Queer Acts and the Politics of "Direct Address": Rethinking Law, Culture, and Community

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A question intimated by some contemporary scholarship (but not yet fully explored) is how cultural practices that law both enables and limits might be related to new styles of politics and redefinitions of community. This query is first explored in the context of Queer Nation's response to the decision in *Bowers v. Hardwick* (1986), which reduced homosexual identity to a single behavior. Queers' subsequent embrace of a cultural politics of "direct address" suggests that the transformation of identities and communities must be built from social and cultural practices that seek to redefine citizens' affiliations. While "turning away from the law" is one strategy for redefining political practice, the case of Karen Ulane—a transsexual who was fired after having sex reassignment surgery—suggests another: The articulation of a queer notion of "nonidentity" within the legal field may afford possibilities for destabilizing dominant legal classifications such as "sex" and "gender."

Law limits the expression of individual and group aspirations and claims and simultaneously provides powerful resources for marginalized groups to assert their interests, to articulate rights claims, and to refigure their identities. Viewing law as a set of symbols and norms which are integral to the constitution of relations among citizens draws our attention to how ordinary people (re)create law in their "everyday lives." Of course, law is

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merely one factor in how individuals negotiate their daily interactions and instigate social change. Social and political contexts and the particularities of history and culture play equally important roles in mobilizing groups to contest or affirm legal norms.

Local relations between legal culture and legal consciousness are aptly described by Merry (1990) in her study of working-class Americans' use of the lower courts. The personal and political aspirations of ordinary people are shaped by awareness of the symbolic promise of law *and* undermined by courts and legal actors' rephrasing of their claims. Individuals respond to the retranslation of their interests by creatively appropriating legal discourse for their own ends: "plaintiffs come back [to court], renewing their demands, learning to use legal categories with more sophistication, mastering legal discourse, asserting their problems in their full complexity and emotional power, demanding recognition in their own terms" (ibid., p. 180).

As Merry (ibid., pp. 172–76) teaches, law is both enabling and constraining and legal consciousness is contingent and fluid. Participation in the legal field doesn't necessarily lead to conformity and the reproduction of existing relations but may also enable resistance, the reconstruction of social interaction, and a redefinition of community. However, as McCann (1994:11–12) argues, groups may mobilize legal strategies without relying on direct official recognition; legal symbols and narratives can function "as powerful resources for "counter-hegemonic activity" which may be "antagonistic" to the legal order. Victories in the legal arena do not create political and social change directly, rather they may redefine the terms of "immediate and long-term struggles" (ibid., p. 285).

These theoretical developments advance our understanding of the relationship between legal culture and social and political change. They also suggest but do not develop other possibilities: To what extent do the cultural practices and resistances that law both enables and limits affect the nature of politics and the political field itself? I suggest here that we have seen the emergence of a new style of politics in which engagement in what I define as "direct action" can facilitate the emergence of a political identity that does not ask the law for recognition. Legal reinforcement of "stigmatized" identities like homosexuality, for example, may ironically create the conditions for a renewal of community and a politics which "begins not with the object of constructing similarities to address rights claims to the state, but rather with the object of addressing such claims to each other" (McClure 1992: 123).

The political agent who draws upon and who is constituted by the signifying power of legal culture is no longer simply defined by legal categories or legal consciousness. Rather, this politics has several features that distinguish it from traditional ac-

counts of liberal citizenship or liberal legalism. First, the location of what counts as political practice is shifted to the enactment of social practices and cultural codes that become vehicles for affirming the identities of marginalized groups. Second, identity is refigured, as Mouffe (1991:80) puts it, "as the articulation of an ensemble of subject positions, constructed within specific discourses and . . . precariously and temporarily sutured at the intersection of these subject positions." In contrast to the unitary subject of liberal citizenship whose interests are projected "onto the screen of state policy" (McClure 1992:120), the creation of this subject's identity and agency is contingent on forms of identification that emerge from contesting differences without necessarily asserting similarity. Group interests are not aggregated based on sameness; rather the contestation that emerges from negotiating differences of race, class, ethnicity, sexual orientation, and gender may provide opportunities for the modification of available forms of identity and their embrace. Third, community is reconceived, not as a "final achievement" (Mouffe 1991:81) but as a historically contingent phenomenon enacted within, and limited by, the "historical realm of discourses and institutions" (Smith 1991:110).

Finally, the manner in which law enables and constrains social change is redefined. The paradox posed by this insight has long been a central focus of sociolegal scholarship.[1] For exam-

[1] Sociolegal scholars have begun to retheorize the relationship between law and society in a manner that recognizes the dialectical interaction between the two terms. This retheorization of the relationship between "law" and "society" draws on a research tradition that, at least since the publication of Abel's "Law Books and Books about Law" (1973), recognizes that law is a *social* variable. As Abel's critique of the gap approach suggested, a "top-down approach" to studying legal change did not take into account how behavior inside the legal arena and the social and political structure of the larger society affected legal change. If law was merely one variable among many, as Abel hypothesized, then analyses of legal change had to consider an increased number of variables and a diversity of relationships.

Whether in response to the methodological weaknesses of the gap approach, or because of its rather simplistic assumptions about the relationship between law and behavior, or because it implied that an unproblematic order and harmony were the natural state of law and society, legal scholars began to search for richer descriptions of legal and social change. The disputes processing paradigm (the "bottom-up approach") helped sociolegal scholars analyze law as part of a social process and to examine its embeddedness in social relations. While this paradigm was less optimistic about the possibilities of simply using law to effect social change and reform, it did not address the complex processes whereby power and social control are produced and how, precisely, they are related to legal and social contexts.

The turn to studies of legal consciousness was designed, in part, to overcome this lacuna. Drawing on the insights of contemporary social theorists (e.g., Derrida, Foucault, Rorty), Silbey and Sarat (1987:171) argued that law "in its daily life" had not been analyzed. Rather than focus on the "law," they suggested that attention should be paid to social processes and the forms that law and legal power take in social relations. The "culturalist approach" (McCann 1994:283) suggests that legal structure is indeterminate and contradictory and legal consciousness is historical and situational: sociolegal scholars are thus called on to consider the diversity of ways in which law "enables" and "constrains." Social and legal change occurs in relation to localized and particularized contests enacted by historical agents whose strategies are both authorized *and* circumscribed by legal conventions. (For a related discussion of these points, see ibid., pp. 282–308.)

ple, as Scheingold (1986:76) persuasively argues, a problem with articulating rights claims is that they "cut both ways—serving at some times and under some circumstances to reinforce privilege and at other times to provide the cutting edge of change." For Scheingold, the failure of legal decisions may paradoxically foster social change—the resistance to implementing *Brown v. Board of Education* (1955) followed by backlash "among those whose hopes for integration were frustrated" (Scheingold 1986:80) instigated the formation of the civil rights movement. The "demystification" of rights was followed by their "remystification," which reaffirmed a belief in the efficacy of rights as viable tools for social change. When the "myth of rights" is reaffirmed, core hegemonic values such as liberal individualism and an unproblematized belief in the power of law are also reinstated. The effective deployment of rights appears to rest on the reinstatement of some of the structural constraints that the articulation of rights was designed to eliminate (see also Bumiller 1987; McCann 1994; Sarat 1990; White 1991; Williams 1987).

