

1-1-2009

Elusive Coalitions: Reconsidering the Politics of Gender and Sexuality

Kathryn Abrams
Berkeley Law

Follow this and additional works at: <http://scholarship.law.berkeley.edu/facpubs>

 Part of the [Law Commons](#)

Recommended Citation

Kathryn Abrams, *Elusive Coalitions: Reconsidering the Politics of Gender and Sexuality*, 57 *UCLA L. Rev.* 1135 (2009)

This Article is brought to you for free and open access by Berkeley Law Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

ELUSIVE COALITIONS: RECONSIDERING THE POLITICS OF GENDER AND SEXUALITY

Kathryn Abrams*

INTRODUCTION	1135
I. THREE CONFLICTS IN SEARCH OF A COALITION	1136
A. Proposition 8	1136
B. Times Square Redevelopment	1138
C. San Francisco's Proposition K	1139
II. ANALYZING FAILURES OF COALITION	1141
III. PLURALISM AND SOLIDARITY IN THE TRANSGENDER MOVEMENT	1145

INTRODUCTION

In her provocative recent book, *Split Decisions*,¹ Janet Halley argues that left political movements have suffered from a “convergentist” assumption: They assume that forms of critique or intervention that serve the interest of one group, for example, feminists, also serve the interest of other groups, for example, gay/lesbian or queer activists. She contends that we ought to set aside this kind of convergentist assumption in order to examine the ways in which our frames, premises, and strategies may in fact point us in different directions. In this Article, I pose a contrary hypothesis: Analysis of and organizing around gender and sexuality may be suffering not from too much convergence but from too little. In Part I, I examine three recent contexts in which coalitions related to gender and sexuality failed to emerge, coalitions that might have been highly fruitful not only for the issues in question but for thinking about sexuality and gender. Following this examination, in Part II, I ask what factors or influences may be fueling this divergentism in thought and activism on sex and gender. Among the possibilities I consider is that a focus on subordination among feminist and gay/lesbian theorists and advocates, and normalization among queer theorists and activists has created a range of differences in matters from goals and preferred means, to attitudes toward the state and even affective stance, that have made coalescence less likely and more difficult to achieve. Finally, in

* Herma Hill Kay Distinguished Professor of Law, UC-Berkeley School of Law.

1. JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006).

Part III, I look to the burgeoning transgender movement to identify certain approaches to pluralism in subject positions, ends, and means that may be useful in rethinking this pattern.

I. THREE CONFLICTS IN SEARCH OF A COALITION

In several recent contexts, legislation, proposed legislation, or policy initiatives have implicated the lives of feminist, gay/lesbian, and queer activist groups. Given the far-ranging and diverse effects portended by each of these initiatives, one might have expected dynamic, plural coalitions to emerge to defeat or secure the proposed actions, and to expose their complex sex and gender effects. Yet in none of these cases did that kind of coalescence actually occur. These failures raise questions about how the affected groups understand their interests and about the prospects for collaboration in the future.

A. Proposition 8

Proposition 8 was first and foremost about same-sex marriage, but its campaign strongly implicated gender. It was supported by a barrage of television and video ads that sought to highlight the threat that same-sex coupling posed to the normative family's role in the gender socialization of children. That normative family, as my colleague Melissa Murray has argued,² looked like something right out of "Father Knows Best": mothers waiting in the kitchen for their children's return from school, to offer snacks and moral socialization; fathers hovering in the background, doing manly things like barbecuing. My first reaction when I heard about these ads was one of foreboding: This campaign was going to produce both a denial of gay marriage and huge collateral damage in terms of the enforcement of conventional gender roles. My second reaction was one of perplexity: Where were the feminists in this campaign? Marriage equality has potential benefits for everyone interested in nonnormative gender roles. As one advocate said to me, if you've got a gay male couple, any way you slice it there's going to be a guy doing the dishes.³ This is good news from a feminist perspective. On the flip side, mobilizing people on the basis of highly traditional notions of family roles is bad news for feminists. This is part of the point that Reva Siegel makes in her forthcoming book with Linda

2. Melissa Murray, *Marriage Rights and Parental Rights: Parents, the State, and Proposition 8*, 5 STAN. J. C.R. & C.L. 357 (2009).

