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The madness is catching : transsexuality and the Cartesian subject.

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THE MADNESS IS CATCHING:
TRANSSEXUALITY AND THE CARTESIAN SUBJECT

By

Andrew Edward Clark
B.A., University of Louisville, 2009

A Thesis
Submitted to the Faculty of the
College of Arts and Sciences of the University of Louisville
in Partial Fulfillment of the Requirements
for the Degree of

Master of Arts

Department of Women's and Gender Studies
University of Louisville
Louisville, Kentucky

May 2011

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A Thesis Approved On

April 5, 2011

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Thesis Director

DEDICATION

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ABSTRACT

THE MADNESS IS CATCHING: TRANSSEXUALITY AND THE CARTESIAN SUBJECT

Andrew E. Clark

April 5, 2011

This project uses the work of Michel Foucault and Lynne Huffer to examine the creation of the transsexual subject in 1950s American sexology through the Cartesian subject. I argue that medical professionals utilized the Cartesian subject as a standard to create and classify transsexuality as deviant. Further, through their joining, medicine and psychology positioned the transsexual subject in both madness and abnormality. Such a position leaves transsexuals in a subject position that cannot speak for itself and requires medical qualification. I demonstrate how such a subject position, created through medicalized discursive practices, carries over into judicial discourse. I find that the judiciary demands transsexuality be spoken, but utilizes medical discourse to define and interpret transsexuality. Examining *Ulane v. Eastern Airlines*, I argue that the tropes of the transsexual act as techniques of Cartesianism that require transsexual subjects conform to a properly aligned interiority/exteriority and mind/body.

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INTRODUCTION

À CÔTÉ DE LUI: POSTMODERNISM, CARTESIAN SUBJECTIVITY AND DISCOURSE ON TRANSSEXUALITY

A Subjective Explosion

In 1952 the media erupted with the news of an Ex-GI Turned Blonde Beauty. Christine Jorgensen, then just thirty, returned to the United States after her successful sex reassignment surgery and became an over-night sensation. Jorgensen's face covered the front page of newspapers and inspired thousands of others to follow in her footsteps. Classy and ultra-feminine, Jorgensen utilized her image to become a writer and a performer with a successful career. Her autobiography was a best seller, and her story was the inspiration for countless other popular representations of transsexuals.

Jorgensen in many ways had a relatively normal childhood. As Dr. Harry Benjamin indicates in the introduction to Jorgensen's 1967 autobiography *Christine Jorgensen, A Personal Autobiography*, "There was no broken home, no weak or absent father with whom the little boy could not identify. These are still the favorite theories of many psychologists and psychoanalysts to explain the transsexual state, but they do not fit into the childhood of Christine Jorgensen."¹

Despite her rather normal rearing, Jorgensen still experienced discomfort with her body and other people's reaction to her body, demeanor, and interests during childhood.

Swimming with some local boys at a “swimming hole” in upstate New York, Jorgensen writes that the boys would often say, “ ‘C’mon, George,” they challenged. ‘Why don’t you swim in your birthday suit like we do?’”² Although Jorgensen liked to swim, she could not get past wearing a complete bathing suit, both top and bottom, and lied saying that she would be too cold. Once Jorgensen started school, she encountered just how scathing people could be. At school, a teacher found some needlework in Christine’s desk. When she (then known as George) returned from recess, she found that it was missing. She didn’t notice that her mother was there in the classroom waiting for her return.

In the silence that followed, the teacher took an object from her desk. “Is this yours?” she asked, with a prim little smile, holding the precious needlepoint just beyond my reach.

“Yes” I answered. I felt the quick sting of tears, the blood rushing to my face and heard a hot little breath such in behind me in excitement. I reached out to take the needlepoint from her hand, but she withdrew it sharply and faced my mother.

“Mrs. Jorgensen, do you think that this is anything for a red-blooded boy to have in his desk as a keepsake? The next thing we know, George will be bringing his knitting to school!”

There were titters from the class which she didn’t try to silence. I glanced at Mom. Her lips were quivering and her face flushed. “I’ll Take care of it,” she said quietly, and guided me ahead of her out of the classroom.³

The shame that Jorgensen felt from her teacher continued through her adolescence. After a brief stint in the Army (from 1945 to 1946), she returned home looking for a stable job and determined to hide her feelings. Jorgensen was living in Hollywood at the time trying to make it as a photographer. Visiting Helen and June (a couple of friends), Jorgensen finally expressed her feelings. They suggested that she might be homosexual, though Jorgensen insisted that she felt like a girl. Recalling his childhood Jorgensen told

them, “Gradually, of course, I had to accept the things that were forced on me. ‘In other words,’ June interrupted, ‘you only did the things you had to do because they were expected.’”⁴ Here Jorgensen learned that Denmark (where Helen had been traveling) viewed sexual problems as normal, not something shameful or criminal. Although her desire to obtain medical help increased during this time, Jorgensen did not seek a doctor.

Jorgensen, of course, went on to become the twentieth century’s most well-known and successful transsexual. I bring up Jorgensen here not to discuss her fame or her success as a performer and film editor. Instead, I want to highlight the feelings that Jorgensen had, starting in childhood and continuing into young adulthood. While it seems that Jorgensen has some misgivings about her body as a young child, the critiques and snide remarks of others exacerbated Jorgensen’s feelings of shame and guilt. Jorgensen felt as if she were a girl, though she had the body of a boy and was raised to act like a boy, and internalized much of the shame she felt around others.

It is this narrative of feeling different, and the turning inward of shame and guilt that leads me to discuss transsexual subjectivity, or rather the creation of a transsexual subjectivity in the 1950s. Though Jorgensen was not the first transsexual, she was by all accounts the most popular with the media. Her presence led to an explosion of writing about transsexualism in the United States, starting with Harry Benjamin and his associates. The writings of medical and psychological professionals are littered with narratives similar to Jorgensen’s – full of anxiety and fear.

I believe that this anxiety and fear – though personal for Jorgensen – characterized the social mindset for much of the United States in the mid-twentieth century. As Margot Canaday argues, the bureaucratic state, having just finished a war,

was trying to find ways to deal with the influx of male workers coming back to the states. The number of workers far outnumbered available jobs. With the help of certain government programs and the GI-Bill, some were able to find work, while others – such as those with a “pink” discharge for being gay – were only possibly covered under the GI bill. These anxieties about the labor force and masculinity, combined with an increased drive in consumerism aimed at women, concerned literary critics, writers and artists more generally. In exploring the effects of war, the seeming instability of gender roles, and the move toward entertainment and consumerism, writers, critics, artists and philosophers started the postmodern movement as a critique of modern industrial capitalism.

It is within this context that I wish to couch the creation of the figure of the transsexual. Against this backdrop, as we will see, several factors went in to the production and elaboration of the figure of the transsexual⁵ and its “proper” narrative. In a way, we could read the figure of the transsexual as *the* postmodern figure because of its questioning of the foundations of what we believe to be a *rational* subjectivity. Using the work of Michel Foucault and Lynne Huffer as guides, I examine transsexual subjectivity through the linking of discursive fields and the production of the figure of the transsexual and its various tropes. In looking at discursive fields, I am interested in institutional discourse and how it creates subjectivity positions. Personal experience also shapes and informs subjectivity, but for the purposes of this project, I am bracketing the personal in an effort to better examine the institutional side of subjectivity creation.

I argue that the transsexual – positioned as both abnormal and mad – is defined against a normative Cartesian, or “rational,” subjectivity. Focusing on the Cartesian subject highlights a conception of subjectivity under explored in transsexual and queer

theory. This analytical lens shows the workings of rationalism, a deeper way of not counting, and that transsexual subjectivity is, at its base, created in medicalized unreason. Through the linking of medical, psychological, and judicial discourse, we can see just how transsexual subjectivity is always already questionable and subjected to interpretation from the discursive fields. While the linking of discourses can be productive for transsexual patients and trans activists (I am thinking here of Joanne Meyerowitz's description of the "Liberal Moment"), the unintelligibility of transsexual subjectivity always requires interpretation through the medical and psychological fields.

Postmodernism and the Critique of Reason

Is it possible that the alignment of postmodernism and the creation of the figure of the transsexual is mere coincidence? In the sense of traditional history, yes. It could be that the anxieties produced through World War II, the rise of science and the cold war led to the postmodern critiques of society, and the simple advancement of Science (with a capital "S") "naturally" led to the discovery of the transsexual in the 1950s. Yet looking at the birth of the transsexual in this manner leads to a few problems.

First it keeps history in a box – or rather divides history into parts, fracturing history into the history of "things." For example: the history of Science, the history of war, and the history of the United States. These demarcations of history seem to be coherent and self-explanatory. Yet when put to the test, we can see that these *histories* overlap and overstep their bounds. If each of these seemingly coherent categories constitutes a discursive field, then the slippage between fields alludes to what Derrida believed to be the false center of discourse.⁶ We assume that there is a "center," a

coherent sign around which discourse is organized. Yet as Derrida shows, there is no center, only the substitution and play of centers. While we can use such arbitrary markers or categories of history such as “the history of Science,” Derrida reminds us that these categories are both the cause and effect of discourse.

If the divisions of history are arbitrary (albeit sometimes useful), then saying that the creation of the figure of the transsexual and the critiques of postmodernism are separate is equivalent to saying that the history of Science and the history of war are separate. The same anxieties that produced the postmodern movement contextualize the creation of the figure of the transsexual. As Susan Stryker argues, the public’s fascination with Christine Jorgensen is no doubt part of the anxieties around masculinity and the general fascination with the advancement of science leading up to the 1950s.⁷

Thus postmodernism can be used as a context and a lens for reading the figure of the transsexual. I use postmodernism to examine the figure of the transsexual and its creation during the 1950s. I am not saying that subjects similar to transsexuals were not present prior to the 1950s. In fact, just the opposite is true. Various sexologists in the late 1800s wrote about “inverts” that felt they were trapped in the wrong body. Rather the postmodern lens shows how various discourses change, link, diverge and play through repetition and substitution. These linking and splittings of discourse provide a reading of the transsexual figure that is more than a history of transsexuality. The postmodern lens highlights that discourse itself produces subjectivities, indeed multiplies and refines them in infinite play.

Thinking of transsexual subjectivity in terms of postmodernism and discourse leads me to ask *under what conditions does the figure of the transsexual appear?* This question is undoubtedly complex and far beyond the scope of this paper, but a quick word just to indicate the complexity at hand. In order for the transsexual to appear as it did in the U.S. in the 1950s, there had to be a concept of sex – and more importantly a binary system of sex that is male and female. Further there had to be an understanding of the proper function of “sex” in both senses of the term, as in male/female and the meaning and physical act of sex. But an understanding of “sex” is not enough. We had to find a way to rationalize sex, to examine it and understand sex – how it worked, how we did it, why we did it, its purpose, its morality etc. Thus medicine (and its particular branch, sexology) had to be conceptualized and developed. Medicine and psychology had to refine the concept of the abnormal and the mad, an effort to define what is “normal” through the explicit examination of what is unnatural or unreason. The list of conditions could go on.

The figure of the transsexual was created in the setting of American sexology in the mid-twentieth century. In *Disorders of Desire: Sexuality and Gender in Modern American Sexology*,⁸ Janice Irvine argues that the fledging field of sexology walked a fine line between outside influence (second-wave feminism, homophile movement, gay liberation) and legitimation through medicalized standards. Given the anxiety about gender roles, the family, and sexuality more generally, Irvine argues “sexology hoped to build and expand a market through addressing cultural fears about the survival of heterosexuality and the institution of marriage.”⁹ Thus sexology tried to legitimate its own position as a medical field through using medical language while also tapping into a

service market. Sexology was comprised of not only medical doctors and psychologists, but also a variety of sex therapists and self-help writers who all tried to address – in one way or another – the anxiety surrounding gender roles and American’s “sex” problem.¹⁰

Out of fear, the medical sexologists instituted trade journals, conferences and institutionalized programs in an effort to standardize the field of sexology, yet the very ideologies/findings of sexology provided a way to undermine the developing field.¹¹ Irvine shows how the work of Alfred Kinsey, William Masters, and Virginia Johnson provided increased knowledge about changing sexual mores and practices in modern American culture. While American sexologists were examining the laxity of sexual mores in an effort to “fix the conjugal bed,” publications like *Newsweek*, *Time*, and couples or sex manuals were promoting sex in articles and in advertisements.

Within the mixed messages about sex and sexuality, the figure of the transsexual appeared as a gender variant medical/psychological personage. Irvine argues that sex reassignment surgery, though not performed widely, was part of the “mid-twentieth century transformations in social and economical arrangements [that] created optimal conditions for sexology to take root, expand, and ultimately market interventions.”¹²

While Irvine focuses on the contentions within and external to sexology, other historians focus on the mid-twentieth century need to pin down or stabilize sex. In trying to parse out a “history” of transsexuality, academics and activists alike have chosen “sex” to be their primary analytical category. In *How Sex Changed: a History of Transsexuality in the United States*, Joanne Meyerowitz examines how notions of “sex” were challenged, redefined and changed through transsexual patients, doctors and

transsexual activism. She argues that transsexual patients were not “dupes of gender,” but rather, “that they were ordinary and extraordinary human beings who searched for workable solutions to pressing personal problems” and that “their struggles show us how sex changed in the twentieth century.”¹³ To show how sex changed in the mid-twentieth century, Meyerowitz examines medical professionals, their patients, and the ways in which transsexuals instituted certain practices as modes of resistance using “the language and cultural forms available to them.”¹⁴

In the chapter “A Fierce and Demanding Drive,” Meyerowitz contextualizes the transsexual desire to change sex in the 1960s in an era of “[the] pursuit of self-fulfillment [and]... ‘self-actualization.’”¹⁵ Yet in their pursuit to change their bodies, transsexuals “bumped up against the power of medical gatekeepers, the costs of commodified medical care, and the limits of technology.”¹⁶ In their persistence, some transsexual patients were able to find doctors to help them. This “fierce and demanding drive” led some doctors to believe that transsexuals were psychopaths, which created a doctor-patient relation fraught with problems.¹⁷

Transsexual patients also took to the courts to lobby the judiciary for rights. In the chapter “The Liberal Moment,” Meyerowitz examines how transsexual patients were able to use the liberal ‘60s and ‘70s, “taking on the task of defining the legal meanings of sex and gender, of who counted legally as a woman and who counted legally as a man. The public process of redefining sex, seen earlier in the press and the medical literature, had found its way into the law.”¹⁸

Susan Stryker presents a much more political transsexual/transgender history in *Transgender History*.¹⁹ Stryker highlights the transgender activism in the late '50s and early '60s by examining events like the Compton's Cafeteria Riot of 1966 in San Francisco, in which a melee broke out over an officer harassing one of a group of street queens.²⁰ This kind of harassment prefigured what Stryker calls the "Difficult Decades" of the late 1960's and '70s. As more universities picked up gender identity clinics – like those at UCLA, Stanford and the University of Texas – transsexual patients quickly realized that "the new university-based scientific research programs were far more concerned with restabilizing the gender system, which seems to be mutating all around them in bizarre and threatening directions, than they were in helping that cultural revolution along by further exploding mandatory relationships between the sexed embodiment, psychological gender identity, and social gender role."²¹ Rather than questioning the relationship between sex and gender, medical professionals strove to maintain static notions of sex and gender – choosing to provide proliferation of sex and gender categories through abnormality.

In "I Went to Bed with My Own Kind Once: The Erasure of Desire in the Name of Identity,"²² David Valentine looks at the cost of taking on an identity produced through a neat system that accounts for both gender identification and erotic desire. Valentine shows that our need to pin-down sex, or codify sex and gender expression through binary categories, marginalizes those whose identity markers do not fit neatly into the system. He says, "things are not always so clear cut, for frequently, as I will show, erotic desires expressed in speech can conflate, confuse, and contradict this neatness."²³ Focusing on speech, or the way in which categories are used in speech,

Valentine shows how some subjects use categories of sex, gender, and sexuality interchangeably to express themselves, often employing contradictory categories and thereby defying strict binary categorization. Studying the speech of various members of an alternative lifestyles group in New York, Valentine records the various ways in which one subject – Angel – reports her identification(s) and the discomfort her conflicting identity produces for other members of her alternative lifestyles group. This discomfort, Valentine argues, points out the limits of identity and the way in which desire and self-expression are erased while also highlighting our need to pin-down and categorize sex, gender, and sexuality.²⁴

What Meyerowitz, Stryker and Valentine have in common is their use of “sex” as an analytical framework. By using “sex” to analyze transgender history and identity, each author in his or her own way points to the ways in which the dichotomous system of sex, gender and sexuality were examined, challenged, and redefined or restabilized through the figure of the transsexual. While using “sex” as an analytical category is helpful in showing our need or desire to pin-down/redefine sex and that desire’s effects on subjectivity, I suggest that there is a need to look at transsexuality through lenses other than just “sex.” Because the figure of the transsexual questions so many boundaries regarding sex, gender, sexuality, abnormality, madness, subjectivity, and the stabilization of categories/systems, examining transsexuality and transgenderism only through the lens of “sex” produces a limited reading of transsexual history and subjectivity.

Rather than examine the figure of the transsexual through the category of “sex,” I suggest that the concept of Reason shapes and frames sex and sexuality in a way that, when examined, provides a nuanced understanding of transsexual subjectivity. Reason,

or the desire for reason, undergirds sex and sexuality. In *Sexuality One*, Foucault argues that “‘Sexuality’: [is] the correlative of that slowly developed discursive practice which constitutes the *scientia sexualis*. The essential features of this sexuality are not the expression of a representation that is more or less distorted by ideology, or of a misunderstanding caused by taboos; they correspond to the functional requirements of a discourse that must produce its truth.”²⁵ The need or desire to make meaning out of sex, our very need to parse sex into acceptable/unacceptable practices, alludes to a desire to rationalize sex, to find the “truth” in the discourse of sex. Thus the notion of *reason* shapes and informs discourse. It is at once the constituting concept of discourse (I am thinking here of the very order of language and its division into the sign, signifier and signified) and its effect.

Given this constitution-effect position of reason, examining the division of reason/unreason and its influence in the categorization of sex, sexuality, and identity will help us better understand our desire to pin down sex and divide sexual practices and identities along the lines of reason and unreason. Since the Enlightenment – and particularly in the eighteenth century – there has been a shift in how we view sex and sexuality that causes a further division of sexual practices and the production of sexual identities. I am not making the argument that necessarily *new* identities have been created, but rather a recentering of discursive fields that fractures “normal” or “natural” sex practices and sexual identities.

The Madness is Catching

It is reason, or rather the postmodern critique of reason that I offer as an analytical frame. “Rational subjectivity” is coherent, divided between the interior – the thinking self – and the exterior body/world. Descartes identifies this subjectivity as a thinking being that is present and can know its world and self because it has reason and perception. Reason is the ability to know that which is right and that which is wrong or evil and thus determine a right way of being/living. The Cartesian subject, the subject that we’ve been given since the Enlightenment according to postmodernism, holds that we as beings have reason, and utilizing that reason (or the internal thinking part of the self) will help us better humanity.

It is this Cartesian subject that I will use as a guide for the examination of the transsexual. In *Mad for Foucault: Rethinking the Foundations of Queer Theory*,²⁶ Lynne Huffer uses Foucault’s *History of Madness* as a guiding text for rethinking queer ethics and practices. She argues in “How we Became Queer” that unreasonable erotic expressions were grouped under the general category of madness and split from reason. Positioned as such, Huffer argues that *Madness* “is about the internalization of bourgeois morality which produces, eventually, the ‘fable’ of an inner psyche, soul, or conscience.”²⁷ Because such interiority is produced through shame and guilt from external formations of morality, it is what Huffer and Deleuze calls the “fold” of the outside.

This splitting of the subject and the splitting of unreason from reason is what Foucault calls the “Cartesian Moment” in *Hermeneutics of the Subject*.²⁸ Huffer

contends that this double splitting calls being into question. If the split of reason and unreason served to render certain bodies and practices mad while holding others up as normal, then what should be our approach to queer ethics? Or put another way, in what ways should we be listening and reconceptualizing the mad? It is this question that Huffer tries to answer through her examination of *Madness* and her critique of queer theory.

Huffer critiques both Judith Butler and Lee Edelman for maintaining the status of the inner psyche, or rather not questioning the ways in which the fable of an interior self creates subjects that are derogatorily queer. While performativity theory questions the relationship between sex and gender through discursive practices, it crystallizes the psyche through the inversion of sex and gender, rather than questioning the division of an interior/exterior that performs and comes to be the sign of sex. Similarly, Huffer critiques Lee Edelman's *No Future: Queer Theory and the Death Drive*²⁹ in which Edelman argues that queers should embrace the role given to them, this subjectivity with no future or a subject unto death. Huffer believes that embracing such a position, while trying to pull "queer" into a positive and empowering term, does not question how the subject-unto-death subjectivity affects queers. Like Butler, Edelman's work leaves the interior/exterior division of the subject unquestioned, simply substituting a new interiority for the old.

This questioning of queer ethics leads Huffer to examine what she calls the "desubjectification" of the subject, or the voiding of the subject. Huffer notes that Foucault – in a Deleuzian way – draws attention to the coextensivity of the subject, or put a different way, the inseparableness of the inside and outside, or the mind and the body.

Foucault “rethinks the subject in her coextension not only with her social, historical, and discursive environment but also, ultimately, with the act of thinking itself.”³⁰ The Cartesian subject resists thinking towards its own limit, or where the inside and outside meet, or mind and body meet. Thinking outside of thinking, outside the Cartesian subject, becomes the specter of madness or the undoing of the subject as we know it. Put another way, the rethinking of the mind/body divide pushes subjectivity to the limit and undermines conceptions of what it means to be a rational, thinking subject with a presence in the world through the body.

Similarly, Huffer shows that Foucault also believed sexuality to be a limit, a “void arrested at the limit ... through the violent, ‘denaturalizing’ languages of logic and nature wielded by science.”³¹ In this way, madness has slowly come to be “madness-as-sexuality.”³² This positioning of madness-as-sexuality, the limit of thinking and language, raises ethical questions for Huffer. How do we move or think beyond the limits of language? Ironically, we have to use the language of reason to talk about madness. The utilization of rational language produces the subjects of madness as unintelligible: those thinking the limit are “a ‘sideways’ encounter with a language that speaks but that philosophy does not know... ‘the philosopher...discovers that there is, *beside him [à côté de lui]*, a language that speaks and of which he is not the master.”³³ Thus this madness becomes “deprived, ‘at every moment not only of what it has just said, but of the very ability to speak.’”³⁴

The denial of the ability to speak is, I believe, how the figure of the transsexual is positioned in madness. Because transsexualism, the desire to alter one’s body to match the “interior” sex, is expressing a desire that is beyond the limit of a Cartesian rational

subjectivity, it requires the creation of a rational language (or the play of discourse) to speak of its irrationality. Or put another way, transsexuality requires interpretation for reason to comprehend it and arrest its movement toward the limit of being. This is the function of the medical and psychological communities – to act as containment fields of discourse that express the irrational in a rational way, again splitting and separating reason from unreason.

