Tanya Domi:
Hi, this is Tanya Domi. Welcome to The Thought Project recorded at the Graduate Center of the City University of New York, fostering groundbreaking research and scholarship in the arts, social sciences, and sciences. In this space, we talk with faculty and doctoral students about the big thinking and big ideas generating cutting-edge research, informing New Yorkers and the world.

Tanya Domi:
Kevin Leo Yabut Nadal is a professor of psychology at John Jay College of Criminal Justice in the Graduate Center CUNY. He received his doctorate in counseling psychology from Columbia University in the city of New York and is one of the leading researchers in understanding the impacts of microaggressions or subtle forms of discrimination on the mental and physical health of people of color, lesbian, gay, bisexual, transgender, and queer people, and other marginalized groups. He has published more than 100 works on multicultural issues in the fields of psychology and education. Nadal is the author of 10 books, including his latest Queering Law and Order: LGBTQ Communities and the Criminal Justice System is the subject of The Thought Project Podcast today. Welcome to The Thought Project Professor Kevin Nadal.

Kevin Nadal:
Hi Tanya.

Tanya Domi:
Congratulations on your newly published book today, as a matter of fact, Queering Law and Order: LGBTQ Communities and the Criminal Justice System. Before we discuss the book, I just wanted to say how I was so personally moved by your story of growing up as a Filipino gay child, knowing that you were different, not necessarily knowing why initially like so many of us, a son of immigrants negotiating a potentially hostile world in which you picked up on social cues about how your Filipino culture perhaps perjoratized effeminate men and how frightened you were of being discovered to write that you are surprised to be alive today because of a litany of devastating data about real threats to queer people's mortality, especially those who are persons of color.

Tanya Domi:
And it is suggested that every book a writer produces is said to be in some way, part memoir. Writing this book must be part cathartic and an effort to affirmatively create a safe place of understanding as well as a means to deliver your vision of a world that is inclusive and centered within a system of justice. One cannot read your book without having a real sense of your strong commitment and intention to create a place of justice. This is in fact a pivotal moment in our country on the topic of justice. You mentioned at your talk last night that the book's publication was delayed because of the pandemic, but in fact you see this as a fortuitous moment. Can you talk about that, and please share why you wrote this important book?

Kevin Nadal:
Sometimes when I think about my childhood, and my growing up, and my own development and coming out process, it feels like, yes, it's my story, but I feel like it's so many people's stories, just add different identities and nuances and that sort of thing. To be an LGBTQ person who is probably over 30 years old, there has to have been some struggle that people have had. And I feel good in fact that upcoming
younger folks are not experiencing as many things as people who are older have. But it's just, I write my story because I want to normalize that this is what it was like for so many of us struggling with not just coming out and just this connecting to this identity of ours, but how it might look differently because of all the different identities we hold and environments that we grew up in and communities that we belong to. Thank you for mentioning that.

Kevin Nadal:
When I think about, also, the work that I do, I have to personalize it. So it is very much a memoir in some ways, because every single thing that I wrote about I could either connect to very personally in very real and authentic ways, or I can empathize with it so closely because I've seen things happen to people who I love and care about. I wrote this book just because there really hasn't been a lot of literature, at least not in a comprehensive way, that has really tackled the idea of justice or injustice many LGBTQ people, and the system that we try to navigate. As I was writing all of the different chapters, which I'm sure we'll talk about a little bit more in detail, I could relate to certain things here and there.

Kevin Nadal:
My chapter on legislation I was able to relate to like, "Oh yeah, I remember that these laws existed and that they prevented us from being able to do certain things," to looking at a chapter on immigration and just learning and understanding more about how LGBTQ immigrants have been discriminated in this country to reading and writing about experiences of incarceration, experiences with the police, even considering family law and just the idea that LGBTQ people have a lot more to fight against in even creating their own families. So it's very personal. It is very much a memoir. A lot of times researchers, especially social scientists, will say that it's not just research, it's me-search, and I agree with that.

