

Transgender Vulnerabilities: State Issued Identity  
Documents and Third Gender Options

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**Abstract**

Transgender Vulnerabilities: State Issued Identity Documents and Third Gender Options

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Until recently the power to classify people by gender in the U.S. resided exclusively with the state and federal governments, both of which exclusively used the two binary gender options, female and male, and no others. Since 2017 this has begun to change as more states and cities have begun making third gender options available to those who do not identify as either. This represents a step forward towards greater acceptance of transgender, and particularly non-binary identities within society. It is revolutionary in how the state administers “sex designations,” along with your name as the foundation of an individual’s legal identity. Trans people in both private and public spaces have to prove who they are as well as correct wrong assumptions, at times exposing themselves to public humiliation, exclusion, marginalization and even violence. These everyday situations give private citizens the power to analyze and pronounce judgment on everyone’s identity acting as agents of the state. How do third gender options work, how did we get here and what does this mean for the ongoing debate about gender and how it relates to identity politics, public policy, feminist and queer theory?

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**Abstract:**

Transgender people suffer appalling rates of exclusion, marginalization and physical violence. Existing liberal legal reform efforts to improve their lives have proved ineffective at preventing the violence and has not led to equality for trans people. The Trump Administration's war on trans people, a mixture of initiatives from removing Title IX and Title VII protections to literally erasing all references to trans people in federal administrative laws and databases have turned back the clock on trans rights of any kind. These initiatives have left many in the trans community feeling more vulnerable than they were prior to the Obama administrations expansion of Title IX definitions of gender as inclusive of both expression and identity. As a result some states and cities have begun experimenting with ways to extend additional legal protections under state and municipal laws and regulations.

Until a few years ago the power to classify people by gender in the U.S. resided exclusively with the state and federal governments. Both have been using only the two binary gender options, female and male. Recently this has begun to change as more progressive states and cities have begun making third gender options available to those who do not identify as either female or male. This is a small step forward for transgender acceptance within society, but it also is a revolution in how the state uses "sex designations,"<sup>1</sup> as one of the foundations for legal identity in society. It's also a huge step forward in legal recognition for those who identify their gender as non-binary<sup>2</sup>.

The path from birth to death has legally at least to this point, meant either one or the other. The gendering starts with the delivery doctor making a judgment about your "sex designation" (based on a cursory examination of genitals) as a baby comes out of the womb. This becomes the basis of your legal identity and is recorded on your birth certificate. From this birth

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<sup>1</sup> Sex designations: the legal terminology employed by law makers, lawyers, and activists to describe the gender assigned at birth to individuals.

<sup>2</sup> Non-binary: "within trans-related discourses, typically refers to people or identities that fall outside of the gender binary" (Serano, n.d.).

certificate, one gets assigned a Social Security Number (SSN) which remains with you your entire life. Eventually it will also become the basis for obtaining a state-issued identity card or driver's license.

For trans individuals, the impacts of sex-specific identity documents such as birth certificates, SSN's, and driver's licenses or state-issued identity cards has profound implications as to whether or not they will be able to lead a self-actualized life. As such, trans individuals face a dilemma: how to present and express yourself when your inner identity does not match your state-issued identity documents?

The issue of government sanctioned identities, who can be classified as what, and what is required to do so, is also about the fundamental nature of gender and how it is a key site where government power and the medical industrial complex establish and enforce rules that impose binary gender identities onto people by fiat. The medical industrial complex is slowly awakening to its responsibilities to transgender people. However, government (all three branches, state and federal) and the administrative law systems they run on, the very rules for how they function, continue using essentialist definitions of gender as one of the underlying structures of state power. This makes the task of expanding beyond them in favor of acceptance and integration a difficult and multi-faceted problem.

Recently the State of Washington as well as other state and municipal jurisdictions around the country have adopted a non-binary "sex designation" as a solution to the problem of identity documents for trans people. The increasing presence of trans people in society, media and popular culture as well as the significant pushback of the Trump Administration against trans acceptance and rights is moving this issue to the forefront of national debates around gender broadly, but more specifically trans phenomena. The most common way this has occurred in public forums is around the question of whether or not trans people have the right to even exist in public spaces, like bathrooms. This research argues that the bathroom problem and trans legal exclusion and marginalization from lack of legal ID congruent with an

individual's identity and expression are similar problems. They share the same sources of misinformation and bias, and this is why issues around identity classification (female, male, or non-binary "X") have a considerable impact on transgender populations for both good and bad.

To analyze the issues that arose within this research four methods were employed during the data compiling process. First feminist theory is used to demystify trans phenomena and is useful in analyzing large scale questions about gender and power in society. What makes feminism central to this theoretical analysis is that it has a political agenda, one that challenges sexism directed at trans people, particularly trans women. My approach is intentionally intersectional when it comes to subjectivities, and openly acknowledges my own, making use of my observations as a trans lesbian. Additionally, this thesis makes use of queer theoretical analysis as a way to open up a more inclusive range of gender identities as feminist theory all too often relies on a binary one.

Second, drawing on feminist standpoint theory and its focus on the situated production of knowledge and related practices of power, particularly in socio-cultural and political contexts, this research makes use of autoethnography. Doing so allows a richer, denser, description of trans experiences that removes trans people from the category of other within this research. Instead it creates a shared consciousness and shared stories. Allowing personal accounts creates richer data and hopefully as such serves as a resource for other social justice movements and researchers.

Third, to further explore the nature of how these third gender identity options shape the national discourse around trans rights this research explores and analyzes the language used in public discussions about trans people and their identities. Specifically, I examine media coverage of the rollout of the Washington State Department of Health's (DOH) new third gender option "X". It is analyzed with an eye to how the Department justified the expansion of identity classification rights to non-binary people. It also analyzes the public discourses of the trans

activist community around the Department's action as well as those of socially conservative groups opposed to the new rules.

Finally, this research embraces critical emancipatory research perspectives grounded in feminist principles. As an out, feminine trans, queer individual myself I have a personal reason to wish for improved living conditions and increased integration for the trans community within society. Thus, this thesis is charged with political purpose and is not value free. It seeks nothing less than the transformation of society, to one where trans people can live in dignity, safety, and with possibilities for self-actualization.

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## **Introduction: sex designations, gender identity & expression**

### **Transgender peril in the age of Trump-Pence**

Since the election of Donald Trump as U.S. President the transgender community has been under siege by the federal government. In October 2018 the *New York Times* uncovered a draft memo of a rule change in Department of Health and Human Services regulations which removes all mention of transgender, erasing our existence from federal databases (Green, et al., 2018). Transgender people who have already changed their gender markers legally are theoretically at risk for having their federal identity connected to their Social Security card and passport returned to the gender recorded at their birth.

According to the National Center for Transgender Equality (2018), the Trump administration is the most anti-transgender in American history. It has rolled back all of the advances made over several decades with surprising callousness and speed. They have made it their mission to appoint openly and actively anti-trans senior officials such as Jeff Sessions, Trump's original Attorney General and Betsy DeVos, his Secretary of Education. Most recently (2019) the Administration argued in the Supreme Court that employers do not have to follow Title VII regulations when it comes to firing transgender people in the workplace<sup>3</sup>. In other words, employers can just do it, use religion to justify it, and the federal government will protect that right.

Into this environment individual states have taken it upon themselves to offer legal protections and an easing of overly burdensome gender-based identity rules to ease trans acceptance within society and improve trans health and happiness. To make sure that non-binary people as well as binary transgender people see these benefits a third gender option (in most cases "X") is rapidly being adopted across the country.

### **X as a third gender option**

In January of 2018, after several months of public comments, the State of Washington announced it was going to allow people to choose a third gender on their birth certificates, "X". It only applies to people born in the State of Washington and the procedures for changing your gender between female and male are slightly different from getting the new "X" on your birth certificate. This new administrative law is officially listed in the Washington Administrative Code (WAC) as 246-490-075 (2018).

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<sup>3</sup> R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission (Pending).

At present, any adult born in the State of Washington may change to the “X” designation without any additional requirements beyond the payment of a small fee for the new birth certificate (\$20.00), and the filing of a petition that is notarized. Minor children wishing to obtain the “X” designation must obtain the signature of a doctor or mental health practitioner as well as the consent of their legal guardians.

As noted above, in addition to being able to change your sex designation to the non-binary “X”, Washington State also has administrative procedures in place to change between female and male. This requires the additional step of obtaining a signature from a medical or mental health provider that you are under treatment with for gender dysphoria<sup>4</sup> and that you understand the consequences of this decision. The person looking to change their gender marker must sign this form in the presence of a notary public.

With this step to the non-binary X designation, Washington became the second state on the West Coast to offer an official gender-neutral third option on birth certificates, California being the other one. Oregon offers a gender-neutral option on driver’s licenses, but it is not available on birth certificates (Graham 2018). As of this writing other Washington State agencies have not followed suit by adopting a similar rules with appropriate administrative procedures, though at the time of the rollout of X in 2018, a spokesperson for the Department of Licensing was quoted in the press as saying that they were researching how the department could change driver’s licenses (Willmsen 2018).<sup>5</sup> At present the gender neutral, or third gender option is not

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<sup>4</sup> Gender Dysphoria: a somewhat plastic term used in psychiatry over the last 40 plus years to generally denote the “discomfort and/or distress that trans people experience when they are unable to live as members of the gender/sex that they identify as or desire to be” (Serano, n.d.) With DSM-5, the most current version, Gender Dysphoria became an officially recognized psychiatric diagnosis. There is an ongoing debate about whether or not it should be considered a mental disorder. Opinions vary widely from medical professionals who see it as primarily a medical condition to trans activists whose general position is that all forms of gender expression, binary or non-binary, no matter how extreme, are just normal variations in human gender expression and identity.

<sup>5</sup> During the final writing of this section the Washington State Department of Licensing (DOL) announced a proposed change in the WAC (308-104-0150) that would allow citizens to adopt the “X” sex designation on the WA state driver’s licenses, instructional permits and ID cards. Public hearings are to be held in Seattle, Olympia and Spokane in August of 2019. The press release from DOL states: “This “X” option is necessary to ensure that all Washington residents have identity documents that match their gender

recognized in other states or by the federal government and as such is seen by trans activists, for now, as a largely a symbolic gesture.

The number of states that allow some kind of third gender options is presently twelve. Two cities, New York, City and Washington D.C., also allow it and the policy is pending in another five.<sup>6</sup> In July of 2017 Oregon was the first state to permit a third gender option, in this case on drivers' licenses. The nation's capital was the first city to do so and also holds the distinction of being the first place in the country where a non-binary birth certificate designation was possible. Every state that has adopted a non-binary option but one uses the designation "X" for their third gender option. California uses "non-binary" and it is available both on "state identification and birth certificates" (Magness, 2018). In the remaining states to regulate state-issued ID there exists a complicated patchwork of laws and regulations governing gender identity markers on identity documents, requiring various procedures, usually involving engagement with medical (often including proof of surgery) or psychological professionals to move one's marker from the original sex designation assigned at birth to a different one.

### **The administrative realities of self-identity**

A common desire within trans populations is be able to self-identify. But, if the gender identity they desire for themselves exists outside of the two cisgender (cis)<sup>7</sup> choices, born female, or born male, there are not many options available. Not having identity documents that match your identity and/or expression can lead to severe societal consequences including exclusion, marginalization and sometimes violence. Lack of documents that match one's lived identity

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identity. Accurate and consistent gender markers on identity documents help residents of all genders access public spaces and resources, and reduce the risk of violence and harassment."

<sup>6</sup> The states are: Arkansas, California, Colorado, Indiana, Kansas, Maryland, Minnesota, New Jersey, New Mexico, Oregon, Utah, and Washington. Third gender options are pending in Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New York, and Vermont.

<sup>7</sup> Cis, Cisgender, Cissexual: labels that begin within the trans community to denote people who are not transgender. It assumes that it confers societal advantages because they are not trans. Cis can be used to name the unmarked dominant majority to better articulate the ways trans people are marginalized in society (Serano, n.d.).

creates cascading negative effects in health care, economic stability, education, housing, access to critical services, and greatly reduces possibilities for improving overall life chances for trans individuals.

Not everyone considers themselves just a female, or just a male. Nor does the way one identifies stay constant throughout their life. A growing number of people are identifying as neither and are using terminology to describe themselves like agender<sup>8</sup>, genderfluid<sup>9</sup>, genderqueer<sup>10</sup>, intersex<sup>11</sup>, non-binary, or two-spirit<sup>12</sup> to name a few. Ideally society would accept these various descriptive terms of identity and incorporate them into government issued identity documents to ease societal acceptance. Even better getting rid of them altogether would greatly simplify it (see conclusions). In the absence of that outcome, having appropriate identity markers that are sanctioned by the state can begin to ease the burdens trans people face daily to exist in public space, or to be valued and engaged members of society.

In most of the U.S. states it is a very difficult process to legally change one's gender. Like changing one's name, at minimum it can often be very time consuming and expensive to change one's sex designation on a birth certificate or other state-issued identity documents. Across the U.S. individual states have different laws, rules and requirements related to how identity documents are assigned, to whom, and under what circumstances, in effect controlling how people may express their identities. The federal government has its own set of rules about

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<sup>8</sup> Agender: "a person who does not identify with any gender, or who does not experience a gender identity" (Serano, n.d.).

<sup>9</sup> Genderfluid: a non-binary identity accepted by people whose perception of their gender identity and/or expression is as one that changes and shifts over time.

<sup>10</sup> Genderqueer: an identity label with many different meanings. It is sometimes used as an umbrella term for non-binary people. It's used to denote people who don't identify with either the female/male or man/woman binaries. I personally used it to denote my radical queer politics, and my often mixed gender presentation during the years leading up to my transition. In other words, it covers a diverse range of identities, life paths, and sexualities that exist.

<sup>11</sup> Intersex: an umbrella term used to denote people whose reproductive or sexual anatomy does not fit into standard medical definitions of female or male.

<sup>12</sup> Two-Spirit: a modern umbrella term for First Peoples/Native American gender roles that fell outside of, or combination of female/male. The Pacific Island people have their own version, fa'fa'afafine.

changing names as well as gender related to your social security number. Thus, if you live in a state that has progressive ideas about freedom of gender expression you may have a very easy time having a legal identity that matches who you present as. If you don't you could end up living as one gender full-time while all of your identity documents have a different name and sex designation. This is key, because if your gender expression does not match what people see on a health card, driver's license, or bank ATM card you risk being publicly outed, dead named<sup>13</sup>, and humiliated, if not worse. This is a form of state violence against a specific population, those who fall outside of and disrupt established binary gender norms. Access to the ability to legally change one's name and gender designation, in effect having control over one's own identity, thus is key to reducing trans violence and increasing trans people's chances to live fulfilling, self-actualized lives.

States other than Washington are also taking care to reduce bureaucratic procedures involved in switching your gender between female and male. These administrative law changes are not uniform nor available to everybody, and in the case of X, can often end up being forms of identification that do not carry any real legal weight across jurisdictional boundaries.

### **Transgender: Feminism's sibling and queer theory's step child**

An interdisciplinary approach and multiple theoretical paradigms are necessary to adequately engage all the issues that arise from a serious discussion of trans subjectivities. No one paradigm is up to the challenges presented when looking for ways to empower transgender people. While up to the minute rules, laws and regulations are important to this discussion, a look back at the history of identity politics is also necessary to frame all the issues and actors in the interconnected and often complicated problems trans people face.

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<sup>13</sup> Dead name: refers to the former name of Transgender individuals. When I legally changed my first and last name, all references to my previous name, either first, or first and last were considered being dead named. For Transgender people it can be very hard to be dead named because it reminds them of past trauma, opportunities lost, psychological baggage and so much more.

Historically, radical gender and sexuality politics are somewhat intertwined and only came into national consciousness within the last 75 years. In that time, gays and lesbians have gone from “social and political pariahs” (Stewart-Winter, 2015, pp. 1), to having some political clout and expanded legal protections. Along with feminist movements and politics, gay and lesbian social movements and politics have become part of the social fabric of American culture. Transgender people however, unlike mainstream feminists and even gays and lesbians, mostly live on the margins of society. They exist on the fringes in much of the country, even within self-proclaimed progressive areas. They are considered part of what is referred to as the “queer community”, yet they greatly problematize it as well, and as a result are often not warmly welcomed within. They are interested in gender equality because their very lives depend on it, yet the feminist movement, the single most important factor in gender politics in the last one hundred plus years, has been very slow to accept trans people or incorporate their concerns, particularly male to female spectrum ones. Some radical feminists refer to transgender women as “SCAMS”, which stands for surgically and chemically altered males, and compare them to the serial murderer character in Jonathon Demme’s *The Silence of the Lambs* (The TERFS, 2019). These radical feminists are generally referred to as “TERF’s”, which stands for trans-exclusionary radical feminist. It is a subgroup of radical feminists that embrace transphobia<sup>14</sup>, trans-misogyny<sup>15</sup>, and an overall dislike of trans-inclusivity within third wave feminism.

Academically, both feminist and queer theoretical frameworks, though relevant to transgender scholarship, fall short of encompassing the unique subjectivities of trans people. Queer studies have always been inherently interdisciplinary, and were developed out of and are best understood in terms of feminist knowledges (Jagose, 1996). Drawing on postmodern and

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<sup>14</sup> Transphobia: Its literal meaning is “fear of” or “aversion to” people who are transgender. Serano also uses it to denote the assumptions and beliefs that cis people’s gender identities, expressions, experiences, and embodiments are more natural and legitimate than those of trans people” (Serano, n.d.)

<sup>15</sup> Trans-misogyny: A term Julia Serano coined in her 2005 chapbook *On the Outside Looking In* and expanded upon in *Whipping Girl* (2007). It is used to describe forms of sexism that are specific to the MTF trans community.

poststructuralist thinking, queer theorists critique essentialist categorizations of people. Instead they argue that “human cognizance of lived possibilities is more complicated and subject to variation than essentialized, binary categories of male/female, man/women, heterosexual/homosexual admit” (Nash, 2010, pp. 581). Queer expands feminist theory in such a way to encompass all sorts of identities that exist outside of binaries, whether related to gender or to sexual identity and all the intersections between them.

Queer as a theoretical concept and framework has plasticity built into it and thus it can be expanded upon to include work that is not specifically about gender or sexuality. It can be used to explore other intersectional subjectivities that acknowledge ability, class, ethnicity, and race as they relate to gender and sexuality (Sedgwick, 2013). Queer as a concept can also be anything out of step with normativity (Halberstam, 2005), invaluable when considering transgender subjectivities.

Though the trans and women’s liberation movements are comprised of overlapping populations and goals, there have historically been complicated relationships between them (Serano, 2007, 2013; Stryker, 2008). Both feminist and queer circles are problematized by the presence of trans people and the phenomena they bring to their respective communities and movements. Gay communities are often trans people’s only viable social and political home (Minter 2006), and a sizable proportion of the trans community also identify as bisexual, gay, or lesbian (Feinberg, 1996; Minter, 2006; Doan, 2007). These overlaps with the queer community are problematic because both feminist and queer communities have a tendency to embrace essentialized gender definitions. Thus the troubled spatial and interpersonal experiences that exist between trans people and communities that should be aligned with them reflect long-standing, often bitter disputes between feminist, queer, and trans activists and scholars over the socio-political and theoretical implications of an increasingly visible and vocal trans population (Currah, 2006; Juang, 2006; Minter, 2006; Stryker, 2006, 2008; Serano, 2007, 2013). As a result of these tensions and conflicts, research into transgender phenomena must take both

feminist and queer as a starting point and include both interdisciplinary and intersectional approaches to analyze them. To fail to take that into account would be to only consider the problem of trans discrimination and violence from a few narrow angles, rather than the myriad of ways it actually manifests itself.

### **Transgender rights**

Trans folks face so many simple administrative barriers and too little is understood about how the seemingly banal administrative legal systems that regulate them impact their lives. The existing liberal legal reform and public policy approaches for transgender rights of the past have proved inadequate, if not counterproductive, to expanding them. Existing approaches may constitute a useful starting point for looking at possible future efforts to expand trans rights, because other, more radical approaches are available and worth consideration. One such alternative approach to the issues of trans legal identities is states experimenting with and adopting non-binary legal identity markers on state-issued documents. Are they working? If so what is working and what is not? What additional steps may be necessary for the governments stated desire to empower and improve the quality of life for trans people for it to become a meaningful reality? To begin answering those questions this research fuses socio-cultural, legal, and political understandings of transgender phenomena and contextualizes the contemporary legal and public policy approaches to address these questions as well as explores their potential ramifications in the day-to-day lives of trans people.

