

THE CUTTING EDGE OF EMPLOYMENT DIVERSITY:
TRANSGENDER HUMAN RESOURCES POLICIES IN U.S. EMPLOYERS

A dissertation presented

by

Jillian Todd Weiss

to

The Law, Policy and Society Program

In partial fulfillment of the requirements for the degree of
Doctor of Philosophy

in the field of

Law, Policy and Society

Northeastern University
Boston, Massachusetts
August, 2004

© 2004
Jillian Todd Weiss
ALL RIGHTS RESERVED

ABSTRACT

This exploratory study studies the rapid proliferation of transgender human resources policies. Other diversity policies refer to fixed identities, whereas transgender refers to people whose identity combines or moves between conventional notions of male or female gender. Because of its intrinsic ambiguity, transgender identity in HR policies is problematic to the extent that employers inappropriately presume that the category of “transgender” is real, material, and stable. Early-adopting employers generally understand these policies through rational myths. They believe transgender human resources policies enhance their attractiveness to non-transgender employees by conferring legitimacy on employers, and that such enhancement is both important and urgent. Transgender identity, however, does not conform to these myths and there is a large gap between the reality of transgender employees and the understanding of employers. The real “cutting edge” of workplace diversity is the question of whether, despite discriminatory norms, diversity policies will support the needs of covered employees, as well as the needs of employers.

ACKNOWLEDGEMENTS

Drs. Suzann Thomas-Buckle and Leonard Buckle,
whose mentorship and friendship alone made the voyage possible

To Eric, who gives me the heart to continue and to Anne, who gives me Eric

TABLE OF CONTENTS

Abstract	ii
Acknowledgements	iv
Table of Contents	vi
List of Tables	vii
Chapter 1. The Cutting Edge of Employment Diversity	1
Chapter 2. The Intrinsic Ambiguity of Transgender Identity.....	17
Chapter 3. Characteristics of Early Adopters.....	61
Chapter 4. Methods and Methodologies.....	79
Chapter 5. Employer Beliefs About Policy Adoption	87
Chapter 6. Employee Experiences of Policy Adoption	121
Chapter 7. A Theory of Early Adoption of Transgender HR Policies.....	152
Appendix	169
References	178

LIST OF TABLES AND CHARTS

- Figure 1. Adoption of Transgender HR Policies by year
- Figure 2 – Map of Transgender HR Policies by State
- Figure 3 – Policies by State
- Figure 4 – Ratio of THRP Employers to 100,000 Employers by State
- Figure 5 – Conservative States with Policies
- Figure 6 – Transgender HR Policies by region
- Figure 7 – Ratio of THRP Employers to 100,000 Employers by Region
- Figure 8 - Cumulative growth of policies by year and region
- Figure 9 - Cumulative growth of private policies by year and region
- Figure 10 – Transgender HR Policies by employer size
- Figure 11 - Number of THRP employers by economic sector
- Figure 12 - Economic Sector characteristics: Size, regular workforce, number of establishments, average pay and benefits
- Figure 13 - Sampled Private Employers by NAICS Classification
- Figure 14 - Policy adoption before or after enactment of law by region
- Figure 15 - Policy adoptions before and after enactment of law by NAICS Classification
(includes case law)
- Figure 16 - Cumulative growth of laws by year
- Figure 17 - Cumulative Growth of Private Policies by year
- Figure 18 - Percentage Change of Laws and Policies
- Figure 19 – Sampled Employers by NAICS Classification
- Figure 20 –Attributed Causes of Policy Adoption
- Figure 21 – Attributed Causes by Economic Sector
- Figure 22 – Number of transgender employees by economic sector
- Figure 23 – Mean number of transgender employees by sector
- Figure 24 –Attributed Cause Differences among respondents

Figure 25 – Transgender HR Policies on the HRC Equality Index

Figure 26 – Cumulative Growth of Private Employer Transgender HR Policies by Year

Figure 27 – List of U.S. Employers with Transgender HR Policies as of July 28, 2004

Figure 28. Cumulative Frequency Chart of Policy Adoption

Chapter 1. The Cutting Edge of Employment Diversity

The Proliferation of Transgender Human Resources Policies

“Ex-GI Becomes Blonde Beauty: Operations Transform Bronx Youth.” On December 1, 1952, Christine Jorgensen made the headline of the New York Daily News, opening for public debate an assumption seemingly unquestioned in fifty centuries of recorded human history: that men and women are fundamentally and unalterably different. “Transgender” refers to identity that does not conform unambiguously to conventional notions of male or female gender, but combines or moves between these (Oxford English Dictionary 2003). Beginning in the 1960s, transgender people began openly challenging this assumption of unalterable sex differences through lawsuits and legislative lobbying, mostly unsuccessfully, resisted by the power of large institutions.

In the new millennium, this assumption still holds in most places, and transgenders are subject to a great degree of social ostracism as well as intense controversy. Nonetheless, governmental, corporate and cultural institutions have begun to accommodate the presence of transgender people in U.S. society. Starting in the late 1990s, and accelerating in 2001, U.S. employers began to adopt transgender human resources policies. Today, 196 U.S. employers, including some of the largest and most powerful, have adopted such policies. What accounts for this rapid proliferation of transgender human resources policies? This study shows that many early adopters focus on benefits unrelated to the protection of transgender employees.

The Paradox of Workplace Diversity

The claims of transgender advocates that gender is (or should be) irrelevant to the workplace demonstrate a fundamental paradox of non-discrimination law. Such claims require attention to the very social identity they declare irrelevant. While non-discrimination policies prohibit different treatment of employees, employees are, in fact, different. Transgender employees may request accommodation of those differences. Such requests, however, may be viewed as demands for special treatment based on protected status. Thus, policies may cause problems for transgender employees.

In a larger sense, this dilemma is common to all diversity efforts. In order to eliminate discrimination on the basis of gender identity, advocates attempt to raise consciousness about the nature of gender identity, the effects of prejudice, and issues that gender identity raises in the workplace, such as bathroom use, employee identification cards, and dress codes. Paradoxically, these efforts emphasize the difference between transgender employees and others, and reinforce legal, political and cultural assumptions about sex and gender. By attempting to increase participation of marginalized groups, advocates are subject to accusations of perpetuating, rather than eliminating, distinctions based on gender. Yet, without such consciousness raising, embedded assumptions will continue to undermine workplace protection for transgender people. As discussed in Chapter 2, the law itself contains

these assumptions embedded in putatively neutral legal rules, making research on workplace policies all the more critical.

The Importance of Workplace Policies

The study of diversity in the workplace is more important than study of abstract legal rights. In our capitalist environment, the workplace is the main institution holding the key to social acceptance, insurance and pension benefits, and a stable identity (Raeburn 2000). *De jure* rights often do not translate into *de facto* rights. The law “on the books” is not the same as the law “on the street.” Organizations operate as “mediating institutions,” constructing the social meaning of legal rules and reconciling the impact of law on society (Edelman 1992). Discrimination in the field of employment is the issue of greatest concern to transgender people (Bean 2003, Whittle 2002:99). Study of what employers actually do regarding transgender employees is thus of critical importance to a proper understanding of diversity and its deployment in the workplace.

Estimates of the transgender population range between 25,000 and 9 million and are all subject to significant methodological objections (Witten 2001). There are about 3 million transgenders, broadly defined, in the U.S. (Conway 2002). Furthermore, U.S. transgenders are beginning to emerge from the severe stigma to which they have been subject in years past, particularly in one of the most important of modern institutions, the workplace. This trend is demonstrated by the fact that

approximately 75 U.S. jurisdictions have enacted laws prohibiting employment discrimination on the basis of transgender identity. The rate of such enactment is steady, between five and fifteen new jurisdictions per year since 1996 (Transgenderlaw.org 2004). Employer policy adoption has been accelerating. When I started this research in 2002, there were 123 employers on the list. As of July 30, 2004, transgender non-discrimination policies were in effect in 196 U.S. public and private employers, including 39 Fortune 500 companies, and eleven colleges and universities (HRC 2004a). These also included 85 public employers, such as states, counties and cities, and 111 private employers.

In addition to its importance to the transgender population, these phenomena bear an important relationship to larger socio-political controversies. Some scholars have suggested that the controversy surrounding laws and policies affecting transgender people are, in some respects, central to the issue of sexual orientation discrimination (Flynn 2001). Others have declared similar issues to be a basic challenge to Western epistemology (Sedgwick 1992). Indeed, to those who adhere to traditional notions of sex, the suggestion that a man can truly become a woman, or vice versa, challenges not merely a notion but a worldview. The idea that sex is a false distinction also implicates the scholarship suggesting that “race” is a false distinction (Appiah and Gutmann 1998). Just as our understanding of race translates culture into biology, so too our understanding of sex may be inappropriately biological. The issue of transgender non-discrimination has been referred to as the “acid test” of diversity (Diversity Inc. 2004). In this sense, this is a study of the

unfolding future of workplace and social diversity.

Transgender Human Resources Policies

In this project, “transgender human resources policy” refers to organizational policy regulating the human resources of an employer that accommodates, in some way, shape or form, the presence of transgender personnel. Human resources policies include a number of different types of policies: anti-harassment policies, anti-discrimination policies, equal employment opportunity policies, affirmative action policies, dress codes, policies regulating employee identity, and policies regulating access to employer resources such as bathrooms and locker rooms. This study will include all policies that acknowledge the presence of transgender employees in the workplace.

Transgender human resources policies are a relatively new addition to the more traditional categories of civil rights protections at U.S. employers, which began with the Civil Rights Act of 1964. Prior to that statute, U.S. law generally permitted employers to fire employees for any reason, or no reason at all. This “employment at will” doctrine, linked with the rise of laissez-faire capitalism, explicitly permitted discrimination based on any grounds, including race, sex and national origin. The Civil Rights Act of 1964, however, prohibited discrimination based on race, sex or national origin, and authorized legal action against employers that discriminated on these illegal bases. This, in part, prompted employers to create anti-discrimination policies, proclaiming their commitment to equal opportunity in employment practices

based on certain statuses (Edelman 1992). A steadily growing number of U.S. jurisdictions have added transgender identity as a protected category to their employment discrimination laws.

The Shifting Politics of Transgender Identity

The Oxford English Dictionary definition of “transgender,” quoted above, refers to “people whose identity does not conform unambiguously to conventional notions of male or female gender, but combines or moves between these,” eliding many complexities of transgender identity. However, it has the benefit of conveying the ideas of ambiguity, combination and movement of identity. It should be noted that transgender HR policy is different from HR policy protecting the sexual orientation of lesbians, gays, and bisexuals, because “transgender” refers to “gender identity,” which is “our own deeply held conviction and deeply felt inner awareness that we belong to one gender or the other” (Brown and Rounsley 1996:21). “Transgender” also refers to “gender expression,” the expression of behavioral characteristics that are culturally associated with the opposite sex^{*}. The distinguishing characteristic is that transgender self-identification and self-expression as male or female does not correspond to the physical body in the usual way, whereas lesbian, gay or bisexual individuals are attracted to sex partners with the same anatomy as

* The term “opposite sex” is problematic in discussions of transgender identity. Sex and gender were originally equivalent terms referring to physical anatomy, but have increasingly been differentiated, with “gender” being used to refer to the different behavioral, social and psychological traits that are stereotypically associated with the two sexes. Some transgender advocates argue that there is no necessary relationship between sex and gender, that individuals should have the right to determine their own sex and gender, and the right to identify themselves as such in society (Weiss 2001).

their own (although bisexuals are also attracted to the opposite sex). In contrast to transgender HR policies, which often refer to “gender identity or expression,” HR policies protecting lesbians, gays and bisexuals refer to “sexual orientation,” which defines the sex of the individuals to whom one is emotionally and erotically attracted. There are significantly more HR policies addressing sexual orientation. In contrast to the 196 U.S. employers protecting gender identity, all of which also include sexual orientation as a protected category, there are more than 2600 U.S. employers with HR policies protecting sexual orientation (HRC 2004a).

Policies in use by U.S. employers do not generally refer to “transgender” employees. Instead, other terms such as “gender identity” are often used. In addition, some policies are designed to deal with transgender employees by means of eliminating gender references in general employer policies, by articulating rules for the use of sex-segregated facilities such as bathrooms and locker rooms, or by use of dress codes (or lack thereof). Thus, paradoxically, the word “transgender” cannot be used as a defining characteristic of transgender HR policy. In addition, while many policies make use of terms such as “gender identity,” some do not. Thus, there is no easy evaluation criterion for determining which policies are directed towards “transgender” people.

Part of the reason that policies do not use the word “transgender” is that the understanding of “transgender identity,” as a social discourse in the U.S., is still in flux. The word “transgender” arose out of a series of other discourses regarding the

relationship among sex, gender and sexuality. The construction of U.S. homosexual identity, with its roots in the late 1800s (Greenberg 1988), has demarcated transgenders into a category that is said by some transgender advocates to be entirely unrelated to sexual orientation, although most people in the country would likely identify transgenders with homosexuals. The construction of U.S. “transsexual” identities, beginning in the 1950s, created a tension between those who theorize transgenders as “trapped” in the body of the opposite sex, requiring medical intervention for this pathology, and those who theorize transgender behavior as matter of free choice (Devor 1989, 1997; Meyerowitz 2002). The legal construction of these transsexual identities, beginning in the 1970s, acknowledged a change in sex only after surgical intervention had reconfigured the genitalia, and marked those who were unable or unwilling to undergo such intervention as members of their birth sex (Franke 1995; Keller 1999; Weiss 2001). Some legal authorities have, however, relaxed this requirement.

In the 1990s, the postmodern understandings of sex, gender and sexuality permitted the creation of a distinctly “transgender” identity, in which gender identity is marked by mind, rather than genitalia (Butler 1991, 1993; Foucault 1976; Wilchins 1997). In fact, some transsexuals oppose this understanding on the grounds that it erases specifically “transsexual” identity, which involves an intense desire for sex reassignment surgery, in favor of a vague transgender identity marked only by an individual’s say-so, causing social and legal problems for transsexuals (Namaste 2000; Prosser 1998; Valentine 2000). The history of transgender representation and

rights advocacy in the larger GLBT* (gay, lesbian, bisexual and transgender) and feminist movements is also important to the understanding of transgender social location. Some advocates mark transgender identity as central to the larger political GLBT and feminist movements, while others minimize it as peripheral and misleading because of the distinction between sexual orientation and gender identity (Flynn 2001, Weiss 2004).

The Changing Face of Human Resources

Transgender HR policies are part of a larger development towards diversity of the workforce in the U.S. workplace. “Human resources” is a phrase that came into vogue in the U.S. after World War II, referring generally to the field of personnel recruitment and management. It grew out of the distinction in 19th century classical economics between three factors of production (labor, land and capital goods), wherein labor was seen as a relatively fungible commodity. Major changes in personnel practices occurred early in the century, including benefits packages, increasing specialization and rationalization of work roles and centralization and regularization of personnel practices such as hiring, promotion and firing. These changes were widely attributed to innovative manufacturing firms, and spread rapidly in banking, insurance, utilities, trade and transportation (Baron, Dobbin & Jennings 1986).

* Many prefer to use the acronym “LGBT” to demonstrate that the order of the letters is unimportant. However, there is great historical and political significance to this ordering. The reordering results in (con’t)

These practices have also been linked to modernization, unionization, federalization, and World War II. “Modern” industries adopted scientific management techniques to increase production capacity and capitalize on internal labor markets. Unions seeking changes in labor relations occasioned a management response towards bureaucracy. The federal government became increasingly involved in labor regulation and subjected a number of industries to state scrutiny. World War II also created a vast industrial capacity, and a modernist “can-do” attitude to match, fueled by the intense desire to win the war. The post-war workforce expanded and exceeded the number of jobs, encouraging further bureaucratic rationalization. That workforce also included a large number of veterans returning from the war, who were used to the routinized personnel methods used in the wartime armed services for the rapid influx of untrained personnel. The U.S. was also in an excellent position to create much of the world’s goods, since the industrial base of Europe had been decimated by the war.

Employers increasingly turned to departments dedicated to the testing, recruitment and management of this large workforce, using psychological and other scientific methods. The expertise of the specialized “human resources” department became efficient use of production resources through regulation and rationalization of four major functions: recruitment, promotion and demotion, benefits and separation. Personnel specialists encouraged the idea that their functions were part of a profession necessary for business efficiency and control, particularly with regard to

an unintentional reinforcement of these power relations by obscuring it (Weiss 2004).

union demands and, to a lesser extent, with regard to growing state scrutiny (Baron, Dobbin & Jennings 1986).

Coming from these roots, "human resources" were understood as routinized, interchangeable work units with clear job descriptions and an immediate return on investment. In this functional view, conformity and ease of management are emphasized over diversity, creativity and social contribution, although both are recognized as important.

There was, however, a competing understanding of labor that began in the early twentieth century. By the late 1930s, it was well-recognized, particularly by white-collar service industries and to a lesser extent by mass-production manufacturers, that personnel procedures should not attempt to increase production capacity by stricter regulation, but must promote employee loyalty, firm-specific skills and the maintenance of an internal labor market by the creation of incentives such as career ladders (Baron, Dobbin & Jennings 1986:510).

In the 1960s, economic theorists extended capital theory to labor, blurring the line between the two. In addition to mere production capacity, they began to see such labor as "human capital" (sometimes referred to as intellectual, instructional or individual capital), particularly in occupations requiring substantial education and training investment. Unlike "human resources," people are important not for their production capacity and immediate return on investment, but for future pecuniary and

nonpecuniary returns (Blaug 1976:829). This theory suggests that human beings are not predictable commodity resources controlled by contract, but are creative and social beings that make contributions beyond mere labor. Workers contribute much more than "work": they bring their character, their ethics, their creativity, and their social connections, contributing to the corporate culture (Wikipedia 2004).

As the 20th century closed, this idea gathered force, dovetailing with the shift from output-oriented manufacturing as the primary economic engine to a process-oriented, technology-driven economy. This shift changed the labor requirements from trained but unskilled labor with easily measurable outcomes to educated skilled labor heavily dependent on process measures of performance (Baron, et al. 1988:511). In addition, the slow change of U.S. society from a modernist view towards a post-modern consciousness suggests a growing understanding that "science" and "efficiency" do not always result in improvements, that all reality is necessarily partial, and that different cultures have different ways of relating that are equally valid. This encourages a workplace diversity that reflects the diversity of the global industrial base. In the understanding of labor as "human capital," creativity, innovation, change, and diversity are emphasized over conformity, although both have their importance.

Two Paradigms of Rights

The meaning of “civil rights” is an important part of understanding transgender HR policies. The civil rights movement of the 1950s and 1960s was an attempt to free African-Americans from the entrenched socio-political system that oppresses them. Civil rights were not seen as merely “civil” in the sense of “legal” rights. They also encompassed social rights to be free of stigma based on skin color, political rights to participate in electoral politics, and economic rights to work and live free of discrimination. “Civil rights” was a term intended to convey a broad understanding of cultural non-discrimination.

Just as the meaning of “human resources” changed, so did the meaning of “civil rights.” The main strategy of African-Americans turned to the courts as a means of effectuating rights that were stated but not given. The vision of “civil rights” began to narrow, towards a model of “legal rights.” “Civil rights” became, to many, those rights that a nation’s inhabitants enjoy by law. They were, and are, an important means of providing protection to minorities. However, some scholars have criticized them on the grounds that they have become mere “rights-talk,” conveying the image, but not the substance of the socio-political rights envisioned by the original U.S. Civil Rights Movement. As noted in Bell’s (1980) work on “interest convergence,” and similar arguments, civil rights in the U.S. progressed less as a result of altruism or legal action, although both had their place, than because the civil rights cause served the interests of elites. These interests included the national economic cost of legal discrimination and the Cold War interest in winning the hearts and minds of non-industrialized nations with large non-white populations (Bell 1976;

Rosenberg 1991; Klarman 1994). The extension of protection to specific protected categories, such as race and ethnicity, and later religion and disability, was prompted by the attention of elites to those specific identities at certain historical junctures. This contrasts sharply with natural law notions of universal human dignity and worth as memorialized in such documents as the United Nations 1948 Universal Declaration of Human Rights, without need for specific enumeration of identities.

The idea of “civil rights,” as it has come to be known in the U.S., is based on a “positive law” framework of rights derived from authoritative written law. It is this framework upon which all U.S. civil rights law is based. “Civil rights” thus refers to specific categories protected by law, such as race, ethnicity and sex. Outside the U.S., however, the notion of “human rights” is in general use, which differs in that it is based on a “natural law” framework of rights conferred by virtue of being human. “Human rights” requires no enumeration of protected categories to confer rights. These rights include not only civil rights based on a legal code, but also political, economic, social, and cultural rights. According to some human rights advocates, this approach differs from a “civil rights” approach because of its emphasis on the accountability of political, civil, social, cultural and economic institutions, an overarching framework for addressing multiple institutional oppression, and grounding in international law (Odinkalu 2004).

Under the civil rights framework prevalent in today's versions of late capitalism, discrimination based on personal characteristics are not a matter for which political, civil, social, cultural and economic institutions are accountable. Rather, these are individual abuses caused by bad individuals. There is an aversion to granting "special rights" to specific groups, although there is little enthusiasm for the replacement of civil rights by human rights. At the same time, the human rights framework is beginning to gain a foothold, as the concept of "non-discrimination" becomes a naturalized norm. More people in the U.S. are beginning to express the feeling that all forms of "discrimination" are morally wrong, without need for special legislation enumerating protected categories. This is a significant cultural shift. In its older sense, the word "discrimination" simply means differentiation. The Merriam-Webster Online Dictionary (2004) defines discrimination, a noun originating in 1648, as follows:

1 a : the act of discriminating **b** : the process by which two stimuli differing in some aspect are responded to differently
2 : the quality or power of finely distinguishing
3 a : the act, practice, or an instance of discriminating categorically rather than individually **b** : prejudiced or prejudicial outlook, action, or treatment <racial *discrimination*>

Thus, discrimination in its older sense is simply distinguishing between any two things. When I choose chicken over beef, I am "discriminating." Any policy that references a differentiated group of employees necessarily involves "discrimination." It is generally not illegal to discriminate on the basis of such characteristics as appearance, weight, hygiene, or education. Yet, discrimination in employment is increasingly seen as immoral and unethical, in addition to illegal. In such a view, job

performance is the only morally proper criterion. This new cultural norm of non-discrimination engages the human rights framework of universal personal dignity, increasing acceptance of transgender HR policies.

Conclusion

This exploratory study seeks to understand the influences on the rapid proliferation of transgender HR policies, and more generally, the increase in calls for workplace diversity of all types. “Transgender” refers to people whose identity does not conform unambiguously to conventional notions of male or female gender, but combines or moves between these. Transgender identity challenges longstanding norms of gender, the fundamental difference between men and women. What accounts for the rapid proliferation of transgender human resources policies, and how does it relate to the generally increasing call for workplace diversity of all types? The paradox of workplace diversity means that gender is (or should be) irrelevant to the workplace, yet diversity claims require attention to the very social identity they declare irrelevant. A number of phenomena are important to analysis: the origins of transgender human resources policies, the shifting politics of transgender identity, changes in understandings of “human resources” management, and the movement from “civil rights” legal norms to “human rights” cultural norms.

Chapter 2. The Intrinsic Ambiguity of Transgender Identity

In order to analyze properly the data presented here, it is important to understand the intrinsic ambiguity of transgender identity. Transgender HR policies are different from other diversity policies, which refer to fixed identities. It is never clear whether “transgender” is an objective phenomenon that is part of a determining structure, or a subjective phenomenon that is mediated by the agency of the individual. Because of this, interpretation of transgender HR policies is always subject to re-interpretation.

As noted in Chapter 1, transgender HR policies do not use the term transgender because of its ambiguity. This points to a significant problem for transgender HR policy advocates. Defining “transgender” presents extreme epistemological and ontological challenges. It is defined differently in different communities, such as medicine, philosophy and law. The word “transgender” can refer to a number of related, yet independently stable identities. It was originally created in the 1980s (as “transgenderist”) to refer to those who live in the opposite sex role, but who do not opt for genital surgery, as opposed to the earlier word “transsexual,” which refers to those who desire genital surgery (Holly 1991:31). Since then, however, “transgender” has taken on a different usage as an umbrella term to denote transsexuals, transvestites, cross-dressers and anyone else whose “gender identity” or “gender expression” is variant from the dimorphic norm. The most widely known transgender identity is that of post-operative transsexuals, who

live in the opposite sex role from that of their birth and have received surgical and medical intervention to change their anatomical configuration to match that of the opposite sex. Many people think of this identity when they hear the word “transgender.” There are, however, many different views of transgender identity. The parable of the seven blind scholars describing the elephant comes to mind. Each one took hold of a different part, arguing amongst themselves that the elephant is like a wall, a rope, a tube, etc. This disciplinary divergence creates ambiguity.

The Historical Invention of Transgender

Transgender is now often referred to in the same breath as gay, lesbian and bisexual. The acronym “GLBT” refers to this community. However, it is important to understand that there are significant political differences between these four groups, and particularly between the GLB and the T portions. Many now understand transgender identity to be different in nature from gay, lesbian and bisexual identity. This difference is expressed as a distinction between “sexual orientation” and “gender identity.” “Sexual orientation” is the emotional and erotic attraction of gays and lesbians to members of the same sex, and of bisexuals to both sexes. They do not have any cross-gender self-identification. “Gender identity” on the other hand, refers to identification as male or female, and involves cross-gender self-identification. These two concepts are considered by some to be entirely unrelated and independent (Nangeroni 2001).

This GLB vs. T identity split is especially surprising because distinctions

between gays, lesbians, bisexuals and transgenders developed rather recently in history. Until the 1950s, those now called “transgender” were classified as homosexuals by everyone, including the physicians who specialized in their treatment, and it is only in the past fifty years or so that transgender has been theorized as different in kind from homosexuality. Many in US society today still consider transgender people to be homosexuals, no different from gays, lesbians or bisexuals. Yet sometime in the past century, transgenders started to become separate from homosexuals, being gay, lesbian or bisexual became more acceptable than being transgender, and a split developed between gay/lesbian/bisexual and transgender. This split came from political differences between these groups.

The separation between sex and gender had its roots in the early 1900s. In 1910, scientist Magnus Hirschfeld coined the term “transvestite” to refer to one who prefers to wear the clothing of the opposite sex, to distinguish it and separate it from “homosexualitat,” coined by the Hungarian writer Kertbeny forty years earlier. Hirschfeld first mentioned “psychic transsexualism” in passing in 1923, but it was not used consistently until popularized by Dr. Harry Benjamin in the 1960s. Thus, from the nineteenth century’s unitary conception of homosexuality there developed two concepts: “sexual orientation” (sexual object choice) and “gender identity” (sexual self-identification as male or female).

After World War II, there were furtive movements towards political action to remove the stigma of homosexuality. These were largely separated along gender

lines. The Mattachine Society, an organization for gay men, was established in 1950. The first openly lesbian organization in the US, the Daughters of Bilitis, was established in 1955. These accommodationist groups encouraged gay people to "act normal" and fit in (lesbians belong in dresses, gay men don't), and recruited prominent "experts" like psychiatrists and psychologists to comment on homosexuality (Wikholm 2000). Effeminacy was linked in the public mind to male homosexuality. It was this gender ambiguity, as much as the same-sex act itself, which channeled the stigma of illegitimacy. It was not surprising, therefore, that some homosexuals sought to lessen the stigma of homosexuality by rejecting the stigma of "inappropriate" gendered behavior, thus beginning a separation between homosexuals passing as straight (while nonetheless being open about their homosexuality in some contexts), versus effeminate males and masculine females. It was also not surprising that, when transsexuality came to the attention of the U.S. public in the 1950s, transsexuals and their doctors sought to avoid the stigma of homosexuality by reconceptualizing their sexual relations as heterosexual. Thus, both groups tried to "normalize" their own identity by distinguishing themselves from the other.

These "normalizing" attempts led to understanding one's bodily sexual identity as different from one's mental sexual identity, a split conceptualized as one between "sex" and "gender." The terms "sex" and "gender" had, up until that time, been exact synonyms. This split between sex and gender was entrenched in public discourse when, in the 1970s, feminists invoked it to explain the right of women to

participate more fully in public life, in slogans such as “anatomy is not destiny.” Sex was theorized as anatomical and gender was theorized as psychological (Brown and Rounsley 1996:20).

Not until the 1960s could these groups begin to live somewhat more openly in the United States and to enter into the arena of state politics. The struggle to obtain social acceptance and civil rights pitted these groups against one another. In order to portray themselves as “normal” both groups sought to distinguish them from the other. Gays and lesbians campaigned for acceptance by suggesting that they were “just like you,” but with the single (but extremely significant) exception of being oriented by virtue of some organic and/or psychological process to partners of the same sex. This fueled the tensions between accommodationist tendencies in the gay/lesbian community and gender ambiguity. Transgenders violated this conceptual scheme, both by their recognizable (in some cases) gender ambiguity, and by their seamless blending (in other cases) into the heterosexual community.

Feminist hostility towards transsexuals was dramatically increased by the publication in 1979 of *The Transsexual Empire: The Making of the She-Male* (Raymond 1979). Raymond argued that the phenomenon of transsexuality was created by fetishistic males who sought to escape into a faux stereotypical femininity, with the connivance of male doctors who thought that femaleness could be medically created and homosexuality medically vitiated. Although “male to constructed female” transsexuals claimed to be against the stereotyped gender system by virtue of

their escape from stereotypical masculinity, they in fact added force to the binary system by merely escaping from one stereotype to another, or at most mixing together different stereotypes, rather than advocating true gender freedom. They were not political radicals, as they claimed, but reactionaries seeking to preserve a stereotypical gender system that was already dramatically changing due to the political action of 60s and 70s feminists and gays. Transsexuals were, according to Raymond, sheep in wolf's clothing.