Scheingold's analysis suggests that the power of law is always partial and circumscribed by the social field. Yet, he also intimates (1986:86), without fully describing, the equally powerful insight that the failure of legal decisions may create "a cultural space for politicization." For Scheingold, cultural innovations are undertaken with a view to returning to the law, tempered, of course, by the insight that any reengagement with law reinforces prevailing hegemonies. But still untheorized are the manner in which one might return to the law or articulate rights claims, and how that engagement is informed by the complex and variable ways individuals use cultural resources to shift identifications, to reconstitute community, and to reconfigure the social and legal field as ongoing sites of struggle.

For Scheingold (p. 80) and others, cultural change is limited to expanding the pluralist agenda, enlarging the audience (Mather & Yngvesson 1980–81), and demonstrating how people in their everyday lives creatively appropriate and refashion legal symbols to effect particularized goals (Merry 1990; Ewick & Silbey 1992; Sarat 1990). Building on these insights, McCann (1994:307–8) suggests that social change may be most effectively enacted in relation to law when it "sustain[s] the momentum of change": legal reforms (or their failure) may "generate significant new resources, opportunities and aspirations for continued counterhegemonic struggle." When marginalized groups creatively appropriate key concepts (including those provided by law) that have accepted ideological meaning, opportunities may be created to engage in community-based struggles that are not merely defensive or reactive.[2] Rather, these encounters may de-

[2] For example, Neil Smith (1992) suggests a number of ways in which ideological definitions of community can be challenged through the reconfiguration of space. Strug-

velop through citizens' recognition (and contestation) of diverse and overlapping social identities based on race, class, gender, national origin, sexual orientation, etc. These struggles may be most effectively enacted in the realm of the social without necessarily assuming that law is the final locus of address.

Marginalized groups may use tactics of cultural subversion to expand these contestations. Tactics that aim to appropriate and contest legal inscriptions of identity are circumscribed by the fields of power (including law) they seek to subvert. On the other hand, the legal field cannot contain or regulate the energy of these cultural transformations (Coombe 1992:1222). Law limits, but does not in every instance regulate, the use of its own signifiers.[3] The use of tactics of cultural subversion by marginalized groups suggests that the transformation of aspirations, values, and practices ultimately must be built from broadly conceived social practices which aim to redefine citizens' affiliations and the contours of what constitutes "community."

To consider how these processes of political transformation and cultural identification work, I ask how the law enables culturally transgressive moves which foster a redefinition of the political and facilitate the formation of communities dedicated to new styles of politics. To address this question in concrete terms, I focus on the 1986 decision in *Bowers v. Hardwick* in which the Supreme Court rejected a constitutional challenge to a Georgia sodomy law. This litigation interrupted lesbian and gay activists' engagement with law and forced them to face the limits of liberal tolerance. The Supreme Court decision enacted "a sodometry [by fixing] an identity based on acts" (Goldberg 1992:24)[4] and

gles within specific geographic locales can become either a means of confining struggles within fixed borders or expanding them into new spaces. As Smith (p. 71) puts it:

> [P]lace-based struggles can . . . galvanize a more progressive response as previously fragmented social groups coalesce into a politically defined community. Thus in many British cities in 1981, amidst tumultuous uprisings sparked by unemployment, police brutality, and racist attacks on blacks and Asians, many young Asians, who had traditionally seen themselves as quite separate from and even superior to British blacks and Afro-Caribbeans, began to call themselves "black" in a clear act of solidarity expressing their own experience of racism. . . . As the scale of black identity was thereby expanded, the scale of struggle against racism was unified and expanded.

[3] This argument is forcefully developed by Coombe (1992), who suggests that the legal commodification of cultural celebrities provides the means through which celebrities may attempt to fix the identity and meaning of their personas. However, the legal stabilization of a celebrity identity may create opportunities for minority groups to appropriate and invest celebrity images with "new and oppositional meanings." Subaltern groups may destabilize these images with the aim of articulating "alternative gender identities and social aspirations." Marginalized groups are thus empowered and their difference(s) legitimated by claiming the signifiers which are "nearly always the properties of others" (p. 1224).

[4] In his brilliant analysis of sodomy and *Bowers v. Hardwick*, Jonathan Goldberg (1992) suggests intriguing parallels among Renaissance texts, colonial American statutes, and the Supreme Court's decision in the *Hardwick* case. Each legitimizes an act (heterosexual sodomy) in one situation that it stigmatizes in another (homosexual sodomy). As Goldberg (1992:10) puts it: "[T]o define an identity through an act that it also permits to

thereby created a new agenda for the group known as "Queer Nation." Queers propose to make the articulation of identity a political project, to disaggregate legal definitions of homosexuality and to constitute a cultural politics of "direct address" as a political commitment. However, the redefinition of politics by Queer Nation in the face of this decision poses a larger theoretical problem: Is the law always and only an organizer of coherent identities? If so, is it always at odds with agendas that do not seek recognition "as the same as"[5] or identities that do not parallel those already established and accepted?

Rather than answer this question definitively, I address this inquiry by turning to another case: a 1984 employment discrimination case in which Kenneth Ulane, a pilot for Eastern Airlines, was fired after having sex reassignment surgery. Read together, the District Court case (*Ulane v. Eastern Airlines* 1984; hereafter *"Ulane I"*) and the Court of Appeals case (*Ulane v. Eastern Airlines* 1984; hereafter *"Ulane II"*) show that sexually ambiguous subjects may create instability in legal discourse or, like the decision in *Bowers v. Hardwick* (1986), make alternate identities available for marginalized groups. They also suggest that transgressive representations of sexual identity in the legal field do not guarantee transformative social change.

While the *Ulane* cases illustrate the familiar point that law is both limiting and enabling, they might be read in a more radical fashion that takes seriously queers' focus on the politics of cultural transformation. The *Ulane* cases suggest moments in which the law recognizes nonidentity as well as the legal tendency to contain the insights such moments might afford. The legal actors in this case are called upon to write coherent definitions of sex in order to, as Halley (1991:363) puts it, "place legal burdens upon it." In so doing, they cast light on the legal field as an interpretive field of practice where identifications may be shifted and re-

those whose identities are not defined by the performance of the same act, [the decision] leaves open the question of where heterosexual identity resides beyond the affirmation of a difference that has no content, an identity in other words that is defined by no specificity of acts but only by claims to be an identity." Sodomy, that "utterly confused category," continues to animate contemporary juridical regimes of power and to "perform the work of categorical confusion that is necessary to maintain the state" (p. 11). The distinctions drawn between homosexuality and heterosexual sodomy, and between identities and acts, are productive in the Foucauldian sense because they (re)affirm the patriarchal family, the institution of marriage, and the hom(m)o-sociality of the public sphere that is glossed over by "the thin veneer of family life as the sole domain of sexual behavior" (p. 17).