These questions are important because people who openly transgress socially acceptable limits of gender self-presentation are among the most at risk for decreased life chances through exclusion, harassment, and violence in society (Namaste, 1996; Spade, 2011, 2013). The types of violence that trans people fall victim to are varied and come from many sources. The statistics about the rates at which trans people suffer from violent physical attacks or murder are appalling, particularly for trans women of color. So are the rape and physical assault statistics

and the rate at which trans people take their own lives. Often denied employment or other meaningful economic opportunities, trans people often must engage in survival-based as well as escapist criminal activity. Incarceration for trans people, particularly those on the feminine spectrum, often leads to further violence and rape within the confines of the prison industrial complex.

In seeking to understand something as multi-faceted as transgender people's experiences with violence it becomes necessary to focus in on a few key aspects. Thus, to analyze the new administrative law changes as strictly a legal phenomenon would be to leave out the impacts they have upon the intended group on a micro level, and it is also necessary to examine what it means in the evolution of socio-political debates about the nature of gender in society on the macro level. It is necessary to analyze trans people's legal status not only through the lenses of administrative law systems (Spade 2011, 2013), but also significant recent case law, as well as trans socio-political history (Sharpe 2006; Collins 2016). One of the key reasons this is necessary is that trans people experience space and place differently than cisgender heteronormative people do, and often face significant dangers that cis-hetero people do not, or they are shut out of public spaces altogether (Doan, 2010, 2011, Lubitow, et al., 2017). Being out in society offers a variety of challenges for trans people beyond which bathroom to use (Minter, 2006; Serano, 2007, 2103; Nash, 2010). The challenges are many and they happen to us every day, often multiple times a day. One of the primary root causes is state-sponsored violence.

States, by granting or denying transgender people the right to self-classify based on their individual sense of identity and choice of expression are controlling them through the rules they create that govern provision of legal documents that prove identity. This creates an undue burden for trans people whose appearance and sense of identity may not match their state-issued identity documents. Thus, trans people face the conscious bias of transphobia that produces targeted violence, as well as the numerous bureaucratic/legal catch-22s that render basic life necessities unattainable (Spade, 2011). The situations they face and their impacts are

exacerbated by the ways that gender is used as one of the foundational principles upon which culture and the “seemingly banal administrative systems that govern everyone’s daily life” (pp. 11) are organized. These situations particularly hit the poor the hardest as most modern necessities require showing ID to prove your identity, such as renting housing, which often requires a background check. Accepting a job and having to prove your identity for your employer’s I9 form, a proof of legal identity document, is another way the poor get hit just a bit harder, perpetuating often horrific life circumstances with little resources available to improve chances to lead a productive life.

When considering legal and/or public policy solutions to the vexing problems of transgender violence and reduced life chances, we have to ask, where do we push, where do we pull to get the changes we seek? It begins by asking whether or not trans people have the legal, moral, or ethical right to decide and assign their own genders. Does that right belong to the state, the church, or the medical and psychological professions? If gender is classification, how can trans people afford to not take and own the very basic right to classify ourselves (Bornstein 1994)?

The judiciary’s longstanding refusal to recognize discrimination against transgender people as a type of gender discrimination has forced activists to turn to legislative solutions. Minnesota passed the first law that added a category for gender nonconforming people in their nondiscrimination laws in 1975 (Stewart-Winter 2015). Since then a few states have followed suit including California, Oregon, and Washington. As of 2006, “30 percent of the U.S. population lived in jurisdictions that have passed ‘transgender rights’ legislation” (Currah 2006, pp. 21), though many of these laws have little in the way of legal effect and are largely symbolic (Spade, 2011 and 2013).

For transgender people the frameworks for legal equality are clearly not up to the task of addressing the realities of their criminalization, despair, poverty, violence, or their chances at having a healthy fulfilling life, the very things intersectional resistance wishes to transform. In

seeking to address this issue Spade (2011) asks us to consider alternative ways of life that current US law, not to mention society, cannot presently comprehend including: life without borders or prisons, without gender and health norms, without work, wealth, or poverty as we currently know it.

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In the chapters that follow I survey the literature of trans, feminist, and queer theory and argue that no one single theoretical framework is sufficient to begin describing transgender day-to-day subjectivities. Nor is one methodological practice up to the task. And since this research is grounded in street-level activism, staid academic methodologies must be augmented with relative newcomers to the researcher's toolbox. Given the liberatory purpose behind this research, it necessarily chooses frameworks that seek liberation, not endless theorization.

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## **Literature Review: third gender options and legal binaries**

### **Feminist, queer and transgender theoretical frameworks**

*“Queer means to fuck with gender.”*

Cherry Smyth - 1992

To best understand how to improve transgender people’s circumstances we must look at the sources of their exclusion. Feminist and queer literatures are essential to understanding how the role of gender, and particularly patriarchal norms, figure in that exclusion. Intersectional analysis is crucial to understanding the legal and public policy frameworks that sanction transgender marginalization, as well as the role of identity and identity politics in shaping debates around trans rights. Feminist and queer geographies provide a rich descriptive universe to illustrate how trans experiences in public, semi-public and even private spaces are much different than those for cisgender people, and that almost all spaces and places are coded as cisgender and heteronormative, making them all significant vectors for anti-trans violence. Finally, a survey of the published works of well-known trans authors and academics provides critical contextual information on historical, political, and sociological issues unique to trans subjectivities.

The theoretical frameworks included in this thesis are critical in their orientation, grounded in both feminist and queer theory, but also incorporating the emerging field of transgender theory. Trans scholars and activists, most of them feminists, seek to confront the assumption that feminism is the only go-to place for a theory of gender or sexuality. They argue that one of the biggest problems with traditional feminism is that it is stuck in its conflictual relationship to the female/male divide. The consequence of this is that transgender people remain to feminist theorists necessarily ambiguous figures (Felski 2006), and as such they are anachronistic and dislocated. Felski said that in 2006 but thirteen years later it is still mostly true. Thus, “gender remains both essentialist and impossible for feminism, which shifts between a radical questioning of the ontology of femininity and an insistence upon its real effects” (Felski 2006, pp. 572). This is best illustrated by anti-trans feminists’ insistence that if you are born

male, no amount of hormone replacement therapy or gender related surgical procedures can change what exists within a trans women's brain, which they argue is still male.

Feminist theory is a theory of gender oppression, not a theory of sexual oppression and as such it fails to make a distinction between gender, on the one hand, and on the other, erotic desire and other sexual behaviors (Rubin, 1984). Rubin's main argument is that most of the violence against sexual minorities is in fact a policing of gender expression within public and private spaces (Rubin 1984; Namaste 1996). As such mainstream feminism can only tell a portion of the story of how trans people suffer day-to-day marginalization. Nor is it well positioned to explain how transgender positionalities can be understood within the context of various academic disciplines to expand awareness of trans issues. This blind spot in feminist theory has led me to incorporate queer theory in order to dig deeper into the messy realities of trans subjectivities, but also to push against established boundaries within both disciplines. Queer theory offers some interesting ways of looking at gender phenomena specifically, such as Judith Butler's notion that gender is performative and is different for every individual, as well as challenging social standards more broadly by queering the conversation about it.

Trans-feminism, a relatively new approach to the intersections of feminism and transgender theory offers an additional unique perspective that focuses on the application of trans discourses to feminist discourses, as well as feminist beliefs to trans discourse (Koyama 2001; Serano 2007, 2013; Enke 2012). Trans-feminism ultimately desires to establish itself within mainstream feminism by offering specific content to transgender people, but also providing theory and knowledge production that is applicable to all women as well as sparking broader philosophical and socio-political discussion of the nature of gender (Hill 2001) and transgender being.

**So, what is transgender?**

What is transgender, and how do we define it legally, socially, and politically? First, we must acknowledge its meaning is far more complicated than its political usage as an umbrella term for collective identity. It is also an expansive social category and within it are many different generational markers and philosophical tensions around terminology (Currah 2006). When you consider the extraordinary diversity of practices, identities, and beliefs about gender that reside within gender nonconforming communities, it's a small wonder that a single unifying framework could exist at all under one word. For the purposes of this thesis I will define transgender as referring to individuals whose gender is different from the one they were assigned at birth.

Essentialist definitions within the law and the administrative systems that govern identity within the day-to-day business of society are out of synch with these realities. Thus the purpose of this research is to highlight and illustrate these realities and look for potential solutions to the problems trans people experience. This is achieved by surveying theoretical literatures regarding trans identities and the experiences contained within that draw, epistemologically, on the socio-political rage of queer and trans people that stems from their societal marginalization.

### **Transgender rage**

“Rage

gives me back my body

as its own fluid medium...

and no sound

dilutes

the pure quality of my rage...

Rage

throws me back at last

into this mundane reality

into this transfigured flesh

that aligns me with the power of my Being.

In birthing my rage,

my rage has rebirthed me.”

(Susan Stryker, 1994, pp.247-248)

Gender outlaws, cross-dressers, drag queens and kings: people who exist outside of the female/male binaries are common in cultures around the world going back millennia (Garber 1992; Bornstein 1994; Feinberg 1996; Juang 2006, Doan 2007). The diversity of gender expression that actually exists in society is best described as a “gender galaxy” (MacKenzie 1999). Bornstein (1994) suggests that there are as many as a thousand different genders and the only limit to the possible number of them is our own imagination. These individuals defy societal expectations for modes of dress as well as behavior, and they can and do vary across cultures and historical periods (Doan 2007). What’s new since the mid twentieth century is the availability of pharmacological assistance via hormone replacement therapy (HRT) and medical modifications such as plastic surgery or gender reassignment surgery to align physical bodies with inner gender feelings of individuals who exist under the transgender umbrella (Bornstein 1994, Meyerowitz 2002). The newest transgender phenomenon is the emergence of radical trans

academic research and its intersections with activism and storytelling which began making its first appearances in the early 1990s.

Like feminist as well as gay and lesbian rights activism, trans activism is fueled by anger at the injustices surrounding their own marginalized place within society, their economic disadvantages, criminalization, and the violence perpetrated against them. It is further fueled by the many ways they are treated as freaks, monsters, others, pariahs and worse.

“We are entitled to our anger in response to this oppression: our anger is a message to ourselves that we need to get active and change something in order to survive. So, we resist the oppression, the violence – we resist the tendency of the culture to see us as a joke”.

(Kate Bornstein, 1994, pp. 81)

Transgender rage can be conceived of as a kind of “queer fury” (Stryker, 2006, pp. 253), an emotional response that necessitates taking up, for the sake of one’s own survival as a subject, practices that hasten expulsion from the presumed natural order of the world that seeks to perpetuate itself as the only possible basis for being a subject (ibid). In Stryker’s view, the transgender body when encountered, presents trans consciousness expressing itself, thus bringing with it the possibility of unmasking the constructedness of the natural order. To reactionary forces as well as essentialist factions of feminist and queer movements, being transgender is an affront to the natural order and represents nothing less than a foundational paradigm shift.

“According to mainstream psychology, I am a lying hypersexual deviant whose opinions are unobjective and irreparably tainted by my supposed mental

impairment. And this view gives scientific legitimacy to those who wish to invalidate me. This is why I am *legitimately* angry”

(Julia Serano, 2009, p. 14).

Transgender rage is also about trans people having been subjected to cruel and dehumanizing experiments that turned them into scientific and psychological Guinea pigs. It's about being invalidated for identifying and expressing who we are authentically to ourselves. The history of the pathologization of trans people (particularly trans women) in modern Western medicine is depressing for its sadism and its sexism (Meyerowitz, 2002; Serano, 2007; Stryker, 2008). In short, to pathologize is to portray some human trait as being abnormal, unhealthy, or diseased. Thus, while trans people could be described as examples of gender diversity or variation consistent with much of the natural world, what most often happens is that trans people are pathologized (as they currently are) by noting that according to the DSM V they suffer from a medical and/or psychiatric condition, Gender Dysphoria. Or in the previous version of the DSM as Transvestic Disorder.<sup>16</sup> (Serano, 2007, pp. 161-193). This matters a great deal because in the society we live in trans people must obtain an appropriate diagnosis (e.g., Gender Dysphoria) to access medical services. As trans activists have noted, that has given medical professionals the power to act as gatekeepers as to whether or not trans people do or do not access those services.

Transgender rage is also about how gender nonconforming people are portrayed in popular culture, particularly media, usually as hyper-sexualized females, “depraved”, “deviant,” actively deceptive, as well as criminal (Juang 2006, Serano, 2007). Serano (2009) notes that

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<sup>16</sup> Transvestic Disorder: a psychiatric diagnosis in the DSM-5 that replaced Transvestic Fetishism in the DSM-4-TR. It is a recurrent and intense sexual arousal from cross-dressing expressed in behaviors, fantasies, and urges. To be diagnosed the subjects cross-dressing, or “transvestism” causes significant distress or functional impairment. Cross-dressing is a form of paraphilia (“a psychological/sexological category of sexual desires and practices that researchers consider to be ‘abnormal’ or ‘deviant’ for some reason or another” (Serano, n.d.), but most people who engage in it do not meet the clinical requirements for a diagnosis of a paraphilic disorder.

this “sexualization of trans women, and the reciprocal invisibility of trans men, occurs not only in mainstream culture and in the media, but in the field of psychology” (p. 10). An example of this is the well documented practice of medical and psychological gatekeepers basing their recommendations for sex reassignment surgery upon their own subjective opinion of whether or not the trans women in question will be physically attractive enough, whatever that means, and/or willing to dress and act in a very feminine manner (Winters, 2008; Serano, 2009).

Kelly Winters speaks about mainstream psychologists using what she calls “maligning language” (Winters, 2008, pp. 45-49). For instance, she calls out the practice common in psychological literature of referring to trans women as “male transsexuals” and “female transsexuals” for trans men. Trans women partnering with men are called “homosexual” and trans females who identify as lesbian are referred to as “heterosexuals.” Cis folks however are not referred to as cisgendered. Instead, within most psychological literature terms like “biological” women and men, or “normal” are used (Serano, 2009, pp 6). This nomenclature persists to this day.

Transgender rage is also about the appalling rates of verbal and physical violence, including murder, that people who fall under the transgender umbrella face, particularly trans people of color, who are murdered at a much higher rate than other trans people (Spade 2011). Transgender rage thus understandably fuels transgender politics. This is why transgender activists are constantly pointing out that those who openly transgress the acceptable social limits of self-presentation are among the most at risk for profound social consequences, discrimination, and potential violence (Doan 2007). Their visible transgression of cis norms “makes them one of the most vulnerable and least protected communities in social space” (Doan, 2007, pp. 61).

Assaults against men who are judged to be ‘effeminate’, or women who present as too ‘masculine’, expose the ways in which gender and sexuality are connected (Namaste, 1996). When considering violence in the LGBTQ community it’s important to note that gender and

sexuality are often conflated in the minds of many. Thus, from Namaste's point of view gender is the signal as to how to locate gay men and lesbians. Therefore, the gendered construction of both public and private spaces is central to acts of aggression against trans people. Their non-traditional gender presentations, even in queer spaces, leaves these individuals vulnerable as well as invisible in public spaces (Namaste 1996; Doan 2007). When disturbing the presumed naturalness of cisgender heteropatriarchy individuals may find themselves subject to abusive/hateful speech, exclusions and worse (Namaste 1996, Browne 2004). Lastly, and perhaps most distressingly, when trans people are the victims of crimes they are often blamed for it by authorities because of the "deception" factor (Juang 2006).

Transgender rage is about the widespread meme that trans women are deviant and promiscuous, as well as sexually deceptive, and sex motivates our desire to transition or alter our gender. It's about the common archetypes of trans women found in media such as "the gay man who transitions to female in order to seduce unsuspecting straight men, the male pervert who transitions to female in order to fulfill some kind of bizarre sex fantasy, and the overrepresentation of trans women as sex workers" (Serano, 2009, p. 10). Meyerowitz (2002), and Serano (2009) both suggest that as media interest in male-to-female's (MTF) has become more overtly sexualized, the interest in female-to-male's (FTM) has diminished. This accounts for the invisibility of trans men in media accounts about transgender people. Serano (2009) posits that this is a result of media being unable to sexualize FTMs. This difficulty in sexualizing FTMs is a prime example of sexism and trans-misogyny, it stems from the rareness of men or masculinity being objectified or sexualized within our culture (Meyerowitz, 2002; Serano, 2007, 2009).

### **Media shaping transgender awareness and consciousness**

Media depictions of transgender people have largely been responsible for creating the myths and memes surrounding what it means to be trans. The portrait they paint is one of both

hyperfemininity and hypersexuality. Certain images are bound to be included: trans woman at a make-up table or mirror “transforming” themselves with high heels, tight “sexy” clothes and other accoutrements designed to attract male partners (Serano, 2007).

Despite this, media are often how people who experience some form of gender dysphoria come into contact for the first time with depictions of other trans people, good and bad (most often bad), and this in turn lets them know they are not alone. Thus media (print, motion picture, television, music, social media, the web...etc.) are often where transgender identity is first culturally defined. As Cavalcante (2017) notes, visuals, more so than written words, form one of the fundamental ways of knowing in our modern technological world. For trans people these moments of seeing others like themselves can be formative, “powerful experiences of self-recognition and conferred feelings of ‘realness’ and legitimacy” (pg. 102). Thus, media depictions can open up avenues of imagination and possibilities for people who exist outside of the dominant cisgender heterosexual representations. This despite the highly sexualized nature of most depictions of trans women that exist within media. This experience of seeing others who struggle with their gender often prompts isolated trans people into looking up the print and internet literatures to find a vocabulary to begin talking and thinking about what was previously considered unknowable (pg. 113).

This ever-expanding web of available media options and outlets facilitates transgender possibilities and the questions that arise from those possibilities. Technology is the tool that delivers these experiences but is not designed with either queer or trans people in mind which renders it somewhat limited in its usefulness to either. While other factors such as race, class, and education determine how much access to resources an individual has for self- and life-making choices, media (in all of its forms) reaches more people than either education or religion, making it the most common thing between poor and rich for viewing contemporary cultural shifts.

## **Transgender subjectivities and administrative law catch 22's**

Researching the myriad ways trans people suffer from appalling rates of violence makes it necessary to dive into and analyze their legal status within administrative law systems (Spade 2011 and 2013), including both state and federal case law, and transgender socio-political history (Sharpe 2006; Collins 2016). Everyone who falls “under the transgender umbrella potentially face social stigma for transgressing gender norms, those on the male-to-female or trans female/feminine spectrum generally receive the overwhelming majority of societal fascination” (Serano, 2012, pp. 1). For Serano this suggests that MTF's are “culturally marked” (ibid) because of the direction of their gender transgression and not for a generalized failure to adhere to socially acceptable gender norms. The marginalization that trans women face (often the root of violence against them) is not just an example of transphobia, but is more accurately thought of and described as trans-misogyny.

## **Banal administrative systems and gender policing**

As Spade (2011) notes, the situations that transgender people face and their impacts are greatly exacerbated by the ways that gender is one of the foundational principles upon which both the economy and the “seemingly banal administrative systems that govern everyone's daily life” (pg. 11) are organized. These “banal administrative systems” are at the heart of my research. This thesis concerns itself with how such systems impact trans people, and considers the emerging strategies for undoing the damage they do to improve quality of life for everyone under the transgender umbrella.

Trans people suffer reduced life chances in many ways cisgender people do not. Thus it is necessary to look at the different kinds of violence they experience, including state-sponsored. This takes many forms: socio-economic exclusion, binary identity documents that don't match one's current gender presentation, little to no legal protection against discrimination, lack of access to appropriate public accommodations like restrooms, and perpetual cycles of the

criminal punishment system. It is also important to consider what happens on the streets and in everyday life where what is most likely to come up is abusive/hateful speech, discrimination, exclusions and verbal and physical harassment in the form of people violating trans people's space (Namaste 1996; Browne 2004).

Laws and law enforcement antagonizing impact upon trans Americans is a long history of state-sponsored policing against gender and sexual identities and expressions that lie outside of cisgender heterosexual standards. The first laws against dressing in the opposite genders clothing went into effect in the 1850s and were called sumptuary laws. Some of these laws stayed on the books well into the 1980s (Stryker 2008, Mogul, et al. 2011), even in progressive bastions such as San Francisco. Such laws and the policing of them included requirements that individuals wear at least three articles of clothing conventionally associated with the gender they were assigned at birth, subjecting crossdressers to arrest for impersonating another gender (Garber 1992; Stryker 2008).