This book further exacerbated the split between gays and lesbians, on the one hand, and transgenders on the other. Indeed, it was not only transgenders who were subject to this gender radicalism. Henry Rubin argues that the creation of a separate transsexual identity and community emerges in the 1970s in the U.S., when it was made repeatedly clear that butch lesbians were no longer welcome within the lesbian feminist movement (Hemmings 2002:92). Paradoxically, although the sex/gender distinction was intended to permit a wider range of expression, the fault line of these political tensions was along gender lines – anyone expressing non-traditional gender was subject to rejection by the lesbian and gay communities.

An example of this split can be found in the recent reaction of some gays to two recent court rulings in favor of transsexual marriage. Here is one gay columnist's reaction:

Both cases will be cited as gains for GLBT rights. The New York Times quoted Lynne Gold-Bikin of the American Bar Association as saying of the Florida case, "This is a major victory for alternative lifestyles." But you have to wonder.

It is not clear how the Florida ruling affirms any "alternative lifestyles." The whole focus of the case was the effort by a transsexual male to prove that he should not be viewed as a woman in a same-sex relationship, but a nice, normal heterosexual guy in a heterosexual marriage – in short, that there was nothing "alternative" about his life or his lifestyle at all.

And far from benefiting gays and lesbians in any way whatsoever, the ruling conspicuously reaffirmed opposite-sex, heterosexual marriage as normative and exclusionary.

Ironically, the Florida transsexual's case was argued by the National Center for Lesbian Rights (NCLR) which won by convincing the court that its client, although born a woman and married to a woman, was not female and therefore not a lesbian. How this supports lesbian rights is obscure.

. . . So gay and lesbian people gain nothing from heterosexual transsexuals being able to marry. But transsexuals, all transsexuals, would gain from gay marriage. (Varnell 2003a)

While the “sexual orientation”/“gender identity” distinction is a useful shortcut to understanding GLBT identities, it raises more problems than it solves. Such essentialist arguments about "true nature" are based on the problematic notion that "gay" and "transgender" exist in nature, and are not a product of culture. But the need to argue that sexual orientation and gender identity are essences at all, whether

the same or different, does not derive from any natural quality of these concepts themselves. As discussed, sexual orientation and gender identity are not "natural" concepts, but were constructed from 19th century Western European notions of homosexuality, from which sexual orientation and gender identity were not separated as distinct notions until the mid-20th century. At that time, political exigencies in the US created a situation wherein the former notion of "homosexuality," which encompassed all sexual and gendered "inversions", split into four separate and distinct notions, from which the current understanding of the gay, lesbian, bisexual and transgender ("GLBT") community springs. These same mid-20th century political exigencies still drive the notion that gayness and gender are separate and distinct, while the earlier 19th century notion of homosexuality drives the more common understanding of transgender as a version of gay expression.

Interestingly, a few activists have returned to the 19th century notion of transgender as a version of gay expression, arguing that "gender is a gay issue," meaning that the oppression of gays and lesbians occur primarily because of their failure to fit into stereotypical gender norms. In other words, the oppression of gays and lesbians occurs primarily when straight people see an effeminate gay man or a masculine lesbian -- when their gendered behavior is in question. Such oppression is not on the basis of sexual orientation, because it is not based on that person's partner, but that person's gender expression. Thus, not only transgenders, but also gays and lesbians are oppressed on the basis of gender, making gender a gay issue. In fact, some have argued persuasively that gender should be seen as the central case of gay

rights, rather than a peripheral issue (Flynn 2001, Wilchins 1997).

The intertwined nature of gayness and gender is pointed up by the conceptual confusion over the question of when a transgender person is being “gay” -- when they are with a man or when they are with a woman? This question is not answerable on the basis of "sexual orientation" -- defined by a "same sex" relationship -- because transgender identities transcend physical sex. For these reasons, arguments from the "nature" of gay and transgender essences, whether pointing out similarities or differences, may be accepted as influencing policymakers, but should not be uncritically accepted as true. This does not mean, however, that these essentialist understandings of gay and transgender have not had an important influence on policy adoption. The importance of essentialism does not rest upon its truth, but upon its strong cultural influence.

The heterosexist attitude towards transgenders, coming from the gay and lesbian community, has begun to change in important ways.* In 2001, Taylor Flynn, a prominent lesbian attorney and professor of law published an essay in the influential Columbia Law Review. She argued that transgender rights should be included as a central issue in the struggle for sex and sexual orientation equality. Her essay, analyzing a series of court cases on transgender legal issues, demonstrated that gay

* Particularly on the international level, progress is more troubled. For example, in June 2004, the South African Gay and Lesbian Alliance barred transgenders from membership and expelled two members of its board from those groups, saying they harmed the image of lesbians and gays (Capetimes 2004).

men and lesbians could benefit by advocating a more accurate and multifaceted understanding of sex and gender (Flynn 2001).

The following year, the Human Rights Campaign, a bipartisan organization that works to advance equality based on sexual orientation and gender expression and identity, and the largest gay and lesbian organization in America, initiated the HRC “Equality Index.” The Index rated major U.S. corporations on their records toward lesbian, gay, bisexual and transgender employees, consumers and investors. It specifically included a rating for policies accommodating transgender employees, without which corporations could not receive the top score of 100% (HRC 2003).

HRC has also tracked law and employer policies regarding transgenders, just as it has done for gay and lesbian issues. In 2004, HRC released a 32-page, meticulously researched document entitled “Transgender Issues in the Workplace: A Tool for Managers” (HRC 2004c). Soon after, HRC changed its long-standing position on an important piece of legislation. It agreed not to support the Employment Nondiscrimination Act, a bill introduced in the U.S. Congress to prohibit job discrimination on the basis of sexual orientation, unless it included gender identity.

Other groups such as Out and Equal Workplace Advocates (outandequal.org), GenderPAC (gpac.org), also sponsored education for gay and

lesbian employees regarding the importance of transgender policy. Many in-house employee resource groups came to the understanding that discrimination against lesbians and gays is linked to transgender discrimination. Those groups advocated for transgender HR policies, in addition to sexual orientation policies (Wilchins 2004).

There still remains much room for improvement in relations with the transgender community. However, important progress is being made, albeit slowly. These events mark a shifting of transgender issues from the periphery of gay and lesbian advocacy, and the wider GLBT social movement, to the center of the arena.

“Transgender” in Medicine

Mental health professionals who specialize in gender identity issues are considered by themselves and many others to be the ultimate authorities regarding the meaning of “transgender.” As noted above, medical professionals identified and labeled transgender behavior in the early 1900s, although it is a phenomenon as old as human history itself (Feinberg 1997). Psychiatrists do not use the term “transgenderism.” Instead, they refer to “gender identity disorder” (“GID”). There are three criteria for a diagnosis of GID:

- (1) cross-gender identification,
- (2) discomfort or sense of inappropriateness in the gender role of birth sex,
and
- (3) clinically significant distress. (American Psychiatric Association 1994)

Under these criteria, medical and surgical interventions are not conditions precedent for transgenderism. There is no difference in diagnosis between one who has full surgical intervention and one who does not. Those who wish medical assistance require the approval of a mental health professional. However, because one criterion that mental health professionals use is “sustained employment,” HR personnel are, whether they know it or not, part of the medical team.

There is no treatment considered effective in resolving a diagnosis of GID other than cross-sex hormone administration and surgical intervention. When cross-sex hormones are administered, secondary sex characteristics change over a period of three months to two years so that the patient’s original secondary sex characteristics disappear, and the secondary sex characteristics of the opposite sex markedly appear. The speed and success of this treatment varies with the age and hormonal levels of the patient, because the secondary sex characteristics tend to harden with age and high sustained hormonal levels. Involuntary behavioral in-patient treatments have been tried in the past, often with not only negative results, but also reinforcing stigma and extreme negative self-concept (Scholinski 1997). Cross-sex hormones and sex reassignment surgery is effective in producing satisfaction in 97% of female to male transsexuals and in 87% of male to female transsexuals. Other studies, however, have concluded that 10-15% of clients who receive sex reassignment surgery “end up in failure” and up to 7% suffer a tragic outcome, defined as requests for reversal, psychotic episode, hospitalization or suicide (American Press Psychiatric Textbook

1999). Still, few post-operative patients express regret over having had sex reassignment surgery, and suicides completed postoperatively are infrequent (0.8% to 2.1% of all patients receiving SRS for which follow-up data are reported) (Brown 1990).

As with many psychiatric studies, these are based on remarkably small numbers, and a lot of work remains to be done to justify these figures. However, as a practical matter, Brown notes that an estimated 90% of patients treated with any modality are unavailable or unamenable to long-term follow up. There is a dispute among mental health professionals whether the evidence supports the diagnosis and treatment of GID. There is also some controversy as to whether “gender identity” is an objective or a subjective psychological phenomenon. In other words, who decides who is transgender: psychiatrist or patient?

The “medical intervention” referred to can take many forms. “Sex reassignment surgery” (SRS) is not a single procedure. For example, female to male transgenders may undergo one or more of the following: hysterectomy (removal of the uterus), salpingo-oophorectomy (removal of the fallopian tubes), vaginectomy (removal of the vagina), metoidioplasty (removal of the skin bridge between clitoris and labia, scrotoplasty (creation of a scrotum), urethroplasty (lengthening of the urethra) , placement of testicular prostheses (for simulation of the male testicles and erectile function), and phalloplasty (creation of a penis). Each operation may be considered a form of surgery intended to aid in “sex reassignment”. Male to female

transgenders may undergo one or more of the following: orchiectomy (removal of the testicles), penectomy (removal of the penis), vaginoplasty (creation of a vagina), clitoroplasty (creation of a clitoris) and labiaplasty (creation of labia) (HBIGDA 2004). Each of these may be considered a form of surgery intended to aid in “sex reassignment”.

There are also hormonal interventions intended to aid in “sex reassignment”. Female to male transgenders may receive injections of testosterone. Within three months of continuous administration, this causes facial hair to begin growing, hardening and coarsening of the skin, thickening of the vocal cords and consequent extreme deepening of voice, redistribution of fat reserves from the skin, hips, cheeks and breasts to the stomach, chin and arms, and enlargement of the clitoris. The effect seems to be inversely related to age and increases with time of administration, taking full effect within three years. Male to female transgenders may receive oral administration or injections of estrogens. Within six months of continuous administration, this causes softening of the skin, growth of breast tissue (with full effect reputedly being one cup size lower than the average of close female relatives), redistribution of fat reserves from the stomach, chin and arms to the skin, hips, cheeks and breasts, and reduction (and eventual loss of erectile function) of the penis and testicles (HBIGDA 2004).

It is important to note that those who attempt to define transgender by reference to medical or surgical procedures fail to appreciate the wide variety of

medical and surgical interventions. Such definitions are problematic because not all interventions are available to everyone, whether because of medical conditions, financial issues, or the state of the art. For example, surgeons have not advanced the state of the art for female-to-male transsexuals as far as the better-perfected techniques for male-to-female transsexuals. If genital surgery is the *sine qua non* of transgender status, this means that many female-to-male transsexuals must choose between poor surgical results for phalloplasty (creation of a penis) and the right to live in their chosen sex. For this reason (and many others too numerous to mention here), female-to-male transsexuals are not simply the inverse of male-to-female transsexuals, and these groups have separate and distinct issues and concerns. “Transgender” is not symmetrical for male and female (Eadie 2004).

The complexities of transgender identity cannot be fully stated here, but they must not be underestimated. As noted above, the term “opposite sex” is problematic when dealing with a transgender person because the term presumes an easily defined and stable sex, in such phrases as “living as the opposite sex” and “attracted to the opposite sex.” If a person is born transgender, then their sex does not become “opposite” to another. Is a transgender person attracted to the “opposite” sex when they desire a man, or a woman? In addition, approximately 1 in 200 babies are born with some sexual ambiguity, a condition called “intersex.” 1 in 2000 has so much ambiguity that their sex cannot be determined, and often they are surgically assigned

to one gender or the other* (Blackless 2000). Because some transgender people have intersex conditions, it cannot be said with certainty that a transgender person assumes the “opposite sex.” Rather, the most that one can say is that it is different from the sex assigned at birth.

Professionals who treat transgender patients routinely have formed a professional organization recognized as the leading authority on the treatment of transgenderism. The Harry S. Benjamin International Gender Dysphoria Association issues the following requirements for treatment (HBIGDA 2004):

VII. Requirements for Hormone Therapy for Adults

Eligibility Criteria. The administration of hormones is not to be lightly undertaken because of their medical and social risks. Three criteria exist.

1. Age 18 years;
2. Demonstrable knowledge of what hormones medically can and cannot do and their social benefits and risks;
3. Either:
 - a. A documented real life experience of at least three months prior to the administration of hormones; or
 - b. A period of psychotherapy of a duration specified by the mental health professional after the initial evaluation (usually a minimum of three months).

In selected circumstances, it can be acceptable to provide hormones to patients who have not fulfilled criterion 3 – for example, to facilitate the provision of monitored therapy using hormones of known quality, as an alternative to black-market or unsupervised hormone use.

Readiness Criteria. Three criteria exist:

* Many intersex advocates consider this to be unnecessary and unethical surgery caused by social discomfort with gender ambiguity. The Intersex Society of North America provides information at its website, isna.org.

1. The patient has had further consolidation of gender identity during the real-life experience or psychotherapy;
2. The patient has made some progress in mastering other identified problems leading to improving or continuing stable mental health (this implies satisfactory control of problems such as sociopathy, substance abuse, psychosis and suicidality);
3. The patient is likely to take hormones in a responsible manner.

IX. The Real-life Experience

* * *

Parameters of the Real-life Experience. When clinicians assess the quality of a person's real-life experience in the desired gender, the following abilities are reviewed:

1. To maintain full or part-time employment;
2. To function as a student;
3. To function in community-based volunteer activity;
4. To undertake some combination of items 1-3;
5. To acquire a (legal) gender-identity-appropriate first name;
6. To provide documentation that persons other than the therapist know that the patient functions in the desired gender role.

Real-life Experience versus Real-life Test. Although professionals may recommend living in the desired gender, the decision as to when and how to begin the real-life experience remains the person's responsibility. Some begin the real-life experience and decide that this often imagined life direction is not in their best interest. Professionals sometimes construe the real-life experience as the real-life test of the ultimate diagnosis. If patients prosper in the preferred gender, they are confirmed as "transsexual," but if they decided against continuing, they "must not have been." This reasoning is a confusion of the forces that enable successful adaptation with the presence of a gender identity disorder. The real-life experience tests the person's resolve, the capacity to function in the preferred gender, and the adequacy of social, economic, and psychological supports. It assists both the patient and the mental health professional in their judgments about how to proceed. Diagnosis, although always open for

reconsideration, precedes a recommendation for patients to embark on the real-life experience. When the patient is successful in the real-life experience, both the mental health professional and the patient gain confidence about undertaking further steps.

XII. Genital Surgery

Eligibility Criteria. These minimum eligibility criteria for various genital surgeries equally apply to biologic males and females seeking genital surgery. They are:

1. Legal age of majority in the patient's nation;
2. Usually 12 months of continuous hormonal therapy for those without a medical contraindication (see below "Can Surgery Be Provided Without Hormones and the Real-life Experience");
3. 12 months of successful continuous full time real-life experience. Periods of returning to the original gender may indicate ambivalence about proceeding and generally should not be used to fulfill this criterion;
4. If required by the mental health professional, regular responsible participation in psychotherapy throughout the real life experience at a frequency determined jointly by the patient and the mental health professional. Psychotherapy per se is not an absolute eligibility criterion for surgery;
5. Demonstrable knowledge of the cost, required lengths of hospitalizations, likely complications, and post-surgical rehabilitation requirements of various surgical approaches;
6. Awareness of different competent surgeons.

Readiness Criteria. The readiness criteria include:

1. Demonstrable progress in consolidating one's gender identity;
2. Demonstrable progress in dealing with work, family, and interpersonal issues resulting in a significantly better state of mental health; this implies satisfactory control of problems such as sociopathy, substance abuse, psychosis, suicidality, for instance).

To summarize, one must obtain psychotherapy and live unambiguously and successfully in the opposite sex role for a minimum of three months prior to

administration of cross-sex hormones, and one year before surgery, and obtain the approval of a mental health professional.

Even among transgender advocates there is a split of opinion regarding these criteria. While some transgender advocates protest this pathologizing of transgender behavior, arguing that this perpetuates the widespread prejudice against transgender people, others view it as a positive step, permitting insurance coverage of medical intervention. Policymakers, too, cannot be sure whether the GID diagnosis is ultimately useful because it is a double-edged sword. Since transgender behavior is a medical condition, then policies reasonably accommodating it in the workplace are appropriate as for any other medical condition. On the other hand, since it is a sexual pathology, then policies allowing this behavior in the workplace are inappropriate as for any other sexual pathology.

The history of “Gender Identity Disorder” demonstrates that the psychiatric understanding of transgenderism has significantly changed over time. It first appeared in the third edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (American Psychiatric Association 1980). In fact, DSM III contained four different gender identity disorders: Gender Identity Disorder of Childhood, Gender Identity Disorder of Adolescence or Adulthood, Nontranssexual type (GIDAANT), Transsexualism and Transvestic Fetishism. This was based upon studies showing that most children who express transgender impulses do not change sex, that many adolescents and adults who express transgender impulses do not

change sex, and that there was a minority of patients who could effectively pass as the other sex despite their intense desire to do so.

A separation was made between the “true transsexual” or “primary transsexual,” who from a very young age unquestionably appeared to be and consistently claimed to be the opposite sex, and the “secondary” transsexual, who had a desire to be the opposite sex originating in adolescence or adulthood and whose desire to be the opposite sex was not matched by their appearance (Stoller 1968). It also separated those who cross-dressed because of a desire to be the opposite sex from those who cross-dressed for sexual satisfaction. This permitted psychiatrists to assure anxious patients and their families, particularly in the case of youngsters, that such pathological impulses could be cured, or at least resisted by those who were not “true” transsexuals. In addition, it ensured that authorization of medical intervention was only permitted in cases of “true transsexualism.”

Those who criticized DSM III pointed to its pseudo-precision, which made it easier to reify certain criteria and apply them in a mechanical, rigid manner. For example, it ascribed special significance to certain duration requirements (consistent symptoms for three months in some cases) despite the fact that these were based on consensus of opinion rather than systematically collected empirical evidence. Other criticisms included fostering undue attention on diagnosing rather than treating, and the social and economic consequences of the system. The DSM IV Guidebook (Allen 1994:10), in referring to these criticisms, notes, “[p]erhaps the most important lesson

taught to us by the history of psychiatric classification is that it is probably best to be humble in asserting any particular position until we have acquired a much more profound understanding of the causes of mental disorders.

The current edition, DSM IV (American Psychiatric Association 1994), contains 297 disorders (up from 180 in DSM III), and while it retains the DSM III attempt at precision, it has some significant differences in its understanding of diagnostic criteria for all mental illnesses (Shorter 1997). One important difference is the idea of “distress” as a criterion for mental illness. If the symptoms do not cause the patient to experience “distress,” then it is not considered a mental illness. However, there is still confusion as to whether that distress is to be determined subjectively, according to the patient’s perceptions of what constitutes distress, or objectively, according to the clinician’s perceptions of what constitutes distress. The DSM IV Guidebook explains DSM IV’s philosophy as follows:

The ever-increasing number of new categories meant to describe the less impaired outpatient raises the question of where psychopathology ends and the wear and tear of everyday life begin. . . . Despite its limitations, the definition of a mental disorder that is used in both DSM-III and DSM-III-R is as serviceable as any other and has helped guide decisions regarding which conditions on the border between normality and pathology should be included in DSM-IV. In DSM-IV, each of the mental disorders is conceptualized as a clinically significant behavioral or psychological syndrome or pattern. For every diagnosis in DSM-IV, the symptoms by which the person meets the criteria threshold must cause

“present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) In addition, this syndrome or pattern must not be merely an expected and culturally sanctioned response to a particular event, for example, the death of a loved one. Whatever its original cause, it must currently be considered a manifestation of a behavioral, psychological or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious or sexual) nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the individual, as described above” (American Psychiatric Association 1994:xxi-xxii).

Because the separation between the four diagnoses available for transgenderism was unworkable in practice, DSM IV, included a single diagnosis applicable across the developmental and severity spectrum. (Allen 1995:320) The diagnostic criteria are more complex and more inclusive, but at the same time, more flexible and less clear. If a person with transgender identity feels that they suffer no distress, then it is debatable whether it is appropriate to render a diagnosis of “gender identity disorder.” The clinician may judge that an individual’s transgender impulses “cause impairment in one or more important areas of functioning,” such as the ability to function in society, relate to family and friends, or get a job, making a diagnosis of gender identity disorder appropriate. The individual, however, may feel that the “cause” of these impairments is social prejudice, and not their transgender impulses, making a diagnosis of gender identity disorder inappropriate. Yet if there is no diagnosis, then the individual cannot be considered an appropriate candidate for

medical intervention within current medical guidelines. This has profound implications for transgender policy-making, and these issues frequently appear in the data presented here, although often in subtle or disguised forms.

This is an important point because it raises the question of what makes gender variance a “disorder”. Is it a disorder because the person’s gender role varies from the normal associations of anatomy, or because it deviates from a normative standard of society, or because it is causing some harm to the patient, or because it is causing some harm to the person’s family or society, for some other reason? Gender variance may be a mental illness, not because it is a dysfunction from the patient’s point of view, but because it is a dysfunction from society’s point of view. If true, then “gender identity disorder” is little more than a label for “behavior society doesn’t like” (Szasz 1984).

The application of the three criteria contained in DSM IV varies from professional to professional. How much and what kind of “cross-gender identification” is required to be transgender? The danger of a strict interpretation is that it could become a “beauty” contest, in which the mental health professional decides whether or not the patient sufficiently passes as the opposite gender to be allowed to obtain medical assistance. Such a requirement could eliminate every patient that did not meet a certain stereotypical view of the opposite sex. The danger of a liberal interpretation is that it could cause dissatisfaction resulting in depression and suicide in patients who have incomplete cross-gender identification. The patient

may be unable or unwilling to adjust to meet societal expectations of the opposite sex, possibly resulting in non-employability, loss of family and friends, and inability to find or maintain intimate relationships. This raises the important question of whether these effects are caused by the patient's "dysfunction," the mental health professional's "misdiagnosis," or society's prejudice.

The symptoms listed are "a stated desire to be the other sex, frequent passing as the other sex, desire to live or be treated as the other sex, or the conviction that he or she has the typical feelings and reactions of the other sex." These symptoms are called "strong and persistent cross-gender identification." In other words, "cross-gender identification" is identifying one's self as belonging to the opposite sex in some important or material way, such as by saying so or by the act of passing as the other sex. "Cross-gender identification" is thus a speech-act of self-identification, which involves *both* internal gender identity and external gender role (although manifestation of both are not required in every case).

Criterion D refers to "clinically significant distress or impairment in social, occupational, or other important areas of functioning". In other words, if a person has cross-gender identification and discomfort with sex or gender role, but no significant distress or impairment in function, then theoretically there is no disorder. I say "theoretically" because the distinction seems more theoretical than real. The elements of distress and impairment in function are in keeping with the philosophy of DSM IV that these are important in defining a disorder. The emphasis is on function

in social and occupational roles. But, as a practical matter, since Criterion B already requires “discomfort” or a “sense of inappropriateness”, Criterion D is likely to be disregarded as redundant in a real clinical setting, faced with a patient who insists on sex reassignment. By definition, *anyone* meeting Criterion B could be considered to have “distress”.

Furthermore, from a practical viewpoint, this diagnosis cannot, in reality, be dependent on the existence or nonexistence of some internal “distress” separate from societal expectations. Children who are brought to mental health professionals by concerned parents because of severe cross-gender behavior are unquestionably going to receive a diagnosis of gender identity disorder, despite the fact that the children see nothing wrong with their behavior and are getting along with peers about as well as other children. They may not be in any more distress than any other child. Their problem is not distress, but others’ stereotypes. A psychiatrist cannot very well send these worried parents home with the DSM IV admonition that “neither deviant behavior (e.g., political, religious or sexual) nor conflicts that are primarily between the individual and society are mental disorders.” They must confer the diagnosis despite the fact that, as the literature shows, there is little or nothing that psychiatry can do for these children in regards to their gender identity, although they may be able to help with co-morbidities.

Adults, too, who bring themselves to mental health professionals for gender identity issues, even if they are already living in the opposite gender role and are very

happy doing so, are there to get the professional's imprimatur on the diagnosis so they can get their surgery. Their problem is not really distress, although they may have some, but the need for a diagnosis which is the key to sex reassignment surgery. Children and adults who appear before a psychiatrist for gender identity issues arrive there not because they have a subjective sense of distress or impairment, but rather because theirs is "deviant sexual behavior" which is a problem for others. A critic of the GID diagnosis, Katherine Wilson, says that parents bring their children to gender clinics for the most part "because they don't want their kids to be gay" (Wilson 2000: 31-38).

Wilson summarizes the criticism as follows:

Transgendered people do suffer distress and impairment from societal intolerance, discrimination, violence, undeserved shame, and denial of personal freedoms that ordinary men and women take for granted. The psychiatric interpretation of inherent transgender pathology serves to attribute the consequences of prejudice to its victims, neglecting the true cause of distress. It promotes treatment paradigms that are punitive rather than affirmative with the goal of conformity and not self-acceptance. . . .

Transsexuals who openly face stigma and discrimination every day are poorly served by the DSM IV. The label of psychiatric disorder burdens them to continually prove their mental competence. Fraught with murky and ambiguous language, gender identity disorder has failed to provide a compelling "medical necessity" for many hospitals and nearly all US insurers, who have dropped SRS [sex reassignment surgery] procedures and coverage (Wilson 2000:31-38).

Ultimately, the controversy over the GID diagnosis comes back to the

subjective/objective distinction. The presence of the GID diagnosis in the DSM gives an appearance to those outside the mental health professions that the clinician decides, based on objective criteria, whether the patient has GID. Since the diagnosis of GID rests on self-reports of cross-gender identification, it is, in fact, the patient who determines whether they have GID. Nonetheless, physicians and surgeons in the U.S., Canada and Europe will not provide medical and surgical treatments associated with cross-gender identification without a diagnosis of GID and one or two years of living as the opposite sex. As a practical matter, mental health professionals often will not certify patients for treatment unless they live unambiguously and successfully as the opposite sex for at least one year. Part of the definition of “success” is maintaining financial viability, which, in most cases, requires steady employment. Since they cannot legally obtain cross-sex hormones that assist them in successfully passing until they live unambiguously and successfully as the opposite sex for one year, they must spend that time dressing as the opposite sex, but maintaining ambiguous secondary sex characteristics. This requires them to find accommodating employers, a difficult task regardless of education or experience.

The main understanding of transgender identity in medical circles is the idea that medical and surgical interventions are necessary to compassionate treatment of these patients. The difficulty with this approach is that it tends, if unchecked, to reify transgender identity as a fixed identity, marking post-operative transsexuals as the “real transsexuals” and those who assert a transgender identity without medical intervention as lower on the hierarchy of value. It also tends to reinforce

heteronormative notions of anatomical determinism.

“Transgender” in Law

At the same time that medical professionals consider themselves the ultimate authorities for determining who is transgender, legal authorities charged with determining sex for purposes of government identification are considered by law to be the ultimate authorities in that determination. Some legal authorities permit self-identification of sex, while others require various levels of proof of various types of psychological, medical and/or surgical changes (Weiss 2001).

Startling as it may seem, legal authorities are mixed on the question of whether a legal sex change is accomplished by one diagnosed by a mental health professional with GID, who has successfully assumed the opposite sex role for the required time period, has had full medical and surgical intervention, and has changed their legal documentation, including birth certificate and all other government identification, to reflect a legally-approved change in sexual status. U.S. courts, forced to make a decision in the face of this ambiguity, have generally done so by ignoring the ambiguity, simplistically declaring the issue to be one of “chromosomes.” The problem is amply illustrated by comparison of two quotes from court opinions:

“It might just as easily be argued that the right of privacy protects a person’s decision to be surgically transformed into a donkey....[T]he change from man to beast

“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty

might be just as devoutly wished, as psychologically imperative, and as medically appropriate as the change from man to woman, but the Constitution, I fear, could not long bear the weight of such an interpretation.”

-- VanArtsdalen, J., in Ashlie v. Chester-Upland School District, No. 78-4037, U.S. District Court for the Eastern District of Pennsylvania (May 9, 1979), rejecting claims that the discharge of a transgender employee, on the grounds of “incompetency, immorality and other conduct”, violated the U.S. Constitution.

and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

-- Kennedy, J., in Lawrence v. Texas, No. 02-102, U.S. Supreme Court (June 26, 2003), quoting Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833, 851 (1992), upholding claims that prosecution of homosexuals for sodomy violated the U.S. Constitution.

In fact, it is logically and legally meaningless to say “I am now legally male” or “I am now legally female” There are no statutes that define the moment, although there are statutes and regulations that permit changes on government documents that contain gender markers. These statutes base the right to make such a change on various forms of proof, ranging from a doctor’s note suggesting that such a change is medically indicated to a surgeon’s sworn affidavit testifying to certain required surgical procedures. None of these statutes or regulations specifically states whether or when a person becomes “legally” male or female, although a broad (or overbroad, perhaps) interpretation could certainly include such a reading. However, courts have interpreted these statutes and regulations narrowly so that the broader implications of becoming “legally” male or female are specifically excluded for such purposes as marriage, inheritance, employment, military service, and incarceration. No court in the U.S. has ever ruled that a person became “legally” male or female for all purposes. Thus, it cannot be said at this time, in any meaningful way, that “I am now legally male,” or “I am now legally female.” One can truthfully say that their birth certificate, drivers’ license or passport says “M” or “F”, but that is not the same thing.

One can, at most, say that “for X purpose, I am now legally male.” Statements such as “I am now legally male” are a statement of opinion, rather than a statement of law.

