

3-1-2020

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Recommended Citation

Kyle C. Velte, *From the Mattachine Society to Megan Rapinoe: Tracing and Telegraphing the Conformist/Visionary Divide in the LGBT Rights Movement*, 54 U. Rich. L. Rev. 799 (2020).
Available at: <https://scholarship.richmond.edu/lawreview/vol54/iss3/6>

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FROM THE MATTACHINE SOCIETY TO MEGAN RAPINOE: TRACING AND TELEGRAPHING THE CONFORMIST/VISIONARY DIVIDE IN THE LGBT-RIGHTS MOVEMENT

Kyle C. Velte *

INTRODUCTION

From the beginning of the LGBT civil rights movement, there has been an intracommunity debate concerning strategies and tactics to effect legal and social change. On one end of the spectrum, the lesbian and gay organizations of the 1950s—the Mattachine Society and the Daughters of Bilitis—advocated an assimilationist strategy that sought tolerance rather than full acceptance and integration. The tactics to affect this strategy are best described as conservative and conventional—to look and act as “straight” as possible in order to convince courts, legislatures, and the public that lesbians and gay men should be left alone rather than fired from their jobs and criminalized for their intimate conduct. On the other end of the spectrum, the protesters at the Stonewall Inn on June 27, 1969, advocated for liberation along many axes—gender, race, sexual orientation, gender identity, class. The Gay Liberation Front, inspired by the Stonewall Riots and formed shortly thereafter, embodied this liberation-based strategy. Its tactics are best described as confrontational, intersectional, and anti-assimilationist. This Article will refer to these two approaches as Conformist and Visionary.

Presumably, both the Conformist and the Visionary approaches shared the general end goal of equality for LGBT people; what

* Associate Professor, University of Kansas School of Law. Many thanks to the *University of Richmond Law Review* for organizing this important symposium and for including me among the outstanding scholars, activists, and practitioners who presented. Thanks also to my research assistant, Delaney Hiegart. This Article is dedicated to the Conformists and Visionaries who came before us; the arc of the moral universe may be long, but it is bending toward justice faster because of your work at a time when that work was tremendously risky, scary, and difficult. We stand on your shoulders.

equality looked like to each group reflects the differences between them. The differences between their strategies and tactics can be generalized as ones of imagination and vision.

The Conformist and Visionary divide has permeated the LGBT community's civil rights campaign through the present day, as has the debate among scholars and advocates about the "best" approach to effect lasting change. While most scholars discuss the benefits and drawbacks of these two approaches vis-à-vis the law and society writ large and propose that one take precedence over the other, this Article explores how this decades-long intracommunity divide—the conversation *among* activists and scholars *within* the LGBT community—might shape the future of the movement. Rather than attempt to settle on the "best" approach, then, this Article instead focuses on the impact of the dynamic created by the intracommunity debate vis-à-vis the law and society writ large. It asks and answers the questions: What work did the Conformist and the Visionary approaches do to support the rise of LGBT rights in the United States? And, what work do they continue to do today, so that we may anticipate the growth and impact of LGBT rights on education law and employment law in the future? In doing so, it does not make a normative or strategic judgment concerning either approach. Rather, its goal is to expose and explore what this Article calls the transcommunity dialogue—a communicative pathway between the LGBT community and society at large, which is informed by the Conformist-Visionary dynamic.

The Article proceeds in four parts. Part I describes the historic trajectory of the Conformist and the Visionary approaches. It then sketches the scholarly debate concerning these approaches. Part II frames the Article within social science literature on the importance of *intragroup* disagreement in social justice movements, which necessarily implicates *intergroup* dynamics. Part III traces these approaches to two current-day LGBT legal issues: (1) Title VII's promise of pay equity as illustrated by the U.S. Women's National Soccer Team pay equity lawsuit¹ and Title VII's promise of nondiscrimination as illustrated by the sexual orientation and gender identity ("SOGI") lawsuits currently pending at the United States Supreme Court,² and (2) Title IX's promise of educational

1. Complaint, *Morgan v. U.S. Soccer Fed'n, Inc.*, No. 2:19-cv-01717 (C.D. Cal. Mar. 8, 2019).

2. See *Bostock v. Clayton Cty.*, 723 F. App'x 964 (11th Cir. 2018) (per curiam), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1618); *Zarda v. Altitude Express*, 883 F.3d

equity “on the basis of sex”³ as illustrated by the legal battles over transgender elementary school children seeking to access sex-segregated facilities that align with their gender identity.⁴ Part IV adds to the scholarly conversation about this intracommunity debate by interrogating the dynamic created by the intracommunity debate itself and its relationship with and impact on these contemporary Title VII and Title IX legal battles. The Article concludes by predicting that both the Conformist and the Visionary approaches will continue to contribute to equality gains for the LGBT community. It attempts to telegraph the work that these approaches have done in the past to the work that they might do in the future.

I. THE EMERGENCE OF THE CONFORMIST AND VISIONARY APPROACHES

This Part traces the trajectory of the early LGBT-rights movement from one that was decidedly conservative to one that was audaciously radical. This historical summary is followed by two contemporary examples of the Conformist-Visionary debate dynamic: marriage equality and repeal of the military’s Don’t Ask, Don’t Tell (“DADT”) policy. This historical-to-contemporary summary provides the frame for Part III’s analysis of the impact of these two strands of the movement on social and legal change today and in the future.

A. *Conformist Beginnings*

The earliest LGBT-rights groups were formed in the 1950s and known as homophile groups. The groups formed within a United States society that recently had emerged from a world war—a war that gave many LGBT people their first interaction with other LGBT people as thousands of Americans streamed into urban areas to assist in the war effort or to join the military.⁵ After the war, many LGBT people decided to stay in the urban areas to which

100 (2d Cir. 2018), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1623); R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C., 884 F.3d 560 (6th Cir. 2018), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 18-107).

3. 20 U.S.C. § 1681 (2012).

4. See *A.H. v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321, 323–24 (M.D. Pa. 2017); *Bd. of Educ. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 854–56 (S.D. Ohio 2016).

5. MARTIN DUBERMAN, *STONEWALL: THE DEFINITIVE STORY OF THE LGBT RIGHTS UPRISING THAT CHANGED AMERICA* 92–93 (2d ed. 2019).

they had migrated during the war so that they could continue to enjoy the support of an LGBT community, through newly formed gay bars, publications, and support groups.⁶ In 1950, the nascent movement took a consequential step: the Mattachine Society formed in Los Angeles.⁷ Chapters of the Mattachine Society formed in San Francisco, New York, and Washington, D.C.⁸

The group began with what was at the time a radical central belief: that “gays were a legitimate minority living within a hostile mainstream culture.”⁹ This was a radical view in the 1950s because the then-dominant medical, social, and legal position was that homosexuality was an illness, a pathological state.¹⁰ The early Mattachine positions included what today is known as internalized oppression—the notion that members of marginalized communities come to internalize common conceptions of their identity, such as the medical model of homosexuality as a pathology that dominated in the 1950s.¹¹ The Mattachine Society called out the internalized oppression, characterizing it as a false consciousness that LGBT people needed to challenge.¹²

By the 1960s, however, this then-radical notion had fallen out of favor and the National Mattachine Society had embraced a more conservative approach. The group was overwhelmingly male and white.¹³ Indeed, by 1953, just two years after it was founded, the membership of Mattachine was decidedly more conservative than the organization’s founders; this new majority took over the group and stripped it of its original radicalism. In its place grew a conservative conformism: “The newcomers were primarily interested in winning acceptance on the mainstream’s own terms, not in challenging mainstream values[.]”¹⁴ These Conformists viewed themselves as “patriots and good Americans.”¹⁵ Their preference was “to rely on ‘experts’ rather than on political organizing to plead their cause—having internalized the view of that era’s prime experts,

6. *Id.* at 93.

7. *Id.*

8. *See id.* at 125.

9. *Id.* at 93.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 94.

15. *Id.*

the psychiatrists, that their ‘condition’ was pathological.”¹⁶ In 1961, Mattachine dissolved as a national organization, splintering into independent chapters around the country.¹⁷ Some of these chapters continued to embrace a Conformist strategy.

In addition to the Mattachine Society, the Daughters of Bilitis (“DOB”) represented the Conformist approach in the 1950s and 1960s. The DOB served primarily as a social organization for lesbian women, though it eventually included education and legal reform as part of its agenda.¹⁸

The National Mattachine Society and the DOB embraced an incrementalist approach to social and legal change.¹⁹ They advocated assimilation and tolerance rather than full acceptance. They stayed closeted, “their energy bent on avoiding detection.”²⁰ As such, they insisted that their members present themselves according to the gender norms of the day.²¹ Respectability was the key organizing principle.²²

By the early 1960s, the Mattachine Society of Washington had eschewed the Conformist tactical vein of the other Mattachine Society chapters under the leadership of Frank Kameny. Kameny, who was the chapter’s “guiding” and “militant”²³ leader encouraged his chapter to engage in a “series of radically aggressive statements and actions” that “reflected the confrontational strategy of the black civil rights movement and heralded the rejection of apologetics.”²⁴ But even this radicalism was an incremental stepping-stone to what would become an all-out liberation goal by the Stonewall rioters and the organizations they inspired. While Kameny was radical for his day, he still held on to the notion that LGBT people would not gain rights by *appearing* or *presenting* in unconventional ways. Thus, for example, when he organized the Washington Mattachine Society to picket the White House—an emphatically radical tactic for the day—he demanded sartorial

16. *Id.*

17. *Id.* at 125.

18. *Id.* at 94.

19. *Id.*

20. *Id.* at xxvii.

21. *Id.* at 137.