Sumptuary laws are a good historical example of how essentialist definitions of class, gender, race, and sexuality can enable further criminal violence. These definitions also frame the police response to complaints of violence from the LGBTQ community (Hutchinson 2003). For trans people encounters with the criminal justice system are fraught with further potential perils. In the case of an assault against a trans individual, in addition to suffering a violent act there is also the very real fear that the police and/or the courts will blame them for the violence they experience, by seeing them as committing "sins of deception" or "sexual fraud" (Juang 2006). In many states it is legal to use the gay and trans "panic" defense for violence, including murder, against a queer or trans person.<sup>17</sup> The "panic" defense is a tactic used in criminal trials to bolster other defense strategies (2019, LGBT Bar). The way it is used is to make the claim that because of the victim's gender or sexual orientation, and the surprise upon discovering it, the

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<sup>17</sup> At present 15 states and the District of Columbia either expressly forbid use of the "panic" defense or are in the process of either adopting or rejecting laws to remove it from criminal procedures.

perpetrator loses self-control, thus excusing their assault. The case of Matthew Shepard in 1998 is a good example of defense counsel deploying this tactic. Shepard, a 21-year-old gay college student was beaten, tortured, and left to die by two men. Shepard died six days later in the hospital from severe head injuries he had received.<sup>18</sup>

Social constructions of deviance and criminality also pervade the routine practices and procedures of law enforcement and the judicial system. Thus, the role of law enforcement in upholding systems of gendered power relations, conventional notions of morality and sexual conformity cannot be overlooked (Mogul, et al., 2011). One of the common ways this manifests itself is that trans women, particularly trans women of color, are so frequently perceived to be sex workers by police that the term *walking while trans*, derivative of the more commonly known phrase *driving while black*, was coined to reflect the reality that trans women often cannot walk down the street without being stopped, harassed – verbally and sexually --, physically assaulted, and/or arrested, regardless of what they are doing at the time (Doan 2001; Mogul, et al., 2011). With gay men and trans women among the most visible targets of sex policing, gender nonconformity in conduct or appearance among gay men and trans women appears highly sexualized in the eyes of law enforcement, suggesting presumptions that gender-nonconforming people are engaged, or about to engage, in criminal sex related activity (Mogul, et al., 2011).

When officers feel challenged for engaging in this rigid classification of individuals into binaries (e.g., female and male, gay and straight) a nonconforming individual's mere presence in public spaces can be viewed by police as a disruption of the social order. For police officers, transgender people are threatening because they place in question identities previously

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<sup>18</sup> The 1998 murder of Matthew Wayne Shepard (December 1, 1976 – October 12, 1998) garnered significant media coverage that was largely focused on what role Shepard's sexual orientation played as a motive in the commission of the crime. At trial, the defense counsel for one of the accused murderers attempted to use the "gay panic defense" during the trial which was rejected by the judge in the case. Both defendants were found guilty of felony murder and sentenced to two consecutive life terms in prison. The Matthew Shepard case led to adoption of anti-gay hate crimes legislation at the federal level during the Obama Administration in 2009.

conceived as grounded, known, stable, and unchangeable, which serve as critical tools of heterosexist culture (Garber, 1992; Mogul, et al., 2011).

Historically, gender has long been used as a site of oppression against the gay, lesbian and the broader queer community within the U.S. criminal legal system. Criminal legal theorists point out that policing gender and sexual deviance “is central to notions of crime” (ibid, p. xiii). The reality is that crime is rarely policed or punished in a way that could be construed as “fair”.

### **Queer intersections, concepts, theory**

To build the necessary historical and theoretical frameworks to explore how gender variant people suffer violence at the hands of the state, the recent past must also be analyzed for clues as to how to begin seeking liberation for trans people. Prior to the 1980s and the AIDS epidemic, homosexual oppression was largely theorized in terms of gender, since homosexual men and women also suffered under the oppression of patriarchy. At that time, their sexuality and their general behavior was coded to be non-masculine or worse as feminine (Jagose 1996). Even early gay liberation politics were grounded in gendered concerns. The first “gay” riots were started by drag queens (Stryker 2008; Stryker and Silverman 2010) who were angry over continual police harassment, something that was common in large cities (Stryker 2008; Stewart-Winter 2015).

During the late 1960s and early 1970s, a group of radical gay men in New York City started the Effeminists (Dansky, 1970). They celebrated effeminacy in gay men on the grounds that it refused even those patriarchal privileges enjoyed by straight-acting gay men. The Effeminists operated under the premise that “all women are oppressed by all men” (ibid), rejected masculinity, challenged “misogyny and effemiphobia” (ibid), and urged their fellow gay liberationists to be more mindful of what feminism was saying (Jagose 1996).

Similarly, early queer theorists like Eve Kosofsky Sedgwick used gender to argue against the naturalization of the system of classification that represents the binary opposition of hetero

and homosexuality. As Sedgwick noted, the gender of object choice emerged as important at the turn of the century and has “remained, as the dimension denoted by the now ubiquitous category of ‘sexual orientation’” (Sedgwick 2013). Importantly to trans activist work, Sedgwick also notes that queer as a concept can be rather plastic and expanded upon to include issues that are not specifically about gender or sexuality and has the potential to also explore other intersections including ethnicity, race, and postcolonial nationalism as they relate to gender and sexuality. As Halberstam (2005) notes, queer can be anything out of step with normativity.

Queer theory thus can be seen as the outcome of the somewhat uneasy combination of gay and lesbian studies, postmodernism and poststructuralism (Knopp and Brown 2003). It uses the analytical and political tools of poststructuralism to deconstruct the categories that are common to queer experiences; things like closeting, gender, identity and sexuality, etc.

Queer theories origin stories generally agree ths much of modern queer theory stems from Judith Butler’s book *Gender Trouble* (1990) which introduced the notion of performativity. It was also critical to the rise of transgender activism in the early 1990s. The central concept of the theory of performativity is that gender is constructed through your own repetitive performance of gender. For Butler, the structure or discourse of gender is bodily and nonverbal (ibid). *Gender Trouble* is mostly framed in terms of, and grounded in academic feminist philosophy. Of interest is that one of its most influential achievements is to specify how gender operates as a regulatory construct that privileges heterosexuality, and furthermore, how the deconstruction of normative models of gender legitimates lesbian and gay subject-positions. (Jagose, 1996) Butler contests the truth of gender itself, arguing that any commitment to gender identity works ultimately against the legitimation of homosexual subjects. Butler refigures gender as a cultural fiction, a performative effect of iterative acts. Heterosexuality, meanwhile, is naturalized by the performative repetition of culturally sanctioned normative gender identities. The theoretical significance of Butler’s performativity is that *all gender* – and not simply that which self-consciously dramatizes its theatricality – is *performative* (ibid).

Early queer theorists and academics were intrigued by questions that arose from Butler's view that identity categories "tend to be instruments of regulatory regimes" (Butler, 1990, p. 13-14). Six years later Jagose (1996) picks up on this and makes the point that collective identities, long assumed to be prerequisites for political intervention, are in light of queer theory understood to put into circulation effects that have gone beyond their original intention. Brown (2012) expands upon this by crediting Butler's work as solving a recurring scholarly problem, namely "how we understand that, despite individuals' resistance to power structures like gender, class, or sexuality, they remain constantly oppressive factors in society" (Brown, 2012, pp. 31).

Also in the wake of Butler mid-to-late 1990s transgender writers like Leslie Feinberg, Kate Bornstein, and Riki Wilchins began telling stories about how gender outlaws who exist outside of female/male binaries have been common in cultures around the world going back millennia (Garber, 1992; Bornstein, 1994; Feinberg, 1996; Valentine, D., and Wilchins, R., 1997). These people defied societal expectations for modes of dress and behavior that varied considerably across cultures as well as historical periods (Garber, 1992; Feinberg, 1996; Doan, 2007). Defying societal expectations is a very queer thing to do.

Thinking about queer as a concept, as an outcome of strange temporalities, imaginative life schedules, as well as eccentric economic practices detached from sexual identity, it can help clarify, as Foucault notes in *Friendship as a Way of Life*, that "homosexuality threatens people as a 'way of life' rather than as a way of having sex" (1996). Applying this to transgender subjectivities it is easy to connect queer as a concept when it is used to gain a clearer understanding of the roots of trans marginalization. Queer's value to trans subjectivities lies in its noting that it can also mean to "fuck with gender" (Smyth, 1992). As a socio-political term, queer shares another commonality with transgender: as an umbrella term that encompasses many different subjectivities.

### **Queers, trans, cops, the mob, riots**

Another way that queer is essential to transgender studies is that there is a considerable amount of shared socio-political history between the two. This is best exemplified using the Stonewall riots in New York in 1969, and the lesser known but earlier riots at Compton's Cafeteria in San Francisco in 1966. Stonewall has been mythologized by media depictions that identify it as the beginning of the radical gay rights movement. This constitutes a nice simple narrative out of which grew the many Pride celebrations that take place in late June and early July to mark the anniversary of Stonewall. The reality is that Stonewall was mob owned. And it was a full-on riot, one started by trans women, drag queens, and various street hustlers who were tired of being continually harassed by the police. One day someone got angry enough at the continual harassment and threw a brick or an empty bottle and the rest is history. Stonewall (and Compton's Cafeteria) are the first two times that a variety of gender and sexual minorities united together under a common cause. To riot against cops to end the unceasing harassment of law enforcement. Unfortunately, the predominate narrative that has survived in popular culture around Stonewall is that it was the birthplace of the gay rights movement; de-emphasize the riot part, and the "T" in LGBTQ need not apply.

### **Queering the socio-political landscape**

Radical queer politics are about sixty years old and in that time gays and lesbians have gone from "social and political pariahs" (Stewart-Winter, 2015, pp. 1) to having significant political clout, greatly expanded legal protections, and now in large parts of the country are woven into the everyday social fabric of American culture. This is far less true of trans people.

Gays and lesbians made some of their greatest gains in legal protections over the past few decades via the court system as well as some modest gains in state legislatures and the U.S. Congress. A place they did particularly well was in city halls in some of the larger cities like Chicago, New York, San Francisco, and Seattle, though these all took different forms in each

city. These urban-based political movements were largely based on a response to constant police harassment and the threat of arrest under which gays, lesbians and transgender people lived their daily lives (Stewart-Winter 2015). A key historical trend that led to this urban-based movement was the great gay migration to urban centers in the first half of the twentieth century (Weston 1995). In Carl Wittman's 1969 essay "*Refugees from Amerika: A Gay Manifesto*" (published by The Red Butterfly cell of the Gay Liberation Front in January 1970), he points out that this migration was largely the result of people leaving rural areas and coming to urban centers: "we came not because it is so great here, but because it was so bad there" (Wittman 1969). An outgrowth of this was that as urban gay communities grew in size, they began demanding recognition and government protection. Their numbers started to add up to significant populations in certain metropolitan areas around the country. As a result over the decades they ended up realigning modern urban politics and transforming the Democratic Party (Stewart-Winter, 2015).

### **Collective identities, collective action**

Similarities between the politics of lesbians, gay men, bisexuals, and transgender people during the 1970s and 1980s and queer activists of the 1990s do exist, but the new queer politics deviates significantly from that legacy. In defining the new queer, destabilization of collective identity is itself a goal for collective action (Polletta and Jasper, 2001). Related to this concept is intersectionality which emerged from black feminist legal scholarship and looks at the connections between, as well as the limitations of, single axis, identity-based structures of inequality and oppression (Crenshaw 1995, Brown 2012). Where the intersections of oppression and resistance lie, so too does the radical potential of queerness to dispute cis heteronormative privilege and to bring together everyone considered marginal via a commitment to liberatory politics.

Queer and intersectional feminist politics not only seek radical change in oppressive structures of power, but it also centers itself on the alleviation of suffering. Knopp and Brown (2003) call for aid to others in their day to day survival in the face of that oppression. They point out that a way to achieve this in the context of queer political activism and scholarship is to reveal “the ways in which heterosexism is an incomplete, incongruous, nonhegemonic, and spatially diffuse set of social relations and practices full of possibilities for subversion and reconfiguration, rather than how it is a coherent, complete, spatially fixed, and hegemonic one” (Knopp and Brown, 2003, pp. 413). The world is a pretty queer place and the politics of liberation for trans and queer people lie in embracing subversion and reconfiguration.

Thus, the concerns of the new breed of queer activists are focused around an understanding of the implications of the idea of queerness while also highlighting queer presence, and “destroying heteronormativity” (Cohen, 2013, p. 79) in dominant society as well as in public spaces, theories, and sites of resistance, focused primarily on the left. Cohen reminds us that intersectional feminism, particularly from women of color, has provided much of the foundational framing of postmodern strains of queer theory, and that it owes much of its impetus to the politics of people of color and other marginalized members of the gay and lesbian community (Stewart-Winter 2015).

By the mid to late 1990s, queer politics and activist groups had “failed to reach the transformative and radical potential originally promised by queer activism and theory” (Cohen, 2013, p. 74). Cohen faults queer activist’s reliance on uncomplicated binaries, particularly between “heterosexual” and “queer,” as well as the privileging of certain identities over others, particularly class, gender and race (Cohen 2013). By focusing on one or just a few particular axes of oppression and social inequality, researchers risk erasing or disregarding other ones that positioned individuals who are quite different from one another (Brown, 2012, pp. 542). The radical potential found in the idea of queerness and the practice of queer politics would seem to

be located in the ability to create space in opposition to dominant norms, and this is the space where transformational political work can begin (Cohen 2013).

### **Feminism - holistic theory of gender liberation**

In looking to create a holistic, critical trans politics that is up to the challenge of this age of transgender repression, queer theory and the notion of queering dominant norms are vitally important political tools for trans activists. Its shortcomings as an overarching theoretical perspective, and also as a set of political tools, lies in its overwhelming focus on sexuality and the freedom to love (or make love to) whomever one chooses, leaving questions of gender largely out of the equation. That's why for trans activists, feminism as a holistic theory of gender liberation, along with its stated desire to end sexism (gender bias), is an invaluable addition for pointing out how patriarchy, capitalism and white supremacy harm all genders, all sexualities, as well as people with other intersectional identities such as different abilities, immigration statuses, religions, class and race. Feminism is critical because it exposes how patriarchy zealously favors and protects a Western, male-oriented, top-down philosophy and social operating system. Feminist demands for equality by their very nature seeks to challenge these entrenched gender roles. It also provides critical language and frameworks from which trans activists can find tools, theories, and methods to combat exclusion, marginalization and violence based on gender or sexuality bias. Feminism's history as a movement and the battles feminists fought, the tactics they used, are central to understanding contemporary trans political struggles because they created the space within the culture and socio-legal and political realms to begin building one.

## **The revolution that the notorious R.B.G. wrought**

"Fight for the things that you care about, but do it in a way that will lead others to join you."

Associate Supreme Court Justice Ruth Bader Ginsburg - Speech at Harvard University (Vagianos, 2015).

The feminist movement of the late 1960s and early 1970s greatly increased the numbers of women in the legal field, both in the legal academy as well as in the practice of law. By 1975 most law schools were beginning to address this by creating courses organized around women's legal studies. These mostly dealt with criminal, family, and anti-discrimination laws, as well as reproductive rights. During this period legal students and scholars, themselves feminists, began developing legal theories to help women improve their legal status and began laying the groundwork for challenging essentialist identities and the notion that the world is inherently gendered (Cain, 2003). By doing so they were pointing out that this gendering is a political and a social process that hurts many people, not just women.

The basis for their challenges to existing laws regarding gender was that women's perspectives in any legal forum should take into account their place in a highly gendered world. In other words, the courts began to recognize that gender was a major component of identity and gender based discrimination and unfairly punished women and other marginalized minorities. At the beginning of the 1970s the Supreme Court began to rule in favor of sex discrimination claims that were pursued under the Fourteenth Amendment to the U.S. Constitution based on these legal arguments. The first such case to reach the Supreme Court was argued by now Associate Justice Ruth Bader Ginsburg (Cain 2003)<sup>19</sup>. This new focus on the

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<sup>19</sup> *Reed v. Reed*, U.S. 71 (1971)

harms to women, and exposing the gendered nature of those harms, is what eventually gave rise to core principles of feminist legal scholarship, and led to the creation of a canon that made up feminist legal theory.

Early transgender rights-based arguments built on the work already done by feminist legal theorists by seeking to further chip away at essentialist definitions of gender but expanding arguments made for equal rights for women to include people with non-binary genders. This evolution traces its start back to *Holloway v. Arthur Andersen and Co.*, 566 F.2d 659 (1977) where the courts responded to the plaintiffs claim of gender based discrimination because she began the medical steps to transition to female from male. Even though the court ruled against Holloway, this decision is credited with slowly beginning to move the marker of what constitutes sex, and the classification of it away from rigid essentialist criteria (Collins 2016). In 2008 the decision in *Schroer v. Billington*, 577 F. Supp. 2d. 293 2008, reconfigured the location of sex before the law and suggested that the law's "plain meaning" of sex was never really about assigning it as an identity marker, but rather indicated "the *social practice* of assigning sexed identities" (16). As a result of this view, sex is located as a rhetorical construction, and law is not the mechanism by which the meaning of sex is maintained but rather is a lens through which society (and the courts) can examine the effects of this construction. The civil rights legal tradition centers on claims being made on behalf of identity rather than on particular practices. This accounts for arguments of gender expression through modes of dress often failing to win in courts for transgender clients. Currah (2006) and Spade (2011) speak to this particular legacy of the civil rights movement as dominating public and legal thinking about equality all the way to this day, to the point that it is almost unimaginable to base claims of equity on anything other than "who one is."

By contrast social conservative arguments against trans rights are: One's sex at birth is one's legal sex for life; gender should exist in a predictable relation to birth sex even as the social norms for gender expand; and, those who cross those boundaries should not be protected from

discrimination or have any legal recognition of their gender whatsoever (Currah 2006). From their point of view, the question is: Can a physician change a person's gender with counseling, drugs and/or the scalpel? Or as conservatives argue, is gender immutably fixed by (insert religious deity here)? In other words, one cannot will gender into being; it just is. Up until recently the law agreed with this point of view.

Transgender activists, by making liberal use of the concepts of "gender identity and expression" turn these questions of what constitute legal sex or gender on their head, challenging the relation between sex and gender by reversing it: "biological sex characteristics are cast as aspects of genders, and largely mutable ones at that" (Currah 2006, pp. 18). By adding expression, they appeal to a broader sense of fairness around issues that arise from gender nonconformity instead of the issue being specifically limited to transgender people or issues (Currah, 2006; Juang 2006). This view takes into account that gender exists on a spectrum, a very wide one in terms of how people have chosen to express themselves and trans people's belief that the law should reflect that (Bornstein 1994; Serano 2007 and 2103). It also neatly exposes how untenable formal equality is across rigid categories, because that's not how people live their lives.

This kind of thinking has led trans sympathetic lawmakers and activists to choose very broad definitions of "transgender" when describing the prohibited discrimination in legal arguments or crafting public policy, rather than mentioning any specific categories that exist under that umbrella since words and definitions can dramatically change meaning over time. This has led to the trans legal activist community sticking to generalized concepts about gender rather than specific ones such as genderqueer or agender. In many of the newer statutes designed to protect transgender people the language being used is so purposefully broad that it eliminates the legally prescribed relationship between biological sex, gender identity, and gender expression – a normatively structured series of relations that governs everyone, not just self-identified trans people (Currah 2006). In that light, the transgender rights movement could

be conceptualized as an queer influenced identity politics movement that seeks to dissolve the very category under which it is organized. Indeed, the current leading edge of transgender academic and activist thinking agrees with queer theorists that the best way to accomplish trans equality is to obliterate gender categories altogether (Davis, 2017).

Traditional legal reform movements have begun to ask the question: Why not construct gender as a choice in legal arguments? Many queer legal scholars and theorists have taken up the focus of the free speech clause of the First Amendment in work on sexual orientation and the law. They ask, why not use the free speech clause as the basis of rights claims against the state by conceptualizing gender nonconformity as an expressive activity worthy of constitutional protection (Currah, 2006)? There is significant Constitutional precedent for supporting the right of “pure speech” that is based in the expression of political and symbolic acts and speech. This is not a perfect solution by any stretch but merely another possible avenue through which to attack essentialist gender definitions within the law.