Kevin Nadal:
I actually don't think there's anything wrong with that. Sometimes people think that to do research, that you're personally invested in is somehow biasing the research, and in fact, it gives you a different perspective. It gives you a much more focused perspective of why you do the work. As long as you're able to balance and manage any of the potential biases that may occur in conducting and collecting your results, that it gives you something much more than folks who try to approach research without having any connections to communities or to their people of certain identities and miss out on a lot of the things because they're not part of those communities.

Tanya Domi:
Sure, makes complete sense. And I would also offer an observation here. I know that you graduated from Columbia. I did, and I teach uptown, and I also teach at Hunter. And one of the things that I really come away with in your case, but it is a characteristic of CUNY, I think many scholars within CUNY are also activists. When I looked at how you defined yourself, professor, scholar, activists, it made me smile. You're leveraging your knowledge in this book in particular for the public good, so it's wonderful to see.

Tanya Domi:
Speaking about your work as a scholar, you are considered one of the leading researchers in understanding the impacts of micro aggressions on the mental and physical health of people of color, LGBTQ people, and other marginalized groups. And last night, you evoked a discussion about the trauma that was inflicted upon the LGBTQ community in 2016 as a consequence of the Pulse nightclub mass shooting. You called those communal trauma that is shared among queer people. And your work with
respects to microaggressions is interwoven throughout this text, so can we talk about that? I think that's really important for people to know about you as they prepare to read this book.

Kevin Nadal:
Sure. I do a lot of work and I have for the past decade or more on the impact of microaggressions or these subtle forms of discrimination. And when I talk about microaggression, I try to make it very clear that my microaggressions are one form or one manifestation of discrimination, and that there are so many other forms of discrimination that exist that are all interconnected in some way, shape, or form. So when we think about something like the Orlando Pulse nightclub massacre, that is clear that that is... There's nothing subtle about that. That is a very overt form of discrimination and bias that resulted in the deaths of 49 people and injured dozens of others.

Kevin Nadal:
And so there's still violence that affects LGBTQ folks. There's still a systemic oppression that affects LGBTQ folks. There are various levels of other forms of discrimination, so things like bullying, or things like homophobic or transphobic slurs, and then other forms of more overt racism, overt homophobia and transphobia. And then we also have microaggressions, which are some of the more subtle things that people experience based on one of their historically marginalized identities. And so when we talk about LGBTQ folks in the criminal justice system, we also recognize that there are various forms of oppression that they may encounter. There's definitely legislation that would be considered more systemic. Legislation and policies that either prevent LGBTQ people from living their most truest and most authentic selves, or legislation that directly try to limit LGBTQ people from being able to do things.

Kevin Nadal:
And then there's also overt violence and overt discrimination that happens towards LGBTQ folks, especially trans women of color are more likely to be targeted by violence than most other groups, and so we see that. We also see that lots of trans people in general, and again, especially trans women of color can be harassed by law enforcement, or they might not have equitable experiences in court systems. And so those are some of the more overt/systemic things that could happen, and it's systemic because it's a problem, because it's happening everywhere across the country and even across the globe. And then we also have microaggressions within the criminal justice system.

Kevin Nadal:
So the microaggressions would be the misgendering of plaintiffs or defendants in court-

Tanya Domi:
And in the workplace. And in the workplace.

Kevin Nadal:
... Right, in the workplace, and workplace will be considered part of our system too. And even things like presuming heterosexuality in the workplace, or the notion of promotion of heterosexuality as the norm when it comes to many things, whether it's within a prison population or within law enforcement. All these little things, microaggressions, can add up, and what studies on microaggression have found over and over again is that the cumulative effect of microaggression may result in a variety of negative outcomes, such as depression, anxiety, and trauma symptoms, and so forth.
Kevin Nadal:

And so they're all very much related. And so you have an LGBTQ person who is navigating the system, and in doing so, she or he one day will encounter systemic policies that might negatively affect them, might encounter violence, which a lot of LGBTQ people do, especially by law enforcement and in the prison industrial, and then they also might experience microaggressions. And so you're navigating every single type of oppression that you can experience, sometimes multiple times a day, and so what impacts is the totality of all of those different forms of oppression that people's ability to live and survive and to thrive in our world.