A recent example where the courts were squarely faced with this issue and the case received full appellate process, up to and including the U.S. Supreme Court (which denied certiorari), is the case of In Re Gardiner. J’Noel Gardiner was assigned to the male sex at birth. She was diagnosed by mental health professionals with GID, lived successfully for a period as the opposite sex, was administered cross-sex hormones and sex reassignment surgery and changed her birth certificate as authorized by state law to reflect her female status. On the authority of this, she married her husband Marshall. When Marshall Gardiner died without a will, J’Noel was entitled, as his spouse, to half of his \$3 million estate under Kansas law. However, Marshall’s estranged son, Joe Gardiner, contested the award of the spousal share of his father’s estate to his wife on the grounds that J’Noel, as a “transsexual,” was not legally entitled to marry his father, and was therefore not entitled to the usual spousal share of the estate.

Three different Kansas courts came up with three different rulings based on three different theorizations of transgender. The trial court ruled that medical and surgical intervention does not change sex, awarding the entire estate to the son. The case was appealed to the Kansas Court of Appeals, which ruled that sex can be changed with certain medical, surgical and legal procedures. (In re Gardiner 2002a)

Therefore, it was possible that J'Noel Gardiner was female at the time of her marriage. It sent the case back to the trial court to investigate whether the correct procedures were followed. Before that occurred, however, the son appealed to the highest court of Kansas, the Supreme Court of Kansas, which ruled that sex can be changed using certain approved medical, surgical and legal procedures, but only for some purposes and not others. The court ruled that it is impossible to change sex for purposes of marriage (In re Gardiner 2002b).

The Kansas Court of Appeals based its ruling that sex can be changed upon the theory that maleness and femaleness are not fixed. The Court noted that “transsexuals” have brain structures different from typical structures in those of the same birth sex. This conclusion was based on a study of 12 autopsied brains of male-to-female transsexuals that differed in structure from other male brains. The study concluded that male to female transsexuals have brain structures within the female range. The Court also addressed the issue of chromosomes, which typically differ between males and females, and situations of ambiguity in which chromosomes are atypical, cautioning against rigid sexual stereotypes:

If one concludes that chromosomes are all that matter and that a person born with “male” chromosomes is and evermore shall be male, then one must confront every situation which does not conform with such a rigid framework of thought. . . . Professor Julie A. Greenberg, writing in the Summer 1999 issue of the *Arizona Law Review*, states: . . . “The assumption is

that there are two separate roads, one leading from XY chromosomes at conception to manhood, the other from XX chromosomes at conception to womanhood. The fact is that there are not two roads, but one road with a number of forks that turn in the male or female direction. Most of us turn in the same direction at each fork. The bodies of the millions of intersexed people have taken a combination of male and female forks and have followed the road less traveled. These individuals have noncongruent sexual attributes.”

The Court reviewed various types of chromosomal and gonadal combinations, questioning the long-held assumptions about the legal definitions of sex, gender, male and female.

The Kansas Supreme Court noted that some courts had ruled that sex had been changed for purposes of marriage, based on “crediting a mental component, as well as an anatomical component, to each person's sexual identity.” However, it declined to go so far, holding that a woman is defined by her internal sexual organs, ova, chromosomes and capacity to bear children, not by her mind.

Webster's New Twentieth Century Dictionary (2nd ed. 1970) states the initial definition of sex as "either of the two divisions of organisms distinguished as male or female; males or females (especially men or women) collectively." "Male" is defined as "designating or of the sex that fertilizes the ovum and begets offspring: opposed to *female*." "Female" is defined as "designating or of the sex that produces ova and bears offspring: opposed to *male*." [Emphasis added.]

. . . . A male-to-female post-operative transsexual does not fit the definition of a female. The male organs have been removed, but the ability to "produce ova and bear

offspring" does not and never did exist. There is no womb, cervix, or ovaries, nor is there any change in his chromosomes.

The difference between the Kansas Court of Appeals opinion and the Kansas Supreme Court opinion is the subject/objective distinction. In other words, the Court of Appeals attributed agency to J'Noel Gardiner to subjectively determine her sex. The Kansas Supreme Court, on the other hand, took the view that sex is an objective phenomenon that is part of a determining biological structure.

The Kansas Supreme Court is not alone in this view. Appellate courts in Texas and Florida have written similar opinions (*Littleton v. Prange* 1999, *Kantaras v. Kantaras* 2004).

The other legal issue of note is the importation of heteronormative cultural standards into laws intended designed to accommodate non-heteronormative transgender identity. In *West v. Goins* (2001), a transsexual employee was denied access to the women's bathroom. The operative state statute prohibited sexual orientation discrimination in the workplace, defined as "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." The court held that she was not female for the purposes of bathroom use. The statute did not require access to the women's bathroom according to her subjective self-image because of the "cultural preference" for sex-segregated facilities, which the legislature presumably did not intend to change. Two judges concurred in the

result, underscoring that the transsexual employee's subjective belief in her femaleness was insufficient. Had she introduced objective evidence of female anatomy, then her employer would have been required to give access to the women's bathroom. Here, the subjective/objective distinction was used to support the "cultural preference" of sex segregation and anatomical determinism.

"Transgender" in Philosophy

While medical professionals are the ultimate in medicine, and legal officers are the ultimate in law, philosophers are the ultimate in sophistry. Philosophical theories of gender raise more questions than they solve. The objective/subjective distinction is found in the distinction between sex and gender (although it did not originate there), created in the 1970's by feminists seeking to deconstruct Freud's infamous dictum that "anatomy is destiny" (Rubin 1975). Sexes are understood as an objective phenomenon, grounded in anatomical fact, but "genders" are not. "Genders" are the sex roles, masculinities and femininities, grounded in psychological and social constructions. This distinction radically shifted the ground of argument for feminism, permitting the argument that anatomy is not destiny. While "women" have different anatomies than "men", the difference does not mean that women are restricted to the roles of sexualized emotional caregivers to men and children, and men are restricted to the roles of rationalized protective drones for women and children. The distinction permitted the argument that women may be valued for their rationality and their productive capacity (Stolcke 1993; Butler 1990; Wilchins 1997:51).

Some have criticized the sex/gender distinction on the ground that it does not go far enough. It has simply moved the marker. Rather than making the point that sex and sex roles are social constructions, the sex/gender distinction reifies “Sex” (with a capital “S”) as a fixed point based on “biology” (Davidson 2002, Morris 1995). This conceals the "constructed" nature of Sex, thus opening up “gender” to the criticism that it is “just made up,” whereas “Sex” is real. If so, feminists who claim that women are not restricted by anatomy are making a claim to subjectively determine that which is determined by the objective structure of reality. The same is true of transgenders. The critics of the sex/gender distinction bring evidence to show that sex, as well as gender, is a social construction.

This brings to the fore an issue which makes the definition of “transgender” problematic. Despite the fact that transgender identity is intrinsically ambiguous, most theorization of transgender identity *presumes that the category of “transgender” is real, material and stable.* This raises the central but rarely identified issue of the legitimacy of the transgender claim that the sex assigned at birth can be different from the individual’s gender identity or that sex can be "changed". A thought experiment: Imagine a world in which each individual is at one moment a man, at another moment a woman. What would one in such a world make of a survey that included boxes marked “M” and “F”? Clearly, it would make no sense. This is not to say that we all live in such a world, but that such stability is

an underlying assumption necessary to make the category of “sex” real, material and stable. If this assumption of stability is not correct, then “M” and “F” categories are artificial constraints. In the transgender world, the assumption that “sex” is real, material and stable is not true (Butler 1990, Wilchins 1997).

Some attempt to explain "transgender" by reciting a list. Such lists distinguish between “transsexuals,” defined as those who have sex change surgery and live full-time as the opposite sex, and “crossdressers,” often defined as male heterosexuals who like to relax by putting on female clothing in privacy. The idea that transsexuals and crossdressers are different in some important way is problematic. There is only one distinction between them, and it is solely a mental construct: Transsexuals wish to be and consider themselves to be the opposite sex. Crossdressers do not. This is a distinction of intent only, and not action or behavior. Because of this, one cannot tell by looking who is a transsexual and who is a cross-dresser. On the one hand, some transsexuals have never worn clothing of the opposite sex; and some have not had surgery and never will. Yet they declare themselves transsexuals. On the other hand, some crossdressers have taken medical intervention (but not genital surgery) to change their bodies; some wear clothing of the opposite sex all or most of the time and pass undetectably as members of the “opposite sex,” although they do not consider themselves to have changed sex. The only difference is the label that a person chooses to take. There is no "real" difference between the two, except as a self-identification. A physician cannot distinguish between a crossdresser and a transsexual by physical examination (although that doesn't stop them from trying).

While there may be no physical difference, there is a social difference. Transsexuals are given more credence in society because "transsexualism" is seen as a "medical condition", a gender "identity", whereas "crossdressing" is seen as an extreme eccentricity, a gender "expression". There is no basis, however, for this notion other than fiat. These are both identities and expressions, and there is nothing that distinguishes them as concepts. The attempt to limit "gender identity" to one's identification as *male* or *female* reprivileges anatomy as a hierarchical structure. The attempt to use surgery as a dividing line does the same. Feminists have argued for decades, and it is now well accepted (I hope), that Freud's infamous maxim ("anatomy is destiny") was mistaken. Arguments to the contrary must be assessed critically, no matter how well intentioned. For such contrary arguments, when analyzed, boil down to the idea that society is willing to accept transgenders as long as they reenact gendered norms and only to the extent they "pass" (undetected as the "opposite sex").

Nonetheless, this is not to say that sex does not exist. If I argue that the category of "fork" is not real, not material and not stable, I am not implying that forks do not exist. In order to understand this, one must be able to separate the fork as an object from the mental and philosophical category of "fork." Yes, forks exist, but the category is not "real" because the category of "fork" is artificial. Forks are meaningless and functionless without culture. Most people in China use chopsticks and have never heard of the idea of a "fork." They are not able to understand the use

of a fork without considerable training. The category of fork is not “material” because a “category” is a concept, and not a material object itself. The category of fork is not “stable” because there are different kinds and shapes of forks, and forks change over time. Similarly, the category of “transgender” and the identities based thereon are not real, material or stable. Without such an understanding, the sex/gender distinction causes as many problems as it solves.

Valentine makes this point when he argues as follows:

In short, I will argue that “transgender” has arisen so rapidly and has become so broadly used because it depends on, and upholds, an emerging cultural model of gender and sexuality in the US. By this I do not mean a system of gender/sexuality which upholds a system of masculine and feminine binary gender. Rather, the binary I am concerned with is that of gender/sexuality itself. This emerging model relies on an understanding that while gender and sexuality are *related human experiences*, they describe theoretically and ontologically *different experiences*. Such an understanding has been at the heart of feminist, gay and lesbian, and psychiatric model of gender and sexuality since the 1970s, and stands against a more powerful, but slowly shifting, US American model of gender and sexuality which has seen them as intrinsically linked and inseparable. I will show that such a discursive shift has not only allowed “transgender” to emerge as a category, but, in a very real sense, *presumes* the existence of such a category. Ironically, the progressive politics which has underpinned the theoretical and political separation of gender and sexuality has also, I will argue, resulted in a solidification of binary gender in US American culture around the category of transgender (Valentine 2002).

Thus, the sex/gender distinction distances transgenders from gays, lesbians and bisexuals. Someone who “comes out” as gay, lesbian or bisexual is not seen as changing a physical or social identity. Rather, they are conceived of as admitting to a fixed-at-birth “orientation” towards certain sexual and emotional partners. By

contrast, transgender identity is viewed as a change, over time, in both physical form and psychological identification. A transgender employee who transitions at work is seen as “changing” and assuming an identity of “transgender.” Yet, an employee may have changed sex long prior to joining an employer’s organization. If the employee self-identifies unambiguously as a natal member of their chosen sex, and passes unambiguously as a natal member of their chosen sex, and the change is unrevealed, is it correct to say, as some do, that the employee is no longer “transgender?” In that conception, “transgender” is simply a marker of some point(s) in a process of identity change, rather than a stable “identity.” Since both of these competing meanings exist side by side, mostly unrecognized, in the US, it can never be clear at what point being “transgender” begins or ends. The unrecognized definitional ambiguity renders “transgender” unusable in a legal policy context.

Gender Identity, Transgender And Employers’ Policies

For these reasons, policies generally use the term “gender identity” or some variant thereof, rather than the term “transgender.” Unfortunately, this is simply a higher level of abstraction that encapsulates the problem. “Gender identity” is sometimes understood to refer to the set of identities from which “transgender” is drawn. In other words, “gender identity” is one’s identification as male, female, transgender, or other categories, some of which are known as “transsexual,” “genderqueer,” and “crossdresser.” Others use it to refer to the fact that there are only two genders, “male” and “female,” but that they are independent of birth sex. Yet others say that “male” and “female” are not genders, but sexes. Instead, they

point to “masculine” and “feminine” as genders, sometimes including a continuum between them. The use of the term “gender identity” simply shifts the ambiguity from “transgender” to “gender.”

This is a version of the famous philosophical conundrum: “If a tree falls in the forest, and no one is there to hear it, does it make a sound?” Despite the trivialization of this question by comedians everywhere, it is particularly useful here because it highlights the importance of the unrecognized definitional ambiguity of the term “sound.” “Sound” is something we perceive with our ears. Yet, at the same time, “sound” is also a physical fact of vibrations in the air, independent of an ear to hear. This unrecognized definitional ambiguity makes the question unanswerable. Whether an ear to hear is necessary to the creation of a sound in the forest is a matter of opinion, giving rise to endless theoretical discussion. Similarly, the question of when “transgender” begins or ends, whether it exists independent of perception, or, for that matter, what it is, while referencing certain physical facts, is a matter of opinion as well.

There are four major opinions regarding when “transgender” begins. Some argue that one is born transgender, although the discovery of this fact is necessarily delayed. In this interpretation, “transgender” is a fact independent of perception, because neither the newborn nor anyone else can determine the later gender identity (although the sexual anatomy is usually, although not always, unambiguously male or female at birth). Others argue that one becomes transgender only when one has

successful completed surgery to change sexual anatomy to match that of the opposite sex. In this interpretation, “transgender” is a perception of a fact, that of a change in sexual anatomy by surgical means. Yet others argue that the significant fact is not surgery, but the *decision* to undergo the change, although the surgery itself may be many years away. When one decides to undergo the surgery, one declares oneself “transgender.” Still others argue that the significant fact is the perception of difference, that one’s gender identity differs from social norms. When one realizes that the internal recognition of being a boy or a girl is at odds with what one is being told by parents and others, at that moment, one becomes “transgender,” whether or not any medical or surgical intervention occurs later. It is the life-plot, rather than actual somatic sex change that characterizes the transgender person (Prosser 1998:158).

There are three major opinions regarding when “transgender” status ends. The first is that it ends permanently when the person unambiguously assumes the opposite sex. The second is that it never ends because it marks difference and/or change. The third is that it ends when the person says it ends.

The following is a thought-exercise involving some of the various scenarios that may occur. Using the criteria above, determine for yourself when transgender begins and ends:

- An employee is in the midst of the transition process when they join the organization

- An employee begins the process after joining the organization
- An employee lives part-time in the opposite sex role from that of their birth, with surgical intervention
- An employee lives part-time in the opposite sex role from that of their birth, without medical or surgical intervention
- An employee lives ambiguously with some male and some female characteristics.
- An employee has the internal desire, never publicly expressed, to change sex
- An employee cross-dresses occasionally, considering themselves to be the sex they were assigned at birth
-

The Heterosexual Norms

The objective view of “transgender” rests upon an essentialist notion of “realness.” Males and females possess certain essential biological attributes. Heterosexual norms decree that an individual’s habitus – anatomical configuration, body styling and gender performance – must conform to certain ideals. There are penalties for nonconformance (Transgenderlaw.org 2002). Non-conforming females are sometimes not considered “real women,” “accused” of being lesbian, whether or not they are, considered unattractive and “bitchy,” subjected to employment discrimination, and harassed in women-only spaces. Similarly, non-conforming males are sometimes not considered “real men,” “accused” of being gay, whether or not they are, considered unmanly and “sissies,” subjected to employment discrimination and harassed in men-only spaces.

Because of the cultural requirement that men and women must use sex-segregated spaces for bathrooms, dressing rooms, and locker rooms, any person, transgender or not, who violates the habitus rule is subject to social and legal penalties. A transgender person who fails to “pass” as an unambiguous male or female, or who chooses not to undergo medical or surgical interventions publicly violates these heterosexual norms. Despite the good intentions of policymakers, policies can be enforced, but these norms cannot be changed by fiat or appeal to reason.

Even amongst those who wish to be tolerant of transgender differences, these heterosexual norms pose problems. The easiest case of tolerance involves a transgender person who possesses heteronormative habitus and whose discourse does not call attention to uncomfortable issues, like which bathroom to use. However, transgender people whose habitus is nonconforming and do not “pass,” or who have not had medical and surgical intervention (either because they have not yet completed the real life test or because they choose not to undertake such procedures), or who insisting upon creating non-heteronormative discourses about using the bathroom of their choice, publicly violate the heterosexual norms. This creates a hierarchy of value in which post-operative transgender people who possess heteronormative habitus are the most “real,” pre-operative transgender people who intend to undergo surgery are “semi-real” (as long as they pass reasonably well and do not raise nonconforming discourse) and non-operative transgenders are accorded no credence whatsoever. Such reasoning conflicts with the intrinsic ambiguity of transgender

identity, and turns the protection of “gender identity” contained in transgender HR policies into a further reification of heterosexual norms. Paradoxically, advocates must call upon these problematic understandings in order to persuade employers to adopt transgender HR policy.

Conclusion

Transgender HR policies are both similar to and different from other diversity policies. Other diversity policies refer to fixed identities, whereas transgender refers to people whose identity combines or moves between conventional notions of male or female gender. The meaning of “transgender” is itself ambiguous, and it is never clear whether transgender is an objective or subjective phenomenon. This ambiguity permeates the history of transgender and the medical, legal and philosophical understandings of transgender identity. Transgender HR policies are problematic to the extent they presume that the category of “transgender” is real, material, and stable. Paradoxically, advocates must call upon these problematic understandings in order to persuade employers to adopt transgender HR policy.

Chapter 3. Characteristics of Early Adopters

The employers studied here are “early adopters,” that is, employers that are among the first to adopt such policies. In this chapter, I set forth data on these early adopters and some of the trends in the adoption of transgender HR policies. The current list of U.S. employers with transgender HR policies, maintained by HRC, can be found in the appendix.

A number of findings about early adopters can be made from the available data.

- The number of policies is comparatively few but rapidly proliferating.
- There is wide geographical diversity.
- There is diversity of size and economic sector.
- Law is not a significant factor in early adoption

Number of Policies

- 196 U.S. employers have adopted such policies (HRC 2004a).
- 111 of these are private employers. This is 0.001% of the 5,657,774 business firms in the United States as of 1999 (U.S. Census 1999). The total number of employees covered by these policies is 1,798,058. This is 1.6% of the 115,061,184 employees of business firms in the U.S. as of 1999 (U.S. Census 1999).

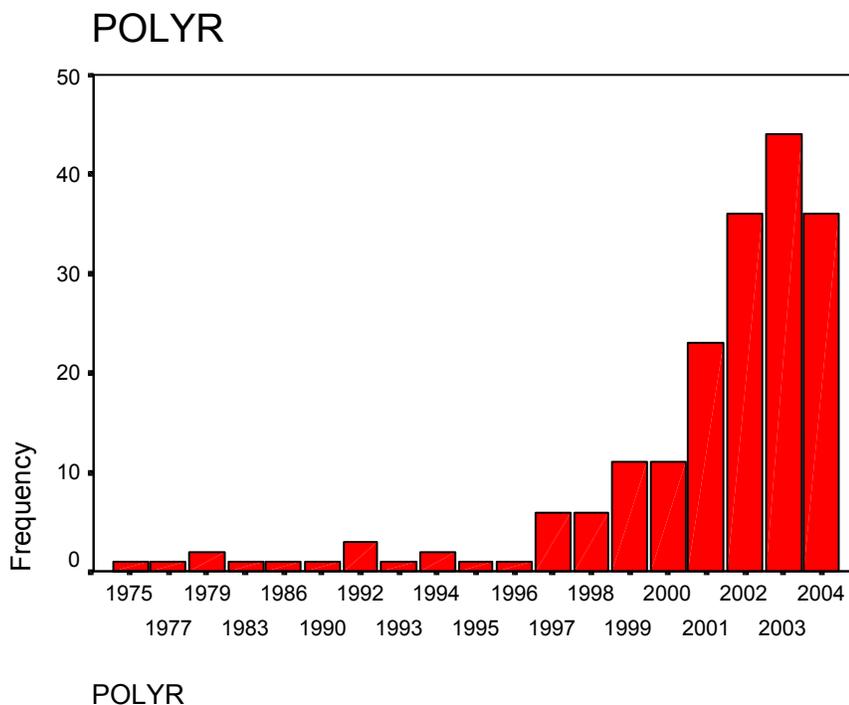
- 85 of these are public employers, such as states, cities, and school districts.

This is 0.1% of the 87,900 government units in the United States as of 2001 (U.S. Census 2002a).

It is no exaggeration to state that the number of transgender policies adopted by U.S. employers is miniscule in comparison to the number of U.S. employers. The redoubtable benefits of transgender HR policies seem to have underwhelmed the vast majority of U.S. employers.

While small in number, the policies are rapidly proliferating.

Figure 1. Adoption of Transgender HR Policies by year



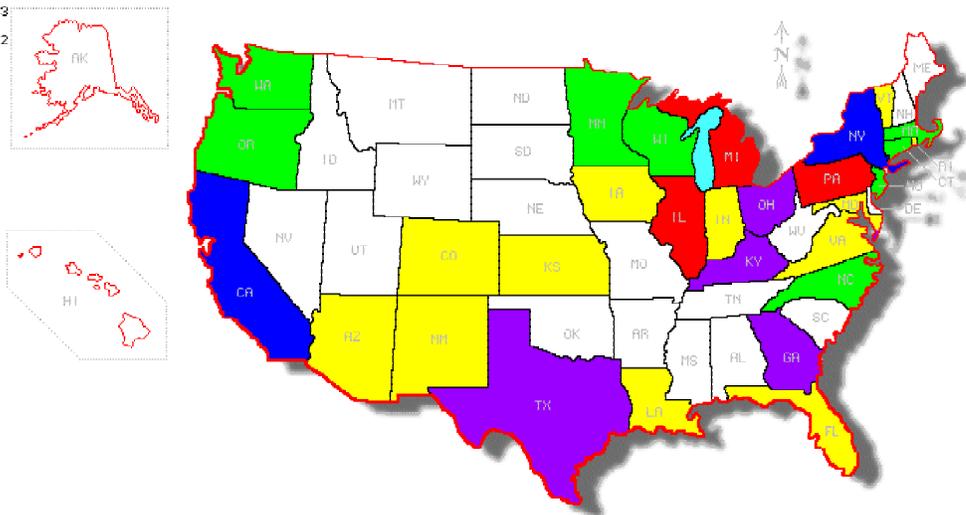
This chart shows the frequency of policy adoption by year. Policy adoption was nonexistent prior to 1975, was infrequent from 1975 to 1996, began a slow but steady increase in 1997, and a more rapid increase in 2001. A cumulative frequency chart can be found in the appendix.

Geographical Diversity

A map of states with employer policies shows the following distribution:

Figure 2 – Map of Transgender HR Policies by State
States with Transgender HR Policies

- - 1-3
- - 4-6
- - 7-9
- - 10-13
- - 26-32



7-21-04

The most interesting information from this map is the view of three areas that have no transgender HR policies:

- northern New England
- the deep South (with the exception of Georgia and Texas)
- the Great Plains.

The state breakdown, in order of the number of policies, is as follows:

Figure 3 – Policies by State

STATE	# OF THRP EMPLOYERS
CA	33
NY	28
PA	13
IL	13
MI	11
OH	10
DC	8
TX	8
KY	7
GA	7
OR	6
MN	5
WI	5
MA	5
NJ	5
CT	4
WA	4
NC	4
AZ	3
CO	3
RI	2
NM	2
IA	2
FL	2
VT	1
KS	1
VA	1
LA	1
MD	1
IN	1
TOT	196

The chart shows that California and New York together have 31% of the policies.

Most states have 4 policies or less.

If the number of employers in New York and California are compared to the number of employers with transgender HR policies (“THRPs”), the dominance of those two states disappears.

Figure 4 – Ratio of THRP Employers to 100,000 Employers by State

STATE	# OF THRP EMPLOYERS	TOTAL EMPLOYERS (IN 100,000s)*	RATIO OF THRP EMPLOYERS TO 100,000 EMPLOYERS
1. DC	8	.16265	49.2
2. KY	7	.72533	9.7
3. RI	2	.25205	7.93
4. OR	6	.84556	7.1
5. NY	28	4.19850	6.7
6. MI	11	1.93447	5.7
7. NM	2	.35669	5.6
8. PA	13	2.36870	5.5
9. VT	1	.19196	5.2
10. IL	13	2.53550	5.1
11. CT	4	.79070	5.1
12. CA	33	6.55712	5.0
13. OH	10	2.13455	4.7
14. GA	7	1.58660	4.4
15. MN	5	1.14732	4.4
16. WI	5	1.15603	4.3
17. MA	5	1.45810	3.4
18. AZ	3	.92278	3.3
19. IA	2	.65909	3.0
20. WA	4	1.37495	2.9
21. NJ	5	2.01088	2.5
22. NC	4	1.62311	2.5
23. CO	3	1.33058	2.3

* U.S. Census (1997a and b)

24. TX	8	3.66069	2.2
25. KS	1	.61278	1.6
26. VA	1	1.38155	1.4
27. LA	1	.81903	1.2
28. MD	1	1.05296	0.9
29. IN	1	1.16630	0.86
30. FL	2	3.50175	0.6
TOT	196	56.07743	3.5

Interestingly, the largest ratio is held by the District of Columbia, which has a ratio 8 times larger than New York. Most of the THRP employers in DC are non-profit advocacy organizations.

There are employers with transgender HR policies in 11 of the 30 states with policies are ordinarily considered the most conservative, according to the American Conservative Union (2004). I have listed them below, together with their conservative ranking, 1 to 50 from most conservative to least conservative. As shown below, these 11 states have 50 of the 189 policies:

Figure 5 – Conservative States with Policies

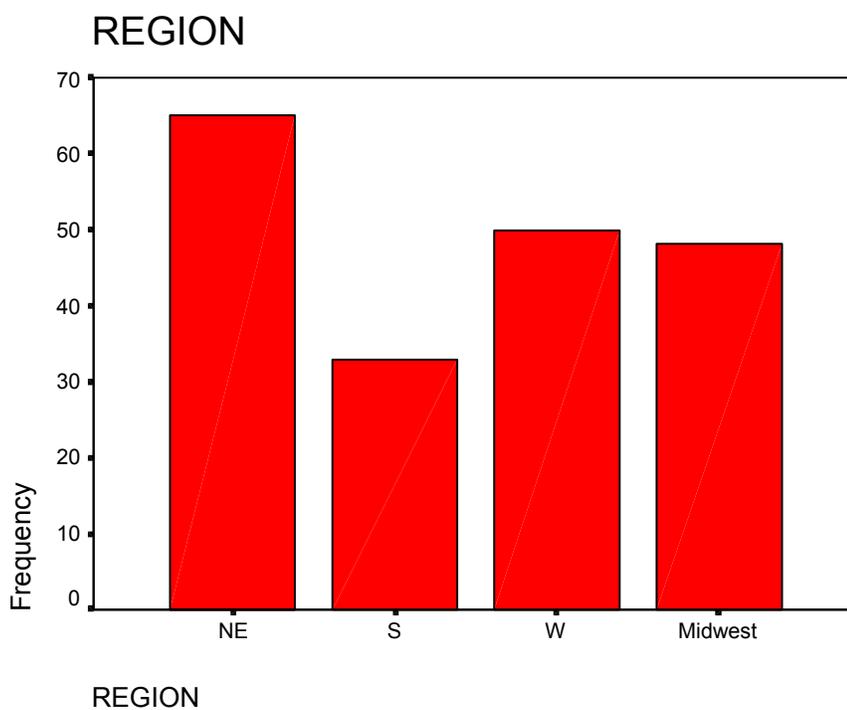
	THRP Policies	Conservative Ranking
KY	7	4
KS	1	6
AZ	3	7
VA	1	10
TX	7	15
CO	3	16
OH	9	18
NC	4	20
PA	12	21
IN	1	22
IA	2	24
	50	

In line with this, Taylor has demonstrated that the distribution of state laws

prohibiting employment discrimination against transgenders is not predicted by political ideology (Taylor 2002).

When viewed by region, the Northeast has the most policies (65), followed by the West (50), Midwest (48) and South (33).

Figure 6 – Transgender HR Policies by region



These numbers are disproportionate to the number of businesses in each region.

Figure 7 – Ratio of THRP Employers to 100,000 Employers by Region

	THRP Employers	Employers (in 100,000s)	Ratio of THRP Employers to 100,000 Employers
Northeast	65	12.3	5.3

Midwest	48	10.2	4.7
West	50	15.1	3.3
South	33	20.2	1.6
Total	196	57.7	3.4

While the South has the fewest policies, it is possible that the entrenched perception that the South is culturally intolerant caused it to be avoided by those activists who were concentrating on what they perceived as more fertile territory in the Northeast and West. This is supported by the fact that it took 5 years for the Northeast to grow from 5 policies to 33, and it took the South the same amount of time, faster than the Midwest and West regions.

Figure 8 - Cumulative growth of policies by year and region

	1997	1998	1999	2000	2001	2002	2003	2004
NE	5	6	8	10	20	33		
Midwest	10	11	15	17	23	27	33	
W	6	9	10	12	14	25	33	
S	0	1	5	9	15	21	29	33

Red = 100%+ increase (increase from 0 not included)

In addition, looking at private employer policies, the South did not adopt any until 2002, whereupon it grew 500% in the following year.