### **Critical race theory, equality law, and modern legal reform critiques**

Beginning in the mid to late 1980s and taking off in the early 1990s there was a shift in academia within the social sciences that viewed culture and society and their relationships to how law, power, and race are categorized. Critical race theory (CRT) arose out of critical legal studies and the ongoing reworking of race issues within that field. CRT has further radically changed the debate about how best to expand rights within a diverse range of social justice contexts.

The core of CRT states that, since people are not monochromatic, the solutions to their marginalization are not as simple as passing a comprehensive series of laws, such as the The Civil Rights Act of 1964. Kimberlé Crenshaw in her ground-breaking essay on CRT, “Mapping the Margins,” (1995), pointed out that women’s experiences are “often shaped by other dimensions of their identities, such as race and class” (357). Her observation that feminist and

antiracist activism and theoretical discussions of racism and sexism rarely intersected like they do in the lives of real people is of critical importance for the expansion of activist work when looking at identity issues (Crenshaw 1995). Since CRT's rise and the advent of intersectional analysis, social justice work has taken on many of the long established "truths" of previous identity-based legal work. The more recent paradigm makes a distinction between single-axis analysis of civil rights and legal equality and a more critical, intersectional analysis of these issues (Spade 2011 and 2013).

Taking Crenshaw's argument a step further, Spade (2013) points out that "antidiscrimination laws have proven to be largely ineffective in addressing even the narrowest version of individual race discrimination" (Spade, 2013, pp. 1034). A good example is people of color being denied a job or housing and their subsequent inability to produce documented evidence of intent, in addition to a high degree of probability of not being able to afford an attorney. Applying this to trans people, Spade points out that they are unlikely to have the kind of single-axis discrimination cases that courts and lawyers can readily understand. Spade argues this is Crenshaw's greatest gift to social justice activists: by pointing out the limits of "equality" we can begin to understand intersectional harms (Crenshaw 1995), begin discussing population-level state violence instead of individual discrimination, and start articulating it as what it really is: "population control" (Spade 2011 and 2013). Anti-discrimination law need not always rely on the perpetrator/victim binaries. By refusing to locate discrimination at the level of the individual we can draw attention to easing the impacts of larger social forces that perpetuate discrimination (Spade 2011; Collins, 2016). Thus, by drawing connections between the key methodologies that intersectional scholars use, attention can be focused on the violence of legal and administrative systems that on the surface appear to be neutral regarding gender and race,

but in actuality are sites of the gendered racialization processes that produce the nation-state<sup>20</sup> (Spade, 2011).

Another of Crenshaw's important contributions has been to influence the work of critical race theorists via the concept of "preservation-through-transformation", which describes how civil rights laws feed discriminatory dynamics (Crenshaw 1995; Spade 2013). Facing significant resistance to conditions of subjection, law reform tends to provide just enough transformation to stabilize and preserve status quo conditions. In Spade's view (2011), civil rights law and color-blind constitutionalism operate as "reforms" that cover-up perpetuation of the white supremacist capitalist patriarchy as a status quo. While exclusionary policies and practices are now forbidden, racialized and gendered distribution of life chances in the U.S. has remained the same and in many ways worsened under neoliberal economic policy<sup>21</sup> which has greatly increased the concentration of wealth while simultaneously cutting back or dismantling critical social welfare systems (Spade 2013).

This critical perspective suggests a different method for analyzing American law. Spade (2013) looks at the realm of "equality law" as being centered in antidiscrimination and hate crime laws. Spade looks at the law for places where marginalized groups are "named for exclusion or could be named for protection" (pg. 1042) and then proceed on the assumption that the only way to remedy it is by reforming the laws. Critical scholars and modern political movements on the other hand instead have begun to focus not on what the law says about itself but how it distributes life chances to those groups. These critics refuse the law's focus on affirmations of equality and justice because they so often turn out to be window dressing for continued violence and systemic marginalization (Spade 2013).

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<sup>20</sup> The notion of nation-state is tied to a desire for one generally accepted culture with political and cultural boundaries matching up as much as possible. While connected to the topic at hand I don't have either the time or the space to further elucidate theories of nationalism, much less gendered and racialized nationalisms, I leave that to Spade who is an expert and more eloquent.

<sup>21</sup> Neoliberalism is a preference for free-market capitalist solutions to just about any problem. Another critical concept that is outside the scope of this research project.

By moving away from a rights-based discourse, critical political engagements seek to build alternative broad-based resistance movements that come from multiple vulnerable subpopulations with mutual concerns around issues like criminalization, colonialism, immigration, militarism, poverty, and other urgent problems (Spade 2011 and 2013; Cohen 2013). They seek to target the very administrative systems and law enforcement methods that distribute racialized and gendered harm and violence (Mogul, et al., 2011; Spade 2011). The end goal is nothing short of material change in the lives of populations that are largely powerless, not legal recognition and formalized inclusion (Spade, 2013).

### **Essentialist interpretations of identity**

In legal settings involving gender nonconformity, two main arguments come up, one being that transgender is an affirmation of gender identity which is less amorphous than the concept of gender expression, the key words being identity and expression (Currah 2006). A direct result of this focus on identity is that far from deconstructing the logic of the law's essentialism which assumes ideological coherence, transgender law is riddled with contradictions. Trans people historically have challenged the courts reliance on essentialist definitions of identity markers such as sex and gender, which does not take into account a person's internal sense of gender (Flynn 2001). Transgender and intersex people challenge that legal system by presenting it with individuals for whom anatomical birth sex and gender diverge in a myriad of ways (Flynn, 2001).

Despite these complexities, legal arguments for trans equality have greatly benefited from feminist legal theory establishing both the ethical and legal basis for gender equality (Cain 2003; Currah and Juang 2006). Simply put, trans people should be covered by existing nondiscrimination law because, when gender nonconformity is the basis for injustice it becomes gender discrimination by its very nature (Currah 2006). Despite that, within civil society, the courts, as well as mass media, we still run into an adherence to essentialist interpretations of

gender and biological sex, as well as the damaging widespread cultural assumption that trans people are sexual “deviants” (Juang 2006). Certain factions within the feminist movement itself have been guilty of this kind of thinking for decades with one of the results being that the trans movement, which should share natural affinity with the feminist movement, has always been strongly affiliated with the LGB movement (Currah 2006).

### **Transgender exclusion**

Many trans people (as well as bi, to be completely honest) experience exclusion and rejection in LGBTQ spaces (Halberstam, 2005; Stryker 2006; Serano 2013) largely because trans people are sometimes taken as “transgressing spatially specific gendered, sexualized and embodied expectations” (Nash, 2010, pp. 579). The result is that in critical ways they are marginalized and/or not even wanted within affiliated communities. The social consequences of trans people’s open transgressions of the acceptable limits of self-presentation puts them at risk for profound repercussions and renders them among the most vulnerable and least protected communities in social space (Doan 2007). MacKenzie (1999) suggests that there are no safe spaces for individuals who live outside the binary gendered world.

The social stigma they face includes being labeled a creature, fraud, monster, pervert (Stryker 2006), and even agents of a “necrophilic invasion” of female space (Daly 1978). Janice Raymond (1979) was a student of Daly’s and expanded her doctoral dissertation to become her book *the Transsexual Empire: the Making of the She-Male*. Raymond went a step further than Daly did and suggested that being trans was about colonizing “feminist identification, culture, politics, and sexuality” (Pg. 104). She also believed that trans people “rape women’s bodies by reducing the real female form to an artifact, appropriating this body for themselves ...” (ibid). Raymond equated having gender reassignment surgery to cutting “of the most obvious means of invading women, so that they seem non-invasive” (ibid).

A notable example was the battle between transgender activists and the organizers of the Michigan Womyn's Musical Festival regarding trans females' right to attend the festival (Serano, 2007, 2013). In another, a feminist blocked a post-operative trans woman, Kimberly Nixon, from volunteering to be a front-line rape counsellor at the Vancouver Rape Relief and Women's Shelter on the grounds that she did not possess the necessary "life experience" to relate to women fleeing violence perpetrated by men (Tasker 2017). These examples and many others attest to the fact that LGBTQ and feminist spaces are not inherently inclusive. These troubled philosophical and spatial experiences reflect deep seated, long standing and often acrimonious disputes between some feminists, queer theorists, trans activists and theorists over the socio-political and theoretical implications of an increasingly visible and vocal trans population (Currah, Juang, and Minter, 2006, Stryker, 2006).

### **Bisexuality, like transgender, queers things**

Another good example of exclusion within the LGBTQ community is how bisexuals are treated. Much as transgender troubles fixed notions of gender, bisexuality troubles the queer community who should be allied as they share overlapping interests. However, being and identifying as bi is troubling to both feminist and queer theory and in their communities because like transgender, it directly challenges the binaries of gender and sexuality that are largely embraced by feminists, gays and lesbians. Bi and trans both connote messy categories, with fuzzy boundaries, fluidity, or both, and this makes it easier to leave those individuals out when their identities fall in-between either of the two binaries, gender or sexuality (Angelides 2013).

Angelides (2013) critiques queer theory for its inattention to bisexuality particularly and connects this to trans phenomena. Early queer theory, in leaving bisexuals out of the discussion, did not address the "ongoing and problematic" separation of sexuality and gender in critical discourse, and as a result failed to live up to its radical potential (pg. 60). By unraveling the tangled web of gender and sexuality into distinct female/male, gay/straight categories, early

queer theory left out people whose genders and sexualities may match up differently (Serano 2013).

Thus, in order to better understand the lived experiences of trans people in public and semi-public space it is useful to incorporate both feminist and queer geographical insights into this research and also be mindful of the B and T under the LGBTQ umbrella. It's also useful in expanding both feminist and queer disciplines to include transgender and all the various gender variant subjectivities and their unique experiences of space and place. In particular, I'm intrigued by the ways that spaces get 'queered' or pronounced safe for non-binary gender presentations through interactions with gay, lesbian and trans individuals (Bell et al. 1994; Rushbrook 2002; Knopp and Brown 2003; Nash 2010). As of yet there is little in the way of literature that considers how variations in gender identity and performance can alter the subjective nature of gendered spaces (Knopp 2007; Doan 2010).

### **Welcoming: Transgender experiences of space matter**

Queer spaces, which mostly occur at the margins of society, are coded as inclusive of gender variant people when in fact they often are not, and thus that notion remains largely a theoretical construct (Namaste 1996; Rushbrook 2002; Doan 2007, 2010). The research that does exist shows how sexist and transphobic homonormative<sup>22</sup> gay and lesbian spaces can be and also challenges our assumptions about the stability of gender when it intersects with sexuality (Duggan, 2002; Doan 2010). When considering the socially constructed nature of both gender and sexual identities as well as spaces that are coded either via gender or sexuality, early queer geography clearly demonstrated that not all space is 'straight' (Bell et al. 1994). Implicit in this notion is that if space is not made as bi, gay, lesbian or trans, then it has to be straight. Thus, straight space becomes the essential frame through which we work, and that LGBTQ

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<sup>22</sup> The term homonormativity has many connotations, but basically it's about conforming to dominant social norms. In this context I am specifically referring to spaces that are overwhelmingly populated by cisgender gays and lesbians.

people can subvert and cohabit. Bell calls on activists and theorists to understand the straightness of our communities as an artifact. Our job going forward is to question the presumed undisputed cisgender heteronormative nature of everyday spaces (ibid).

To this end, feminist geographies have “forced a consideration of gendered spaces and the spatiality of gender” (ibid, pp. 49). Secondly, feminist geographers look at space and gendered power relations as control of women’s bodies and movements, and how this is achieved through coercion, fear, and sometimes even violence. As such both feminist and queer geographies are well situated to begin looking at transgender experiences of day-to-day life through a spatial lens, and illuminate how trans people experience space and place differently.

Central to the question of how trans people fare in space and place is Namaste’s (1996) observation that “Because most people believe that there are only ‘men’ and ‘women’” (Namaste, 1996, pp. 228), they must choose to live as one or the other in order to avoid verbal and physical harassment in public. In other words, passing<sup>23</sup> becomes key. Connected to that are the unavailability of spaces that are free from the ‘tyranny of gender’ (Doan 2010). Doan’s central argument is that transgender and gender variant people experience the gendering of space “as a special kind of tyranny” (Doan, 2010, pp. 635) which arises when trans people challenge hegemonic gender expectations for appropriate behavior within western society. This tyranny intrudes into every space in which trans people live (even their own private space) and puts constraints on how they behave (Doan 2010). For genderqueer, non-binary and other gender variant identities under the transgender umbrella, the consequences of this gendering come into clearer focus and expose their marginalization even within trans communities and spaces.

Where and under what circumstances has a great deal of bearing upon the likelihood of either confrontation or transformation for trans people in public and semi-public spaces. As a

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<sup>23</sup> Passing is a concept that is too complicated to adequately explain within this thesis. Generally what I am referring to is the ability to blend-into cisgender heterosexual social spaces (almost all that exist) more easily.

trans woman myself, I often choose to regulate my behavior in certain public situations and spaces, bathrooms being a primary one. I also generally try to avoid having to speak and if I do I use my quietist voice. I avoid eye contact and make myself as small and quiet as possible. For transgender people, we must modulate our gender performance as a reaction to not only who is observing our gender, but what kind of spaces we are interacting in. As Doan notes, (2010), “These modulations do not shift my own sense of gender, but they do shape the visibility and impact of my gender performance” (p. 648). When those circumstances involve having to prove your legal identity, the ability to move through society as you choose to present yourself is directly challenged by an individual’s presentation that doesn’t match the identity document they are using as proof of who they are.

### **Ontological disruption and queer semiotics**

That tyranny is perhaps best illustrated by the transgender bathroom debates. The very concept of transgender doesn’t just disturb societal norms of gender and sexual identities, it also disrupts and unsettles temporalities that dominate the rhythms of life. Halberstam (2005), in describing all the complex meanings attached to Brandon Teena in the film “Boys Don’t Cry”, characterizes him as “literally and figuratively out of time and out of place” (Halberstam, 2005, pp. 16). What Halberstam is saying is that the trans body is a contradictory site within a postmodern context<sup>24</sup>. This revolutionary argument represents a different set of assumptions about the nature of gender than those that have existed in previous centuries. Thus, in modern times, the trans body has emerged as futurity itself, a fulfillment of the promises of gender flexibility that postmodernism promises (Halberstam 2005) and medical science can now deliver. Thus, by opening the doors to viewing gender as something beyond the female/male

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<sup>24</sup> Postmodernism here refers to a late-20th-century style and concept in criticism that represents a departure from modernism and has at its heart a general distrust of grand theories and ideologies as well as a problematical relationship with any notion of “art.” A full and complex analysis and historical background of postmodernism, a very complex and contested term is beyond the scope of this paper.

binary, trans people also represent a break in the ontologies of what it means to be human just as cybernetics does.

In discussing the modern debates and discussion around ontology, Knopp (2004) points to the rise of the 'new' cultural identities and related forms of politics as having precipitated them. Some examples of this include modern forms of 'black consciousness' like Black Lives Matter and other socio-political movements related to racial identities. In relation to gender issues these "new" identities would include women's/feminist consciousness, newer forms of feminism like holistic and intersectional feminisms, and contemporary women's rights movements like the Women's March, #MeToo and #Times Up. They would necessarily also have to include modern development of the terms 'asexual,' 'bisexual,' 'gay,' 'intersex,' 'lesbian,' 'transgender' and other related gender and sexual identities and the socio-political movements associated with them (Knopp 2004).

Knopp connects these with the rise of 'Western' modernisms and points out that since they represent an explicit challenge to at least some elements of entrenched power structures, they have precipitated "quite virulent countermovements" (Knopp, 2004, pp. 121). These countermovement's reassert cisgender, heterosexual and patriarchal family structures and then endeavor to delegitimize and/or deny almost everything about identity politics, including their language, practices, theoretical analyses, and in the end their very existence. An excellent example of this would be the actions against trans rights by the Trump Administration, which has singled out trans people for exclusion from protections, banning them from being mentioned in federal databases, and countless other ways. They want erasure as policy and they're barely concealing it. Concurrent with these developments, a radical *anti*-identity politics of hybridity and fluidity has emerged whose nature is diasporic, post-colonial, post-feminist and 'queer,' as well as focused on intersections (Knopp, 2004, pp. 122). Shades of that thinking are present in third gender options in that "X" is more of an anti-identity, one that best exemplifies

the concept of being outside of gender binaries but also imagines fluidity in identity. As symbolism it is amorphous. It is whatever one wants it to be.

### **The semiotics of “the bathroom problem”**

To get a broader view of why identity that is state validated matters we can look at the debates around what is termed in the public discourse as “the bathroom problem.” For trans people public restrooms are vexed spaces that are full of potentiality for harassment, having one’s gender and/or core identity questioned, humiliation, emotional trauma, and at their worst, sites of violence (Browne 2004, Juang 2006).

There are gendered codes for bathrooms that are fraught with peril for trans people seeking to perform the most routine of biological functions including risk of discovery as well as potential confrontation with others who may be outraged by perceived transgression of space (Doan 2010). Doan notes, in addition, that, “the full weight of the legal system is against us, requiring a hyper-vigilant approach” (ibid, pp. 643). Juang (2006), describes the peril as gendered policing and notes that within “the transphobic imagination, the bathroom becomes the extension of a genital narcissism” (pg. 247). Expressed differently, most of society believes that there is a set-in-stone relationship between a person’s genitals and their gender presentation. This accounts for why bathrooms are customarily “based on genital configuration” (Bender-Baird, 2016, pg. 987). Thus, trans women are being read within female gendered restrooms as not at all woman but ‘really’ men in feminine attire. Therefore, the trans female represents an existential threat to the fundamental belief structures of a significant portion of the population.

It gets even murkier because gender and sex are intertwined in the public imagination. Judith Halberstam (1998) notes that “the codes that dominate within the women’s bathroom are primarily gender codes; in the men’s room, they are sexual codes”. This is because historically men’s restrooms have been important sites for gay sexuality whereas women’s restrooms were

traditionally more social in nature (Halberstam, 1998, pp. 24). As a result, gender policing that occurs in bathrooms converges with the imbalances that shape the cultural ideals of femininity and masculinity, as well as the divide between public, which is coded as a space of masculine sexual privilege, and private, which is coded as feminine, domesticated (Juang 2006).

The practice of separating public toilets into female and male may not be universal, but when they are separated, “these sites can be problematic for those who move between apparently distinct sexed categories” (Browne, 2004, pp. 336), meaning non-binary individuals. Browne contends that bodies, sexed sites (toilets) and the location of these sites in public and semi-public spaces (e.g., nightclubs, universities, public parks, etc.), are continuously reconstructed through gendered (sexed) systems of power (Browne 2004). Having state-issued identification documents that are consistent with one’s gender expression gives an individual the necessary legal right to enter whichever bathroom feels right to them with the additional knowledge that it is state sanctioned and the law is on trans people’s side. The problem with this is that it still leaves out anybody who exists outside of the female/male binaries. And it only applies in states that explicitly afford legal protections against discrimination to trans people. Even in the most gender sensitive places, like Western Washington, personal safety is still a crapshoot.

This is why, for transgender people, every encounter that involves proof of identity carries with it possibilities for them that are fraught with peril. Whether they have to provide physical or legal proof, or neither. At a bank one has to show legal proof of identity, usually a state-issued form of identity proof, like a drivers liscence. To enter a restroom at the public library, or the movie theater, one doesn’t need to provide a card that proves your identity, but you will be scanned and read upon entering a gendered restroom. The potential perils are obvious: one can be outed when one doesn’t desire to be with public humiliation often being the result. Encounters with employers, medical providers, landlords, ticket takers, door people checking ID are just a few examples of the myriad sites where this can happen.

**Push/pull, extension/retraction: Recent political shifts**

During the Obama administration, there was an expansion of Title IX rights for transgender people and an increased public acceptance of trans rights. States augmented this by seeking ways to improve trans lives that fell within their own jurisdiction. They also continued and expanded these efforts after the Trump Administration took power and it became quickly apparent how anti-transgender they were and states took decisive steps to protect their transgender population. Quite a few states settled on providing a third gender option on state-issued identity documents as one way to show acceptance and provide a legal identity for those who did not identify with either of the binary genders. These efforts have had the unique place of being among the first pro-active steps in a protracted struggle to upended the accepted practice of splitting humanity into two distinct categories, codified by law, and enforced socially through exclusion and marginalization, as well as violence. It has altered the very language we use to discuss gender and the way media shapes narratives around transgender identity. And according to the latest polls, these efforts have been a factor in greater social acceptance of trans people by the cisgender heteronormative public.