[5] Here I am not referring to identicality or sameness; rather, following Derrida, I am suggesting that homosexuality (or any other suppressed identity) is both deferred and different in an "economy of the same." As the Derridean conception of *différance* suggests, meaning is constructed within a system of binary oppositions in which each term differs from the other and in which meaning is also continually deferred. It thus follows that any seemingly fixed meaning is subject to an endless series of displacements and deferrals. As Derrida (1982:19) states, "différance as [an] economic detour which, in the element of the same, always aims at coming back to the pleasure or the presence that has been deferred by (conscious or unconscious) calculation . . . [also exists simultaneously] as the relation to an impossible presence . . . as the irreparable loss of presence."

formed. Finally, these cases intimate that the legal field may be conceptualized differently when articulating "nonidentity." Refusing legal definitions of identity challenges the politics of an unproblematized return to legal fora. What potential might the legal field afford for the articulation of nonidentity when such articulations operate to explode legal categories and the taxonomies that support dominant, unitary classifications of identity? These questions will be addressed by exploring the dialectical engagement between subject positions and juridical fields of power.

"We're here, we're queer, get used to it"—Queer Nation

Like African Americans and feminists, gay and lesbian activists have a long history of engagement with law. Before the 1986 Supreme Court decision in *Bowers v. Hardwick*, gays and lesbians were able to assume that one of the rights guaranteed by substantive due process was the "right to intimate association." When the *Hardwick* court held that the "right to privacy" under the federal Constitution did not encompass the right to engage in homosexual sodomy, homosexual advocates had to reconsider their litigation tactics.[6]

While the *Hardwick* decision forced gays and lesbians to rethink their strategies for implementing legal change, it also instigated the formation of a new social movement of gays, lesbians, and bisexuals.[7] The classificatory and normalizing[8] tendencies of

[6] This strategic retooling has taken a number of different forms. Turning to the equal protection clause of the Fourteenth and Fifth amendments, gay rights advocates have argued that discrimination against homosexuals as a group is unconstitutional. There are two versions of this argument: first, that "sex" like race is a "suspect classification" and therefore entitled to "heightened scrutiny." A second strategy has been to argue that gays and lesbians have "a fundamental right" to participate in the political process and that this right should be protected (see Halley 1989; Currah forthcoming). A recent decision by the Hawaii Supreme Court rejecting the argument that marriage laws do not discriminate against homosexuals because of their inability to procreate suggests a third potential strategy. In *Baehr v. Lewin* (1993), the court did not find that a fundamental right had been violated; however, they intimated that similar laws might be challenged by claiming gender discrimination under the Fourteenth Amendment equal protection clause.

[7] I am not suggesting that the decision in *Bowers v. Hardwick* was the sole factor leading to this renewal of gay and lesbian activism. In 1990, Queer Nation (which I discuss below) emerged out of the ACT UP movement in response to a marked increase in violence against lesbians and gays. Their aim was to generate "impromptu political actions" in contrast to the "strictly ordered, consensus-rule fashion of ACT UP" (Trebay 1990:35). For further discussion of the emergence of Queer Nation, see Duggan (1992), Chee (1991), and Village Voice (1992).

[8] As Foucault (1979) has argued, the punitive power of the sovereign has been replaced by tactics of normalization. The norm is the principle that allows "biopower" to develop as a mechanism: it serves as a vehicle for the transformation of negative juridical restraints into the more positive controls of normalization.

Within the legal field, norms are produced, as Bourdieu (1987:846–47) suggests, by the classificatory and universalizing tendencies of legal discourse: legal language extracts from "the contingency and historicity of particular situations to establish a general and universal norm which is designed as a model for later decisions." The logic of precedent guarantees that "the future will resemble what has gone before" and adaptations and changes will be expressed in a language that conforms to the past. As a concomitant, the

legal discourse, which in *Hardwick* reduced homosexuality to a fixed "sodomitical essence" (Halley 1991:354), created the rhetorical conditions for queers to resist this representation of their identity and to turn to alternate forms of social activism.

As Halley argues, the *Hardwick* decision was a hegemonic move for putatively heterosexual America because it reduced homosexual identity to a unitary essence based on a single behavior and, in so doing, stabilized heterosexual identity. Given the outcome of this case, Halley suggests that the notion of a stable homosexual identity should be reconsidered. The signal feature of lesbian and gay litigation strategy—a focus on "an" identity—should be reworked to emphasize the instability of homosexual identities. Halley suggests that the mutability of sexual orientation might be deployed to demonstrate the instability of heterosexuality by showing how heterosexuals, as a class, "predicate homosexual identity upon acts of sodomy in a constantly eroding effort to police [their] own coherence and referentiality" (ibid., p. 352). As she points out, it is "heterosexuality" that is implicitly, but insistently, called into question in the "sodomy" cases. To describe homosexuality as different is a means of displacing the anxieties and doubts that sustain the classification heterosexual as a cohesive class or subject position.

One response that activates this insight is the use of tactics of cultural subversion by the heterogeneous group of scholars and activists affiliated with Queer Nation. Queers embrace these tactics to destabilize traditional meanings of sex and sexual orientation for the political purposes of undermining and reconstructing dominant forms of (hetero)sexuality.

Queer Nation was founded in August 1990 by a group of Act Up members who were interested in "doing direct action around lesbian and gay issues" (Trebay 1990:35). The plan was to generate impromptu political actions which "play on the politics of cultural subversion": for example, "theatrical demonstrations, infiltrations of shopping malls and straight bars, kiss-ins and be-ins" (Bérubé & Escoffier 1991:14).[9] These cultural tactics parallel the desegregation techniques used in the civil rights movement; and the language and confrontational style of Queer Nation are similar to other movements such as black nationalism and feminist separatism (Kaplan 1990:36). By appropriating the signs, sym-

rationalizations advanced to justify legal opinions universalize dominant world-views, legitimate legal actors' decisions, and reaffirm the social order. The universalizing tendencies of legal discourse heighten the authority already exercised by legitimate culture and contribute to "the imposition of a representation of normalcy according to which different practices tend to appear deviant, anomalous, indeed abnormal, and pathological" (emphasis omitted).

[9] A sample of Queer Nation "direct action groups" includes ASLUT (Artists Slaving Under Tyranny); GHOST (Grand Homosexual Organization to Stop Televangelists); HIMOM (Homosexual Ideological Mobilization Against the Military); Queer Planet; United Colors; QUEST (Queers Undertaking Exquisite and Symbolic Transformation); for an expanded list and discussion see Bérubé & Escoffier 1991:14.

bols, and artifacts of popular culture, queers aim to construct a new culture by combining discordant elements; queers "[build] their own identity from old and new elements—borrowing styles and tactics from popular culture, communities of color, hippies, AIDS activists, the antinuclear movement, MTV, feminists and early gay liberationists" (Bérubé & Escoffier 1991:14).