In addition, or perhaps counter to, the figure of madness, Andrew N. Sharpe in *Foucault's Monsters and the Challenge of Law*,³⁵ argues that the transsexual is a modern representation of what Foucault calls the “abnormal” or monster. Sharpe uses Foucault’s lectures in *Abnormal: Lectures at the College de France 1974-1975*³⁶ to frame his discussion of the transsexual (among other modern representations of ‘monsters’). Transsexuals, according to Sharpe, are considered to be “monsters” because of their “double breach, of law and nature.”³⁷ According to Sharpe, it wasn’t until the medical community advanced its surgical techniques that transsexual patients with successful sex reassignment surgeries began to petition the legal definition of sex. He traces the response of the judiciary, especially in the United Kingdom in *Corbett v. Corbett*, through two different legal methods. The first is the “sex is determined at birth” method presented in *Corbett*, the second in reform jurisprudence which seeks to allow litigants to make claims about their sex based on a certain medical state.

The “sex determined at birth” method, Sharpe argues, rests in a judicial anxiety to keep rigid lines of sex difference for the purposes of procreation and marriage. Yet under examination, Sharpe finds that Ormrod J’s decision is not as stable as he may wish. Ormrod J acknowledges that he was lucky to be faced with a transsexual, for “the

difficulty would be acute in the cases of testicular feminization and testicular failure.”³⁸ Such a strict definition of sex created through anxiety about the blurring of sex difference and the possibility of same-sex marriage does not work well, and in fact highlights other possible aberrations of bodies under the law.

The second method that Sharpe presents, reform jurisprudence, is perhaps just as dubious as the “sex determined at birth method.” While reform jurisprudence has allowed post-operative transsexuals to make a claim about their sex, it does not allow those that are pre-operative or who do not wish to undergo the knife to make a claim about their sex. Thus, “while reform jurisprudence has, at least ostensibly, brought the post-operative transsexual within the law, it would seem that the exclusion of pre-or non-operative transsexuals is informed by their decision not to undergo genital surgery.”³⁹ This places the burden of the monster on the transsexual subject in that transsexuals are expected to submit to normalization. Those “who [refuse] to be normalized, and who thereby [continue] to pose a challenge to legal order, [are] scripted as culpable.”⁴⁰ Yet not even post-operative transsexuals are free from the figure of the monster in English law. Rather post-operative transsexuals, even when encountering the law, come up against barriers that place them back in the figure of the monster. Sharpe notes that, as decided in *Corbett*, the law requires the disclosure of “gender history”: “the fact [is] that non-disclosure, what the courts prefer to describe as inter-personal ‘fraud’, has assumed special significance in relation to legal consideration of sex claims.”⁴¹

Even in the liberal framing of reform jurisprudence, Sharpe believes that the law still returns to the body. A section of his conclusion is worth citing at length for its allusion to Cartesian subjectivity and the legal/medical focus on the body.

Both the mind and the body can constitute a monstrosity in law. Interestingly however, the body proves resilient to reform. For, in thinking about the Gender Recognition Act, it is necessary to invoke a distinction between substance and legal reform. As already noted, it is clearly the expectation of the UK government that surgery will occur. Moreover, the absence of surgery must be explained by medical report and it may serve to cast doubt on a diagnosis of gender dysphoria and therefore block the avenue to legal recognition. The body, and therefore the relevance of the older meaning of the concept of monstrosity as morphological irregularity, also reasserts itself through a legal requirement under the Act to disclose gender history. Here law returns to the body and, more particularly, to biological “truth” as the ultimate arbiter of what it means to be male or female and therefore human.⁴²

Here Sharpe lists both the mind *and* the body that can constitute the monster in law.

Under the Gender Recognition Act in the United Kingdom, transsexuals are allowed to change their legal status of gender post-surgery. For all intents and purposes – especially that of marriage – once the operation is completed and the legal paperwork filed, that person is considered to be their desired gender. Yet the law creates an imbalance because it requires 1) that the transsexual patient have surgery in order to claim the legal status of their gender and 2) requires that each post-operative transsexual reveal their ‘gender history,’ again, especially where marriage is concerned. Thus the figure of the transsexual, even in liberal circles, is still figured in the monstrous or the abnormal, now more than ever through bodily means. Should a transsexual not wish to have sex reassignment surgery, he or she is not considered to be normal, but rather abnormal or monstrous.

Here, with both Huffer and Sharpe in mind, I am interested in the simultaneous linking and splitting of discursive fields. In *Abnormal*, Foucault discusses the ways in which discourses are considered to be true, or the ways in which certain discourses gain validity. He shows quite convincingly that, when faced with a “monstrous” figure, the

Law seeks out other discourses to utilize so that it can successfully pass judgment. Specifically he shows how psychology is called in to testify when the Law is faced with a figure that it cannot understand, or for which it cannot pass judgment. The criminal with no motive, or the criminal with no psychosis or delusional state, became a problem for the judiciary in the mid-nineteenth century. The monster of the seventeenth century (a figure who was half-man, half-animal, or a mixture of both sexes, or otherwise some freak of nature) to interesting twists and turns through discourse, becoming by the eighteenth century the “individual to be corrected,”⁴³ and later the child masturbator or the “abnormal individual” in the nineteenth century.⁴⁴

Through the linking of discourses – the psychological to the juridical – Foucault shows that the “monster” or the “criminal with no motive” was slowly turned into a case history, a past, and a tendency that represented the crime in the criminal before he could commit the crime. This “laughable” form of discourse, utilized by psychologists, traces the criminality of the criminal back to childhood, a move that “introduces different techniques that for a sort of third, insidious, and hidden term, carefully cloaked on all sides and at every point by the legal notions of ‘delinquency,’ ‘recidivism,’ et cetera, and the medical concepts of ‘illness’ et cetera.”⁴⁵

This production of the “abnormal individual” through the normalizing yet laughable (in that the production is rendered in puerile language) effects of power allows various State apparatuses to develop a “refined ... general technique of the exercise of power that can be transferred to many different institutions and apparatuses.”⁴⁶ This general technique of power that is transferrable allows us to think differently about the “abnormal individual” and the figure of the transsexual. As we will see, medical and

psychological professionals later took up the narrative initially used by transsexual patients. This utilization of “the” transsexual narrative traced the vestiges of transsexualism (as with Jorgensen) to childhood. As the figure of the transsexual came before the judiciary in the mid-twentieth century, medical and psychological professionals – already exercising power over a medicalized condition – testified before the judiciary, effectively transferring the figure of the transsexual and its narrative to another State apparatus.

These techniques allow for the transferral of power from one apparatus to another is what Foucault more explicitly examines in his essay “Omnes et Singulatam.”⁴⁷ In this essay Foucault argues that the State and the way in which power is exercised through various state apparatuses (both linking and splitting to reinforce and create new discursive fields) becomes a totalizing and individualizing apparatus. Totalizing in that life, or *bios*, becomes part of the *polis*, or the function of the state.⁴⁸ Individualizing in that the powers exercised through various apparatuses effects and controls individuals, or put another way, comes to exercise power on individuals acutely.

It is the linking and splitting (or refining) of discursive fields that produce the individualizing and totalizing effect. The figure of the transsexual in the U.S. context was first encountered in the medical profession. Because of the status of the medical and psychological fields as scientific, their assessment of transsexualism was taken as a general truth. Later, when transsexuals sought rights through the judiciary, the medical and psychological communities were called in to testify as “knowers” of the transsexual state. As such the figure of the transsexual was transferred from one discursive field (medico-psychological) to the judiciary. This transfer has the effect of being both

totalizing and individualizing. As transsexual patients took to the judiciary, they stood before the law as individuals. The decisions of the courts had individual effects on litigants while also having a totalizing effect in that the state became increasingly concerned with “sex” and the regulation/definition of sex.

“Sex” was (and still is) one of the basic ways in which the State parses and categorizes its citizens. As James C. Scott argues in *Seeing Like a State*,⁴⁹ the act of nation building consists of creating and integrating readily usable systems that quickly and easily demarcate citizens of the state. Everything from city-state infrastructure (major-thoroughfares, recourses, etc.) to the obligatory creation of surnames creates a way in which the State can easily identify a citizen in an individual sense. These systems or structures indicate what Foucault⁵⁰ and Scott both believe to be the purpose of the state: management of life. Not that the State cares about individual lives *per se*, but rather that the State takes care of a population, an entity or mass of people that can be divided, categorized and easily understood.

Given the State’s aims at readily identifiable citizens, we can now look at madness and abnormality through a different lens. I argue that the figure of the transsexual could fall under both the heading of madness and of abnormality. I am not saying that transsexuality should be under these headings – indeed my purpose is to rethink how the figure of the transsexual came to be framed in both madness and abnormality. Because the figure of the transsexual, as Sharpe argues, is a double breach of both natural and civil law, the transsexual is subject to both the category of the monster or the abnormal, while also falling under the heading of madness because of its unintelligible rendering of internal desire and external appearance.

These two factors – or the combination of madness and abnormality – place the transsexual in a subject position that is unintelligible or in the best circumstances questionable and subject to surveillance and State interrogation that seeks to return the mad/abnormal personage to society through correction, or to contain the mad/abnormal through institutionalization or heightened surveillance. These two methods are what I call *technologies of Cartesianism*. The first seeks to correct the mad/abnormal through intervention (medical, psychological, etc.) as a way to bring the individual back to the normative fold. Generally speaking, sex reassignment surgery was created to fix the social problem of individuals who did not fit the sex/gender expectations of society. Sex reassignment surgery, while desired by patients, was also a way to “correct” the issue and return the individual to society as a new and “normal” man or woman. The second method is related to the first and later picked up in the judiciary. While there were transsexuals who were committed to asylums because of their condition, few were contained in such a manner. Yet the regulatory function of medicine and the law serve as a containment apparatus that ensures that individuals will uphold the standard of their target gender while being subjected to constant reminders of their “deviant” status through various (and often confusing) regulations and policies.

If, as Huffer and other postmodernists argue, we have lived under a Cartesian understanding of subjectivity since the Enlightenment period and its revaluation of reason, then why should we examine transsexuality and transgenderism? Why not examine homosexuality, bisexuality, or even heterosexuality? What makes the figure of the transsexual a better candidate for examination through a critique of Cartesianism? It is true that just about any identity could be examined through Cartesianism, yet the figure

of the transsexual and its history best displays the effects of such a conception of subjectivity. At the risk of making a rather broad generalization, it is possible to argue that most heterosexuals, homosexuals and bisexuals are comfortable with their gender expression and the “sex” of their physical bodies. Further, while homosexuals and bisexuals could possibly present a narrative that locates their sexuality in an abnormal feeling in childhood, such a narrative focuses on the emotional aspect of having a desire that is counter to social norms. Conversely, the transsexual narrative, while also couched in childhood abnormality, focuses on the dualism of the mind and body, a desire for a forbidden type of expression that is both emotional and physical (of one’s own body). Thus while other figures could possibly benefit from a reading through the lens of Cartesian subjectivity, I believe the figure of the transsexual to be the most productive figure in that the examination of the figure will help us reevaluate how identities are produced and commodified through transfer, repetition and play across discursive fields.

In the first chapter I argue that medical and psychological professionals used a Cartesian subject to interpret their patients’ narratives. Patients expressed feeling as if they were in the wrong body. In seeking help from the medical and psychological communities, transsexual patients asked medical professionals to correct their discordance of mind and body. Initially, the medical and psychological communities fought over which practice could best treat transsexual patients. The medical community believed that psychology and psychiatry did little to help transsexual patients. The psychological community believed that medical professionals were allowing transsexual patients to change their bodies based on a psychological disorder that required psychiatric treatment, not surgery.

Despite the warring medical and psychological communities, both doctors and psychiatrists used a Cartesian model of subjectivity, a rational split of the mind and body. Medicine focused on the body, and psychology focused on the mind. Eventually these two discursive fields joined. This joining of the fields – or rather the incorporation of psychology into the medical treatment of transsexual patients – further reified the Cartesian model. Both fields, working together yet focusing on different parts of the subject, furthered the notion of an exterior body and a rational mind with rational (bodily) desires.

Further, the discursive practices of both fields produced stereotypical tropes of transsexual subjectivity. Many medical and psychological professionals positioned their patients as desperate, conniving, unreliable and suffering from a psychopathic disorder. These generalizations frame the transsexual subject in terms of madness – a subject that is always already questionable and unintelligible. These oversimplified stereotypes became a utilizable subject position for the linking of other discourses. Other state discursive fields, such as the military, the judiciary and the legislature, all adopted the tropes, creating a generalizing belief about the figure of the transsexual that readily legible and easy to manipulate.

To examine the issues presented in chapter one, I look at the works of medical and psychological professionals in professional journals and books ranging from the late 1800s to about 1980.⁵¹ I also examine patient letters to Harry Benjamin and Charles Ihernfeld and their assistant Virginia Allen. These documents show the war between the medical and psychological field through their journal articles and books, while showing the transsexual patient's narrative of feeling trapped in the wrong body and their drive for

relief. In addition, these works show the joining of the medical community in the 1960s and '70s while also showing the creation of the stereotypical transsexual tropes that will later be picked up and examined through other institutions.

Looking at the linking of medico-psychological and judicial discourse demonstrates how the various stereotypes of the transsexual are refigured and played out in other institutions. In chapter two I examine how the various tropes of the transsexual are picked up, refashioned and played out before the court. The linking of discourse and the production of the transsexual tropes function as technologies of Cartesianism in the courtroom. These stereotypes are utilitarian in function, serving to police the borders of “proper” transsexual subjectivity. Looking at the linking of medico-psychological and judicial discourse shows how the stereotypes of the transsexual are refigured and played out in other institutions. This movement of the figure of the transsexual into the courtroom, while potentially restrictive, also provides sites of resistance for transsexual patients. Some transsexuals were able to navigate the judicial system and gain rights based on their transsexual identity. While productive for right-seeking subjects, the position of the transsexual in unreason under the Cartesian subjectivity system requires medical and psychological translators for the court. Faced with an unintelligible subjectivity, the courts call in medical and psychological professionals to interpret transsexual subjectivity.

To better understand the history of sexual deviancy, the body, and the law, I look at Herculeine Barbin’s memoir. This primary source material shows that bodily deviancy and sex were presented before the law in the mid-1800s. Barbin’s memoir, when read

through the lens of Cartesianism, shows that the legal and medical professions then believed in a split mind and body.

Next I examine the law as an afterthought for twentieth-century medical professionals. While the transsexual was part of a media sensation in the early 1950s, the transsexual stayed curiously out of the courtroom until the 1970s. Looking at doctors' writings in medical journals and books, I show how medical professionals discussed the legal implications of sex reassignment surgery. Further I examine letters to discuss how the 1970s were not always the "liberal moment" that Meyerowitz argues it was. While I believe that many court cases were part of a liberal movement to find in favor of transsexual patients, not all of the effects of the figure of the transsexual coming before the law were positive.

Next I examine *Wallace v. Chicago* and *Ulane v. Eastern Airlines*. These two cases show how the transsexual was framed as a danger to the public and as a potential liability to employers. These two cases show how the tropes of the transsexual, produced in the medical community, were utilized in the court system. Although *Wallace* doesn't call for the medical profession in the courtroom explicitly, transsexuality was positioned as a medical condition in two ways. First, the two transsexuals under treatment were allowed to dress as women in public as part of their treatment. Secondly, the dissent in the case shows one of the judges expressly calling for witnesses from the medical and psychological communities. Lastly, because the two transsexuals were arrested for dressing in public as the opposite gender, the court had to answer whether transsexuals were a danger to the public because of their ability to dress differently and hide their identity. Framed as a danger to the public, the transsexuals in the *Wallace* case shows

how the trope of the dangerous and transgressive transsexual can be utilized in law and in the courtroom.

Lastly, I examine *Ulane v. Eastern Airlines*. This document displays several tropes of the transsexual in the courtroom. Fired from her job after transitioning, Karen Ulane sued Eastern Airlines for wrongful termination under Title VII of the Civil Rights Act. Judge Grady was asked if Title VII applied to transsexuals, if Ulane was truly a transsexual, and if Eastern Airlines fired Ulane for her transsexuality. I show that Eastern's defense team painted Ulane as a danger to the public, not a true transsexual, desperate, conniving, and willing to do anything to have her surgery. Judge Grady finds in favor of Ulane after systematically examining each of Eastern's claims for firing Ulane. While this case was a positive decision for Ulane, ultimately medical and psychological professionals were called in to interpret Ulane and her character and subjectivity. Doctors had to explain her condition and her mental and physical state. Her own identity claim as a transsexual made it impossible for her – in this case – to defend herself. The legality of her being was not so much on trial here, but rather her being itself. I argue that the transsexual tropes produced the medical and psychological communities are utilitarian in nature. The judicial and legal fields pick them up, refashion them and use them to construct arguments against transsexual patients.

A Caveat

In the introduction to *Mad For Foucault*, Huffer acknowledges her own ironic position vis-à-vis her project. Looking at the ethical treatment of subjects that is outside the splitting of the subject, Huffer notes her own use of reason and logic in order to make

a claim about reason and madness. Moreover, as a queer person, Huffer also knows that, were she living in a different time, she too would be subject to confinement and labeled mad.

I, too, acknowledge my own positioning vis-à-vis this project. I am also using the language of reason to write about madness/abnormality and the figure of the transsexual. Some might object to this work because I am not a trans-identified person. I do not have the experiential knowledge that comes from feeling a dissonance with one's body, nor do I have the experience of transitioning and living differently in this world under the scrutinizing and demanding gaze of society. Yet in doing this work, I have tried to listen to those beside me, to those that may have been positioned as mad many years ago while also listening to those that tried to help them. Moreover I have tried to let those people speak where the historical record leaves trances of their voice, and I have tried to render their narratives with care.

My hope is to better understand the formations of sex/gendered identities and their function within discursive fields. Because of the historical and contemporary position of trans-identified persons vis-à-vis the medico-psychological community and the State, the transsexual is perhaps the figure that best shows the splitting, utilitarian, and sometimes liberatory functions of identity. With a better understanding of how identities are conceived under the Cartesian subject, I believe that we can problematize identity politics and the efficacy of identity based rights. The splitting of subjectivities, especially where the State is concerned, is never just a personal matter. As we will see, the creation and fracturing of the figure of the transsexual has both subjective and liberatory aspects.

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- ¹ Christine Jorgensen, *Christine Jorgensen: A Personal Autobiography*. (New York, Bantam Books: 1967). WNC.
- ² Ibid., 13-4.
- ³ Ibid., 15.
- ⁴ Ibid., 52.
- ⁵ I use the term “transsexual” here and throughout this work to reflect the usage of the term in mid-1900s American sexology. In more general discussion (especially in chapter 2 and the conclusion) I used the term “transgender” or “trans-” in line with Susan Stryker’s work on the term. Stryker prefers the use of “trans-” because it functions as a prefix that can be attached to multiple nouns, reflecting the contemporary play of the term. In the conclusion, I use “trans-“ and “trans-identified” almost exclusively. See Susan Stryker, “Introduction: Trans-, Trans, or Transgender?” *Women’s Studies Quarterly* 36, nos 3/4 (2008): 11-22.
- ⁶ Jacques Derrida, “Structure, Sign, Play in the Discourse of the Human Sciences.” *Writing and Difference*. (Chicago, The University of Chicago Press: 1978).
- ⁷ Susan Stryker, *Transgender History*. (Berkeley, CA, Seal Studies Press: 2008). 48.
- ⁸ Janice Irvine, *Disorders of Desire: Sexuality and Gender in Modern American Sexology*. (Philadelphia, Temple University Press: 2005).
- ⁹ Ibid., 6.
- ¹⁰ Ibid., 51.
- ¹¹ Ibid, see chapter 3.
- ¹² Ibid., 6-7.
- ¹³ Joanne Meyerowitz, *How Sex Changed: a History of Transsexualism in the United States*. (Cambridge, Mass., Harvard University Press: 2002). 12-3.
- ¹⁴ Ibid.
- ¹⁵ Ibid., 131.
- ¹⁶ Ibid.

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- 17 Ibid, see 153-162.
- 18 Ibid., 209.
- 19 Susan Stryker, *Transgender History*.
- 20 Ibid., 64.
- 21 Ibid., 93-4.
- 22 David Valentine, “I went to Bed with My Own Kind Once: The Erasure of Desire in the Name of Identity.” *Transgender Studies Reader*, S. Stryker and S. Whittle (Eds.) (New York, Routledge: 2006).
- 23 Ibid., 409.
- 24 Ibid., also see 417.
- 25 Michel Foucault, *The History of Sexuality: An Introduction, Volume 1*. (New York, Vintage Books: 1990). 68.
- 26 Lynne Huffer, *Mad for Foucault: Rethinking the Foundations of Queer Theory*. (New York, Columbia University Press: 2010).
- 27 Ibid., 76.
- 28 Michel Foucault, *Hermeneutics of the Subject: Lectures at the College de France: 1981-1982*. (New York, Picador: 2005).
- 29 Lee Edelman, *No Future: Queer Theory and the Death Drive*. (Durham, NC, Duke University Press: 2004).
- 30 Huffer, *Mad for Foucault*, 110.
- 31 Ibid., 111.
- 32 Ibid.
- 33 Ibid., 112, Huffer quoting Foucault. Italics and translation in the original.
- 34 Ibid., Huffer quoting Foucault.
- 35 Andrew N. Sharpe, *Foucault’s Monsters and the Challenge of Law*. (New York, Routledge: 2010).