22. *Id.*

23. *Id.* at 125.

24. *Id.* at 123.

conservatism: men were required to wear suits, women were required to wear dresses, and protesters were ordered not to chant or speak.²⁵ While the tactics may have been radical—his were the first-ever gay protests in Washington, D.C.,²⁶ the goal was more distinctly Conformist—to gain access to traditional institutions like federal government employment and the military.²⁷ Thus, while the tactics touched on more typically Visionary tactics, this Article includes the Washington Mattachine Society within the Conformist group because it represented assimilationist substantive goals—the acceptance into already-established institutions without questioning how those institutions reflect and perpetuate institutional inequalities and marginalization along the axes of gender, race, and class.

Today, the Human Rights Campaign is often characterized as embodying the Conformist approach.²⁸ Its agenda, including marriage equality and the repeal of DADT,²⁹ is emblematic of its conformist roots.³⁰

B. *Visionary Vectors Emerge*

Social and cultural changes in the 1960s created the social context that paved the way for the Stonewall Riots of 1969.³¹ These changes saw the emergence of the civil rights movement, the anti-war movement, the feminist movement, as well as a new stripe of college student—the militant.³² These social movements injected a radical, destabilizing force into American culture by questioning foundational rules and long-standing assumptions about race, gender, class, capitalism, and status regimes.³³ Coverage in the mainstream media about these movements—The Women’s Movement,³⁴

25. *Id.* at 137–38.

26. *Id.* at 138.

27. *Id.* at 136–37.

28. *Id.* at xxvii (noting that the “HRC took a much more centrist stance”).

29. National Defense Authorization Act for Fiscal Year 1994, 10 U.S.C. § 654 (2006), repealed by Don’t Ask Don’t Tell Repeal Act of 2010, Pub. L. No. 111-321, § 2(f)(1)(A), 124 Stat. 3515, 3516.

30. See DUBERMAN, *supra* note 5, at xxiv, xxvii.

31. See, e.g., SUSAN STRYKER, *TRANSGENDER HISTORY* 104–05 (2d ed. 2017).

32. See DUBERMAN, *supra* note 5, at xxv.

33. See, e.g., David A. Reichard, “We Can’t Hide and They Are Wrong”: *The Society for Homosexual Freedom and the Struggle for Recognition at Sacramento State College, 1969–1971*, 28 *LAW & HIST. REV.* 629, 631 (2010).

34. See, e.g., Linda Greenhouse, *Women’s Groups Pressing Reforms*, *N.Y. TIMES*, Nov.

the Black Power Movement,³⁵ the Student Nonviolent Coordinating Committee (“SNCC”), and the like—created a national awareness and consciousness of this liberation-minded counterculture.³⁶ So too did the mainstream press begin to push homosexuality into the national conversation in the 1960s. On December 17, 1963, the *New York Times* published an article lamenting what it characterized as the “problem” of the “increasing openness” of “[t]he city’s most sensitive open secret—the presence of what is probably the greatest homosexual population in the world.”³⁷ Notwithstanding the radicalization of American discourse about sex and race, the predominant discourse around LGBT people in the 1960s continued to be framed by the medical model of pathology; homosexuality was viewed as an illness that could be cured.³⁸ The 1963 *New York Times* article broke the national silence of LGBT issues and created a burst of news coverage of LGBT people and LGBT literature and films.³⁹ From the other social movements of its time and the blossoming LGBT-rights movement emerged a “rapid-fire succession of events from 1963 to 1965 marked a seismic shift in national consciousness.”⁴⁰

From this seismic shift arose a new strand to the LGBT-rights movement—the Visionary strand. Unlike the Conformist approach, the Visionary approach “reflect[ed] and further[ed] . . . the general assault on traditional values and, with respect to homosexuals themselves, represented the first glimmers of a possible improvement in status.”⁴¹ The Visionary strand of the movement adopted a more radical approach than the Conformist strand.⁴² It criticized the apologist mentality of the Conformists.⁴³ For example, on the question of whether homosexuality is a disorder—a

25, 1969, at 51.

35. See, e.g., Charles V. Hamilton, *An Advocate of Black Power Defines It*, N.Y. TIMES, Apr. 14, 1968, at 286, 332–35.

36. See, e.g., Tomiko Brown-Nagin, *Does Protest Work?*, 56 HOW. L.J. 721, 734–35 (2013).

37. Robert C. Doty, *Growth of Overt Homosexuality in City Provokes Wide Concern*, N.Y. TIMES, Dec. 17, 1963, at 1, 33.

38. See DUBERMAN, *supra* note 5, at 119.

39. See *id.* at 119–20.

40. *Id.* at 120.

41. *Id.* at 121.

42. Other scholars have labeled these strands as “gay advocacy” and “queer advocacy.” See Elizabeth J. Baia, *Akin to Madmen: A Queer Critique of the Gay Rights Cases*, 104 VA. L. REV. 1021, 1028 (2018).

43. See *id.* at 1026.

question hotly contested *in* the LGBT community as well as mainstream and medical communities—the Visionary strand pushed back on the medical model by publicly articulating that it may *not* be a psychological disorder at all, and, if it were a disorder, it was not curable.⁴⁴ This was a radical position to stake out in the 1960s.

The years leading up to Stonewall saw the continued growth of the Visionary model. For example, some LGBT people engaged in organized, public resistance to police harassment—a radical and unthinkable strategy to the Conformist strand of the movement.⁴⁵ One example of these organized acts of defiance ended up in court. In a 1964 case, heterosexual ministers joined the LGBT people to speak out against police harassment and the court dismissed the charges against the LGBT protesters.⁴⁶ Thus, five years before Stonewall, the Visionary approach “learned the precious lesson that open, organized defiance could yield positive results.”⁴⁷

The East Coast Homophile Organizations (“ECHO”), formed in 1963 by the joining of four organizations, represented the next iteration of the Visionary strand of the movement.⁴⁸ It adopted tactics such as picketing and public demonstrations.⁴⁹

The 1966 Compton Cafeteria riots are another example of the then-emerging Visionary approach to social and legal change. Compton’s Cafeteria, located in San Francisco’s Tenderloin District, was a favorite gathering spot for transgender people and drag queens.⁵⁰ The owners became annoyed by a “noisy young crowd of queens”⁵¹ and called the police to intervene.⁵² The owners had called the police with increasing frequency in the months leading up to the riots of August 1966.⁵³ One of the police officers grabbed a drag queen by her arm and attempted to drag her out of the cafeteria; she reacted by throwing a cup of coffee in the officer’s face.⁵⁴ A fracas followed.⁵⁵ The police called for backup as the melee

44. See DUBERMAN *supra* note 5, at 121.

45. See *id.* at 122.

46. See *id.*

47. See *id.*

48. *Id.* at 125.

49. *Id.* at 136.

50. See STRYKER, *supra* note 31, at 64.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

moved outside into the street.⁵⁶ As the paddy wagons arrived, the drag queens continued to resist, striking the officers with their purses and high-heeled shoes.⁵⁷ At least fifty people and officers were involved in the riot, which left police cars vandalized and a newspaper stand burned to the ground.⁵⁸

And then came Stonewall, probably the most well-known and recognizable example of the Visionary strand of the movement.⁵⁹ The Stonewall Visionaries were “the ‘queerest’ of the queers, the Black and Puerto Rican drag queens” and transgender people who rioted as an act of resistance to police brutality aimed at queer people of color.⁶⁰ These Visionary rioters “were, by definition, ‘multi-identified’ and out of the mainstream, even to prominent gay and lesbian subcultures.”⁶¹ Notwithstanding their outsider status vis-à-vis the LGBT community *and* the straight community, “their battle birthed respect for gay and lesbian sexual equality. Therefore, their history is our history.”⁶²

Out of the Stonewall rebellion grew the Gay Liberation Front (“GLF”), an exemplar of the Visionary approach. The GLF employed a liberation-based lens for achieving equality rather than one based on assimilation and respectability and stressed intersectionality as a key to liberation.⁶³ In its 1971 Manifesto, GLF rejected traditional gender roles and relationship structures: “The oppression of gay people starts in the most basic unit of society, the family, consisting of the man in charge, a slave as his wife, and their children on whom they force themselves as the ideal models. The very form of the family works against homosexuality.”⁶⁴ It thus

56. *Id.* at 65.

57. *Id.* at 86.

58. *Id.* at 87.

59. See generally Greggor Mattson, *The Stonewall Riots Didn't Start the Gay Rights Movement*, JSTOR DAILY (June 12, 2019), <https://daily.jstor.org/the-stonewall-riots-didnt-start-the-gay-rights-movement/> (noting that Stonewall has become a “particular night and this particular bar came to signify global gay rebellion” and observing that while “[i]t was not the first rebellion, but it was the first to be called ‘the first,’ and that act of naming mattered”) [<https://perma.cc/B5R3-F9BC>].

60. See Elvia R. Arriola, *Staying Empowered by Recognizing Our Common Grounds: A Reply to Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, by Professor Nancy Ehrenreich, 71 UMKC L. REV. 447, 452 (2002).

61. *Id.*

62. *Id.*

63. See DUBERMAN, *supra* note 5, at xxv (“The Stonewall riots had refocused their energies on gay liberation, yet in shifting priorities they’d maintained their prior concerns with racism, sexism, and imperialism.”).