Queer cultural improvisations, like those of other subordinate groups, can be used to "affirm emergent identities and communities" (Coombe 1992:1222–23). Moreover, these cultural interventions suggest that political practice may be reconceived to include "the everyday enactment of social practices and the routine reiteration of cultural representations" (McClure 1993: 123). By invading straight bars, for example, queers broadcast the "ordinariness" of the Queer body. As Berlant and Freeman (1993:162) point out, "Queer Nights Out" show a heterosexual culture that "gay sexual identity is no longer a reliable foil for straightness" and that "what looked like bounded gay subcultural activity has itself become restless and improvisatory, taking its pleasures in a theater near you."

Similarly, Queer Shopping Network uses the mall, print media, and advertising to take advantage of that quintessentially American institution, the "consumer's pleasure in vicarious identification." Queer Shopping Network's strategy is "to reveal to the consumer desires he/she didn't know he/she had, to make his/her identification with the product 'homosexuality' both an unsettling and a pleasurable experience [thereby making] consumer pleasure central to the transformation of public culture" (ibid., p. 164). The staged mall spectacle of same-sex couples embracing, kissing, and holding hands incites the consumer's own " 'perverse' desire to experience a different body" while offering itself as "the most stylish of the many attitudes on sale in the mall" (p. 167). Unlike the other "displays" present in the mall setting, the queer body invites identification with a commodity that shoppers already possess: "a sexually inflected and explicitly desiring body."

If, as Berlant (1991) has suggested, American cultural legitimacy derives from "the privilege to suppress and protect the body," then queers clearly unsettle a central feature of national identity. The articulation of queerness challenges a conception of the public sphere defined by a disembodied subject; as Warner (1993a:240) describes it: "The bourgeois public sphere has been structured from the outset by a logic of abstraction that provides a privilege for unmarked identities: the male, the white, the middle-class, the normal." Queer Nation rejects the dominant culture's categorization of homosexual bodies to assert the positivity of a queer sexuality which is public, political, and particular. Queers reject "right-to-privacy" arguments which are asserted to invalidate antisodomy laws; they reject their status as

disembodied subjects of the public sphere; they refuse the historical, cultural, and legal terms used to frame sexuality; and they reconfigure the public sphere as a potential site for the articulation of multiply sexed subjects.

These cultural improvisations are sustained by a number of poststructuralist insights. As the following excerpt from a roundtable discussion among queer intellectuals and activists suggests, the current academic fascination with decentered and multiple subjects is a central feature of Queer Nation's program:

> [A]s we feel freer to be ourselves, the useful organizing fiction of the past—that a person's politics could be determined by his or her sexual orientation (or some other salient feature of identity)—no longer serves. We need a new way of thinking about identity, or at least a new appellation, one that preserves the promise of sexual liberation. It isn't enough to become parallel to straights—we want to obliterate such dichotomies altogether. And the best way to erase a boundary is to occupy it. . . . Out of this impulse *queer* was born. (Solomon 1990:27)

Queer politics, Warner (1993) argues, can exist alongside gay and lesbian movements functioning as a form of "political noise." Queers reject a fantasized national identity that assumes that race, class, and gender can be brought into alignment in favor of a more thorough-going resistance to "regimes of the normal" (ibid., p. xxvi). Familiarizing mainstream America with "otherness" in all its varieties means that queers do not seek inclusion under the rubric of liberal tolerance; rather, they suggest that the processes whereby identities are constructed should become objects of criticism in their own right. Ultimately, as Doty (1993:xvii) describes it, queerness "should challenge and confuse our understanding and uses of sexual and gender categories" and (pp. xviii–xix) "new queer spaces open up (or are revealed) whenever someone moves away from using only one specific sexual identity category—gay, lesbian, bisexual, or straight."

This disaggregation of identity categories, including the binary oppositions that sustain sex and gender, serves several interrelated goals: it refutes the implicit claim of the *Hardwick* case that homosexuals constitute a uniform class; it unsettles societal assumptions that sexual identities, including heterosexuality, are stable; and it redefines the terms "community" and "nation" by upsetting conventional equivalences to show that "Queer=Different; Nation=Same" (Bérubé & Escoffier 1991:12).

When a conception of the political is expanded to incorporate the everyday enactment of social practices and cultural significations, politics becomes a form of "signifying activity" (Coombe 1993:412). Marginalized groups may become active agents of change by drawing on "historically available signifieds" (Smith 1991), including those that legal discourse puts into circulation. The (re)appropriation of legal signs and legal inscrip-

tions of identity provides resources for the formation of identity and community. However, as Coombe (1993) observes, these "tactics of appropriation" are not necessarily taken up to return to the legal field as a site of struggle. Queers use legal descriptions of homosexuality to create contestation in the public sphere, to reimagine community and to transform the political field by challenging community members' own identifications.

Queers' response to the legal normalization of homosexual identity might be described as a means to get people to stop seeing "straight," for seeing straight is a form of "misrecognition"[10] of oneself, of others, and of the space we share. Law is thus fruitfully reconceived as a discourse that both "fixes" identity and creates rhetorical and discursive conditions for contesting that identity in a public forum. Marginalized groups may claim that their identities cannot be contained by the legal classifications that define them, and they may do so through tactics of familiarization that appropriate dominant consumer imagery. Public recognition of a norm may shift attention to the subordinate terms and identities which sustain it through processes that provoke identification by redefining the familiar landscape of the mall, for instance, while critically marking it as a site of difference.

Having argued that law, as a discursive practice, can generate categories, distinctions, and sites of resistance, I now turn to the question I posed earlier. Is the law capable only of organizing and recognizing unitary and coherent identities? Can the examination of cultural identity formation peculiar to queer theory become part of the development of legal strategy? What possibilities are afforded for legal fora to "accommodate" a queer definition of "sex" and sexuality which depends on articulations of a subject whose identity is not defined in unitary terms?

Although there are clearly practical, indeed pressing, reasons for queers to seek legal protection, my purpose in posing these questions is not merely to suggest that they must do so.[11] My hesitation in simply asserting that queers should reengage with law is familiar: Although ordinary citizens and legal agents may make law meaningful through practical social activity, engagement with law also leads to the reauthorization of hegemonic values and norms. Law has the capacity to reduce, rephrase, and normalize identities and interests so that they "fit" (no matter how uncomfortably) into legal classifications. On the other hand, as

[10] Misrecognition (*méconnaissance*) is a term which suggests that the inherent advantage of powerholders is effected through their "capacity to control not only the actions of those they dominate but also by the language through which those subjected comprehend their domination" (Terdiman 1987:813; emphasis omitted). I use it here to suggest that seeing "straight" is based on structural and linguistically produced misunderstandings about the nature of sexual categories.

[11] For a discussion of why queers need to think seriously about how to translate queer "theory" into practice and why claims for legal protection might be important, see Duggan 1994.

Bourdieu (1987) and others have suggested, the "pull" of the legal field is powerful; given a limited universe of resources, law provides citizens with a powerful repertoire of discourses and practices that enables them to (re)construct meaning, identity, and social interaction.