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- 36 Michel Foucault, *Abnormal: Lectures at the College de France, 1974-1975*. (New York, Picador: 2003).
- 37 Sharpe, *Foucault's Monsters*, 88.
- 38 Ibid 97, Sharpe quoting Ormrod J.
- 39 Ibid., 103.
- 40 Ibid.
- 41 Ibid., 105.
- 42 Ibid., 108-9.
- 43 Michel Foucault, *Abnormal*, 57.
- 44 Ibid., 59.
- 45 Ibid., 42.
- 46 Ibid., 49.
- 47 Michel Foucault, "Omnes et singulatim: towards a criticism of political reason." 1979. <http://foucault.info/documents/foucault.omnesEtSingulatim.en.html>.
- 48 Though not within the scope of this paper, Foucault was not able to join the two primary ideas or themes that present themselves time and again in his work. The theme of power and sovereignty, and the ways in which *bios* (life) becomes part of the state's concern. For more on this topic (biopower and the state of exception) see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. (Stanford, CA, Stanford University Press:1998).
- 49 James C. Scott, *Seeing Like a State*.
- 50 Michel Foucault, "Governmentality." *Power: the essential works of Foucault, 1954-1984*. (New York, The New Press: 1994).
- 51 For the purposes of this project, I do not look at the work of Robert Stoller or David Caldwell. Both worked with transsexual patients, but did not have the notoriety for transsexual research that Benjamin had. My wish is not to give a broad account of transsexual medical history, but rather to show the development of a transsexual subjectivity through medical and psychological discourse. Even

Benjamin, one of the transsexual community's largest supporters, participated in discourse that had ironic effects for transsexual patients.

CHAPTER ONE

AN UNRELIABLE NARRATOR: THE LINKING OF MEDICAL AND PSYCHOLOGICAL DISCOURSE, TRANSSEXUAL FIGURES AND CARTESIAN TECHNOLOGIES

Although Foucault does not address the figure of the transsexual in *History of Madness*, he discusses how those declared mad were viewed as unintelligible subjects and a danger to the general populace.¹ In extending his argument, I suggest that the figure of the transsexual, as demonstrated through medical and psychological rhetoric, fits within Foucault's concept of madness. As we will see, transsexual patients were frequently positioned as the victims of a delusion or a psychopathological disease that caused them to feel as if they were in the wrong body. This dissonance of the mind and body, coupled with the treatment of medical and psychological professionals, led to the conceptualization of transsexual patients as having a mental and/or physical disorder. But more importantly the splitting of the mind/body and the rational/irrational positions the figure of the transsexual in a subjected position under the Cartesian system of subjectivity.

At the beginning of the nineteenth century, medicine as a field was in its infancy and approached the body holistically. Charles Rosenberg argues in "The Therapeutic Revolution"² that in the middle of the century, medicine shifted to a more "rational" approach to the body. Medicine initially treated the body and the mind together, believing that the body constituted a delicate balance or "system of dynamic interactions with its

environment.”³ A patient could not live without interacting with her environment (breathing, water intake, eating). In addition to the interaction of the body with the environment, all parts of the body were assumed to be connected, including the mind and body. Rosenberg writes, “A distracted mind could curdle the stomach; a dyspeptic stomach could agitate the mind.”⁴

Yet by the mid- to late-1800s, medicine became a professional and scientific field, “shift[ing] from the home to some institutional setting” that relied less on the connection of the body to the mind and the environment, and more on empirical evidence of disease/illness treatment.⁵ Seeking to improve health, doctors, nurses, midwives and medical laypersons began a push to professionalize the field through institutionalization. Medicine at this time used a scientific method that privileged reason, systematic exploration, and that identified and classified bodies and illnesses.⁶ The rise in medical schools and educational boards helped standardize medical knowledge through hierarchical systems that classified bodies and illnesses within a rational paradigm while providing institutional backing to a specific field of knowledge. With the birth of Darwinism in the mid-1800s and its taxonomic approach to classification, medical professionals and medical laypersons more generally began to parse and classify illnesses into discrete categories that have specific signs and symptoms. Over time, the meanings of illnesses – their signs, symptoms and causes – shifted and proliferated as medical professionals added new information to the emerging paradigm.

With the rise of the Victorian Era, there was an increased curiosity in the medical field in sex and sexuality. As Foucault points out in *Sexuality One*,⁷ there was an intense need to speak about sexuality – one that we are still living in today. Medical

professionals wrote about sexuality, classified the bodies involved, and sought to parse sexual illnesses, or rather illnesses latent with sexuality. Taking up the role of the confessor, medical professionals began asking patients to reveal not only their bodies but also their sexual thoughts and practices. This borrowing of the confessional, as Foucault argues, produces the sexual subject in that sex and sexuality are assumed to at once mask and provide a “truth” to the self. The “truth” of sex, the guilt of sexual deviancy exacerbated through confession, and the assumption of an interior “true” sexual self with external implications, provided the path for the creation of various sexually deviant figures in the late 1800s. This incitement to discourse not only provided the figure of the homosexual, but also the figure of the invert and the transvestite. It is these two figures that will later lead to the development of the transsexual in the mid-1900s and will continue to inform conceptions of the transsexual patient.

Further it is this interior “truth” of sex that will shape and inform the discourse of transsexuality and sexual deviancy more generally. Early patients revealed to doctors that they felt as if they were trapped in the wrong body. This dissonance of the mind and body creates a narrative that fits within the corrective mission of rational medicine of the mid- and late-1800s. By rational I mean the objective and methodical medicine that assumes that, in order for the body to function properly, its various parts must be properly dispositioned. Thus the mind and the body, the body and its various parts and the body’s outward expression should align properly for correct function.⁸ This disposition of the mind and body, the division of the interior and exterior, shapes and informs the figure of the transsexual. Moving into the twentieth century, the medical community shifted its focus to the body.⁹ The medical community, hearing a dissonance between mind and

body, sought to alleviate the dissonance through bodily treatment – hormone therapy and sex reassignment surgery.¹⁰

The majority of contemporary research on transsexual and transgender theory seeks to question our need to pin down sex, or rather a need to visually see someone as either male or female. As Kath Weston argues,¹¹ those individuals who do not visually fit into either sex category are momentarily unsexed, and could potentially experience violence because of others' inability to visually sex them. David Valentine,¹² working with a transgender group in New York, notes that one particular member of the group defies identification through using multiple and sometimes-contradictory identity categories. He argues that such a personage creates an anxiety for others because of her refusal to clearly identify as either one sex or the other. Similarly, Meyerowitz¹³ examines in *How Sex Changed* the development of sex and gender vis-à-vis the transsexual in the 1950s, '60s and '70s. She argues that the meaning of sex – and the stability of sex – changed dynamically during this period.

Although looking at dynamic development and our compulsion to pin down a “true” sex is important for activists and scholars alike, I believe that looking at subjectivity provides a more fundamental examination of sex vis-à-vis subjectivity. As Lynne Huffer suggests in her discussion of Foucault's *History of Madness*, “The focus on Descartes – the philosopher par excellence of the subject, the ‘I’ of the cogito – highlights the centrality of subjectivity as a category of analysis for a history of madness.”¹⁴ Questioning the foundations of queer theory, Huffer situates Foucault's *History of Madness* as a way of rethinking how queer theory addresses subjectivity. Huffer draws attention to how queer theory has left the question of the subject unaddressed through its

use (play) of psychology and psychoanalysis.¹⁵ If it is true, as Foucault argues, that sexuality has become fundamentally tied to being, then examining subjectivity and being will shed light on how sex, gender and sexuality shape and inform how subjects come to know and experience their being. In *History of Madness* Foucault explains how, gradually over time, the mad or mentally ill were separated or split from rational subjects. He argues that this splitting of the mad from the rational ushers in the Cartesian subject, one that has a properly aligned rational mind and body.

While Huffer does not provide a reading of queerness under her own revised foundations of queer theory, I situate the subject of the transsexual and its genealogical/historical creation within Huffer's call for a rethinking of queer theory. Rather than focusing on sex as an analytical category, I focus on the various ways in which differing discourses and epistemological fields act as technologies of Cartesianism. The systematic study and classification of the transsexual, the various and shifting modes of discourse within the medical and psychological fields, and the eventual joining of the two fields increasingly positioned the transsexual as a medicalized identity. This medicalization of the figure of the transsexual placed and maintained medical professionals as the knowers of transsexual identity, while placing transsexual subjects/patients in a subject position of unreason that requires the interpretation of medical professionals.

As I will show, medical and psychological professionals debated the best treatment of the "problem" of transsexualism. In the early part of the 20th century, the field of medicine moved toward a rational view of treatment that was focused on the body and the cure or treatment of bodily ailments.¹⁶ With the rise of psychology as a

professional field in the early part of the twentieth century, the medical community had to justify its particular treatment of transsexual patients. The psychological community questioned surgery as a treatment for transsexual patients, choosing to focus on mental and psychological issues of transsexual patients. Janice Irvine notes that the medical sexologists were able to gain legitimacy despite “the opposition of psychoanalysts (who accused them of collaboration with psychosis)...”¹⁷ Psychology and psychiatry¹⁸ thought of transsexualism as a form of dysphoria or psychosis that, with the proper treatment, could be cured or at least abated through psychiatric means. Like homosexuality, transvestitism and transsexuality were thought to be psychological problems that developed out of childhood and lay strictly within the mind itself. Essentially, transsexual patients were thought to be mad, suffering from a psychotic delusion. In *History of Madness* Foucault writes that madness was, overtime, removed from the realm of reason and into the asylum, set apart from those with a rational mind.¹⁹ Though not declared mad in the seventeenth-century sense, the association of transsexuality with mental disorder continued to plague the figure of the transsexual, limiting access to treatment and placing the transsexual subject in a separate realm from rational persons. As an irrational subject, transsexuals were treated with suspicion and disdain.

During the 1950s the psychological and medical communities were at war over which community could best treat transsexual patients.²⁰ Yet by the 1960s – most notably through the work of Harry Benjamin – both sides of the aisle were (reluctantly) supporting each other by creating a system that incorporated both communities.²¹ As Meyerowitz notes, with the development of “gender identity” – or the internal

psychological feeling of gender – in the 1960s, more doctors began to use “the concepts of psychological sex or gender identity to support transsexual surgery.”²²

Irvine examines the joining of the two professions in terms of legitimation. She writes,

The development of policies and guidelines, such as the Standards of Care developed by the Harry Benjamin International Gender Dysphoria Association, provided surgeons with a medical rationale. The inclusion of transsexualism as a mental disorder in the *DSM-III* provided additional therapeutic support. One psychiatrist commented that the new classification “has legitimated gender dysphoria... in that it is now a legitimate psychiatric diagnosis.... The psychiatrists have been getting more acceptance now that they are validated by the *DSM-III*.”²³

The joining of the two communities illustrates two points. First, the two communities strengthened their power and authority through joining. Vying for control over the power to diagnose and treat transsexualism, the medical and psychological communities created a linking of the two fields through the standardized treatment of transsexual patients. Medicine began suggesting that transsexual patients seek out psychiatric or psychological help before starting physical treatment with hormones and surgery. This particular linking of institutional powers provided greater power to each community while producing an identity or figure that was productive in terms of rhetoric and utility. The figure of the transsexual is productive in that patients began using the narrative to have better access to surgery and psychological treatment, and productive of a usable figure of other institutional powers. Further, the linking of the two fields aptly displays the function of Cartesian subjectivity. In assuming that subjectivity is split into the mind and body, both fields assumed that both – though connected – could be treated separately and brought back into “proper” alignment. Thus this linking of the medical and psychological fields becomes a technology of Cartesianism, whereby subjects are

examined and treated under the assumption that the internal psyche and the external body and desires should properly align.

In what follows I argue that the joining of the medical and psychological fields not only reinforced each field's power over patients' diagnosis and treatment, but also created various technologies of Cartesianism that placed the figure of the transsexual in a subjectivity position that is split between the mind and body. This split, and the subsequent treatment/procedures that the medical and psychological professions produced, demonstrates the effects of medical and psychological rhetoric based in Cartesian subjectivity. Because we hold the rational Cartesian subject as normative, the dissonance of the mind and body transsexuals experience positions the figure of the transsexual as an unintelligible subjectivity. I start by looking at early sexologists in Europe to show how transvestites, inverters and eonists were part of the general sexological taxonomy. The work of these early medical professionals shows the early beginnings of the figure of what would later become the transsexual through their case studies of patients. Expressing a discordance of mind and body, patients helped early medical professionals formulate the transsexual narrative and shaped how medical professionals treated patients.

Next I look at the rise of the transsexual in a US context, starting with Christine Jorgensen. Jorgensen's public notoriety garnered attention from media outlets and the medical and psychological fields. American doctors and the US population more generally became fascinated with transsexuals. Doctors working with transsexual patients during the 1950s and '60s toed a line between fame and misfortune. Dr. Benjamin, an endocrinologist born in Germany who worked with Jorgensen once she

traveled back to the U.S., became the leading medical professional for transsexual patients in the United States. His work, initially skeptical of the psychological field, eventually came to incorporate psychological treatment as a way to legitimate his own belief that surgery was the answer for transsexual patients, and to provide a greater accessibility to treatment for patients. “By the early 1960s,” Meyerowitz argues, “Harry Benjamin and a few others used the concepts of psychological sex or gender identity to support transsexual surgery.”²⁴ Benjamin’s work, though the incorporation of psychology, displays the work of a Cartesian subjectivity system that splits subjectivity into the body and the mind that are simultaneously connected and separate. Although exercised as a liberatory move allowing easier access to treatment, the coupling of medical and psychological discourse through Benjamin’s later work becomes a technology of Cartesianism that further reifies the interior/exterior split among transsexual patients.

Finally, I look at the various transsexual figures produced through the medical and psychological literature in the 1950s, ‘60s and early ‘70s. Doctors – including Benjamin – often framed the transsexual patient as unreliable, a false narrator, disturbed, and willing to do anything to receive both attention and treatment. It is these variations of the figure of the transsexual that aptly display the effects of a Cartesian system of subjectivity as productive. Because transsexual patients are framed as unreliable, disturbed, mad and abnormal, they are unable to claim their own subjectivity. Rather, medical and psychological professionals act as interpreters of transsexual subjectivity, deciding the most desirable outcome and the best method of treatment.

Early Sexologists, Taxonomy and Cartesian Subjectivity

The rise of the medical profession in Europe in the late 1800s led to a medicalization of the body that systematized illness and its causes. Additionally, the Victorian era, as Foucault argues, brought an incitement to discourse about sex and sexuality. The combination of the fledging medical profession and the incitement to speak about sexuality led many medical professionals to believe “sex” and its various inflections of desires to be sites of medical illness. In trying to achieve legitimacy for the field of sexology, doctors realized that “an emphasis on biology, and later biomedical science, was... crucial in achieving legitimacy and was linked to scientific solutions for such problems as venereal disease and prostitution.”²⁵

As the medical profession’s rhetoric proliferated,²⁶ doctors created a taxonomic system to classify illness and the body. European sexologists in the late 1800s and early 1900s sought to classify sexual illnesses and to further clarify sexual abnormality. The writings of sexologists from this time period show that medical professionals were attempting to classify not only bodily illnesses, but also abnormal desire and expressions of sexuality. Though the term “transsexual” did not exist in the medical community of the late 1800s and early 1900s, medical professionals like Havelock Ellis and Magnus Hirschfeld developed the terms “eonism” and “transvestite” to describe patients who cross-dressed or who experienced a crossgender identification.²⁷ While Joanne Meyerowitz argues in *How Sex Changed* that the work of sexologists from the late 1800s into the mid-1900s demonstrated that sex was “neither as obvious nor as permanent as it might have seemed,”²⁸ Meyerowitz’s interrogation of sex does not question how early sexologists influenced the subjectivity and experience of crossgender identification. I

argue that the work of medical and psychological professionals used the Cartesian subject as their normative base when examining sexual illness, sexual deviancy and abnormality.

Of these abnormal figures, medical professionals focused on homosexuality, masturbation, prostitution, sexual inversion and transvestitism. While we may think of sexual figures as separate today, early sexologists and their parsing of sexual deviancy allowed for slippages between categories. For example, sexologists believed that homosexuals suffered from a type of sex inversion in that, while being biologically one sex, their habits, mannerisms and desires were that of the opposite sex.²⁹ Yet the same medical professionals also believed that transvestites and transsexuals suffered from the same problem of sexual inversion, just to a heightened and varying degree. Thus the line demarcating homosexuality and enonism or transvestitism was relatively permeable and subject to blurring.³⁰

These early sexologists relied on a taxonomic and scientific system to relay their patients' cases. When taking case notes, sexologists would describe in detail their patient's body, followed by a narrative of their patients' lives and problems. For example, writing in 1897, Havelock Ellis, a German psychologist, traces the "History of Miss D." in *Studies in the Psychology of Sex, Volume II*. Ellis begins with a bodily description of Miss D., who has developed as a female but has the "manner and movements somewhat boyish."³¹ Further her "menstruation [was] scanty and painless" and Ellis describes her sexual organs as "showing some approximation toward infantile type with large labia minora and probably small vagina."³²

While Ellis – like other sexologists – focused on the precise description of the body, it seems that the patients did not feel anything to be entirely wrong with their body. In fact in the narrative section of Miss D’s account she says, “I regarded the conformation of my body as a mysterious accident. I could not see why it should have anything to do with the matter.”³³ Rather it was her “likes and dislikes”³⁴ and that she “was not allowed to follow them”³⁵ that troubled her the most. While doctors like Ellis were disturbed by their patients’ “abnormal” desires vis-à-vis their bodies, it seems that the patients themselves – Miss D. more specifically – were upset that their bodies and cultural expectations of their bodies were holding them back from expressing their own desires. Patients did not necessarily believe that anything was wrong with them, but viewed their own subjectivity as anomalous. Rather it was doctors such as Ellis who medicalized the “problem” and in doing so, created a whole taxonomy around sexual deviancy.

Another sexologist from Germany named Magnus Hirschfeld furthered the taxonomy of sexual deviancy in the early 1900s. Rather than believing that sexual deviancy was a strict medical problem, Hirschfeld believed that various types of sexuality were normal and natural variations of human sexuality. Hirschfeld believed in *bisexuality* in that “male” and “female” were never absolute. Rather he indicated, “we have been able to prove that in every man, even if only to a small degree, there is his origin from the woman, in every woman the corresponding remains of manly origins.”³⁶ Hirschfeld’s conception of bisexuality allowed him to argue that homosexuals, transvestites, eonist and other sexual abnormalities were just natural variations of human sexuality. As natural variants, those who were homosexual, transvestites or otherwise

identified should not be subject to persecution, but rather celebrated as part of human diversity.

Hirschfeld's theory of bisexuality had the most potential to undo the Cartesian subjectivity for sexual deviants. His understanding, applied to all persons, would have framed even heterosexuals as bisexual in that each sex would have varying degrees of the opposite sex within them. Further, Hirschfeld's theory posited that the interior, exterior and desires did not have to align in any "proper" fashion. Rather any permutation or combination was acceptable as a natural variant of human sexuality and desire. Yet because of Hirschfeld's work being burned in Germany during WWII, and his subsequent exile to the US, his liberal theory of natural variation in human sexuality did not develop into a dominant theory.³⁷ Harry Benjamin, influenced by Hirschfeld, would later explain transsexuality using the "bisexuality" theory in his early work in the late 1950s and '60s. Yet as more medical professionals incorporated the psychological term "gender identity" or "psychological sex" into their work, the bisexuality theory fell out of use.³⁸

Through the medicalization of the sexual inversion problem, medical professionals capitalized on the Cartesian subjectivity system. Because doctors in the mid- to late-1800s invested in a mind and body that are connected, medical sexologists believed that one's sex and one's actions and desires should align. As Charles Rosenberg points out, the concept of the connected mind and body was accepted generally in medicine.³⁹ Treating the body would have an effect on the mind, and vice versa. When the body and the mind did not align, such as in sexual inversion, it was the job of medical and psychological professionals to rectify the "problem."

It would be wrong, however, to suggest that the creation of the sexual invert's "problem" – which later became the transsexual's problem – was entirely the doing of medical and psychological professionals. Patients actively helped doctors formulate the sexual invert's problem through their own use of rhetoric. As Miss D. says in her narrative, "I thought that the ultimate explanation might be that there were men's minds in women's bodies..."⁴⁰ The rhetoric of being in the wrong body dominated the sexological explanations of sexual inversion and transvestitism and led medical professionals to the conclusion that there was a dissonance between the mind and body of such patients. Miss D. further describes herself in her late twenties, saying "What I felt with my mind and what I felt with my body always at this point seemed apart" and that she "always imagined [herself] as a man loving a woman."⁴¹

The inversion theory is rooted in the Cartesian system of subjectivity because of its alignment with the nineteenth-century conception of the connected mind and body. The narrative of patients feeling as if they are in the wrong body led medical and psychological professionals to treat the "problem" of sexual inversion as if the body and mind needed realignment. Such a framing, strengthened through the medicalization of deviancy in medicine, placed the figure of the sexual invert – in this case the furthest degree of inversion: eonism – as the target of what would become various technologies of Cartesianism – or ways in which the doctor sought to return the subject to a proper alignment of the mind and body. Some patients did not view their bodily state as a problem (as Miss D. stated above), but rather feared the reactions of others and social rejection. Medical professionals and other lay people viewed their bodies and desires as

problems that only the medical community – keepers of the correct knowledge – could correct through scientific and taxonomic classification of bodies.

The Modern Medicalization of Transsexualism, and the Warring Medical and Psychological Fields

Through the mid- to late-1900s, both the medical and psychological fields continued to revamp their taxonomies of sexual deviancy while exploring new concepts and procedures to make surgery safe.⁴² Not only did medical professionals parse out sexual deviancy and bodies – and therefore further complicate the debate about “sex” – but they also placed the transsexual figure further and further under the scrutiny of a Cartesian lens. Through medical and psychological literature, the warring professions argued which field could properly treat transsexual patients.⁴³ This war, carried out through a proliferation of research and writing, placed the transsexual under a medical lens concerned with the body, and a psychological lens concerned with the mind.

While, as Meyerowitz argues, “sex” changed through medical and psychological research, the lens of Cartesianism did not. Despite the warring fields that Meyerowitz points out,⁴⁴ both medicine and psychology later agreed on and utilized a rhetoric that described the dissonance of mind and body as a starting point for the treatment of transsexual patients. As I will argue the rhetoric utilized became the focus of the two fields, the warring medical professions eventually linked in further support and actualization of Cartesian rhetoric: one to treat the mind, the other to treat the body. I further argue, that the reluctant joining of the fields and the continuing split of the body and mind used the technologies of Cartesianism that, while rendering the figure of the transsexual as legible through the paradigm of illness, left the transsexual in a position

where one could claim such a subject-hood, but never be able to speak it without medico-psychological help.