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## **Transgender Methodologies:**

### **The politics of transgender linguistics and semiotics**

The meta issue which inspired my research question was, “how do we reduce violence against transgender people?” To investigate this question, I focus on the Washington State’s Department of Health rollout of the third gender option on state-issued birth certificates. To answer this question in multiple ways, I employed different methodologies to gather a variety of interconnected yet distinct data. The methods employed in my research on state issued identity documents were therefore selected because of their ability to illuminate the connections between state-issued identity documents and larger issues in gender politics and public policy that arise from the tyranny of gender, and lastly to illuminate the day-to-day realities of trans people. To best accomplish this I used both Multimodal Critical Discourse Studies (MCDS) and autoethnography. Having spent the better part of several decades as an environmental and drug policy reform activist I am well aware of the power of language to shape and change debates, sometimes even policy. This was why I chose MCDS, to get at the heart of the terminology and linguistic structures that serve as key sites for gender based discrimination and marginalization.

Autoethnography was used to illuminate the day-to-day lived realities of how transgender people are affected by things most people take for granted, like presenting your ID for services. Thus, while my intent is to get at the root causes of trans violence, I chose the window of the expansion of options on state-issued identity documents to examine it. The bulk of this material comes from a three and half year period of my life beginning just before I left my marriage. For over a year I presented as what I would call genderqueer. I still had my facial hair but my manner of dress became more experimental with colors, fabrics and styles, some of which were pretty femme. I mostly looked like an effeminate male. The first place I moved into

upon leaving allowed me to dress and express myself however I wanted and I embraced my femininity fully, at least at home. As this grew more and more routine my public outward expression became decidedly more feminine with a few remnants of the parts of me that were male. At a party for my birthday with a beloved LGBTQ therapy group that year (2018), I crossed the line and dressed as I truly felt in public. It was a mild and semi-private coming out but emotionally satisfying. New emboldened, within a month, however, I was fully out, living full-time under a new name, attending public functions in a skirt and I changed my gender from a non-binary one (genderqueer) to a trans woman. Within weeks my beard was gone and I began hormone replacement therapy. The autoethnographic material is based on careful observation of not only my actions and reactions during that roughly three-year period described above, but it also incorporates thick descriptions of the spaces and places that these observations occurred in. There is also a bit of generalized, non-individual discussion of the actions of other actors in the gender performance of a given moment.

### **Transgender critical linguistics and MCDS**

Critical or multimodal discourse studies (CDS or MCDS) is a set of tools for analyzing semiotic content in texts, visual images, and spoken language that when used, reveal more detailed layers of meaning. Arising out of linguistics in the latter part of the twentieth century, MCDS is a loose combination of approaches from that field and is associated with several authors whose works are universally used [Fairclough, 1989 and 1995; Wodak, 1989; van Dijk, 1993, and Machin and Mayr, 2012]. MCDS is used to create a more detailed analysis of how speakers, authors, and artists use language, grammatical features, and/or images to create layers of meaning, and to provoke certain types of responses from the words or visuals. This set of tools is useful in this research for understanding the meaning behind the discourse the State used to promote the third gender option, but also, how the transgender activist community interpreted it, and the discourses from those opposed to this third gender option. These

observations and subsequent analysis, firmly grounded in appropriate theory, form the basis of much of my conclusions.

Much of the early work of MCDS grew out of critical linguistics. For example, Deborah Cameron's work in feminist linguistics, which pre-dates the rise of MCDS, is useful for breaking down how specific language is used to discuss gender, and how it promotes and maintains patriarchal power structures. Applying MCDS to my research illuminates how the discourses around transgender subjectivities are largely framed around essentialist definitions of gender or birth sex on the one hand, and how trans people problematize cisgender heteronormativity, on the other.

The critical discourse analysis I conduct below, like the totality of my research, is motivated by goals of social emancipation for transgender people and a desire to critique the unequal social orders that create sites of violence against them. It "aims to advance a rich more nuanced understanding of the complex workings of power and ideology in discourse in sustaining (hierarchically) gendered social arrangements" (Lazar, 2007, p. 141). Feminist CDS perspectives are by their nature interdisciplinary. As Lazar notes, feminist studies have greatly contributed to linguistic and discourse studies by adding a feminist perspective while also advancing methods for investigating issues related to gender and women's studies.

One of the primary objectives of feminist linguistic studies is to question patriarchal bias within contemporary linguistic and discourse structures and point out how many of the underlying assumptions and practices within them are oppressive (Cameron, 1992, p. 16). For this reason, it is useful to apply both feminist and transgender linguistic perspectives to my research. Doing so allows me to explore more fully the distinct subjectivities of trans people. Cameron's work reminds us that any kind of discourse study that is not feminist, while broadly progressive, nonetheless will suffer from the hegemony of straight white men, as well as an all-too-often adherence to essentialist gender discourses common amongst cisgender gay and

lesbian people as well as mainstream feminism, which is now more a brand than a movement for liberation (Zeisler, 2017) and sometimes referred to as “femvertising” (Iqbal, 2015).

To Cameron (2005) part of the holistic feminist CDS project must be to de-colonize<sup>25</sup> scholarly work related to feminism, and looking towards the future should be applied to trans issues. Lazar (2007) remarks that the main reason to adopt a critical (in this case feminist) view of gender relations as activists and researcher’s is the motivation to change the existing conditions of gender relations as presently structured in society. Thus, using the methods feminist linguistic theory and MCDS offer as the basis to expand feminism into a more holistic model is critical to exploring trans people’s unique subjectivities. It’s also crucial in any form of trans liberation politics.

Feminism’s restlessness is a quality trans activists should adopt. Lazar (2007) cautions us against slipping into the mainstream neo-liberal thinking pervasive in contemporary societies. Reaching marriage equality, or cannabis legalization spring to mind as recent examples of once accomplished it was broadly assumed LGBTQ and criminal justice reform issues had had their moment in the sun, take a victory lap. These discourses contend that as certain indicators of change, access to appropriate medical care or bathroom access, for example, become public policy, the larger cultural conversation around gender (or racism, and others) shifts in a direction that implies equality has been reached. The thinking goes something like this: We (the government) have enacted laws against transgender discrimination, therefore your socio-political rage has no place in society anymore, you’re equal according to the law.

MCDS’s focus on fighting oppression lends itself to interrogating issues around identity, which is at the core of gender theory as it relates to trans phenomena. By better understanding discourses in the public sphere around trans issues, and in line with both CDS and feminist

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<sup>25</sup> Decolonization: in this context I am referring to the concept of dismantling systems of thought that are responsible for the discrimination, exclusion, and marginalization.

emancipatory methodologies, feminist and trans activists gain valuable tools to expose and analyze linguistic sites of gender based violence against them.

### **Storytelling + qualitative research = autoethnography**

People who openly transgress the acceptable social limits of gender self-presentation are among the most at risk for decreased life chances, exclusion, harassment, and violence in society (Namaste 1996; Spade 2011, 2013). Since language plays an enormous role in how culture and society are produced, this research takes it as a given that linguistically, public discourses greatly favor cisgender heteronormative people, and creates punishments (civil, cultural, economic, legal, political, and social) for any deviations from gender norms (Doan 2010, 2011; Spade 2011). These punishments play out in transgender lives as exclusion in public spaces like bathrooms, street harassment, or being suddenly evicted without explanation.

In conducting the autoethnographic portion of my research the two most eye-opening discoveries were how much discourse and geography are inter-connected to influence the gender reality at any given moment or space. Without linguistics, it is difficult to describe or express what it feels like to be gender nonconforming in a given situation, or the overall experience of being trans. It's not an experience that many people have themselves and is varying degrees of frustrating and liberating. Without MCDS, it's difficult to understand the contours of socio-political debates or identity construction around trans issues, but also how public attitudes about trans phenomena are created and spread through various forms of media. MCDS in conjunction with media studies also has the potential to more fully explain how transgender people create their own identity through media discourses that while overwhelmingly negative, create possibilities for transgender expression and existence (Cavalcante, 2018).

This project specifically focuses on analyzing the multimodal discourses used by media outlets chosen to establish a wide baseline of material from various sectors of the news industry

within Washington State. It analyzes the discursive construction of gender, legal and medical bio-markers, and related labels and asks what words were used and how they were deployed to construct transgender identity in the context of discussions of third gender options on state identification documents. In undertaking this analysis, it was important to stay mindful of the connections between gender and themes of power, identity, and the gatekeeping for trans related services by the medical and psychological professions.

### **Feminist standpoint theory and transgender autoethnography**

*“We are not a free society. We are shackled by chains of our own making. And if you don’t feel those chains holding you down? Well, that’s probably because you’re not tugging against them like I am. Yet.”*

(Adrien Converse, 2019).

The day-to-day lives of transgender people are so different from those of cisgender, heteronormative people that more than a passing explanation is needed to illustrate why expanded access to gender identity and expression appropriate documents is so key to increasing trans people’s life chances. My goal in using my own autoethnographic observations of life as a transgender female and graduate student was to provide a thick enough description so that future readers of this work can visualize the scene and discern motivations and critical details. It is within these thick descriptions that the everyday violence against trans people gets exposed as the end product of the tyranny of gender.

Feminist methodologies such as standpoint theory allow accounts of social relations not otherwise accessible to many people due to the hegemony of mainstream accounts. Standpoint

theory usefulness lies in its foregrounding of the voices of those who are oppressed in the search for innovative solutions to vexing social problems. These kinds of personal accounts provide needed real-world context and semiotic resources with which to explain transgender subjectivities more fully in whatever format; artistic, digital, verbal, or visual.

Focusing on thick descriptions of my particular trans experiences creates the possibility of advancing unique awareness “about social relations in general in which (my specific) oppression is a feature” (Harding, 2004, p. 9). By doing so I can illuminate points of harm, like being outed at the register in one’s favorite coffee shop for using a credit card and showing ID to prove identity, since the card used to prove identity indicates a different gender than the one presented. These kinds of examples normally would escape a basic explanation or visual representation. Using autoethnography I can discuss not only what happened but how a trained observer who is a trans female, myself, reacted to those kinds of situations.

Using my own autoethnography as an out transgender woman is a critical practice. It acknowledges my own semiotic technologies for making meaning with a firm commitment to a more richly descriptive and accurate memoir of my experiences in the ‘real’ world. While those experiences are unique to myself, they are also consistent with many of the accounts in the literature of transgender people, and accounts I have heard from other trans people I’ve interacted with in my own community. Consequently, using autoethnography gives me the opportunity to center my own experiences of the everyday world as the primary ground of my knowledge while also checking in with my peers as to how common certain kinds of phenomena are to the experiences of individuals within the broader trans community. This is useful in discussing a multi-faceted issue like the bureaucratic nuances of obtaining new appropriate state-issued identity documents when one is transgender. I lived this experience and I took notes along the way. I’ve also discussed it with around a dozen other trans folks and discovered there is a great deal of commonality in our descriptions of factors involved in having access to state issued identity documents consistent with one’s gender expression or presentation.

Epistemologically there is an infinite number of ways to make meaning in the world, but as Dorothy Smith (2004) notes, “The only way of knowing a socially constructed world is knowing it from within” (p. 28). The fieldwork conducted as part of this research fulfills that need.

The use of autoethnography to access transgender subjectivities is, as Haraway (2004) notes, consistent with other academic feminist work that aims to “privilege contestation, deconstruction, passionate construction, webbed connections, and hope for transformation of systems of knowledge and ways of seeing” (p. 88). Harding (2004) adds that no partial perspective is adequate, that we (feminists and by extension trans people) “must be hostile to easy relativisms and holisms built out of summing and subsuming parts” (p. 89). My research is concerned less with reaching any definitive conclusions than it is in provoking a number of key questions that arise from my observations. It seeks both expansion of knowledge of trans subjectivities as well as the furthering of dialog about how to achieve trans liberation. At its heart it searches for answers as to how to decrease the violence against the trans community, particularly trans women of color. It also seeks innovative solutions to vexing social problems faced by trans people to increase possibilities for us to live fulfilled integrated lives as we see fit.

### **Additional qualitative methods**

To better achieve the goals mentioned above, multiple qualitative methods were employed to provide a comprehensive view of a given phenomenon, in this case the issues that arise from either having or not having a state-issued identity card or birth certificate that matches one’s present gender expression and identity. It’s using the best parts of oral history and then incorporating them into a legal, linguistic, political, and sociological analysis of a specific component of a pressing social justice issue around gender identity; namely, proving identity. The field work and the analysis both rely on thick descriptions of trans phenomena to increase needed awareness of the unique perspective of gender variant people and the additional physical, social and economic violence we suffer from every day. It is qualitative research that is

based upon examination of the language used to discuss transgender people in society, and the stories we tell of life outside the gender binary within it.

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## **Analysis: Gender outlaw in cisgender, heteronormative spaces**

### **Introduction:**

*“I keep trying to integrate my life, I keep trying to make all the pieces into one piece. As a result, my identity becomes my body which becomes my fashion which becomes my writing style. Then I perform what I’ve written in an effort to integrate my life, and that becomes my identity, after a fashion.”*

Kate Bornstein - 1994

Transgender people experience space and place much differently than those who are comfortable with the gender they were assigned at birth. When a cis person who appears female goes into the women’s bathroom, other than the rare exception, people don’t get upset about it. When a gender variant person goes into a gendered bathroom, particularly the woman’s, they are exposing themselves to ridicule, humiliation, but also, potential violence. People can and do start freaking out. This is an example of Doan’s (2010) “tyranny of gender”. For transgender people just about every space we inhabit or move through pressures us to behave in ways that are not necessarily consistent with who we are. Trans people have to make these adjustments dozens, if not hundreds of times a day to safely navigate society. In other words, society places boundaries on how we behave when we are in spaces other than our own private ones. That is

the tyranny of gender in a nutshell. In order to better illustrate this adjustment process, researchers need to look at trans phenomena and ask the question: “Are there social and spatial contexts that empower the performance of non-binary genders and how do they operate” (Pg. 649)?

### **Cross-dressing, goth, hippie, genderqueer, trans**

*“My gender identity always felt more like a puzzle that I had to put together myself, one in which many of the pieces were missing, where I had no clue what the final picture was supposed to be.”*

(Julia Serano, 2007, pg. 216)

As a child, my memories are ones of my mother taking me to the ballet, symphony, theater, art museums, and various community activities that involved me being creative. I played many musical instruments. I spent a lot of time in libraries. My father took me to baseball and football games, and he tried in vain to interest me in golf, which other than drinking vodka and sex, were his favorite pastimes. When I was 10 years old, my Mother was diagnosed with terminal cancer and died when I was 12. With that my life changed forever.

My gender journey to who I am today reaches back more than four decades. My earliest gendered memories go back to the early 1970s when we briefly moved to Southern California while my father tried in vain to start a printing business. During this time we lived in an affluent neighborhood outside of Los Angeles called Westlake Village, and this was where I first became aware that there was a whole lot of variety to how people lived their lives and publicly presented themselves. In that neighborhood was the first openly gay person I remember, plus all the strangeness that comes from living in the same Cul de Sac as one of the Pointer Sisters, and with Tim Conway living two blocks away. I remember my parents trying desperately to shield me

from some of this, making me get in the car, stay in the car, or get in the house. Our house was literally encircled by tall stuccoed concrete walls. Their efforts failed, I drank it all in as only a bright curious child could with the result that I was never the same.

One incident sticks out. When I was really young (about four or five) my sister and I had to dress up as Raggedy Ann and Andy. It was the first time I had worn lipstick. I hated it, the feel on my lips, the people staring at me, but I do remember really enjoying being dressed up. That love for being dressed up manifested itself in many ways over the years: acting, costume parties, alternative lifestyles, and also crossdressing.

In my pre-teen years (10-12) I began to experiment with dressing up in women's clothing. While my Grandmother was away shopping or socializing, I would go through her voluminous collection of clothes and try on different things. Sometimes when I found something that worked I would sit and read or listen to music while dressed up as a woman and then change really quickly when I heard her arriving home. It was something done in secret, hidden away, and only done when it was "safe."

From the earliest days of crossdressing in my Grandmother's basement until my early 40s, my relationship with my femininity and my overall desire to express myself in feminine ways did not change all that much. One thing that did change was during my teens and twenties it became a permanent part of my sexuality. This was largely true all the way until I reached my late twenties. Since then the performance of my gender has evolved considerably. I started having experiences of being "out" within certain carefully controlled circumstances in the past twenty-five years, but it particularly intensified beginning in my mid-forties. As a result, I came out on a limited basis, mostly just with my closest friends as transgender. I began working through the issues related to my complicated gender and sexuality in therapy. I began living and expressing myself as a (decidedly femme leaning) genderqueer person.

I was never very comfortable being a boy and even less so as a man. I didn't do very well at any of the behaviors that are expected of boys; instead I was an advanced learner and creative

from a young age. At school as a teenager I was mocked and bullied for my effeminate mannerisms, general bookishness, somewhat feminine tastes and slightly androgynous looks. My appearance, my mannerisms, my way of talking and gesturing, the way I danced, how my voice softened and dropped an octave when I was vulnerable, and hundreds of other little things about me leaned feminine. This despite adapting to and adopting many expected masculine behaviors. My early adulthood socialization took place mostly at my best friend's house with his family and within both the hippie (Grateful Dead) and goth/punk (The Cure, Siouxsie and the Banshees, X) subcultures. In my teens and twenties, with an absent father and my irresponsible late 20s brother in charge I had a lot of freedom and space for expressing different forms of gendered and other identities (some even hyper masculine) and sexualities and I experimented wildly and reveled in it during my late teens and twenties. Then the reality of the AIDS crisis hit us in Generation X like a asteroid and suddenly we were way less innocent and insulated. Sexually and socially, nothing was ever the same. Eventually I retreated back into standard white male roles with a private side that came out when it could.

Later, as I entered middle age, I realized that living as I had (a male face and front, something far more complicated behind my eyeballs) became untenable and was at the root of much of my life-long on again, off again depression and many of my persistent medical conditions, which were myriad and vexing. Under the care of a therapist and my doctor I began discussing and addressing my gender and this ultimately prompted me to transition. This change took about four years in total and had many different stages.

It started with me experimenting with my gender expression as a genderqueer person (neither femme or masculine), doing it more frequently, and in more spaces. There were some early forays out in public outside of my normal comfort zone. I also consciously worked to stop being self-conscious about my somewhat feminine mannerisms that I had and just allowed them to happen organically instead of suppressing them. It was a huge unburdening to do so. These simple changes opened up an unstoppable force and after spending many decades being

somewhat satisfied with just crossdressing as an outlet for my feminine side, all of sudden it was not even close to enough. My expression by this time included wearing a mixed assemblage of male and female clothing as well as accessories and other flourishes with a somewhat obvious feminine tilt. I also began engaging more and more openly on a personal rather than political level in the queer and trans community in the Puget Sound region.

During this period of self-re-discovery, and even preceding it a bit I started studying feminist and queer art history and came into contact with the work of Julia Serano, Dean Spade, women of color and intersectional feminists while getting my BA degree at the Evergreen State College. I devoured books and articles with the fervor of someone who finally has found and understands what has been a key missing piece in their adult life. These works challenged me to dig deeper into myself to figure out what gender, both in a personal and social context, meant to me. More importantly, for my academic work this new world opened the door to a way of looking at transgender subjectivities and telling stories that pointed to a way I intrinsically understood to discuss the violence against trans people by society and the institutions that govern it well beyond individual discrimination and marginalization. It provided a way to fold the micro narrative of my own gender journey and recent full embrace of my innate feminine nature into the modern politics of feminism and trans rights that allowed a more illuminating, if not holistic, view of both.

By the time I got to Dean Spade's devastating critique of the legal rights frameworks of social justice over the past sixty-plus years and pointing out how it is connected to the rise in the nonprofit industrial complex, I knew I was on the right path. Here was a melding of my interests in law and public policy that incorporated advanced gender theory and created opportunities to view the problem of violence against transgender people through multiple lenses: art, geography, linguistics, psychology, and sociology. Having spent some time in big philanthropy as a paralegal and administrative assistant I understood all too well Spade's critique of how chasing big donors has diminished the work of most of the large-scale nonprofits that specialize

in LGBTQ+ issues. There is an abundance of college educated, mostly white, mostly male administrators and grant writers within the non-profit sector perpetuating the cycle of funding, both the chasing and the spending, not individual liberation.