My purpose in the following is to suggest how queers might "stand before the law" with awareness of law's capacity to enable and constrain claims to identity and, at the same time, how they might deploy a strategic framework which seeks to articulate a subject who is not defined in unitary terms. In other words, by demonstrating that the queer subject is produced within and by systems of power that inscribe heterosexuality as the dominant term and homosexuality as its excluded "other," can queers avoid merely articulating an identity which, as Butler (1990:2) describes it, "turns out to be discursively constituted by the very political system that is supposed to foster its emancipation"?

To explore the implications of these questions, I consider a situation in which an ambiguously sexed subject sought legal protection. The *Ulane* cases, which deal explicitly with a transsexual identity, are important to a queer agenda because they demonstrate the energy deployed by authoritative discourses like law to maintain traditional notions of sex and gender. The remarkable story of Karen Ulane suggests that the law authorizes and circumscribes the articulation of differently or multiply sexed subjects, yet it also shows how legal actors create opportunities for public contestation about the seeming stability of sex, gender, and sexual orientation.

"What did we get when we got sex?"—Judge Grady

Twice married and divorced, the biological father of one child, a decorated Vietnam veteran who flew combat missions, a first officer who also served as a flight instructor, Karen Ulane was fired by Eastern Airlines in 1980 after she had sex reassignment surgery. She sued under title VII of the Civil Rights Act of 1964. Her case was first heard in the federal District Court in Chicago and later by the Court of Appeals for the Seventh Circuit.

In the District Court case, Judge Grady was called on to determine whether Karen Ulane was wrongfully discharged from her position as a pilot for Eastern Airlines. As her lawyer described the relevant facts: "This is a Title VII case brought by a pilot who was fired by Eastern Airlines for no reason other than the fact that she ceased being a male and became a female" (*Ulane II:*1082).

The central problem of the case lay in conclusively determining the meaning of sex. This determination was crucial because the applicability of title VII of the Civil Rights Act of 1964 to

transsexuals depended on the interpretation of the section of the act (sec. 2000e-2a) that deemed it an "unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual . . . because of such individual's race, color, religion, sex or national origin."

The legal questions this case presents suggest that Judge Grady's task was merely to decide if Ulane was female and therefore a member of a class protected by title VII. However, Ulane's transsexuality confounded the determination of "sex" from the beginning. Once it became clear that there was no fixed definition of sex per se, it was necessary to distinguish this case from one in which Ulane was simply discharged because she was a woman. Rather, the question of how "sex" and "gender" *signify* within the boundaries of title VII became crucial. The plaintiff's transsexuality thus opened up, as Judge Grady described it, "a can of worms,"[12] which suggests the difficulties posed when dominant social and legal classifications of identity such as male and female are called into question.

Because homosexuality, transvestism, and transsexuality had not been afforded legal protection under title VII,[13] Grady was called on to distinguish transsexuality from these other categories and to show why it deserved legal protection. To this end, he noted:

> Homosexuals and transvestites are not persons who have sexual identity problems. They are content with the sex into which they were born. Transsexuals, on the other hand, are persons with a problem relating to their sexual identity as a man or a women. I believe on that basis the situation of a transsexual is distinguishable. (*Ulane I*:823)

He then stated:

> I have no problem with the idea that the statute [title VII] was not intended and cannot reasonably be argued to have been intended to cover the matter of sexual preference, the preference of a sexual partner, or the matter of sexual gratification from wearing the clothes of the opposite sex. It seems to me an altogether different question as to whether the matter of sexual identity is comprehended by the word, "sex."

12 Transcript of Proceedings, 10 Jan. 1984, p. 15, Box 193001.

13 The two relevant cases to which the court referred that failed to provide protection for transsexuality under title VII were *Sommers v. Budget Marketing* (1982) and *Holloway v. Arthur Anderson* (1977). In *Sommers*, Budget Marketing fired an anatomical male who claimed to be female when the company discovered that he had misrepresented himself when he applied for the job. In *Holloway*, Arthur Anderson, an accounting firm, dismissed the plaintiff after he informed his superior that he was preparing to undergo sex reassignment surgery. In *DeSantis v. Pacific Tel. & Tel. Co.* (1979:329), the court expanded the reasoning in *Holloway* to argue that "Title VII's prohibition of sex discrimination appears only to discriminate on the basis of gender and should not be judicially extended to include sexual preference such as homosexuality." While several cases have dismissed charges against transvestites who were cross-dressing before undergoing surgery (*City of Columbus v. Zanders* 1970 and *City of Chicago v. White* 1978) (see Walz 1979:190), transvestites also have not been afforded protection under title VII.

Judge Grady concluded that the greater weight of the evidence showed that sex was not a "cut and dried matter of chromosomes"; rather the term "sex," as used in medical science, "can be and should be reasonably interpreted to include among its denotations the question of sexual identity." Grady recognized an ambiguously sexed subject and asserted that sex should be reconceived as a question of "sexual identity" defined in social and relational terms, rather than as a discrete, essential category of being. Therefore, he affirmed, "transsexuals are protected by Title VII" (p. 825).[14]

The medical testimony in this case was, of course, a key factor. In contrast to the defendant's witnesses, who argued that sex was simply chromosomal, an expression of fixed biological categories, the evidence presented by several members of the University of Chicago Gender Identity Board,[15] who claimed that sex was an "unstable" category," was decisive. While several of the board members considered sex reassignment surgery a success based on factors such as psychological stability and emotional health (Is the patient "happy"? Has she/he been able to maintain ties with family members, friends? Is the patient functioning well in the workplace, in the community, etc.?),[16] their testimony sug-

[14] Dean Dickie (Karen Ulane's lawyer) and Dr. Tom Jones (an endocrinologist associated with the University of Chicago Gender Identity Board) describe Grady as a rather conservative judge with a high regard for the medical profession. Their recollection is that Grady demonstrated a remarkable learning curve during the course of the trial (interviews, 26 May 1993 and 2 June 1993). As Judge Grady notes in his oral memorandum: "Prior to my participation in this case, I would have had no doubt that the question of sex was a very straightforward matter of whether you are male or female. . . . After listening to the evidence in this case, it is clear to me that there is no settled definition in the medical community as to what we mean by sex." *Ulane I*:823.

[15] Such members of the board as Dr. Jack Berger, who was one of founding members of the Harry Benjamin International Gender Dysphoria Association (an organization that in the 1960s established the legitimacy of the gender reorientation process), spoke convincingly of the origins, diagnosis, and treatment of transsexuality. Transsexuality is considered a psychological disorder. The current guidelines for gender reassignment, first established by the Harry Benjamin Association in 1980 and later revised in 1990, are based on the criteria for transsexuality listed in the diagnostic manual for psychiatric and psychological disorders, the DSM-III. These include "a persistent discomfort and sense of inappropriateness about one's assigned sex" (DSM-III, 6) and "a persistent preoccupation for at least two years with getting rid of one's primary and secondary sex characteristics and acquiring the sex characteristics of the other sex" (DSM-III, 12). Cited in Harry Benjamin International Gender Dysphoria Association 1990. Hormonal and surgical sex reassignment are offered to individuals who meet these diagnostic criteria.