64. GAY LIBERATION FRONT, MANIFESTO (rev. 1978), <https://www.fordham.edu/halsall/>

envisioned a social movement that included not only LGBT people, but one that would achieve “a complete overhaul of accepted cultural norms governing sexuality, gender, family, and community.”⁶⁵ The GLF “called for a fierce, full-scale assault on sexual and gender norms, on imperialistic wars and capitalistic greed, and on the shameful mistreatment of racial and ethnic minorities.”⁶⁶ It “announced . . . a new kind of queer: boisterous, uncompromising, hell-raising.”⁶⁷

These Visionaries also challenged the prevailing notion—then and now—that gender is a clear binary with biological roots.⁶⁸ As we will see below, this view was prescient; it forecasted the rise of today’s transgender rights movement.⁶⁹

Within the movement, the Conformists openly showed disdain for the Visionary approach, calling it “nonsense” and urging the movement to go in a direction that would allow LGBT people “to go unnoticed, to ‘get along.’”⁷⁰ Where the Conformists espoused “gradualism and quietism” and sought to modify “gay comportment so that it would better coincide with middle-class notions of proper behavior,”⁷¹ the militant Visionary strand adopted the mindset of the racial civil rights movement and “insisted that society had to do the adjusting.”⁷²

In sum, both the Conformist and Visionary approaches set the stage for what was to come—and what still will come—for the LGBT-rights movement. While some contend that the movement has become watered-down through the dominance of the Conformist approach and its high-profile legal victories,⁷³ this Article contends that the Visionary approach is still alive and well when one looks closely at the contemporary contestation of LGBT rights. Stonewall thus is more than just a remnant that provides “a potentially galvanizing look back at the gay movement’s radical roots”⁷⁴;

pwh/qlf-london.asp [https://perma.cc/27VY-CGKX].

65. See DUBERMAN, *supra* note 5, at xxiii.

66. *Id.* at xxiv.

67. *Id.* at xxvii.

68. *Id.* at xxvi.

69. See *infra* Part III.

70. DUBERMAN, *supra* note 5, at xxvii.

71. *Id.* at 133.

72. *Id.*

73. See *id.* at xxvii.

74. *Id.*

instead, Stonewall's riotous and radical legacy continues to have purchase on the movement and the socio-legal changes it brings about.

C. *Contemporary Debates Within the Movement*

Scholars and activists alike have debated the pros and cons of the Conformist and Visionary approaches in effecting legal change. This sub-part uses two issues—marriage equality and open service in the military—as examples of this debate. As Professor Dean Spade notes, there was a

significant debate about whether accessing marriage and military service are, on the one hand, important markers of progress on the road to equality or, conversely, investments in harmful institutions that are unlikely to benefit queer and trans people unless they are members of the elite classes within societies sharply divided by racism, wealth inequality and colonialism.⁷⁵

1. Marriage Equality or “Stonewall has become Stepford”?⁷⁶

A public and influential debate in 1989 between two prominent attorneys in the LGBT-rights movement exemplifies the intra-community debate between the Conformist and Visionary strands. Tom Stoddard, then the executive director of Lambda Legal, represented the Conformist strand in arguing that the movement should “aggressively” seek the right to marry.⁷⁷ Stoddard thought it made pragmatic sense to seek inclusion in the institution of marriage rather than seek to dismantle it and focused on the economic benefits that would accrue to same-sex couples if marriage equality were obtained.⁷⁸

In the 1990s and into the 2000s Evan Wolfson, then an attorney with Lambda Legal and later the Executive Director of Freedom to Marry, was a leader among the Conformists seeking marriage

75. Dean Spade, *Under the Cover of Gay Rights*, 37 N.Y.U. REV. L. & SOC. CHANGE 79, 90 (2013).

76. Cynthia Godsoe, *Perfect Plaintiffs*, 125 YALE L.J. FORUM 136, 138 (2015).

77. See Thomas Stoddard, *Why Gay People Should Seek the Right To Marry*, OUT/LOOK Fall 1989, at 9, reprinted in WILLIAM B. RUBENSTEIN ET AL., CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW 678, 679 (3d ed. 2008).

78. See *id.* Those benefits are in the realms of tax, government benefits, inheritance, immigration, and spousal immunity. *Id.*

equality. He positioned marriage as a central civil rights imperative for LGBT people as well as a “lifelong dream” of LGBT people.⁷⁹ He supported the marriage equality campaign’s centrality in the movement because of the tangible benefits it would bring to LGBT people and because he believed the campaign was about “deeper values” and creating an “engine for change.”⁸⁰ Wolfson believed that marriage equality would create a “transformative language that would help people understand who [LGBT people] are and change their attitudes, and that thus would make everything we seek more attainable.”⁸¹ He responded to Visionary critiques of the marriage equality campaign by stressing the transformative potential of same-sex couples to the institution of marriage, as well as by appealing to notions of formal equality.⁸²

In seeking access to a traditional, conservative institution, the marriage equality movement embraced a conformist and assimilationist approach to formal equality for LGBT relationships.⁸³ The movement’s insistence that the plaintiffs in the marriage equality cases be of a certain clean-cut, traditional aesthetic and have “conservative, white-picket-fence”⁸⁴ backgrounds and stories⁸⁵ was a

79. See Evan Wolfson, *The Freedom To Marry: Our Struggle for the Map of the Country*, 16 QUINNIPIAC L. REV. 209, 211–12 (1996). Professor William Eskridge was another prominent Conformist voice in favor of marriage equality. See, e.g., WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 51–85 (1996).

80. Evan Wolfson, *Freedom To Marry’s Ladder of Clarity: Lessons from a Winning Campaign (That Is Not Yet Won)*, 29 COLUM. J. GENDER & L. 236, 237–38 (2015).

81. *Id.* at 238.

82. See Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intracommunity Critique*, 21 N.Y.U. REV. L. & SOC. CHANGE 567, 583–96 (1994).

83. See generally Neo Khuu, *Obergefell v. Hodges: Kinship Formation, Interest Convergence, and the Future of LGBTQ Rights*, 64 UCLA L. REV. 184, 190–91 (2017) (noting disagreement within the LGBT-rights movement concerning the marriage equality campaign and describing anti-marriage-equality LGBT people as arguing “marriage equality has not been all beneficial, but carried with it the costs of liberty, autonomy, and dignity for LGBTQ individuals having to organize their lives around the institution of marriage”).

84. Andrew Bruck, *Equality in the Garden State: Litigation and Social Activism in the Struggle for Marriage Equality*, 2 HARV. L. & POL’Y REV. 419, 426 (2008).

85. See, e.g., Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 COLUM. J. GENDER & L. 236, 239 (2006) (criticizing the Conformist marriage equality strand of the movement for “posing model homo families—our perfect plaintiffs—before the media”); see also Godsoe, *supra* note 76, at 138 (“[The] typical is one couple—two attractive veterinary professors who were recruited because they are ‘in a stable, good relationship,’ and are ‘likeable’ ‘homeowners’ with respectable jobs” and describing other marriage equality plaintiffs as “similarly TV-ready, sure to appeal to the public and Justices alike. None look butch, drag, or flamboyant. Four qualities make them generically appealing, especially to a predominantly straight audience: they are all-American; they seem to be asexual; many

modern-day instantiation of the Mattachine Society's insistence on a certain clean-cut, traditional aesthetic of its members as a prerequisite to protesting for federal employment protections in the 1950s. In the numerous cases seeking marriage equality, attorneys for the plaintiffs highlighted assimilationist aspects of the LGBT plaintiffs: they cast them as "devout Christians, military veterans, law enforcement personnel, and otherwise mainstream professionals and productive members of society."⁸⁶ For proponents of marriage equality, "[c]hoosing plaintiffs who seem 'just like us' [was] undoubtedly a winning strategy."⁸⁷

The Visionary strand offered stiff objections to the marriage equality campaign.⁸⁸ In response to Stoddard, Paula Ettelbrick, Stoddard's colleague at Lambda Legal, argued that the marriage equality movement would "short change our lives and our families by adopting marriage as the sole family recognition strategy."⁸⁹ Et-

have children; and all are (purportedly) non-political. There are no outlaws here.").

86. Scott Skinner-Thompson, *The "Straight" Faces of Same-Sex Marriage*, SLATE (Apr. 24, 2015, 2:19 PM), <https://slate.com/human-interest/2015/04/the-straight-faces-of-same-sex-marriage.html> [<https://www.perma.cc/3GW9-8APX>].

87. Godsoe, *supra* note 76, at 153.

88. See generally Mark Strasser, *A Little Older, a Little Wiser, and Still Committed*, 61 RUTGERS L. REV. 507 (2009) (describing the Visionary objections to centering marriage equality on the LGBT civil rights agenda); *id.* at 514 ("Some commentators reject that marriage is appropriately accorded such priority and argue that LGBT advocates should seek to de-privilege the institution, either because the institution of marriage promotes patriarchy or because privileging the marriage relationship implicitly devalues others."); see also Jessica R. Feinberg, *Avoiding Marriage Tunnel Vision*, 88 TUL. L. REV. 257, 258–59 (2013) ("The movement's focus on marriage equality as opposed to acquiring legal rights and protections to serve the needs of the diverse relationship and familial forms in existence today without regard to marriage eligibility (pluralistic relationship recognition) has long been the subject of criticism by many individuals within the LGBT rights movement."); Douglas NeJaime, *Before Marriage: The Unexplored History of Nonmarital Recognition and Its Relationship to Marriage*, 102 CALIF. L. REV. 87, 105–08 (2014) (summarizing the Conformist-Visionary marriage debates).