Starting the in 1950s in the United States, the figure of the transsexual became a media sensation and one of the central debates of the medical and psychological professions. Both medical and psychological professionals further refined their taxonomy from that of early 1900s, bringing the transsexual into a distinct figure separate from homosexuality and transvestitism. Joanne Meyerowitz and Susan Stryker both cite the Christine Jorgensen media sensation of 1952 as when the transsexual became a public figure and the birth of the medical and psychological debate over treatment of transsexual patients in the U.S. Her notoriety, no doubt because of her beauty and sensational story, brought the figure of the transsexual to the public while causing an stir in the medical community.

After the media sensation of Christine Jorgensen, there was a proliferation of medical writing about transsexuals (also known as eonists in the early 1950s), and about the causes and treatment of transsexualism.⁴⁵ Frequently, patients would contact doctors in hope of receiving the same surgery as Jorgensen. In August 1955 edition of *Sexology: Sex Science Illustrated*, a letter to the editor of the magazine writes, “Then the case of Christine Jorgensen was published. I had previously hoped that I could be changed likewise. It only added to my sorrow. I would just as soon die trying to be what I should be, as to continue to live as I am living. Perhaps some day my hope will be fulfilled.”⁴⁶ As more people read about and identified with Jorgensen, patients tried to persuade doctors to provide the same kind of surgery. While the majority of doctors were

unwilling to perform the surgery, a select few sympathized with their patients and sought to study transsexualism and further sex reassignment techniques.

Christian Hamburger, writing “Transvestism: Hormonal, Psychiatric, and Surgical Treatment” in the *Journal of the American Medical Association* in 1953 describes his research on eonism (another medical term for transsexualism) and some of its variants and its causes. Hamburger calls those patients who have “a fundamental feeling of being victims of a cruel mistake – a consequence of female personality in a male body” as eonists.⁴⁷ The eonist experienced the dissonance of the mind and body, thereby by differentiating them from transvestites, and further leaving the medical professional with the challenge of bringing the mind and body into accord. More importantly, Hamburger places the diagnosing and parsing of sexual abnormality in the hands of medical professionals: “only through clinical analysis is it possible to distinguish between these various states.”⁴⁸

With Hamburger’s work the “problem” of the transsexual is medicalized and pulled into the medical profession through the claiming of special kind of knowledge/truth that only physicians can decode. Hamburger’s claim for the medical community works in different and reinforcing ways: 1) it gives doctors control over diagnosis and treatment of patients and their particular “condition,” 2) places the patient in the position of subject(ed)/object and vis-à-vis the knowing doctor who has the ability to treat such a “broken” body/mind subjectivity, 3) qualifies transsexual subjectivity as a mode of being that can be claimed but never spoken intelligibly until there is medical intervention, and 4) continues to reify the split of the mind and body through the notion that each subject should have a properly aligned mind and body. Thus the Cartesian

subject is once again the norm through which transsexuals are “deciphered” and brought into being as transsexual.

Hamburger notes that psychologists and psychiatrists have been unsuccessful in finding a cause and treatment for eonists: “It is reasonable to suppose that physical factors may play a decisive role, as evidenced by the frequent appearance of more or less pronounced feminine physical appearance. On the other hand, there are eonists having completely normal masculine habitus.”⁴⁹ Although Hamburg believes that signs of eonism can be traced to childhood, his focus on the body as a problematic site for eonists leads him to believe that a physical, surgical treatment is the better option. Though not a cure, surgery, according to Hamburger is part of a medical ethics that “[when] a disease cannot be cured an attempt should be made to improve the stress and inconvenience of the patient in order to make his life as tolerable as possible, have, naturally, due regard to the interests of society.”⁵⁰ Through his rhetoric and research, Hamburg believed that it was not only better to treat eonist with surgery than psychiatry, but also it was his duty to help the suffering patients.

By the early 1960s, Harry Benjamin was the most prominent medical professional working with transsexual patients. An endocrinologist born in Germany, Benjamin worked with transsexual patients and developed treatment using hormone therapy. Yet over time, Benjamin developed a relationship with several of his patients that led him to believe that hormone therapy *and* sex reassignment surgery were the best treatments for transsexual patients, or as he called them “TS” patients. His belief that TS patients should be treated through surgery placed him in the center of the ongoing treatment debate among medical and psychological professionals.⁵¹

Benjamin's seminal work on transsexualism was *The Transsexual Phenomenon*.⁵² Written in 1966 as a guidebook for other medical professionals, *The Transsexual Phenomenon* attempted to describe the transsexual patient, his/her "problem," and the various methods used to treat transsexuality. Although Benjamin meant for his work to have a liberatory effect – one of educating doctors about transsexualism and rooting out ignorance – Benjamin's own rhetoric repeats the trope of the transsexual who feels trapped in the wrong body. In a letter reproduced in *The Transsexual Phenomenon* from *Sexology Magazine*, one patient writes, "What can I do to end my misery? In body I am looked at by others as male, but in my mind and heart I see myself as a woman."⁵³

Many letters to Benjamin from transsexuals seeking help contain similar pleas. One from J.C. in 1956 reads, "However your masculine body forbids, what your mental tortures beg for. This has caused me trouble all of my life, and has brought considerable unhappiness in my family, as you can easily understand."⁵⁴ Another from T.L.C. in 1967 reads, "[I] know that I'm a female imp[ersonator] & truly want to be a woman & not a man, & definitely not an imitation!"⁵⁵ These letters indicate that people asking for help experienced a dissonance of body and mind. Wanting to be a "woman... & definitely not an imitation" and blaming the masculine body indicate a disconnect between the interior and the exterior, the mind and body.

Showing Benjamin's use of his patient's narrative of being trapped in the wrong body, *The Transsexual Phenomenon* also clearly demonstrates that Benjamin rejected the notion that psychology could aid in the treatment of transsexuals. In a section titled *Psychotherapy in Transsexualism*, Benjamin writes, "Psychotherapy with the aim of curing transsexualism, so that the patient will accept himself as a man, it must be

repeated here, is a useless undertaking with present available methods. The mind of the transsexual cannot be changed in its false gender orientation.”⁵⁶ Rather, Benjamin believed that, once treated with hormones and sex reassignment surgery, all psychosis or pathological behaviors would at least abate if not disappear altogether. Benjamin questions the diagnosis of paranoia or schizophrenia so often given to transsexuals writing, “it was always a question in my mind how much of the psychotic reaction or how much of the psychoneurotic symptoms may be due to the thwarted sex life and gender discomfort of the transsexual state.”⁵⁷

Psychologists and psychiatrists disagreed with Benjamin and other medical professionals. As Irvine reminds us, medical sexologists were attempting to gain legitimacy over “the opposition of psychoanalysts (who accused them [medical sexologists] of collaboration with psychosis).”⁵⁸ Writing in *The Journal of Sex Research* in 1968 Eric Sagarin, a psychologist, took Benjamin to task for developing his treatment of transsexuals around an ethic of sympathy, or what Sagarin believed was an ideological pollution of medicine. Denouncing such sympathy-as-treatment logic as “unscientific,” Sagarin wrote, “deviation is seen as a normal manifestation of the human animal, and not an abnormal development, not because there is scientific evidence leading to this conclusion, but because such a conclusion is consistent with the image that one wishes to project.”⁵⁹

Thus Sagarin accused Benjamin and his cohorts of doing unscientific work in an effort to project a positive image of transsexuals. Moreover, Benjamin’s assertions that psychotherapy was unsuccessful in treating transsexuals equated with the denial of deviance because, to label a patient/body as deviant would be to expose the patient to

social stigma. While Sagarin believed that doctors and researchers could themselves have values, he called for science to be value free.⁶⁰ Thus despite the values of Benjamin, he, according to Sagarin, should have classified transsexuals as sexual deviants with severe psychological problems in need of psychological treatment, not a physical treatment.

Writing in *The Journal of Sex Research* Natalie Shainess explores the psychological gender development of homosexuals and transsexuals. Shainess notes the concept of gender identity was still new when she was writing her piece in 1969. Research on gender identity formation was tentative at best, and Shainess highlights that research on gender development, particularly the age at which gender development occurred, was hotly debated. Nevertheless, Shainess believes that transsexuals and homosexuals were sexual deviants that followed a prescribed gender identity development that was a perversion of “normal” gender identity development: “In considering sexual perversions Gershman’s (1967) interpretation of the meaning behind each pathological condition states that the transsexual has the *delusion* he *is* a woman, the transvestite has a strong *yearning* to be a *woman* but knows he is not, and the homosexual ‘*acts as if*’ he were a woman.”⁶¹

Focusing on the transsexual narrative given in the context that Shainess provides, we see that transsexuals are just one sexual pervert on a sliding scale of insane femininity. The transsexual is under the delusion that he is actually a woman, which indicates that his gender identity formation process went awry somewhere in adolescence, creating the patients as victims/subjects of a life altering pathological condition or madness. Further she believes that transsexuals suffer from a “kind of

monomania, or uses a single overdeveloped maneuver as a way of life that fills in all kinds of gaps in a rigid compulsive manner... So, the transsexual is a very disturbed person – a psychotic – who fills his gaps and alters his reality with a delusional sex preoccupation.”⁶²

Shainess is obviously recommending that “sexual deviants” need psychological counseling, not surgery. She believes that “the transsexual is rivaled only by the paranoid who demands plastic surgery for his nose, in persuading physicians to alter reality to conform to delusion.”⁶³ She may call it delusion, but Shainess was willing to recognize along with Benjamin that transsexuals express a feeling of disconnect between their biological bodies and their gender identity. Again we see the trope of “a man trapped in a woman’s body” played again, just in a different form to advocate psychological treatment for the “psychotic” transsexual.

Both the position of Benjamin and Shainess reified the narrative of the transsexual as one of discordance and as a body/mind in need, albeit with differing aims. The work of medical professionals and psychologists gave narrative form to a “condition” and a set of bodies. This narrative of discordance, shaped and fashioned by differing ideological backgrounds, served to limit the number of bodies that fall into seemingly discrete taxonomies and shaped and dictated the splitting and treatment of the body/mind. The development of the transsexual narrative through psychological and medical discourse created a limiting set of factors and beliefs about bodies and minds while dictating what constitutes an acceptable body/mind for treatment. Moreover, by setting up discrete taxonomies for the transvestite, homosexual, and transsexual, the narratives of each served to lead doctors and the medical community to conduct a confessional mode of

treatment. Before doctors would willingly treat a patient, the doctor first had to search out the “true” cause of the condition and definitively classify the body/patient into one of several clearly demarcated categories of deviance. Thus, in a Foucauldian sense, the deviant, unintelligible and irrational body/mind, then as today, must be read as intelligible through investigation, interrogation and discrete codification of the body/mind before medical diagnosis and treatment can begin. Moreover, the hope was that once treatment was completed, the once deviant body would be rendered “docile” and thereby fit into the normative social fabric and its institutions.⁶⁴

Almost a decade after *The Transsexual Phenomenon*, Benjamin et al. begin their 1973 article in *The American Journal of Nursing* saying, “Transsexualism is a disorder of gender identity. Persons with this problem feel a lack of harmony between their psychological sex and their anatomical sex.”⁶⁵ This simple definition offered by Benjamin has remained more or less unchanged. When we think of transsexual or transgender persons, we tend to think of someone who is at war within one’s self and with one’s body. The notion of a split mind and body existing in dissonance was further refined in the 1960s and ‘70s. While Meyerowitz alludes to the mind/body dissonance as a problem for medical professionals, her emphasis on the dynamic meaning of “sex” does not examine the splitting of the interior and exterior to the mind and body.

Despite the debate between the medical and psychological fields, eventually Benjamin began to incorporate more psychology into his work. In 1963 (and later reproduced in *The Transsexual Phenomenon*) Benjamin, giving advice to a young transsexual encourages her to find a good psychologist to help her through the process and “discuss[ing] the problem with someone who is understanding, ~~who is not a~~

~~transvestite or a transsexual himself~~, and does not have the handicap of emotional involvement.”⁶⁶ In *The Transsexual Phenomenon*, Benjamin advocates that potential patients spend a year living as the target gender before undergoing physical treatment. While still not using psychology explicitly, this year period eventually became the year spent with a psychologist who would eventually sign-off on surgical papers. Writing in a psychology journal in 1971, Benjamin indeed allowed that environmental factors could act as “triggers, instead of being the true cause of the abnormality.”⁶⁷ A 1979 volume of the *Bulletin of the American Academy of Psychiatry and the Law* shows how Dr. Sarwaer-Foner believed that the physical aspects of transsexualism reinforced the psychological, writing “It should hardly surprise anyone that if organic factors operating towards diffusion or inversion of sexual role are present, they will interact with, reinforce, and be reinforced in their turn by the above-mentioned developmental intrapsychic environmental factors.”⁶⁸

By the end of the 1970s, the linking of the medical and psychological fields around the figure of the transsexual further medicalized and pathologized the figure while definitively securing or framing the transsexual “problem” as a problem of a split and improper or unintelligible subjectivity.

Conflict and (Ir)Resolution: Transsexual Figures

Through their encounter with transsexual patients, medical professionals and psychologists formed not only a taxonomic classification for transsexualism and its symptoms and treatment, but also opinions of the typical transsexual personage. Though some doctors like Benjamin were willing to help transsexual patients and worked to make access to treatment easier, many patients were written off as mad, crazy, desperate and a

liability to doctors and the medical profession more generally. In hearing many patients indicate feelings of being in the wrong body, many doctors believed that – regardless of surgical need – patients were suffering (as was always the case) from mental illness. This “demanding drive” led some medical professionals to be leery of transsexuals. Through the slippage of personal beliefs into medical rhetoric, doctors warned others in the field to be wary of transsexual patients and the potential danger to one’s medical career for treating untrustworthy patients.⁶⁹

As doctors parsed the figure of the transsexual in their taxonomy and warring over treatment, medical and psychological professionals created several narrative tropes of the figure of the transsexual. The creation of the variants of the transsexual figure shows both the limiting and productive nature of the two fields joining around a particular illness using a Cartesian model of subjectivity. The creation of various figures of the transsexual (as untrustworthy, desperate and conniving) places the transsexual patient into a subjectivity that is always already questionable. Such a trope renders transsexual subjectivity as one that can be spoken, but only unintelligibly, requiring medical and psychological intervention to properly translate the unintelligible identity into a “rational” and intelligible illness in need of correction. Yet, the *productive* aspect of medical and psychological intervention was the proliferation of possible subjective transsexual positions. Although these tropes limited transsexuals and further inhibited access to surgery, the production of these tropes illustrates the proliferation of discourses about transsexualism and sex and sexuality more generally.

According to Meyerowitz and Stryker, Benjamin developed a good rapport with his patients. Often Benjamin himself served as the link between many transsexual

patients, acting as the liaison and introducing them to each other. One could argue that Benjamin – though Meyerowitz does not go so far – created a network of transsexuals in diaspora across the U.S. Benjamin’s intimate association with his patients provided him with a privileged look into the developing lives of transsexuals as they experienced the desire to transition and the transition itself. Benjamin often repeated that the condition of the “true” transsexual is that of a severely unhappy individual. The end of “Newer Aspects of the Transsexual Phenomenon” from *The Journal of Sex Research* is worth quoting at length:

“Transsexuals, as a rule, are definitely not psychotic, but often show mental peculiarities aside from their sex and gender role disharmony, peculiarities that can contain neurotic, depressive, paranoid, schizoid, or merely sociopathic and eccentric features. Asexuality is by no means rare. There can also be an unfortunate character defect which I have come to think of as the ‘transsexual character.’

“Transsexuals are deeply disturbed, unhappy people who deserve more sympathy and attention than they have so far received.”⁷⁰

Although meant as general comments, Benjamin’s rhetoric of a “transsexual character” generalizes a pathological character among all transsexuals and produces an interiority. Benjamin believed that that transsexuals were the “step-children of the medicine”⁷¹ and in need of greater medical care and research. Yet it is striking that Benjamin made such general marks about transsexual patients if indeed he wished the medical community to have more sympathy for the patient and their “condition.” Benjamin wrote that transsexuals “are often sent from doctor to doctor, each one trying to get rid of them as quickly as possible.”⁷² Indeed in 1955, a response from the editor of *Sexology: Sex Science Illustrated* noted that a doctor was often advised to “avoid entangling himself” with transsexual patients.⁷³

Comments like those of Benjamin and those cited in *Sexology: Sex Science Illustrated* demonstrate how the rhetoric of a “transsexual character” informed practice. For example, in 1972 a transsexual patient from Halifax, Nova Scotia was denied treatment because a prior patient became belligerent after surgery. Fearing their own careers were in jeopardy, the attending doctors decided to end all surgeries and cut their sex reassignment program.⁷⁴ Benjamin’s own words created a narrative of transsexual patients that is anything but appealing to medical professionals. Writing about the “fierce and demanding drive” of some transsexual patients in *How Sex Changed*, Meyerowitz argues that doctors, “accustomed to deference, [...] encountered patients whose determined demands surprised and annoyed them. Even the more sympathetic doctors sometimes lambasted their patients.”⁷⁵ Meyerowitz notes that many doctors researching transsexualism had their own agendas, yet Benjamin’s quote was probably read as a gentle reminder to doctors of what to expect when taking on a transsexual patient that was insistent on surgery. Thus Benjamin’s own writing of the transsexual-seeking-treatment narrative served to limit access to doctors and treatment because of the general characterization of the transsexual patient as needy, overbearing, and a general Pandora’s Box of problems.

Benjamin’s assertion that transsexuals are “unhappy individuals” with some particular tendencies to mental health and personality issues is striking when we consider that Benjamin did not believe that transsexuals were psychotic. Benjamin rather believed that, if transsexuals were afforded the needed sympathy from the medical community, their “condition” could be alleviated either through therapy as a small child or through hormone treatment and sex reassignment surgery as an adult. Perhaps Benjamin’s critics,

like Sagarin and Shainess, in the psychological field caused him to write such a statement conceding transsexuals as “disturbed” persons. Nevertheless, Benjamin slowly began to incorporate psychology into his work. This incorporation of psychology had a price: the painting of the transsexual as mentally disturbed, demanding and untrustworthy. As Shainess (discussed earlier) reminds us, transsexuals were considered by the psychological establishment as “very disturbed persons”⁷⁶ who suffer from “monomania”⁷⁷ and are rivaled only by the narcissistic paranoia of the man “who demands plastic surgery for his nose.”⁷⁸ By 1980, Gender Dysphoria was added to the DSM-III and Harry Benjamin’s Standards of Care (which included psychological care of transsexual patients) was in place.⁷⁹ In adding psychology to the treatment of transsexual patients, Benjamin and his colleagues could no longer argue that transsexual patients were not psychotic. Rather through the joining of medical and psychological rhetoric transsexual patients were classified as mentally ill and therefore questionable.

Positioned as mad, transsexual patients were often thought to be desperate and willing to do anything to obtain surgery. As one letter to Benjamin indicates in 1956, “[I am] willing to do anything in order to be transformed. I do not seek fame or fortune, but only a chance to be able to breathe and live as a woman, and hope to make a wonderful person...”⁸⁰ Also seeking help, another letter from T.L.C. reads, “All I know Dr. is that I feel I have a right on this earth to live a normal & happy existence. I definitely know now this is the only way I can have it.”⁸¹ Framing sex reassignment surgery as the “only way” to correct the “condition” of the transsexual shows the insistence of the patients for surgery and the “obsessive” drive for surgery.

As more patients wrote to and worked with medical and psychological professionals, other transsexuals seeking surgery learned the proper “transsexual narrative” that would garner access to surgery. As Benjamin indicates, he preferred not to perform surgery on younger patients, and a history of homosexuality made him leery of performing surgery. Framing transsexuals as untrustworthy and unreliable narrators, doctors often treated transsexual patients with suspicion. As Benjamin warns in a 1971 article in the *American Journal of Psychotherapy*, “In eliciting the early history of transsexuals, we must remember that – as a rule – these patients are very unreliable reporters. Facts, fancies, and wish-dreams often intermingle to the detriment of diagnostic accuracy.”⁸² As unreliable reporters, transsexual patients are positioned as either mad and hiding the “true” character of the self because of their inability to differentiate between the imaginary and the real, or as conniving and willing to fabricate a personal narrative to obtain surgery. In addressing the latter aspect of the transsexual as an unreliable narrator, Benjamin writes, “The situation can unfortunately be aggravated for the doctor by the fact that many of these patients know only too well what their story has to be in order to get consent for what they want. Furthermore, their own overpowering obsession dictates their actions and make them disregard all medical advice”⁸³

These various tropes or sub-figures of the transsexual – that of the obsessive, mad, desperate, and unreliable/untrustworthy transsexual – continue to place transsexual subjectivity in the realm of madness or unreason. As a figure of unreason, transsexuals were not to be trusted, always subject to medical interpretation, and as such sent from one medical profession or institution to another. The rational Cartesian subject is the model

through which transsexual subjectivity is read. The various tropes, though a positive aspect of medico-psychological discourse, fashions a popular notion of transsexualism and illness that necessarily includes mental disorder. Thus while transsexuals were able to claim transsexual subjectivity and plea for help from medical professionals, such a subjectivity – always already medicalized in terms of unreason – cannot speak on its own. Rendered unintelligible, transsexual subjectivity and its various tropes require medical translation, a set of knowers who can render transsexual subjectivity as intelligible and therefore usable. The complex weaving of discourse, seemingly liberatory in nature (especially in Benjamin’s case) continues to be *both* limiting and productive. Fashioned through Cartesianism, transsexual subjectivity and its inflections are productive in that there is a proliferation of transsexual subjectivities, yet limiting in that none of those subjectivities are positive or “normative.”

Technologies of the Cartesian System, Usable Knowledge and Resistance

Through the linking of the medical and psychological fields, the figure of the transsexual was created and the “truth” of sex sought out through research and practice. Early sexologists set out trying to define the eonist, the homosexual and the transvestite. These early pioneers placed sexual illness – both mental and physiological – into categories of deviancy and paved the way for the medical and psychological fields of the 1950s, ‘60s and ‘70s. Popularized by Benjamin, the medical term “transsexual” became part of both popular and medico-psychological discourse. With the advent of Christine Jorgensen, the media sensation and fascination with transsexualism inspired a proliferation of discourse about transsexualism and eventually a war between medicine and psychology over which field could better treat transsexual patients.

The linking of the fields also further strengthened the assumption of a Cartesian subject that is split into the mind and the body. Now the transsexual patient was to be treated through both fields, psychology to cover the mind or the interior, and medicine the body or exterior. The splitting of the mind and body further reified the figure of the transsexual as an ill figure, one that is always already sick because of the dissonance of the mind and body. No “cure” for transsexualism existed, only treatment in hope of making life easier for transsexual patients. Because there was no “cure,” the treatment – split between two fields – placed the figure of the transsexual in a subject position that can be claimed but never understood. The dissonance of mind and body is framed in unreason, naturally anti-rational and always already suspect.