When Karen Ulane sought treatment for her gender dysphoria, the University of Chicago Gender Identity Board was composed of a psychiatrist (Dr. Jack Berger), an endocrinologist (Dr. Tom Jones), a plastic surgeon (Dr. Martin Robson), a urologist, a gynecologist, and a lawyer. The board's purpose is to oversee and provide multiple input into decisions about gender treatment. Because of its irreversibility, the board's decision about a patient's suitability for surgery is the most important determination it makes. Each board member sees a candidate at least twice; the board then meets to discuss the individual and decide whether the person is a suitable candidate for sex reassignment. The board, as Dr. Jones describes it, "considers the patient's ability to comply with therapeutic recommendations and assesses whether the person is psychologically stable independent of gender dysphoria" (interview, 2 June 1993).

[16] Dr. Tom Jones, interview, 2 June 1993.

gested that Karen's successful performance as a gendered woman was equally important in evaluating the outcome of her surgery.[17]

The claim that Ulane had successfully acquired a female role is crucial in the testimony because it undermined the defense's argument that Ulane was unstable and therefore psychologically unfit to pilot an aircraft. The articulation of appropriate performance in the gender of choice as the hallmark of a postoperative transsexual identity reinstates the fixity of sex based on a binary system of gender. In the opinion, Grady suggested that gender signifies psychological, social, and cultural stability because it demonstrates that sexual ambiguity has been erased.

"You fake just like a woman, oh, yes, you do"—Bob Dylan

A slippage between sex and gender and the law's role in producing socially gendered subjects is illustrated in the next part of Judge Grady's opinion. Having established that title VII applied to transsexuals, Judge Grady was faced with the task of deciding whether Karen *was* a transsexual. Grady relied on the definitional ambiguity of the term "sex" to suggest an expanded reading of the term. To affirm Karen's status as a transsexual, he again relied on the medical evidence which indicated that Karen was a "gendered woman." Grady noted Karen Ulane's remarkable adjustment to her sex-change operation:

[17] The interdependence of law and medicine in constructing gender as the hallmark of a successful postoperative transsexual is captured in the following exchange between Dr. Jack Berger (the University of Chicago Gender Identity Board's psychiatrist) and Eastern's lawyer:

Q. Doctor, have you had an opportunity to examine the grievant in this particular case since she underwent sex reassignment surgery?

A. Yes, I have on several occasions.

Q. And based on these examinations and interviews [do] you have an opinion as to whether or not the desired objective of the operation was achieved in Miss Ulane's case?

A. I think it was, yes. . . . She has been living and functioning totally and completely in the female role without any difficulty. I don't know all of the aspects of her life but she has become—she is accepted in the community (and has friends). . . . Her mother and [her older brother] accept Karen in this female role. Her mother refers to Karen as she, and this is kind of a hard thing for a mother to do as you can imagine . . . but the mother now accepts Karen as her daughter and introduces her that way.

Q. Do you have an opinion or not as to whether or not she has adjusted to the role or to the sex that she was attempting to acquire or she did acquire?

A. I think she has adjusted totally to that. . . . She's had two further surgical operations, a corrective rhinoplasty and what is referred to as a cartilage shave which is the reduction of the thyroid cartilage in the neck so that the Adams Apple is reduced in size and prominence. These things together with her actions, her movements, her automatic behavior and so forth—you don't think Karen's anything but a girl when you talk to her or see her.

Testimony of Jack Berger before the Eastern Airlines Pilots System Board of Adjustment, Miami, FL (18 Nov. 1982), Doc. 977-1155, pp. 1017–19, Box 193001. Also see Transcript of Proceedings, vol. 15 (16 Dec. 1983), pp. 1030–1127, Box 193005.

> She appears to [the various psychiatrists] to be a woman. She conducts herself as a woman. She dresses as a woman. There is nothing flamboyant, nothing freakish about the plaintiff. It would take an extremely practiced eye, it seems to me, to detect any difference between the plaintiff and the biological woman and . . . she appears [to me] to be a biological woman. (P. 827)

And, most important, there has been "no reversion to any masculine behavior that we have any knowledge of" (ibid.).

Legal acknowledgment of the mutability of "sex" is here foreclosed by the reinscription of discrete gender categories—to be a successful transsexual requires that one function socially as a male or female. The resurrection of the male/female binary is motivated both by medico-juridical definitions of successful transsexuality *and* by the juridical need to reaffirm the meanings of male and female that have been paradoxically unsettled by a medical discourse objectively affirming the instability of "sex" as an anatomical or biological category.

Having established that Ulane was a transsexual because of her ability to successfully enact a fixed gender identity, Judge Grady considered the specific reasons for her discharge after the sex-change operation. Eastern advanced three related reasons for her discharge that affirmed the "dangers" of sexual ambiguity. First, the airlines argued that the continued employment of the plaintiff as a pilot was inconsistent with the safety considerations which underlie the so-called co-ordinated crew concept.[18] Second, Eastern voiced concern about the public's perception of safety: the public might not feel safe in an aircraft "manned" by a transsexual. Finally, as Grady noted, Eastern "conjured up all sorts of dangers that inhered in [Ulane's] so-called underlying psychological problems," which, in Eastern's view, surgery would not resolve (p. 829).

While Ulane's psychological and hormonal "instability" suggested to the airline the potential inadequacy of the plaintiff's performance in the cockpit, more insidious motives may be evident. Eastern's concern with a "transsexual in the cockpit," which is expressed in their focus on the relationship between safety and psychological stability, reflects the anxiety generated by both Karen's biological lack *and* her successful acquisition of a female gender role. In other words, Ulane is threatening because she is

[18] Eastern claimed that "over 50% of the captains and a large number of the second officers" at Ulane's home base in Chicago expressed a desire that they not be assigned to fly with Ulane. Their concern was that Ulane was "known to have emotional and psychiatric problems and they felt that they could not trust the pilot in the cockpit." Ulane's return to the flight deck would distract other crew members and interfere with the "integrated crew concept" which requires that "each member have full faith and confidence in the other members of the crew." As Captain Frank Causey, Ulane's immediate supervisor, noted, "history has proved, and it is the opinion of a lot of people in the aviation industry that distractions in the cockpit are a major source or contributing factor to most aircraft accidents." Brief of Defendant-Appellant, Eastern Airlines (filed 20 April 1984 before U.S. Court of Appeals, 7th Cir.), File 84-1431, pp. 9–16.

a "man" who has chosen to dispense with the insignia of male power by literally having his penis surgically removed and by figuratively repudiating the "phallus."[19] Moreover, Ulane is a "man" who has successfully acquired a female gender role.[20] Ulane not only disrupts conventional notions of sex and gender, but she also calls into question the heterosexual matrix which depends on discrete and immutable definitions of sex and gender.