89. Paula L. Ettelbrick, *Wedlock Alert: A Comment on Lesbian and Gay Family Recognition*, 5 J.L. & POL'Y 107, 109 (1996) [hereinafter Ettelbrick, *Wedlock Alert*]; see also Paula Ettelbrick, *Since When Is Marriage a Path to Liberation?*, OUT/LOOK 9 (1989), reprinted in RUBENSTEIN ET AL., *supra* note 77, at 685, 687. See also generally Steven K. Homer, *Against Marriage*, 29 HARV. C.R.-C.L. L. REV. 505 (1994). Even earlier intracommunity opposition to centering marriage equality on the movement's agenda emerged in 1977 with the publication of Carl Wittman's, *A Gay Manifesto, out of the Closets and into the Streets*, in which he declared: "Traditional marriage is a rotten, oppressive institution. . . . [M]arriage is a contract which smothers both people" and encouraged LGBT people "to define for ourselves a new pluralistic, rolefree social structure." Carl Wittman, *A Gay Manifesto: out of the Closets and into the Streets* 4 (1977), http://www.againstequality.org/files/refugees_from_amerika_a_gay_manifesto_1969.pdf [<https://perma.cc/TMU3-GXHY>]. He concluded that "[l]iberation for gay people is defining for ourselves how and with whom we live, instead of measuring our relationship in comparison to straight ones, with straight values." *Id.*

telbrick and others saw marriage as an inherently conservative institution.⁹⁰ Ettelbrick eschewed the confining nature of the institution of marriage in favor of working to “open the definition of family to include those who function as family, regardless of whether marriage or blood relationships form the core of their union[.]”⁹¹

Ettelbrick was joined by scholars such as Professor Nancy Polikoff in arguing against what the Conformist strand contended was the liberatory potential of same-sex marriage. Polikoff countered that same-sex marriage would “detract from, even contradict, efforts to unhook economic benefits from marriage and make basic health care[sic] and other necessities available to all.”⁹² Moreover, she lamented that the marriage equality campaign mandated “a rhetorical strategy that emphasizes similarities between our relationships and heterosexual marriages, values long-term monogamous coupling above all other relationships, and denies the potential of lesbian and gay marriage to transform the gendered nature of marriage for all people.”⁹³

In addition to limiting the social and legal vision of the family, Visionary scholars also offered feminist theory and queer theory critiques of the marriage equality campaign. The feminist critique was of the institution itself, which they described as patriarchal and one that “cannot escape its oppressive history.”⁹⁴ This feminist analysis of marriage as an institution traced back to the “Stonewall-era LGBT rights movement [which] had deep connections with the contemporaneous women’s rights movement . . . , a move-

90. See generally Khoo, *supra* note 83, at 191–92 (“[M]arriage is a mechanism through which the state disciplines and cultivates the normative sexual subject. . . . This construction of LGBTQ couples . . . necessarily limits LGBTQ individuals from choosing a life different from the model homo families.”).

91. Ettelbrick, *Wedlock Alert*, *supra* note 89, at 112–13.

92. Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not “Dismantle the Legal Structure of Gender in Every Marriage,”* 79 VA. L. REV. 1535, 1549 (1993) [hereinafter Polikoff, *We Will Get What Ask For*]. See also generally Nancy D. Polikoff, *Ending Marriage as We Know It*, 32 HOFSTRA L. REV. 201 (2003); Nancy D. Polikoff, *Making Marriage Matter Less: The ALI Domestic Partner Principles Are One Step in the Right Direction*, 2004 U. CHI. LEGAL F. 353 (2004).

93. Polikoff, *We Will Get What We Ask For*, *supra* note 92, at 1549.

94. Elizabeth S. Scott, *A World Without Marriage*, 41 FAM. L.Q. 537, 538–39 (2007); see also Carlos A. Ball, *The Blurring of the Lines: Children and Bans on Interracial Unions and Same-Sex Marriages*, 76 FORDHAM L. REV. 2733, 2764 n.134 (2008) (“[T]he critique of the traditional understanding of marriage [is] that [it] subordinates women to the interests of men.”).

ment with significant anti-marriage and marriage reform sentiments.”⁹⁵ The queer theory critique noted the paradox of achieving marriage equality: “[M]arriage for lesbians and gays involves identifying as citizen-subjects of the very state that until recently criminalized their sexualities, and thus abandon a history of resistance against the state.”⁹⁶ Professor Michael Warner asserts that marriage “dequeer[s]” LGBT people because it produces lesbians and gays with “no politics, no public, no history of activism or resistance, no inclination to deviate from the norm, and no form of collective life distinct in any way from that of ‘society.’”⁹⁷

By centering marriage on the LGBT-rights movement’s agenda, the Visionary strand argued, the movement constructed marriage as the yardstick by which the general public recognized and appreciated LGBT rights as a movement. This in turn subordinated or rendered invisible other significant issues to the LGBT community such as “transgender youth’s access to non-disciplinary and protected spaces in education, LGBTQ hate crimes, and LGBTQ youth homelessness.”⁹⁸ Moreover, the focus on just one kind of LGBT family—one that looks very similar to mainstream, traditional, and conformist heterosexual families—“reifies traditional norms, excluding the vast number of people, gay or straight, who do not fit the heteronormative marital model.”⁹⁹ Excluding these segments of the LGBT community “can, perversely, hinder the quest for equality for all types of couples and families.”¹⁰⁰

Professor Katherine Franke bemoaned the conservative and conventional vision of equality adopted by the Conformist strand: “How has this come to be? How has this become a community that . . . seems to have abandoned some of the more radical strategies

95. Edward Stein, *Looking Beyond Full Relationship Recognition for Couples Regardless of Sex: Abolition, Alternatives, and/or Functionalism*, 28 *LAW & INEQ.* 345, 347 (2010); see also *id.* (“Marriage was seen as an institution that, both legally and socially, disempowered women and treated men and women differently. The anti-marriage attitudes of gay liberationists were thus influenced by the fact that same-sex couples were not allowed to marry, but also by the connection to the women’s rights movement.”).

96. Yuvraj Joshi, *Respectable Queerness*, 43 *COLUM. HUM. RTS. L. REV.* 415, 454 (2012).

97. Michael Warner, *Normal and Normaller: Beyond Gay Marriage*, 5 *GLQ: J. LESBIAN & GAY STUD.* 119, 152 (1999).

98. Khuu, *supra* note 83, at 192 n.40 (2017).

99. Godsoe, *supra* note 76, at 153. Godsoe went on to “name just a few” of these kinds of non-normative people: “the childless, polyamorous, low-income, multiracial, divorced, and flamboyant.” *Id.*

100. *Id.*

and goals grounded in a politics that sought to destabilize dominant forms of sexuality and kinship, rather than seeking to be stabilized by them?”¹⁰¹ She urged that there is something of political value “in resisting the transformation of the gay political subject from pervert to domesticated couple” and re-embracing the Visionary strand of the movement’s history.¹⁰²

The intracommunity debate around LGBT service in the United States Military, discussed next, was equally heated.

2. Don’t Ask, Don’t Tell or Why Even Ask?

The rescission of the United States Military’s DADT policy can be traced back to the Conformist approach. The goal of opening the military to openly LGBT people mirrored the goal of opening federal employment to openly LGBT people that took place forty years earlier. Both goals were decidedly conservative and conformist—seeking entry into entrenched, conservative institutions within the federal government. Both faced similar backlash efforts: the Lavender Scare of the 1950s, which resulted in the firing 5000 federal employees for being LGBT was followed by the dishonorable discharge of LGBT soldiers in all branches of the military.¹⁰³

The strategies and tactics of both were similar: Emphasizing the sameness of LGBT people and their ability to lead normal, productive lives. Both framed their goal as a civil rights request rather

101. Katherine M. Franke, Commentary, *The Domesticated Liberty of Lawrence v. Texas*, 104 COLUM. L. REV. 1399, 1418–19 (2004). In a later article, Franke explicitly ties her Visionary critique of marriage equality to the Stonewall Visionaries:

The creation of new gay publics outside City Hall [to get marriage licenses], on the pages of the *New York Times* [in marriage announcements], and on the six o’clock news [posing model homo families as spokespersons for marriage equality] are not exactly the gay publics the drag queens at Stonewall had in mind.

Franke, *supra* note 85, at 239, 244 (“What I lament is a failure of the movement’s leaders to appreciate the creative political possibilities that the middle ground between criminalization and assimilation might have offered up.”).

102. Franke, *supra* note 101, at 1418–19 (2004); *see also* Franke, *supra* note 85, at 240 (“[R]adical critics would argue that the same-sex marriage movement has accelerated and privileged the more assimilationist aspects of the gay rights struggle.”).