As my transition developed from male to genderqueer to ultimately queer trans woman these issues became more personal and my own journey provided living examples of phenomena trans people suffer from that cis people don't. As I sought to explain my transition to myself, my therapist and others I gained insight and language that cut to the heart of trans subjectivities and presented them in a manner cis and other trans people found engaging based on the responses to my public talks and published works. This is important to me because at times I'm not sure where I end and the work begins or vice versa. In a way, it feels like a Zen riddle filtered through modern performance art with minimalist classical music in the background.

### **Medicalization, pathologization, and trans gatekeeping**

“Can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth?...

There are some things we cannot will into being. They just are.”

*Littleton v. Prange*, 9 S.W.3d 222, 224, 231 (Tex. App. 1999)

Before tackling the heart of the matter in this chapter, it's important to note that my experiences of the issues trans people face related to proving identity in contemporary American society have been one of relative ease and easy access. This is not always the case for other trans people. Where in the country you do this is a significant factor that determines the ease and the quality of care and assistance you receive on the way to obtaining state-issued identity documents that match your gender identity and expression. I clearly have white privilege living in Seattle, WA, a large urban metropolitan city known for its progressive politics, socially

mindful businesses and cooperatives. My access to gender appropriate, quality medical and mental health care services has been consistently excellent, and my team of providers are extremely supportive and have helped me to make well-informed choices regarding types of care, prescriptions and therapy. This is all too often not the case in areas outside of the larger progressive metro regions in the U.S., mostly on the coasts.

For some time now transgender activists have been questioning medical gatekeeping and agitating for improvements in how we are treated by the medical establishment. We best understand that the role of the medical and mental health professions in a cisgender dominated world has been and continues to be to regulate trans lives, thereby serving as the instruments of enforcement of gendered binaries and fulfilling the role of gatekeepers of appropriate care for trans people. Trans activists have been struggling to change this reality and make the process one that serves the different needs of every individual according to those needs. One trans activist, author Julia Serano (2007, 2012, 2016) has spent a great deal of time debunking the underlying premises that keep transgender people listed in the DSM as having a mental illness. She explains how both the American Medical Association (AMA), and the American Psychological Association (APA) are all too often in charge of what kinds of treatments trans people receive. Under the current system medical and psychological professionals end up as de facto agents of the state with the power to determine who is worthy of medical and surgical procedures, as well as access to appropriate mental health services. As Serano (2007) notes these decisions are often based upon subjective judgments by medical professionals such as whether or not a given treatment of hormones or gender-reassignment surgical procedures will assist trans people to successfully integrate into society as normal (read: cis) women and men.

Medical gatekeeping isn't the only way barriers are erected for trans people seeking care – in fact, finding something as simple as a therapist who understands transgender subjectivities is often a rare privilege afforded to a few. Money can also be an obstacle as trans people deal with disproportionate poverty rates (Walker, 2019). Geographic location plays a significant

factor in that trans people are likely to have a harder time finding affirming care the farther they get from a metropolitan area (ibid).

In some states it is mandated in administrative laws and regulations that a person has to have had gender reassignment surgery in order to alter their identity documents. Other states mandate that a mental health practitioner must swear in writing that you have been diagnosed with gender dysphoria and have sought treatment for this disorder in order to gain necessary documents and permissions needed to alter your recorded sex designation. Several states, including Ohio and Tennessee expressly forbid citizens born in that state to alter any state issued identity documents to a gender that is different than the one assigned at birth.

### **Gender performativity - publicly transitioning**

*“The most heightened state of being female is watching people watch you.”*

(Kim Gordon, 2015, pg. 20)

As I have noted above the performance of my gender has evolved over the decades. This included some experiences of being “out” within certain carefully controlled circumstances over the decades, but it wasn’t until a few years ago that I fully embraced who I was and came out as a trans female with my wider circle of friends and colleagues. For me it was a long and intensely personal experience which required a series of outward as well as inner adjustments and weekly therapy over the course of several years using six different therapists.

My transition began in earnest during my undergraduate studies where I specialized in women of color, feminist, lesbian, and AIDS activist art history. During this time, I began

researching and writing about feminist theory as well as transgender subjectivities, public policy and law. It started with bell hooks and still hasn't stopped.

By the time I applied to graduate school at the University of Washington Tacoma I had chosen to specialize in transgender social change rooted in feminist and queer paradigms. At some point during the Winter of 2018 during my first year in graduate school, an internal switch got thrown and my transition to full-time female reached a point of no return. I grew my hair out, shaved my facial hair off, began hormone replacement therapy, legally changed my name and gender, began dressing more and more femininely, and began making the required adjustments to live as a woman twenty-four seven, as well as made life changing adjustments to move through space as a female that made sense to me.

It was during this period that I first had to confront on a personal level what is referred to as the "bathroom problem." Along with that was the other myriad ways proving identity became something I had to frequently consider as I went about my daily business. This was an awkward period for me and during it I had so many new experiences that seemed somehow familiar but were not. I discovered so many facets to being a trans lesbian that could not have been anticipated. These facets arose at random times and each one required careful thought and consideration in light of published book and academic accounts from many of the major thinkers in transgender studies and the other materials that are the foundation of this research. It was important both to my research and myself as an individual.

Being at a tier one research university in a graduate program definitely allowed me to transition in relative isolation in a fairly painless way during most of my day-to-day life. I did run into some transphobia and just plain ignorance at the university, but the blows were softened by supportive friends at school and a few staff and faculty I trusted. As I built and solidified a reputation and my presence became common on campus this lessened considerably. For the past year or so my discomfort on campus now only revolves around individuals who are intrinsically transphobic and the appalling lack of meaningful bathroom access as I am not

always comfortable using the women's restroom while it is overrun with 18-24-year-old undergraduates. The reason for this is simple: As a middle age person I would stick out in such a space, whereas in more public spaces like bars, restaurants and in professional settings it is not such a problem. Lots of different kinds of people come and go making it easier, at least mentally, to just go about my business as if it was normal, because it is. While I am fully out and proud, facing the mocking or humiliating questions that those kinds of circumstances can bring about is just my way of minimizing the chance of it happening and reducing my risk of confrontation or worse. It's a calculation.

The importance of having proof of a legal identity that matches who I am internally not only gave me increased legal protection from harassment, it also had a noticeable impact on my psyche and emotional balance. The best way to explain it is that prior to having a driver's license that said I was a woman, inwardly I definitely thought of myself as not male, as a woman or at least femme. However, presenting as the person I was pre-transition, it was an act that required being conscious of my gender as I moved through space and time. After my new driver's license was issued to me, I no longer had to think about being my gender because my full-time reality is I am a woman. My gender nurse, my doctor and my therapist all commented upon it as this change came over me. So did my friends who knew me best, and it wasn't missed by the people I worked most closely with at graduate school.

Moving through the rest of society outside the confines of the university however subjected me to new challenges and opened my eyes to the tyranny of gender in ways that no reading of the literature around transgender subjectivities could have prepared me for. As someone who can now move through the world without thinking about how I am presenting or how my presentation will be perceived by others I am relieved of the burdens I had as a feminine man, as a genderqueer person. Once I stopped all pretense of presenting anything close to masculinity and fully embraced my femininity it quickly became apparent in a very real way to me how much of the most basic interactions and transactions of daily life are based in

established gender roles. Everything I had witnessed previously, and everything I had read in feminist literature couldn't have prepared me for this experience despite my academic knowledge. Or for how often women are treated as less than in society. Nor how often trans women are thought of as even less than that. We are treated as other, monsters, freaks, objects of curiosity and horror. Cis people and their cultural privilege all too often think they have the right to ask questions about the most intimate aspects of your life, as if it is perfectly normal to ask about the state of one's genitals, or what taking hormones is like. This privilege also seems to grant cis people the right to obtrusively stare at us whenever and wherever they choose.

### **What are you? I'm confused. What should I call you?**

*"I'm not a woman, I'm not a man, I am something that you'll  
never understand"*

(Prince, 1984)

A point of regular contact that frequently distressed me was the cash register, particularly using a charge card or buying products that require proof of age. For those who don't approve of trans people it gives them an opportunity and safe way to mock or publically humiliate me. This has happened many times in a multitude of ways at multiple places: dead naming, misgendering, hearing "thank you sir", "are you a woman or a man, I'm confused", "what should I call you", or the worst, "what are you?" As a trans person I have evolved and learned ways to adapt and cope during these situations that do not involve me being snarky with a witty comeback, something that would only bring more attention to myself. It became a non-stop battle to avoid being publicly outed, subjected to any personal or publicly humiliating questions, and having to constantly defend my identity as if my mere presence was not valid. Inevitably I came to the conclusion that not speaking as my go to defense and then smiling really

big but sort of dumb-looking was the easiest way to defuse these situations. When this happened it always left me feeling dirty. The anti-authoritarian, punk streak in me screamed in rage inwardly every time it happened.

A specific circumstance while attending an academic conference in a fairly progressive state is an illuminating case in point. At the rather nice hotel I was booked into I had to tell the desk clerk that I wished to be referred to as a different name than the one on the credit card I had used to check in. It still had my gender as male and my dead name on it. As this was on the same weekend that I began living as a woman full-time it was something that hadn't previously occurred to me might come up.

I had to do the same thing at the conference itself because when I arrived and checked in my name tag displayed my dead name, this despite sending an email correspondence in advance to the organizers asking them to refer to me in my new name. I understood this somewhat challenged their pre-printed programs which included my old name since I had signed up for the conference and presented my proposal to speak under it. Within the multiple month lag time between my proposal being accepted and the actual event itself, my life had radically changed. To me it seemed a simple request to allow me to be myself and attend the conference as well as do my presentation under the name and gender I was using then, and not embarrass me.

That weekend, my first as Mira, in restaurants, bars, shops, public transportation, the hotel, and the airport for the return flight I put on a brave face, earrings, purse, a summer dress and stepped into the unknown. I expected the airport to be the most stressful and/or troublesome thing to deal with over this weekend as Homeland Security requires you to prove your identity and I was in a dress giving them a driver's license that said I was male. It ended up being easier to navigate the Transit Security Administrations (TSA) departing flight security checkpoint than my own hotel or the conference. My gender never even came up. The TSA person who checked my ID and my travel plans looked at my ID and me in the face, asked no questions and waved me through as if she had done this before, multiple times. Same thing at

the conveyor belt for my carry-on luggage to be scanned. As I walked through the metal detector I set it off and this was the only snag. It was because of the metal underwire in my bra. As a result, I was required to enter a device that scanned me from head to toe, but after not being outed while presenting my ID during the previous several steps in the TSA line, I didn't care. It felt more like a badge of honor than a hassle. After all it was because of my bra. How delightfully feminine a dilemma!

Beginning that weekend there was no turning back for me. My university offers the option to use a preferred name and I promptly took it upon my return and sent out an email informing my faculty and support staff that my transition had become reality. I came out publicly to everyone I could in person, posted on social media for everyone else and never looked back.

### **Bureaucratic sorting**

*“I’ve proven who I am so many times*

*The magnetic strip’s worn thin*

*And each time I was someone else*

*And everyone was taken in”*

(Bruce Cockburn, 1997)

Individuals are asked to check one of the binary sex designation boxes on a wide variety of bureaucratic forms in everyday life. The sheer volume and wide range of policies that relate to an individual's identity as well as our social lives is staggering. Checking a sex-identity box is so routine that many of use never notice, let alone question it. Typically, they appear at the top of applications and forms, signaling their essentialness, importance, and priority. These boxes make appearances practically everywhere we go, in everything we do and they will be a constant

and persist throughout our lifetimes. We are asked to check them for apartment rentals and mortgages, banking, using a debit card at retail outlets, documents related to employment, census forms, dental, medical and mental health intake forms, public records like deeds, social media, voting, applications for higher education, to buy a car, and so many more. In fact, its endless and happens from cradle until the grave when one's death is noted bureaucratically for one last time in the official records.

In addition to being bureaucratically sorted according to the binary sex designations we were assigned at birth, people are also sorted into physical ones throughout their lives. Some of them are voluntary like choosing a private sex-segregated school, or gender specific private associations or clubs. However, others are anything but voluntary, sports being the easiest one to use to illustrate this phenomenon. Public spaces are another and often default to one or the other approach with both formal and informal practices of sex segregation. This results in a mandatory separation of the binary sex designations and leaves non-binary people to decide which choice feels right at best, and at worst which one is the least likely to cause them distress and/or additional hassle. Most restaurants, bars, retail and performance spaces are guilty of this by providing just two types of rooms, one labeled "men" and the other "women", or some variation, some visual representations. This bathroom reality means quite a bit to trans people and yet it is another truism that is so pervasive in modern life that most cis people don't think about it. As I discovered on my own transgender journey these decisions turn out fine most of the time. But the threat of people judging or mocking you, or violence arising is always present. I'm never not thinking about it while considering a public restroom. I am always on my guard using public accommodations as well as many other daily circumstances when I'm in public.

### **Cash or credit?**

During the period of time I lived as genderqueer I learned quickly to carry cash because the use of credit and debit cards is one of the surest ways to run into the tyranny of gender in public spaces. Presenting a bank card with a male name while appearing androgynous to female raised lots of questions about who I was and why my driver's license and debit card didn't match my presentation. In these situations, I ran into a number of issues with clerks, particularly in larger, busier, chain-oriented stores. These included them asking a series of invasive questions that start with something like 'This doesn't match' which requires me to publicly explain that I was born male, but now I am female (the easiest public answer, even when I was genderqueer). If one is lucky that would be the end of it. Sometimes though that was not the end of the ordeal, and the clerk would ask me some variation of 'What does this mean?' or even worse offer some lame attempt at humor to diffuse the tension. In a few cases in my experience they find a way to let me and everyone within a close radius know that they don't approve of me, don't respect my humanity, and think I am a fraud, or worse. Cash tended to greatly reduce the frequency of these types of scenarios happening. It certainly reduced the number of occurrences of them for me. Paying cash removed the need for ID to prove my identity unless I was purchasing a proof of age required product like alcohol, cannabis, or tobacco products.

### **Agents of the state**

Bars, nightclubs and restaurants are a common set of places where all of the above scenarios have played out in my life. It starts with a doorperson wanting to make sure you are over 21. It repeats itself with either a bartender or wait staff or both. The presence of alcohol also creates additional factors that increase the probability of humiliating or even violent encounters. I personally enjoy going out with friends occasionally and the best results I've had come from places that included a gender-neutral option for restroom facilities, had well-trained sensitive staff, and have a posted and enforced zero-tolerance policy for any form of hate or bias. These

places are few and far between. This is true even in what should be the safest of places. As an example: At a restaurant in the heart of the Capitol Hill neighborhood, Seattle's oldest established "gayborhood", I was called "sir" by a security worker at the front door checking ID's on Cinco de Mayo weekend nearly a year into my hormone treatments. He had read my ID which identifies me as female and still did it. It was crowded near the front door with people both leaving and entering the establishment through this one opening. The risk to me in this situation arises from it being a holiday, surrounded by all kinds of people eager to get the party started or for it to continue, with alcohol consumption being a key part of the character of the holiday. After getting past this stressful and humiliating moment, my friend and I were seated and asked if we wanted waters, which we did. Another table was sat by the same hostess immediately after us and they immediately received menus, water (without being asked), and were told the specials of the evening from the kitchen. We were seated before them and our table was still empty. After about five minutes of waiting we got up and left. Conversely, I have also had some of the most gratifying little moments of affirmation of my identity and expression on Capitol Hill. The point is that it can happen anywhere at any time, even while wearing a dress and presenting ID that says female.

### **The power of discretionary enforcement of gender binaries**

Many of these encounters, with the government, in banks, stores, at school or the neighborhood bar, involve discretionary power granted by the state to private and public actors to check identity using gender as a fundamental marker to prove that identity. The use of this power is often required by law, such as in the case of age verification for purchasing certain items. Some businesses require verification of identity when using a debit or credit card to purchase items or services.

Even now, more than half a year after legally changing all of my identity documents, I still occasionally experience sex-identity discrimination and marginalization despite my

appearance, which becomes more and more feminine every day. Changing my legal sex-designation, dressing full-time as female, or feminizing my gestures and speech patterns has not entirely put an end to it. It has however decreased the frequency of these experiences and blunted some of the more blatant forms of anti-trans harassment I previously had experienced. That is my reality as a privileged, middle-aged, white, trans female (binary) with all the necessary legal documentation who currently lives the life of a full-time graduate student at a top five, tier 1 research university in a very progressive West Coast city in a very progressive state. For people who are living as non-binary, genderfluid, or genderqueer, the problem is manifestly more complicated and rife with potential for negative consequences, no matter where they live.

### **Human classification**

Invasive questioning and potential for public humiliation are just part of being transgender in this day and age. In my own travels around the region I live in I like to visit out of the way places like ethnic delis, grocery stores and eateries. At one in Tacoma, upon seeing the name on my bank card then looking at me directly and back to the bank card multiple times, a cashier (a cis woman) asked me “what are you?” This easily was one of the more painful encounters I have had. She was not only humiliating me in front of other customers and staff by outing me, she was questioning my very humanity, not just my identity. Asking “who are you?” is an ocean of qualitative difference from “what are you?” Everybody who overheard this exchange became very quiet and the woman smiled hugely as if this was her moment of supreme triumph over the evils of transgenderism. That is the discretionary power the state grants to individuals to act in manners that force them to classify the humans they come into contact with. By adhering to the gender binary in identity documents, the state empowers members of the general public to enforce this binary in ways that are often demeaning, dehumanizing, and ultimately humiliating. It is a form of state-sanctioned violence against transgender people.

### **Me, Sound Transit, Securitas, a restroom, and a loudspeaker**

The most painful experience I had was also the most public one and was entirely based on a discretionary call by one individual in power. One day in the Fall of 2018, after leaving my therapists office on a day I did not have to make any other public appearances and admittedly looking rather ambiguous gender-wise with male jeans and tee shirt, shoes and no jewelry, I began the multi bus journey home. While transferring buses at the Federal Way Transit Center (FWTC) I found myself needing to go to the bathroom rather desperately. FWTC has two bathrooms, one for each binary gender. To unlock the door one must get a token that is provided by the security guard on duty at the station. The guards are often not right by their office which is directly across from the bathrooms or even on the platform to easily track down and get one. They sometimes patrol the large parking structure or the perimeter, meaning they are gone for some time.

As I arrived, I headed straight to the security booth to get a token and discovered the guard was not there. I proceeded to look around the platform where I also did not see them. My bus was due in ten minutes and I was thinking I was not going to have the opportunity to relieve myself before it came. Just then the women's bathroom door opened, and a woman exited. I grabbed the door and let myself in and took care of my business. In the middle of doing so I became aware that I could hear someone yelling over the loudspeaker that exists for the guards to talk to the transit riders, much like a bank tellers window. It slowly dawned on me the guard was yelling at me. As I got closer to the door to exit, I realized that he was yelling that he was going to have me arrested and how dare I go in there!

One of my personal nightmares is being stuck in a cell with cisgender males for any length of time. Sexual assault and rape of transgender women is a known and quantified danger we face. This security guard was yelling at me that he was calling the police and telling me how bad a person I am all with a crowd beginning to take notice. I pulled out my UW ID card which

had my new name on it and showed it to him and yelled back “I am a female dammit, and state law says I can go into whichever restroom is consistent with my gender identity or expression.” With that his verbal assault and behavior changed from he was “going to have me arrested” to he “could call the cops and have me arrested.” Eventually we got to “I’ll let you go this time but don’t you ever do that, ever, again.” At this point at least 30 people were tuned into this situation and I took his change in posture and approach as a sign to go stand in line with the others waiting for my bus and get away from there as quickly as possible. I was shaking with anger and fear as the bus pulled away to take me home.

While I knew state non-discrimination laws were on my side, my desire to avoid any interaction with law enforcement officers whose hostility to transgender people is very well documented is understandable (Terry, 2015; Tourjée, 2019), I certainly think so. I felt the need to prove who I was to defuse the situation. This is the crux of the issue of having state-issued ID that matches your gender identity and/or expression. If the security guard, or a police officer called to the scene had asked to see my driver’s license, the situation could have been escalated to a higher level of potential danger for me as this was before I had changed my legal identity. The sympathy of some in the crowd might have shifted away from me. The whole scenario could’ve have been so much more fraught with peril for me.

My distaste for having to refer to my assigned-at-birth sex-designation, or my birth name, and even my present identity was why I dreaded having to get to the point of having to show my driver’s license, and the further humiliation that would have ensued from the explanations that would have become necessary as a result of it. In this particular scenario my advanced education in transgender law and public policy combined with decades as a street level activist experienced in dealing with law enforcement served me well. It was part of the mix of circumstances that helped defuse the situation and allowed me to continue on my way home without any additional hassle. Still I had to endure a rather humiliating encounter in so public a

place in that fashion, with all of his hateful words amplified by the security windows loudspeaker.