The anxiety generated by transsexuality is, perhaps, related to "safety," just as Eastern argued all along. However, it may not be the safety of the public or crew members that is at stake here, but *the relative safety and security of the term "sex" and the comfort we take in assuming that gender categories fix identities unproblematically.*

The problem of distinguishing between sex and gender plagued Judge Grady until the end of the trial. Grady was required to decide if Ulane was discharged, and therefore discriminated against, because she was woman (Count I) and/or if she was discharged because she was a transsexual (Count II). Initially, he stated:

> I feel more comfortable with Count II. I believe that these [Count I and II] are truly alternate theories and that it cannot be both ways. . . . The evidence much more clearly . . . establishes that transsexuals are entitled to protection under the act than it does that an operated transsexual is now a woman. While I would not argue with the latter proposition, the former seems to me more strongly supported. (P. 838)

During a posttrial hearing, however, Grady expressed reservations about his decision. Based on a reconsideration of the evidence, he issued a supplement to his oral memorandum that claimed that the "plaintiff may have an equally good case on Count I." Accordingly, judgment for Ulane was entered in favor of both Counts I and II.[21]

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[19] The distinction between these two terms was first posited by Jacques Lacan in *Écrits* (1977), where he argued that the phallus is a "signifier" that belongs to the order of language. It is thus not a "real" organ (as is the penis) but suggests the power to make meaning. But, as Jane Gallop (1988:126) has observed, "no speaking subject can perform this generative act." In other words, no subject can actually claim the "phallus." Nevertheless, Gallop (p. 127) notes, "as long as the attribute of power is a phallus which can only have meaning by referring to and being confused with a penis, this confusion will support a structure in which it seems reasonable that men have power and women do not."

[20] Lisa Disch provided this insight during one of our innumerable conversations about Karen Ulane.

[21] The following excerpt from the posttrial hearing illustrates the difficulties Grady encountered:

> *The Court:* What I'm not sure of is that, number one, plaintiff is a woman; and number two, that defendant discharged her because she's a woman. I am clear that she was discharged because of sex, for the reason I stated in some detail in my oral opinion. But I believe that the sexual component of this case is that status of being a transsexual.
>
> *Plaintiff's Lawyer:* I'd be the first to agree with your Honor that the transsexual count is the easier one to find factually. . . . And even though it's the harder question, I think all the facts are before you as to whether she's a woman. We have presented the Illinois statutes; we've presented Ms. Ulane herself; we presented

"Even if one believes that a woman can be easily created from what remains of a man, that does not decide this case."—Judge Wood

On appeal, the lower court decision was overruled and the court found that sex was not defined as "sexual identity." The appeals court asserted that what Congress had in mind when amending title VII to include sex discrimination was "sex, in its plain meaning," suggesting that it is "unlawful to discriminate against women because they are women and against men because they are men" (*Ulane II:*1085). The decision reinstates a fixed biological definition of sex, based on the statutory maxim that "unless otherwise defined, words should be given their ordinary common meaning" (ibid.).

Having found that transsexuality was not covered by title VII, the court then considered whether Ulane was female. The appeals court claimed that Judge Grady had "made no factual findings necessary to support his conclusion that Eastern discriminated against" Ulane because she was female. Ulane was discharged simply because Eastern "did not want a transsexual in the cockpit." Judge Wood stated: "It is clear from the evidence that if Eastern did discriminate against Ulane, it was not because she is female, but because Ulane is a transsexual—a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear to be female." (*Ulane II:*1087). As the logic of the Court of Appeals judgment reveals, once sex is redefined as merely a biological category, it becomes possible to rewrite transsexual identity: "Ulane is . . . a biological male . . ." and therefore not afforded protection by title VII.[22]

Within the legal field, the destabilization created by Grady's initial interpretation of sex is erased, and gender is eliminated as a category of analysis. (And if we take seriously Judge Wood's non sequitur mentioned above, a "one-sex"[23] model which as-

psychiatrists who have testified to various criteria of sex, hormonal profile, the anatomical; we've had the reports concerning—how close to, how apparently female the person is even to the gynecologist and the like.

The Court: Well, except there was a difference in the discussion between the question of sex and the question of maleness and femaleness. And if we've learned anything in this trial, it's that these two areas are not synonymous.

Transcript of Proceedings, 10 Jan. 1984, pp. 11–12, Box 193001.

[22] After the Court of Appeals decision, Karen Ulane went into business for herself operating a private pilot's service. One of the many ironies of this case is that about 7 years after her case was heard (1991), she was killed in a plane crash with one of her employees who was piloting the small aircraft. The Ulane cases generated considerable media attention in the local Chicago newspapers, and Dean Dickie and Ulane appeared on several talk shows to discuss her case. Both Dickie and Dr. Tom Jones described Karen Ulane as "a wonderful person, . . . very outspoken."

[23] The unfamiliar one-sex model in which "men and women were arrayed according to their degree of metaphysical perfection, their vital heat, along an axis whose telos was male" (Laqueur 1990:5), was replaced in the 18th century with the "modern" two-sex

sumes women are a supplement (and therefore) inferior to men is reinstated.) Mirroring the confusion that transsexuality generated, yet ultimately constrained by the need to maintain the legal fiction of a binary sex/gender system, Grady's opinion tacitly underscored the ambiguity of "sex," thereby creating an opportunity for further contestation within the legal field and, potentially, for public debate about the cultural and social definitions of normal sexed/gendered identity.

There are several moments in the District Court case when Ulane's transsexuality unsettled stereotypic definitions of sex and gender and, by extension, the taxonomies that sustain heterosexuality as *the* definition of "normal" sex and sexuality. Grady came perilously close to claiming that Ulane's appearance and actions constituted sufficient ground for her claim that she was discharged by Eastern because she was a woman. Why he was unable to make this move in a definitive way when he decided the case is unclear. If he had claimed that Ulane was a gendered woman and that gender, rather than sex, should be the criterion for male and female, it would have been more difficult for the Court of Appeals to overturn the District Court decision.[24] (And it would have also directly reinscribed the binary nature of gender as the ground of a destabilized sexual identity.)

Grady might have pressed further and acknowledged that transsexuality *also* reveals the instability of gender. The tensions contained in the legal and social insistence on the fixity of "male" and "female" would thereby have been released and the biological and cultural instabilities built into the sex/gender system authoritatively acknowledged. Because definitions of gender and sex provide one of the "primary differentiating principles by which binary structures are socially initiated and maintained," "ambiguous identities and erotic practices" (Epstein & Straub 1991:6) may provide a location for destabilizing the taxonomies that underwrite the sex/gender system. As numerous scholars (Butler 1990; Case 1989; Davis 1975; Garber 1991; Riviere 1986; Russo 1986) suggest, to reveal gender as a "performance," as a "masquerade," would prompt a reevaluation of the binary thinking that sustains legal categories of analysis and call into question the system of "masculine hegemony and heterosexist power" (Butler 1990:33) that underwrites them (Epstein & Straub 1991:2).