Additionally, the warring fields of medicine and psychology and their eventual joining incited a proliferation of medicalized and popular discourses about transsexuals and transsexual subjectivity. Medical and psychological professionals created “types” or tropes of the transsexual through their encounters with transsexual patients and research. These inflections of the figure of the transsexual furthered the positioning of the transsexual subject in the realm of unreason through the characterization of transsexual patients as conniving, untrustworthy, desperate and psychotic or pathological. Positioned in unreason, transsexual patients were always already suspect and likely to be either ignored or shuffled from one medical professional to another.

The creation of the various transsexual figures was *productive* in that certain stereotypes of medicalized deviancy were rendered usable for other state and cultural institutions. Just as Margot Canaday shows in *The Straight State*,⁸⁴ the medical and psychological fields were key in producing usable technical and cultural knowledge

about sexual deviancy. As the medical profession created particular kinds of knowledge, various state institutions utilized that knowledge to better understand sexual deviancy and create state and federal policies that shaped and defined who could and could not be part of the general populace.

In a more specific way, I show in the next chapter, using the various transsexual tropes and the joining of the medical and psychological fields as a framing, how law and the judicial system picked up on medical rhetoric and the various transsexual tropes. As with the medical field, the transsexual before the law is split between the mind and body. As such the transsexual is once again produced an unintelligible subjectivity that requires interpretation. The judiciary calls for medical and psychological professionals to interpret the figure of the transsexual for the judiciary. This juridical move further strengthens the medico-psychological community's position as the knowers of transsexual subjectivity and illness while playing out the various transsexual tropes in the courtroom.

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- ¹ Michel Foucault, *History of Madness*. (New York, Routledge: 2009).
- ² Charles Rosenberg, “The Therapeutic Revolution: Medicine, Meaning, and Social Change in Nineteenth-Century America.” *The Therapeutic Revolution: Essays in the Social History of American Medicine*. (Philadelphia, PA, University of Pennsylvania Press: 1979).
- ³ Ibid., 5.
- ⁴ Ibid., 5-6.
- ⁵ Ibid., 21.
- ⁶ Ibid. See 14-5 and references to rationalism as a threat to the early eighteenth-century therapeutic model.
- ⁷ Michel Foucault, *History of Sexuality, Volume 1: An Introduction*. (New York, Vintage Press: 1991).
- ⁹ See notes 3-4 above.
- ¹⁰ See Joanne Meyerowitz, *How Sex Changed*. (Cambridge, MA: Harvard University Press, 2002).
- ¹¹ Kath Weston, *Gender in Real Time: Power and Transience in a Visual Age*. (New York, Routledge: 2002).
- ¹² David Valentine, “I Went to Bed with my Own Kind Once.” *The Transgender Studies Reader*. (New York, Routledge: 2006).
- ¹³ Joanne Meyerowitz, *How Sex Changed*.
- ¹⁴ Lynne Huffer, *Mad for Foucault: Rethinking the Foundations of Queer Theory*. (New York, Columbia University Press: 2010). 50.
- ¹⁵ See Lee Edelman, *Queer Theory and the Death Drive*. (Durham, NC, Duke University Press: 2004).
- ¹⁶ See Rosenberg, “The Therapeutic Revolution.” Also see Meyerowitz, *How Sex Changed*.
- ¹⁷ Irvine, *Disorders of Desire*, 207.

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- 18 For the purposes of this project, I am writing as if psychologists and psychiatrists are interchangeable. I realize that the field of psychology contains internal fractures, though the differences within the field are not within the scope of this project and will not be treated.
- 19 Foucault, *History of Madness*.
- 20 See Meyerowitz *How Sex Changed*, 105-6.
- 21 Ibid., 120.
- 22 Ibid.
- 23 Janice Irvine, *Disorders of Desire: Sexuality and Gender in Modern American Sexology*. (Philadelphia, Temple University Press: 2005). 210-1.
- 24 Meyerowitz, *How Sex Changed*, 120.
- 25 Ibid., 6.
- 26 Ibid., 5-6.
- 27 Ibid., 15.
- 28 Ibid.
- 29 See Jay Prosser, "Transsexualism and the Transsexologists." *Sexology in Culture: Labeling Bodies and Desires*. (Chicago, University of Chicago Press: 1998). 119.
- 30 Ibid. Prosser finds the taxonomy of sexual inversion to be a misnomer when applied to same-sex desire. Examining the work of Karl Heinrich Ulrichs and Richard von Krafft-Ebing, Prosser believes that "Current terminology would differentiate Krafft-Ebing's four 'degrees' of inversion as respectively, bisexuality, homosexuality, transgender/transsexuality and intersexuality; but, as in Ulrichs and Westphal, what Krafft-Ebing is seeking to map – what 'degree' represents – is the presence of transgender. Same-sex desire (and given the transgender character of the overall paradigm, the term again appears to be a misnomer) constitutes only one of four (and the second to least extreme) symptoms of inversion." 120.
- 31 Havelock Ellis, "Selection from *Studies in the Psychology of Sex, Volume II*." In L. Bland and L. Doan (Eds.) *Sexology Uncensored*, (Chicago, The University of Chicago Press: 1998). 91.
- 32 Ibid.

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- 33 Ibid.
- 34 Ibid.
- 35 Ibid.
- 36 Magnus Hirschfeld, "Selection from *Transvestites*." In L. Bland and L. Doan (Eds.) *Sexology Uncensored*, (Chicago, The University of Chicago Press: 1998). 97.
- 37 See Stryker, *Transgender History*, 48. Also see Irvine, *Disorder of Desire*, 5.
- 38 Meyerowitz, *How Sex Changed*, 118. Hirschfeld worked closely with Benjamin in his early years, and influenced Benjamin's work. Even as late as 1966 with the publication of *The Transsexual Phenomenon*, Benjamin was refining the "bisexuality" theory through the incorporation of psychology, writing "Every Adam... contains elements of Eve and every Eve harbors traces of Adam, physically as well as psychologically" (Meyerowitz quoting Benjamin).
- 39 Charles Rosenberg, "The Therapeutic Revolution." 18.
- 40 Havelock Ellis, "Selection from *Studies in the Psychology of Sex, Volume II*. 93.
- 41 Ibid.
- 42 See Irvine, *Disorder of Desire*, 207. Irvine notes, "The process [of sex reassignment surgery] took off in the United States in the 1950s, and by the 1970s had consolidated into a thriving industry."
- 43 Ibid.
- 44 See Joanne Meyerowitz, *How Sex Changed*, 106-8.
- 45 See Irvine. This proliferation of writing was part of the developing field of American sexology more generally.
- 46 Hugo Gernsback, *Sexology: Sex Science Illustrated*. Published by Sexology Magazine, (New York, Sexology Corp.: 1955). KI J520 Se58 v.21 n.12. HB on the board of Medical and Sexological Consultants, published monthly, this is a collection of all materials from 1955.
- 47 Christian Hamburger, (1953). "Transvestism Hormonal, psychiatric, and surgical treatment." *Journal of the American Medical Association*, 152(2). KI 538.13. 391.

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- 48 Ibid.
- 49 Ibid.
- 50 Ibid., 395.
- 51 See Meyerowitz, *How Sex Changed*, 106. Benjamin addressed the Association for the Advancement of Psychotherapy in 1954, and with therapists as his audience carefully denouncing psychotherapy for treatment of transsexuality.
- 52 Harry Benjamin, *The Transsexual Phenomenon*. (New York, The Julian Press: 1966).
- 53 Ibid., 61.
- 54 Letter to HB, from J. C., Chicago, Ill. C/o Mr. O. S. dated May 7, 1956. HBC Box 3, Ser II-C.
- 55 Letter from T. L. C. to Harry Benjamin, dated March 16, 1967. HBC Box 4, Ser II-C.
- 56 Ibid., 53.
- 57 Ibid., 33.
- 58 Irvine, *Disorders of Desire*, 207.
- 59 Edward Sagarin, "Ideology as a Factor in the Consideration of Deviance." *The Journal of Sex Research* 4, no 2 (1968): 84-94. 93.
- 60 Ibid.
- 61 Natalie Shainess, "The Formation of Gender Identity." *The Journal of Sex Research* 5, no 2 (1969). 79. Emphasis in the original.
- 62 Ibid.
- 63 Ibid.
- 64 Michel Foucault, *Discipline and Punish*. (New York, Vintage: 1995). 138.
- 65 Harry Benjamin and Charles Ihlenfeld, "Transsexualism." *The American Journal of Nursing*. 73, no 3 (1973): 457-481. 457.

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- 66 Harry Benjamin, "Advice to a Male Transsexual [who wants a "conversion operation"]." Source: paper. April 1963. Xeroxed, 4pp. KI 538. 3. Strike in the original.
- 67 Harry Benjamin, "Should surgery be performed on transsexuals?" *American Journal of Psychotherapy*, 25, no 1 (1971): 74-82. HBC 538.2. 76.
- 68 G.J. Sarwer-Foner, "Some Psychodynamic Aspects of Transsexual, Homosexual and Transvestite Patients Presenting Themselves to a Psychiatric Gender Clinic." *Bulletin of the American Academy of Psychiatry and the Law* 7, no 3 (1979): 249-58. 253-4.
- 69 See Meyerowitz, *How Sex Changed*. 159-162. Also see Joanne Meyerowitz, "A 'Fierce and Demanding' Drive." In *The Transgender Studies Reader*, edited by Susan Stryker, 407-19. (New York, Routledge: 2006). 362-386. Meyerowitz discusses the "Agnes" case. Agnes reported to Stoller and his colleagues that she was intersexed, born with male genitalia but developed feminine secondary sex characteristics at puberty. Later, after surgery in 1959, Agnes confessed to Stoller that she had been taking estrogen tablets since the age of twelve. Meyerowitz argues that the Agnes case served as a warning to doctors, effectively positioning transsexual patients as untrustworthy.
- 70 Harry Benjamin, "Newer aspects of the transsexual phenomenon." *The journal of sex research*, 5, no 2 (1969): 135-141. 140.
- 71 Harry Benjamin, "Transvestism and transsexualism in the male and female." *The journal of sex research*, 4, no 2 (1967): 107-127. 126.
- 72 Ibid.
- 73 Gernsback, *Sexology: Sex Science Illustrated*, 55.
- 74 H.K. Letter in response to Virginia Allen, dated August 2, 1972. HBC Box 5, Ser. II-C.
- 75 Meyerowitz, *How Sex Changed*, 164.
- 76 See Shainess, "The Formation of Gender Identity," 79.
- 77 Ibid.
- 78 Ibid.
- 79 The Harry Benjamin International Gender Dysphoria Association, "Standards of Care for Gender Dysphoric Persons, Fourth Version."

(www.cinematter.com/soc.html: 1990). Originally drafted in 1979 with subsequent editions in 1980, and 1981, these non-binding standards of care strongly suggest that the procedure for treatment require at least a year of counseling by a behavioral scientist, and then surgery can be performed only with the recommendation of the counselor.

80 Letter to HB, from J. C., Chicago, Ill. C/o Mr. O. S. dated May 7, 1956. HBC Box 3, Ser II-C.

81 Letter from T. L. C. to Harry Benjamin, dated March 16, 1967. HBC Box 4, Ser II-C.

82 Benjamin, Harry. "Should surgery be performed on transsexuals?" *American Journal of Psychotherapy*, 25(1), 74-82, 1971. KI 538.2. 76.

83 Ibid., 81.

84 Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. (Princeton, NJ: Princeton University Press, 2009).

CHAPTER TWO
TRANSSEXUALS IN THE COURTROOM:
THE LINKING MEDICO-PSYCHOLOGICAL AND JUDICIAL DISCOURSE

In the last chapter, I examined how the medical and psychological community, though conflicting at first, eventually joined in defining and treating transsexual patients. While the linked fields were concerned with finding a “truth” to the transsexual subject, the linking was also productive in several ways. First the linking solidified the category of the transsexual, providing a working identity model for both doctors and patients. Second, the linking of the two communities provided a path to treatment for some transsexuals, however small a number. Third, the linking of the medical and psychological discourse produced tropes of the transsexual as dangerous, conniving and unreliable/untrustworthy. These tropes worked as technologies of Cartesianism, placing the transsexual in a subject position that is always already questionable, mad and steeped in unreason.

While the 1950s and ‘60s saw the rise of the transsexual in both medical and psychological discourse, the contemporary social and political climate, coupled with transsexual and transgender activism, allowed discourses about transsexuality to proliferate. As more transsexual patients fought for surgery and began to live their lives in the open and push for transsexual rights, the transsexual patient moved into the judicial system.¹ In the 1970s and 1980s, several cases went before the courts concerning

transsexuals. These cases range from issues with public dress, to employment, to health benefits. In this chapter, I examine transsexuals in the courtroom and the linking of medical discourse with judicial discourse. Turning to the judicial system shows the continuing effects of Cartesian subjectivity. Utilized as such, these tropes continue to be a technology of Cartesianism that both limit and expand transsexual subjectivity by policing the borders of “proper” transsexual subjectivity.

Starting in the mid-1900s not only did the transsexual figure come into contact with the judicial system, but also with divisions (police, bureaucratic systems) of the state that are both individualizing and totalitarian in its methods. In “Omnes et Singulatim: Towards a Criticism of *Political Reason*,” Foucault notes “... right from the start, the state is both individualizing and totalitarian... Its inevitable effects are both individualization and totalization. Liberation can only come from attacking, not just one of these two effects, but political rationality’s very roots.”² Foucault calls for a critique of political reason, or “the type of rationality implemented in the exercise of state power.”³ Through a genealogical method, Foucault shows the linkages of various institutions, such as the church and the monarchy, that produce the state while also tracing shifts in ideology over time. For instance, Foucault demonstrates the movement from the relationship of the prince to his position as prince of a country to an “art of government” which is “a right manner of disposing things so as to lead not to the form of the common good, as the jurists’ texts would have said, but to an end that is ‘convenient’ for each of the things that are to be governed.”⁴

If the state is both individualizing and totalitarian and concerned with the disposition of “things” to a convenient end, then how do individual subjects fit into this

multidirectional framework of the state that both individualizes while also creating a totalizing effect for society? In *Abnormal: Lectures at the College de France, 1974-1975*, Foucault shows that, through the linking of psychological discourse and the judicial system, criminals were no longer just criminals, but criminals with a psychopathic tendency to commit crime. In the middle of the eighteenth century, the law encountered a figure for which it had no law: a person who, with what appeared to be a sound mind, committed a crime with seemingly no motive.⁵ According to Foucault, the judiciary reluctantly called in psychiatrists to determine if the criminal was mentally sound. Rather than answering the question of whether or not the criminal was suffering from a delusory state, psychiatry turned to examine certain tendencies in childhood (isolationism, small acts of violence, insubordinate to parents) that became linked with the crime in question. The criminal came to represent his or her crime.⁶

Foucault argues that, in the nineteenth century, with its “very constitution” at stake, psychiatry outside the asylum sought “to detect the danger harbored by madness, even when it is a scarcely perceptible, general, and inoffensive madness” in order to justify its position of power through its ability to detect social danger, even imperceptible danger.⁷ Because of psychiatry’s vulnerable position in the nineteenth century it is understandable that psychiatry would “very quickly [become] interested in the problem of criminality and criminal madness.”⁸ By linking itself with the judiciary, psychiatry was able to garner respect as a valid field, further substantiating its ability to diagnose and treat mental illness.

To better understand the concept of (criminal) mental illness and its functions, Foucault examines the constitution of an abnormal subject as one that transgresses the

law through problematic double transgression of both nature and the law. As Andrew N. Sharpe argues, the transsexual figure fits within Foucault's understanding of the "monster" because, when brought before the law, the transsexual transgresses the boundaries of natural law and institutional law.⁹ The transsexual transgresses natural law because she violates what is assumed to be a natural division of the sexes into male and female, and transgresses institutional law because she violates laws based on a clear division of the sexes for the act of procreation, sexual intercourse and marriage.

Though not a criminal in the traditional sense, the figure of the transsexual followed much the same line as the *petit fou* (small crazy) that Foucault describes throughout his early work. In the figure of the transsexual, the law encounters something for which it is not prepared. While the categories of "male" and "female" and "sex" were well established in common law, the law could not account for a subject changing his or her sex – or the *transience of sex* – and the subsequent destabilization of the common law definition of sex. The meaning of sex, as we will see, was until questioned assumed to be rather straightforward. Common law understanding of "man" and "woman" did not require a strict and clear definition of sex, yet the figure of the transsexual before the law throws the meaning of "sex" into question.

While Sharpe soundly argues that the transsexual fits within Foucault's *petit fou* though its double transgression, Sharpe bypasses examining the transsexual as framed in madness. I argue that the figure of the monster and the figure of the abnormal or mad are joined through the figure of the transsexual. Because the figure of the transsexual before the law is considered unintelligible – causing the medical and legal professions to perform a tortured acrobatics to find a "truth" to the transsexual subject – the doubling of

transgression, or the “monstrous,” finds its link with madness and unreason. The subjects Foucault presents in *Abnormal* are not just those that fit the bill of the monster, but also those that seem to be verging on complete indecipherability or madness. The monstrous/mad figure’s logic – in terms of actions, desires and subjectivity – seems to be completely unintelligible. While Sharpe briefly mentions critiques of splitting the subject into a body/mind or psyche binary, it is precisely this mode of inquiry that has the greatest potential for rethinking transsexual and transgender subjectivity and the law, and subjectivity more generally.

The implications of such an inquiry are that the transsexual subject is still judged against what Lynne Huffer calls the Cartesian subject,¹⁰ one that is “naturally” split into a body/psyche, rational/irrational binary. With the rise of science and the revaluation of knowledge in the Renaissance, the Cartesian subject and reason take hold. Thus “Reason itself (*ratio*) becomes an ‘event’ that not only divides the Renaissance from the classical age, but also divides the thinking subject from the nonthinking subject.”¹¹ This split between the thinking and nonthinking subject ultimately defines the rational and irrational being. “The thinking subject’s use of reason to abolish madness from himself exiles the mad into the category of nonexistence”¹² in a vicious cycle that continues to endlessly reproduce and reify the rational, non-monster and sane subject. Foucault connects sexuality to those that “inhabit the world of unreason: the libertines, debauchers, prostitutes, sodomites, nymphomaniacs, and homosexuals...”¹³ The figure of the transsexual, I believe, can be added to that list. Compelled to speak its subjectivity, the figure of the transsexual – framed as monstrous and mad – is believed to be incapable of speaking her own subjectivity because the subjective interior and exterior do not align.

As I will argue, medico-psychological discourse, linked with judicial discourse, serves as an interpreter of the transsexual subject, to find the hidden truth of the transsexual's being, and to hear it speak (in a metaphorical sense) a subjectivity before both the medico-psychological and judicial communities.

To better understand how subjectivity is wrapped up in the reproduction of the rational/irrational subject, Huffer argues that we must look back in order to look forward.¹⁴ Sharpe calls the hermaphrodite of the nineteenth century Foucault's privileged subject. By starting with this figure, we can trace a trajectory of discourses that, through many twists, turns, and divergences, still leaves its vestiges in contemporary discourse. Therefore, to understand the barrage of usable tropes created through the linking of medical and psychological discourse, we need not only to look at the figures created through medical and psychological discourse, but also those before the law in the eighteenth and nineteenth centuries.

First, I examine the case of Hurculine Barbin, a late-19th century hermaphrodite. Barbin's case displays an early example of the legal implications of being "in the wrong body." While Foucault's introduction to Barbin's memoir argues that we feel a need to find a "true" sex, I argue rather that Barbin's case shows the early workings of Cartesian subjectivity. In *History of Madness*, Foucault locates the splitting of the subject in the transition from the Classical Age to the Renaissance in Europe with the rise of reason. It is this splitting of the subject, where mind and body are separate but aligned, that creates the cultural and social dissonance of the hermaphrodite from the Renaissance through the mid-1800s with the rise in sexology, and later, as I argue, for the transsexual. Linking medico-psychological discourse and the judiciary serves to further reify and reproduce

the Cartesian subject through the rooting out of the “truth” of the transsexual in the 1970s and ‘80s.

Secondly, I look at medical professionals and their work on the legality of transsexualism. Through their writing of medical texts and various journal publications, medical and psychological professionals addressed some of the legal issues of sex reassignment surgery and cross-dressing in public. Because the medical community exchanged ideas internationally, doctors were able to discuss which countries had laws or provisions for transsexual patients and which were more likely to welcome transsexual patients. Additionally, I examine a set of letters from a transsexual patient in Nova Scotia and her legal battle to travel to another country for her sex reassignment surgery.

Lastly, I examine the case of *Ulane v. Eastern Airlines* from 1983. Initially hired as Ken Ulane, Karen Ulane served Eastern Airlines for twelve years prior to her sex-reassignment surgery. Once fired, Ulane filed suit against Eastern Airlines for discrimination and wrongful termination under Title VII of the Civil Rights Act of 1964. Before District Judge Grady was the issue of whether or not Title VII applies to transsexuals. In my discussion I show how the polymorphous figures of the transsexual created in medical and psychological discourses are once again trotted out for the judicial system. As I discussed in the last chapter, through medical and psychological discourse, transsexual patients were framed as conniving, desperate and untrustworthy. As usable stereotypes, these tropes are used in the judicial system as a method of arguing against transsexual rights and as a method of policing the borders of “proper” transsexual subjectivity. Not only is the judicial system concerned with the destabilization of sex, it is also asked to judge transsexual subjectivity through the various tropes of the subject in

the wrong body, the transsexual subject as unreliable, and the transsexual subject as dangerous to public well being. Thus it is the linking of medico-psychological discourse with the judicial system that further substantiates the power that all three institutions exercise.

Early Legal Encounters: The Nineteenth-Century Case of Herculine Barbin

Herculine Barbin is a tragic subject in the late nineteenth century. Foucault found Barbin's memoirs and her case record through his research in France. Barbin's narrative is interesting for the current inquiry because of her standing before the law, and tragic because she committed suicide shortly after completing her memoirs. The development of the memoir shows the early linking of medical and judicial discourse, while also showing just how violent the valorization of the Cartesian subject can be.