Figure 9 - Cumulative growth of private policies by year and region

	1997	1998	1999	2000	2001	2002	2003	2004
NE	2	2	3	5	9	16	27	31
Midwest	1	1	4	4	7	8	16	20
W	1	2	2	2	3	6	11	17

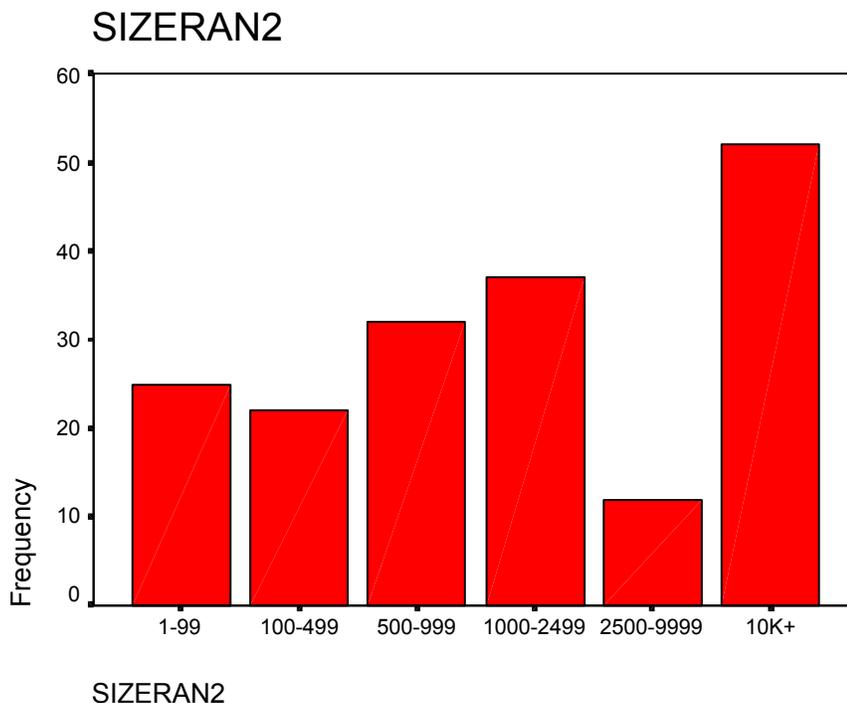
S	0	0	0	1	6	9	11	12
---	---	---	---	---	---	---	----	----

Red = 100%+ increase (increase from 0 not included)

Size and Economic Sector of Employers

There is a wide diversity of employer sizes.

Figure 10 – Transgender HR Policies by employer size



This chart shows the frequency of employers, grouped by employee size, with transgender HR policies. There are employers of many different sizes.

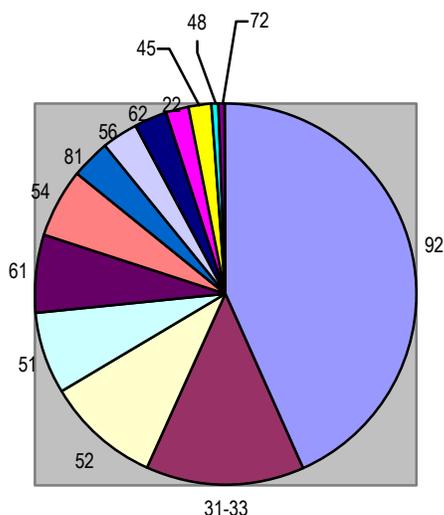
When one views the economic sectors from which these policies originate, certain sectors clearly predominate. This can be determined by using the North

American Industrial Classification System (“NAICS”), a system of approximately 25 industry classifications designed to allow comparison of economic and financial statistics. There are currently 111 private employers and 85 public employers found on the HRC list (HRC 2004a). These can be categorized into 13 NAICS classifications. (The NAICS classification methodology is discussed in Chapter 4.) Thus, there is an average of 15 firms per sector. However, as shown in the table below (by NAICS number and category), the number of firms in some sectors is disproportionately large, and in others disproportionately small.

Figure 11 - Number of THRP* employers by economic sector

	92 Public Administration	31-33 Manuf	52 Finance & Insurance	51 Information	61 Educ Svcs	54 Prof, & Tech Svcs	81 Other Svcs (exc Pub Admin)	56 Admin & Waste Svcs	62 Health & Soc Ass't	22 Utilities	44-45 Retail	48 Transp- ortation	72 Accomm & Food Svcs	Total
THRP employers	85	26	19	14	13	11	7	6	5	4	4	1	1	196

THRP Employers by NAICS Classification



The disproportionate dominance of a few categories may be easily grasped by looking at the pie chart. The half slice of blue on the top right represents public administration, followed clockwise by slightly smaller slices of manufacturing, finance and information. From these tables and charts, we can see the following industry trend:

- Disproportionately large numbers of transgender HR policies are found in public administration, manufacturing, finance, and information.
- The manufacturing, finance and information sectors comprise more than 50% of all the private firms with transgender HR policies.

The economic sectors with larger numbers of transgender HR policies tend to have 200 or more firms that are large (10,000+ employees), with a large regular workforce (1000+), many establishments, (10,000+ establishments) and higher than average pay and benefits (\$35,000+).

Figure 12 - Economic Sector characteristics: Size, regular workforce, number of establishments, average pay and benefits

	200+ big firms	1000+ regular workforce	10,000+ establishments	35K+ Pay & Benefits	THRP FIRMS
Manufacturing	YES	YES	YES	YES	25
Finance	YES	YES	YES	YES	14
Information	YES	YES	YES	YES	13
Professional	YES	YES	YES	YES	10

Services					
Educational Services	NO	YES	NO	YES	10
Other Services	NO	NO	YES	NO	7
Administrative Services	YES	YES	YES	NO	6
Health Services	NO	YES	YES	NO	5
Retail	YES	YES	YES	NO	3
Utilities	NO	YES	NO	YES	3
Transportation	NO	YES	YES	YES	1
Accommodations	NO	YES	YES	NO	1
Mining	NO	NO	NO	YES	0
Construction	NO	NO	NO	NO	0

There are important differences in the mechanisms of policy adoption at private employers and public employers because of the difference in governance structures. Private employers typically have centralized authority, whereas public employers typically have fragmented authority. Perhaps as a result, transgender HR policies at private employers were usually centrally mandated by the human resources department through the senior human resources official a year or two after the issue was raised by employees, during which the alternative solutions were studied. Senior management simply approved the action. In contrast, policies at public employers were usually mandated by legislative councils by majority vote some months or weeks after a council member or mayor raised the issue. The human resources department had no little or no say in the matter. Often, the law passed by the council also included a requirement that all employers in the jurisdiction follow suit. Sometimes, the law was passed not by the legislative council, but was mandated as an application of pre-existing public principles of fair governance by a court, to which

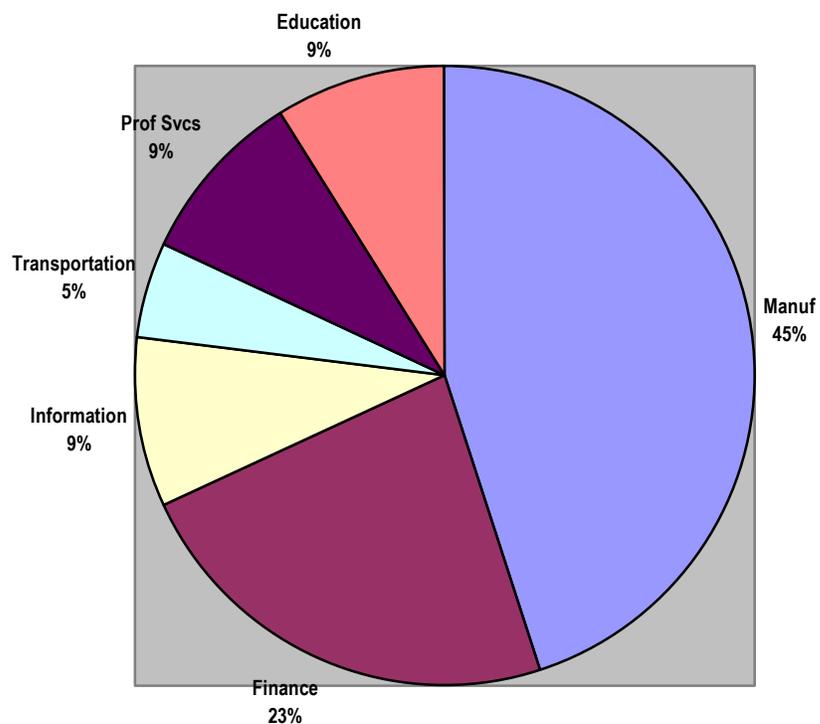
private employers have no parallel. Because of the obvious differences, I have analyzed public and private employers separately where appropriate.

When one looks at the private employers alone, 77% of these respondent firms are in the categories of manufacturing, finance and information, and they comprise 91% of the employees protected by all respondent firms. Thus, the sample interviewed is heavily weighted in favor of these NAICS classifications. This is useful because the population of firms with transgender HR policies is also heavily weighted in favor of these NAICS classifications.

Figure 13 - Sampled Private Employers by NAICS Classification

	31-33 Manuf	52 Finance & Insurance	51 Information	48 Transp- ortation	54 Prof, Scientific & Tech Svcs	61 Educ Svcs	Total
<i>Respondent firms</i>	10	5	2	1	2	2	22
<i>Percent of group</i>	45	23	9	5	9	9	100
<i>Respondent firm employees</i>	877,000	220,000	17,000	96,000	1100	700	1,211,800
<i>% Percent of group</i>	72	18	1	8	0	0	99*

*Error due to rounding



Law

Adoption of transgender HR policies by public employers is accomplished only by means of public law. It is not clear what the reason, but in every instance of adoption of transgender HR policy by a public employer, it has been accomplished by legislative enactment or judicial pronouncement. Thus, law and policy are synonymous for public employers. By contrast, transgender non-discrimination law

in the jurisdiction does not appear to be an important characteristic for private employers adopting transgender HR policies.

There were a number of statutes and judicial cases prior to 2000 that protected transsexuals from employment discrimination. There were, however, few employer policies. HRC provided me with data on the policy adoption dates of 80 private companies (HRC 2004d). Looking at both explicitly transgender-inclusive anti-discrimination statutes and case law, about the same number of private employers adopted transgender HR policies *before* the law as after the law.

Figure 5 - Policy adoption before or after enactment of law (includes case law)

Before	Same Year	After	Total
36	6	38	80

When one looks regionally, one sees the same effect in the Midwest, West and South.

Figure 14 - Policy adoption before or after enactment of law by region (includes case law)

	Before	Same Year	After	Totals
Midwest	13	0	7	20
W	8	3	6	17
S	7	2	3	12
NE	8	1	22	31
Total	36	6	38	80

In fact, adoptions by private employers *decreased* an average of 43% after the enactment of law. Where law does not precede policy adoption, law cannot be a cause of policy adoption.

NUMBER OF LAWS	17	23	28	33	39	55	67	71
PERCENTAGE CHANGE		35%	22%	18%	18%	41%	22%	6%

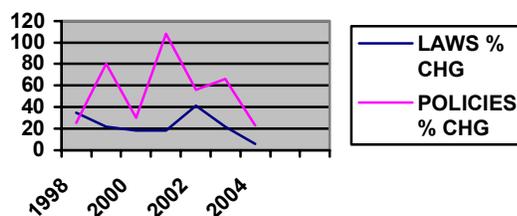
(Transgender Law and Policy Institute 2004)

Figure 17 - Cumulative Growth of Private Policies by year

	1997	1998	1999	2000	2001	2002	2003	2004
NUMBER OF POLICIES	4	5	9	12	25	39	65	80
PERCENTAGE CHANGE		25%	80%	30%	108%	56%	66%	23%

(HRC 2004a)

Figure 18 - Percentage Change of Laws and Policies



The law may have had some effect on private employer early adopters, but it does not appear to have been a major factor.

Conclusion

A number of findings about early adopters can be made from the available data: the number of policies is comparatively few but rapidly proliferating, there is wide geographical diversity, there is diversity of size and economic sector, and law is not a significant factor in early adoption. 196 U.S. employers have adopted policies,

of which 111 of these are private employers and 85 of these are public employers, such as states, cities, and school districts. Policy adoption began a rapid increase in 2001. California and New York together have 31% of the policies, but when compared to the number of employers in each state, the dominance of those two states disappears. There are employers with transgender HR policies in 11 of the 30 most conservative states (2004). When viewed by region, the Northeast has the most policies (65), followed by the West (50), Midwest (48) and South (33). There are more policies in the most populous states, and few in the least populous states. Disproportionately large numbers of transgender HR policies are found in public administration, manufacturing, finance, and information. Law is an important environmental characteristic for public employers, but is not characteristic of private employers adopting transgender HR policies.

Chapter 4. Methods and Methodologies

The research design of this project has been crafted for the purpose of exploring influences on the adoption of transgender HR policies by employers. It is a hypothesis-generative project. The conceptualization of “transgender HR policy adoption” is set out in chapters 1, 2 and 3. This chapter discusses the operationalization and research design.

Study Population and Sampling Frame

The study population is U.S. employers with transgender HR policies. The unit of study is employers. I conducted interviews with 46 respondents who provided information about 33 organizations. All respondents had knowledge of the adoption of transgender HR policy at their employers, and some had knowledge of more than one employer. The respondents had a number of primary* roles: 13 were human resources managers, 12 were employees involved with employee groups or committees that advocated the policies, 11 were transgender employees, 5 were elected or appointed public officials, 2 were senior management, and 3 were lawyers involved in drafting policies. With regard to the transgender employees, the determination of transgender status was made by means of self-identification. While participants were not asked about their gender identity, these respondents noted during the interviews that their connection with the policies came as a result of their gender identity.

* I refer to the primary role because some of the respondents had more than one role. For example, some of the public officials were transgender, some lawyers were public officials or transgender, and (con't)

Because there is no centralized location where employers report the adoption of these policies, I used several sampling techniques to identify these employers, including a census of a directory of a non-profit organization, a convenience sample at a GLBT conference, and snowball techniques by contacting academics and activists.

First, at the time this study was commenced in 2003, and during the subject recruitment phase, there were approximately 123 U.S. employers with transgender HR policies on a publicly available list created and maintained by the Human Rights Campaign, America's largest gay, lesbian, bisexual and transgender advocacy organization. All employers were contacted by phone and asked for the name of the person in charge of Human Resources. Many employers would not give out the information, and I assembled a list of the names and addresses of 60 human resources officials. During June through August 2003, I sent a letter to these contacts on department letterhead requesting assistance in a study taking place at Northeastern University regarding the adoption of certain types of non-discrimination policy. The letter noted that the project involved telephone interviews* with human resource management personnel, and that employer and employee information would be kept

some of the transgender respondents spoke on behalf of employee resource groups.

* While face-to-face interviews would increase data quality, telephone interviews were substituted because the Northeastern University Institutional Review Board refused to consider the application until it received permission of an authorized representative of each employer to whom a request for participation would be sent. It was determined that obtaining such permission would unacceptably lower the response rate and delay the research.

confidential. Because of the social milieu surrounding transgender issues, this confidentiality is important both to attract study participants and to give them the freedom to make controversial statements. I followed up the letter with a telephone call approximately one week later. The 60 letters directly resulted in 12 interviews with HR personnel, a response rate of 20%. In addition, the list also provided contact information for the GLBT employee resource groups in these organizations. I sent letters to those groups and got 4 interviews.

I attended the 2003 conference of Out and Equal Workplace Advocates, a group that champions safe and equitable workplaces for Lesbian, Gay, Bisexual and Transgender people. The conference was held in Minneapolis, Minnesota in October 2003. I made 8 contacts there that resulted in interviews.

The remaining 22 interviews came from snowball sampling techniques. I sent the standard letter in an email to academics and activists I knew personally and asked if they had any useful contacts. I also requested, at the end of each interview, other contacts with knowledge of policy adoption at U.S. employers.

Sample Composition

The employers in the sample represent a number of different economic sectors. The HRC list provides a breakdown of economic sectors, but does not follow the standard North American Industrial Classification System (“NAICS”). NAICS is

the classification system used by US industry and government agencies. It is a system of approximately 25 industry classifications designed to allow comparison of economic and financial statistics (U.S. Census 2004). The employers with transgender HR policies fall into 12 NAICS classifications.

The table below sets forth the number of sampled respondent employers in each NAICS classification.

Figure 19 – Sampled Employers by NAICS Classification

	92 Pub Admin	31-33 Manuf	52 Finance & Insurance	51 Information	54 Prof, Scientific & Tech Svcs	61 Educ Svcs	48 Transp- ortation	Total
<i>Respondent firms</i>	10	9	5	3	3	2	1	33

These comprise only 9 out of the 25 NAICS classifications. The largest number of employers is in public administration, which includes all governmental functions. Public employers have a disproportionately large number of transgender HR policies. While public employers are approximately 2% of all U.S. employers, public employers with transgender HR policies comprise approximately 40% of all employers with transgender HR policies. At this point in the analysis, we have not yet seen any evidence explaining this disproportion, but as shall be explained, it may relate to the great differences in policy adoption mechanisms between public and private employers.

Sampling Bias

Many employers contacted from the HRC list did not respond to the initial letters and telephone calls. Those who did often indicated that their employer had a strong reaction to the publicizing of the policy, mostly positive. Those who responded through snowball sampling methods, and who were present at the conference, were often motivated by personal ideological investment in transgender issues. Some felt that their participation portrayed their employer in a very positive light. A few portrayed their employers in a negative light, and expressed the opinion that they felt their participation in the study might persuade their employers to treat them better. The results are skewed in favor of employers that have a reason to make their policies public, perhaps because they view the policies as an important part of their public image or because there are ideologically in favor of GLBT rights, such as non-profit employers. This may overrepresent employers who are sympathetic to or wish to appeal to the GLBT community, and underrepresent employers at which transgender HR policies were adopted with more controversy or more grudgingly. This may account for the fact that the sample included so many public employers and manufacturers.

Interview Protocol

Prior to the interview, potential respondents were sent an informed consent document approved by the Northeastern University Institutional Review Board, which they were required to sign and return. The document was reviewed over the

telephone with potential respondents, and any questions or concerns were addressed. The text of the document is reproduced in the appendix.

I used the method called “standardized interviewing,” in which respondents are asked a series of fixed questions, and probing is liberal, but generally limited to clarification of the answers, providing requested feedback to the participant, or probing for more detail when the answers are too general to be useful. The goal of this method is to direct the interview to the specific topic of the influences on the adoption of the policy and to permit comparison of answers to the same questions. At the same time, it maximizes interviewees’ freedom in choosing how to respond. It also lowers the effect of social desirability and social acquiescence by reducing the ability of the interviewer to give or receive indications of desired responses.

The participants were interviewed for approximately one half-hour in a single session. The interviews were taped. The questions were intended to operationalize influences on the adoption of transgender HR policy. The interview consisted of preliminary statements followed by 17 questions. These are reproduced in the appendix.

The interviews were transcribed and analyzed for influences on the policy adoption process. The transcription preserved non-standard English and verbal hesitations, such as “um” and “y’know” because these contain important information about the comfort level of respondents with the subject matter under discussion.

Influences on policy adoption were determined by identifying several broad themes that occurred in various interviews. These themes were then coded, and the transcripts re-analyzed to determine the presence of these themes for each employer. Wherever respondents are quoted, names, genders, and places have been freely altered, without changing substantive content, to preserve confidentiality.

The data for each employer was entered into a spreadsheet using SPSS, a computer program titled “Statistical Package for the Social Sciences.” Data was obtained from interviews and public sources. I was able to obtain data on the policy adoption dates of 188 employers from HRC. The variables used were:

- year of policy creation
- year of enactment of law, if any
- economic sector
- number of employees
- known number of current or former transgender employees
- attributed cause of policy adoption
- attributed benefit of policy adoption
- bathroom use requirements of transgender employees
- whether it was permissible to wear clothes of the opposite sex if the employee did not intend to change sex
- the presence of the gender identity policy on the employer website

Separate spreadsheets were created listing the data for each private employer and the data for each public employer. Where data for respondents from the same employer differed, a determination was made as to a single appropriate response. These three spreadsheets were used to compare and contrast the respondents and their employers.

The use of these methods was guided by the nature and purpose of the study: exploratory research to determine influences on the adoption of transgender HR policies by U.S. employers. These influences, although set out and analyzed in great detail here, are only a beginning point for research into the adoption of transgender human resources policies. It is to be hoped that the results here will be seen as useful to conduct more generalizable research.

Chapter 5. Employer Beliefs About Policy Adoption

In the following pages, I shall set forth some of the salient portions of the confidential interviews illustrating the beliefs of employers and the experience of employees regarding the adoption of transgender HR policies. Wherever respondents are quoted, names, genders, and places have been freely altered, without changing substantive content, to preserve confidentiality.

The employers being discussed here are “early adopters,” that is, they are in the forefront of a rapid trend. Later adopters may be influenced by other factors than those highlighted here.

The Ethics of Tolerance

When asked why the policy was adopted, the overwhelming majority of the respondents indicated that the transgender HR policies were created as a result of an ethic of tolerance. In plain language, protecting transgender employees is “the right thing to do.”

...being ethical and right about how we treat our colleagues and peers...(EGS)

It was created in an attempt to make sure that all students and guests and

employees are protected and feel comfortable working here...(EGS)

...we've always sort of been on that leading edge of being a liberal accepting tolerant company and I think it sort of helps us maintain that place...(MU)

...the manner in which we've been operating has been consistent with a policy that we have established and that we treat employees fairly and that gender identity is not used as basis for discrimination, but we wanted to make the policy change just to kind of formalize that...it creates a more diverse workplace, and also a workplace that is respectful of individual differences which we always want to accomplish. (CQ)

...we always treated them with respect, made sure that they were in a safe environment and that they were not discriminated against and even although we were acting fair and doing the right thing, there was a feeling, with the growing number of transgender people, and it was becoming more visible in society that it was important to actually add it officially into our statement. Also, the company does like to say, y'know, as a diversity leader...(JDP)

...the policy was actually created to be more inclusive of all of our employees...(NQW)

...it provides some kind of... a sense of wellbeing...(VL)

...because the town is, y'know we call it the liberal bastion of the state, but...and they said y'know what, if we're going to say that and we're going to feel that way, let's go ahead and demonstrate it and make some policy...(UWF)

...this tells them, hey, we are with you 110%, we're going to support you, and we're going to make sure that you're protected...(BC)

The Business Case

At the same time, most respondents also espoused the efficiency theory, citing

a “business case” for the policy.

...it was also a matter of creating a business case that showed that um this is where the diversity leaders in the industry were heading in terms of y’know, other companies were doing this, and we gave some feel for the return on investment in terms of the visibility with um HRC Worknet and those types of metrics... I was able to show...it’s become like the latest indicator of a cutting edge diversity leader. (JP)

...I think that makes for an overall more healthy work environment, and gets the idea that we’re a business, we’re trying to get the best possible talent to achieve specific business objectives...(BXD)

So basically it’s driven by the marketplace as a whole... You know, I think customers out there like to do business with progressive companies that have good HR policy, and so it assists us in terms of our selling and marketing efforts, and having a good name out there in the community. And then it helps us recruit talent...(JDP)

...I think that most companies more likely act when moral issues are also in their business interest...often if you can tie it into marketability, the profitability, the other things that speak more to a for-profit corporation, you have a better chance of success...(KN)

I think it makes us um a workplace of choice for people who are um transgender certainly and also for other people who care about the issue like, the gay community, which has always been true of our company that um we have domestic partner benefits and we've always sort of been on that leading edge of being um a liberal accepting tolerant company and I think it sort of helps us maintain that place. (MU)

...if we're really serious about attracting and retaining the best possible talent, this makes sure that people who happen to be transgendered are included in that pool. (BXD)

From my perspective, it is um, it's a recruitment tool and it's a retention tool. (EGS)

...if people in that community look to companies having gender identity as a

metric of their fairness and equality in their hiring, and retention, they look to that text, just as they used to look for the presence of domestic partner benefits, it's become like the latest indicator of a cutting edge diversity leader. *** in that regard I was pointing to recruitment and retention of employees.

An employment law attorney, who advises many businesses on HR policy, illustrates the synergy between the business case and the ethics of tolerance. This excerpt shows the conflation of ethical and business considerations.

R: [there's a] recognition that the policies make them more marketable, show them to be a compassionate and caring employer and I think there's a moral component, and a business component to it. I think that's of greater concern, because there's so many companies that are starting to do this and the laws don't require it.

I: Which one's the greater concern?

R: The moral um business case for doing this is a greater concern, in other words the fundamental fairness issues, that employers want to be seen and market themselves as being fundamentally fair to people regardless of what the law states.

Q: Well, it's interesting that you put the moral issue together with the business case, do you see them as essentially the same, or

R: *** most companies more likely act when moral issues are also in their business interest and so that's why I try and put it in both perspectives to an

employer

Along these same lines, HRC recently issued a report entitled “Transgender Issues in the Workplace: A Tool for Managers” (HRC 2004b). This report is carefully thought out and based on empirical research with managers and transgender employees in organizations that have adopted transgender HR policies. The third section, after the introduction and glossary, is entitled “The Business Case.” It provides six pages of information justifying transgender HR policies based solely on business considerations. While it gives a nod to equity issues, it derives from the efficiency theory of organizational action.

While motivated in part out of concern about workplace fairness, both private and public sector employers are incorporating protections for gay, lesbian, bisexual and transgender employees because they see it as a business imperative and as an important component of their diversity initiatives.

Employers that develop and implement workplace strategies that address discrimination against transgender employees can enhance corporate reputation, increase job satisfaction and boost employee morale. Results can include increased productivity, reduced turnover and decreased vulnerability to legal challenges.

The respondents indicated that activists have used this “frame” to convince

employers to adopt transgender HR policies. However, it is unlikely that an employer actively resistant to such policies would be convinced by efficiency arguments. In fact, such an employer would be more likely to raise efficiency arguments *against* transgender HR policies. In fact, a number of respondents indicated that efficiency arguments were raised against policy adoption.

The simple fact that the number of “out” transgender employees is miniscule demonstrates that direct technical or economic efficiency is not a plausible argument. The paucity of known transgenders was raised in a number of respondent’s companies as an argument against transgender HR policy.

The, the lawyers were also coming from a very...scientific or statistical, well how many people, how much, and I told them the number was immaterial, and the issue of an employer of choice transcends numbers...(QTX)

As part of this research, respondents were asked if they were aware of any current or former employees of their employer who identified as transgender. While no respondent’s employer kept records of the number of transgender employees, the respondents were each in a position to know transgenders at their employers. Their responses varied from 0 to 24. None of the public employer respondents knew of any transgender employees. In total, the 22 sampled private employers had a total of 124

known current or former transgender employees. (Where there was more than one respondent per employer, the responses were averaged to obtain a single response per employer.) The average number of known transgender employees in this sample was 5.6. Employees per firm averaged 55,322. Known transgender employees were 0.1% of employees. Whatever the justifications for transgender HR policy may be, it is unlikely that direct efficiency is one of them.

The Legitimacy Connection

Some respondents suggested that transgender HR policies assist in recruitment and retention of non-transgender employees. QTX is a large financial sector firm that added “gender identity” to its nondiscrimination policy in early 2003. In general, it would not be inaccurate to say that it is a firm with a conservative approach to finances, and perhaps to social issues as well. The idea of including transgenders in the non-discrimination policy was initiated by the human resources department, and a “chief diversity officer” hired from another company with a transgender policy. While the CDO had hoped that the gay and lesbian employee resource group would advocate for the policy, that group decided to concentrate on other issues it considered more important. The initiative lingered for two years, and did not appear to have any momentum. It was accelerated in both time and importance, however, by the discovery that a key employee was going to transition. At this point, the HR department became the major advocate for the policy. At QTX, when asked about the benefits of the policy, they linked transgender HR policy to non-transgender

recruitment/retention. The following excerpt illustrates the subtle and inchoate connection between the policy, recruitment/retention and non-transgender employees.

The policy confers legitimacy on the employer.

HR (Human Resources Director): Yeah, well, well I think there are several perspectives with how this has benefited us. Number one, internally um uh people who are truly um proponents of this uh once it became public that this had become part of our, our policy, I mean they were very very happy. Um, and I also think that um uh externally one of our transgender employees... has been um asked to do a lot of speaking about uh her transition, and her experiences and in some of those comments she's able to say that we are one of those employers who have this as part of our nondiscrimination policy. And that's a very positive thing for us, particularly given the audiences that would invite her, to, to speak, so we're getting a lot of um, uh positive uh buzz, both inside and outside the organization, for having done this.

CDO (Chief Diversity Officer): And one of the events was in fact even before the policy was, was signed off on was uh the conference board had a tough issues conference, and I'm part of the conference board council on diversity, so we positioned her, every year we have an executive speak quote unquote from the trenches, so we've had CEOs and other high ranking executives and they just talk about what their work life and experience is like and in her (inaudible) position as an executive, not as a transgendered employee, it was just, she was an executive, and so there was no um uh indication in any of the

literature uh about her specific situation, and so she just kind of dropped it on the crowd after she talked about her role *** and then it had a positive effect or a, some kind of effect on the, people listening.

HR: Yeah it did, both in terms of how they viewed her and how they viewed the firm she works at, yeah, absolutely.

CDO: And it led to an article in the press, because that reporter happened to be sitting in that session. It was very positively received that y'know...

HR: Yeah, that's true, that's very true.

CDO: Well, I received a call from the chairman.

HR: And I did as well, and uh y'know that's gotten a lot of, of publicity again, very positive, is for for the firm. Uh, the chairman called me, uh, I had not seen the article yet, and he called me just to tell me that he had seen it and he thought it was great, he commended me for a job well done, I mean, I mean it didn't hurt for my own career either, that it happened the way that it did, so...

CDO: Yeah, y'know it boils down, employer of choice externally but internally how people feel about the company, and that the company cares about y'know all of its employees. That's what we're really striving for. Y'know, we get a lot of external recognition around here for some things we have in place but what we really want are people inside to feel, feel that the company really is supportive and does value them.

Policy advocates also refer to the legitimacy connection. XE is a small firm

providing public relations and marketing services for corporate and nonprofit clients. One of its specializations is gay and lesbian marketing efforts. The business of the firm involves suggesting methods to its clients to make them appealing to the GLBT market, including adding “sexual orientation” and “gender identity” to their HR policies.