In the appellate court decision, the destabilization created by Grady's initial interpretation of sex is foreclosed, in part because, as the Court of Appeals judges asserted, Judge Grady failed to think "straight." Ulane's transsexuality made it difficult for Grady

model. An outgrowth of a Cartesian world-view, the two-sex model was constructed at the nexus of biological theories of sex, juridical notions of personhood, and the need to police the licentious behavior of those who might misrepresent their sexual identity.

[24] This argument has been made by O'Donovan (1985).

to think in terms of discrete biological categories and hampered his ability to authoritatively claim that Ulane had been discriminated against because she was female. The interpretive problem the Court of Appeals faced was to create a seemingly fixed ground that would enable the reduction of the complexities and incongruities surrounding Ulane's nonidentity. This ground could not be reinstated simply by asserting fixed biological categories. Instead, to justify their reversal of the lower court decision, the appellate court judges first referred to the history of the Civil Rights Act of 1964:

> When Congress enacted the Civil Rights Act of 1964 it was primarily concerned with race discrimination. "Sex . . . was added as a floor amendment one day before the House approved Title VII, without prior hearing or debate." . . . This sex amendment was the gambit of a congressman seeking to scuttle adoption of the Civil Rights Act. The ploy failed and sex discrimination was abruptly added. . . . The total lack of legislative history supporting the sex amendment coupled with the circumstances of the amendment's adoption clearly indicates that Congress never considered nor intended that this 1964 legislation apply to anything other than the *traditional concept of sex.* (Emphasis added; *Ulane II:*1085)

The appellate court argued that congressional intent supersedes expert medical testimony and questions regarding witnesses' credibility: until Congress believes that title VII should be expanded, the court has declined to judicially expand the definition of sex beyond its usual interpretation (*Ulane II:*1086).

It is not unusual for the court to refer to congressional intent as a means of interpreting statutory language. The court's attention to Congress's motives signifies its deference to a system of checks and balance, its rhetorical affirmation that judicial decisionmaking is free of the taint of politics, and its regard for elected representatives who articulate the "voice of the people." Within the *Ulane* case, however, reference to congressional debates over the passage of the Civil Rights Act of 1964 and the inclusion of sex serves an additional purpose.

Since legal classifications of "sex" are unstable, they may be validated by a fictive community whose sexual identity is ostensibly fixed. As a result, differently sexed subjects are theorized as marginal to this community and, accordingly, denied legal protection. Congressional intent is invoked as a metaphor for a fictive community that is presumed to endorse the "traditional" meaning of sex ("men are men, and women are women"). This community is composed of individuals whose sexual identities are fixed and naturally ordered and whose affiliation with others is implicitly confined to a heterosexual model. The juridical interpretation of sex appears to rest on an extralegal foundation, a homogeneous community of unambiguously sexed individuals.

However, this "community," as in the Court of Appeals decision, is created as an effect of legal discourse.

The *Ulane* cases suggest that sexually ambiguous subjects and the articulation of "nonidentity" may create instability in legal discourse. The uneasy fit between legal definitions of sex and subjects whose identity is always excessive to those definitions has the potential to effect a reevaluation of binary thinking. Moreover, in returning to the legal field, a queer reading of law foregrounds the interpretive nature of law and the manner in which legal decisionmakers create legal fictions that are constituted in relation to fixed definitions of identity. These cases suggest both how reductive notions of community are constructed and how a politics of nonidentity can internally destabilize legal categories.

At the same time, legal definitions of sexual identity—as in *Bowers v. Hardwick* (1986) and in *Ulane*—may create the conditions for a renewal of community and a new style of politics which begins with the "object of addressing claims to each other" (McClure 1993:123). The Court of Appeals invocation of a community of unambiguously sexed individuals rests on a model of politics that assumes that individual interests are aggregated based on shared affiliations which can be addressed to a sovereign state. In comparison, a queer politics suggests that identities and representations are themselves contingent rather than fixed and that "community" is more forcefully articulated in the plural. Locating "community" in the realm of the social signals "a move beyond the territorially bounded juridical institutions of the state into the far more fluid and shifting domain of cultural representation" (McClure 1993:123) where citizens' identifications can be modified.

Like other social movements such as the civil rights movement and feminism that have used cultural tactics to effect political, social, and legal change, queer acts are aimed at transforming citizens' identifications as a means of rewriting the social text. Unlike these other movements, however, queers refuse an identity that is limited by dominant, unitary legal classifications. Queer acts, which destabilize fixed notions of sexual identity, enable a reformulation of the "conditions under which further interventions into the juridical, policy, and popular practices of contemporary America" (Berlant & Freeman 1992:154) can occur. Can sexual differences understood *not* "in terms of naturalized identities but as a form of dissent . . . as a constellation of nonconforming practices, expressions, and beliefs" (Duggan 1994:11) create a renewal of political practice that has implications not only for a queer agenda but also for a renewal of community and politics?

In posing this final question, I want to consider briefly the manner in which queer acts both destabilize and reconfigure the field of struggle. As I have suggested, a renewal of community

and politics may occur through a politics of direct address which is most effectively enacted through cultural interventions and the reimagination of community. Unlike traditional views of legal, social, and cultural change that envision a linear process of transformation linked to unproblematic notions of progress, I suggest that cultural and social transformation is best understood from a perspective of shifting affiliations and identifications. Transformation occurs not merely by exposing differences and arguing for their inclusion under the guise of liberal tolerance; rather, change occurs when the affiliations of "ordinary people" are reconstituted.

Identities are constituted in relation to each other, but they are also constituted through political identifications which constantly reconfigure those identities (Crimp 1992). In other words, identities are constituted out of bits and pieces of experience, but in their articulation, they become more than just the sum of their original elements (Rutherford 1990). As Crimp (1992:15–16) illustrates:

> [A] white, middle-class, HIV-negative lesbian might form an identification with a poor black mother with AIDS, and through that identification might be inclined to work on pediatric health care issues; or, outraged by attention to the needs of babies at the expense of the needs of the women who bear them, she might decide to fight against clinical trials whose sole purpose is to examine the effects of an antiviral drug on perinatal transmission and thus ignores effects on the mother's body. She might form an identification with a gay male friend with AIDS and work for faster testing of new treatments for opportunistic infections, but then, through her understanding that her friend would be able to afford such treatments while others would not, she might shift her attention to health care access issues.

Political identifications may thus become vehicles for remaking identities. Fields of practice such as law are thereby modified in relation to the shifting terrain of citizens' affiliations even as they are circumscribed by past struggles that define the possibilities of transformation. Queer acts suggest that legal and social change may depend on the local and particularized interventions of citizens whose actions are not merely defined by legal consciousness but rather emerge in relation to the contradictions embodied in the relationships among (and between) "self," "other," and "community." Such transformations in identification enable a shifting of both the site and the scope of political practices. Moreover, they enjoin us to consider the potentialities of a politics of "direct address" as well as the partiality and temporality of social and legal transformation.

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Archival Material

All archival materials from National Archives & Record Administration, 7358 Pulaski Avenue, Chicago, IL.