Not content to remain silent about it while waiting in line to board the bus I immediately shared this experience on my social media outlets and most of the feedback cried for running it up the chain of command with the security contractor who staff Sound Transit hubs like FWTC. I called into Sound Transit's customer care line and was immediately transferred to a supervisor. Within several minutes of finishing my conversation with him, I heard from the account representative with Sound Transit from Securitas, the firm employed to provide security at transit hubs throughout the system. She informed me that an investigation would be conducted and she would get back to me very soon. I was skeptical but I had to admit it was considerably more than my usual cynical nature expected.

The downside to this was that she called back while I was on the bus home from FWTC. We had just pulled out and were not even on Highway 5 yet. Sound Transit's express buses are relatively quiet and so I had to explain the whole scenario to the woman on the phone while everyone in a certain radius of me could hear every word of it. This is what being re-victimised to get justice is like was all I could think in the back of my mind. Could I have waited to take the call, or ask her to call me in a bit when I got home and had privacy? Yes, but I was so enraged at the idiocy of what occurred at FWTC that it slipped my mind to consider those options.

Skeptical of her initial reaction I was pleased when several days later she called and informed me that all Securitas staff had begun to receive additional training in state non-discrimination laws around gender identity and expression, that Sound Transit at an unspecified future date would convert all single stall restrooms to gender neutral ones at all of their facilities, and that the security guard who threatened me had been dealt with, though they could not legally say how to me. I can confirm the trainings took place within a matter of days of the incident, but as of mid-September 2019, almost a year later, Sound Transit has not yet converted the restrooms from the two binaries.

## **Mundane everyday interactions and institutional cover**

*“Passing means surviving somehow*

*continuously being monitored*

*& scrutinized*

*for the ‘smallest mistake’*

*or ‘fault’*

- *a scrutiny that few if any*

*genetics would or could ‘pass’*

*without screaming ‘unfair’*

(Phillipa, p. 8, 1993)

There are also the insidious mundane occurrences in our personal and professional lives that happen in routinely used everyday spaces, often with people we have to interact with semi-regularly or more. These spaces are woven into the routines of our lives which makes the slights, or the sheer ignorance so jarring when it happens. Personal examples of this include my pharmacy that is connected (same building) to the clinic where my primary doctor, dentist, and my gender nurse office are located. Pharmacy staff has deadnamed me on multiple occasions in the presence of others requiring an explanation from me. At my university it has happened while checking out equipment in the technology lab, the Teaching and Learning Center reception desk, and in the library while picking up special order materials. Also at the university I have been subjected to gaslighting in the form of catty, underhanded, or just plain thoughtless comments about my gender presentation. In my experience at the university the marginalization primarily came from women, not men, who almost without exception were at least polite and often laughably uncomfortable. As a feminist to say that saddens me a great deal.

A prime example is being told that I can't expect people to respect my gender if my presentation is ambiguous, as if that is a satisfactory reason to discriminate against me or publicly humiliate me. Even after I had taken the time to explain to them the reason that what this person had said was troublesome, and to me personally felt deeply offensive, they later doubled down with almost identical comments in a different context. This in an email intended to make me feel silly for wishing my dead name not be used, as if it is just a mere inconvenience that I must suffer through because of my choices.

This is why the power to inspect or make judgments about our sex-identity as granted by the state to citizens acting as agents creates avenues for verbal and ultimately physical violence against us. It allows just enough wiggle room to provide "institutional cover for administrative agents" (Davis, 2017, p. 27). These agents, under that institutional cover can and often do engage in anti-transgender behaviors while strictly speaking staying within the boundaries of the law. It's very hard for me to quantify just how often I have been asked about my gender status in some inappropriate way by actors empowered by the state to determine if my identity is real or not it is so monotonously routine. It often is a multiple times a day occurrence, and each one of these situations exposes trans people to potential risks as a result of being outed as trans. If you include phone call misgendering it can even happen in your own home on a day you never leave it.

### **The larger problem**

*"Who does civility serve?"* (Elthaway, 2019)

Socio-economically and politically, sex-classification policies are a major source of forced conformity and cultural constraint. Sex-classification policies inherently are restrictions,

external and internal, on personal freedom to create our own individual versions of ourselves through gender expression, be it feminine, masculine or neither. They reduce our authority to make our minds up about our gender and sexual identities, limiting people to the binary choice between female or male. Thus, both cis and trans people are harmed by essentialized gender roles and legal requirements. However, the burdens of sex-identity discrimination are disproportionately borne by trans and non-binary identifying people.

### **I went to court and had a memorable, transformative day**

The District Court in Pierce County, where I filed the petition to legally change my name charged me over \$200 to go through the necessary legal process required to get a court ordered name change. The all important step is getting that court order signed by a District Court judge. The name change court order is the key component to all the remaining steps needed to completely change one's legal identity, in my case for both name and gender. The day I went to the court house the clerk who staffed the administrative booth where my paperwork was officially filed and who scheduled my court date was very nice to me. She used female pronouns and indicated in multiple ways how happy she was for me, what a big step it is, how awesome it was. It was a charming "you go girl!" moment. Honestly, as this was the first step on a multi-step journey to changing my identity it was nice to have it start off in so affirming and celebratory a manner.

With my court date scheduled I then waited several weeks for the day to come. I decided to wear a sharp business casual dress to appear before the judge looking my best, very feminine (this was for my sake, not hers). The judge entered the room and informed the clerk and all present that matters pertaining to identity change would be moved to the top of the docket and heard first and with that my name was called. All the lawyers and their clients would have to wait, and they all would be watching me, ugh. After affirming under oath that I was doing this of my free will and not to avoid debts or obligations, the Judge gave me a big smile and granted my

request with her signature. She congratulated me, as did the clerk who handed me my paperwork. She informed me I needed to go back to the main District Court clerk's window where the court date was scheduled, and that my court ordered name change document with official stamp would be available for me there in a few minutes. Pierce County, where I did this, at every step along this process was helpful, polite, encouraging, and as noted even celebratory. Walking out with tears in my eyes, it was hard not to feel a rush of empowerment and a sense of inner peace knowing that from that moment on I was literally Mira, in other words my true nature and identity. At last.

The excitement, the relief, and that sense of empowerment was overwhelming and stayed with me for sometime. I knew I needed a medical or psychological providers signature on the paperwork for a legal gender change with the State Department of Licensing (DOL), which was the next stop on my path to true identity. I was fortunate to have worked with a staff psychologist briefly on the UW Tacoma campus the previous summer and on a whim while on my way home from the courthouse decided to see if I could get in to see her at her earliest convenience. As luck would have it she had an opening in the middle of the day and agreed to see me. We had a delightful conversation and once again I thought to myself how lucky I was because it would've taken me 30 plus days in advance to see my personal physician or my gender nurse. We both signed the paper and then very briefly dropping the veil of patient and provider, we both shed a tear of joy and happiness. It had been a huge transformational day to be me.

Armed with this affidavit, the next morning I was the first person in line at the DOL. As I handed over copies of my court ordered name change and medical provider documents, as well as my old driver's license, the clerk dead named me. I was wearing one of my best skirts and earrings, I looked unmistakably feminine and it still happened. After explaining to her what that meant to me she apologized and by the end of our business was congratulating me. She explained she was new there, barely out of training, and I was the first person to get in her line

and request to do both name and gender changes at the same time. It was thin, but she was trying to recover. Once done with her I got in line to get my new picture taken and then walked out the door with a legal (temporary) Washington State driver's license that contained my new name and reflected my true gender, not the one assigned to me at birth. There was a minimum cost for the new driver's license and overall it was a fairly easy process. It was a very heady 36 hours

With the new driver's license, I now had everything necessary to change my birth certificate to my real gender as well as new name. Instead of going to the Department of Health in Tacoma I decided to make a day of it and go to their main office in Tumwater. I was the only person in the office at the time. I handed over my documents and that is when I found out that the form that the UW psychologist had signed had to be signed by me in the presence of a notary public. Fortunately, I hadn't signed it yet, and there was a nice gentleman who came out of the computer room beyond the security doors who notarized my signature. While the friendly clerk did her magic in the state's databases, we chatted about what the process was like for me and how often she deals with transgender people changing their identity. She didn't see it an awful lot she told me, at least in her office. She said the majority of newly issued X or binary gender change birth certificates happened in Snohomish, King, and Pierce counties. At a point in our light chit chat she said, "I just want you to know that I am doing the equivalent of flipping the switch right now and your new identity is now your permanent one." It was very sweet and a moving experience for me. With that I was reborn. The metaphors were endless and played in my head as I headed into Olympia to meet a friend, share the good news and celebrate.

### **Losing my pink mace canister**

Up to this point all offices and departments that I interacted with to legally change my name and gender were either part of the State of Washington or Pierce County, and briefly the University of Washington Tacoma Counseling Center. I was very nervous about the next step,

dealing with federal government. In the oppressive atmosphere of open hostility from the present administration, the prospect of visiting the Social Security Office to change my name and gender was more than a bit intimidating. On the morning I went, arriving about forty-five minutes before they opened, I was person number 19 in line. About ten minutes before opening three security employees came out and explained about the rules; no metal, no weapons, there is a metal detector, have your backpacks and purses open for inspection and then once past security take a number and find a place to sit. I ditched my \$20.00 pink mace canister as I wasn't going to wait another 45 minutes on another day to accomplish this, the last step in my identity change.

When my number was called I went to the window I was assigned and my luck held out again. The woman was very nice and openly happy to help me with the two changes I was coming in to do. I passed my documents through the window slot and within fifteen minutes all trace of my birth-assigned male identity were gone and I was Mira, female. Inwardly I was greatly relieved this was done but I also left feeling skeptical that my gender had actually been changed in federal databases.

The nice lady at the Social Security office informed it would take several business days for all the changes to be registered and the databases updated to reflect them. The following week I began changing my identity everywhere. The bank, UW, medical providers, health care insurance carrier, public library, and with Washington State Apple Health. It was through the latter I was able to confirm that my gender had indeed been changed in federal databases along with my legal name. A few days later my new Social Security card arrived in the mail. With that the matter was completed. I had lived for over half a year as Mira without documentation that reflected that. Going forward I had the blessings of the state I was born in and the federal government to be who I really was. I'd like to say how much it mattered to me was not much as I am who I think and say I am, but it was a huge psychological shift for me. No one could question who I was anymore from a legal standpoint. For me it created a sense of empowerment to be

who I am as publicly as I wanted. For retail clerks, or hospitality industry workers, they now had to treat my identity with respect or they would be the ones called out by me for their error when I thrust my driver's license at them. That is tangible personal power to live as I see fit.

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### **Analysis: Media discourses of the third gender option on State of Washington issued birth certificates**

#### **Introduction: Gendered language, gendered discourse**

Some of the most basic necessities of modern life flow from government issued ID's. This research seeks to begin answering the question: How is this change in the law regarding identity and state-issued birth certificates affecting the discourse around transgender phenomena? To accomplish this, I focus specifically on the media component of the rollout of Washington State's third gender option in January of 2018.

By looking at the variety of ways Washington State media outlets (hereafter, "the media") discussed what was being done, to benefit whom, and what exactly it meant, I expose the essentialized language often used in discussing gender and more specifically transgender issues. This is particularly true when we get into legal definitions of an individual's gender which often uses the term "sex" or "sex designation". These terms have persisted culturally and socially despite shifting legal, socio-cultural and socio-political meanings and terminology. They are ingrained into our national consciousness and often used automatically with little or no thought

in one-on-one conversations all the way to arguing a case concerning gender questions in the highest courts in the land.

The modern media, concentrated in the hands of a few corporations, is the single biggest source of the lexicon and terminology used in popular culture and thus of how to describe exactly how a non-binary sex designation option changes the way the state categorizes gender. Thus, in order to better understand how language plays a role in evolving debates about the role of gender in society, this research seeks to fuse socio-political understanding of transgender issues with legal and public policy initiatives using critical discourse analysis as a method.

### **Washington State media background**

The bulk of the data for this research was collected between September 2017 and February 2018, with additional observations of my own added that have arisen since. Five separate types of media outlets coverage of the rollout of the gender X option in Washington State were analyzed.

I focus my analysis on the January 4<sup>th</sup>, 2018 (the actual day the third gender option became the law of the State) broadcasts on Seattle based television outlets KIRO, KOMO, and Q13 Fox news that are archived online. For print media accounts, I focus on the online archives of daily newspapers from Seattle, Olympia, and Spokane for that day, as well as the online archives of *The Stranger*, *Seattle Weekly*, *Seattle Met*, *Seattle Gay Scene* and *Seattle Gay News*.

The first type of media analyzed is traditional print newspapers, via their online archives. The traditional newspapers whose online web archives of articles were analyzed included *The Daily Olympian*, *The Seattle Times*, and *The Spokane Spokesman Review*. The only type of media produced by these outlets is the news article.

Regional television stations are the second type of media outlet analyzed. Three of the four Seattle-based television stations that publish archival material online had articles and in one case videos available. These are *KIRO 7*, the local CBS affiliate, *KOMO 4* which is a local

affiliate of the ABC network and is owned by Sinclair Broadcasting, a noted owner and content distributor of conservative slanted news to small network affiliated stations they own nationally, and Q13, the local Fox network affiliate. Neither *KIRO* or *KOMO* archived their nightly broadcasts, but they did with the online news articles they posted.

*Q13* had an article as well as two videos. One is an online only video which resembles a short headline piece with background music, no vocalized speech with simple text and a few background images.

The third type of media outlet is the two Western Washington alt-weekly news magazines, *The Stranger* and *The Seattle Weekly*. Both have online archives and at the time ran larger scale news articles with more analysis and background than the daily print media outlets. Additionally, *Seattle Met*, a glossy super market checkout magazine that is owned by SagaCity Publications, a company which publishes lifestyle magazines throughout the West that are focused specifically to an area like Seattle or Portland, was added. In fact, all of the media used in this examination enjoy statewide distribution with the exception of the two smaller market newspapers from Olympia and Spokane.

The fourth type of media outlet analyzed is the LGBTQ media in the region which were included to look more closely at the discourses coming from a group affiliated with the transgender community, how it framed the issue, and the language used in discussion of the third gender option. In this case *Seattle Gay Scene* which published a detailed article on the issue, and the *Seattle Gay News* (SGN). SGN, instead of writing an independent piece, published a news release from an organization called Legal Voice, which describes itself as “a progressive feminist organization using the power of the law to make positive change for women and girls in the Northwest. Legal Voice uses groundbreaking litigation, legislative advocacy, and community education to fight gender oppression and injustice in the legal system (Seattle Gay News, 2018). Their mission statement is activist and sensitive to transgender people: “Legal Voice pursues justice for all women and LGBTQ people in the Northwest, through

groundbreaking litigation, legislative advocacy, and legal rights education” (Legal Voice, n.d.). In addition, in its values statement the organization notes that gender is not binary, that women, transgender people, and other gender-nonconforming people are entitled to dignity and respect, and that these are the people the organization fights for. LGBTQ media outlets that did not cover the third gender option rollout are also of interest. The national gay press did not cover it. Not *Out*, not *Them*, not *The Advocate*. The feminist alt press tended to ignore it as well. *Bitch* did not cover it though it has covered non-binary identity issues before and been supportive of transgender and other gender nonconforming identities. *Bust Magazine*, a feminist, queer and trans positive publication with an equally positive track record with trans awareness to *Bitch*, also did not cover it.

### **Analysis of activist, state, and opposition discourses**

To analyze the discourse used by the media to build a narrative around the rollout of the third gender “X” option I noted the combination of words used to describe what is changed by the adoption of this policy. An analysis of oppositional discourses used to critique this change in state policy is found in a later section below. Also included in my analysis are some significant linguistic structures that were used to describe factors within these media accounts related to how gender based identities are constructed.

Consider this sentence from the online archives of the Seattle based CBS television affiliate, KIRO 7: “Gender identity does not refer to sexual orientation or to people with indeterminate gender” (KIRO 7 News Staff, 2018). Within that sentence we have references to gender identity and sexual orientation, which are two distinctly different categories of identity. We also have a phrase used to describe a particular type of identity under the transgender umbrella, namely “indeterminate gender,” which could be anything from an intersex individual to a non-binary or genderqueer person, as well as quite a few other possibilities. Specifically

related to broader feminist and transgender research is how gender identity culturally, legally, politically, and socially, is often equated with and based on essentialized definitions of both.

To place this analysis into a larger context of transgender liberation politics, a broader meta-analysis of common threads, notable usage of terms, evolution of terminology, and both inclusive and hostile language around acceptance of trans phenomena is analyzed using the two tables below. Table 1 provides the lead paragraph and particularly the first sentence of a story used to convey what the media outlet regards as the key element in a given story (see Table 1). Thus, attention is paid to the commonality of descriptions in the lead within text accounts. The discourses of the Washington State Department of Health, which was responsible for administrating the rollout are also analyzed below using significant quotes. These are found in Table 2. Finally, in Table 3 we find statements from the Family Policy Institute of Washington which was opposed to the expansion of options on State of Washington birth certificates

**Table 1:** The lead sentence in all news accounts surveyed.

<i><b>Media Outlet</b></i> <i><b>Location</b></i>	<i><b>Lead sentence</b></i>
KIRO 7 CBS, Seattle	“Washington-born residents will soon be able to change the gender on their birth certificates to one that is neither male or female.”
KOMO 4 ABC, Seattle	“The state Department of Health announced Thursday that starting January 27 there will be a third gender option for Washington state birth certificates.”
Q13 FOX, Seattle	“Washington residents who want to change the sex designation on their birth certificates will soon have a third ‘X’ option.”
Seattle Times, Seattle	“People born in Washington will now have a third choice – X – when defining their sex on a birth certificate.”
Spokesman Review, Spokane	“The Washington state Department of Health on Thursday announced a new rule that allows individuals to change the sex designation on their birth certificate.”

Daily Olympian, Olympia	“State Department of Health officials announced a new rule on Thursday that will allow people to change their sex designation on their Washington birth certificate from male or female to X.”
Seattle Weekly, Seattle	“Every day that barber Adi Chen wakes up, they are struck by the undeniable recognition that their internal and external states are unaligned.”
The Stranger, Seattle	“The Department of Health has passed a rule allowing a third gender option on Washington State birth certificates.”
Seattle Met, Seattle	“On the morning of December 5, 2017, Tiffany Metzger dressed in a skirt and earrings and climbed into a car, dark hair swept back in a ponytail.”
Seattle Gay News, Seattle	“The Washington State Department of Health (DOH) passed a new rule that simplifies the process for a person to change the gender listed on their birth certificate.”
Seattle Gay Scene, Seattle	“On Thursday, January 4, 2018, the Washington State Department of Health issued a statement that delighted the transgender community.”

**Table 2:** WA State Department of Health discourses.

<b>Media Outlet</b>	<b>WA State Dept. of Health discourses</b>
Q13 FOX, Seattle	“Agency says the rule provides an option for those who do not exclusively identify as male or female.”
Seattle Times, Seattle	“The most important thing is that we are trying to reflect that norms are changing and provide people with options that match their living experience” ... “This is an opportunity to reduce risk of harassment and promote health equity.” Chris Spice, DOH state registrar and director of Center for Health Statistics.
Spokesman Review, Spokane	<ol style="list-style-type: none"> <li>1. “We see that allowing a designated change means that people are less likely to be challenged when presenting their birth certificate as proof of identification,”</li> <li>2. “We determined having the rule improved health equity in Washington.” <i>David Johnson, spokesman for the DOH.</i></li> </ol>
Daily Olympian, Olympia	“After receiving and considering public comment, the agency determined that this rule change will provide individuals with the option to have a birth certificate that aligns with their gender identity,” <i>DOH news release.</i>

Seattle Weekly, Seattle	<ol style="list-style-type: none"> <li>1. “It’s really about wanting your core identity document to match your lived experience.”</li> <li>2. “Allowing sex designation change on the birth certificate reduces the risk that the person is going to experience harassment and discrimination when they use that document in their lives.” <i>Christie Spice, director of the Center for Health Statistics, DOH.</i></li> </ol>
Seattle Met, Seattle	“Society is changing,’ says <i>Christie Spice, state registrar and director of the center.</i> The agency is ‘looking at providing people with options to have a birth certificate that matches who they are.’”