3. Thanks to Fred Hertz for this insight.

Greenhouse:⁴ There's a connection in the minds of advocates for the Christian Right between same-sex marriage and issues like abortion. Feminists might have been instrumental in rallying mainstream women by making clear to them the broader agenda of the Christian Right: If you think they're not coming for you next, think again. This kind of feminist intervention might have mobilized more people to vote no on Proposition 8, and it might have helped to broaden our understanding of the issues at stake. But this kind of coalition never emerged. Feminists were not absent from the Proposition 8 campaign; feminist organizations staffed phone banks and supported Proposition 8 in their work on college campuses.⁵ Several feminist organizations authored amicus briefs in the case challenging the legality of Proposition 8 once it prevailed at the polls.⁶ But feminist activists were not involved in the core group that framed positions or responded to negative advertisements during the campaign,⁷ nor did their support during or after the campaign illuminate the interest they shared with gays and lesbians in resisting state-supported efforts at gender normalization, or in challenging a Christian Right coalition whose long-run objects targeted both groups.

4. See Reva Siegel, *The Difference a Field Makes: The Impact of Sexuality and Gender Law Scholarship on the Law and Legal Scholarship*, Address at the UCLA Law Review Symposium: Sexuality and Gender Law, *Assessing the Field, Envisioning the Future* (Feb. 19, 2010); see also REVA SIEGEL & LINDA GREENHOUSE, *BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT'S RULING* (forthcoming 2010).

5. See Email From Laura Brill to Katherine Franke, Director, Ctr. for Gender and Sexuality Law, Columbia Univ. (Feb. 23, 2010) (on file with author).

6. See Corrected Application to File Amici Curiae Brief in Support of Petitioners and [Proposed] Amici Curiae Brief of Amici Concerned With Gender Equality, *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009) (No. S168047) (brief of Equal Rights Advocates, California Women's Law Center, Women Lawyers of Santa Cruz County, Lawyers Club of San Diego, Legal Momentum, and National Association of Women Lawyers). The arguments in this brief did not highlight the common interests of feminist and gay/lesbian groups in resisting state-supported normalization of gender roles. They focused primarily on the concern that, if permitted to stand, Proposition 8 would authorize simple popular majorities to deny the equal protection of politically marginalized groups—a prospect that might one day harm women, as it has gays and lesbians.

7. This is the conclusion I reached after reading several post-mortem analyses of the key decisions and players in the Proposition 8 campaign. See Tim Dickinson, *Same-Sex Setback*, ROLLING STONE, Dec. 11, 2008, at 45, available at http://www.rollingstone.com/politics/story/24603325/samesex_setback/3; Ben Ehrenreich, *Anatomy of a Failed Campaign*, ADVOCATE, Dec. 2008, at 34, available at http://www.advocate.com/Politics/Election/Anatomy_of_a_Failed_Campaign; Surina Khan, *Tying the Not: How the Right Succeeded in Passing Proposition 8*, PUBLIC EYE, Spring 2009, available at http://www.publiceye.org/magazine/v23n4/proposition_8.html. Some of these articles make the point that the group of decisionmakers directing the campaign against Proposition 8 was even narrower than I have suggested, as it did not fully represent even gay and lesbian activists and advocacy groups in California.

B. Times Square Redevelopment

The effort to commercialize or “Disneyfy”⁸ the Times Square area, from 1995 through approximately 2005, led to the demolition of a range of adult bookstores and theaters. These sites, often demonized by city officials, were integral to the creation of an interracial, socioeconomically plural, queer sexual culture.⁹ The redevelopment was undertaken in the interest of encouraging tourism and gentrification, but it was also justified under the political sign of creating physical safety for women and children. This move was met with silence from feminist organizations, which I see as a real failure of coalition.¹⁰ Traditional gender norms of a different type (vulnerable women in need of protection) were being used to stifle the development of queer sexual cultures,¹¹ and also to reinforce hierarchies among different subgroups of women. Alert feminists might have said, “not in our name,” and argued that women and children had no inherent interest in an arrangement where male homosocial sexual cultures are destroyed, and where nonconforming human beings are treated like a form of urban blight as an area is made “safe” for tourism. They also might have observed that this kind of rhetoric obscures the race and class hierarchies implicit in the claim of “respectable” women in need of protection,¹² and the effects of the renovation on the women (including working class,

8. I first encountered this term for the Times Square Redevelopment in Eric Rofes, *Imperial New York, Destruction and Disneyfication Under Emperor Giuliani*, 7 GLQ 101 (2001) (book review).

9. For a vivid, multifaceted depiction of this culture, see SAMUEL R. DELANY, *TIMES SQUARE RED, TIMES SQUARE BLUE* (1999).

10. It is possible that redevelopment efforts received the support of groups such as Women Against Pornography, which supports regulation to prevent the subordinating effects of erotic representations. None of the accounts of the redevelopment efforts I have seen identify any significant intervention by such groups. Delany suggests that their activity in the Times Square area peaked during the early 1980s, around the time of the “Sex Wars.” See *id.* at 79.