103. *See* BRUCE SEARS ET AL., THE WILLIAMS INST., DOCUMENTING DISCRIMINATION BIASED ON SEXUAL ORIENTATION AND GENERAL IDENTITY IN STATE EMPLOYMENT 53 (2009); *see also* SUBCOMM. ON INVESTIGATIONS, S. COMM. ON EXPENDITURES IN THE EXEC. DEPTS, EMPLOYMENT OF HOMOSEXUALS AND OTHER SEX PERVERTS IN GOVERNMENT, INTERIM REPORT, S. DOC. NO. 81-241, at 2, 4 (2d Sess. 1950); *see also, e.g.*, Gabrielle Waxtein, *Repealing Don’t Ask Don’t Tell: What Happens to the Dishonorably Discharged?*, ENTITY (Feb. 28, 2017), <https://www.entitymag.com/repealing-ask-dont-tell-dishonorably-discharged/> [<https://perma.cc/7DXR-ZA4Q>].

than a gay rights request.¹⁰⁴ Performing a heterosexual, gender-binary aesthetic was a tactic shared by both movements. Mattachine's insistence on suits and ties for men and skirts for women was followed by hyper-masculine, clean-cut gay men seeking entry into the military. Even the name chosen for the organization formed to challenge DADT—Campaign for Military Service—was decidedly conservative and assimilationist, as well as “not an arbitrary or random choice,”¹⁰⁵ but rather deliberate: “At the meeting at which the name was selected, a public relations professional cautioned the group that the words ‘justice’ and ‘equality’ should be avoided.”¹⁰⁶ Rather, the name was chosen to emphasize service in the military and LGBT people's “willingness to enter the revered institution that is charged with this country's defense.”¹⁰⁷ As Polikoff noted, it was a

campaign that [met] and embrace[d] the military on its own terms, the implicit message being that the military is accepted as it now exists. The name serve[d] to assure military leaders and mainstream society that there [would] be *nothing transformative* about allowing lesbians and gay men to serve their country openly.¹⁰⁸

Visionaries contested the LGBT-rights movement's prioritization of repealing DADT. As Spade observed, many who take a Visionary position within the LGBT-rights movement view the military as a “primary force of systematized rape, colonization, land and resource theft, genocide and other imperialist violence.”¹⁰⁹ The feminist theory critique of prioritizing DADT worries about leaving

104. See Catherine Connell, *Right To Serve or Responsibility To Protect? Civil Rights Framing and the DADT Repeal*, 95 B.U. L. REV. 1015, 1016 (noting that for a decade “gay rights activists fought for the repeal of DADT, largely based on the claim that military inclusion was a civil rights issue”) (citing Nathaniel Frank, *The President's Pleasant Surprise: How LGBT Advocates Ended Don't Ask, Don't Tell*, 60 J. HOMOSEXUALITY 159, 163 (2013)) (“The problem with framing the issue as a violation of gay rights was that it was convincing only to those who already believed that gay rights were civil rights and, even more importantly, only to those who prioritized gay rights over military readiness.”).

105. Polikoff, *We Will Get What We Ask For*, *supra* note 92, at 1544.

106. *Id.* Also excluded from the organization's name were the words “gay,” “lesbian,” “rights,” “discrimination,” and “homosexual.” *Id.*

107. *Id.*

108. *Id.* (emphasis added). Thus, “the implicit, if not explicit, message offered to sway public and political opinion is that everything will remain the same, that military culture will be unaffected; open lesbians and gay men will blend in, not transform, the institution.” *Id.* at 1548–49.

109. Dean Spade, *Keynote Address at the Columbia Journal of Gender and Law Symposium: Gender on the Frontiers—Confronting Intersectionalities*, 19 COLUM. J. GENDER & L. 1086, 1095 (2010).

the rampant sexual abuse of female soldiers unexamined and un-interrogated.¹¹⁰ Polikoff criticized the Conformist campaign to repeal DADT for its failure to critique the military as an institution; in contrast, the Conformists framed its campaign as one “that meets and embraces the military on its own terms, the implicit message being that the military is accepted as it now exists” and ensured the country that “there will be nothing transformative about allowing lesbians and gay men to serve their country openly.”¹¹¹

The Visionary approach also disagreed with the prioritization of repealing DADT because it “align[ed] us with regressive forces” and creates a myopic view of what is possible:

Instead of wanting in on the military, we should be advocating for non-military jobs that promote peace and train people to overcome poverty and despair. Why not put people to work in this country helping to rebuild our cities and feed the hungry? Channel some of that defense budget into social welfare programs that can be staffed by the same young men [and women] who now pursue Uncle Sam for a job. This is where queers should align themselves.¹¹²

Spade believes that “our imagination of a world without coercive and violent gender, sexuality, and family formation norms requires the elimination of militaries . . . and civil marriage.”¹¹³ Rather than pursue the Conformist goal of making sexual orientation irrelevant, “so that being gay or lesbian is no obstacle to participating in key functions and institutions of American society, such as being a police officer, a soldier, a banker, or a spouse[.]” Spade takes the Visionary position of “queer and trans politics [that the goal] should not be inclusion in systems that enforce colonial, gender and racial control, but to dismantle such systems.”¹¹⁴ The United States Military would be one of the systems to be dismantled under this Visionary approach.

110. See generally Francine Banner, “It’s Not All Flowers and Daises”: Masculinity, Heteronormativity and the Obscuring of Lesbian Identity in the Repeal of “Don’t Ask, Don’t Tell,” 24 YALE J.L. & FEMINISM 61, 70 (2012).

111. Polikoff, *We Will Get What We Ask For*, *supra* note 92, at 1544.

112. *Id.* at 1545–46 (quoting TOMMI A. MECCA, BETWEEN LITTLE ROCK AND A HARD PLACE: THE NEW GAY/LESBIAN/BISEXUAL STRUGGLE FOR NATIONAL POLITICAL POWER 125–26 (1993)).

113. Spade, *Under the Cover of Gay Rights*, *supra* note 75, at 100.

114. *Id.* at 84–85.

3. Deconstructing the Debates

As evidenced above, the scholars and activists engaged in these debates often engage in the intracommunity dialogue to advocate for one approach over another. Some scholars take the position that the Visionary approach is the only one to secure true equality. Other scholars take the position that the Conformist approach is the surest way to true equality. Generally speaking, then, these scholars have not specifically focused on the *dynamic* created by the intracommunity debate or the impact of this dynamic on law and society. This Article attempts to do just that. To do so, it frames its discussion within social science literature concerning the importance of intragroup conflict, which is addressed in the next Part.

II. THE IMPORTANCE OF INTRAGROUP CONFLICT FOR SOCIAL MOVEMENTS

Civil rights movements don't occur in a legal or social vacuum. Instead, the marginalized group seeking civil rights necessarily must convince the majority group that such rights should be recognized. As a result, the *intragroup* conflict between the Conformist and Visionary strands of the LGBT-rights movement takes place within the larger society as part of an *intercommunity* dialogue. The Conformist-Visionary dialogue certainly creates a dynamic within the LGBT community; the question addressed in this Article is how does that intragroup debate impact the intergroup work that must be done to accomplish the equality goals of the LGBT community. Social science helps answer that question.¹¹⁵

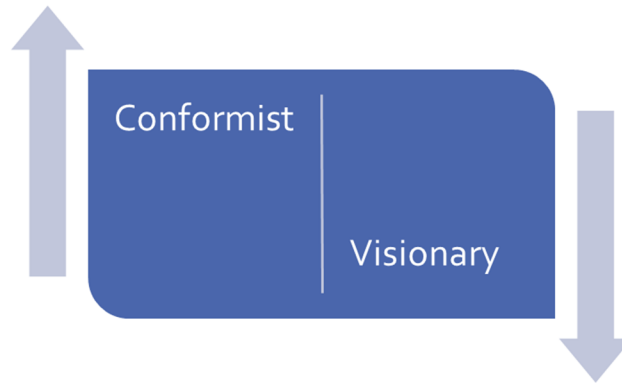
Simply put, to fully appreciate how social movements work, we need to understand the relationship between intragroup dynamics and intergroup relations. Because "intergroup and intragroup processes are highly interwoven,"¹¹⁶ the intragroup dynamic of the Conformist and Visionary strands has important consequences for the larger dynamic between the LGBT community and the larger society.

As noted in Part I, many scholars who address the conflict between the Conformist and Visionary strands of the LGBT-rights

115. See John F. Dovidio et al., *Cooperation and Conflict Within Groups: Bridging Intragroup and Intergroup Processes*, 65 J. SOC. ISSUES 429, 429 (2009).

116. *Id.* at 430.

movement do so to advocate that one of these approaches is normatively or strategically better than the other. This scholarship can be conceptualized as theorizing the intracommunity debate as an insular dynamic that “the movement” needs to figure out. In other words, much of this body of scholarship seems to be focused on finding a way forward as a unified LGBT-rights movement, rather than considering the independent impact that the Conformist-Visionary debates may have on the larger society outside of the movement.¹¹⁷ This body of scholarship can thus be visualized as focusing on an either/or dyad within the LGBT-rights movement:



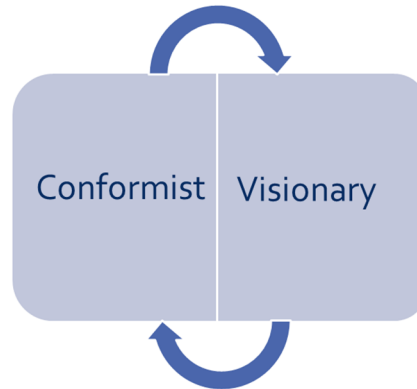
This view, however, may not comprehensively capture the entirety of the dynamic that pushes forward social movements toward equality. Social scientists counsel that “cooperation and conflict should be viewed as developmental processes in the life of a group, reflecting the dynamic tension between stability and change.”¹¹⁸ In fact, some social scientists have observed that “a process that increased intragroup harmony led to potential intergroup tension.”¹¹⁹ This observation supports the idea put forward in this Article, namely that the Conformist-Visionary conflict within the

117. *But see* NeJaime, *supra* note 88, at 111 (noting that the contemporary intracommunity scholarly regarding marriage equality “underestimates the centrality of marriage as an anchoring principle for domestic partnership in the 1980s and early 1990s and obscures the dialogical relationship between nonmarital recognition and marriage. . . . [B]y looking closely at how domestic partnership emerged, succeeded, and gained meaning, we can appreciate the influence of marriage on nonmarital advocacy in the 1980s and 1990s as well as the impact of that work on marriage”); Edward Stein, *Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition*, 61 RUTGERS L. REV. 567, 571 (2009) (“I suggest, going forward, that the LGBT rights movement does not have to choose between a sustained and vigorous focus on marriage equality for same-sex couples, on the one hand, and a more revisionist and pluralist approach, on the other.”).

118. Dovidio et al., *supra* note 115, at 431.

119. *Id.* at 430.