Although the Barbin case and the transsexual of the 1950s are two different phenomenon separated by nearly one hundred years, I bring up Barbin here to show the similarities and dissimilarities between the two subject positions. Certain aspects of the hermaphrodite carry over to the transsexual. For Barbin, as with the transsexual of the 1950s, the exterior (the body and desire) is unintelligible. This exterior unintelligibility brings both the hermaphrodite of the nineteenth century and the transsexual of the 1950s to the Law. However, the judiciary in Barbin's case did not seem to be concerned with Barbin's physical morphology so much as her external appearance, whereas transsexuals in the 1950s courtroom are in varying degrees defined through their physical bodies as well as their ability to uphold cultural standards of gender performance against a feeling of internal dissonance.

Foucault begins his introduction to Barbin's memoirs with the question, "Do we *truly* need a *true* sex?"¹⁵ By asking such a question, Foucault complicates the subject in three ways: 1) He questions the incessant need for a sex, 2) he questions or complicates the validity of subjectivity based on sexual markers, and 3) linked to the previous questions, he questions the need for a *true sex*, one that is always already extant, a truth that can be discovered. Furthering Foucault's argument, Thomas Puckett in "Foucault, Physics, Sexuality, and the Hermaphrodite" situates Barbin's narrative in a larger historical context – or the "Logic of Sex where gaps and silences are recorded over with a complex mechanism of the sciences of modern nations."¹⁶ Thus Puckett is not only concerned with "sex," but also with the interconnections of multiple sites of discourse that serve to cover over the gaps in "sex."

While I believe that Foucault's questioning of the "truth" of sex and Puckett's extension are important, I extend both arguments by examining Barbin's memoirs through the lens of Cartesian subjectivity. Using Foucault's work as a frame, I show how Barbin's narrative displays an abnormal and monstrous subjectivity before both the fledging medical community and the law. Further, because of Barbin's description of her bodily and emotional experience as a child, her memoir shows the internalization of shame and the beginnings of a discourse of an interior and exterior. Though Barbin at first felt nothing was wrong with her body or her actions, she slowly internalizes guilt through her experience with other people, institutions and their issues with Barbin's actions and body.

Barbin's memoirs – and the search for a "true" sex – begin in childhood. Barbin, having experienced the death of her father and her mother sending her to a convent in the

“house of L.,” grew up as a female. Later moved to the convent of S., Barbin excelled in her studies and developed a loving relationship with Lea, another sickly girl at the convent. Barbin was often punished for being at Lea’s side, holding her and sharing her bed.

At the age of seventeen, Barbin was admitted to normal school, and during her tenure there her body took on startling changes. She writes, “My upper lip and a part of my cheeks were covered by a light down that increased as the days passed. Understandably, this peculiarity often drew to me joking remarks that I tried to avoid by making frequent use of scissors in place of a razor. As was bound to happen, I only succeeded in making it thicker and more noticeable.”¹⁷ Despite her bodily changes, Barbin fell for Thecla, kissing her incessantly and being banished to sit through lessons at the edge of the garden away from the class.¹⁸ Later that year, during a storm at night, a particularly loud clap of thunder sent the naked Barbin bounding over beds and into the arms of Sister Marie-des-Anges. In describing the incident Barbin notes that an “*incredible sensation* dominated me completely and overwhelmed me with shame.”¹⁹ Starting with this incident, Barbin refused to participate in school activities that might reveal her body, trying desperately to avoid the “passions that shake mankind” and the revelation that would be a “further torment” in her life.²⁰

After receiving her teaching degree at age nineteen and becoming the head mistress of a school, Barbin developed a relationship with a woman named Sara. Once her passions were discovered, Monsieur de M. (a prefect at the convent) and her mother waited for a confession from Barbin, which never came. Finally after a month’s time, she took her situation to Monsieur de B. (Barbin’s hometown priest), confessing to him *in*

detail herself and her longings. Monsieur de B. arranged for Barbin to meet with a doctor to further examine her condition. Barbin describes the experience a frightening and torturous one, one that left no room for privacy. The doctor tells Barbin,

Here you must regard me not only as a doctor but also as a confessor. I must not only see for myself, I must also know everything you can tell me. This is a grave moment for you, more so than you think, perhaps. I must be able to answer for you with complete assurance, before Monseigneur [sic] first of all, and also, no doubt, before the law, which will appeal to my evidence.²¹

Here the linking of medical discourse and the law is apparent. Barbin's bodily evaluation, the scientific examination of the body and its condition, is directly linked to the legal implications of Barbin living as a different sex. Barbin's doctor knows his "evidence" will be called before the law to testify to the bodily condition of Barbin to explain her passions and actions. The anxiety about Barbin's bodily formation and desire speaks to the division of body and mind that Foucault is concerned with. Barbin's interiority does not match the exteriority of her body, nor does it match the exterior (transitive) desire she expresses for women. The notion that the body, gender expression and desire must all align in a certain way shows a relatively early stage of what Judith Butler calls the heterosexual matrix, which assumes that sex, gender and desire should align in order to make an intelligible subject.²²

The theme of confession is explicitly displayed in the doctor's rhetoric. By saying he is at once her physician and her "confessor," he deploys a rhetoric that Foucault expressly notes in *Sexuality One*²³ and again in *Abnormal*.²⁴ According to Foucault, it is the notion of confession in the church in the seventeenth century that is linked and secularized with various institutions (education, medical, judicial). Through the

assumption that there is some interior truth to the subject, confession becomes a “truth” seeking technology of power that produces an internalizing subject. Confessing not only one’s desires and actions, but also one’s bodily experience and dissonance makes the Barbin doubly available to the exacting dynamics of confession and interiorization.

Thanks to the plan the prefect and the doctor devised, Barbin was to lead her life as a man. Once the doctor completed his “voluminous report, a masterpiece in the medical style, intended to ensure before the courts a petition for rectification, which was to be ordained by the court of L., my birthplace.”²⁵ Barbin, under court order, was subjected to yet another physical examination, which “in conformity with the report to which it led, the civil court of L. ordained that a rectification be made on the civil status registers...”²⁶ Living as a man, Barbin was depressed and often without a job. The end of the memoirs describes Barbin’s impending departure for the United States upon the *Europe*. Describing her feelings of leaving all of those who helped her and protected her, she nonetheless notes that she needed to get away from her past and all those that know about it: “What strange blindness was it that made me hold on to this absurd role until the end? I would be unable to explain it to myself. Perhaps it was that thirst for the unknown, which is so natural to man...”²⁷ Barbin presciently notes at the beginning of the memoir that she is upon the hour of her death, and Foucault appends his note to the end of her memoir, saying the body of “Abel Barbin” was found in February, 1868. She committed suicide “by means of a charcoal stove.”²⁸

Barbin’s narrative provides an early example of what sexology and medical science will further refine as the hermaphrodite. Notably, this early depiction shows a medical and legal community concerned with maintaining the sex order. Yet reading

Barbin's narrative, other features read as if Barbin were homosexual/invert, or perhaps a transvestite. Through the developing taxonomy of sexology, these confusing claims to sex and desire are parsed out into distinct categories. Although Barbin would be classified as intersex today, it seems that many of the features of her narrative are present in the modern rendition of the transsexual.

Barbin connects her feelings of shame to her childhood and to her body, especially when exposed to others. Though Barbin does not express it directly, it is apparent that there is dissonance between Barbin's body and psyche. By locating the origin of her "problem" in her childhood, Barbin precipitates the narrative of the transsexual while showing yet another early example of the problematizing of childhood. Barbin's use of her childhood to locate her "problem" and the reaction of others to her body and desires. And further, though Barbin never expressed a desire to live as a man (in fact it was her undoing), her dramatic (and involuntary) change from living as a woman to living as a man predates the transsexual narrative of the 1950s.

Removed from the medicalized language and the developing taxonomies of medical knowledge, Barbin herself thought her narrative sounded like madness, and yet felt compelled to tell her story. Throughout the memoir she doubts that the reader will believe her: "I have to speak of things that, for a number of people, will be nothing but incredible nonsense because, in fact, they go beyond the limits of what is possible."²⁹ It is the transgression of the limit, the speaking of things unspeakable and unintelligible to our current way of thinking about subjectivity that Huffer calls, thinking the limit. She defines this limit as "The paradoxical possibility of thinking's impossibility, or madness, is thus the result of thinking itself: the fold of the outside or thinking the limit."³⁰

Through the connection of medical and judicial discourse, trying to listen to the speaking subject who, perhaps simultaneously, embodies reason and unreason (as they are “folds” of the same fabric), the possibility of thinking the limit of subjectivity, one that is not split into a body/mind divide, is possible.

As we will see in the next section, many of themes presented in Barbin’s case come up again in the court cases in the middle- to late-twentieth century. The transsexual as speaking unintelligible desires, as needing medical certification of her “condition,” and as tragic are all displayed for the court. This focus on medical certification and the “condition” of the transsexual highlights the rise of “abnormal individual” as a “shift from the body to the soul as the object of legal concern.”³¹ Further, the “advances” in the medical and psychological fields, joined together (as discussed in the previous chapter), add additional themes to the courtroom menagerie: the transsexual as desperate, as unreliable, as dangerous, as deceitful.

The Law as Afterthought: Doctors’ Musings on Transsexual Law and the Transition from the Operating Room to the Court Room

When the transsexual phenomenon exploded in the U.S. with the media sensation of Christine Jorgensen in the 1950s, the developing bureaucratic state – just learning how to better track and contain homosexuality³² – was surprisingly both fascinated and terrified of transsexuality. Susan Stryker in her *Transgender History* notes that the public’s fascination with the advance of science played into the media hype surrounding Jorgensen and her “sex change” operation. Not only could technological science split atoms, but also “apparently, turn a man into a woman.”³³ The sheer sensationalism compounded with popular media kept the transsexual in the mind of the populace, yet

surprisingly out of the courts. The discourses the media used, that of changing from one sex to another, allowed the public to believe that, once a transsexual completed the transformation, he or she was simply of the opposite sex. Succinctly, transsexuality was not popularly thought of as a legal matter. While Jorgensen, the ex-GI turned blonde beauty, hinted at anxiety surrounding masculinity post World War II, Jorgensen was generally not thought to be a legal menace either because of her sensational story, or because of her highly feminized appearance persona.

While there are only a few early legal cases of transvestites and transsexuals from the early 1900s to about 1950, the legal question of the transsexual post-Jorgensen was largely an afterthought. This slow movement of the transsexual into judicial discourse could be for two reasons: 1) there were so few transsexuals (post-op) in the U.S. that few if any encountered legal problems concerning their sex, or 2) the state was not concerned with transsexuality until after the McCarthy era and the “liberal moment” of the 1970s with all its various social movements. In either case, doctors were already writing about the legality of changing sex before the courts were. In multinational correspondence, doctors from Europe and the U.S. wrote about legal codes pertaining to transsexuality, discussing the differences among countries, and explaining some of the legal questions patients may have.³⁴

Christian Hamburger, writing in 1953, remarks in the *Journal of the American Medical Association* that the legality of castration varies from country to country. Some countries such as Denmark, Norway, Sweden made “voluntary castration possible when the patient’s sexuality make him prone to commit crimes, thereby making him a danger to society, or when it involves mental disturbances to a considerable degree, or social

deterioration.”³⁵ In 1963, Harry Benjamin’s form letter to male transsexuals warns, “The law, too, may cause you many difficulties and complications, even after the operation. Much red tape stands in the way for you to have your birth certificate read ‘female’ instead of ‘male.’ But you may need that for a new job, or if you should want to get married as a woman.”³⁶ Benjamin, writing later in 1971 for the *American Journal of Psychotherapy*, believes that many of the problems transsexuals face could be alleviated by the relaxing of certain laws, namely the “vagrancy” laws that prohibit dressing as the opposite sex in public.³⁷ Doctors like Benjamin, concerned with the legality of the operation that they would ultimately perform, looked to discuss the legal implications of such a procedure while looking for methods of change.

Meanwhile, transsexual patients in the 1970s began lobbying the judicial system for rights to change their name, birth documents and other legal forms, as well as rights to marriage and work. As Joanne Meyerowitz points out, in an era post *Brown v. Board of Education*, “more individuals chose to pursue their civil rights in the courts, and by the 1960s, with the rise of judicial activism, they had some expectation that they might find judges to back them.”³⁸ This moment in the 1970s is what Meyerowitz calls the “Liberal Moment.”³⁹ Starting with Harry Benjamin and the Erickson Educational Foundation, transsexuals and transgender individuals used existing networks⁴⁰ to form transsexual rights organizations. Additionally, doctors began forming institutional organizations post WWII in an effort to organize research about transsexuality.

Despite the efforts of doctors and transsexual/transgender organizations to provide and lobby for better access to treatment and sex reassignment surgery, some transsexuals still found access to gender identity clinics legally difficult. H.K., a

transsexual from Nova Scotia in 1972, began the process of transitioning with the help of a hospital doing research on transsexualism when funding was suddenly pulled for the program. The program performed one sex reassignment surgery, and H.K. was slated next. Writing to Dr. Charles Ihlenfeld for assistance, H.K. explains that the previous patient has “aggressive behavior” post-surgery.⁴¹ After visiting her psychiatrist, H.K. confirms, “I saw my psychiatrist [sic] yesterday and received some definite but bad news. The gynecologist surgeon told him that he would do no further re-assignment operations... I was told what amounts to the old cliché ‘Once burned, twice shy.’”⁴² H.K. feels cheated and that it “is seems to me to be grossly unfair and unjust to be judged on the behavior of a previous patient without so much as having been seen personally by this surgeon.”⁴³

Virginia Allen, once Benjamin’s assistant who later became the assistant of Dr. Ihlenfeld, writes that, should H.K. be able to make her way to New York, that Dr. Ihlenfeld and others would be happy to help her. It seems that H.K. attempted to take them up on the offer, or attempted to fly to Holland for the operation. Yet, when applying for a visa, the US Consul in Halifax rejected her applications, “because I was a ‘sexual deviate.’ I was very much surprised and deeply hurt that I should be classed the same as rapists, child molesters and people of such nature. I have never been in trouble with the law. I did not conceal anything and was honest with the consul.” Her passport has her “male name” and her “alias” on it. She says, “So you can see even if one desired one could not even seek medical help in the U.S. except by devious means.”⁴⁴

H.K.’s case shows the difficulty of reaching surgery, even once institutionalized. Further, H.K.’s attempt to receive a visa to the U.S. shows the legal limitations of

transsexuals; especially those who wish to immigrate to the U.S. for surgery. While the courts in the U.S. were attempting to parse out how transsexuals fit into the national citizen body, the 1970s were not always the “Liberal Moment” that transsexuals (especially those outside the U.S. and Europe) and doctors hoped for.

Yet many of U.S. court cases from the late 1970s and early ‘80s concerning transsexualism underscores Meyerowitz’s dubbing the late 1960’s and ‘70s as the “Liberal Moment.” Transsexual patients and activists were successful in utilizing the courts as a mode of resistance to the oppression that had been building since the late 1800s. Thus not only was the court able to further strengthen the power it and the medico-psychological field had, but was also able to provide a crack in the totalizing and individualizing system. These cracks acted as sites of resistance for transsexual patients and sympathetic medical professionals.

The City of Chicago v. Wallace et. Al: Resistance and A Call for Increased Medical Evidence

Early cases dealing with transsexuals were mainly concerned with the legal altering of identification documents, the ability to dress to desired gender expression, and marriage. Susan Stryker shows that most early litigation (from about 1850) in the courts centered on cross-dressing and the fear of same-sex marriage through the blurred distinction of men and women.⁴⁵ Later cases like *The City of Chicago v. Wallace Wilson et al.*⁴⁶ in 1978 examined the ability of a pre-operative transsexual to dress as their desired gender in public or on job discrimination, usually argued under specific municipal codes, the Fourteenth Amendment or Title VII of the 1964 Civil Rights Act.

In *Wallace*, two pre-operative transsexuals were arrested for dressing as women in

public. The court had to decide if the rights of the individuals were violated, and if being a pre-operative transsexual were permitted to cross-dress in public as part of their treatment. Initially, the defendants, both pre-operative transsexuals, argued that the Chicago Municipal Code 192s8 was “unconstitutionally vague, overly broad, and denies them equal protection under the law on account of sex” under the First, Fifth and Fourteenth Amendments.⁴⁷ Justice Moran finds that, as applied to the defendants, 192s8 is unconstitutional, but does not want to address its vagueness or the issue of equal protection. Citing *Richard v. Thurston* (1970), he notes that, while the choice of appearance is not considered a fundamental right, “the State is not relieved from showing some justification for its intrusion.”⁴⁸ Justice Moran believes that the context under which such a right is asserted should be examined, as *Kelly v. Johnson* (1976) suggests.

Chicago v. Wallace Wilson provides an example of the “Liberal Moment” where transsexuals were able to use the court system as a means of resistance. Yet strangely enough, the case has been ignored by academics, while also being listed as one of the top forty cases for LGBTQ Americans in the past forty years by Lambda Legal.⁴⁹ To show the beginnings of a connection between the medical and judicial fields, I contextualize *Wallace* in the “Liberal Moment” that Meyewitz examines, showing that, while relying on medico-legal literature rather than professional testimony, *Wallace*’s dissenting judge on the Illinois Supreme Court explicitly calls for medical testimony from the stand, thus setting the stage for following cases.

Because both defendants claimed to be undergoing therapy in preparation for sex reassignment surgery, Justice Moran looks to the medico-psychological literature to explain the process of transitioning. More specifically, Judge Moran cites several

medical and medically informed legal works about transsexualism and the law in his decision with the comment “wherein it is noted that cross-dressing is recommended as part of a sex-reassignment preoperative therapy program.”⁵⁰ Because dressing as the target sex is suggested prior to surgery, and because the defendants were not engaged in sexually deviant behavior, Justice Moran finds “we cannot assume that individuals who cross-dress for the purposes of therapy are prone to commit crimes.”⁵¹

In addition to his argument against the state’s assertion that the municipal code aids in the detection of criminals, Judge Moran argues that the state would be inconsistent in its treatment of transsexuals should it continue to enforce the municipal code because the state of Illinois has already provided legal means of changing birth certificates for post-operative transsexuals. Through the enactment of section 17(1)(d) of the Vital Records act of 1977:

which authorizes the issuance of a new certificate of birth following sex-reassignment surgery, the legislature has implicitly recognized the necessity and validity of such surgery. It would be inconsistent to permit sex-reassignment surgery yet, at the same time, impede the necessary therapy in preparation for such surgery. Individuals contemplating such surgery should, in consultation with their doctors, be entitled to pursue the therapy necessary to insure the correctness of their decision.⁵²

By calling the medico-psychological field into the court, Justice Moran at once lends creditability to his decision, while also buttressing the power of the medico-psychological field to determine, diagnose, and treat transsexual patients. But more importantly, the linking of the judicial and medico-psychological fields, though serving to bring the figure of the transsexual under further surveillance, also provides a means of resistance. Initially, a lower court dismissed the defendants’ claims. Yet on appeal, the defendants were able to have the motion to dismiss overturned, and thus won their case.

Interestingly, the short dissent by Justice Ward displays many of the figures of the transsexual from the medical literature, and that will be seen again in *Ulane v. Eastern Airlines*. First, Justice Ward calls for more proof from the psychological community, citing that “The only testimony in support of the defendants’ claim was that of the defendants themselves. No psychiatrist was called to testify...”⁵³ Despite Justice Moran’s reference to the medico-legal literature on transsexualism, Justice Ward presents an exemplary appeal to the psychological community while simultaneously bringing up the figure of the unreliable transsexual patient. Because transsexuality is a medicalized condition in the eyes of the court, the patients are assumed to not be able to make their own claim to their transsexual status in the courtroom. Not only does Justice Ward want the transsexual patients’ testimony, but also the presence and testimony of medical professionals. Both the call for more substantive proof and the trope of the unreliable transsexual continue to fix the transsexual patient as at once incapable of making a claim about her own subjectivity, while condemning her to an extra burden of proof because her claimed identity.

This doubled cycle, placed within the medico-psychological and judicial fields, continues to question the subjectivity of the transsexual and her right to speak for herself. The framing of the Chicago statute and the prosecution in *Wallace* – that of danger to the public through cross-dressing – shows that the figure of the transsexual meets the qualifications of the “little monster” that Sharpe describes.⁵⁴ Yet it is also this inability to speak an intelligible subjectivity (madness) that forces the judicial system to call for an interpreter: the medical and psychological fields. The need for such an

interpreter highlights the splitting of subjectivity into reason and unreason, whereby the “unreasonable” subject is assumed to be incapable of speaking her own subjectivity.

Though not the first case to argue for transsexual rights under the Fifth and Fourteenth Amendments or municipal codes,⁵⁵ *The City of Chicago v. Wallace et al.* highlights transsexual patients standing before the law claiming their own subjectivity with the help of interpreters of their “condition.” Or, put another way, transsexual patients took to the courts to defend their subjectivity. Indeed, the decision in favor of the defendants shows the willingness of the court to acknowledge the transitioning process for transsexuals, and, further, the court expressly stating that transsexuals cannot be assumed a danger to the public because of their dress. No doubt this liberatory aspect of the case led Lambda Legal to place *The City of Chicago v. Wallace et al.* on their list of the forty most important cases in the last forty years.⁵⁶

However, as transsexuals encountered the judicial system more frequently, the judicial system called for medical testimony, not just published medico-legal opinions. In calling for more medical interpretation, the judicial system effectively links medico-legal discourse while simultaneously positioning the transsexual subject as one that cannot come before the law without medical interpreters. The call for greater amounts of testimony and an increased involvement of the judicial system in the lives of transsexual subjects, however, goes unnoticed by Lambda Legal. While Lambda Legal points out the “positive” and liberatory aspects of the decision, I wish to point out its *effects*. In fact, just six years later, medical professionals played a key role in the district court decision of *Ulane v. Eastern Airlines*. As the following reading of *Ulane v. Eastern Airlines* will

show, the various tropes of the transsexual continue to highlight the linking of judicial and medico-psychological discourses and the split subject of reason and unreason.

The Menagerie of *Ulane v. Eastern Airlines*

Ken Ulane served Eastern Airlines for twelve years prior to transitioning. Eastern Airlines fired her after becoming Karen Ulane, and Ulane filed suit against her termination under Title VII of the Civil Rights Act of 1964. District Judge Grady had to decide if Title VII applied to transsexuals and if Ulane was fired because of her sex. Questioning how transsexual patients go about winning their case in court, Anna Kirkland believes that *Ulane* is an example of a transsexual winning through expert testimony and a close and “well adjusted” approximation of womanliness.⁵⁷ Lisa Bowers argues that *Ulane* case “show[s] that sexually ambiguous subjects may create instability in legal discourse” and further suggests “moments in which the law recognized nonidentity as well as the legal tendency to contain the insights such moments might afford.”⁵⁸ Rather than situate the *Ulane* case in the terms of nonidentity, I expand Kirkland’s argument that Ulane was indeed a stereotype in the courtroom, but in a different way. The decision Judge Grady delivers in *Ulane* shows that medical professionals were called in to testify to Ulane’s status as a transsexual and her ability to perform her duties as a pilot. Throughout the case, the tropes of the transsexual – identified in chapter one – play out before the court through Eastern’s arguments. By calling in medical and psychological professionals, the court again places Ulane in a position of being able to claim a subject position without being able to speak for it alone. Thus the figure of the transsexual is again rendered in madness as an unintelligible subject, one that requires medical and psychological translation for the court.