11. Delany argues—quite sensibly in my opinion—that the use of such arguments was “superstructural.” *Id.* at 161–64. Developers were exploiting such rhetoric instrumentally: Their goals were not to advance the interests of any group of women but to facilitate their ability to demolish and construct buildings; political leaders in New York employed such arguments as a means of facilitating a development they believed would enhance the city’s appeal to tourists.

12. Cf. Beverly Balos & Mary Louise Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U. L. REV. 1220 (1999). Balos and Fellows make a nuanced cultural and historical argument that feminist argumentation has often distinguished between “respectable” women (middle class, sexually conforming women) and other women (who include working class and poor women, immigrants, and sexually nonconforming women). In that sense, their argument would support a feminist activism that sought to vindicate the interests of women who do not automatically fall within the privileged category of the respectable. However, they also argue that this distinction is reified in and policed by the figure of the prostitute—an exemplar of the kind of woman who is not entitled to respect. This argument leads them to favor an abolitionist approach to prostitution and a regulatory approach to pornography. So they would be unlikely to follow their argument to the conclusion I do—namely, that feminists should have taken part in the coalition to resist the redevelopment of Times Square.

immigrants, women of color) who lived and worked in Times Square.¹³ This kind of coalescence, which might have helped open up the debate, and increase public scrutiny of redevelopment efforts, did not occur.¹⁴

C. San Francisco's Proposition K

Proposition K was a ballot issue that prohibited law enforcement from expending funds to enforce criminal laws against prostitution, or applying for federal or state grants that use "racial profiling" in antiprostitution efforts.¹⁵ The initiative was supported by a coalition of sex worker advocacy groups concerned about the difficulty of reporting violence against sex workers under conditions of criminalization, public health professionals concerned about the challenges of providing adequate medical care to patients who were reluctant to identify themselves as sex workers, and women of color activists animated by recent targeted enforcement against Asian American women working in the sex industry (which had been characterized as an intervention to prevent trafficking).¹⁶ The initiative was opposed by a coalition of neighborhood groups

13. See DELANY, *supra* note 9, at 160 ("[T]here have always been women in Times Square They were barmaids. They were waitresses. They were store clerks. They were ticket takers I will hazard that a minimum 40 percent of the workers there were women. Also women lived in the neighborhood.").

14. One factor that may have complicated the inclination or ability of feminist groups to play an active role in debates about Times Square redevelopment is feminists' own conflicted history over the regulation of public sexuality. Some queer scholars have noted the parallel between feminist debates over the regulation of pornography, see *infra* note 30 and accompanying text, and debates between queer pro-sex activists, on the one hand, and city officials and "reactivist" gay groups on the other, over the regulation or closing of sex clubs, adult theaters, and other public sex venues in New York City. See Eva Pendleton, *Domesticating Partnerships*, in DANGEROUS BEDFELLOWS, POLICING PUBLIC SEX 373 (1996); Amber Hollibaugh, *Seducing Women Into "A Lifestyle of Vaginal Fisting": Lesbian Sex Gets Virtually Dangerous*, in POLICING PUBLIC SEX, *supra*, at 321. Some commentators have gone so far as to suggest that feminist arguments against pornography helped to pave the way for more active municipal regulation of public sex venues. See Tom Redburn, *Putting Sex in Its Place*, N.Y. TIMES, Sept. 12, 1994, available at <http://www.nytimes.com/1994/09/12/nyregion/putting-sex-in-its-place.html?pagewanted=1> ("Attacks on pornography by feminists have also played a role in making such restrictions [on the location of adult establishments] more acceptable").

15. See generally Yes on Prop K, <http://www.yesonpropk.org> (last visited June 5, 2010).

16. Sex worker advocates argued that criminalization not only makes prostitutes vulnerable to violence by customers, police, and others, but it also makes them vulnerable to exploitation by pimps. As advocate Rachel West argued: "Criminalization encourages pimping because when you're underground you're more likely to be vulnerable to exploitation and need protection." S.F. *Rejects Legalization of Prostitution*, CONTEMP. SEXUALITY, Dec. 2008, at 13. The Yes on K coalition also included members of the Erotic Service Providers Union and Industrial Workers of the World, an international union that aims to unify all laborers regardless of trade. These latter organizations argued that ending prosecutions against sex workers would permit them to unionize and improve the conditions of their labor. Elizabeth Pfeffer & Angela Hart, *Proposition to Legalize Prostitution Strikes Chord in San Francisco*, ALAMEDA TIMES-STAR, Oct. 20, 2008 (quoting Slava Osowka, a member of Industrial Workers of the World, who collected signatures for the petition that placed Proposition K on the ballot). For another

