},
ans who are afraid of male-to-female transsexuals unfortunately assume that all MTFs are pseudo white men, or former white gay men, or some such variation on the antithesis of their own identity. That false consciousness ignores the intersections of race and class which also impact on the lives of transgendered individuals,97 some of whom in other times would have been the lesbian/gay/bi/transvestites of their era, long before the civil rights movements of Blacks, women, and queers changed America’s social and political history. The moment we resist the transgendered female because she evokes our distrust as women or lesbians for the residual power of male privilege, we might as well reject all the others who have been “queer” in the past; we might as well throw out the story of the Stonewall Riots as having sparked a lesbian and gay civil rights movement because the primary actors on that night were transgendered people.98 We might as well in that rejection throw out anyone who defies the closeted, straight-looking gender conformists and all those whose lives exist out of the mainstream white gay/lesbian activism of today—poor/working class, Black, Latino, very butch/femme, partial transgendered drags, etc.

Transgenderism, then, pertains to feminist, lesbian and queer theory. How people react to the subject, and to the persons seemingly affected by the analysis (MTFs or FTMs), is a painful reminder that progressive theorizing can dangerously internalize the values of the dominant culture. We must resist hegemonic approaches which falsely suggest that the gender, the “lesbian,” or the queer label applies to one category of easily defined people. For, you and I may occasionally share a common label, yet how each of us defines and experiences that label (e.g., lesbian) is completely dependent on time, place, manner, historical, social and cultural context. Whether our approach to dismantling the rule of law/men/whites/heterosexuals in our lives uses gender, or lesbianism, or race/color/ethnicity as categories of analysis, our quests must look at the elements of the “hard cases.”

As a feminist, I am not satisfied with the notion that the consciousness-raising (CR) techniques for dismantling “gender oppression” used in the seventies are useful only to girls/women who are the victims of harassment, rape, child abuse and incest, or that the old methodology and form of CR groups must remain the same today.99 If little girls are capable of being


97. See, e.g., Paris Is Burning (Miramax 1991), a film poignantly documenting the positive outlook and equally tragic existence of New York City’s Hispanic and Black gay drag queens, and transgenders, many of whom survive by petty thievery and hustling for sex. The range of gendered identities can boggle the mind as many of these individuals define their “gay identity” not solely by homosexual sex but also by way of their exploration of cross-gendered identities, whether in the form of drag, transvestism, or partial or full transsexual operations leading to the creation of “female” identities.


99. This proposal suggests that it may be a destabilizing, yet necessary, move for femi-
abused in a heterosexist and patriarchal society, so are little boys. If adolescent girls are capable of being denied the right to explore their sexual difference by way of sexual behavior with other girls or by playing with butch/fem identities, then so are adolescent boys. If gender oppression so harms our youth,\textsuperscript{100} it harms those who didn’t take the steps to defy the gender oppression of their childhood/youth until they became “women,” “men,” or even “lesbians.”

\textbf{VI. CONCLUSION}

We need to expand the rhetoric we are using to explore the meaning of gender or sexual oppression, making it inclusive and interconnected with our struggles to deconstruct the meanings of race or class oppression. This is necessary because these movements are all united in the search for a meaningful concept of identity which would allow us to affirm our differences—with the progressive end goal, presumably, of destroying unfair stereotypes and uniting with others on a higher plane of existence. Contemporary society expresses tremendous hostility towards its gender rebels—which include everyone from the middle-class gay man and lesbian woman, to working-class gays, butch lesbians, white or Black/Hispanic transsexuals, rich and poor cross-dressers, full- and part-time transgendered, gay male drags, and so on.\textsuperscript{101} The varied potential in this list illustrates how limited our current vocabulary is for seeing sex, gender, race and class as continuous and interconnected concepts, all or some of which may collide in one person’s experience of “oppression.” Yet there are cultures, even in America, where gender and racial fluidity are the norm of social existence, so I do not speak of a hypothetical society.\textsuperscript{102} Only sex and gender stereotyping grow out of the


\textsuperscript{101.} An excellent example of contemporary oppression is the recently enacted Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419 (1996), which is intended to fend off the impact of a Hawaii Supreme Court ruling in the plaintiffs’ favor in the re-trial of Baehr v. Lewin, 852 P.2d 44 (Haw. 1993). DOMA allows states to refuse to acknowledge legal same-sex marriages obtained in other jurisdictions.

\textsuperscript{102.} It is interesting that the legal culture which generated the most expansive reading of sex-based discrimination so as to recognize the right of lesbian and gay couples to not be discriminated against in the issuance of marriage licenses, see Baehr v. Lewin, 852 P.2d 44, arises from a social culture that is permeated with the norm of gender and racial ambiguity. The historic Polynesian influence in Hawaiian culture (including Tahitians and Samoans) has long recognized the social identity of the \textit{mahu}, cross-dressers and transgendered individuals whose discrimination on the mainland U.S. is strong, but on the islands is tempered by the Hawaiian belief that it is natural for some men to spend their lives in
insistence to divide people into two sexes. We need to begin to see our sex­
ual and gender identities as being as unique as our personalities. That pos­
sibility should encourage feminist, lesbian/gay or queer theorists to shed the
arrogance and prejudice which induce them to stereotype the transgendered
and to question their motives. For their quest seems highly compatible with
that of feminists, lesbians or queers—to undermine the role that the law and
the science of sex, or hetero-patriarchal notions about sex, gender and
sexuality, play in the second-class treatment of women and/or other
sex/gender rebels. Introducing and examining the resistance to the topic of
transgenderism should encourage us to re-examine our notions of respect for
difference and diversity. It should also encourage us to become even more
critical about the role we should give to biological essentialism in defining
the boundaries of race, class, gender, and sexuality.

“feminine” roles and to dress and act like females and even become the passive sexual
Lewin 6 (1996) (unpublished student paper, University of Texas (Austin)) (on file with
author).