The respondent, the president of the firm, noted that transgender discrimination is beginning to be raised as an issue for companies of all types. The benefits of the policy were articulated as “it insures that people in our company, who work for our company are educated more about what this issue is and why they should care about it.” He viewed the policy as reinforcing the identity of the firm as one specializing in the transfer of cultural legitimacy to its clients. Thus, the value of the policy to this firm lies, in the view of this respondent, in having people who are educated about this form of cultural legitimacy, which can be transferred to clients and which will increase the revenue of its clients.

The policy was adopted after he attended a seminar in April 2002. He made the change immediately after the issue was called to his attention. Sexual orientation protection was included when the firm was started in 1993, but gender identity protection was not included because “it wasn't on our radar screen because we didn't have anybody at the company that it affected....back then when we founded the company 10 years ago there wasn't an awareness nor was there a visibility for gender identity and expression....” It appeared on the radar screen when “we were briefed by

members of the transgender community about the issues in the workplace at a seminar that happened two years ago....It wasn't until I heard Riki speak about a year and a half ago...where I got it....”

Riki is activist Riki Wilchins, executive director of GenderPAC, a public advocacy organization devoted to transgender issues founded in 1999. The respondent immediately took steps to add gender identity to the policy. He notes in particular what motivated him to action: “I've become quite aware that gender identity and expression is the core of why gay people are discriminated against, not because of their sexual orientation. It's because of our diverse...it's because we differ in our gender expression, that we're not male enough men or feminine enough women which is why people first will single us out as not being part of the norm. It's not who we have sex with. So um which I've come to appreciate from Riki Wilchins from GenderPAC.”

Although information on transgender issues was available in the area years prior to the firm's adoption of its transgender HR policy, the policy was not adopted at that time. For example, as early as 1994, a paper widely read in the community reported on the suit of a transgender woman claiming that she was fired from her job because she looked too much like a man (Washington Post 1994). Later that year, an appellate court held that a statute prohibiting discrimination on the basis of “personal appearance” could cover the employee's suit (although it dismissed her claims for discrimination based on sex and sexual orientation) (Underwood 1994). Indeed, the

respondent's statement that "it wasn't on our radar screen" does not deny that he was aware of the existence of transgender issues, but rather implies that he did not accord them the significance he later attributed.

The respondent's statements frame transgender HR policies, in his own company and in other employers, in terms of legitimacy conferred by the adoption of the policy. For example, he pointed to a press release in late 2003 stating that "The total buying power of the U.S. gay, lesbian and bisexual (GLB) population in 2003 is estimated at \$485 billion." The basis for this estimate is not given, and its accuracy unknown. The press release continued: "Given the growing visibility of the gay consumer dollar, [he] noted that corporate America is paying attention as shown by the popularity of new television trends such as Bravo's "Queer Eye for the Straight Guy," and innovative marketing campaigns by many Fortune 500 companies to target same-sex households one in five same-sex households have children under the age of 18, and usually have needs similar to other families, while single gay men tend to be early adopters and often enjoy upscale products." The important point illustrated by XE's use of transgender HR policy is that the policy demonstrates cultural competence and legitimacy.

Opposing Discourses

At the same time that employers seek cultural legitimacy from transgender HR policies, those policies also invoke cultural illegitimacy based on the social opprobrium long faced by transgender people. There are opposing cultural discourses

at work here. Many advocates for transgender HR policies faced daunting opposition, not from senior management, and not from the rank and file, but from their legal departments. Opposition was not based on the probability of specific legal risks, but upon the cultural understanding of the lawyers. This opposition illustrates the tension between legitimacy and illegitimacy caused by the intrinsic ambiguity of transgender identity. At QTX, the legal department posed a number of concerns about the adoption of the policy, and there was an extended negotiation between the two departments. That negotiation shows the opposing cultural discourses, and how each views transgender HR policy. Here are the CDO (Chief Diversity Officer) and the head of a Human Resources Office (HR) discussing that negotiation:

CDO (Chief Diversity Officer): the lawyers were coming from jurisdictional perspectives, uh, we were coming from a basic employer of choice, so to the issue of primary motivator for us, y'know we want to be an employer of choice, uh, we felt it addresses issues relevant to productivity, uh the talent that we need to be competitive in the marketplaces that we uh compete in and just the fact that it engenders a great deal of employee uh trust and loyalty when you put uh y'know uh subjects such as gender identity in a non-discrimination um policy, people feel that um populations that are not represented in great numbers if we are concerned about them, that we're concerned about basically everybody in the work force. *** Yeah there was opposition, basically from our lawyers, uh, this was, y'know, if, if I can give you the thumbnail, it was 18 months working it through our lawyers and a 20

second discussion with the chairman who y'know totally supported it. Interesting, huh? Y'know, so, y'know that was uh, y'know their issue was, y'know adding to a non-discrimination statement uh, uh, items that do not apply on a nationwide basis creates enforceability that we don't necessarily have, so my counter was well our policy's always provided a broader base of uh protection and then went through the specifics of Title VII, and Title VII doesn't cover sexual orientation, disability, marital status, harassment, intimidation, other things that we have in our nondiscrimination policy, uh y'know in order to just kind of reinforce that y'know we know the law as well as you do, and we put other things in our policies. They were going back to I think you mentioned to jurisdictions and y'know two states, Minnesota and Rhode Island are two states that have it currently and a lot of other smaller jurisdictions, but uh they were saying why, y'know we have protections for people in our current policy, why do we need to expand it, and that, the employer of choice argument kicked in.

I: When you say they have protection for people already, what were they referring to.

CDO: Well, any kind of harassment of any sort any kind of intimidation is covered, so if there was any issue, in fact that was my initial concern when the internal group raised the issue, uh, my initial concern, is there anybody in the workforce that's encountering issues because they happen to be transgendered, and the response was no, we don't know of anybody, just we thought it would be a positive thing to do. The, the lawyers were also coming

from a very uh...scientific or statistical, well how many people, how much, and I told them the number was immaterial, and the issue of an employer of choice uh transcends numbers. ***

I: Okay, so what are the drawbacks of the policy for the company?

HR: I, I don't really see any drawbacks, y'know, if you want I could share legal's perspective, but I, I think it's not a very valid perspective.

I: What's, what's their perspective?

CDO: (laughter) Well, y'know, there's another benefit, Jill, if I may...

I: Sure

CDO: It gave me the opportunity, especially as I was working these issues with our, our lawyers, to really let them see some of their own biases in the process. So, y'know it was sort of a side issue but part of my job is to do coaching for the, for the most senior folks, do one on one coaching and this was an opportunity to really uh work it through and let me, I'll give you the example. Uh, we had a series of meetings with the lawyers that finally was meeting with the head of HR, the lawyer, and uh y'know it was almost like point counter point, it was like a poor Saturday Night Live sketch (laughter) and I think I was Jane Curtin, but uh, the lawyer said, well y'know, here's why we can't, we already have protection, why do we need to do this, how many people are there, da da da da da, and then got to the point well, y'know, what if I showed up tomorrow, this is a man, in a dress and lipstick. And I said, well, y'know, this is like the, the third time he used this, so, typically I was trying to work with him one on one, but I said, well number one,

obviously my attempts to educate you regarding the distinctions and differences between crossdressing and gender expression and identity have been y'know been fruitless because you still keep bringing this example up, but then I got to the point where I said, y'know, what's the underlying assumption, uh, that concerns you, y'know, so what's the underlying assumption behind that statement, and then I used a couple of examples, uh, one of the corporate officers happens to be an African American woman. I said, so, in the past, African Americans were not welcomed into the workplace, from what I understand, I've only been here for five years, because they were deemed to be too aggressive. Y'know women weren't necessarily welcomed because people perceived them to be a distraction to men, gays and lesbians weren't welcomed because it was perceived they might hit on the straight folks. So I said, so tell me, what's the underlying assumption behind your expression, behind your statement, and so that, y'know, although I y'know tried working this person in a variety of ways, y'know, y'know it was one of those moments of truth where y'know, do you have a legal basis for your argument, or is this a personal bias coming to the surface?

Public Employers: Revitalizing the Labor Force

Public employers adopting transgender HR policies show similar patterns. Non-discrimination policies are viewed as a means of attracting a highly educated labor force, a larger business tax base and a more affluent population. This is referred

to as the 3T's formula, which stands for Technology, Talent and Tolerance (Florida 2003). The gay population has been used, in this connection, as a measure of the "creative class" within geographic areas and as part of an index to determine their attractiveness to high-tech businesses. The creator of this index, Dr. Richard Florida of Carnegie Mellon University, is a sought-after lecturer and consultant for cities seeking to revitalize, and his theory is named as number 2 on Harvard Business Review's list of breakthrough ideas for 2004. (Richard Florida Creativity Group 2004)

The town of BNO adopted a proposal including "gender identity" in its human relations ordinance in May, 2002, affecting both municipal and private employees. The ordinance was not adopted in response to specific concerns about any transgender employees. In fact, there are no known transgender employees for the municipality, and "gender identity" was not the primary focus of the policy adoption in this case. It was added as an afterthought to a proposal to add "sexual orientation" to the human relations ordinance, at the request of two gay organizations supporting the "sexual orientation" proposal. These organizations provided the language used in the ordinance, and it was apparently used without change from the original. Its benefits are perceived as being a "benchmark for major employers" and making a "statement" to national and international employers and their employees at a time when some employers are leaving the area. The policy has been heralded to the local gay community. However, while there is some talk of sending a bulletin to major employers, they are waiting until the election cycle is over. While the language

adopted included a definition of gender identity, the definition itself is a bit confusing, and the meaning is unclear to the person who has the job of enforcing it, particularly with regard to bathrooms and crossdressing. There were disagreements before the ordinance was adopted as to what situations it might cover, but there was no resolution of these issues. In fact, after the human relations ordinance was amended, it was not perceived to be necessary to take the official step of including it in the administrative personnel policy of the municipality. However, it has been added to the EEO statement included on publications and job advertisements. The only concern expressed about the policy is its vagueness and the need for testing in the courts. There was opposition to the proposal generally, but the opponents did not perceive gender identity as different in any important way from sexual orientation, and the opposition was primarily against adding sexual orientation. He disparaged the opposition as religious fanatics. In fact, the proposal was a bipartisan effort, and the person who shepherded the proposal through the council was a conservative Republican, who did so because this was “one of the Mayor’s issues.”

The small town of OJ is an old town, settled in the early 1700s. The town’s main business now is its shopping and tourism industries. It now attracts many to shop for antiques, art, crafts and curios, and has “bed and breakfast” inns, fine dining, and a nearby vineyard. It has 200 art galleries. It conducts historical tours, boat rides on the nearby river, and carriage rides. It also has symphony, ballet, theater and other cultural landmarks not found in the larger surrounding area. It is generally considered a very tolerant place, and has many gay residents. It boasts that it offers its visitors the

experience of escape into the arts.

The respondent explicitly stated that the town did not need this policy, as there is no discrimination against gay people in the town, and a number of town officials are gay. Rather, he viewed as a “political statement” designed to hold the town up as a model of tolerance to the rest of the state. This tolerance was viewed as attracting business to the town in the form of shopping tourists.

A public official in another city had similar thoughts:

R: Well I think it's showing that it is an inclusive place for employees and we believe that over time it will bring businesses here because there is going to be a more diverse, more open workforce in the area...One of the reasons it did pass unanimously, and we did have some of the businesses step in and say, y'know this is important to us, we've been (inaudible). Just last month, um we had the city council pass an ordinance adopting the state's first ever domestic partner registry. Besides passing unanimously with no discussion whatsoever on the floor when it came to a vote, because we had kinda y'know really worked out (inaudible), we had letters of support from the major businesses in town, not only the larger employers but then also from some of the more, the smaller yet more powerful or influential businesses as well, and there was absolutely no problem, all of the council, and we do have a partisan council, some democrats and some republicans, and it went through absolutely, with great support. As a matter of fact, it was originally, a draft was approved,

back in May, and the only comments that were made were several of the council persons felt it was necessary to speak out in support to get it onto the record.

The clearest statement was by this respondent from QJL:

R: And you know what? That brings people into the city...to live, I mean, not as tourists...Look, we have gay people living and thriving here, who feel comfortable opening up businesses, buying houses, raising families ...all of the economic benefits. I mean the gay and lesbian community in the city has grown to be that part of the city that is the most adventuresome in terms of rehab-ing neighborhoods, and not without controversy, because it means moving people out. But at any rate rehab-ing neighborhoods, opening up businesses, I suspect without knowing that half the new restaurants in the city, it's like the eating capital of the east coast now, are owned by, by typically, gay men, I mean, these are the guys opening up restaurants, and so if that brings money into the city, we have an active gay tourist bureau in the city, and gay people come to the city that have money, so they're spending money, raising revenues, paying my salary, which for my grandchildren is very important. So the overall economic benefit to the city is anytime you have a situation where you broaden the number of people who feel comfortable living and working and doing business in the city, the more people are going to be living and working and doing business in the city. Simple as that.

The needs spoken of by these respondents are not the needs of transgender employees, but needs of the employers themselves. The interviews suggest that the policies are intended to benefit employers by conferring a legitimacy that, among private employers, serves recruitment and retention of non-transgender employees, and among public employers, serves to create an environment that attracts an educated labor force, the businesses that require them, and the money that will hopefully follow. The needs of transgender employees are secondary.

Public statements of corporate executives back up these conclusions. Here are excerpts from some statements listed on the HRC website. I note that these are excerpts from the statements, and the website should be viewed for fuller context.

Public excerpts from "Corporate Statements on the Corporate Equality Index"

"We view diversity as a business opportunity, one that helps us be a stronger company and a stronger partner for our customers worldwide."

Phil Harlow, Chief Diversity and Employee Advocacy Officer, Xerox Corp.

"The contributions that are made by the IBM members of the GLBT community accrue directly to our bottom line."

Ted Childs, Vice President, Global Workforce Diversity, IBM Corp.

"Our success as a Firm is entirely dependent on the quality of our workforce,

and focusing on being the Firm of choice for the very best people from the widest available pool of talent is critical to our continued success."

Joseph M. Gregory, Chief Operating Officer, Lehman Brothers Holdings

"Without question, workplace diversity is a business imperative for NCR."

Robert Driessnack, Chief Financial Officer, Retail Solutions Division, NCR Corp.

"Doing so makes us better able to hold on to our very best employees, take great care of all of our customers, and helps American to compete and win in the marketplace."

Debra Hunter Johnson, Vice President-Human Resources, American Airlines

"We're firm believers that it takes the talents of many different people to grow and succeed."

Rosalind Hudnell, Global Diversity Manager, Intel Corp.

(HRC 2004c)

These statements all allude to the profit to be gained from these policies. This is, of course, no criticism. Profit is the purpose of a business corporation under our system of free market capitalism, and the adoption of transgender HR policies is no exception. In fact, such policies are now considered a necessary concomitant to

profitability in the future by many top company officials. Carly Fiorina, CEO of Hewlett Packard, has spoken of this issue, opining that the root of economic problems experienced by Silicon Valley companies is the fact that diversity is not a hiring priority, and the limited perspective of hiring managers. She noted that companies with a high degree of conformity stifle creativity and attraction of new talent. It is not enough to tolerate differences; rather, they must be embraced. She said diversity is not a choice, but a necessity because of the insufficient number of college graduates for the technology industry. It is necessary to delve into underprivileged classes to fill the company ranks (Fiorina 2000, 2003).

Policy Influences

The respondent employees were asked 17 questions. The questions and the procedures employed are detailed in Chapter 4. For the present purpose of determining influences on policy adoption, the most significant questions were as follows:

- Why was this policy created?
- What were the steps in the creation of this policy?
- What are the benefits of this policy for your employer?

While these three questions request different information, influences on policy adoption run throughout the answers to all three.

Attributed Causes in Private Employers

Respondents attributed various causes to the adoption of transgender HR policies. “Attributed causes” refers to the respondent’s expression of belief as to the causes of policy adoption. It is clear from the data that there are multiple influences on transgender HR policy adoption. However, respondents tended to take a simple view of causation. These beliefs are important to the adoption of transgender HR policy. I identified four types of attributed causes in the answers of the 31 respondents at private employers: “employee(s) in transition,” “request by non-transgender employee(s),” “request by external advocates,” and “request by HR”. “Employee(s) in transition” refers to the presence of an employee or employees who were known to officials of the firm to be in transition from one sex to another. As discussed in Chapter 2 above, some define the process of “transition” to refer specifically to the short time surrounding surgical intervention, but others refer broadly to the entire period prior to living in the opposite sex. Thus, there can be no rigid definition of “transition,” and I use it here in the broadest sense. However, the mere fact that there were employees in transition at the respondent’s employer does not mean that such employees were the sole cause of the policy adoption. In fact, a number of respondents stated that the employer had considered policy adoption prior to its knowledge of an employee in transition, and the policy was adopted only after it became aware of the presence of such employees. I assigned “employee(s) in transition” as the attributed cause of the policy adoption only when the respondent’s statements indicated that this was the most direct factor affecting the decision to adopt the policy.

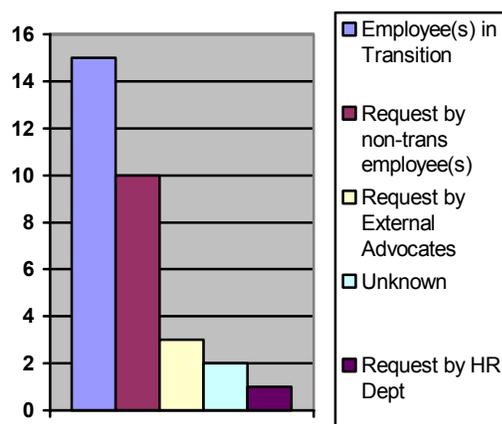
I note that “employee(s) in transition” does not mean that these employees made any explicit request to the employer to create such a policy. In some cases, the human resources department decided *sua sponte* to propose such a policy, or non-transgender employees, who were not part of the human resources department, advocated the adoption of such a policy to the human resources department. When these two situations were the attributed cause of the policy, I coded them as “Request by HR” and “Request by non-transgender employee(s).” “Request by HR” includes proposals from the official “human resources department” and from committees or task forces with HR functions at those firms. “Request by non-transgender employee(s)” usually, but not always, refers to a GLBT employee resource group that advocated policy adoption to the human resources department. “Request by external advocates” refers to advocacy by persons not employed by the firm. These include transgender activists and advocacy groups. There were two instances in which the respondents attributed no cause. I have listed those as “unknown.”

As shown in the table below, the most common attributed cause by far was “employee(s) in transition,” followed by “request by non-trans employee(s).”

Figure 20 –Attributed Causes of Policy Adoption

<i>Attributed cause</i>	<i>Frequency</i>	<i>Percent</i>
Employee(s) in Transition	15	48
Request by non-trans employee(s)	10	32
Request by External Advocates	3	10
Unknown	2	6
Request by HR Dept	1	3
Total	31	99*

*Error due to rounding



The table below shows the causes indicated by the respondents in the three economic sectors with the most policy adoptions. (This was done by respondents, rather than by employers, because respondents within the same employers sometimes indicated different proximate causes.)

Figure 21 – Attributed Causes by Economic Sector

	Employee(s) in Transition	Request by non-trans employee(s)	Other	Total
Manufacturing	6	4	0	10
Information	3	1	1	5
Finance	2	3	2	7
Total	11	10	3	22

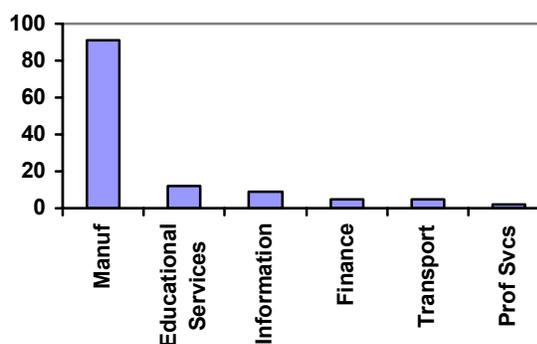
Most of the respondents in manufacturing and information indicated that the cause of policy adoption was employees in transition, whereas the respondents in finance indicated a number of different causes. From this table, it appears that the manufacturing and information sectors have more employee transitions than other sectors, although finance, despite its adoption of a number of policies, does not. If true, this could indicate a different mechanism of policy adoption in manufacturing and information than in finance.

The number of known transgender employees in these sectors, shown in the table below, provides additional support for the notion that the manufacturing and information sectors are experiencing a higher rate of employee transitions, but finance is not. When these responses are separated into economic classifications, we find a startling statistic. Manufacturing had 73% of the known transgender employees. The next highest sector had only 10% of the total. (Zero responses are not included in this table.)

Figure 22 – Number of transgender employees by economic sector

	Manuf	Educational Services	Information	Finance & Insurance	Transportation	Professional, Scientific & Technical Services	Total
No. of trans employees	91	12	9	5	5	2	124

Number of Trans Employees



This stark contrast between manufacturing and the other economic sectors is remarkable despite the fact that manufacturing had the most firms in the sample. Manufacturing had 10 firms in the sample compared to 5 firms in finance. Startlingly, the number of known transgender employees in manufacturing was

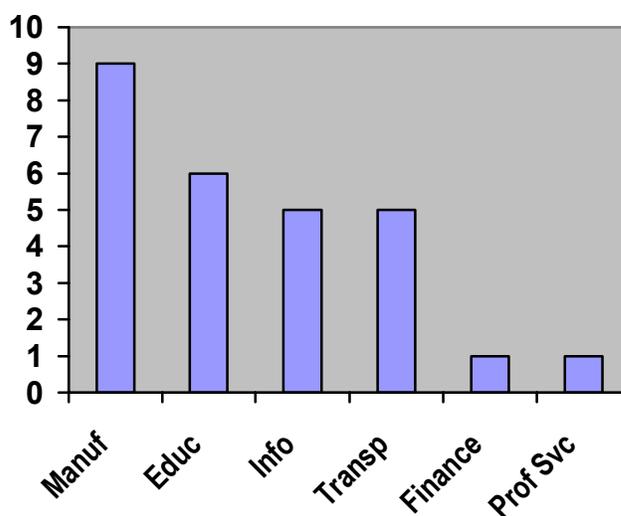
1820% more than the 5 found in Finance.

When we view the mean number of known current or former trans employees in each economic classification, the numbers are still unbalanced. Manufacturers had the largest mean of all categories. These data support the suggestion that there is a higher rate of employee transitions in the manufacturing sector.

Figure 23 – Mean number of transgender employees by sector

	Manuf	Educational Services	Information	Transportation	Finance & Insurance	Professional, Scientific & Technical Services
Mean no. of known trans employees	9	6	5	5	1	1

Mean number of trans employees



While these statistics support the suggestion that there are more employee

transitions among manufacturers, the answer to the question of why that sector has so many more known transgender employees requires careful analysis. The appearance of a higher rate of transitions in this study may stem from validity problems with the study itself. For example, there was significant variation in the sample obtained for manufacturers and that obtained for finance. Half of the manufacturing respondents were transgender employees (50%), whereas much fewer of the finance respondents were transgender employees (29%), and the rest of the finance respondents were drawn about equally from other categories of employees. The respondents' corporate functions at their employers may have determined their attribution of cause. HR employees who had to persuade senior management and lawyers may have viewed the policy adoption quite differently from the transgender employees who had to follow the policy. If this is true, then the difference between the two economic classifications may have occurred, in whole or in part, because the sample in each classification was different.

Looking at the statistics, there is a correlation between the cause attributed by the respondent and that respondent's corporate function. All respondents had knowledge of the adoption process, and many were involved in that process, but they represented four different types: transgender employees (35%), employee resource group members (29%), HR management (29%) and senior management (7%). Transgender respondents tended to identify the cause as "employee(s) in transition" (82%). They saw themselves as the catalyst for the policy adoption. Respondents who were members of employee resource groups tended to identify the cause as

“request by non-transgender employees” (78%). They saw the GLBT employee resource group as the primary advocate for the policy adoption. Human resources management respondents identified “employee(s) in transition” in 56% of cases and “request by non-transgender employees” in 22% of cases. It clearly cannot be said from this evidence that the respondent’s function absolutely *determined* their view of attributed cause, but, in the absence of some alternate explanation, it appears likely that their function had some *influence* on their point of view.

There is evidence that could provide further insight on the issue of whether respondents’ corporate functions determined their view. Seven of the corporations from which respondents were drawn yielded more than one respondent. If the respondents’ function determined their attribution of cause, then it would be expected that respondents with the *same* function would view the cause *the same*, but respondents with *different* functions would view the attributed cause *differently*. This function-determinative expectation was met in four out of the seven instances. The chart below shows the seven corporations from which more than one respondent was drawn, crosstabulating respondents’ functions and attributed cause. The function-determinative expectation was met in four instances (shaded – total of 57%), but there were three instances in which respondents with *different* functions assigned the *same* proximate causes (43%).

Figure 24 –Attributed Cause Differences among respondents

	Same attributed cause	<i>Different attributed cause</i>
<i>Same</i>	2 (28.5%)	0

<i>function</i>		
<i>Different function</i>	3 (43%)	2 (28.5%)

This information indicates that respondents' corporate functions influenced their views to some extent. It is not clear to what extent this occurred, or how this interacted with the effect found from the economic classification of the respondents' employers. Until this effect is ruled out, a question will remain as to whether the higher rate of transitions among manufacturers found in this study is more apparent than real.

Public Employers

There were 11 respondents from nine public employers. The assignment of attributed cause amongst these was simpler than in the private employers. In seven of the nine, legislative council enacted the transgender HR policy. In each of these cases, activists who requested a law banning discrimination on the basis of "gender identity" approached council members. In one of these cases, the "gender identity" language was included after language banning discrimination on the basis of "sexual orientation." The laws were proposed and passed unanimously or by a large majority. Thus, the proximate cause of these policies was activism by external advocates.

Two of the nine were not enacted by legislative council, but activism nonetheless had a role. In one, a tribunal charged with human rights enforcement wrote an advisory opinion interpreting a law against discrimination on the basis of

“sex” to include transgender employees. This ruling was prompted by a request from a transgender attorney on behalf of a transgender client. In another, the town officials, who include some forward-thinking individuals, sua sponte interpreted a law against discrimination on the basis of “gender” to include transgender employees. While not involving activism in the traditional sense of “getting out the vote,” the adoption of policies in these public employers also involved a type of activism.

Conclusion

The interviews suggest that the early adopters believe policy adoption is prompted by an ethic of tolerance, that it is “the right thing to do.” At the same time, there is a belief that policy adoption is related to a “business case,” yet it mostly occurs when there are transgender employees in transition and by the advocacy of internal diversity advocates. It is likely that the policies are intended to benefit employers by conferring a legitimacy that, among private employers, serves recruitment and retention of non-transgender employees, and among public employers, serves to create an environment that attracts an educated labor force, the businesses that require them, and the money that will hopefully follow.

Chapter 6. Employee Experiences of Policy Adoption

Respondents generally indicated that policy adoption was a result of employer tolerance, coupled with efficiency gains. However, employers generally did not make great efforts to understand transgender employees and their needs. When employer and employee interests diverged, as they often do with transgender employees, tolerance of employee needs diminished. Transgender employee interests often diverge from employer interests because of the intrinsic ambiguity of transgender identity and public violation of the heterosexual norms discussed in Chapter 2.

The Privilege of Ignorance: Transgender-as-wished-for

Many of the respondents stated that their employers were committed to accommodating the needs of transgender employees, but at the same time indicated that, when confronted with those needs, managers fell back upon heterosexual norms. This is not cited as a general criticism of these employers. Indeed, the intentions of the vast majority of them were clearly honorable. However, the failure of many of these employers to educate themselves about transgender needs suggests that transgender needs were, in fact, secondary. When transgender employees strayed from the heterosexual norms, they were viewed as troublesome.

It is this education gap that Audre Lorde challenges in her often-cited (but less-often read) essay “The Master’s Tools Will Never Dismantle the Master’s House.” Her essay specifically challenges the idea that ignorance excuses privilege, and suggests that ignorance is a function of privilege. “Women of today are still being called upon to

stretch across the gap of male ignorance and to educate men as to our existence and our needs. This is an old and primary tool of all oppressors to keep the oppressed occupied with the master's concerns" (Lorde 1984). Similarly, it may be argued that the ignorance of these employers about the needs of their transgender employees demonstrates an exercise of privilege.

The July 2004 issue of Diversity Inc. Magazine, in its article entitled "Transgender Employees: The Acid Test of Diversity" (Bean 2004), leads with an allusion to the issue of management ignorance and heterosexual norms.

HERE'S A MANAGEMENT QUIZ: A valued employee has privately prepared for a gender transition. Now, the employee wants to talk through the job related implications. A manager's proper response is:

A. "No problem. We have business plans in place to deal with a wide range of medical issues."

B. "Huh? What about the bathroom?"

A, of course, is the right answer. But interviews with those who have experienced a gender transition on the job—transsexual executives, employers and advocates—say B is far more common.

The interviews set forth here reveal that many employers reified transgender identity and based their policies on a mythology about transgender people. Employers attempted to address *transgenders-in-themselves* through their human resources policies, but what they perceived and constructed is *transgenders-as-known* through the lenses of the heterosexual norms. These norms then constructed *transgenders-as-wished-for*, a convenient selection of the evidence fitted into a predetermined intellectual or emotional pattern, and constraining transgender

employees to meet the heterosexual norms (Piggott 1975). If one reads the transcripts carefully, it is possible to distinguish the reification and the mythology by noting where the rhetoric of altruism disappears and the presumption of heterosexual norms takes over. For example, a significant number of policies did not address whether transgender employees would be subject to heterosexual norms of bathroom use and dress, and there were no guidelines, written or unwritten, on these points. These are central questions for transgender employees, perhaps *the* central questions. Their complete absence from the policy signifies that transgender needs are secondary to heterosexual norms. There were other employers that construed “gender identity” so narrowly that they required transgender employees to have surgery before they could use the bathroom or dress in opposite sex clothing. The misunderstanding demonstrated by such policies is profound.