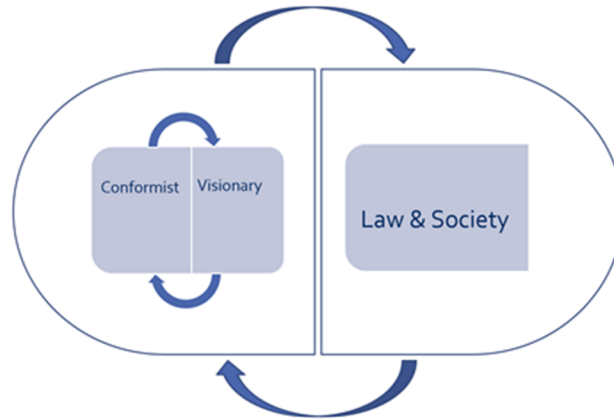
LGBT-rights movement is more of a feedback loop than an either/or, and that that feedback loop dynamic within the movement has impact without the movement, namely in relation to society at large. So conceptualized, the Conformist-Visionary conflict is not exclusively an internal issue with which “the movement” must settle to find a unified way forward, but rather is an internal debate whose dynamic produces external consequences. This conceptualization of the Conformist-Visionary conflict is visualized as follows:



Viewing the Conformist-Visionary conflict as a feedback loop acknowledges that the contestation of goals, strategies, and tactics within the LGBT-rights movement is a “process that recognizes dissent, allows . . . expression of minority views . . . and increases . . . diversity of ideas and perspectives available within the group,” which has potential gains for society as a whole.¹²⁰ As a result, “cooperation and conflict should not be interpreted as opposite outcomes, one good and the other bad, but as developmental processes that are important for long-term group functioning, creativity, and stability”¹²¹ that in turn can facilitate understanding across larger group lines, such as the line between the LGBT community and larger society. The dynamic, dialogic process between the LGBT-rights movement and larger society can be visualized as follows:

120. *Id.* at 435–36.

121. *Id.* at 441.



This dynamic, dialogic process will be referred to as a “transcommunity dialogue” and frames the remainder of this Article, which next turns to tracing the intracommunity Conformist-Visionary debate to today’s transcommunity consideration of formal equality in education and employment for LGBT people, then turns to telegraphing the impact of the transcommunity dialogue into the future.

III. TRACING THE CONFORMIST AND VISIONARY APPROACHES TO TODAY’S TITLE VII AND TITLE IX DISPUTES

This Part explores the through lines that can be traced with regard to employment and education from the emergence of the Conformist and Visionary strands in the 1950s and Stonewall to today’s Title VII and Title IX disputes. These connections illustrate the intracommunity debates’ creation of a transcommunity dialogue on contemporary issues that touch on both Conformist and Visionary values.

A. *Conformist Contours*

From the 1950s to the present, the Conformist approach of assimilation has led to several equality gains for the LGBT community. For example, one can trace the suit-and-tie conservatism of the Mattachine Society to the marriage equality win in *Obergefell v. Hodges* and the repeal of DADT. In these instances, we see the transcommunity dialogue at work: the Conformist-Visionary debate regarding marriage and gender norm conformism took place

within the LGBT community, from which the prioritization of marriage equality and open military service emerged, which became the subject of the transcommunity dialogue that eventually resulted in LGBT civil rights victories in these two arenas.

As pertinent to this Symposium panel addressing education and employment, we can also see a through line from the Conformist thinking of the 1950s to the contemporary debate regarding employment discrimination based on sexual orientation.

The United States Supreme Court currently is considering two sexual orientation employment discrimination cases, *Bostock v. Clayton County*¹²² and *Zarda v. Altitude Express*.¹²³ In each case, the question is the same: Whether Title VII's prohibition against employment discrimination "because of such individual's . . . sex"¹²⁴ includes discrimination against LGBT people. In both cases, the plaintiff-employee was framed as an assimilationist, norm-adhering employee consistent with the Conformist legacy of Frank Kameny.

In *Bostock*, Gerald Bostock had worked for Clayton County, Georgia for more than a decade when he was fired after his supervisor learned that he is a gay man.¹²⁵ His attorneys, however, did not lead with that fact when pitching their case to the United States Supreme Court. Instead, the factual portion of the brief led off by singing Mr. Bostock's professional praises:

Petitioner Bostock advocated ardently for the interests of at risk children in the juvenile court system of Respondent Clayton County . . . [H]e received favorable performance reviews . . . and was given primary responsibility for the Court Appointed Special Advocates program ("CASA"). . . Clayton County's CASA program flourished under Mr. Bostock's leadership. In 2007, it received the Program of Excellence Award from Georgia CASA. . . In 2010, it was the first county in the metropolitan Atlanta, Georgia area to provide a volunteer for every neglected or abused child in the juvenile court system. . . In 2011 and 2012, Mr. Bostock was asked to serve on the National CASA Standards and Policy Committee. . . He is a dedicated social services

122. 723 F. App'x 964 (11th Cir. 2018) (per curiam), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1618).

123. 883 F.3d 100 (2d Cir. 2018), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1623).

124. 42 U.S.C. § 2000e-2(a)(2) (2012); *Bostock*, 723 F. App'x at 964 ("Gerald Lynn Bostock appeals the district court's dismissal of his employment discrimination suit under Title VII of the Civil Rights Act of 1964 . . ."); *Zarda*, 883 F.3d at 107 ("Donald Zarda . . . brought a sex discrimination claim under Title VII of the Civil Rights Act of 1964 . . .").

125. See Brief for Petitioner at 4-5, *Bostock v. Clayton Cty.*, No. 17-1618 (June 26, 2019).

professional who has for many years been committed to ensuring that abused and neglected children have safe homes in which to live, grow, and thrive.¹²⁶

Only after presenting this assimilationist narrative did the brief mention: “Mr. Bostock is also gay.”¹²⁷

In *Altitude Express v. Zarda*, Donald Zarda was fired from his job as a skydiving instructor after his employer learned that he was gay.¹²⁸ His ACLU attorneys similarly framed his story with assimilationist, Conformist undertones—as a sky diving professional and enthusiast first, and as a gay man second: “Don Zarda loved to skydive. He worked as a skydiving instructor at Altitude Express, a company on Long Island, N.Y. He was fired for being gay.”¹²⁹ His attorneys continued:

Skydiving started as a hobby but became a career for Don. By 2010, Don had been skydiving for nearly [twenty] years and performed hundreds of jumps as a skydiving instructor. After a customer learned Don was gay, the customer complained to Don’s employer and Don was fired from the job and the company he built his life around.¹³⁰

Zarda’s partner continued this Conformist narrative in the mainstream press: “Don worked as a skydiving instructor. He loved his job, and he took it seriously. He would quadruple-check everything on every jump he did, every hook, every strap, every last thing about the parachute. If you were going to jump on a skydive with anyone, you would want it to be with him.”¹³¹ Although Zarda died several years ago, the narrative from his surviving partner continues to embrace traditional Conformist themes of civil rights, freedom, and dignity: “His story and his case are paving the way for all LGBTQ people to fly, living their lives with dignity and respect, unburdened by the discrimination that has held so many of us back from true freedom.”¹³²

126. *Id.*

127. *Id.* at 5.

128. See Brief for Respondents at 4, *Altitude Express, Inc. v. Zarda*, No. 17-1623 (June 26, 2019).

129. *Altitude Express Inc. v. Zarda*, ACLU (Sept. 10, 2019), <https://www.aclu.org/cases/altitude-express-inc-v-zarda> [<https://perma.cc/8THL-G24X>].

130. *Id.*

131. Bill Moore, *With His Case of LGBTQ Discrimination Before the Supreme Court, My Longtime Partner is Helping People Fly Again*, DALL. MORNING NEWS (Oct. 8, 2019), <https://www.dallasnews.com/opinion/commentary/2019/10/08/case-lgbtq-discrimination-before-supreme-court-longtime-partner-helping-people-fly-again/> [<https://perma.cc/2GVU-36DZ>].

132. *Id.*

Images of both Bostock and Zarda within the transcommunity dialogue (in the mainstream press) are reminiscent of Frank Kameny's preference for conservative dress and demeanor more than sixty years earlier. There are thus echoes of the Mattachine Society's strategy to gain federal employment protections in the current Title VII sexual orientation cases pending before the United States Supreme Court;¹³³ the focus on assimilation and respectability likely will be a narrative that the Court adopts if it finds that Title VII includes sexual orientation protections.

B. *Visionary Victories*

From the late 1960s to the present, the Visionary approach has embraced a radical lens for LGBT equality. The core group of original Stonewall Riot protesters were transgender people of color—Stormé DeLarverie, Miss Major Griffin-Gracy, Sylvia Rivera, Marsha P. Johnson.¹³⁴ These radical, gender-bending, intersectionality-conscious activists envisioned equality as a world unencumbered by the gender binary and thus gender norms.¹³⁵ Examples through the decades include formation of the groups the GLF, the Gay Activists Alliance, the Street Transvestites Action Revolutionaries (“STAR”),¹³⁶ ACTUP, and QueerNation. There is a thread from the radical liberation approach of Stonewall and its successors to current-day Title VII and Title IX issues.

1. Soccer's Stonewall Moment

The Visionary approach can be traced from the out-and-proud drag queens that played a central role in the Stonewall uprising and that backed that activism up with a radical vision of true equality based in intersectionality to the present-day lawsuit brought by the U.S. Women's National Soccer (“USWNT”) team against its employer, the United States Soccer Federation.¹³⁷ The

133. See *Bostock v. Clayton Cty.*, 723 F. App'x 964 (11th Cir. 2018) (per curiam), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1618); *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018), *cert. granted*, 139 S. Ct. 1599 (Apr. 22, 2019) (No. 17-1623).