Tanya Domi:

Sure. Thanks for sharing that. Not only is this really intrinsic to your book and your scholarship, but you applied, I think it was like three or four theoretical frameworks to shape this book. What you discuss is certainly intersectional, but I'd like you to discuss those for the benefit of our audience?

Kevin Nadal:

Sure. There are a lot of theories that I use, all the groundwork for the type of work that I do, the most obvious for this book is queer theory. So the idea of disrupting the status quo and the ways that we've learned to conceptualize most things, in particularly gender and sexual orientation. And so by using queer theory, really challenging the way that status quos have been implemented and maintained across the entire justice system to the detriment of LGBTQ people and especially LGBTQ people of multiple marginalized identities. And so using queer theory means to look at anything that we've learned and to question it, and to critique it, to look at it through the lens of oppression and the ways that it may be used or even created to oppress certain people that are particularly LGBTQ folks. I also applied the lens of womenist theory, or feminist theory, you know?

Tanya Domi:

Mm-hmm (affirmative), Toni Morrison.

Kevin Nadal:

A lot of similarities between the two theories, but really again, thinking about the way that our society has been a patriarchal one in which men, and in this case particularly, cis-gender men have created the ways that our policies and our government operates that has negative impacts on people who are not men and particularly people who are women and trans and gender nonconforming folks.

Kevin Nadal:

I also looked at microaggression theory and understanding the ways that our multiple identities affect the ways that we navigate the world and how people might treat us. And so looking at things like interpersonal interaction, looking at things like race and gender and sexual orientation of not just people that are trying to live their lives, but also the people that may perpetuate any sort of bias or prejudice towards those people. And then lastly, I looked at this idea of intersectionality as a theory, so understanding how all of these different identities and marginalization, particularly multiple marginalization by people of color. Intersectionality theory was first proposed by Kimberle Crenshaw, looking at the experiences of black women, so how does the experiences of systemic racism and systemic sexism negatively impacts black women. More generally speaking, how does the experiences of systemic racism, systemic sexism, systemic homophobia and transphobia affect people who identify as
LGBTQ, and especially as people who identify as LGBTQ and other multiple identities, multiple marginalized identities.

Kevin Nadal:
So I use all of these as brainwork in part because one of the things that I wanted to do, that would be different than a lot of queer theories in the past, is I wanted to center the most marginalized. A lot of times queer theory had been previously centered on white people's experiences. Part of that is because those were the people who were writing about queer theory, were white people. And so having the opportunity to write through my lens and to always think about the most marginalized in the work and to center their voices first was something that was really, really important to me.

Tanya Domi:
A significant contribution, and thus, this is a hefty book of 11 chapters, and you begin it with a history of LGBT people in the law. I think that not everybody... Those of us who study and talk about it and are from the community, many of us do know about those early laws, but there were early laws that really plagued the queer community, including sodomy and the masquerade laws. And I'd just like you to touch on those, sodomy having been just removed by Supreme Court in Lawrence v. Texas in 2003. That was only 17 years ago.

Kevin Nadal:
You're right. Yes, I think a lot of people just aren't necessarily aware of all these laws. I think a lot of older queer folks may be aware of these things because they lived it and feared for their lives, and they navigated a lot of these laws. But I would say a lot of people who are under the age of 30, maybe even under the age of 40 and they identify as queer themselves, they might not even know that all these laws exist. Part of that is just because we don't get taught about LGBTQ history. Maybe at most people learned about Stonewall, which is great for them to learn about, but they don't know, even, that sodomy was illegal all the way until 2003 across the country in many States. It was illegal then across the country. It took that Supreme Court case.