The Case of the Missing Drawbacks

An illustrative pattern of responses was that of the question of benefits and drawbacks of the policies. Many elaborated on benefits, but said that there were no drawbacks. I found this a curious statement, since anyone who works in human resources or who is in a protected category soon realizes that an employee in a protected category is terminated, demoted or disciplined at the company’s legal peril. While non-protected employees-at-will may be legally fired for any reason or no reason at all, a case of malfeasance or nonfeasance, free from bias, must be documented against the protected employee. This is a substantial drawback to the employer, because it restricts the employer’s freedom of action and requires a great

deal of documentation and supervision. One respondent, a lawyer whose specialization is employment law, advises employers regarding transgender HR policies. While he personally believes such policies do more good than harm, he was frank in his response to the question of whether there are drawbacks to employers:

Q: Are there drawbacks to the policies to employers?

A: Absolutely. One is that, and I speak as a defense lawyer, I'm not saying I agree with this, but I'll tell you from a defense lawyer's perspective, if your handbook is considered to be a binding contract, in some states and depending on the language you have it may be deemed a binding contract, that even if you can't pursue it under the law, you may have created a contractual right that the employees might turn around and sue you for, so you potentially could be adding to your liability. That's one drawback. Another drawback is, if you do a policy without having done education around the policy, you may create hostility in the workplace or you may, in other words, you can't just put a policy and not doing anything to indicate why you're doing that. So if it's implemented poorly it could result in people leaving who don't agree with the policy or it could result in hostility in the workplace.

Furthermore, specifically in terms of transgender HR policy, there are public relations issues regarding granting explicit protection to such a socially disfavored group, and administrative concerns from bathroom usage to record keeping changes.

Certainly, many employers are willing to pay the price in order to have a more just society, but that does not negate the price. The curious insistence that there are no drawbacks to adopting transgender HR policies can be explained by the theory that these policies are adopted for the appearance of protection, not the reality. There are no drawbacks because little effort goes into implementation.

One respondent simply wanted to get his email changed to conform to his new name. This simple request, necessary to the proper presentation of this employee on a daily basis, met with little understanding.

R: So, I, a couple months ago I changed my name, I just wanted that email changed because people knew me by my new name and it was confusing when they got emails that said the old one. Uh and it seemed like a quick thing for them to change my email address and they, they wouldn't do it, um, they sort of immediately coupled my request for this email address change with my gender change, and I tried very hard on several occasions to say, look I'm not asking for anything other than my email address, I'm not asking for you to change the, my gender officially in my system, which is...just some background there.

Right, so they, but they linked these two together and they wouldn't parse them out...So, I think there is, like that experience really tells me that there's a, there's a kind of a big misunderstanding about gender identity still in

companies. They don't really, they don't, I mean this, this whole connection of like my name change with this gender change was very, very obtuse. I still don't understand.

I: What do you think it indicates about their understanding of gender identity.

R: I think, I think it says that um that they don't, they don't have, they don't have a, a um a, uh...let's see, they don't, they don't have a good sense of, of the boundaries of, of gender identity versus name change, like they don't have an understanding of how all those pieces are linked together. I, I think they have probably a pretty good idea of what gender identity is, y'know of what trans, being a transgender person is. I think they have a pretty good idea of sort of name changes that y'know you do for marriage or other things, right, but they don't have a good understanding of how those could be linked or how they're not linked in terms of gender changes.

Enforced Stealth

Despite the rhetoric of tolerance, transgender employees found it necessary to act stealthily in order to avoid public violations of heterosexual norms. This enforced a code of silence about uncomfortable issues, requiring transgender employees to make decisions that, if exposed, could be perceived as fraud or deception. When I asked what is expected of transgender employees in regard to bathrooms, many responses indicate that there are no specific guidelines, and that, sub rosa, the primary consideration is "passing." In other words, if the transgender employee's habitus meets the heterosexual norm, and she passes undetectably as a female, she can use the

women's room, or if the trans employee passes undetectably as a man, he can use the men's room. However, if other bathroom users were able to detect any gender ambiguity, even if the employer accepts the transgender identity as genuine, employees were not allowed to use the bathroom of their choice. This "passing" requirement is at odds, however, with the employer's promise that it will not discriminate on the basis of "gender identity."

Interestingly, only a few respondents uttered the word "passing" itself, although well known and highly valued by many in US transgender culture. This is understandable, as the significance of "passing" is hotly debated in US trans culture. On the one hand, if you are going to assert a changed "gender identity" in public, passing is required for social acceptance. Passing undetectably as the opposite sex allows one to avoid negative judgments from others. It allows one to pick and choose whom to take into one's confidence. It also, for the most part, creates a much greater likelihood of positive judgment by those who do learn of one's trans status. On the other hand, many feel that the acceptance of one's gender identity should not be a sort of "beauty contest," dependent on what one's body looks like. To the contrary, its psychologist-creators intended the concept of "gender identity" as a psychological construct. Psychologists created it for the purposes of distinguishing it from the social forms of "gender" and the somatic forms of "sex". If "gender identity" is now to be re-linked to somatic form, then "gender identity" loses its original meaning. "Gender identity" and "passing" are mutually exclusive concepts.

And yet, despite the high-mindedness of those who assert that “passing” is of no significance, it is a heterosexual imperative of the highest order. Here are the words of a well-known plastic surgeon who is famous among U.S. transsexuals for his surgical ability (and cost):

Looking feminine is, of course, extremely important to you. First impressions are often based just upon your face. That which is first seen in an initial contact is frequently what defines you. It establishes not only who you are, but often what sex you are as well. As a transsexual, perhaps nothing is more important to you than appearing sexually the same as you feel emotionally. Facial feminizing surgery can help bring these two together (Osterhout 1995).

Because of this, it is easy to understand why few of the respondents used this "dirty word." Its use is imbricated with a fatal contradiction, a catch-22. When employees did not “pass”, employers substantially restricted their freedom of expression, regardless of policy. When employees did “pass,” then their freedom of expression was substantially unrestricted. In fact, when concerns were raised about “passing” employees, management generally quashed them. The catch-22 here is that, in many instances, “gender identity” is not the thing protected by the policy. Rather, what is protected is "passing." This in no way negates the good faith and tolerance of employers with transgender HR policies, but rather illustrates the gap between

transgender HR policy and the reality of transgendered people's lives. Here is how one transgender employee spoke of the complications of passing, the ambiguity of the policy and of the negotiation required on that issue:

JPW

I: Okay. Um, now what is expected of transgender employees in regard to bathrooms?

R: Uh it, it depends a little bit. They've, they've been modifying their policy as more people come out. So, um, a few years ago, um, one person was required to, she hadn't had surgery yet, a male to female, and she was required to walk quite a distance to use a unisex bathroom...it's very legal for a company to require a person to even go offsite to use the bathroom...So for me the, the uh change in policy that happened for me is, is that um HR didn't care whether I used a male or female bathroom, as long as I, I passed, y'know for one or the other. So, as soon as I starting passing more as male, they were okay with me using the male bathroom, the men's bathroom, and they, they didn't, they weren't necessarily giving me permission to use one or the other. They wanted me to do what was comfortable for me.

I: Is that what someone said to you?

R: Uh, this is what HR, this is HR's policy.

I: So HR said to you, we want you to do what's comfortable for you?

R: Right, right, and with the understanding that if I don't pass as y'know, if I don't pass as male, like this is sort of a month after taking hormones, if I go

into the men's restroom, then that, that could be challenging for people. They, they really wanted me to consider how other people were feeling and how I was feeling...

Although the respondents was told to do what was comfortable to him, the employer was nonetheless reluctant to permit him to use the proper bathroom once he felt comfortable passing as male.

R: So, I, I guess that um, the other thing that HR suggested was that I use the unisex restroom there's, in my building there's one, it's on the first floor, which, then I'd have to take an elevator four floors, and it had a key, like, I had to ask for the key, at the lobby, and I said, and I told HR well I don't think that that is really a useful thing for me to do, like I don't want to have to, I'm not in kindergarten, and um they thought that it wasn't that big of a deal, and then I suggested to the HR person that they use the unisex restroom every day and ask for a key every day. And after a week, if they felt that it wasn't cumbersome, that, that I would use that bathroom. They never took me up on the offer.

I: So wait, let me just see if I understand that, you suggested that you, you get a key every day?

R: Well, you see, they suggested that I use the intersex restroom where I would have to ask for a key...

I: ...the key all the time.

R: Right, and I said well, I don't think that that's um reasonable and I suggested if you want, I want you to use the restroom.

I: Oh (laughter) you said this to the HR person.

R: Right, and if after a week they felt that it was not cumbersome then I would do it.

I: (laughter) That's great. They didn't take you up on it?

R: They didn't take me up on it. (laughter) So, it's um yeah, so the thing is y'know you kinda have to be smart about transitioning, if, if you're not, I don't know, you have to be very willing to go to bat for yourself over and over again.

“Passing” was an issue largely unspoken, yet essential to understand. In this next vignette, bathroom sex segregation is analogized to other forms of segregation (GJ).

I: And um so you basically, what did you, what did you guys work out?

J: Well, it was like, I said, y'know, like I said it was kind of, some kind of a play by ear kind of thing, y'know, first we would be sort of just hanging out and um I would use the....sort of neuter bathroom for a while.

I: The visitor's bathroom.

J: I had a Haitian immigrant co-worker, and after a while she started to refer to it as the colored people's bathroom (laughter). She was like, youse going down to use the colored people's bathroom? I was like, oooh, you did *not*

just say that, because y'know she...

I: She was kidding because you were, it was like you being segregated in a way?

J: Yeah, yeah, yeah, yeah, y'know it's like the colored people's water cooler back in the 60s, so she, y'know, that's what she used to call it, the colored people's bathroom. Because after a while, it started to get, y'know I, I talked to the HR director and I was like, y'know I don't know, I, and then she was like, well, why don't you wait until December, or whatever.

I: Why don't you wait for, to do what?

J: To use the women's room, and it started to get, like, started to get annoying and so, I started using the women's bathroom, on other floors, where people didn't know me.

I: Oh okay. How many floors does the company have?

J: Seven

I: I see. So if you go down another one they just had no idea who you were?

J: Yeah, because I walked into...

I: ...the ladies' room?

J: Yeah, and you know, they were not busy, they were, they were, I'd use like y'know... The other thing is, is that y'know, I wasn't going to like go down, y'know, the visitor's bathroom wasn't always available. It was frequently broken, or like some customer was in there, or whatever, for like, ever, y'know, I didn't have the kind of time and luxury to sort of like hang around and wait for the bathroom to free up.

At QTX some firms, there was some discrepancy between the views of upper level management and transgender employees regarding the bathrooms. Here is the management viewpoint (QTX).

HR: What we did with one employee was while she was going through this process, um, we um identified a unique space for her to use with her own key etc., and we agreed that would go on for some limited period of time until she was then comfortable with herself as a woman enough so that the transition timing was in large part based on her own comfort level uh and then what we did was we um uh uh shared with the women on the floor where she would be using the bathroom that the transgender employee would be using the ladies room and it would be, it made that transition a lot smoother and easier and y'know um some unprepared unannounced kind of an abrupt uh change uh uh in the bathroom.

A transgender employee of this company noted that the view from her vantage point was different.

R: Well (laughter), my deal with human resources, although people will...you'll get a different answer from HR on this one. My policy was that I was accommodating other people to make life easier for them and that I would

agree to use a different bathroom for an interval of time such that people could get accustomed to me. And, unofficially, I didn't really sign any documents, I said something like six months. And so, I gave it six months and then started and then started using, in fact, I gave it much less than six months, I was using common bathrooms pretty quickly. But six months and a day after I started using the one on this floor, human resources got a...was informed by some female employees who were not particularly thrilled about it.

I: And how did you find out about that?

R: I got a call from human resources saying you're using the bathroom, and I said yes I am, and this was my...intention all along, and if they've got a problem with it, it's their problem. And, I think the way it, actually the way it worked and the thing that got them off the hook was that I told them, look, as far as legally goes, I am female, and I have an F on my drivers license and a passport with F on it, and legally I'm entitled to use any bathroom I want. And once I kind of conveyed that message to them, it was, oh, okay. But I could have pulled that much sooner, I just, as a matter of courtesy I wanted people to get used to me.

Some employers, despite their recognizing a need to accommodate transgender employees, were hostile environments for transgender employees. Their transgender HR policies did not function as non-discrimination policies, but the opposite. One company had a secret policy requiring that transgender employees undergo genital surgery before it would recognize their gender identity. Treatment of

transgender employees depended on the arbitrary factor of their location: in some locations they received empathetic treatment from managers, while employees in other locations were harassed and terminated.

R: Uh...the way I see it is....they are very....well, as I said, they...are very restrictive as far as gender identity is concerned. Uh.....however, at each facility it seems to be a little different. I have talked to other transsexuals in the.....uh, well, I can talk to a lot of people and they have written to me about their stories. Basically, in some areas, they can be what I would call considerably feminine in their attire, but still be within the confines of the limit....uh, of the policy. Here, the environment is much more conservative. *** The policy is company-wide. And as I may have indicated, the policy is sort of unofficial or unpublished, but it does apply across the board. It's one of those things that, unless you say it, it doesn't exist. Once you say it to someone, then they pull it out and give it to you.

I: What's expected of transgender employees in regard to bathrooms? I know you alluded to it before, can you tell me specifically?

R: Plumbing to plumbing, that's how it was described to me by both counselors, so that if you...even if there, as in my situation, almost non-existent, you still have to live by whatever plumbing. If it's external, you have to use a place that has urinals. If you have internal you have to use the facilities that sit.

At a number of companies, legal department concerns restricted the policy to “gender identity” rather than “gender identity and expression” because of concerns about “crossdressers.” These respondents indicated that crossdressing that came to the company’s attention would not likely be allowed, implicitly assuming that “gender identity” referred to transsexuals who intend to undergo medical and surgical intervention. They did not indicate any broader understanding of the concept of “gender identity”. Another company that adopted a transgender HR policy in 2003 confounded transgender and transsexual, denying the possibility of subjective agency in transgender identity.

I: And you mentioned this a little before, what is expected of transgender employees in regard to bathrooms?

H: Um, actually we’ve provided in our guidelines um, I’ll just kind of state what’s, what’s in our guidelines. Um, uh we...we...we need to have um requisite proof um basically of, of their identity, um which could be in the form of a current and official identification document such as a court order, so anyone wishing to use sex specific facilities, we would require that sort of information, and then generally only post-operative transgendered individuals would be permitted um to use common facilities of their newly adopted gender. And then uh people who are still in the process of transition may request that accommodations um and reasonable efforts be made um to allow persons to access like a unisex or a single occupancy facility um that’s y’know is near to their, nearest to their workspace as possible.

I: Okay great. So um do you think it would be possible for me to see a copy

of the policy that you were reading from?

H: We typically don't distribute our policies y'know outside of the company.

I: Would someone who does not intend to change sex be permitted to wear clothing of the opposite sex to work?

H: No, no, actually they would need to be transgendered or in the gender transition process in order to y'know wear clothing of the opposite sex.

Issues of safety and danger run through this issue. The safety and comfort of heterosexual employees requires observing the heterosexual norms. Danger to transvestites and other non-passing employees from angry heterosexuals requires excluding them from the workplace.

I: Okay, now would someone who does not intend to change sex be permitted to wear clothing of the opposite sex to work?

CDO: Yeah I think that's one of the biases and the concerns that the lawyers have, the whole issue of crossdressing in the workplace, and my experience has been that, y'know that would be extremely rare, I mean transvestites y'know typically don't come out at work. Y'know they typically go places they feel safe and secure and comfortable uh y'know expressing themselves, and work is not one of those places.

The sanity of transgender employees is also an issue.

R: ...I had some long and some very difficult conversations about this, some of the issues were just legal issues, because as fiduciaries I needed to demonstrate to him, because he knew nothing about this, that I wasn't crazy. I mean you've got a nice little chapter in DSM IV that says you are.

At one company, a sexual harassment complaint was filed against the transgender employee for having a poster with a transgender theme. Her performance reviews went abruptly from excellent to poor. She felt forced to leave the company:

I: What was the nature of the claims?

J: Um, well, I had a poster up which was like protect your body and it was like, from the Asian AIDS projects, you might have seen this poster before (inaudible), and it shows like an arrow, and it's like \$2000 for a nose job, \$5000, y'know and then, and then at the bottom it says like...protect your body y'know, and like don't catch HIV, and, and that's about all it says. And they said it like, it was sexual harassment because it, it , what did they say, it like idolized the female body or something. I don't know. *** I mean the poster was not visible to anyone but me, you'd have to sit in my chair to see it, because it was, the way it was located there was no way anyone could see it, and it wasn't even really racy, it was, I mean, she was fully clad, I mean y'know she was fully clad and it wasn't something I felt uncomfortable having in the workplace...they were like, oh well, we're taking some, we're taking some like role, some power, they're like we're taking some

responsibility away from you because we don't feel like you're, matching the standards or whatever, and I said, I want to show you a copy of my like reviews for the last, which, I had just gotten a review like two months before that, I'd had my six month review before that, I'd had my hiring review before that, and they were all stellar. And when I started too, I had had three raises in under, in like a year, and I was like, how can you possibly claim that I'm not living up to my job when all you tell me is how good a job I'm doing, you can't just turn around and just strip me of all my positions, and expect me to stay here. So I tried working with the firm, I tried, y'know I tried dealing with, the (inaudible) thing, but in the end I was less valuable than, than the two people who were discriminating against me, and, so I left the firm***And I, and I was like oh ha ha ha ha, y'know like, I'm sure that won't happen here. And it did...

* * *

I: Do you think the policy that they passed gave you a false sense of security?

J: Uh-huh [affirmative sound]

I: In what way, in other words....

J: Well, I thought I wasn't going to get fired because I was transitioning, and I did, so I'd say that it gave me a false sense of security (laughter)...Basically the policy was like, if you're transgendered you'll be okay, and I wasn't at all. I was fired, and like, they didn't even have the balls to like, admit it, y'know, that's the part that really gets me, they couldn't just be like, these people have a problem with you and they're more valuable than you and I'm sorry. They

didn't say, well, why don't we move you to another part of the company, where you'll have no contact with them, because we really need you and you probably don't care what you're doing.

It would be a mistake to assume that this company is any more "backwards" than any other in regard to transgender HR policy. In fact, it is one of the most progressive in the area. They are known as one of the most gay-friendly firms in a very conservative industry. There are a number of high-level and well-respected lesbian and gay personnel who are "out." The company was considering creating a transgender HR policy even before this employee transitioned. They hired a psychologist to provide training to personnel about transgender issues, and created a policy without any request from any transgender employee. The management view of the situation was an isolated complaint, gentle correction by management, and the transgender employee later left of her own accord.

I: Did anyone have any concerns about her at the firm?

R: Oh yes.

I: Oh really?

R: Oh yes, sure. Um, it was interesting because one employee, um...it was funny... because it really took us a long time with this, and it was, it was hard for everybody. Her daughter was working here, she was a high school student, and for some reason the woman didn't have, she said she didn't have any problem herself, but she felt funny about her daughter being exposed to

this. The daughter was like, she was like sixteen, she was working after school in the file room kind of thing, and that, that was huge for her. Um, and it was, it was hard, but we decided that y'know we'd try to do as much support and encouragement and education as we could do, but we didn't want Sarah to feel as if she were doing anything wrong. I mean it was so hard for her to do this, glory be, I mean what fun, who would take this on as a volunteer assignment.

I: But did she have to interact with this high school student?

R: She worked in the same area, but there wasn't a lot of day to day interaction. But, that that was hard.

I: So how did that get resolved?

R: Um, well, well at one point we just said you know we're going to support Sarah and do everything we can to help you with this, but we think it would be wrong for someone to be discriminated against, and so, so we really want you to get with this program.

I: And did she drop her concerns?

R: I think that we tried to alleviate them, um, y'know, I bet individually she would have preferred it hadn't happened...

I: Right...but eventually I guess everyone...

R: ...it subsided. It was a summer job, y'know, yeah, there we go. I mean sometimes you just sort of ride it out.

In these scenarios, there is a large gap between employer perception of

transgender needs, and the needs of the transgender employees themselves. This gap puts transgender employees in an uncertain position. On the one hand, they have been guaranteed tolerance and accommodation by their employer's policy. On the other hand, policy interpretation and enforcement is unclear and ambiguous. Transgender employees who insist on clarification risk labeling as "troublesome" and retracting of rights. As noted, a number of these transgender respondents found it necessary to act stealthily in order to avoid public violations of heterosexual norms. This enforced a code of silence about uncomfortable issues, requiring transgender employees to make decisions that, if exposed, could be perceived as fraud or deception. The willingness of employers to place its transgender employees in this situation suggests that corporate legitimacy, rather than altruism, was behind these policies.

"Transfriendly" Culture

The interviews make it abundantly clear that, even among employers with transgender HR policies, some employers are more "trans-friendly" than others. Some respondents gave several indications, including that recruitment and retention of transgenders themselves was a specific goal of the policy, that there were a number of "out" transgender personnel known to the employer, that the employer communicated its "gender identity" policy to the public, that transgender personnel are allowed to go to the bathroom of their declared gender, and that transgender personnel are allowed their choice of dress.

The number of “out” transgender personnel known to the employer is important because it indicates the confidence of transgender personnel in management. The existence of the “gender identity” policy on its website as a recruiting tool indicates the employer’s comfort with being known as an employer that does not discriminate on the basis of gender identity. The issues of whether transgender personnel are allowed to dress in the clothes of their declared gender and allowed to go to the bathroom of their declared gender without surgical intervention are significant because they indicate that the employer has created appropriate support mechanisms. Such regulation requires the employer to investigate employees’ anatomy, and creates a hierarchy of transgenders based on the notion of “realness.” As discussed in Chapter 2, the notion of “realness” has little place regard to transgenders. If there is no policy, the policy is unclear, the policy requires use of a unisex bathroom, or the policy requires inquiry into the employee’s surgical status in order to go to the appropriate bathroom or dress appropriately, this indicates that the employer does not fully understand the needs of its transgender personnel.

The interviews below demonstrate the level of the discussion at a trans-friendly firm in a way that numbers cannot. This firm’s policy invokes the themes of human capital versus human resources, human rights versus civil rights, and the clear relationship between the transgender HR policy and recruitment/retention.

R: Our Company Equal Opportunity Policy statement: diversity and equal opportunity affords the fundamental part of our Company values and makes

our Company more competitive in the marketplace. It is our Company's corporate policy to treat each individual with dignity and respect. It will effectively utilize all of our human resource talent. *** Demonstrated commitment to equal opportunity is an investment in our people and our future growth. Consequently, a company that attracts, selects, develops and retains the best will remain the industry leader. Our Company's ongoing efforts in this direction will provide us with the critical competitive advantage in the marketplace. And that's signed by our president and chief executive officer ***

This is a human rights perspective emphasizing dignity of individuals regardless of "protected" status. The company provided clear guidance and communication from HR to the rest of the company.

R: Oh, we've actually worked that through. Uh, very simple, or let's put it this way, having had multiple discussions and, and working that, the result we think is pretty simple. Uh any Company employee uses the restroom facility for the gender that they are presenting. So, you come to work on any day, um, you are a certain gender, that is the restroom facility you use. Period end of story.

Some resisted the introduction of these changes. The employer took steps to ensure compliance, providing guidance and coaching where

necessary.

And it took a bit to, to get there. Some local areas um where they had individuals, that's probably been the bulk of our problems, it's all been about the bathroom.

I: So some local areas opposed that?

R: Um, I wouldn't say opposed, they were not comfortable with it.

And it was probably a larger issue, they were not entirely comfortable with the transgendered person and it kind of manifested itself in the bathroom issue. *** Um, probably said differently, they were just very clearly communicated that this is the business policy, so it wasn't really looking for agreement, wasn't really looking for conformance, it was just, this is the policy, you will implement it. Are we clear?

Good. So, it, it, at times it was heavy handed, at times people were just honestly not sure what to do, and they needed some guidance and coaching.

I: Okay. And they were able to get that guidance and coaching?

R: Yes, from [the director of Global Diversity] directly in, in some cases. *** I've seen that be done in all different ways, sometimes it's as simple if it's a finite number for the person to speak to them one on one uh sometimes uh the supervisor of the workgroup will pull all the workgroup together and kind of explain what's going on.

When asked whether someone “who does not intend to change sex would be permitted to wear clothing of the opposite to sex to work,” the response was not focused on heterosexual norms. There was no fuss over potential disruption or distraction, although there was generous allowance for adjustment to new ways.

R: Yes, absolutely, and we've got several cases of that. People um who, because not everyone goes through, a, a full transformation, um, some people when they're just starting out will do it part time. *** We actually had someone, and this is, probably what helped us to clarify most of the issues, someone who was still working through the process and would some days come in as Jane, some days come in as John. So, maybe one or two days a week as Jane and that was the idea that she didn't quite know who was going to answer the phone, that was a little tougher for people, but because of that it helped us to really clearly work through this uh and give very clear direction.

While disruptive to the heterosexual norms, the actual day-to-day workings of such a situation were not disruptive to business in a mature environment.

R: Um you simply say hello and if you identify yourself on a particular day as Jane, or identify himself on a particular day as John, and that's who your talking to.

I: Got it. And was this...was um Jane/John dealing with um people outside the company?

R: Yes, actually. Was in a customer-facing position.

I: Ah. And how'd that work?

R: Very well. It helps when the person is perceived as very very competent and very good at what they do. Um, my guess, if it was someone who did not have strong performance, it would have been more of an issue.

The employer located and used expert guidance and resources.

R: We're very fortunate in that we've outsourced a lot of our employee uh assistance help in the last few years. The two uh groups we used, both Magellan and Lifecare have recently beefed up their transgendered support, at our request by the way, but they have been very open to doing that, to both making it very accessible, because sometimes it's there but it's buried and making sure that that it is there and that it is considered y'know industry leading guidance on the issues: coming out as transgendered at work, what to do when a work colleague comes out as transgendered and what to do, y'know, how do I tell the boss, how do I tell my subordinates, y'know all the different permutations and really that mirrors the support that they give for coming out as gay in the workplace.

The employer also educated its own experts when necessary.

I: Now what is Magellan and Lifecare?

R: Oh, I'm sorry, if you go to magellanassist.com or lifecare.com, those are companies that provide employee assistance programs for other companies.

I: And how did they get, or how would they get involved in situations like this?

R: Um, what happens is uh you're having a, a stressful day as a transgendered employee, y'know, you don't know how to come out to your boss, you're having a problem dealing with your co-workers, that is the support resource that we send our employees to. That's very common, by the way, for large corporations, because they don't necessarily have the expertise to do that in house, that can be a very cost effective way to support employees.

I: Now I've seen EAPs [Employee Assistance Programs], but I'm, I'm actually quite surprised, despite all of my experience with this to hear about EAPs that specifically are, have expertise in assisting transgender employees. I mean, do you know....

R: Not that unusual. Not that unusual. Most of them have it but it's buried. Either you call into a call center or you go to a website finding it* or having a rep who's familiar with it is probably unusual because they just don't deal with it that often, but it is there and we have helped both of those firms to beef it up.

The employer was not immune to issues of legitimacy, and the respondent was well aware of the effect of transgender HR policy on other employees and potential employees. They used the discourse of legitimacy to their advantage.

Magellan Health Services (2004)

R: *** one is that if we're really serious about attracting and retaining the best possible talent, this makes sure that people who happen to be transgendered are included in that pool. That people who are transgendered feel as comfortable here and hopefully more comfortable here than other places that may not have that. That they know it's okay to be whoever you are, or whoever you discover you are uh while working here and that they will be supported y'know tops down, and sometimes in the middle, they may need a little help and support, ah but at the very top they are looked out for and the policies support that. The, the second part of it is um if you are not transgendered you think well why do I care, why does this matter to me, well I would much rather work for a company that truly values their people than not. Kind of the example, if you were straight, why would you want to work for a company that was explicitly homophobic or, or didn't want those kind of people in their firm? I think that makes for an overall more healthy work environment, and gets the idea that y'know we're a business, we're trying to get the best possible talent to achieve specific business objectives, why would you limit yourself and not want the benefit of that particular community of people? When kind of, just anecdotally, uh we have some incredibly high performers who happen to be transgendered.

This employer demonstrates the highest level of understanding of the needs of transgender employees. As shown above, at firms where the level of understanding is low, transgender employees and their allies are cast upon the horns of a dilemma by

the paradox of diversity: they must both advocate for tolerance of transgender difference and avoid public violation of heterosexual norms. This is an extremely difficult line to walk. It is the organization and its responses that tell employees how to interpret, use and mobilize their rights in law and policy, (Fuller, Edelman and Matusik 2000), and in this arena organizations are telling their employees that, if they complain, the policy will not protect them. As in other workplace discrimination claims, organizational complaint handlers subsume rights to managerial interests, minimizing the value of such claims to workers and therefore minimizing the number of such complaints (Edelman, Erlanger and Lande 1993). While corporate legitimacy is certainly a valid interest of employers, it alone cannot sustain a viable and effective transgender HR policy. Indeed, corporate legitimacy concerns alone cannot sustain a viable and effective diversity policy of any kind.

Conclusion

Employers varied widely in their efforts to understand transgender employees and their needs. Many of the respondents stated that their employers were committed to accommodating the needs of transgender employees, but at the same time, indicated that, when confronted with those needs, managers fell back upon heterosexual norms. Employers often reified transgender identity, generally seemed to put little effort into implementation, and created ambiguous policies that enforced a need for stealth among transgender employees. “Transfriendly” cultures shared several characteristics, including that recruitment and retention of transgenders themselves was a specific goal of the policy, that there were a number of “out”

transgender personnel known to the employer, that the employer communicated its “gender identity” policy to the public, that transgender personnel are allowed to go to the bathroom of their declared gender, and that transgender personnel are allowed their choice of dress.

Chapter 7. A Theory of Early Adoption of Transgender HR Policies

Traditional theories of organizational action focus on efficiency and control as primary influences on policy adoption. (Weber [1906-24] 1946; Blau and Schoenherr 1971; Edelman and Suchman 1997). Consistent with this, the data indicate that employers are the primary beneficiaries of transgender HR policies, rather than transgender employees. The efficiency and control argument is weak, however, because the primary benefit claimed by employers is that of improved recruitment and retention and yet the number of known transgender employees is miniscule. This relies on the counter-intuitive assumption that it is more efficient to pay for adoption, implementation and enforcement of an ambiguous and socially disapproved HR policy across a whole organization than to risk upsetting a few unhappy transgender employees.