**Table 3:** Opposition discourses

KIRO 7 CBS, Seattle	“A person’s gender, in nearly 100 percent of people, is binary, determined at conception by the individual’s biology” ... “To ensure integrity in our public records, official documents ought to reflect this biological reality.” <i>Chris Plante, policy director Family Policy Institute of Washington.</i>
Seattle Times, Seattle	“We are concerned for one practical reason – the integrity of state records and people being able to change a state record based on their desired expression and intent on any given day” <i>Chris Plante, policy director Family Policy Institute of Washington</i>

### Transgender identity based discourses

*“This is a monumental step by the state to recognize that there are thousands of Washingtonians who are neither male nor female.”*

Jeremiah Allen – Director of TRANSFORM Washington (2018).

Considering the totality of all of the coverage by the media surrounding the issue of the third gender option rollout, most media outlets relied on statements from the DOH, a small group of trans activists, and one organization that opposed it. Overall, they were conservative in

tone and content because of this reliance on a small group of actors for quotes. One exception was KIRO, the Seattle CBS affiliate whose coverage was in depth and thoughtful in my opinion (more on this later).

With the exception of two media outlets, *Seattle Met* and *Seattle Weekly*, the first sentence of the story stuck to a small set of facts: DOH was now offering a third gender option, or “X” on state-issued birth certificates. Both *Seattle Met* and *Seattle Weekly* chose to do longer magazine style articles that focused on individual trans stories to illustrate and provide context as to what was being changed and the impacts it would have to these two trans individuals. I found both articles to be sympathetic portraits that provided rich stories that laid bare the challenges trans people face every day regarding proof of identity.

There was a lot of change oriented language used by the State and trans activists in discussing the rollout of the third gender option here in Washington. Most media outlets chose to paint this as a positive step for transgender people if not an overall step in the right direction for the citizens of the State. Two media outlets used the occasion to paint sympathetic portraits of the travails of being trans in Washington and made note of the common hurdles we face in our day to day lives to live authentically as fully engaged members of society.

In terms of how the third gender option was described, the most commonly used terminology was “sex designation”. The second most used was “gender”, usually in conjunction with “third gender option” and/or “x”. In all cases where the media discussed what was being expanding upon, “male and female” were mentioned in that order. In combination with “sex designation”, “male and female” (in that order) suggests a more masculine, status quo tilt to the coverage. It wasn’t clear whether the Department of Health, of The Family Policy Institute of Washington, or the often-quoted Gender Justice League set “sex designation” as the term to be used in discussing identity documents related to gender. “Sex designation” implies a cold legal basis combined with essentialist language favored by more conservative and outright anti-transgender political actors. It also has the sterile quality of categorization typical of state power

in the modern capitalist colonial West. It reaffirms the right of the state to say who is man, who is woman, and who is “X” or transgender, with the two binary genders as the basis for any discussion of additional categories.

### **Discourse in opposition to third gender options**

*“We make assumptions every day about other people’s genders without ever seeing their birth certificates, their chromosomes, their genitals, their reproductive systems, their childhood socialization, or their legal sex. There is no such thing as a “real” gender – there is only the gender we experience ourselves and the gender we perceive others to be.”*

(Julia Serano, 2007, p. 13)

Most opposition to transgender rights centers around trans people being outside of the God-given two binary genders both spiritually and biologically. We are cast as monsters who wish to engage in predatory behavior against women and young girls. We represent the end of all state based record keeping because if you can just change your gender, of what worth is a state-issued birth certificate? Trans people upset the very fabric of society as they both live within it and outside of it, and therefore trouble dominant narratives about how society should be organized and what is acceptable gendered behavior. And that’s just for starters.

All of the opposition discourses used in the media sampled for this research were from one organization based in Lynnwood, Washington: The Family Policy Institute of Washington (FPIW). They seemed to have taken the lead within the Christian social conservative political landscape to oppose any expansion of trans rights. Their mission statement states that they are “Linked to a growing coalition of allied partners, we’re preparing a new generation of family-affirming leaders, promoting good policy, and helping citizens provide true accountability for

elected representatives” (FPIW, 2019). In a flyer on FPIW’s website Joseph Backholm, the Executive Director, describes the work they do as a “movement” (FPIW, 2019) that is founded on a “shared belief in the fact that conforming our lives, individually and culturally, to what God has said is true will benefit all of us” (ibid).

FPIW’s main point is based on the notion that biology is immutable and fixed at birth in “nearly 100 percent of people” (KIRO 7, 2018). The other point they make is that by moving beyond the two binary gender categories the overall state of official records for the State of Washington will somehow lose “integrity.” Connected to that concern is that people will now be able to change state records at will “based on their desired expression and intent on any given day” (Seattle Times, 2018). All of these statements came from their policy director Chris Plante. Their president, Joseph Backholm notes that “Personal identification documents weren’t created to harass the gender dysphoric but to allow the world to distinguish one person from another for the myriad reasons that is necessary. If the government gives people the ability to create their own official identity regardless of reality, the purpose of identification documents becomes moot” (Seattle Weekly, 2018). Backholm admits that gender dysphoria is a real medical and psychological problem, and leaves a bit of room for intersex conditions by saying “nearly 100 percent of people”. But he then uses as a justification for maintaining essentialist gender binaries the concept that gender is immutable, and determined at the moment of conception. This verbal sleight of hand makes it appear that the FPIW is tolerant of trans people when they really want us to have no legal protections against discrimination whatsoever. Their overly simplistic, biblical based view of nature is common in discourses in opposition to any expansion of transgender rights. It is a view widely discounted by medical and psychological professionals who tend to view gender as more of a social construct<sup>26</sup> than a biological one. Unfortunately it is echoed all too often in the law and politics, serving as a basis for how society view us

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<sup>26</sup> The social construction of gender is a theory often used within sociology and feminism to describe the operation of gender within society. It can be thought of as a way to project meaning onto objects or people

The other main pillar of the oppositional discourse is that the third gender option will somehow create an ongoing disaster in state record keeping. FPIW again couches its argument in terms of biology to justify its claim that state records will become chaotic if people are allowed to change them “based on their desired expression and intent on any given day” (FPIW, 2019). They argue that birth certificates should reflect the ‘biological reality’ and that giving citizens the right to alter their own birth certificates is just the beginning (though they fail to say what it is the beginning of). FPIW’s stated fear is that “other official documents that reference sex will change too” (FPIW, 2019), as if citizens will do this whimsically based on how the wind is blowing and that it’s an altogether easy, linear process. As detailed earlier in this thesis, changing to the “X” gender on a state-issued birth certificate requires visiting a State Department of Health location, filing the necessary paperwork and paying the necessary fee. Having changed my own sex designation in the State of Washington I can attest that the process of changing from one binary gender to the other involves expense, a commitment of time and energy, requiring multiple steps with different State agencies, the signature of a medical professional, and the individuals signature that is notarized (that’s not even including the Federal Social Security Administration). This is hardly the kind of processes that lends itself to changing your gender on a whim.

From FPIW’s point of view, this notion that we need clear and distinct gender categories is necessary to distinguish “one person from another” (ibid). Joseph Backholm, the president of FPIW goes one step further and makes the case that providing third gender options or the ability to change binary gender markers is to invite unending chaos in society (again, how this will come to pass and in what form is not stated). His argument is that if government grants the

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which in turn shapes the way we perceive them. For Julia Serano, a biologist by academic training, an example of this is that “while biological sex is a real thing, many of the expectations and assumptions that we have about social gender (e.g., that it constitutes a strict binary, that blue is for boys & pink is for girls, that men just want sex while women want commitment, etc) are socially constructed – these ideas may seem natural and taken for granted for many people in our culture, but other people and cultures may view these matters very differently” (Serano, n.d.).

right to individuals to change their legal identity (gender markers) through official government channels, “regardless of reality, the purpose of identification documents becomes moot” (ibid). If Western civilization is dependent on the need for gender binaries as markers of who an individual is, then the dismantling and alteration of these administrative systems that serve to enforce patriarchy must indeed look like the end of the world to a religious person.

### **DOH and trans activist terminology and discourse**

DOH is the state government agency tasked with issuing and maintaining state birth, death and marriage records in addition to the other services it provides. Looking at the totality of the quotes attributed to DOH personnel in response to media inquiries around the policy rollout, it’s hard not to be struck how consistent it is and how much it uses the language of transgender activist discourses. In researching all this material, it became clear that the DOH worked closely with transgender advocacy organizations such as the Gender Justice League.

Multiple different spokespeople for the DOH made a point to speak of reducing harassment and discrimination against transgender people as one of the priorities of the organization. In several comments, the spokespeople refer to the fact that “society is changing” (Seattle Met, 2018), “we are trying to reflect that norms are changing” (Seattle Times, 2018), and how “this rule change will provide individuals with” options for changing their identity (Olympian, 2018). These are discourses of empowerment. The use of this kind of terminology implies change, options, shifting norms, and in this context, these all create possibilities.

The DOH spokesperson in the *Seattle Times* piece refers to the ability to change gender markers as matching citizens with their “living experience” (2018). The *Seattle Weekly* piece carried a quote about how important it is to have a “core identity document to match your lived experience” (2018). In the glossy magazine *Seattle Met* DOH refers to the policy change as providing options that “matches who they are” (2018). The *Daily Olympian* quotes the DOH’s official news release which states that they will provide the option “to have a birth certificate

that aligns with their gender identity” (2018). All of these are discourses of providing choices and empowerment for people with marginalized identities. They are also making clear that state record keeping and administrative rules about gendered identity should be inclusive of people who exist outside of the gender binary.

Lastly in several of the media accounts two separate DOH spokespeople refer to improving or promoting “health equity” (2018). Health equity as a concept owes its origins to the broader health care reform movement and specifically refers to the study and causes of differences in the quality of health and healthcare across different populations. Its particularly sensitive to disparities in access to health care in marginalized and underserved communities. Thus, by using the terms “health equity” the State is making it plain that it considers Trans health care to be of equal importance to cisgender health care, not as a separate entity with different rules. And that they are currently being sensitive to that and will in the future as well. Implied is lack of identity documents poses a health risk

In the *Seattle Times* piece Christie Spice, the Director of the Center for Health Statistics at DOH says that Washington’s third gender option is “an opportunity to reduce risk of harassment and promote health equity” (2018). This statement and the one she made to the *Seattle Weekly* both indicate that one of the State’s desired outcomes was to reduce “the risk that the person is going to experience harassment and discrimination when they use that document in their lives” (2018). In the *Spokesman Review* article, Spice uses more generic language and focuses more directly on the challenges Trans people face when presenting proof of identification: “We see that allowing a designated change means that people are less likely to be challenged when presenting their birth certificate as proof of identification” (2018). If this is a situation involving both name and a binary gender change, in order to change your markers with the Social Security Administration a state-issued birth certificate that records your new gender and name is necessary. For the third gender option this doesn’t matter at present because you cannot have “X” on your driver’s license yet (see footnote #1), nor do other state or federal

government agencies recognize them. However, Spice is clearly seeing that the DOH's birth certificate change is part of a larger overall movement with Washington State government to allow more freedom to Trans people to have proof of identity that is congruent with their gender identity and expression.

### **Let's talk about sex ... designations**

As noted most media accounts used the term "sex designation" and some variation on "change of gender" to describe what was taking place. This is the standard language that is applied within the court system when discussing matters of gender or biological sex. That standard has been evolving ever since feminists began questioning how gender was defined in the law in cases of discrimination against women.<sup>27</sup> While 'sex' is less frequently used in popular culture as a way to describe gender, the tradition persists within media because of its conservative nature and caution in not appearing to have taken a side with a particular issue. The media outlets that used terminology other than 'sex' or 'sex designation' came mostly from the alternative press with newspapers and television outlets adhering to the more conservative descriptors.

*KIRO 7*, alone among television media outlets took some pains to provide additional context to the policy rollout. In *KIRO*'s piece, recent historical evolutions of state regulations regarding gender identity and state documents were covered, as was what this administrative law change means to minors and the different rules that apply to them for changing their "sex designation" on a birth certificate. By doing so *KIRO* created space to consider what gender is, how transgender people think of themselves, and what exactly it means to be trans. Discussing the Gay & Lesbian Alliance Against Defamation's (GLAAD) view of the policy rollout the article quoted their spokesperson as saying: "Gender identity does not refer to sexual orientation or to

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<sup>27</sup> Of interest but outside the scope of this paper are the questions of who was supporting this rule change and what discourses were they using to promote their point of view.

people with indeterminate gender” (KIRO, 2018). KIRO put this quote in between two separate paragraphs unpacking the definition of “non-binary as people who experience their gender identity and/or gender expression as falling outside the categories of man and woman” (ibid) and then describing this as an internal and a deeply held sense of gender. They end the section with a comment about how “their own internal gender identity does not match the sex they were assigned at birth” (ibid).

It’s easy to be taken aback by the amount of transgender activist discourse in the KIRO piece. Rather than viewing gender as something that happens at birth and is strictly female and male, the discourse is questioning this simple binary and making room for the varieties that exist under the trans umbrella. Despite this bit of sympathetic explanation, KIRO chose to end their piece with quotes from the Family Policy Institute of Washington (FPIW) and their essentialized biological binary gender views, giving them the last word.

### **Throwing pebbles**

Within some of the articles were some sympathetic portrayals of trans life and the unique perspectives we have about ourselves and how we relate to society. The *Seattle Met* article speaks to Ellensburg resident Tiffany Metzger, who identifies as both female and male. Describing their gender journey Tiffany recounts how they are “both equally male and female in my person” (2019). Metzger made the journey from Ellensburg to Tumwater when the State Department of Health was holding public hearings about the then potential change. In the article Metzger states the reason they think the “X” designation matters: “It’s really important, as we’re accepting the diversity in our country that we make it known. And we make it known by putting it on official documents” (ibid). Any media outlet with the city limits of Seattle could have throw a pebble and it would hit a person who self identified as outside of the two binaries. That they chose to use someone from the Eastside of the Cascade Mountains, which is known as a more politically conservative part of the state to illustrate how this change plays out in

individual lives indicates an effort to make this change more politically and socially palatable statewide, not just within the Seattle metro region.

### **Non-binary people get no respect**

Not one of the media accounts in their lead paragraph made note of the fact that the third gender option only applied to gender nonconforming individuals who exist outside of female and male. The *Seattle Met* revolves its story around a non-binary individual, in this case Tiffany Metzger, as does the article in the *Seattle Weekly*. These stories of living outside of the gender binary serve as frames through which each media outlet can tell a larger story about how this change in administrative law affects individuals, rather than reporting on it as a phenomenon within the broader culture. It certainly is that in a larger context, but ultimately it is about individual Washingtonians, non-binary ones, being given the opportunity to have a birth certificate with a sex designation marker that matches who they are.

The non-binary designations within the trans spectrum seem to cause the most difficulty for cisgender people. Inevitably you end up getting some variation of the “what are you?” question. Binary gender trans folks get a certain amount of pushback in society, particularly trans females (Serano, 2007), but the gender non-conforming members of the trans community get the most because of how engrained the female/male ethos is Western society. Many of the articles made an attempt to address this, as the gender “X” story is not one about females and males, but about people outside of that binary. They just couldn’t explicitly state that apparently.

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### **Conclusions**

Third gender options (X) are but one legal step on the road to a society with considerably less emphasis upon sex-designations and gender identities, one that embraces and empowers

transgender individuals and provides them the means to achieve their own dreams on their terms. Most of the infrastructure to put these changes into play is already in place. Within existing anti-discrimination laws, we already have the fundamental building blocks needed to inspire and bring about positive institutional change before conflict arises and lawyers must get involved.

To get to a place where sex-designations matter much less, society will have to ask itself some hard questions about gender as a tool of identity mapping, and make fundamental and also profound cultural changes. The questions would be about the necessity of policies that are based upon formal or informal sex-classifications. They need to be analyzed as to whether they are harmful or not. We also need to have a conversation around the question: Does gender matter at all?

Practically, the changes most needed would be an overall minimization of the use of gender as an administrative identity marker. This would involve retaining and also redesigning some of the uses of sex-designations, such as in employment, to ensure that the harm of sex-identity based discrimination is reduced for example. Census data would be another.

### **Welcome to the gender revolution taking place all around you**

The gender revolution that has occurred in American society since the 1990s has altered the language and the cultural reality of what gender is and what it is not. Metaphorically it has connections with the rise of cybernetics and science fiction, provoking fundamental questions about the nature of what makes a human. During this time trans representation has greatly increased within the arts, media, and politics. So much so that gender can and should be recognized as one of the queerest cultural concepts of the present moment. While much remains to be done to liberate trans people from the tyranny of gender, it is beyond debate that trans people are now part of the collective socio-political landscape. That genie is out of the bottle and not going back in. There is a little bit of irony in the fact that anti-trans forces within the federal

government presently, by relentlessly and heartlessly going after trans people by denying them any legal protections within federal law, and literally erasing all mention of them within federal departments and databases has created a pro-trans backlash as more people become aware of the Trump Administrations draconian policies.

Binary gender systems had quite a run within Western liberal democracies. However, ultimately they are not sufficient to the task of representing the actual kaleidoscope of genders that exist in society. A good example would be a baby born to transgender parents. Setting aside the child's own gender, the parents greatly problematize the binary-based assumptions that underlie state-issued birth certificates. In a routine birth to a cisgender heterosexual couple the original sex-designation is entered onto an official original birth certificate right after birth and later given to the "mother" to complete. "She" fills out a form which includes other biographical information about herself, but also who the "father" is. These notions get turned on their head when one or both parents are trans. This standard procedure is exposed for its antiquatedness in the face of queer and/or transgender parents. The reality is that not all parents who deliver the baby identify as female "mothers," and the other parent isn't always a self-identifying male "father." There is a saying in transgender circles used to remind us that there is no right way to be trans: 'some women have penises; some men have vagina's'. In reality, the parents' legal identities (name, residence, date of birth...etc) are far more important and relevant than their gendered ones. As an example of what the form recording a live birth could look like without the binary gender markers the hospital could mark one the "delivering parent" and the other the "second parent."

### **Centering transgender experiences**

Most cisgender people will never have their gender-based identity questioned by administrative agents. Trans people have a much higher risk of negative outcomes when being

asked to show legal documents proving identity and that they will be asked at an exponentially higher frequency than others. Our legally designated gender identity is there on our various forms of identification for inspection by agents. These agents, whether in the public or the private sector, have great freedom in whether they choose to inspect them or not and how they proceed from there. This discretionary power is the very mechanism by which gender-based identity discrimination is most often policed and enforced. That is why liberal legal strategies of accommodation and assimilation, as well as criminalizing discrimination, are inadequate to addressing the problem of anti-trans violence. The mere act of having to prove your identity and gender fits within arbitrary and antiquated administrative categories and this creates opportunities for exclusion and marginalization which can and often does lead to actual verbal and even physical violence.

Third gender options are but a small part of an answer to Doan's (2010) question of whether or not there were "social and spatial contexts that empower the performance of non-binary genders" (Pg. 649)? A decade later society must now ask: if so how do they work and can they be replicated to reduce the tyranny of gender? The other part of this question is asking how we move the public discourse around trans subjectivities away from stereotypical portrayals of hyper-sexualized deceivers to citizens worthy of the same opportunities and respect as everyone else. In that sense, the rollout of the third gender option in Washington State and in other states and cities that have adopted them has produced some progress. The conclusion reached as a result of this research is that the discourse used to educate and inform the public about the new third gender option policy overwhelmingly employed empowering, sympathetic, and trans affirming linguistic structures. That this is an important step forward for transgender acceptance as it centers us as humans deserving of every right and privilege the state offers to its cis residents. It shows that at the grassroots level there is a shift towards agreeing with the notion that trans people deserve dignity and the same chances to find happiness as cis folks.

Ultimately, I reached the conclusion that the “X” third gender option exists firmly within established liberal legal reform efforts centered on accommodation and assimilation and as such is not a huge step forward. Stating that however, doesn’t take away from how revolutionary third gender options are for recognizing the existence of non-binary people and how they are discussed within culture and society. “X” is making inroads to legitimization of non-binary identities and puts a greater focus on inclusivity for trans citizens at the state level, and this is spreading nationally and globally. At its best it loudly says that the state recognizes the importance of non-binary people as full citizens, and that all trans people deserve to take full part in society along with everyone else.

However, as Dean Spade and others have pointed out this leaves intact the underlying bureaucratic structures (sex-designations) that are the very source of sex-identity based discrimination. In the end, it’s still an accommodation designed to facilitate easy assimilation, not trans liberation.

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