134. See *infra* Part I.

135. See *id.*

136. See generally *Street Transvestites Action Revolutionaries (STAR)*, N.Y. PUB. LIBRARY, <http://web-static.nypl.org/exhibitions/1969/revolutionaries.html> [<https://perma.cc/P5CZ-HE3Q>].

137. See Complaint, *Morgan v. U.S. Soccer Fed'n, Inc.*, No. 2:19-cv-01717 (C.D. Cal. Mar. 8, 2019).

suit, a collective and class action, alleges Title VII, Equal Pay Act, and National Labor Relations Act violations; specifically, that U.S. Soccer has discriminated against the USWNT based on sex by paying them less than U.S. Soccer pays the U.S. Men's National Team,¹³⁸ as well as by providing different—lesser—terms and conditions of employment.¹³⁹

Filed on International Women's Day just months before the team's most significant and most publicized event—the Women's World Cup—the lawsuit reflects the audacious tactical approach embraced by the Visionary approach. More specifically, the face of the lawsuit—Megan Rapinoe—embodies the Visionary ethic vis-a-vis the lawsuit itself as well as her commitment to making intersectionality visible and centered in the national and international transcommunity dialogue that the lawsuit sparked.

Rapinoe, described by one journalist as a “purple-haired lesbian goddess[,]”¹⁴⁰ is a gender-bending, out lesbian who gained national attention when she kneeled during the national anthem in solidarity with Colin Kaepernick's protest of white supremacy and the subordination of people of color.¹⁴¹ She uses her platform to talk about intersectionality: “Being a gay American, I know what it means to look at the flag and not have it protect all of your liberties.”¹⁴² She went on to explain that “[w]hen I take a knee, I am facing the flag with my full body, staring straight into the heart of our country's ultimate symbol of freedom—because I believe it is my responsibility, just as it is yours, to ensure that freedom is afforded to *everyone* in this country”¹⁴³ and that she has “chosen to kneel because I simply cannot stand for the kind of oppression this

138. *Id.* ¶ 52.

139. *Id.* ¶¶ 67–74. These terms and conditions of employment include “playing, training and travel conditions; promotion of their games; support and development for their games” *Id.* ¶ 67.

140. Lauren Theisen, *Purple-Haired Lesbian Goddess Flattens France Like a Crêpe*, DEADSPIN (June 28, 2019, 5:06 PM), <https://deadspin.com/purple-haired-lesbian-goddess-flattens-france-like-a-cr-1835954827> [<https://perma.cc/5NBQ-WF3B>].

141. See Victor Mather, *A Timeline of Colin Kaepernick vs. the N.F.L.*, N.Y. TIMES (Feb. 15, 2019), <https://www.nytimes.com/2019/02/15/sports/nfl-colin-kaepernick-protests-timeline.html> [<https://perma.cc/Y57W-GDCC>]; see also Mohamed Hassan, *Megan Rapinoe Defends Her National Anthem Protests*, N.Y. POST (July 10, 2019, 8:19 AM), <https://nypost.com/2019/07/10/megan-rapinoe-defends-her-national-anthem-protests/> [<https://perma.cc/V7NR-LP7K>].

142. Hassan, *supra* note 141.

143. Megan Rapinoe, *Why I Am Kneeling*, PLAYERS' TRIB. (Oct. 6, 2019), <https://www.theplayertribune.com/en-us/articles/megan-rapinoe-why-i-am-kneeling> [<https://perma.cc/NUM9-CYMT>].

country is allowing against its own people. I have chosen to kneel because, in the words of Emma Lazarus, ‘Until we are all free, we are none of us free.’”¹⁴⁴

When U.S. Soccer enacted a policy requiring players to stand during the national anthem, Rapinoe chose to stand with her hands at her side because

taking care of others, standing up for yourself and other people if they don’t have the ability to do so, is very uniquely American. I don’t think anybody can deny the horrors of racism and Jim Crow and mass incarceration and what’s happening on the southern border and gay rights and women’s rights.¹⁴⁵

These kinds of connections among and between the issues facing marginalized groups are exactly the connections that formed that basis of the Visionary worldview and approach to equality; for the Visionary approach, an intersectional antisubordination frame was the driving lens for the fight for equality.

The Title VII suit is thus situated within a larger social context, in which Rapinoe—an echo of the gender-bending drag queens of Stonewall is joined by several other out, gender-bending teammates. Goalkeeper Ashlyn Harris proudly exhibits her full sleeve tattoo, has sported a buzz-cut hairstyle, often wears a suit and tie to formal events, and is engaged to her teammate, Ali Kreiger.¹⁴⁶ She advocates for self-expression and authenticity¹⁴⁷—core values of the Visionary approach. Images of these players and the Stonewall rioters reveal the continued salience of the Visionary strand of the movement in today’s LGBT civil rights fights. Moreover, transcommunity dialogue about this case is significant; it has been widely covered in the mainstream press both in the United States and internationally.¹⁴⁸ The Visionary values undergirding the pay equity lawsuit have crossed over from the intracommunity debate and are squarely positioned within the transcommunity dialogue.

144. *Id.*

145. Hassan, *supra* note 141.

146. Lindzi Scharf, *Ashlyn Harris on Fashion, the World Cup, Equality—and Marriage*, WWD (Apr. 23, 2019), <https://wwd.com/eye/people/ashlyn-harris-on-fashion-the-world-cup-equality-and-marriage-1203115569/> [<https://perma.cc/X93B-UXVU>].

147. *See id.* (noting that Harris “prefers gender neutral looks” and quoting her: “I like to be able to pick pieces from the women’s side and the men’s side and I make them my own”).

148. *See* Andrew Das, *U.S. Women’s Soccer Team Sues U.S. Soccer for Gender Discrimination*, N.Y. TIMES (Mar. 8, 2019), <https://www.nytimes.com/2019/03/08/sports/womens-soccer-team-lawsuit-gender-discrimination.html> [<https://perma.cc/2SPE-NKCZ>].

2. Stonewall-ing Sex and Gender: Transgender Schoolkids and Transgender Employees

In this political and cultural moment, transgender individuals arguably occupy the most radical and revolutionary, and thus most contested, position within both the LGBT community and society at large. Some feminists posit that “transgender existence and transsexual subjectivity [is] a subversive and transformative way of living gender.”¹⁴⁹ Transgender people “challenge the validity of gender essentialism and argue for the adoption of variable gender identities”¹⁵⁰—a decidedly Visionary value.

The past decade has seen an uptick in trans-visibility, including a trend of transgender youth coming out earlier than in the past.¹⁵¹ This increased visibility at younger ages has resulted in transgender youth seeking access to sex-segregated facilities within their K-12 schools that align with their gender identity rather than their sex assigned at birth.¹⁵² These Title IX lawsuits can be traced to the radical philosophies of the Visionary approach.

So too can the Title VII employment discrimination cases being asserted by transgender employees. While this Article has situated

149. See Saru Matambanadzo, *Engendering Sex: Birth Certificates, Biology and the Body in Anglo American Law*, 12 CARDOZO J. L. & GENDER 213, 233 (2005). *But see* Asher Waite-Jones, Book Note, 30 BERKELEY J. GENDER L. & JUST. 182, 186–87 (2015) (reviewing JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2012)) (noting that “certain ‘feminist’ activists and scholars, who refer to themselves as ‘trans-exclusive radical feminists’ or ‘TERFS,’ are actively speaking out against transgender rights, and particularly the rights of transgender women”).

150. Hasan Shafiqullah, Note, *Shape-Shifters, Masqueraders, & Subversives: An Argument for the Liberation of Transgendered Individuals*, 8 HASTINGS WOMEN’S L.J. 195, 196 (1997).

151. Kyle C. Velte, *Mitigating the “LGBT Disconnect”: Title IX’s Protection of Transgender Students, Birth Certificate Correction Statutes, and the Transformative Potential of Connecting the Two*, 27 AM. U. J. GENDER, SOC. POL’Y & L. 29, 40 (2019).

152. See, e.g., *Doe v. Boyertown Area Sch. Dist.*, 893 F.3d 179, 182 (3d Cir. 2018), *vacated*, *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 515 (3d Cir. 2018); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1038–39 (7th Cir. 2017); *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 714–15 (4th Cir. 2016), *vacated*, *Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (2017); *M.A.B. v. Bd. of Educ.*, 286 F. Supp. 3d 704, 708–09 (D. Md. 2018); *Students & Parents for Privacy v. U.S. Dep’t of Educ.*, No. 16-cv-4945, 2017 U.S. Dist. LEXIS 213091, at *2–4 (N.D. Ill. Dec. 29, 2017); *A.H. v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321, 323–24 (M.D. Pa. 2017); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 272–73 (W.D. Pa. 2017); *Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 854 (S.D. Ohio 2016); *R.M.A. v. Blue Springs R-IV Sch. Dist.*, WD80005, 2017 Mo. App. LEXIS 716, at *1–3 (Mo. Ct. App. July 18, 2017).

the gay and lesbian employees seeking Title VII's workplace protections within the Conformist strand, this Article places transgender employees in these cases on the side of the Visionaries because of the fact that transgender people's public existence and request of equal rights is inherently transgressive and radical, thus standing on the shoulders of the Visionaries like Sylvia Rivera.

In short, the Visionaries of the 1950s and 1960s who engaged the Conformists of that era in an intracommunity debate opened up dialogical space. That dialogical space informed both the intracommunity dynamic as well as the current transcommunity dialogue about LGBT people and LGBT civil rights. Today's transgender Title IX and Title VII cases are part of the legacy of the Visionary approach.