Kevin Nadal:
And so, we talk about sodomy. Sodomy dates backs to the foundation of the country and different parts of Europe in which are having oral sex or anal sex or sex with an animal was viewed as illegal, and that you could be arrested and convicted of it. Sodomy actually doesn't say specifically, or at least a lot of sodomy laws depending on where they are, but a lot of sodomy laws don't say specifically about even same-sex sex, as opposed to oral or anal sex. So technically speaking, heterosexual people could have been committing sodomy this entire time, anytime they did oral or anal sex, but they weren't getting arrested for it. We know that it's mostly gay people, trans people that were getting arrested for this law, even though it could have been applied for heterosexual folks.

Kevin Nadal:
Sodomy laws were in existence since the beginning of the country. At first, they were punishable by death, so there were some documentation of people who were around during the foundation of the country who were hung as a result of being tried with sodomy. What's also really interesting is that sodomy laws came when the pilgrims and earlier colonizers, settlers came to this country, because we know indigenous people of North America actually were very accepting of gay people or people who identify along the spectrum of sexual orientation and gender identity.
Kevin Nadal:
Sodomy is something that's been around that the punishment over time has decreased. People would still get arrested from it, and even more so shamed from it. And so prior to Stonewall era, if you got arrested for sodomy, oftentimes, families would be notified that they were arrested and it would actually go on paper, and because of all that stigma, that was life-threatening because people oftentimes would die by suicide because they couldn't deal with a lot of that shame. Sodomy was first illegal on the state level in Illinois, I believe the year is 1961, but it took from 1961 to 2003 for all the states to finally remove sodomy from their legal codes. Now, the thing is that in several states, I think the last time it was about 10 or 15 states still had sodomy on their legal codes-

Tanya Domi:
On their books.

Kevin Nadal:
... They weren't enforcing that.

Tanya Domi:
Right.

Kevin Nadal:
So they're still there, but because of SCOTUS and that decision from 2003, they're not enforced, and so this is why it's always so scary that when SCOTUS is threatened, because there's the potential of any of those state laws being reenacted. Quickly, the masquerade laws, those were just the laws that really enforced that people have to wear clothing that matched their sex assigned at birth-

Tanya Domi:
Transgender, yes.

Kevin Nadal:
... Yeah, and so for Stonewall, even, part of that was that people that were invested on the inside were trans women, or back then, they probably would've identified more as drag queens, where they were wearing... Men assigned at birth who wore women's clothing, and butch women were arrested as well.

Tanya Domi:
Right, right.

Kevin Nadal:
And so, in New York City there was a specific training called the three-article rule, or the three-article law, that you have to have three articles of clothing that match your sex assigned at birth or else you would be arrested. Now, the funny thing is that in doing the research, it wasn't really something that was on the books, but it was something that was practiced and used as a tactic-

Tanya Domi:
A coercive tactic, yeah.
Kevin Nadal:
... to arrest queer people, and then they would get arrested. And if they got arrested, they could be bribed to get out of it when in fact it actually wasn't a law, the three-article rules. Masquerade laws were off the books, but the actual idea of three articles as a justifiable thing was something that was made up and then spread as law when it actually wasn't a law.

Tanya Domi:
Really interesting. Just an FYI, Kevin, in the military, the sodomy statute remains. It went out of effect for sexual orientation or gender identity in 2010, but it remains in the uniform code of military justice, and it is used mostly against heterosexual people when they engage in affairs, extramarital affairs. But if you are defined as being, or you were accused of being gay as I was, I was in fact charged with Article 125 sodomy, but I was later exonerated. Nonetheless, it's still there, and given what's going on, as you point to the court, I fear for a return on these issues.

Tanya Domi:
So those are just two examples. But also what you do in this book, I think the major focus is that in your conclusion, and it's really about the process of the entire book from chapter one til chapter 11 is that you center queer people as being both victimized and criminalized. And I think that has not been seen on a book jacket even. That's like a two-by-four to your forehead and you go, "Wow. It really, really is true." You posit that queer people are both victimized and criminalized. And in your view, your most salient observations about queer people living in these two categories of victim and also being criminalized because of many times, if not most of the time, because of multiple identities that are seen as a threat.