protesting an influx of (immigrant) sex workers employed, in particular, in the massage parlors springing up across the city—city officials alarmed that Proposition K would “put a welcome mat out for pimps and prostitutes,”¹⁷ organizations providing social services to prostitutes and sex workers, and feminist activists concerned about trafficking in women.¹⁸ One potential partner in the Yes on K coalition remained in surprisingly low profile. Some queer advocacy groups offered financial and moral support to the effort: The Harvey Milk Democratic Club, for example, is listed as a sponsor on the Yes on K Website, and contributed a paid advertisement to the November 2008 Voter Information Pamphlet.¹⁹ Yet distinctively queer perspectives on sex work did not become part of the public discussion or the public face of the Yes on Proposition K campaign.²⁰

This apparent reticence was striking given that sex workers are often theorized as part of a queer coalition because having sex for money can be viewed as a nonconforming form of sexuality,²¹ and many sex workers are queer in the sense that their lives are not organized by conventional familial domesticity.²² Queer advocates might have helped the Yes on Proposition K campaign to reach

look at the constellation of interests and organizations that supported the proposition, see SAN FRANCISCO DEPT OF ELECTIONS, VOTER INFORMATION PAMPHLET FOR NOVEMBER 2008 ELECTION, PAID ARGUMENTS IN FAVOR OF PROPOSITION K, at 152–54, archived at http://sfpl4.sfppl.org/pdf/main/gic/elections/November4_2008.pdf (last visited June 5, 2010).

17. Jesse McKinley, *San Francisco's Prostitutes Support a Proposition*, N.Y. TIMES, Nov. 1, 2008, at A10 (quoting San Francisco District Attorney Kamala Harris). See also Elizabeth Pfeffer & Angela Hart, *Will Proposition K Solve Oakland's Prostitution Problem?*, OAKLAND TRIB., Oct. 20, 2008, available at <http://democrats.assembly.ca.gov/members/a16/articles/20081020AD16AR02.htm> (“Given Oakland and San Francisco's proximity, a 20-minute drive and \$4 toll could quite literally become the ‘get out of jail free card’ for pimps and prostitutes from the East Bay and beyond.”).

18. Those opponents concerned with trafficking also included district attorneys responsible for antitrafficking programs, and researchers concerned that Proposition K's ban on the receipt of funds requiring the collection of racial data would prevent San Francisco from undertaking culturally specific outreach to groups of sex workers. See Pfeffer & Hart, *supra* note 16. See also San Francisco Department of Elections, Voter Information Pamphlet, *supra* note 16, at 155–58 (Paid Arguments against Proposition K).

19. See Yes on Prop K, *supra* note 15 [hereinafter Harvey Milk Club, Yes on Prop K] (noting sponsorship of Harvey Milk Club); San Francisco Division of Elections, Voter Information Pamphlet, *supra* note 16, at 152.

20. The Harvey Milk Club for example, frames Proposition K as a workers' rights issue, arguing that “[t]he biggest obstacle to ensuring the protection of workers in the sex industry is the criminalization of prostitution. The Harvey Milk Club has always stood with workers. Join us in supporting sex workers and helping them to improve their working conditions.” *Id.*

21. Samuel Delany, for example, notes the frequent conflation of “perverts and prostitutes” in homophobic rhetoric. See DELANY, *supra* note 9, at 184–86.

22. See JUDITH HALBERSTAM, IN A QUEER TIME AND PLACE: TRANSGENDER BODIES, SUBCULTURAL LIVES 1–21 (2009) (describing prostitutes working on “queer time” because their work did not tend to be organized around familial obligations).

different audiences.²³ A visible role for queer groups—who are less likely to be accused of being coerced or trafficked—might have helped to raise questions not simply of nonconformity but of choice in sex work.²⁴ This could have amplified the claims of feminists taking pro-sex positions, or emphasizing the considered, if constrained, choices of Asian immigrants working in massage parlors.²⁵ Yet queer groups failed to raise these themes in any publicly perceptible way.

II. ANALYZING FAILURES OF COALITION

How do we explain these failures of coalition? My aim, in asking this question, is not to focus primarily on what happened in these specific cases. These cases were shaped by a number of contingent factors that are not likely to recur in future contexts. For example, Proposition 8, Proposition K, and an initiative restricting the availability of abortions were all on the ballot in November 2008: Women's rights organizations had to trade off time working on Proposition 8 with time addressing the abortion initiative;²⁶ gay, lesbian, and queer groups that otherwise would have put time into Proposition K may have been absorbed with Proposition 8.²⁷ I would like to use these cases as indicative of the types of failures of coalition that have occurred in recent years, in contexts involving sexuality and gender, and ask whether there are differences in the ways that feminist, gay/lesbian/bisexual, and queer theorists have analyzed gender and sexuality that have made it difficult for them to see conceptual confluences, or to view

23. The Milk Club's argument, *see* Harvey Milk Club, Yes on Prop K, *supra* note 19, might have served this purpose; but it is arguable that stressing a shared identity as "queers" or sexual dissidents might have mobilized LGBT voters more effectively than reminding them of the Milk Club's historic and ongoing support for workers.