Institutional Theory

Institutional theory (DiMaggio & Powell 1983) asserts that firms adopt policy because of normative pressures to gain legitimacy. Neo-institutional theorists use “legitimacy” to refer to the survival value of policies. (Meyer and Rowan 1977; Dobbin & Sutton 1998; Edelman 1990, Kelly & Dobbin 1999). Typically, internal or external stakeholders who have a vested interest in the organization exert pressure to adopt normative policies. One of the main pressures is the ability to compete for valued human resources. Firms want to hire from a large applicant pool of qualified

individuals. If a firm does not offer all the benefits of its competitor, its applicant pool will offer less qualified applicants or require higher salaries for more qualified applicants (Pfeffer & Salancik 1978, Cook 2004). Goffman called this “impression management” on the individual level (Goffman 1959:208). “Legitimacy” is, on the organizational level, to neo-institutionalists what impression-management was to Goffman on the individual level. The approval of customers, vendors, governments, employees and other large groups is necessary for a successful business (Suchman 1995).

Employers interact with their legal and business environment by creating rationalizing myths and rituals about how they should respond (Edelman 1999). Employers’ beliefs about their environment are more relevant to their actions than the actual environment itself. As noted in the interviews, recruitment and retention was one of the largest concerns influencing policy adoption. Early adopters of transgender HR policies believe that the adoption of these policies will enhance recruitment and retention of non-transgender employees. The HR respondents also espoused the belief that the need for such enhancement is both important and urgent.

Employer Diversity Beliefs

Some large employers believe that minority hiring is not only a virtue, but also a necessity (Fiorina 2000, 2003). There is some evidence to support the idea that employers should have a heightened concern about recruitment and retention in the near future. There are two converging trends in the U.S.: increase in the proportion of

minorities and increase in college-level jobs. Currently, the population is about 28% minority. By 2012, it will be about 33% minority. By 2022, it will be about 37% minority. * In the past, it has not been problematic on a business efficiency level for employers not to hire minorities. From 1992 to 2012, the percentage of minorities in the recruitment pool will increase from 24% to 34% **. At the same time, however, the ratio of workers to jobs will decrease from a positive 104:100 to a negative 100:102. *** The combination of the two trends means that discrimination against minorities will leave jobs unfilled.

This trend is not equal in all parts of the country. From 1900 to 2000, non-Southern states with 10 percent or more non-whites increased from 2 to 26, reflecting the spread of diversity across the country. Only five states, all in the South—Alabama, Arkansas, Mississippi, South Carolina, and West Virginia—had a lower percentage of nonwhite races in 2000 than in 1950. By the end of the century, three

*Based on the Middle Series projections, which uses middle range assumptions for births, deaths and immigration:

- Total 1999 white non-H 196m/total 273m = 28% minority (U.S. Census 2002b)
- Total 2012 white non-H 203m/total 305m = 33% minority (U.S. Census 2002c)
- Total 2022 white non-H 208/total 330m = 37% minority (U.S. Census 2002d)

** The definition of “minority” that I use here refers to all those listed by the U.S. census as non-whites, including Blacks, Hispanics, Asians, American Indians, Alaska Natives, Native Hawaiians and Pacific Islanders. The use of the term “minority” in this context is problematic for a number of reasons, not the least of which is that these groups presently constitute a majority of the population in certain areas of the US, and will be a majority of the US overall by at least 2050, if not sooner. The minority labor force calculations:

- minority labor force 1992 29m/123 m total jobs = 24% minority labor force
- minority labor force 2002 39m/144m total jobs = 27% minority labor force
- minority labor force 2012 56m/165m total jobs = 34% minority labor force

*** The workers-to-job ratio calculations:

- total labor force 1992 128m/123m total jobs = 4% more workers than jobs
- total labor force 2002 145m/144m total jobs = 0.06% more workers than jobs
- total labor force 2012 162m/165m total jobs = 2% less workers than jobs (U.S. Census Bureau

(con't)

states—California, Hawaii, and New Mexico—and the District of Columbia had majority “Minority” populations (including Hispanics) (U.S. Census 2002f). This suggests that areas with higher minority populations, such as New York and California, are already feeling pressure for minority recruitment. At the same time, lower minority populations – the tip of New England, the Great Plains and the Deep South – are not yet feeling the need for minority recruitment. There are no transgender HR policies there.

Employers believe that their recruitment and retention problem is most acute in college-level jobs. Job discrimination is high. Although 25% of those enrolled in 4-year institutions in 1999-2000 were minorities, only about 22% of graduates in 2000-2001 were minorities.* At the same time, only 14% of the college-level workforce was minorities in 2003 (BLS 2004). Thus, only about 64% of the minority graduates were employed. Compared to white college graduates, the unemployment rate for college grads was 61% higher for Blacks, 57% higher for Asians, and 45% higher for Hispanics (BLS 2004). However, this discrimination did not cause a

2002e)

* Statistics on minority enrollment are easy to find. Statistics on degrees conferred is not so easy to find.

- 25% of undergraduates in 4-year institutions in 2001-2002 were minority students. (National Council on Education 2003:93)
- 22% of bachelor’s degrees conferred in 2000-2001 went to minorities. (American Council on Education 2003)
- 9% of bachelor’s degrees conferred in 1999-2000 went to Blacks (National Council on Education 2003)
- 6% of degrees conferred in 1999-2000 went to Hispanics (National Council on Education 2003)

problem for employers because there were fewer college-level jobs than college graduate entrants into the labor force.

Between 1988 and 1998 there were 1.3 million bachelor's-level entrants into the labor force annually (Fleetwood and Shelley 2000). There were 1.1 million college-level job openings created annually by job growth, upgrading and replacement (Fleetwood and Shelley 2000). Thus, for every 1000 college-level jobs, there were 1150 college graduates, 220 of who were minorities, but only 140 of whom were employed in college-level jobs. The employers had the advantage of choosing among an excess labor market.

Many employers believe these circumstances are about to change drastically. In 2012, applicants may have the advantage of choosing among an excess job market. The U.S. Bureau of Labor Statistics predicts that there will be 1.4 million college-level entrants into the labor force and 1.4 million new college-level job openings (Fleetwood and Sweeney 2000). At the same time, minorities went from being 11% of all bachelor's degrees conferred in 1980 to 22% in 2000 (American Council on Education 2003). If this trend continues, about 30% of the entrants will be minorities in 2012. Thus, for every 1000 college-level jobs, there will be 1000 college graduates, 300 of whom will be minorities. If only 64% of minority bachelor's degree holders in 2012 are employed in college-level jobs (as they were in 2003), then 192,000 of the 1.4 million college-level jobs will go unfilled. This will not only

cause efficiency problems because of the unfilled jobs, it will also cause higher salaries.

It is important to note that globalization, outsourcing, and other emerging labor trends may nullify these labor crisis projections. It is too early to tell exactly how the “majority-minority” switch will play out in terms of employment trends. The accuracy of these projections is not, however, the important issue here. The importance of these projections lies in the fact that employers give them significance. It is these “rational myths” that seem to be driving the transgender HR policies, rather than the actualities of law and business. This is consistent with the neo-institutional theory of organizational action.

The alarm has been sounded on this issue, and diversity has become a major business concern among U.S. employers, rather than a mere image concern. For example, DiversityInc magazine, written for senior management at large corporations and owners/partners of women- and minority-owned businesses, launched at the end of 2002. It now has a circulation of over 100,000. Its readership is 19% top management (VP+ at companies with more than 1,000 employees). The other readers are:

- 34% middle management
- 17% work in HR

- 17% women/minority-owned business
- 63% work for large companies (1,000+ employees)
- \$100,000 average head of household income (Diversity Inc. 2004)

The Link Between Transgender HR Policies and Recruitment/Retention

Large employers believe that hiring of minority races and ethnicities is of vital importance, and particularly those that rely heavily on college-level workers. However, the link between transgender HR policies and recruitment/retention of non-transgender employees is not obvious. The linkage can be found in the belief that the power of transgender lies not in numbers, but in legitimacy and in providing a means for employers to escape the diversity paradox. The paradox means they must increase minority hiring without calling attention to minority status or differences, pretending they are colorblind. Racial quotas are illegal and culturally illegitimate, but “racial balancing” and “diversity” are approved. The touchiness of the race issue, its social illogic, and the demographic predictions of soaring minority populations make it one of today’s crucial issues. (Guinier and Torres 2002)

The diversity paradox and the problems of the colorblind ethic are well illustrated by Patricia Williams, a Black law professor, who tells the story of her son’s attendance at nursery school. Over the course of one year, three different teachers in his school assured her that her son was color-blind. She took her son to an ophthalmologist who tested him and pronounced his vision perfect.

I could not figure out what was going on until I began to listen carefully to what he was saying about color. As it turned out, my son did not misidentify color. He resisted identifying color at all. "I don't know," he would say when asked what color the grass was; or, most peculiarly, "It makes no difference." This latter remark, this assertion of the greenness of grass making no difference, was such a precociously cynical retort, that I began to suspect some social complication in which he was somehow invested.

The long and the short of it is that the well-meaning teachers at his predominantly white school had valiantly and repeatedly assured their charges that color makes no difference. "It doesn't matter," they told the children, "whether you're black or white or red or green or blue." Yet upon further investigation, the very reason that the teachers had felt it necessary to impart this lesson in the first place was that it did matter, and in predictably cruel ways: some of the children had been fighting about whether black people could play "good guys." (Williams 1997)

The paradox was again played out in 2003, a California state voter-initiative called Proposition 54 was introduced. It would have prohibited governments from using race, ethnicity, color or national origin to classify current or prospective students, contractors, or employees in public education, contracting or employment operations (Racial Privacy 2003). Affirmative action and diversity proponents, who said it would drastically slash minority participation in these areas, opposed it. It was defeated by a margin of 64% to 36% (Connerly 2004).

Because of the thin line that employers must tread, the language of "diversity" has been substituted for the language of "race." At the same time, gays and lesbians began increasingly "coming out of the closet" at work. They organized and asked their corporations to adopt policies saying that they will not discriminate on the basis of sexual orientation. There are about 300 official GLBT "employee resource

groups” at major employers. About 2600 companies have adopted such policies, including most of the Fortune 1000 (HRC 2004a). If one uses the oft-cited statistic that 10% of the population is gay, these numbers are enough to make employers in the new recruiting environment sit up and take notice.* More important than the numbers is the issue of legitimacy. Discrimination, although it exists in many areas and is even culturally sanctioned, is never pretty. Discrimination against gays and lesbians is becoming less and less culturally sanctioned. It is something of the mark of a boor, and class divisions show sharply here. If a company is accused of discriminating against gays and lesbians, minorities may go elsewhere. Some in the gay and lesbian community have explicitly recognized this linkage. For example, at the 2002 Out and Equal Workplace Advocates Conference, a workshop on this very subject was held.

2002 Out and Equal Conference

The Intersection of Race, Gender and Sexuality: Diversity and Inclusion in Corporate America

This interactive workshop will provide an overview of the key concepts and practices for effective corporate diversity programs as they relate to the LGBT community. The panel of diversity professionals will speak about diversity practices within their organizations and how to effectively build allies and build partnerships within the corporation to further LGBT issues. Participants will be able to leave with tools and resources to be effective change agents in the workplace. (Out and Equal Workplace Advocates 2002)

* The 10% figure is problematic. While Alfred Kinsey’s research suggested that as the percent of the population with homosexual desires, it is not the same as the number of those who openly identify as gay or lesbian. Studies show that about 4% of the population openly identifies as “gay” and 2% openly identify as “lesbian.” This is probably due to the fact that, while 10% of the population may very well have had homosexual desires at some point, it is unclear how many have acted upon these desires, nor do the majority of these self-identify as gay or lesbian. However, the 10% figure is a “rational myth” often cited and rarely disputed.

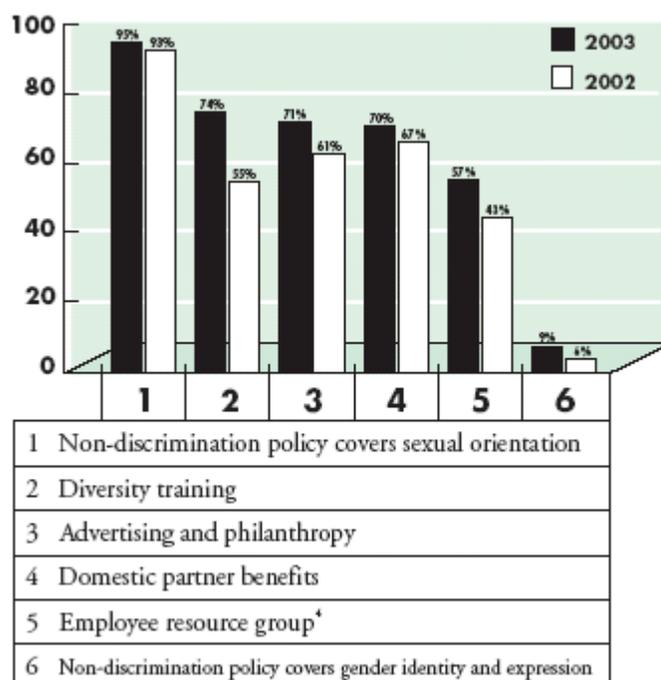
Gays and lesbians, however, are not transgender, as detailed in chapter 2.

Substantial politics divides gay and lesbian advocacy from transgender advocacy.

The number of transgender HR policies is less than 10% of the number of gay and lesbian policies.

Figure 25 – Transgender HR Policies on the HRC Equality Index

Fig. 1. Percent of Companies Meeting Each Index Component



(HRC 2003)

Gays and lesbians are far from universally in favor of promoting transgender rights. Discrimination against transgenders is still culturally sanctioned far more than discrimination against gays and lesbians. Because of this, many gays and lesbians separate themselves from transgenders to avoid the stigma, and many gays and lesbians do not advocate transgender rights. However, starting in 2000, intellectual elements of the gay and lesbian community decided to put transgenders in the

intellectual center of debate. The basis for this decision, not shared by many gays and lesbians, was the understanding that transgender rights advocacy by gays and lesbians furthers the cause of gay and lesbian rights, while at the same time allowing a certain social distance from the subject of the advocacy. While not accepted by all gays and lesbians, this argument has penetrated community consciousness.

One of the most important developments in the transgender link with gays and lesbians is the HRC Equality Index. Initiated in 2002*, it rated major U.S. corporations on their records toward lesbian, gay, bisexual and transgender employees, consumers and investors. The 2003 HRC Corporate Equality Index report notes that the initial publication in 2002 sparked strong public interest and caught the attention of corporate executives.

Within a week of its release in August 2002, more than 30 companies called the Human Rights Campaign to inquire about how to obtain a rating or improve the one they had (HRC 2003). The level of interest was borne out in the improved response rate to the 2003 survey and in the number of companies that told HRC they would begin implementing the policies measured in the index and plan to respond in 2004. Companies have begun to cite their HRC Corporate Equality Index scores in advertisements and public forums, and employee groups are using the index to drive internal change.

* The HRC Corporate Equality Index grew out of the Gay and Lesbian Values Index (glvIndex), which was created by author Grant Lukenbill and financial adviser Howard Tharsing in 1993. HRC acquired the glvIndex in 2001, renamed it and slightly modified the system.

As noted previously, the growth of private employer transgender HR policies experienced a breakthrough in 2001, continued to grow in 2002, and accelerated its growth in 2003.

Figure 26 – Cumulative Growth of Private Employer Transgender HR Policies by Year

	1997	1998	1999	2000	2001	2002	2003	2004
Number of transgender HR policies	4	5	9	12	25	39	65	80

Red = breakthrough growth year (100%+ increase)(increase from 0 not included)

(HRC 2004d)

The increase in transgender HR policies at private employers in 2001 paralleled another trend: during the preceding few years, lesbian and gay employee resource groups at large corporations gradually but increasingly shifted transgender from the periphery to the center of their advocacy. In addition to HRC, other lesbian and gay organizations have been active in transgender HR policies, such as the National Gay and Lesbian Task Force. NGLTF is the national progressive organization working for the civil rights of gay, lesbian, bisexual and transgender people, with the vision and commitment to building a powerful political movement (thetaskforce.org).

Riki Wilchins is executive director of GenderPAC, a public advocacy coalition established in the late 90's, that has worked to end discrimination and

violence caused by gender stereotypes by changing public attitudes, educating elected officials and expanding legal rights. Wilchins and GenderPAC have worked to educate lesbian and gay corporate groups to understand that gender discrimination is the root of sexual orientation discrimination, as well as transgender discrimination. Most sexual orientation discrimination and harassment occurs when lesbians and gays act in gender non-conforming ways. In part because of such educational efforts, many in-house employee resource groups came to the understanding that discrimination against lesbians and gays is linked to transgender discrimination. Those groups advocated for transgender HR policies, in addition to sexual orientation policies. Wilchins believes these factors to have caused the increase in transgender HR policies in U.S. employers starting in 2001 (Wilchins 2004).

I saw an example of the gay and lesbian community's move towards advocating transgender rights in 2003. Out and Equal Workplace Advocates is an organization devoted to the Lesbian, Gay, Bisexual and Transgender community in workplace settings. More than 50 large employers sponsor it. At its 2003 conference, which I attended, there were many employees from Fortune 500 companies. There were several workshops devoted to creating transgender HR policies, and I understand that these workshops had been created the year before and were considered very successful. Listening to the questions asked by the audiences, it was clear that the number of transgenders at their companies was small or nonexistent, and that they knew little about transgender identity, but they were just as clearly interested in creating transgender HR policies at their firms as "the next step."

There was a “there but for the grace of God go I” sensibility. This ordering of transgender issues as “the next step” is in line with the fact that all companies with transgender HR policy also have “sexual orientation” policy. Transgender HR policy never stands alone.

Transgender public and political advocacy has been given a boost by the interest of lesbian and gay advocate in transgender HR policies. In addition to GenderPAC, two other national organizations have become active. The National Center for Transgender Equality is a social justice organization working to make transgender people safe from discrimination and violence. NCTE provides a national voice on fairness and equality for transgender people in Washington and provides resources and assistance to empower and strengthen localized efforts around the country (nctequality.org). The National Transgender Advocacy Coalition is a political advocacy coalition founded in 1999 working to establish and maintain the right of all transgendered, intersexed, and gender-variant people to live and work without fear of violence or discrimination (ntac.org).

These trends fit together: the belief in recruitment and retention as an urgent and important issue, the predicted change in minority demographics, the increase and success of gay and lesbian workplace advocacy, and the sharp increase in the number of transgender HR policies. Transgender HR policies are riding on the “rational myths” of business necessity and legitimacy concerns.

The data presented gives useful answers to three significant questions about the meaning of transgender HR policies, although at this point they are only suggested, not proven:

- What benefits do transgender HR policies give employers?
 - they give legitimacy in recruiting and retention, essential because of rational myths about minority demographics and the cultural meaning of transgender
- Why are these influences driving particular employers to adopt these policies, and not others subject to the same influence?
 - Minority and diversity recruitment and retention are important either because of ideological commitment of senior management in the case of smaller firms, or because large firms with large workforces, many establishments and highly paid workers believe that they need these policies to enhance recruitment and retention of non-transgender employees.
- Why did such policies begin proliferating in 2001, and not before or after?
 - That is when gay advocacy groups began to move transgenders from the periphery to the intellectual center and the HRC Equality Index came out, creating cultural legitimacy for transgender employees and linking transgender to minority recruitment.

“Diversity” policies, including transgender HR policies, despite not being for the direct benefit of traditional minorities, stand as a symbol of minority friendliness. Employers perceive such policies as conferring legitimacy that serves their business needs. The employers believe it, and that is what counts. These factors have combined to make employers receptive to transgender HR policies despite the paucity of “out” transgender employees, and employers’ general lack of understanding of transgender employees and their needs. As with so many things in life, subjective belief is much more important than objective “reality.”

Conclusion

Traditional theories of organizational action focus on efficiency and control, and consistent with this, the data indicate that employers are the primary beneficiaries of transgender HR policies. The efficiency and control argument is weak, however, because the primary benefit claimed by employers is improved recruitment and retention, and yet the number of known transgender employees is miniscule. Institutional theory asserts that firms adopt policy because of normative pressures to gain “legitimacy,” which refers to the survival value of policies. Employers interact with their legal and business environment by creating rationalizing myths and rituals about how they should respond. In line with this theory, early adopters of transgender HR policies believe the policies will enhance recruitment and retention of non-transgender employees, and that the need for such enhancement is both important and urgent. The power of transgender HR policies lies not in numbers, but in legitimacy

and providing a means for employers to escape the diversity paradox. The paradox requires them to increase minority hiring without calling attention to minority differences, pretending they are colorblind. Transgender HR policies stand as a symbol of minority-friendliness. These policies began to proliferate in 2001 because gay and lesbian activists advocated transgender HR policies as culturally legitimate despite the general social disapproval of transgender people. These factors have combined to make employers receptive to transgender HR policies despite the paucity of “out” transgender employees and employers’ general lack of understanding of transgender employees and their needs.

While the sample employed is not generalizable to all employers with transgender HR policies, this information is useful to understand early-adopting firms. The results of this study will permit future research to construct surveys based on the influences found here. These may be used in a larger probability sample as well as in control groups. The real “cutting edge” of workplace diversity on which more research is needed is the question of whether, despite discriminatory norms, diversity policies will support the needs of covered employees, as well as the needs of employers.

APPENDIX

The current list of U.S. employers with transgender HR policies, maintained by HRC, is set forth below. I added the year of adoption from information provided by HRC, and the economic sector as determined in accordance with the method detailed in Chapter 4. The number of employees was obtained from Hoover's Online, <http://www.hoovers.com/free>. In those instances where Hoover's did not have information about the employer, estimates were made from other information sources, such as the employer website.

Figure 27 – List of U.S. Employers with Transgender HR Policies as of July 28, 2004

EMPLOYER	CITY	YEAR OF ADOPTION	EMPLOYEES	ECONOMIC SECTOR
Advanced Fibre Comm	Petaluma CA	2003	773	Information
Aerospace Corp	El Segundo CA	2002	3000	Manufacturing
Aetna Inc	Hartford CT	2001	27600	Finance
Agere Systems	Allentown PA	2001	6800	Information
Agilent Technologies	Palo Alto CA	2002	2900	Manufacturing
AID Atlanta	Atlanta GA	2002	50	Social Services
Akin, Gump	Dallas TX	2003	4000	Professional Services
Albany, City of	Albany NY	2004	6681	Public Administration
Allentown, City of	Allentown PA	2002	1000	Public Administration
American Airlines	Dallas TX	2001	96400	Transportation
American Express Co.	New York, NY	2004	78200	Finance
American University	Washington, DC	2004	2000	Education
Ann Arbor, City of	Ann Arbor MI	1999	1202	Public Administration
Apple Computer	Cupertino CA	1998	10912	Manufacturing
Arcus Foundation	Kalamazoo MI	2003	50	Foundations
Arise Communications	Oakland CA	2002	50	Information
Arizona State University	Tempe AZ	2004	3278	Education
ARTLab	San Francisco CA	2003	50	Professional Services
AT&T Corp	New York NY	2003	61600	Information
Atlanta, City of	Atlanta GA	2000	8914	Public Administration
Austin, City of	Austin, TX	2004	26753	Public Administration
Avaya Inc	Basking Ridge NJ	2000	16900	Information
Baltimore, City of	Baltimore MD	2002	23757	Public Administration
Bank One Corp	Chicago IL	2003	79196	Finance
Bausch & Lomb	Rochester NY	2003	11600	Manufacturing
Bend, City of	Bend, OR	2004	733	Public Administration
Benton, County of	OR	1998	1305	Public Administration
Best Buy Co.	Minneapolis MN	2003	100000	Retail
Borders Group	Ann Arbor MI	2004	32300	Retail
Boston, City of	Boston MA	2002	14682	Public Administration
Boulder, City of	Boulder CO	2000	1425	Public Administration
Box Office Tickets	Atlanta GA	2002	50	Administrative Services
Brown University	Providence RI	2003	1095	Education
Buffalo, City of	Buffalo NY	2002	6012	Public Administration
CALLogistix Natl Call Ctr	Columbus OH	1999	100	Administrative Services
Cambridge, City of	Cambridge MA	1997	1631	Public Administration
Capital One Financial Cor	Falls Church VA	2002	17760	Finance

Cargill Inc	Minneapolis MN	2003	98000	Manufacturing
Carnegie Mellon Universit	Pittsburgh PA	2003	500	Education
Champaign, City of	Champaign IL	1977	1138	Public Administration
Chapel Hill, City of	Chapel Hill NC	2004	646	Public Administration
Charles Schwab	San Francisco, CA	2004	16300	Finance
Chicago, City of	Chicago IL	2002	59107	Public Administration
ChoicePoint Inc	Alpharetta GA	2003	4100	Information
Chubb Corp	Warren NJ	2003	12300	Finance
Cisco Systems	San Jose CA	2004	34000	Manufacturing
Citigroup Inc	New York, NY	2004	259000	Finance
Community Behavioral Health	Philadelphia PA	2003	1000	Social Services
Cook, County of	IL	2002	93611	Public Administration
Coors Brewing	Golden CO	2004	8500	Manufacturing
Covington, City of	Covington KY	2003	1048	Public Administration
Dallas, City of	Dallas TX	2002	11686	Public Administration
Dane, County of	WI	2001	15975	Public Administration
Decatur School Board	Decatur GA	2000	200	Public Administration
Decatur, GA, City of	Decatur GA	2000	747	Public Administration
Decatur, IL, City of	Decatur IL	2002	1363	Public Administration
DeKalb, City of	DeKalb IL	2000	529	Public Administration
Dell Inc.	Austin TX	2004	46000	Manufacturing
Denver, City of	Denver CO	2001	13033	Public Administration
Deutsche Bank	New York NY	2003	67682	Finance
Eastman Kodak	Rochester NY	2002	63900	Manufacturing
eFunds Corp	Glendale WI	2003	5400	Finance
El Paso, City of	El Paso TX	2003	13171	Public Administration
Electronic Arts	Redwood City CA	2004	4000	Information
Erie, County of	Erie PA	2002	3733	Public Administration
Evanston, City of	Evanston IL	1997	1991	Public Administration
Faegre & Benson	Minneapolis, MN	2004	2000	Professional Services
Fallaron Geographics	San Francisco CA	2004	100	Professional Services
Frost Brown Todd LLC	Columbus OH	2004	1600	Professional Services
gfn.com	New York NY	2000	10	Finance
GLSEN	New York NY	2003	50	Foundations
Goldman Sachs	New York NY	2004	19476	Finance
Grand Openings	Brookline, MA	2004	10	Retail
Grand Rapids, City of	Grand Rapids MI	1994	1938	Public Administration
HarperCollins Publishers	New York NY	2004	3000	Information
Harrisburg, City of	Harrisburg PA	1983	3216	Public Administration
Hewlett Packard	Palo Alto CA	2003	142000	Manufacturing
Houston, City of	Houston TX	2001	24232	Public Administration
Human Rights Campaign	Washington DC	1999	50	Foundations
Huntington Woods, City of	Huntington Woods MI	2002	102	Public Administration
IBM*	Armonk NY	2002	255157	Manufacturing
Intel Corp	Santa Clara CA	2002	79700	Manufacturing
Iowa City, City of	Iowa City IA	1995	741	Public Administration
Ithaca, City of	Ithaca NY	2003	298	Public Administration
Jefferson, County of	KY	1999	11984	Public Administration
JP Morgan Chase & Co	New York NY	2002	110453	Finance
Kalamazoo G&L Resource Ctr	Kalamazoo MI	2002	50	Social Services
Kalamazoo, City of	Kalamazoo MI	2001	753	Public Administration
Key West, City of	Key West FL	2003	1375	Public Administration
Keyspan	Brooklyn, NY	2004	11300	Utilities
Kimpton Hotels	San Francisco CA	2004	500	Accomodations
Knox College	Galesburg IL	2001	60000	Education
Kraft Foods	Northfield IL	2004	106000	Manufacturing
Lambda Legal Defense Fund	New York NY	1992	50	Professional Services
Lehman Brothers Holdings	New York NY	2003	16200	Finance
Levi Strauss & Co.	San Francisco CA	2003	12300	Manufacturing
Lexington, City of	Lexington KY	1999	5014	Public Administration

* IBM lays claim to being the first Fortune 500 company to include "gender identity and expression" in its policy in all of the 160+ countries where it operates, and not simply in the United States.