Kevin Nadal:
Right. The whole point, something to point here, is to really point out this dichotomy that exists, which then just prevents queer and trans people from being able to really live their best lives. When you are both victimized and criminalized, what this potentially means is navigate the world and you may be potentially victimized. This idea of being a victim or a survivor of hate crimes, of workplace discrimination, of microaggression, any which way in which people may mistreat you, sometimes violently sometimes not so violently, but again, just that theory of microaggressions and the research on microaggression, but even if it's not so violent, that over time it still has such a negative impact on your overall wellbeing.

Kevin Nadal:
And so when you are victimized, you're supposed to be able to go to seek help, and particularly from a law enforcement or the justice system where you're supposed to be able to seek justice or to be able to have these certain problems resolved in some way. But then what ends up happening is that queer people end up being criminalized, meaning that they get arrested when they in turn were the victim of a crime. I have many examples throughout the book, but one of the most prevalent and many people are aware of are, the case of CeCe McDonald who was targeted by a hate crime and fought self-defense, and then ended up getting arrested and serving time in prison, even though the fight was started by the other group, who-

Tanya Domi:
By the perpetrator. By the perpetrator.

Kevin Nadal:
... By the perpetrators who were saying racist and transphobic things at her and her friends. And so they're also criminalized in that anything that queer and trans people do historically has been viewed as a crime. Our very existence was a crime. To engage in sodomy would be viewed as a crime, and even present day, some of the things that queer and trans people do to survive are criminalized. Also a lot of times, trans women of color or trans women in general, they have difficulty getting a job because of the systemic transphobia-

Tanya Domi:
Because they're trans, yes.

Kevin Nadal:
... They might turn to sex work. Again, because sex work is illegal in most states, they'll get arrested for it. And then meanwhile, trans people in general, or even queer people in general, they try to give you condoms for public health advocacy to the government unhealthy problems, but at the same time, if you get stopped and frisked, and you are found to have three or more condoms on your person, you could be arrested with sex work.

Kevin Nadal:
And so it's just a very... It's such a lose, lose situation that the systems are out just to push you down or to prevent queer people and trans people from succeeding. But then even if people are trying to do what they can to survive in the world, they end up getting arrested and getting criminalized. Even here, a lot of homeless LGBTQ youth, that majority of youth in New York City and of major metropolitan areas, a majority are LGBTQ-

Tanya Domi:
Yes, yes.

Kevin Nadal:
... A study about homeless youth in New York was that 40 to 50% of them were LGBTQ, so that's four times the population of LGBTQ people. If they get involved in any crime as a way of survival, it's because maybe they got kicked out of their homes. Maybe they ran away from their homes that were abusive. And so instead of criminalizing them, if they are caught doing something that's illegal, why not try to find ways to assist them. And so that's why the ways that they have been victimized and the ways that society doesn't promote their ability to succeed. These are just some of the examples that, I think, that's just something that's so important for us to really understand is that for a lot of times people are victimized, that maybe they might be able to see justice. And then sometimes people are criminalized in general, but when there's those happening at the same time, it's just become such a harder society to navigate.

Tanya Domi:
Indeed. In your last chapter, you also make recommendations. And after examining a criminal justice system's relationship to queer people in America, what were your, I think, in your view, the most
important recommendations if you could maybe, I know you would like to be comprehensive, but perhaps one of the most salient or what you've found rose to the top of your list?

Kevin Nadal:
To be as brief and concise as possible, I think one of the things that we need to do to change the system is to attack it from all levels. I think there are things that people do not just personally, but things that individuals can do as individual citizens, as people in their workplace environments to advocate for social justice. And then there are things that can be done on more systemic levels, such as those things like advocating for your legislators to create LGBTQ affirmative legislation, advocating against any atrocities that are happening in the prison system or within law enforcement. And we see a lot of those types of action coming present day with so many people fighting in the movement for Black Lives, and in the movement for black trans lives, in the movement for just social justice in general. That protest works. Protests get things done. In the past, you'll remember that Stonewall was a riot, and people had to make noise in order for people in power to actually hear some of those things.