24. Here the Milk Club's strategy of characterizing prostitutes and other sex workers *as workers* may have had its greatest benefit: Characterizing sex workers as workers tends to emphasize choice rather than coercion or constraint. Yet a characterization of sex workers as sexual dissidents—through an engagement by queer activists that went beyond the endorsement of one organization—might have grounded the argument for choice rather than coercion more fully and audibly.

25. It might also have contested the cover that antitrafficking feminist positions were providing to neighborhood activists embracing what were actually anti-immigrant or neighborhood sanitization positions.

26. Email From Laura Brill to Katherine Franke, *supra* note 5 (praising women's advocacy organizations for phone-banking and message-coordinating on Proposition 8, despite the importance of the pending abortion initiative).

27. It is also possible that these failures are attributable to institutional separation between the organized women's movement and gay/lesbian rights organizations, or between either kind of organization and queer activism. For example, after the panel discussion at which I presented a version of this paper, one activist hypothesized that after the AIDS epidemic began, lesbian activists had tended to mobilize within gay and lesbian organizations rather than within women's rights or feminist organizations, weakening a possible bridge between the two movements.

each other as potential allies or coalition partners.²⁸ This kind of analysis might help to explain the lost opportunities in these cases, but it may, more importantly, point to factors that are likely to recur in future contexts implicating the interests of two or more of these groups.

One hypothesis that I have considered is that feminist and mainstream gay/lesbian groups have tended to be preoccupied with sex and gender subordination, while queer theorists and activists have tended to be focused on sex and gender normalization. The divergence between these two conceptualizations stemmed from many kinds of sources. Some of them are political: A hotly contested debate about the place of sexuality in gender-based harms and liberatory strategies, often referred to as the “sex wars,” created an early and powerful divide between proponents of the two approaches.²⁹ Those who saw sexuality as a source of women’s subordination argued that it required both critique and state regulation;³⁰ those who saw sexuality as the focus of powerful efforts to enforce conformity and discipline dissident practices argued that regulation was in fact part of the problem, and a better solution was nonjudgmental exploration and improvisational proliferation of sexual practices and images.³¹

28. This suggestion does assume some relation between the ways that group-based understandings unfold as a matter of theory and the ways that activism or organized advocacy on behalf of those groups proceed. This is, of course, a controvertible claim that was the subject of analysis at the Symposium. See UCLA Law Review Symposium, *Sexuality and Gender Law: Assessing the Field, Envisioning the Future* (Feb. 19–20, 2010); *id.* at *The Impact of Sexuality and Gender Law and Policy on Scholarship on LGBT Rights* (Feb. 19, 2010).

29. Although it is unclear precisely who coined the expression, the term “sex wars” appears to have come into use after the Barnard Conference, *Toward a Politics of Sexuality*, The Scholar and Feminist Conference at Barnard College (April 24, 1982), often thought to mark the inception of this struggle. Contemporaneous accounts of that conference describe the antagonistic exchanges between antipornography and sex-radical feminists, and some accuse antipornography feminists of trying to create a “sex panic” by highlighting the role of sadomasochism within the sex-radical exploration. See Carole S. Vance, *Epilogue*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 431, 433–36 (Carole S. Vance, ed., 1984). But these accounts do not appear to use the term “sex wars” to describe that antagonism. For work analyzing the sex wars, see LISA DUGGAN & NAN D. HUNTER, *SEX WARS: SEXUAL DISSENT AND POLITICAL CULTURE* (10th Anniversary ed. 2006); Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995).

30. See generally CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 126–54 (1989) (arguing that sexualized objectification and violation are the primary source of women’s subordination); CATHARINE A. MACKINNON & ANDREA DWORKIN, *PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN’S EQUALITY* (1988) (arguing for the enactment of local ordinances that address women’s sexualized subordination by regulating pornography, one important source of such subordination). See also CATHARINE A. MACKINNON, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 219 (1987) (rejecting the view of women who think we can “fuck our way to freedom”).

31. See Carole S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *PLEASURE AND DANGER*, *supra* note 29, at 3. For another edited volume from the same period that embraces a pro-sex or sex-radical position on pornography, sex work, and the place of sexuality in women’s equality and self-realization, see *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* (Ann Snitow et al. eds., 1983).