Lexington-Fayette, County of	KY	1999	5014	Public Administration
Lexmark Intl	Lexington KY	2001	11800	Manufacturing
Log Cabin Republicans	Washington DC	2004	50	Political Groups
Los Angeles, City of	Los Angeles CA	1979	34626	Public Administration
Louisville, City of	Louisville KY	1999	4881	Public Administration
Lucent Technologies	Murray Hill NJ	1997	34500	Manufacturing
Madison, City of	Madison WI	2000	8094	Public Administration
MarketDerby	San Francisco CA		100	Administrative Services
McKinney + Silver	Raleigh NC	2001	1000	Professional Services
MessagePLEX Natl Answering Ctr	Columbus OH	1999	100	Administrative Services
MetLife	New York NY	2003	49000	Finance
Middlebury College	Middlebury VT	2003	1000	Education
Miller Brewing Co	Milwaukee WI	2003	4559	Manufacturing
Minneapolis, City of	Minneapolis MI	1975	6287	Public Administration
Mitchell Gold & Co.	Taylorsville NC	2003	50	Manufacturing
Monroe, County of	FL	2003	3249	Public Administration
Morrison & Foerster	San Francisco CA	2001	4000	Professional Services
Motorola Inc.	Schaumburg IL	2003	88000	Manufacturing
Multnomah, County of	OR	2001	11946	Public Administration
National Academy of Sciences	Washington DC	2002	100	Professional Services
National Coalition for the Homeless	Washington DC		50	Social Services
National G&L Task Force	Washington DC		50	Political Groups
Nationwide	Columbus, OH	2004	30000	Finance
NCR Corp	Dayton OH	2001	29000	Manufacturing
New Hope, Borough of	New Hope PA	2002	24	Public Administration
New Orleans, City of	New Orleans LA	1998	12366	Public Administration
New York Times Co.	New York NY	2003	12400	Information
New York, City of	New York NY	2002	146807	Public Administration
Newark, City of	Newark, CA	2004	662	Public Administration
Nike, Inc.	Beaverton OR	2002	23300	Manufacturing
Oakland, City of	Oakland CA	2003	7895	Public Administration
Ohio Savings Bank	Cleveland OH	2003	1000	Utilities
Ohio State University	Cleveland, OH	2004	33772	Education
OneSource	Bethlehem PA	2002	50	56
Online Partners	San Francisco, CA	2002	122	Information
Outlook News	Columbus OH		50	Information
Owens Corning	Toledo OH	2004	18000	Manufacturing
Peace Learning Center	Indianapolis IN	2001	50	Social Services
Peoria, City of	Peoria IL	2003	1894	Public Administration
PepsiCo, Inc.	Purchase, NY	2004	143000	Manufacturing
Pfizer Inc	New York NY	2004	122000	Manufacturing
PG&E Corp	San Francisco CA	2002	20600	Utilities
Philadelphia, City of	Philadelphia PA	2002	43017	Public Administration
Pittsburgh, City of	Pittsburgh PA	1997	6509	Public Administration
PlanetOut.com	San Francisco CA		122	Information
Portland, City of	Portland OR	2000	9397	Public Administration
Pride Foundation	Seattle WA		50	Foundations
Prudential Financial Inc	Newark NJ	2003	39422	Finance
Replacements Ltd	Greensboro NC	2001	50	Retail
Rochester, City of	Rochester NY	2001	2547	Public Administration
Salem, City of	Salem OR	2002	6946	Public Administration
San Diego, City of	San Diego CA	2003	29341	Public Administration
San Francisco, City of	San Francisco CA	1994	14222	Public Administration
San Jose Police Dept	San Jose CA	2002	1000	Public Administration
San Jose, City of	San Jose CA	2002	11812	Public Administration
Sandia National Labs	Albuquerque NM	2003	100	Professional Services
Santa Cruz, City of	Santa Cruz CA	1992	943	Public Administration
Santa Cruz, County of	Santa Cruz CA	1992	4366	Public Administration
SC Johnson & Son Inc	Racine WI	2003	12000	Manufacturing
Seattle, City of	Seattle WA	1986	11202	Public Administration
Southern California Edison	Rosemead CA	2004	12698	Utilities
Springfield, IL, City of	Springfield IL	2003	11842	Public Administration
Sprint Corp	Overland Pk KS	2004	66900	Information
St. Paul, City of	St Paul MN	1990	6183	Public Administration
State Bar of Texas	Austin TX	2001	50	Professional Services

State of California	CA	2004	668811	Public Administration
State of Connecticut	CT	2000	67354	Public Administration
State of Kentucky	KY	2003	77128	Public Administration
State of Massachusetts	MA	2001	134365	Public Administration
State of Minnesota	MN	1993	86542	Public Administration
State of New Jersey	NJ	2001	179481	Public Administration
State of New Mexico	NM	2003	62382	Public Administration
State of New York	NY	2002	433372	Public Administration
State of Pennsylvania	PA	2003	235767	Public Administration
State of Rhode Island	RI	2001	24512	Public Administration
Suffolk, County of	NY	2001	38124	Public Administration
SUNY	Albany NY		10000	Education
Tacoma, City of	Tacoma WA	2002	4905	Public Administration
Tempe, City of	Tempe AZ	2003	3325	Public Administration
Toledo, City of	Toledo OH	1998	4964	Public Administration
Traverse City Inc.	Traverse City MI		100	Public Administration
Triangle Foundation	Detroit MI	1999	50	Foundations
Trillium Asset Management	Boston MA	2001	50	Finance
Tucson, City of	Tucson AZ	1999	11698	Public Administration
UBS	New York, NY	2004	69000	Finance
University of California System	Berkeley CA	2003	118533	Education
University of Iowa	Iowa City IA	1997	12000	Education
University of Pennsylvania	Philadelphia, PA	2004	11949	Education
University of Puget Sound	Tacoma WA	1996	800	Education
Urbana, City of	Urbana IL	1979	526	Public Administration
Washington DC, City of	Washington DC	1999	1500	Public Administration
Wells Fargo & Co.	San Francisco, CA	2004	140000	Finance
Wesleyan University	Middletown CT	2002	400	Education
West Hollywood, City of	West Hollywood CA	1998	414	Public Administration
Witek Combs Communications	Washington DC	2002	50	Information
Worldspan LP	Atlanta GA	2000	2530	56
Xerox	Stamford CT	2001	62100	Manufacturing
York, City of	York PA	1998	676	Public Administration
Ypsilanti, City of	Ypsilanti MI	1997	306	Public Administration

(HRC 2004a,d)

Informed Consent

Consent to Participate in a Research Study

We are inviting you to take part in a research study. This form will tell you about the study, but the researcher will explain it to you first. You may ask this person any questions that you have. When you are ready to make a decision, you may tell the researcher if you want to participate or not. You do not have to participate if you do not want to. If you decide to participate, the researcher will ask you to sign this statement and will give you a copy to keep.

Why am I being asked to take part in this research study?

We are asking you to be in this study because you work for a company that has a policy prohibiting employment discrimination against transgender people.

Why are you doing this research study?

The purpose of this research is to describe transgender human resources policy in U.S. employers, the kinds of employers that have such policy, and the circumstances in which such policies are adopted.

What will I be asked to do?

If you decide to take part in this study, we will ask you to give an interview via telephone for approximately thirty minutes. The interview will be taped, although your confidentiality will be preserved as described below.

Will there be any risk or discomfort to me?

If there were to be a breach of confidentiality, which is very unlikely, then personal disclosures which you made during the interview might be revealed. The likelihood of this risk is minimal for four reasons. 1) Neither the name of the company nor participants' names will be used in creating study results. 2) The sexual orientation and gender identity of participants will not be revealed. 3) It is anticipated that participants will use normal business discretion in describing people and events. 4) While the interviews will be taped and you will need to sign an informed consent form, these documents will be kept under lock and key at Northeastern University with access only to the researchers, and will be destroyed after the study is completed.

Will I benefit by being in this research?

There is no direct benefit to you from this study. However, the information learned from this study will provide useful information regarding human resource management practices of transgenders and other minorities.

Who will see the information about me?

The researchers will have access to your taped interview, the transcripts, and your signed informed consent form. Only the researchers on this study will see the information about you. No reports or publications will use information that can identify you in any way. The tapes, transcripts and signed informed consent forms

will be kept under lock and key at Northeastern University, to which only the researchers will have access. The tapes and transcripts will be destroyed at the conclusion of the study. The informed consent forms will be kept for three years after the conclusion of the study, as required by law, and then destroyed. In rare instances, authorized people may request to see research information about you and other people in this study. This is done only to be sure that the research is done properly. We would only permit people who are authorized by law or by Northeastern University to see this information.

What will happen if I suffer any harm from this research?

No special arrangements will be made for compensation or for payment for treatment solely because of your participation in this research.

Can I stop my participation in this study?

Your participation in this participation in this research is completely voluntary. It is not required by your employer, and you do not have to participate if you do not want to. Even if you begin the study, you may quit at any time. If you do not participate or if you decide to quit, you will not lose any rights, benefits, or services that you would otherwise have as an employee.

Who can I contact if I have questions or problems?

You may contact the researcher, Jillian T. Weiss, at 335 Cushing Hall, Northeastern University, Boston, MA 02115 , or Suzann Thomas-Buckle, at 305 Cushing Hall, Northeastern University, Boston, MA 02115 . You may call anonymously if you wish.

Who can I contact about my rights as a participant?

If you have any questions about your rights as a participant, you may contact Vivienne A. Conner, Coordinator, Human Subjects Research Protection, Division of Research Integrity, 413 Lake Hall, Northeastern University, Boston, MA 02115 (617) 373-7570. You may call anonymously if you wish.

Who can I contact about my rights as a participant?

If you have any questions about your rights as a participant, you may contact Vivienne A. Conner, Coordinator, Human Subjects Research Protection, Division of Research Integrity, 413 Lake Hall, Northeastern University, Boston, MA 02115 (617) 373-7570. You may call anonymously if you wish.

Is there anything else I need to know?

You must be at least 18 years old to participate.

Interview Protocol

There were six introductory statements.

- Thank you for participating in this study.
- I remind you that the interview is being recorded.
- I have received your signed informed consent form, which we have reviewed together. Do you have any questions about that?
- Employer and employee information is confidential and will not appear in the research study.
- There are no right or wrong answers and it's okay if you don't know - this is a study, not an examination.
- If you need to take a break for any reason, feel free and I'll be glad to call you back whenever it's convenient for you.

There were 17 questions in the interview protocol:

- What is the name of your employer?
- How many locations (list a few major ones, if applicable)
- How many employees in total at all locations
- What is your position?
- How did you come to be involved with the transgender HR policy?
- What protected categories does your employer's general non-discrimination policy include?
- What is your employer's policy regarding transgender employees?
- How does your employer define the terms in the policy referring to transgender?
- When was this policy created?
- Why was this policy created?
- What were the steps in the creation of this policy?
- Who drafted the language of the policy and where was the language drawn from?
- What are the benefits of this policy for your employer?
- What are the drawbacks of this policy for your employer?
- Has there been any opposition to the enactment or implementation of this policy?

- How has this policy been communicated to employees, customers, suppliers and others?
- Are you aware of any current or former employees who identify as transgender?
- Is there a GLBT employee group at your employer that communicates with management?
- What is expected of transgender employees in regard to bathrooms?
- Would someone who does not intend to change sex be permitted to wear clothing of the opposite sex to work?

Cumulative Frequency Chart of Policy Adoption

Figure 28. Cumulative Frequency Chart of Policy Adoption

Year	Frequency	Cumulative
1975	1	1
1976	0	1
1977	1	2
1978	0	2
1979	2	4
1980	0	4
1981	0	4
1982	0	4
1983	1	5
1984	0	5
1985	0	5
1986	1	6
1987	0	6
1988	0	6
1989	0	6
1990	1	7
1991	0	7
1992	3	10
1993	1	11
1994	2	13
1995	1	14
1996	1	15
1997	6	21
1998	6	27
1999	11	38
2000	11	49
2001	23	72
2002	36	108
2003	44	152
2004	36	188

REFERENCES*

- Allen, Francis, et al. 1995. DSM IV Guidebook. American Psychiatric Press.
- American Conservative Union. 2004.
<http://usconservatives.about.com/library/weekly/aastatesrankeda.htm>
- American Council on Education. 2003. "Minority College Enrollment Surges Over the Past Two Decades; Students of Color Still Lag Behind Whites in College Participation."
http://www.acenet.edu/news/press_release/2003/10october/minority_report.cfm
- American Psychiatric Association. 1980. Diagnostic and Statistical Manual of Mental Disorders III. American Psychiatric Press.
- American Psychiatric Association. 1994. Diagnostic and Statistical Manual of Mental Disorders IV. American Psychiatric Press.
- American Psychiatric Press Textbook of Psychiatry, Third Edition, p. 745 (1999) (citing Green and Fleming [1990])
- Appiah, Anthony and Gutmann, Amy. 1998. *Color Conscious: The Political Morality of Race*. Princeton University Press
- Baron, James N., Dobbin, Frank R. and Jennings, P. Devereaux. 1986. "War and Peace: The Evolution of Modern Personnel Administration in U.S. Industry." *American Journal of Sociology* 92:350-383.
- Baron, James N., Dobbin, Frank R. and Jennings, P. Devereaux. 1988. "Mission Control? The Development of Personnel Systems in U.S. Industry." *American Sociological Review* 53:497-514.
- Bean, Linda. 2003. "What's Top Legal Problem for Transgendered People?." *Diversity Inc. Magazine*.
- Bean, Linda. 2004. "Transgender Employees: The Acid Test of Diversity." *Diversity Inc. Magazine*.
- Brown, George R. 1990. "A Review of Clinical Approaches to Gender Dysphoria." *Journal of Clinical Psychiatry* 51:2-62.
- CNN.com. 2002. "Elections 2002: Election Results."
<http://www.cnn.com/ELECTION/2002>

* All internet references were last accessed on July 30, 2004.

Bell, Derrick. 1980. "Brown v. Board of Education and the Interest Convergence Dilemma," *Harvard Law Review* 93:518.

Blackless, Melanie. 2000. "How Sexually Dimorphic Are We? Review and Synthesis." *American Journal of Human Biology* 12:151-161.

Blau, Peter M. and Schoenherr, Richard A. 1971. *The Structure of Organizations*. New York: Basic.

Blaug, Mark. 1976. "The Empirical Status of Human Capital Theory: A Slightly Jaundiced Survey." *Journal of Economic Literature* 14:827-855.

BLS (Bureau of Labor Statistics). 2004. "Employment status of the civilian noninstitutional population 25 years and over by educational attainment, sex, race, and Hispanic or Latino ethnicity."
<ftp://ftp.bls.gov/pub/special.requests/lf/aat7.txt>

Brown, Mildred L. and Rounsley, Chloe Ann. 1996. *True Selves: For Families, Friends, Coworkers and Helping Professionals*. Jossey-Bass.

Butler, Judith. 1990. *Gender Trouble*. Routledge.

Butler, Judith. 1993. *Bodies That Matter: On the Discursive Limits of "Sex."* Routledge

Capetimes. 2004. "Gay Group Kicks Transvestites Out."
<http://www.capetimes.co.za/index.php?fSectionId=271&fArticleId=2125010>

Civil Rights Act of 1964. 42 United States Code § 2000e *et seq.*

Connerly, Ward. 2003. "Not a Chance: The electoral journey of Proposition 54."
http://www.adversity.net/RPI/rpi_start.htm

Conway, Lynn. 2002. "How Frequently Does Transsexualism Occur?"
<http://ai.eecs.umich.edu/people/conway/TS/TSprevalence.html>

Cook, Alison. 2004. "Corporate Decision-Making Process: How Organizations Decide to Adopt Work/Life Initiatives." *Sloan Work and Family Encyclopedia*
http://www.bc.edu/bc_org/avp/wfnetwork/rft/wfpedia/wfpCDMPent.html

Davidson, Megan. 2002. *Binary Sex & Transgender: Denaturalizing the Body and Extending Feminist Theory*. MA Thesis. Binghamton University/SUNY, Department of Anthropology.

- Devor, Holly. 1989. *Gender Blending: Confronting the Limits of Dualism*. Indiana University Press.
- Devor, Holly. 1999. *FTM: Female to Male Transsexuals in Society*. Indiana University Press.
- DiMaggio, P. & Powell, W. (1983). "The Iron Cage Revisited: Institutional isomorphism and collective rationality in organizational fields." *American Sociological Review*, 23, 111-136.
- Dobbin, Erin & Sutton, Frank.. 1998. "The Strength of A Weak State: The Rights Revolution and the Rise of Human Resources Management Divisions." *American Journal of Sociology* 104:441-476.
- Eadie, Jo. 2004. *Sexuality: A Glossary*. London:Arnold Publishers
- Edelman, Lauren B. 1990. "Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace." *American Journal of Sociology* 95:1401-1440
- Edelman, Lauren B. 1992. "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law." *American Journal of Sociology* 97:(6)1531-1576.
- Edelman, Lauren B., Erlanger, Howard S., and Lande, John. 1993. "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace." *Law & Society Review* 27:(3)497-534.
- Edelman, Lauren B., Fuller, Sally-Riggs, Mara-Drita, Iona. 2001. "Diversity Rhetoric and the Managerialization of Law." *American Journal of Sociology* 106:(6)1589-1641.
- Edelman, Lauren B. and Suchman, Mark C. 1997. "The Legal Environments of Organizations." *Annual Review of Sociology* 1997 23:479-515.
- EEOC (Equal Employment Opportunity Commission). 2004a. "Charge Receipt Filed and Resolved." <http://www.eeoc.gov/stats/all.html>
- Feinberg, Leslie. 1997. *Transgender Warriors: Making History from Joan of Arc to Dennis Rodman*. Beacon Press
- Fiorina, Carly. 2000. Digital Connections Conference. http://www.hp.com/hpinfo/execteam/speeches/fiorina/ceo_rainbow_push.html
- Fiorina, Carly. 2003. Churchill and Commonwealth Clubs.

<http://www.hp.com/hpinfo/execteam/speeches/fiorina/churchill03.html>

Fleetwood, Chad and Shelley, Kristina. 2000. "The Outlook for College Graduates 1998-2008: A Balancing Act" *Occupational Outlook Quarterly*.

<http://stats.bls.gov/opub/ooq/2000/fall/art01.pdf>

Florida, Richard. 2003. *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life*. Basic Books

Flynn, Taylor. 2001. "Transforming The Debate: Why We Need To Include Transgender Rights In The Struggles For Sex And Sexual Orientation Equality." *Columbia Law Review* 101:392-403

Franke, Katherine. 1995. "The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender." *University of Pennsylvania Law Review* 144:1.

Foucault, Michel. 1980. *The History of Sexuality*, vol. 1, Introduction, trans. Robert Hurley. New York: Vintage.

Fuller S.R., Edelman, Lauren B., Matusik S.F. 2000. "Legal Readings: Employee Interpretation and Mobilization of Law." *Academy of Management Review* 25:(1)200-216.

Goffman, Erving. 1959. *The Presentation of Self in Everyday Life*. Doubleday.

Greenberg, David. 1988. *The Construction of Homosexuality*. University of Chicago Press

Guinier, Lani and Torres, Gerald. 2002. *The Miner's Canary*. Harvard University Press.

HBIGDA (Harry Benjamin International Gender Dysphoria Association). 2004. "The HBIGDA Standards of Care for Gender Identity Disorder." <http://www.hbigda.org>

Hemmings, C. 2002. *Bisexual Spaces: A Geography of Sexuality and Gender*. New York: Routledge.

Holly. 1991 "The Transgender Alternative." *TV/TS Tapestry Journal* 59:31-33.

HRC (Human Rights Campaign). 2003. "2003 Corporate Equality Index." http://www.hrc.org/Content/ContentGroups/WorkNet/Corporate_Equality_Index1/cei_report2003.pdf

HRC. 2004a. "Workplace Policies Simple Search." http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/Custo

mSource/WorkNet/WorkplacePolicySearch.cfm

HRC 2004b. Transgender Issues in the Workplace: A Tool for Managers
<http://nmmstream.net/hrc/downloads/publications/tgtool.pdf>

HRC 2004c. Corporate Statements on the Corporate Equality Index.
http://www.hrc.org/Content/NavigationMenu/Work_Life/Get_Informed2/Corporate_Equality_Index/Corporate_Statements_on_CEI/Corporate_Statements_on_the_CEI.htm

HRC. 2004d. Private communication containing list of companies with gender identity policies and year of adoption.

HRC 2000e. "Human Rights Campaign Adopts Policy Supporting Modernized Workplace Legislation"
http://hrc.org/Template.cfm?Section=Press_Room&CONTENTID=22037&TEMPLATE=/ContentManagement/ContentDisplay.cfm

In re Gardiner. 2002a. *Kansas Court of Appeals, No. 85,030.*

In re Gardiner. 2002b. *Kansas Supreme Court, No. 85,030.*

Kantaras v. Kantaras. 2004. Florida Court of Appeal.
<http://www.nclrights.org/releases/pr-kantaras072304.htm>

Keller, Susan Etta. 1999. "Operations of Legal Rhetoric: Examining Transsexual and Judicial Identity." *Harvard Civil Rights-Civil Liberties Law Review* 34:329.

Kelly, Erin and Dobbin, Frank. 1999. "Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity Leave Policies." *American Journal of Sociology* 105:455-492.

Klarman, Michael J. 1994. "Brown, Racial Change, And The Civil Rights Movement." *Virginia Law Review* 80:7.

Littleton v. Prange. 1999. *Texas Court of Appeals, 9 S.W.3d 223.*

Leip, David. 2004. "Atlas of U.S. Presidential Elections."
<http://uselectionatlas.org/USPRESIDENT>

Magellan Health Services. 2004. "Transgendered Employees Transitioning in the Workplace," https://www.magellanassist.com/mem/ww/trans_employ.asp and "Working with a Transgendered Employee," https://www.magellanassist.com/mem/ww/working_trans.asp

- Merriam-Webster Online Dictionary, <http://www.merriamwebster.org>
- Meyer, John and Rowan, Brian. 1977. Institutionalized Organizations: Formal Structure as Myth and Ceremony. *The American Journal of Sociology* 83:340-363.
- Meyerowitz, Joanne. 2002. *How Sex Changed: A History of Transsexuality in the United States*. Harvard University Press.
- Morris, Rosalind C. 1995. "All Made Up: Performance Theory and the New Anthropology of Sex and Gender." *Annual Review of Anthropology* 24:567-92.
- Myrdal, Gunnar. 1940 [1975] . *An American Dilemma: The Negro Problem and Modern Democracy*. Pantheon.
- Nangeroni, Nancy R. 2001. Transgenderism: Transgressing Gender Norms. <http://www.gendertalk.com/tgism/tgism.shtml#sexorgenid>
- National Council on Education. 2003a.
Profile of Undergraduates in U.S. Postsecondary Institutions 1999-2000, <http://nces.ed.gov/pubs2002/2002168.PDF>
- National Council on Education. 2003b.
Status and Trends in the Education of Blacks, <http://nces.ed.gov/pubs2003/2003034.pdf>
- National Council on Education. 2003c.
Status and Trends in the Education of Hispanics <http://nces.ed.gov/pubs2003/hispanics/Section13.asp>
- NGLTF (National Gay and Lesbian Task Force Transgender Civil Rights Project). 2004. "Populations of Jurisdictions with Explicitly Transgender-Inclusive Anti-Discrimination Laws." <http://www.transgenderlaw.org/ndlaws/transinclusivelaws.pdf>
- Odinkalu, Chidi Anselm. 2004. "Why More Africans Don't Use Human Rights Language." Carnegie Council on Ethics and International Affairs. <http://www.carnegiecouncil.org/viewMedia.php/prmID/602>
- Osterhout, Dr. Douglas K. 1995. "Feminization of the Transsexual." <http://www.drbecky.com/dko.html>
- RPI (Racial Privacy Initiative). 2004. "Prop 54: Racial Privacy Initiative." <http://www.racialprivacy.org/content/index.php>

Rubin, Gayle. 1975. "The Traffic in Women: Notes on the 'Political Economy' of Sex." In *Toward an Anthropology of Women*. Ed. R. Reiter. NY: Monthly Review Press.

Namaste, Viviane K. 2000. *Invisible Lives: The Erasure of Transsexual and Transgendered People*. University of Chicago Press.

Out and Equal Workplace Advocates. 2002. "Programs – 2002 Conference – Workshop Program." <http://outandequal.org>

Oxford English Dictionary - OED Online Draft Entries. 2003. Ed. John Simpson. 3rd. ed. Oxford University Press.

Pigott, Stuart. 1975. *The Druids*. Thames and Hudson.

Pfeffer, J. & Salancik, G.R. 1978. *The External Control of Organizations*. Harper and Row.

Prosser, Jay. 1998. *Second Skins: The Body Narratives of Transsexuality*. Columbia University Press.

Raeburn, Nicole C. 2000. "The Rise of Lesbian, Gay, and Bisexual Rights in the Workplace." Unpublished dissertation: University of San Francisco Dept of Sociology

Raymond, Janice. 1979. *The Transsexual Empire: The Making of the She-Male*. Beacon Press.

Richard Florida Creativity Group. 2004.
http://www.creativeclass.org/hbr_breakthrough_story.shtml

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* University of Chicago

Scholinski, Daphne. 1997. *The Last Time I Wore A Dress*. Riverhead Books.

Sedgwick, Eve Kosofsky. 1992. *The Epistemology of the Closet*. University of California Press

Shorter, Edward. 1997. *A History of Psychiatry : From the Era of the Asylum to the Age of Prozac*

Stolcke, Verena. 1993. "Is Sex to Gender as Race is to Ethnicity?" in *Gendered Anthropology*

Stoller, Robert. 1968. *Sex and Gender (Vol. I), The Development of Masculinity and Femininity*. Jason Aronson: New York.

Suchman, M. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review*, 20, 571-610.

Szasz, Thomas. 1984. *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct*. Perennial Currents.

Taylor, Jami. 2002. "The Adoption of Transgender Employment and Hate Crimes Legislation in the American States." Department of Political Science, North Carolina State University, Raleigh, NC. Unpublished Manuscript.

Transgenderlaw.org 2004. "Non-discrimination laws in the US that explicitly include transgender people." <http://transgenderlaw.org/ndlaws/chart.pdf>

Transgenderlaw.org. 2002. Gender Neutral Bathrooms Survey. http://www.transgenderlawcenter.org/documents/safe_WC_survey_results.html#conclusions

Underwood v. Archer, 857 F. Supp. 96 (D.D.C. 1994)

U.S. Census. 1999. "Statistics of U.S. Businesses." <http://www.census.gov/epcd/susb/1999/us/US--.HTM>

U.S. Census 2002a. "2002 Census of Governments." http://ftp2.census.gov/govs/cog/2002COGprelim_report.pdf

U.S. Census 2002b. "Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: 1999 to 2100" http://www.census.gov/population/projections/nation/detail/d1999_00.pdf

U.S. Census 2002c. "Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: 1999 to 2100" http://www.census.gov/population/projections/nation/detail/d2011_20.pdf

U.S. Census 2002d. "Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: 1999 to 2100" http://www.census.gov/population/projections/nation/detail/d2021_30.pdf

U.S. Census. 2002e . "Civilian labor force by sex, age, race, and Hispanic origin, 1982, 1992, 2002, and projected 2012." <ftp://ftp.bls.gov/pub/special.requests/ep/labor.force/emplab2002-01.txt>

- U.S. Census. 2002f. "Employment by major industry sector, 1992, 2002, and projected 2012."
<ftp://ftp.bls.gov/pub/special.requests/ep/ind.employment/empmajorindustry.txt>
- U.S. Census 2002g. "Demographic Trends in the 20th Century."
<http://www.census.gov/prod/2002pubs/censr-4.pdf>
- U.S. Census. 2004. "North American Industrial Classification System."
<http://www.census.gov/epcd/www/naics.html>
- University of Georgia 2002 <http://www.uga.edu/news/specialreport/buyingpower/020711buyingpower.html> (retrieved 11/14/03)
- Valentine, David. 2000. "I Know What I Am": The Category "Transgender" in the Construction of Contemporary US American Conceptions of Gender and Sexuality (Unpublished dissertation: NYU Dept of Anthropology)
- Varnell, Paul. 2003a. Guest Opinion – Trans Marriage: No Gain For Gays. *Bay Windows*, Boston, MA, February 27, 2003, p. 8
- Wald, Button and Rienzo. 1996. "The Politics of Gay Rights in American Communities: Explaining Antidiscrimination Ordinances and Policies." *American Journal of Political Science*, 40:1152-1178.
- Washington Post, June 10, 1994 Page F3
- Weiss, Jillian Todd. 2001. "The Gender Caste System: Identity, Privacy and Heteronormativity." *The Journal of Law and Sexuality*, 10:123-186.
- Weiss, Jillian Todd. 2004. "GL vs. BT: The Archaeology of Biphobia and Transphobia in the U.S. Gay and Lesbian Community." *Journal of Bisexuality*
- Weber, Max. [1906-24] 1946. *Essays in Sociology*. Oxford University Press.
- West v. Goins. 2001. *Minnesota Supreme Court*, 635 N.W.2d 717.
- Whittle 2002:99
- Wikholm, Andrew. 2000. <http://www.gayhistory.com>
- Wikipedia: The Free Encyclopedia. 2004. "Human Capital." Retrieved July 14, 2004 (http://en.wikipedia.org/wiki/Human_capital)

Wilchins, Riki Anne. 1997. *Read My Lips: Sexual Subversion and the End of Gender*. Firebrand Books.

Wilchins, Riki Anne. 2004. Private Communication

Williams, Patricia. 1997. *Seeing A Color-Blind Future: The Paradox Of Race*.

Wilson, Katherine K. 2000. "Taking Sides – Clashing Views on Controversial Issues" in *Sex and Gender*, E. Paul, Ed. Dushkin McGraw-Hill, Guilford CN (2000) p. 31-38 (quoting Kenneth Zucker of the APA's GID subcommittee).

PUBLICATION LIST

- Name: Jillian Todd Weiss
- Education: Yeshiva University, New York, NY, B.A. 1983
Seton Hall Law School, Newark, NJ, J.D. 1986
Northeastern University, Boston, MA, Ph.D. 2004
- Publications: 2004. "GL vs. BT: The Archaeology of Biphobia and Transphobia Within the U.S. Gay and Lesbian Community." *The Journal of Bisexuality*.
2004. Selected definitions for *The Glossary of Sexuality* (ed. J. Eadie) Oxford University Press
2002. "Breaking the Deadlock: The 2000 Election, the Constitution and the Courts." *Bimonthly Review of Law Books* 12:21-30
2001. "The Gender Caste System: Identity, Privacy and Heteronormativity." *Law & Sexuality*, 10:123-186.
1994. "The Exception to the Exclusion In Liability Insurance Contracts Through A Procedural Lens." *Washburn Law Journal*, 33:364-382 (1994), reprinted in *National Insurance Law Review* 7:399-420.
1993. "A Natural Law Approach to Remedies for the Liability Insurer's Breach of the Duty to Defend: Is Estoppel of Coverage Defenses Just?" *Albany Law Review* 57:145-167
1987. "The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law." *Seton Hall Law Review* 17:981-984
1985. "The Child Pornography Act of 1984: Child Pornography and the First Amendment." *Seton Hall Legislative Journal* 9:327-353.