On April 24, 1981, Karen Ulane, after her successful sex-reassignment surgery, received a discharge letter from Eastern Airlines that listed five specific reasons for her discharge. First, Eastern Airlines believed Ulane to be a danger to both passengers and crew. Second, Ulane's first class medical certificate was conditional rather than unconditional. Third, Eastern Airlines believes that sex-reassignment surgery does not cure underlying psychological problems of transsexuals. Fourth, allowing Ulane to fly would counter act with Eastern Airline's policy to "assure the public that airline travel is safe."⁵⁹ And lastly, the Eastern Airlines lists its fifth reason as,

To the extent the operation and the counseling you have undergone have been successful in changing your essential nature from male to female, it has changed you from the person Eastern has hired into a different person. Eastern would not have hired you had it known you contemplated or might in the future contemplate such an action.⁶⁰

In the termination letter as at trial, the tropes of the transsexual frame Eastern Airlines' arguments. Eastern Airlines believed that as a transsexual, Ulane was a danger to both passengers and crew and interfered in Eastern's ability to assure passengers of safe air travel, positioning her in the "dangerous" transsexual trope. Eastern Airlines also accuses Ulane of falsifying documents and lying to the company about her treatment through hormone therapy. Further, Eastern Airlines believed that Ulane falsified documents leading to her sex-reassignment surgery, duping doctors and then editing medical documents after the fact. By framing Ulane as conniving, Ulane is also accused through the trope of the deceitful transsexual.

At trial, Eastern Airlines additionally claimed that Ulane did not have standing under Title VII because the company did not fire Ulane based on her sex. Further,

Eastern claimed that Ulane was not a transsexual, but rather a transvestite. Using Eastern's arguments as a framework, Judge Grady methodically examines each trope and its accompanying accusations, showing why each accusation is a pretense on the part of Eastern Airlines. Seeking to find the "truth" of Ulane in light of these tropes, Judge Grady uses the testimony of the expert witnesses to debunk the misunderstandings of transsexualism. Undergirding his argument against the transsexual tropes is the notion of "sex" as a category protected under Title VII, and his working definition of sex more generally. And finally, if "sex," as read in Title VII applies to transsexuals, then the question becomes was Ulane fired for her transsexualism? Thus before he can address the transsexual tropes and whether or not Ulane was fired for her transsexualism, he must first address the issue of "sex," whether or not term "sex" applied to Ulane under Title VII.

The issue of sex, especially under Title VII initially seemed clear. Judge Grady remarks that most cases prior to *Ulane* held that Title VII does not apply to transsexuals. In fact, arguments suggest that Congress did not have any intention of providing protection for homosexuals and transvestites under Title VII, and therefore transsexuals are to be included with homosexuals and transvestites. Judge Grady, however, believes the argument placing transsexuals with transvestites and homosexuals to be invalid. As shown in the last chapter, definitions and taxonomy play a crucial role in creating the identity bounds of transsexual patients. Judge Grady argues that homosexuals and transvestites do not have "sexual identity problems... Transsexuals, on the other hand, are persons with a problem relating to their very sexual identity as a man or a woman."⁶¹ Further, Judge Grady notes that, based on the testimony at trial, there is no "settled

definition in the medical community as to what we mean by sex.”⁶² For the purpose of his decision, Judge Grady relies on the testimony of Dr. Green, who believes that sexual identity “is in part a psychological question,” a matter of “one’s own self-perception,” and “a social matter.”⁶³

The combination of self perception and the social (read bodily) perception places the transsexual figure squarely in the divided subjectivity of body and mind, where a subject is assumed to have an interior and exterior that are linked and assumed to naturally align. For the case of *Ulane*, Judge Grady uses the notion of alignment of social and self-perception to define sex. He rejects the notion that chromosomes are the final factor in defining sex, and relies on Ulane’s change of birth certificate to read female under an Illinois statute (enacted by the people) to determine Ulane’s sex. Because Ulane feels herself to be a woman, and is considered socially – through the state and society – as a woman, Judge Grady believes Ulane to be a woman. More generally, he remarks that the evidence in the record of the case shows that “sex,” in both the legal and medical sense, should also include “sexual identity,” and, “therefore, transsexuals are protected by Title VII.”⁶⁴

Second to the question of sex is whether or not Ulane is really a transsexual. Eastern Airlines contended that Ulane was *not* a transsexual, but a transvestite. Testifying for the defense, Dr. Arbitt believes that Ulane “conned her way into an operation”⁶⁵ despite really believing herself to be a transvestite and her fear of losing her job. Ulane’s physician, Dr. Berger, testifies that he did not simply rely on Ulane’s narrative, but that Ulane fits the DSM III criteria for transsexualism, not transvestitism. Judge Grady further strengthens Dr. Berger’s testimony by looking at Ulane’s personal

history. Ulane was thirty-eight when the decision to transition was made, “the plaintiff is in the upper range of intelligence” and was “capable of understanding all the implications of what it was she was doing.”⁶⁶ Based on his examination of her character and Dr. Berger’s testimony, Judge Grady finds that Ulane was not a deceitful transvestite and was fully aware of the consequences of her actions.

The question of Ulane’s status as either a transvestite or a transsexual highlights just how slippery the taxonomy continues to be. Despite nearly fifty years (in the U.S.) of doctors bantering about how transsexualism and transvestitism should be defined, it appears that the categories could still be construed to mean either someone who cross-dresses or someone who wishes to change her sex. This need to constantly define and redefine transsexualism serves to mark transsexual bodies and desires as always already verging on the edge of intelligibility. In a further effort to contain the transsexual identity/figure, doctors are called in as interpreters, having the authority to speak about the transsexual identity. Despite Ulane’s ability to speak about her own subjectivity, Judge Grady not only calls in the medical and psychological fields, but also does his own interpretation of Ulane. The linking of medico-psychological and judicial rhetoric allows Judge Grady to hear transsexual subjectivity spoken, but also gives him the authority to determine a proper transsexual subjectivity.

Judge Grady’s decision on how to determine sex is interesting in conversation with Andrew N. Sharpe’s reading of the British case of *Corbett v. Corbett*. Concerned with marriage, Judge Ormrod J. found that chromosomal testing defined one’s sex for the terms of marriage to be met. Sharpe argues that such a “sex” test was devised in *Corbett v. Corbett* to avoid the issues of homosexual marriage, believing that a post-operative

transsexual could possibly marry a member of his or her own biological sex.⁶⁷ Judge Grady's decision contrasts with Ormrod J.'s decision in that his definition of sex is based on both social and psychological factors, and is therefore more expansive than a singular biological determinant. His liberal interpretation of "sex" allows him to bolster his arguments against the transsexual tropes and directly plays into the "Liberal Moment" of the preceding decade.

Having answered if "sex" applies to transsexuals and if Ulane herself is a transsexual, Judge Grady then answers the question of whether or not Ulane was fired for her transsexualism. Implicit in Judge Grady's questions is whether or not bias, stereotypes and general misunderstandings played a role in Ulane's firing. Judge Grady examines the actions of Eastern's legal team, the testimony of Ulane's coworkers as to the "danger" she presented, Ulane's lack of an unconditional medical certificate, whether sex reassignment surgery is meant to "cure" psychological disorders, how Ulane undermines Eastern's ability to assure passengers of safe travel, and whether or not surgery changes the patient completely from the pre-operative self.

It is unusual that Eastern's legal team coordinated Ulane's firing. Judge Grady believes that "Here the lawyers were in charge from day one and screened everything that happened" and that the team "carefully drafted the two discharge letters in an obvious attempt to avoid liability under the sex discrimination law."⁶⁸ By putting the legal team on Ulane's termination case, Eastern effectively admits to being aware of the possible legal implications of Ulane's termination. Under normal circumstances, as Judge Grady notes, the process Eastern followed would be legal, so long as the terms cited in the termination letter are not pretenses.

Turning to the first issue, Judge Grady attempts to see just how Ulane presented a danger to both passengers and the crew. In testimony Judge Grady examined both Dr. Millett and Captain Causey to explain just how Ulane posed a threat to safety. When pressed, Captain Causey sited a “question of trust,” though exactly what trust constituted he could not answer. Turning to Dr. Millett, Judge Grady found that Dr. Millett – knowing little about transsexualism, made a couple of phone calls for his information, finally ending with Dr. Meyer. Dr. Meyer stated that there was no such contention that Ulane, as a transsexual, would pose any sort of danger. His only contention was that “the surgery was still experimental and not a cure for the underlying psychological problem.”⁶⁹

Rather than Ulane presenting a threat to the safety of passengers and crew, Judge Grady believes that Eastern fashioned such an argument, taking an “attitude that its mind was made up from the beginning.”⁷⁰ Eastern’s arguments convinced Captain Shipner who, worried about someone taking hormones in the cockpit, stated, “If I knew someone was taking heroin, I would not let them in the cabin.”⁷¹ Yet when asked if his opinion would change if he knew more about the hormone Ulane was taking (Ovulen-21), he admitted that his fears would be alleviated. Judge Grady believes that, rather than taking an “ostrich-like position,” Eastern should have been proactive in investigating the issues of transsexuality and educating its employees.

Framed as dangerous, Eastern’s arguments follow Foucault’s notion of the monster as always already a danger to the public. Without any concrete evidence, it clear that the testimony from Captain Shipner is based on a biased opinion that paints Ulane as monstrous and deviant because of her “abnormal” drug regimen. Further, as Dr. Meyer

points out, surgery is not meant to “cure” any underlying psychological problems. Dr. Meyer’s testimony coupled with Captain Shipner’s also places Ulane in a split subjectivity, where the body and the mind are assumed to be connected, but also able to be treated separately. Thus through her monstrous positioning coupled with the rhetorical lens of the Cartesian subject, Ulane is doubly positioned on the edge of reason and unreason. Ulane’s position at the limit of subjectivity places her in the endless cycle that requires her to speak her own subjectivity for which she is assumed not to be able to speak. Rather interpreters are called in to speak for her.

The second issue, the lack of an unconditional medical certificate, shows Eastern’s attempt to “drum up... adverse crew reaction” based on a psychological evaluation. Ulane’s medical certificate at the time was substantially similar to that of an alcoholic, which required further review. In testimony, Dr. Haynes believed that Ulane’s psychological condition did not affect her ability to fly or her ability to be left alone. Rather Dr. Haynes was concerned about ridicule on the part of the crew of Eastern Airlines. Even after Ulane received an unconditional medical certificate from the Federal Flight Administration, Eastern did not change its position. Dr. Hudson testified that the FAA’s decision was wrong, and that he “could never be convinced by any evidence whatsoever that plaintiff is fit to fly the airplane.”⁷²

The “underlying psychological” condition, assumed “fixed” through reassignment surgery, is the third issue Judge Grady examines. He finds that Eastern has “an articulation”⁷³ problem here, because Eastern fails to connect the issue to safety. Further, he notes, “that the surgery is not designed to cure anything. The person after the surgery is still a transsexual.”⁷⁴ Sex reassignment surgery is meant to help the patient lead a more

comfortable life, but the problem still remains. Rather than look into Ulane's particular case, Judge Grady finds that Eastern did nothing to address Ulane's personal readiness, but rather categorically assumed that all transsexuals present a safety issue.⁷⁵

While Judge Grady's finding on problems two and three is helpful for Ulane, his rhetoric still functions within a system that provides him the ability to judge a proper subjectivity that is coded through an assumed split of the body/mind. By admitting that sex reassignment surgery is meant to help the patient live more comfortably, he acknowledges that mind and body are connected; yet his rhetoric assumes a psychic interiority that can be treated through bodily means. Moreover, the transsexual "problem" is never really alleviated. Because Judge Grady, Dr. Meyer and Dr. Haynes assume that there is a psychic interiority, and that transsexuals' bodies and psyches will never properly align, all of them effectively place Ulane as a subjectivity that will potentially never be on its own. While Judge Grady is finding in favor of Ulane, his position as legal confessor and judge gives him the authority to decide Ulane's subjective intelligibility.

Having decided that Ulane does not present a danger in the cockpit, Judge Grady finds Eastern's claim that Ulane undermines Eastern's efforts to assure the public that airline travel is safe to also be a pretext. Eastern's claim, based on the third issue, does not have any evidence. Specifically, Judge Grady notes that this kind of argument is one "opponents of civil rights litigation urged back in those long-ago days when we did not have anti-discrimination laws."⁷⁶ Implicit in Eastern's argument is that, if a transsexual were allowed to fly the plane, then no one would fly. Further, as said above, framing Ulane as a danger deploys the trope of the dangerous transsexual. The monstrous figure

of the transsexual, if allowed to actualize such a position of responsibility, is assumed to have dangerous and damaging effects for the company and its efforts to assure passenger safety.

Judge Grady believes Eastern's final argument for termination in the letter to be the most discriminatory. The notion that sex reassignment surgery changed Ulane from the person she was before, and that further Eastern would not have hired her, is undoubtedly flawed in reasoning. It doesn't align with Eastern's argument that Ulane was a transvestite rather than a transsexual, and is "a virtual admission of discrimination."⁷⁷ According to Judge Grady, that discrimination is based on sex (in that Ulane's changing of "sex" implies that she has a sex, whatever it may be, and that "was" the determining factor in her termination) and falls under Title VII.

While being the most discriminatory argument, it is also the most monstrous in scope. Ulane is not only framed by Eastern Airlines as a monster through the notion of danger, but also as monster whose morphology has not only been altered, but is also always already perverse. Though Eastern does not explicitly make the connection, implicit in its argument is that Ulane's subjectivity is entirely unintelligible and therefore falls into unreason or madness. In this particular argument we see the strongest binding of madness and monster, whose subjectivity is not only at the edge of reason, but also essentially dangerous.⁷⁸

The second termination letter, sent in March of 1982, follows much the same line of reasoning. Though slightly different from the first letter, Eastern's still frames transsexuals – and Ulane in particular – as dangerous and untrustworthy. In the first

letter Eastern simply claimed that Ulane was a danger in the cockpit, and at trial Captain Causey noted that the danger was about trust. Yet the second letter notes that, because Ulane did not disclose her medications (out of fear of losing her job), that her “behavior shows a consistent pattern of poor judgment and willingness to endanger your fellow crew members and passengers for your own benefit.”⁷⁹ While Eastern’s accusation of untruthfulness may indeed be legal, Judge Grady also believes it to be a pretext because of Eastern’s dissimilar treatment of “male alcoholics.”⁸⁰ It appears that some Eastern pilots, for sometime, concealed their alcoholism. These male pilots were never fired, yet Ulane was fired for not revealing her hormone treatment. Judge Grady believes the sex difference to be at issue, and finds that Eastern’s decision was discriminatory.

Lastly, Eastern again states that Ulane’s presence would undermine their ability to assure the public of safe air travel. But this time Eastern states, “This notoriety would undermine Eastern’s efforts to reassure passengers of the safety of airline transportation.”⁸¹ Eastern claims that Ulane’s position as a transsexual pilot would draw enough attention to threaten Eastern’s ability to ensure safety. While Judge Grady does note that the press was in the courtroom at the time and that Ulane did make herself available for interview, he also notes that Ulane was not seeking attention.

Though not an explicit trope of the transsexual as defined in the last chapter, many doctors framed transsexual patients seeking the “sex change” operation Jorgensen had to be seeking fame and attention. This particular framing serves to infantilize transsexual patients (emotionally immature enough to desire gratuitous attention) while also tying the fame-seeking transsexual to the unreliable transsexual narrator. Just as Ulane was accused of conning her way into surgery, she was also accused of bringing

undue media attention to herself and to Eastern Airlines. Judge Grady admits that she “has made her self available to the media”⁸² but believes that “She conducted herself properly”⁸³ on television. The newspaper articles and interest in the case, he notes, come from the “unusual or even unique [...] character” of the case.⁸⁴

Finding that all of Eastern’s arguments were pretexts, Judge Grady found in favor of Ulane, awarding her back pay⁸⁵ and insisting that Eastern rehire Ulane as a Pilot.⁸⁶ However, the Seventh Circuit Court of Appeals over turned Judge Grady’s ruling in 1984.⁸⁷ In the appellate decision, the court argued that Judge Grady’s decision could not stand because of his interpretation of Title VII. Citing its “responsibility... to interpret... congressional legislation and determine what Congress intended when it decided to outlaw discrimination based on sex,”⁸⁸ the Court finds that Congress did not intend for Title VII to cover transsexuals, homosexuals, or transvestites. “Words,” the court points out, “should be given their ordinary, common meaning,”⁸⁹ which leads the court to interpret Title VII prohibiting discrimination “against women because they are women and against men because they are men.”⁹⁰ The Court argues that Judge Grady did not prove that Eastern Considered Ulane to be a woman and legally discriminated against her because she was “a person who has a sexual identity disorder.”⁹¹

Perhaps more interesting in the appellate decision is the section concerning Ulane as a female. Judge Grady, the Court argues, treated Ulane as if she were female. Yet, the decision states, “even if one believes that a woman can be so easily created from what remains of a man, that does not decide this case.”⁹² Were Judge Grady able to cite evidence that Eastern treated Ulane as a female and discriminated against her based on her sex, then, the Court notes, Title VII would apply. “It is clear from the evidence,” they

argue, “that if Eastern did discriminate against Ulane, it was not because she is female, but because Ulane is a transsexual – a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear female.”⁹³

The decision of the appellate court leaves Ulane’s sex undecided. By indicating that, should evidence be available that Eastern considered Ulane to be female Title VII would apply, the Court effectively leaves Ulane’s sex status as a question of social interpretation, rather than a legal matter. It is clear from the appellate decision that the Court is faced with a subject that it cannot interpret – except that Title VII does not apply to her case. The Court does not suggest that Ulane should be considered either male or female, nor does the Court suggest that being transsexual constitutes some third sex category. Despite Ulane’s “proper” embodiment of femininity and her successful navigation of transsexual tropes, the judicial system, through the appellate court decision, still has a problem with Ulane’s interiority. Despite being considered a woman socially (as both Judge Grady and the appellate court indicate), the Court renders Ulane unintelligible through their classification of her as having a sexual identity disorder.

The Edge of Intelligibility

Because *Ulane v. Eastern Airlines* was overturned on appeal in 1984,⁹⁴ the case does not fit exactly into the Liberal Moment that Meyerowitz describes in *How Sex Changed*.⁹⁵ Yet the decision Judge Grady delivered highlights the ways in which judges could still apply a liberal interpretation of the law even amid the rise of the New Right of the 1980s.⁹⁶ More importantly, *Ulane* showcases the joining of medico-psychological discourse and legal discourse. Faced with a figure it cannot comprehend, the judicial

systems calls in medical and psychological “experts” to interpret transsexual subjectivity. Ulane's case demonstrates how transsexual tropes, informed by Cartesian subjectivity, aid in policing the borders of acceptable transsexual subjects. Ulane's case was more than her ability to uphold femininity. It was also about her ability to navigate those transsexual tropes that police the bounds of acceptable subjectivity. Ulane was called to demonstrate her "rational" mind and appearance against the various tropes that always already present the transsexual subject as suspect. This linking of the discourses serves to undergird the power of both discursive parties: the medico-psychological field continues to be the “expert” on the treatment of transsexualism, while the judicial field – calling for interpretation – continues its power as confessor and judge.

The linking of medico-psychological discourse places transsexual subjectivity in a cycle that continuously asks that transsexual subjectivity be spoken and interpreted. The Cartesian subject – rational and thinking – continues to frame subjectivity as divided into interiority/exteriority that, though treated separately, are linked and should properly align. If interior and exterior do not align, subjectivity is placed on the edge of intelligibility, a criminal madness that holds a “truth” that, once discovered, will rectify the dissonance.

In Barbin's case, rectifying the dissonance (her external appearance and desire) meant forcing her to live as a man, a decision that ultimately led to her death. With the rise of sexology, psychology and medicine more generally, finding the “truth” of hemaphroditism in the late 1800s translated into transsexuality in the 1950s with psychotherapy and surgery as the primary methods for easing the interior and exterior dissonance.⁹⁷ Once the figure of the transsexual made its way into the court system in the 1960s and '70s, courts called in medical “experts” to testify to the “condition” of the

transsexual in order to be able to decide how transsexuals should be considered legally and within the populace.

Further, as *Ulane v. Eastern Airlines* shows, the linking of medico-psychological and judicial discourse, while buttressing power, also provided a means of resistance to oppression for transsexual patients. The “Liberal Moment” an outlet for transsexual subjects to push for rights with the hope of finding a sympathetic judge. Thus the linking of discourses provided a space to argue for rights while forcing the judiciary to reconsider terms of “sex” and “gender” long held to have obvious meanings. While the linking of discourse could undoubtedly be framed as repressive to transsexual and transgender persons, it is important to see the *productive* aspect of such linkages.

Despite the productive aspects of the linking of discourses, the assumption of a coherent interiority still needs to be questioned. As Huffer points out, despite the advances of queer theory and queer activism, “Perhaps the greatest symptom of performativity’s [and queer theory’s] reliance on a conception of subjectivity that leaves unaddressed the historical rise of a moral subject is queer theory’s investment in the psyche.”⁹⁸ I have attempted to show just how the assumption of a psychic interiority factors into the ways in which discourses of subjectivity are constructed and the way in which such discourses have very material realities. Examining such a history, through the question of discourse linking and subjectivity helps us to rethink modes of rights seeking, queer theory and political activism more generally.