There were also theoretical differences between the two approaches, beginning with divergent conceptions of power. Antisubordination argumentation tended to be associated with statist notions of power—either liberal understandings that characterized the state as the primary source of intrusion on individual freedom, or more structural understandings in which state power aligned with, reflected, and reinforced the direction of social, cultural, and other institutional sources of power.³² Nonconformity argumentation tended to be associated with more diffuse, poststructural notions of power, and with understanding of governmental intervention as productive as well as restrictive.³³ Consistent with these differences in theoretical frame, these approaches also differed in their treatment of the subject. The subject of antisubordination approaches was more determinate and identitarian: A female subject was marked, and to varying degrees constituted, by her gender-specific injuries. Her subjectivity, often brought to light by the rendition of experiential accounts, was a source of insight in the formulation of critical and remedial positions.³⁴ Proponents of the nonconformity frame moved from such an identitarian approach to a “subjectless critique,”³⁵ buttressed by the assumptions that important determinants of subject position were in fact fluid, and that focus on the subjectivities produced by injury tended to foster more *ressentiment* than illumination.³⁶

Also associated with this difference in theoretical frame was a divergence in remedial posture: Antisubordination approaches favored reform or transformation, frequently by recourse to legal remedies; nonconformity approaches saw resistance as a more plausible prospect than transformation; their more pluralist strategy reflected skepticism about invoking the power of the state, which often figured as a potent engine of normalization.³⁷ Building perhaps on these

32. See Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635, 644 (1983) (“The law sees and treats women the way men see and treat women.”).

33. For an example of this more diffused notion of power or of the “political,” see Kirstie McClure, *On the Subject of Rights: Pluralism, Plurality and Political Identity*, in *DIMENSIONS OF RADICAL DEMOCRACY* 108, 123 (Chantal Mouffe ed., 1992) (describing diffusion of the political to include economic transactions, sexual relations, and interactions in educational institutions and on the street). For an interesting discussion contrasting liberal and structural with Foucaultian or poststructural notions of power in legal scholarship, see Steven L. Winter, *The “Power” Thing*, 82 *VA. L. REV.* 721 (1996).

34. See Kathryn Abrams, *Hearing the Call of Stories*, 79 *CAL. L. REV.* 971 (1991) (analyzing the role of experiential stories in feminist argumentation).

35. See Michael Warner, *Introduction*, in *FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY* at vii, xxvi (Michael Warner ed., 1993).

36. On this last point, see Wendy Brown, *Wounded Attachments*, in *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* (1995).

37. For a thoughtful effort to contrast the remedial frames of antisubordination (or “dominance”) feminism, on the one hand, and pro-sex, poststructural feminism, on the other, see Susan Etta Keller, *Viewing and Doing: Complicating Pornography’s Meaning*, 81 *GEO. L.J.* 2195, 2229 (1993).

differences, antisubordination and nonconformity approaches also diverged in tone and affect. The earnest, reformist tone of antisubordination argumentation contrasted sharply with the ironic play of nonconformity discourse; the affective posture of the former sounded in indignation, which could occasionally shade into efforts at shaming, while the latter, particularly in the context of queer theory, frequently tended toward a stigmaphilic embrace of shame.³⁸

Although divergence was in these respects predictable and perhaps overdetermined, it was not necessary or inevitable: There are important contexts in which antisubordination and nonconformity goals have been compatible. We can see these moments of convergence in the advocacy of Ruth Bader Ginsburg, particularly as recently reconstructed by Cary Franklin,³⁹ and in the work of scholars such as Katherine Franke.⁴⁰ But however contingent their emergence, or superstructural their character, these differences in assumptions may well have complicated efforts at coalition. They may have made it difficult for feminists to see gender normalization as “their” issue when it is not combined with the subordination of women. It may be difficult for queer advocates to be mobilized by subordination if it is not coupled with strong normalizing influences. One can imagine that the growing rhetorical and strategic distance between these two forms of discourse about gender and sexuality has made alliances seem difficult or at least nonobvious.