Kevin Nadal:
I think people also need to think about like either pushing our lawmakers and politicians to be more, not just inclusive of LGBTQ folks, but to center around LGBTQ folks. If we can't find those legislators or politicians to do that, then people have to consider running themselves. I don't think that visibility itself is one to lead to change, but I do think that visibility plus representation, and especially representation by people who care about our communities, needs, and the most salient issues, then that could lead to some incremental change over time.

Kevin Nadal:
And then I do think there's a lot of things that people can do on an individual level. Within every workplace, there could be some culture changes. People can do things like actively try to engage people to learn more about microaggressions or about certain injustices affecting people of various marginalized races and especially LGBTQ folks. People can institute trainings, and discussions, and educational activities and all sorts of things, so that there's this more awareness. The more awareness that people have of how they treat others, that creates a much more inclusive environment, support for both. If there's discriminatory policies in any way, then you need to speak up and fight out again. Fight out. Stand up against those things and fight against those things, because if not you then who.

Kevin Nadal:
And so really thinking about all of the different things that people see, and just how the cultures are, and using our voices to stand up against those things. Those are just a sample of it. In every system, there's something we can do. So every chapter has something, like the chapter on law enforcement, a chapter on the court system, a chapter on immigration, a chapter on family law. Every single one of those things can change in some way, but it really takes a community effort, and not just LGBTQ folks, people who identify as allies or accomplices-

Tanya Domi:
Sure, solidarity actions.

Kevin Nadal:
... Yes, we need them.

Tanya Domi:
Solidarity actions, yep.

Kevin Nadal:
Absolutely.

Tanya Domi:
Well, you actually conclude the book with a call to action which you've really described. But right now we are facing an election on November 3rd, we have seen and witnessed the deepening criminalization of trans people under this administration, it's a very challenging and frightening time. You quote Bayard Rustin, the great Civil Rights activist who was a black gay man, "We need in every community a group of angelic troublemakers," is what he said. And now given what we're facing, what is in front of us, what is only 33 days away, what in your view could be the most urgent issue on a call to action?

Kevin Nadal:
I think we all need to be troublemakers. Troublemakers doesn't necessarily mean that we have to do anything that's illegal, but we definitely have to vocalize our concerns and our passions, and especially around this election. I think one way to be a troublemaker is to make sure that everybody knows exactly how you feel about the upcoming election and what is at stake here, that especially if you have friends or family that live in these swing states, that we need to find out who they're voting for and try to convince them to vote for the ticket that will protect LGBTQ rights. And for them to realize that it's not just a theoretical concern, that that fear in trans people's lives are literally at stake, that whoever wins this presidential election can determine the federal legislation that can affect this generation.

Kevin Nadal:
We talked about SCOTUS earlier, and right now, they're trying to push for the sitting court justice to be nominated before the election. But if that happens, even if it doesn't happen now, and the current presidential administration gets reelected, then they will be able to push a Supreme Court nominee who then again can outdo or rewrite history by bringing back laws that we have been fighting for or against, actually we have been fighting against for centuries. Every vote is important. I know that a lot of people may not be happy with the choices that are presented, but at this point in time, we have to vote for what we know will affect us positively for our community. I don't know if I'm allowed to say even her name, but I personally am voting for Joe Biden and Kamala Harris because I know that despite any flaws that they may have, and any flaws in their history, that they will do more for LGBTQ people than the current presidential administration.

Tanya Domi:
Thank you Kevin Nadal. The book is Queering Law and Order: LGBTQ Communities and the Criminal Justice System published today by Lexington. Congratulations again, and thanks for being on our program.

Kevin Nadal:
Thank you Tanya, I appreciate it. Thank you so much.
Tanya Domi:

Thanks for tuning into The Thought Project and thanks to our guest Professor Kevin Nadal of John Jay College of Criminal Justice and the Graduate Center CUNY. The Thought Project is brought to you with production, engineering, and technical assistance by Kevin Wolf of CUNY TV. I'm Tanya Domi, tune in next week.