IV. TELEGRAPHING THE FUTURE IMPACT OF THE CONFORMIST AND VISIONARY APPROACHES

The Conformist-Visionary debate no doubt will continue within the movement, as will the transcommunity dialogic dynamic that it creates.¹⁵³ This part attempts to telegraph the impact of this dynamic into the future.

Some Visionaries fear that the Conformist strategy “has run fissures throughout the community between those who can fit into the narrow limits of ‘acceptable’ gay identity and those who cannot.”¹⁵⁴ They worry that “[o]utsiders are included, but only if [they] behave like insiders.”¹⁵⁵ This worry can be mitigated by continuing the intracommunity debates with a vitality that has marked the movement since its inception.

153. See generally Luke A. Boso, *Acting Gay, Acting Straight: Sexual Orientation Stereotyping*, 83 TENN. L. REV. 575, 628–29 (2016) (“Now that the gay rights movement has succeeded in securing many of the core freedoms and liberties that it has long sought, there is a risk that those on the margins—the people of color, poor, rural, sex-radical, and gender-nonconforming among us, just to name a few—may be left further behind. Worse, the already extant divisions within the LGB community may flourish to an even greater degree as people continue to fight over the meaning of gay identity, the future priorities of the gay rights movement, and appropriate public manifestations of homosexuality.”). *Id.* at 630 (“How respectability politics plays out in various legal disputes will influence which visions of gay identity and expression are valid and which are not, and, in turn, what norms will serve as stereotypical baselines by which to judge gay expression.”).

154. Baia, *supra* note 42, at 1032.

155. KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 22 (Randam House Trade Paperback ed. 2007).

Moreover, there is a continued need for the intracommunity debate because LGBT rights in the larger society seemingly continue to hinge on “respectable queerness.”¹⁵⁶ Respectable queerness is the notion that “newfound public recognition of gay people and relationships is contingent upon their acquiring a respectable social identity that is actually constituted by public performances of respectability and by privately queer practices.”¹⁵⁷ Because respectability requires the embracing of norms it places the burden on individual LGBT people to “cease to be unacceptably different” rather than requiring society to accept the differences embodied by LGBT people.¹⁵⁸ Respectability is different than respect in ways that are important to the LGBT community and its intracommunity Conformist-Visionary debate. While respect connotes acceptance of differences, respectability connotes hiding one’s differences and adhering to dominant social norms.¹⁵⁹

The liberationist bent of the Visionary strand thus continues to be important today: In amplifying the liberationist perspective within the movement, the Visionaries create a dialogical dynamic within the community that spills over into the transcommunity discussion of LGBT rights. As “queer liberationists consciously demand respect over respectability, and gay conservatives strive for respectability without noticing the difference”¹⁶⁰ in our intracommunity debate, the dynamic created by that dialogue necessarily alters the transcommunity conversation about the place of LGBT people in American society. Thus a robust intracommunity debate will continue to fuel the transcommunity dialogical dynamic in a way that sustains the “developmental processes that are important for long-term group functioning, creativity, and stability.”¹⁶¹

A concrete way to integrate the Conformist and Visionary strands is to press for both institutional, symbolic rights, like marriage equality, but to simultaneously pursue a Visionary-informed

156. Joshi, *supra* note 96.

157. *Id.* at 416.

158. *Id.* at 418; *see also, e.g.*, Jeremiah A. Ho, *Find Out What It Means to Me: The Politics of Respect and Dignity in Sexual Orientation Antidiscrimination*, 2017 UTAH L. REV. 463, 512 (“Respectability politics reinforces social hierarchies and places heterosexual values over the values of other groups in exchange for acceptance that is fundamentally less egalitarian from the get-go.”).

159. Joshi, *supra* note 96, at 419–20.

160. *Id.* at 425.

161. Dovidio et al., *supra* note 115, at 441.

agenda. Professor Libby Adler suggests that such an agenda should include “multiple, dispersed, and concrete law reform tasks.”¹⁶² This agenda would focus on “low-profile legal conditions” such as rules that disadvantage transgender youth, federal law that requires homeless shelters to inform custodians about the whereabouts of youth, “rules against sleeping in parks, labor laws limiting the hours and conditions under which young people can work and the ineligibility of minors to serve as payees for their own child support.”¹⁶³ This Visionary approach would help the movement avoid the Conformist pitfall of “fixing one’s gaze on the equality ideal” which “can render one too myopic to see other possible paths to change.”¹⁶⁴ Adler, a Visionary, encourages “us”—the LGBT-rights movement—to always remember to ask “who is left behind, and to what extent have their interests been undermined?” when thinking about strategies and tactics for equality and freedom.¹⁶⁵

The intracommunity critiques and debates create a net positive dynamic on the transcommunity dialogue about LGBT civil rights because they “ultimately seek to *empower* oppressed communities and civil rights theory by expanding their breadth.”¹⁶⁶

Concrete examples of the breadth created by the Conformist-Visionary dynamic for the future can be seen, for example, in the Securing LGBT+ Rights and Equality Plan of Democratic presidential candidate Elizabeth Warren.¹⁶⁷ Warren’s plan contains Conformist-informed priorities like passing the Equality Act to

162. Libby Adler, *T. Appending Transgender Equal Rights to Gay, Lesbian and Bisexual Equal Rights*, 19 COLUM. J. GENDER & L. 595, 615 (2010).

163. *Id.* at 612–13.

164. *Id.* at 612.

165. Libby Adler, *Inconceivable: Status, Contract, and the Search for a Legal Basis for Gay & Lesbian Parenthood*, 123 PENN ST. L. REV. 1, 3 (2018). Adler continues:

The difficult strategic decisions that must be made in the name of LGBTQ advancement might well hurt some people even as they help others. This is a brutal fact of most legal advocacy and cannot be avoided. Such strategizing should not be done, however, in a way that is heedless of the many differences among us, or that leaves an unintended distribution whereby the most privileged members of the community reap the benefit while leaving the most marginalized—by race, class, region, and sexual practice—behind.

Id. at 38–39.

166. Darren Lenard Hutchinson, *Beyond the Rhetoric of “Dirty Laundry”: Examining the Value of Internal Criticism within the Progressive Social Movements and Oppressed Communities*, MICH. J. RACE & L. 185, 197 (1999).

167. See Elizabeth Warren, *Securing LGBTQ+ Rights and Equality*, <https://elizabethwarren.com/plans/LGBTQ-equality> [<https://perma.cc/YXX6-A37G>].

prohibit employment discrimination based on sexual orientation and gender identity.¹⁶⁸ But her plan also includes decidedly Visionary goals, like removing structural obstacles to changing the gender marker on identity documents and extending federal family programs to “chosen family”—a recognition of the work done by Visionaries to make visible the fact that “[m]any members of the LGBT+ community form close familial ties to individuals who may not be their legal or blood relatives.”¹⁶⁹

Other concrete examples of future work that will be made possible by and bolstered by the Conformist-Visionary dynamic are claims asserted by gender nonbinary people, as well as the project of addressing and ending police violence against transgender women of color and prioritizing the eradication of poverty in LGBT communities.

Adler imagines an LGBT-rights agenda that is “less consumed with achieving formal equality between gay and straight people, and more interested in using law to create the best possible conditions under which a broad array of people can make choices.”¹⁷⁰ This Author agrees with Adler. This Article posits that it is the push-pull of the intracommunity debate that creates rhetorical, legal, and normative space in which the transcommunity dialogic dynamic can engender conversations about a vision of LGBT rights that is full, robust, and inclusive of all constituencies of the LGBT community.

CONCLUSION

While other scholars have opined about which approach—Conformist or Visionary—is better for LGBT equality, this Article has endeavored to interrogate the impact of that intracommunity dynamic on social and legal change. In so doing, it has attempted to consider these approaches, and the transcommunity dialogic dynamic it creates, without making any normative or strategic judgments about either approach.

As described throughout, the intracommunity debate between the Conformist and Visionary approaches has been just that—one

168. *Id.*

169. *Id.*

170. Libby Adler, *The Gay Agenda*, 16 MICH. J. GENDER & L. 147, 148 (2009).

within the LGBT community itself. That debate within the community, while focused on the community itself, also has created reverberations outside of the LGBT community; the dynamic within the LGBT community spills over to the outside legal and social communities via the transcommunity dialogic dynamic described above.

The transcommunity dialogic dynamic in turn creates multiple points of entry for courts and policymakers to intervene in the LGBT equality project. The dynamic presents a continuum of language, worldviews, and options for courts and policymakers. The more radical vision and philosophies of the Visionary approach may make the more assimilationist vision and philosophies of the Conformist approach seem less controversial and thus more palatable to courts and legislatures. At the same time, the more radical vision and philosophies of the Visionary approach make possible a vision of social and legal equality likely unimaginable to many even a generation ago: institutional and legal protections for transgender schoolchildren and transgender employees.

In sum, both approaches' strategies and tactics have value, depending on the goal. As a result, both should be considered as we move forward. Both the Conformist and the Visionary approaches will continue to contribute to equality gains for the LGBT community and both are necessary to do justice—both figuratively and literally—to the members of the diverse LGBT community.¹⁷¹

171. Stein, *supra* note 117, at 574 (“I suggest that, looking backwards, both Stoddard and Ettelbrick were in a sense right and that both of their strategies have been successful. In retrospect, their two goals, although different, can be achieved at the same time and, further, the pursuit of these two different goals have been mutually supporting. It is possible to ‘aggressively seek full legal recognition for same-sex marriages’ and adopt a more liberationist, more pluralistic, more flexible strategy toward LGBT rights generally and the recognition of and rights for LGBT families. This dual approach to LGBT rights has worked well to accomplish a great deal for LGBT people over the past two decades and I favor this dual approach going forward.”).