These failures of coalition may also reflect the fact that each of these forms of theorizing has struggled to establish a practice of “thinking from the margins.” Feminist scholarship was challenged by powerful critiques, particularly by women of color and sexual dissidents, who suggested that mainstream feminists had replicated the very error they critiqued by universalizing a partial and privileged

38. For a telling example of affective contrast between feminist antisubordination and queer antinormalization approaches, compare CATHARINE A. MACKINNON, *Difference and Dominance: on Sex Discrimination*, in FEMINISM UNMODIFIED, *supra* note 30 at 45 (“So long as sex equality is limited by sex difference . . . women will be born, degraded, and die. We would settle for that equal protection of the laws under which one would be born, live, and die, in a country where protection is not a dirty word and equality is not a special privilege.”), with MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE 2* (1999) (“It might as well be admitted that sex is a disgrace. We like to say nicer things about it: that it is an expression of love, or a noble endowment of the Creator, or liberatory pleasure. But . . . [i]f the camera doesn’t cut away at the right moment . . . or if the walls are too thin, all the fine dress of piety and pride will be found tangled around one’s ankles.”).

39. See Cary Franklin, *The Anti-Stereotyping Principle in Sex Discrimination Law*, 85 N.Y.U. L. REV. 83 (2010) (arguing that “[Ginsburg’s] decision to press the claims of male plaintiffs was grounded not in a commitment to eradicating sex classifications from the law, but in a far richer theory of equal protection involving constitutional limitations on the state’s power to enforce sex-role stereotypes”).

40. See, e.g., Katherine M. Franke, *What’s Wrong With Sexual Harassment?*, 49 STAN. L. REV. 691, 693 (1997) (arguing that sexual harassment is a technology for producing masculine men and feminist women, and that this antinormalization frame can be used to structure legal intervention in workplace sexual harassment).

position.⁴¹ Gay and lesbian rights theorists (and related advocacy organizations) were critiqued by queer theorists for desexualizing queer identities and foregrounding issues like gay and lesbian marriage, which tended to normalize the community.⁴² Queer theory itself has more recently been critiqued for an elitist orientation, particularly by white women and people of color working within this body of scholarship.⁴³ It is possible that this difficulty in theorizing from the margins has affected the inclination of advocacy groups to prioritize—or even think in terms of—particular kinds of coalitions. For example, feminist advocacy organizations may not think first of the exclusions perpetrated by the Times Square redevelopers’ claim to be “protecting women.”⁴⁴ This factor, combined with the continuing influence of “dominance” feminism, may have made feminist activists and organizations less likely to see a working class neighborhood populated by adult theaters as their presumptive domain. That gay/lesbian or queer activists might not see sex workers as automatic allies may also suggest a practice of thinking from privilege, or foregrounding what are supposedly more respectable positions in those movements.

III. PLURALISM AND SOLIDARITY IN THE TRANSGENDER MOVEMENT

In rethinking this divergentism, it may be useful to examine the organizing premises of another group that has mobilized around issues of gender and sexuality—the transgender movement. The transgender movement is in many

41. This critique has given rise to a wide-ranging and substantial literature within feminist theory. For early and influential examples within legal academic analysis, see Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN’S L.J. 191 (1989/90); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 U. CHI. LEGAL F. 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 614 (1990). These critiques also helped to establish the foundation for critical race feminism. See generally GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien K. Wing ed., 2000).

42. See, e.g., LISA DUGGAN, *THE TWILIGHT OF EQUALITY? NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY* (2003) (describing “new homonormativity that does not challenge heterosexist institutions and values, but rather upholds, sustains, and seeks inclusion within them”); WARNER, *supra* note 38 (critiquing tendencies toward desexualization and normalization within mainstream gay and lesbian advocacy). For a thoughtful and provocative critique in a similar vein, see Katherine Franke, Address at the UCLA Law Review Symposium: *The Many Meanings of Gender* (Feb. 20, 2010). Franke has offered a related critique of mainstream feminist scholarship for prioritizing caregiving and sexual victimization over explorations of women’s sexuality. See Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181 (2001).

43. See Judith Halberstam, *Shame and White Gay Masculinity*, 23 SOC. TEXT 219 (2005); Hiram Perez, *You Can Have My Brown Body and Eat It, Too!*, 23 SOC. TEXT 171 (2005) (critiquing implicit privilege and the composition of speakers and performers at the “Gay Shame” conference).

44. For a critique of feminist tendencies to foreground the interests of “respectable” women, see Balos & Fellows, *supra* note 12.

ways already part of the larger picture I have mapped. Transgender groups have raised both antisubordination claims⁴⁵ and antinormalization claims⁴⁶; they have sometimes encompassed both within human rights–type claims for gender self-determination.⁴⁷ But they have also tried to act on certain norms about solidarity across difference that might have been helpful in fostering coalition in the examples I just gave.