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- ¹ See Susan Stryker, *Transgender History*. (Berkeley, CA, Seal Press: 2009).
- ² Michel Foucault, “Omnes et singulatim: towards a criticism of political reason.” 1979. <http://foucault.info/documents/foucault.omnesEtSingulatim.en.html>. 13.
- ³ Ibid., 8.
- ⁴ Michel Foucault, “Governmentality.” *Power: the essential works of Foucault, 1954-1984*. (New York, The New Press: 1994). 211.
- ⁵ Michel Foucault, *Abnormal: Lectures at the College de France, 1974-1975*. (New York: Picador, 2003). 118.
- ⁶ Ibid., 16-7.
- ⁷ Ibid., 120.
- ⁸ Ibid., 121.
- ⁹ Andrew N. Sharpe, *Foucault’s Monsters and the Challenge of Law*. (New York: Routledge, 2010).
- ¹⁰ Lynne Huffer, *Mad for Foucault: Rethinking the Foundations of Queer Theory*. (New York: Columbia University Press, 2010).
- ¹¹ Ibid., 56.
- ¹² Ibid., 56.
- ¹³ Ibid., 60.
- ¹⁴ Ibid 82-3. See references to “prodigal son.” Huffer argues that, rather than return to reason, we should “keep things turning into something other.” Additionally, see 261 where, arguing the ethics of returning to subjects that never were, she writes, “[Foucault’s] *History of Madness* suggests, to release the self from the shackles of biopower requires a return to the birth of the self and the tracing of a genealogy of the formation of those shackles. The ethical project of transformation is thus, like philosophy, a project of return.”
- ¹⁵ Michel Foucault, *Herculine Barbin: Being the Recently Discovered Memoirs of a Nineteenth-Century French Hermaphrodite*. (New York: Pantheon Books, 1980). Vii.

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- 16 Thomas Puckett, "Foucault, Physics, Sexuality, and the Hermaphrodite." *The American Journal of Semiotics* 15/16 (1-4): 2000. 251-267. Page 4 of ProQuest online text.
- 17 Michel Foucault, *Herculine Barbin*.
- 18 Ibid., 27.
- 19 Ibid., 32.
- 20 Ibid., 33.
- 21 Ibid., 78.
- 22 See Judith Butler, *Gender Trouble*. (New York, Routledge: 1990).
- 23 Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*. (New York, Vintage Press, 1990). 18-9
- 24 Foucault, *Abnormal*, 192-3.
- 25 Ibid., 87.
- 26 Ibid., 89.
- 27 Ibid., 114-5.
- 28 Ibid., 115.
- 29 Ibid., 15.
- 30 Huffer, *Mad for Foucault*, 99.
- 31 Sharpe, *Foucault's Monsters*, 87.
- 32 Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. (Princeton, NJ: Princeton University Press, 2009). 3. Also see chapters 2 and 5 as examples of state-building through coming to understand and care about deviant bodies and sexuality.
- 33 Susan Stryker, *Transgender History*. (Berkeley, CA: Seal Press), 47.
- 34 Although some medical professionals were undoubtedly trying to help further transsexual patients' ability to seamlessly and legally obtain surgery, Janice Irvine notes that sexologists established their standards of care in part to create a

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- measure of self protection that “offered a measure of security to surgeons worried about lawsuits.” See Irvine, *Disorders of Desire: Sexuality and Gender in Modern American Sexology*. (Philadelphia, Temple University Press: 2005). 210.
- 35 Christian Hamburger, (1953). “Transvestism Hormonal, psychiatric, and surgical treatment.” *Journal of the American Medical Association*, 152(2). KI 538.13. 393.
- 36 Harry Benjamin, (1963). “Advice to a Male Transsexual [who wants a “conversion operation”].” Source: paper. April 1963. Xeroxed, 4pp. KI 538. 2.
- 37 Harry Benjamin, (1971). “Should surgery be performed on transsexuals?” *American Journal of Psychotherapy*, 25,1. KI 538.2. 77.
- 38 Joanne Meyerowitz, *How Sex Changed*. (Cambridge, MA: Harvard University Press, 2002), 209.
- 39 *Ibid*, Chapter 6, 208.
- 40 *Ibid.*, 227.
- 41 H.K. Letter in response to Virginia Allen (Ihlenfeld’s assistant), dated July 31, 1972. , HBC Box 5, Ser. II-C.
- 42 H.K. Letter in response to Virginia Allen, dated August 2, 1972. HBC Box 5, Ser. II-C.
- 43 *Ibid.*
- 44 H.K. Letter in response to Virginia Allen, dated December 9, 1972. HBC Box 5, Ser. II-C.
- 45 Stryker, *Transgender History*, 33-5.
- 46 *The City of Chicago v. Wallace Wilson et al.* 75 Ill. 2d 525; 389 N.E.2d 522 (1978).
- 47 *Ibid.*
- 48 *Ibid.*
- 49 See Lambda Legal online: <http://www.lambdalegal.org/our-work/issues/fair-and-impartial-courts/the-40-most-important-continued-1.html>

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- 50 Ibid. Judge Moran cites: U.L. Cap, *M.P. v. J.T.: An Enlightened Perspective on Transsexualism*. L. Conn, *The Law and Transsexualism: A Faltering Response to a Conceptual Dilema*. L. Cornell, *Transsexualism, Sex Reassignment Surgery and the Law*.
- 51 *The City of Chicago v. Wallace Wilson et al.*
- 52 Ibid.
- 53 Ibid.
- 54 Sharpe, *Foucault's Monsters*, 88.
- 55 See *Holloway v. Arthur Andersen and Company*, 566 F.2d 659, (1977). Also see *Doe v. State of Minnesota, Department of Public Welfare*. 257 N.W.2d 816, 1(977).
- 56 See note 49.
- 57 Anna Kirkland, "Transsexuals in the Courtroom: A Challenge for Feminist Legal Theory." *Law and Social Inquiry*, 28(1): 2003. 1-37. 25-6.
- 58 Lisa C. Bowers, "Queer Acts and the Politics of 'Direct Access': Rethinking Law, Culture, and Community." *Law and Society Review*, 28(5): 1994. 1009-1033. 1014.
- 59 *Ulane v. Eastern Airlines*. 581 F.Supp. 821 (1983).
- 60 Ibid.
- 61 Ibid.
- 62 Ibid.
- 63 Ibid.
- 64 Ibid.
- 65 Ibid.
- 66 Ibid.
- 67 Sharpe, *Foucault's Monsters*, 94-8.
- 68 *Ulane v. Eastern Airlines*. 581 F. Supp. 821 (1983).

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- 69 Ibid.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid.
- 76 Ibid.
- 77 Ibid.
- 78 Foucault argues throughout his work on sexuality and the “perverse” that those once considered a mere pest were later framed as a danger to society. See Foucault, *Abnormal* and Foucault, *History of Sexuality, Volume 1*.
- 79 *Ulane v. Eastern Airlines*, 581 F. Supp. 821 (1983).
- 80 Ibid.
- 81 Ibid.
- 82 Ibid.
- 83 Ibid.
- 84 Ibid.
- 85 AP, “Dismissed Transsexual Pilot Wins \$158,590 in Back Pay.” *The New York Times* (February 14, 1984).
- 86 E. R. Shipp. “Judge Tells Eastern Airlines to Rehire Transsexual Pilot.” *The New York Times* (December 28, 1983).
- 87 *Ulane v. Eastern Airlines*, 742 F.2d 1081 (1984).
- 88 Ibid.

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- 89 Ibid.
- 90 Ibid.
- 91 Ibid.
- 92 Ibid.
- 93 Ibid.
- 94 Ibid.
- 95 Karen Ulane did eventually settle with Eastern Airlines out of court for “‘substantially more’ than the amount ordered by Judge Grady.” See AP, “Karen Ulane, 48, Pilot; Who Had Sex Change.” *The New York Times* (May 24, 1989).
- 96 For more on the 1980s backlash, see Stryker, *History of Transsexuality*.
- 97 See Irvine, *Disorders of Desire*, 210.
- 98 Huffer, *Mad for Foucault*, 115.

CONCLUSION

COMING APART AT THE SEAMS: UNRAVELING THE CARTESIAN SUBJECT, CONTEMPORARY *TRANS*- POLITICS AND THE ANXIETY OF LIBERATION

One day, perhaps, we will no longer know what madness was.¹

Following the work of Foucault for her research on queer theory and ethics, Lynne Huffer attempts to trace the effects of Cartesian subjectivity and its effects on queer subjectivity and ethics. She argues Foucault critiqued the Cartesian subject throughout his work, starting first with *History of Madness*. In his later work, Huffer notes, Foucault moved to an explicit critique of the State and its power that is both individualizing and totalizing, having the effect of creating a sameness for a populace, and yet an specific legal/ethical implication for the individual.

I have shown in the previous chapters how the medical community, starting in the mid-1800s in Europe (but especially after 1950 in America), created a method for transsexuality. The medical community in the mid- to late-1800s believed that the mind and body had a reciprocal relationship, yet as rationalism and professionalization increased in the U.S., the medical community moved increasingly away from the mind in favor of the body. The split of the medical and psychological communities at the turn of

the twentieth century, coupled with the rise of sexology, paved the institutional way for the creation of the transsexual subject.

Given the gender “problem” of the transsexual in the 1950s, sexology began to question what constituted one’s “sex.” With the advent of sex reassignment surgery, it was only a matter of time before the state became concerned with defining a transsexual person’s sex. Through interactions with the courts, the judicial system again had to address the definition of sex and common assumptions about sex written into state and federal statutes. As I demonstrated in chapter two, the courts called in the medical profession, asking them to step in to define and speak on the behalf of transsexual subjects. In doing so, the medical community brought in many tropes about transsexual subjects, many of which were the vestiges of the war between the medical and psychological communities over the treatment of transsexualism that lasted until the late 1970s. These figures or tropes, as I have argued, were constituted as mad, and thereby accusing a transsexual subject of failing to hold to a Cartesian standard of subjectivity.

I believe that there are (at the very least) still vestiges of postmodernism lingering in our cultural memory – now more than ever in an ever-globalizing and post-9/11 American milieu. The figure of the transsexual, as I have explained, took many twists and turns through the medical and psychological fields, and into other state institutions and discursive fields. Thus the figure of the transsexual (transgender, trans-) is postmodern not only because of its transcendence of gender binaries, but also because of its complex weaving through multiple fields, both professional and otherwise, while opening up subjectivity to a certain amount of play. While it would be easy to examine

other discursive fields, the Law perhaps best shows the joining and splitting of discursive fields and the further fracturing of identity.

Despite the efforts of various institutions to contain the ‘problem’ of transsexuality and transgenderism, there seems to be – at least within the law and on the level of the state more generally – hints at the unraveling of the Cartesian subject. Similar to the current reappropriation of gays and lesbians within the nationalist framework of the American nation-state,² it seems that trans- figures are on their way to becoming an appropriated American subjectivity. Recently, trans-identified persons have been making headlines because of their appointment to “respected” local and state institutions. Stu Rasmussen is believed to be the first trans-identified mayor in the nation as he unseated incumbent Ken Hector in Silverton, Oregon,³ and in 2010, Amanda Simpson made history by becoming the first trans-identified presidential appointee to the Department of Commerce.⁴ California voters recently appointed Victoria Kolakowski, who is the first openly trans-identified judge, to the Alameda County Superior Court.⁵ The fact that trans-identified persons are gaining state and nationally recognized positions seems to indicate that trans subjectivity is moving out of the margins of society and into the mainstream of acceptable bodily subjectivities. Or more simply put, it seems that trans-subjectivities are being appropriated for the national body politic.

But what does it mean to be (re)appropriated? And what does it mean for trans-experience and subjectivity/identity? I have shown how the birth of the transsexual subject required conceptions of sex, gender, and sexuality, a Cartesian subject that consists of an inside and outside, as well as authoritative institutions. Further, I have demonstrated how identities born of such circumstances are both reduced and multiplied

to stereotypes that are utilizable in other discursive fields through (sometimes temporary) linkages of discursive fields and practice. In a way, the flattening and multiplying of subjective identities provides for easy understanding and appropriation (both negatively and positively) on the state and federal levels. Bringing aberrations back into the fold, while seemingly positive and inclusionary, has stark implications for the regulation of society. While there is the effect of bringing marginalized persons into the mainstream of society, the appropriation of certain “errant” bodies causes a further fracturing and marginalization of already marginalized bodies of people. The marginalization of other “others” is, in itself, another type of appropriation, a continued containment device that allows institutional and state systems to easily identify, maintain, and subject subjects to an increasingly scrutinizing gaze of power.

The trans- community is no exception. The diverse trans- community is, as it has been historically, further splitting into bodies that do and do not count. The *Ulane* case discussed in chapter two shows that adherence to the Cartesian mode of subjectivity (with a little corrective help from the medical community) allows the judicial field to maintain social order through rewarding those subjects who correctly uphold the sex/gender/desire matrix. As Anna Kirkland argues, *Ulane* won her initial case because of her ability to adhere to the standards of femininity.⁶ Further, as I have argued, the play of stereotypes that rely on the Cartesian subject further police the borders of acceptable subjects. As state institutions continues to use technologies of Cartesianism, with increasing surveillance and an ever-heightening and constricting standard of normal, “aberrant” trans-identified subjects that do not meet the standard of a properly rectified subject will be further fractured from their “normalized” counterparts.

For example, a *New York Times* article from 2011 indicates that two trans-identified persons have filed suit against New York City at the New York Supreme Court, contesting that current policy requiring “corrective surgery” before a birth certificate can be changed.⁷ The plaintiffs argue that surgery is costly, often not covered by insurance, and requiring surgery does not account for a person’s inner feelings of gender or gender perception. Those who do not comply with corrective surgery are subjected to embarrassing moments, looks of suspicion and humiliation. Their argument highlights how those who “properly” embody a “corrected” transsexual have access to state recognition of their sex status, while those who are unwilling or unable to have surgery are pushed further towards the margins.

In the twenty years since the *Ulane* case, American society has become an ever-increasing surveillance state that is willing to go to great lengths to police the borders of bodies that count in the American populace. Our bureaucratic state has become, since WWII, increasingly better at knowing and maintaining its population, even to the point of directing sexual matters and personal expression. While recent cases such as *Lawrence v. Texas* seem to provide liberties for subjects (gay and lesbian subjects in the *Lawrence* case), there is an increased proximity of the state that provides for state control over sexual expression and freedom that falls according to lines of class, race, nationality, etc.⁸

Despite increasing surveillance from the state, it seems that the state’s ability to use stable categories that uphold the Cartesian subject is becoming increasingly difficult. For example, consider the Florida case of *Kantaras v. Kantaras* in 2004.⁹ Originally from Ohio, Michael Kantaras had sex reassignment surgery in Texas at the Rosenberg Clinic in 1987. Michael met Linda in 1988 and the couple married in Florida in 1989. In

1998 Michael filed for divorce in Florida, but Linda counterpetitioned stating that the marriage was void *ab initio* because Michael was *really* female. Under Florida's statutes on marriage (defined as between a man and a woman) the appellate court found in favor of Linda, citing that Michael was not considered a man for "*the purposes of the marriage statutes*"¹⁰ despite Michael's various other interactions (past, present, and presumably continuing) with the state as a legal man.

Florida's decision in the *Kantaras* case, while explicitly dealing with marriage statutes, and same-sex marriage in particular, has far reaching effects for Michael. The initial decision, which found in favor of Michael, cited his myriad interactions with both local and state governments as a man to bolster the court's argument that Michael was indeed a man at the time of the marriage. While the appellate court does not deny Michael's various interactions (including legal name change and the modification of his birth certificate), it reversed the initial decision using the language that effectively leaves Michael's legal gender in question. By arguing that, for the purposes of marriage, Michael cannot be considered a man, the court throws (though does not rule on) the legality of Michael's other interactions with the state into question, leaving his full legal gender in question.

The decision in the case exemplifies the effects of increasing surveillance and the implications of close government regulation of acceptable bodies. Such regulation, coupled with the nationalistic desire of exemplary inclusion, creates fractures of subjectivity that cannot be maintained. Treated as one sex in Ohio, treated as another sex in Texas, and effectively ungendered in Florida highlights the fracturing nature of subjectivity vis-à-vis trans-identified persons. Such a perplexed state leaves the

individual feeling singled out (not to mention the material reality of such a subjectivity) while policing the borders – both physical/geographical and metaphysically – of the bodies that count in the nation-state. If citizenship is taken to mean belonging to a national body of law-abiding persons with similar conceptions of what it means to belong to a certain group of subjects, rights, freedoms, and the meaning of citizenship, then Michael is (at least on the state level) a non-citizen because of his “confused” sex status between states.

I mention the *Kantaros* case here to point out the implications of Cartesian subjectivity and its unraveling. I see these implications as an expansion of the totalizing and individualizing effects that Foucault describes in “*Omnes et Singulatum.*”¹¹ Through such contact with the state and the judiciary, a non-acceptable trans-identified subject is hailed as an individual in that s/he is subject to individual punishment (in the sense of the denial of citizenship rights) enacted by the state and judiciary. Our belief in a fundamental “nature” of a “natural” inside (mind) and outside (body), while once contestable in previous decades, has become increasingly entrenched to the point that “sex” is always already what is “naturally” assigned at birth. Yet with no federal standard regarding the rights of trans-identified subjects, the states are left to legislate statutes regarding the ability to obtain sex reassignment surgery, the ability to change birth certificates, and discrimination based on gender history or perceived gender incoherence.

Such punishment – or the denial of certain citizenship rights in a confusing manner from state to state – creates a totalizing effect in two ways: 1) it is totalizing for the *individual* in that judgment passed appears total and final, and 2) it is totalizing for the populace in that such punishment serves to police the borders of acceptable

subjectivities not only for trans-identified persons, but also for the citizenry more generally. Despite the increased visibility of trans-identified persons in government positions (which seemingly indicates inclusivity and imminent liberation), state institutions, though their use of “proper” transsexual bodies that fit the heteronormal matrix, continue to enact technologies of Cartesianism that bring some bodies into the national populace while pushing others who do not conform to the same “normative” standard further towards the margins.

The state cannot, as we see with *Kantaros v. Kantaras* continue to have totalizing effects in a singular fashion, as was the case with identities prior to the mid-1900s. Instead, the postmodern age provides for the shifting center of the “abnormal” discourses. I believe that, as the borders of acceptable bodies are policed using the Cartesian subject as the standard (and negative tropes or stereotypes that refer to the standard), the system will become more difficult to maintain. The state’s increased proximity to queer bodies is producing an onus for both the individual and the state itself. State surveillance of queer bodies (to the extent that we have witnessed since 9/11) is so vast that the sheer expense and manpower required – not to mention the agitation from the public, lobbyists/activists and marginalized populations – are taking a toll. There will be a recentering of discourse, one that accepts some trans-identified bodies into society while further marginalizing others.

As Derrida indicates, the endless play or recentering of discourse over time is a *positive* aspect of discourse that allows for new concepts and ideas to emerge. Yet, as there has been more generally with postmodernism, this play, while liberatory, can produce anxiety: anxiety about stability, change, and the opening up of new pathways of

understanding. With this sense of anxiety, trans-identified subjects coming into the national body is no doubt a concern for conservatives. There is, however, another kind of anxiety that is rarely examined in transgender politics. With the current political situation of the United States, with social issues dominating political discourse, there needs to be an examination about the anxiety of liberty.

Anxiety of liberty is the unease produced through trading increased state intervention for “liberties” that are supposedly for an entire “class” of people. While gays and lesbians have made such federal achievements, there is, for now, few protections and provisions for trans-identified persons from either the state or federal level. As with same-sex marriage, the courts have left trans- issues to individual states, further providing for increased legal confusion and marginalization. The linking of institutions through trans- subjectivity, coupled with activism, will eventually press the trans-identified subject back to the federal level, and again creating anxiety over the amount of state involvement in the lives of trans-identified subjects and their ability to transition and express themselves as they see fit. This anxiety producing interaction, while providing some with a bit of liberty, also, over time, allows for the recentering of what we believe to be “abnormal.” As we are seeing now, for example, Americans are becoming more accepting of gays and lesbians, shifting what we believe to be “abnormal.”

Focus on the Cartesian subject allows for another, broader, perspective on the recentering and play of subjectivity and the framing of abnormality. Further, as trans- persons continue to undermine stereotypes and seek litigation from the courts while lobbying legislators, the fissures in the system will become more apparent, and try as the

state might, the system will recenter, again allowing for increased inclusion, but never leaving the dialectical system which leaves a few stones still unturned. Examining the process of state involvement with trans- subjectivities through Cartesianism allows us to see the broader effects of lobbying for liberties through state channels. Further, the examination aids in the development of new methods of seeking out and exploiting the fissures in the system to the advantage of marginalized subjectivities.

Perhaps Foucault was right in believing that we will one day “no longer know what madness was.” Such a simple statement can be misleading, especially when madness is framed as a subjectivity. Perhaps, put another way, our conception of what constitutes madness will change (as it has historically) so that what we diagnose as madness today will indeed be “normal” in the future. The thought seems liberating and, I believe, a little fantastical. The question would then become, *who will be “mad” then?*

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- ¹ Michel Foucault, “Madness, the Absence of an Oeuvre.” *History of Madness*. (New York, Routledge: 2009).
- ² See Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times*. (Durham, NC, Duke University Press: 2009).
- ³ Nick Graham, “America’s First Transgender Mayor: Stu Rasmussen.” *The Huffington Post* (November 8, 2008).
http://www.huffingtonpost.com/2008/11/09/americas-first-transgender_n_142503.html
- ⁴ Michelle Garcia, “Obama Makes History, Appoints Trans Woman.” *The Advocate* (January 1, 2010). <http://www.advocate.com/article.aspx?id=104865>
- ⁵ Michael Sheridan, “California Elects Nation’s First Openly Transgender Judge, Victoria Kolakowski.” *New York Daily News* (November 17, 2010).
http://articles.nydailynews.com/2010-11-17/news/27081592_1_transgender-election-coverage-judicial-elections
- ⁶ Anna Kirkland, “Transsexuals in the Courtroom: A Challenge for Feminist Legal Theory.” *Law and Social Inquiry*, 28(1): 2003. 1-37. 25-6.
- ⁷ John Eligon, “Suits Dispute City’s Rule on Recording Sex Changes.” *The New York Times*, (March 22, 2011).
- ⁸ See Jasbir Puar, *Terrorist Assemblages*.
- ⁹ *Kantaras v. Kantaras*, 884 So. 2d 155 (2004).
- ¹⁰ Ibid. Emphasis added.
- ¹¹ Michel Foucault, “Omnes et singulatim: towards a criticism of political reason.” 1979. <http://foucault.info/documents/foucault.omnesEtSingulatim.en.html>.

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ABBREVIATIONS

HBC – Harry Benjamin Collection, The Kinsey Institute for Research in Sex, Gender and Reproduction: Indiana University, Bloomington, Indiana.

KI – The Kinsey Institute for Research in Sex, Gender and Reproduction: Indiana University, Bloomington, Indiana.

WNC – The Williams-Nichols Collection, University of Louisville Special Collections: Louisville, Kentucky.

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