The first premise has to do with transgender as an “umbrella” term.⁴⁸ This means that there is an implicit understanding that the group encompasses people who experience many different relations between bodies, gender identities, and gender expressions.⁴⁹ Movement solidarity is not viewed as natural or based on a fully shared identity; it is, as Angela Harris said in another context, “[an act] of will and creativity.”⁵⁰ That solidarity nonetheless directs people to pay attention to the issues, and the well-being, of those who may be somewhat differently situated. The movement also encompasses people who have different goals and embrace different means. Means tend to be treated as instruments, rather than as litmus tests for inclusion: The discourse of medicalization, or the recourse to state power are used when it has strategic advantages; each is also the subject of

45. Those who seek transinclusion in mainstream civil rights statutes such as the Employment Non-Discrimination Act (ENDA), S. 1584, 111th Cong. (2009), might be described as seeking to prevent subordination in public or institutional settings such as the workplace.

46. An example of an antinormalization claim might be a legal action on behalf of a transgender student challenging a school rule that students dress in a manner appropriate to their sex at birth. See Paisley Currah, *Gender Pluralisms Under the Transgender Umbrella*, in *TRANSGENDER RIGHTS* 3, 7–13 (Paisley Currah, Richard M. Juang & Shannon Price Minter eds., 2006) (discussing two cases involving high school students disciplined for non-gender-conforming dress).

47. See *Introduction* to *TRANSGENDER RIGHTS*, *supra* note 46, at xiii, xvi (noting that “[d]espite their profound differences, these [transgender] groups all share a common political investment in a right to gender self-determination,” and finding an articulation of that aspiration in the International Bill of Gender Rights).

48. I take this phrase from Paisley Currah. Currah, *supra* note 46, at 4.

49. Currah, Juang and Minter note that:

[T]rans people conceive of themselves in many radically different ways: as transsexual women and men who have always known that they were female or male; as genderqueers living in an existential rebellion against the biopolitics of the dominant society; as butches who move complexly among lesbian and transgender identities and communities; as quietly androgynous femme boyz.

Introduction, in *TRANSGENDER RIGHTS*, *supra* note 46, at xiii, xvi.

50. Harris, *supra* note 41, at 608, 612 (“[W]holeness of self and commonality with others are asserted (if never completely achieved) through creative action, not realized in shared victimization.”). In citing this commitment within transgender politics, I do not want to be unduly rosy about its effects. As Currah observes, there are risks, recognized by many in the community, in “consolidating so much under one category.” Currah, *supra* note 46, at 5. He cites dangers that a movement characterized by this strategic effort at solidarity may overlook certain issues, exclude certain differences, or render certain bodies invisible. *Id.* at 4–5 (citing questions raised by Viviane Namaste).

an important critique within the movement.⁵¹ Transgender politics actively “negotiate[s] the tensions between an identity politics movement [of gender variant people] that seeks primarily to amend the definitions of the binary sex classification scheme and the larger goal of disestablishing sex as a meaningful legal category.”⁵² The ability to combine short-term and long-term strategies, and to retain flexibility about means and ends, are insights that seem to be neglected in the struggles between some feminists and queer theorists, for example, over the role of the state.

The second premise has to do with an effort to think intersectionally, and from the margins, in framing transgender positions. There is a strong historical connection between certain transgendered performances or identities and people of color, immigrants, and working classes;⁵³ and gender variance, as a stigmatized practice or attribute, is also associated with poverty, lack of employment, homelessness, and sex work.⁵⁴ These connections have incited transgender advocates like Dean Spade to ask how gender normalization operates in conjunction with a hierarchical capitalist economic system, or with institutionalized racism in settings from the welfare bureaucracy to the criminal justice system.⁵⁵ This kind of intersectional analysis has emerged in some feminism and queer theory, but it has been the hard-won product of powerful critiques. There has been an effort within transgender activism to build this practice into the movement from the outset,⁵⁶ which may be instructive to observe.

How well these premises can be adapted to movements that have already experienced divergence, as a matter of theory and practice, remains to be seen. But efforts to foster solidarity across differences in means and ends, and to look pragmatically for possibilities for coalition, are critical challenges we must undertake as we attempt to secure equality across the broad domains of gender and sexuality.

51. See Paisley Currah, *The Transgender Rights Imaginary*, in FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS 245, 245–46, 250–57 (Martha Albertson Fineman, Jack E. Jackson & Adam P. Romero eds., 2009).

52. *Id.* at 246.

53. Shannon Minter makes this point, citing the historical work of George Chauncey in Shannon Price Minter, *Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion*, in TRANSGENDER RIGHTS, *supra* note 46, at 141, 147–50.

54. See, e.g., Dean Spade, *Compliance Is Gendered: Struggling for Gender Self-Determination in a Hostile Economy*, in TRANSGENDER RIGHTS, *supra* note 46, at 217.

55. *Id.*

56. *Id.* at 232–33.
