

Digitizing Difference: Fraudulence, Gender Non-Conformity, and Data

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## Introduction: Tracing Fraud Through Trans Life

“I’m just gonna get my name done, right? So, I do all my stuff. Show up for court. And suddenly he’s asking me the standard questions, is this for fraud, blah, blah, blah?”  
(Sharon, Focus Group #3)

State of Minnesota			District Court	
County			Judicial District:	_____
			Court File Number:	_____
			Case Type:	<b>Name Change</b>

In the Matter of:

\_\_\_\_\_

First                  Middle                  Last

For a change of name to:

\_\_\_\_\_

First                  Middle                  Last

---

The above entitled matter came on for hearing before the undersigned Judge on \_\_\_\_\_ upon the Application for a Name Change and Other Relief. Upon the Date testimony and files, THE COURT FINDS the following:

1. The application is made in good faith without intent to defraud or mislead.

**Order Granting Name Change  
And Other Relief  
(Minn. Stat. § 259.10, § 144.218, and § 144.2181)**

Figure 1: State of Minnesota Name Change Petition Application

In the state of Minnesota, people who petition to legally change their names must affirm that they are not seeking a name change in order to deceive others. They are required to make a sworn oath that their application “is made in good faith, without intent to defraud or mislead” (Minnesota Judicial Branch, n.d.). In this opening example, Sharon, a participant in one of my focus groups nonchalantly remarked upon this mandate, describing her interaction with the judge who authorized her name change:

“And suddenly he’s asking me the standard questions, is this for fraud, blah, blah, blah?” To Sharon, a middle-aged, middle-class, white trans woman, the requirement to attest that her name change was in “good faith,” as in, that her legal transition was legitimate, seemed reasonable. She was not trying to defraud or mislead anyone. She had expected this question. It appeared on the application form that she filled out weeks before her court date (fig. 1), and others who had gone through the name change process before her had warned her about being asked it. This question aims to ascertain the reason behind a name change—the intent of the individual petitioning. Some judges use the question in order to interrogate petitioners about their motives, particularly when they are changing their names across genders, such as from a traditionally male name to a traditionally female or gender-neutral name, or vice versa. Sharon’s categorization of the question as “standard,” and “blah, blah, blah,” suggests that this type of inquiry seemed reasonable or normal to her. Even if it was unpleasant, she understood why she would be asked about her intentions before she could legally change her name.

Changing one’s name enables individuals to assume a new legal identity, potentially shedding any reference to one’s past. Sharon’s understanding of the fraud question as expected, perhaps unremarkable, and standard illuminates the importance of identity verification in the US and the presumption that changing an identity signals potential malicious intent. The capacity to elude identification produces profound anxieties in a surveillance-driven culture, where unknowable subjects seemingly present infinite risks. Changes to a name and especially a name and sex designation challenge core tenets of identification, and often also norms about data structure within information

management systems which presume that a person's first name and sex classification will remain stable throughout their life. Because their bodies and identities change in unexpected ways, trans and gender non-conforming people can appear out of place, incompatible with normative ways of making sense of identity in interpersonal interactions and data systems, especially those that compare data across institutions in order to verify identity. In essence, when trans and gender non-conforming people change their names, they appear to be doing something fraudulent, something out of the ordinary that challenges norms about identity and identification. Because the changes that trans and gender non-conforming people make are less common and unexpected to many bureaucrats and representatives tasked with administering these changes or understanding conflicting identification data about an individual, trans life is saturated with fraud detection technologies: tests to verify the authenticity of a trans person's atypical identity.

Ensuring that a person "truly" is who they say they are is central to our contemporary surveillance-driven society. Identity verification is becoming a regular facet of daily life, from entering credentials to access an email account to presenting an ID at a workplace or to order a drink. Indeed, fraud detection technologies are growing rapidly: trans subjects are not only asked to declare non-fraudulent intent when obtaining a name change, but their identities are verified persistently in an expanding web of authentication. Fears that a person might escape their past through a legal name change may seem laughable in the face of expansive data collection and verification tools and near constant news of disappearing data privacy and safety. However, while it seems implausible that a person could ever fully escape their past—with nearly every movement

and interaction digitally documented—trans identity changes mark a glitch in information systems, as their information often cannot be fully accounted for in a meaningful way, and their identities often incompatible with existing data collection and storage norms. The coexistence of former and current identity data trouble information systems and ways of making sense of individuals that rely upon coherency, stability, and predictability in identification.

Trans name changes appear fraudulent because they are unexpected and uncommon occurrences that may appear like identity theft: the improper (and illegal) use of another person's identity to access resources. For individuals or computers unfamiliar with trans people, the presence of two different (and differently gendered) first names, linked to one individual, signals suspicion and warrants further scrutiny. For this reason, trans subjects face tremendous obstacles when they make legal changes to their name and sex classification. A court order issued by a judge will legally change a name and perhaps a sex classification, but these changes must then be reported to all of the disparate institutions where this data matters: to all other state record-keepers (licensed driver registrations, the Social Security Administration, the State Department for passport updates, and so on), as well as the countless private institutions that trans people interact with on a daily basis. This corpus of information about an individual—their body of data—is unwieldy. While every effort may be made to update IDs to reflect a new legal name, inevitably, traces of a former name will remain on mailing lists, customer rewards accounts, online accounts, old subscriptions, and more. Companies may refuse to update a name or sex classification even with proof of a court order, or they may choose to

continue to retain the previous data on record in order to maintain a connection between the former and current identity data, outing trans people to all who access these records. Across and sometimes even within institutions, trans people possess incongruent identification data. Further, a trans person's sex classification may inaccurately identify them, or may cause issues for instance, when attempting to obtain healthcare coverage that seems to conflict with their official sex classification. Indeed, the impetus to identify, classify, and track individuals within and across data systems, as well as within interpersonal assessments of sex, gender, and identity, have the potential to mark trans and gender non-conforming people as suspect, and potentially fraudulent.

As a legal mechanism, fraud accusations have been used to protect the public or harmed individuals against deceit, namely in the realm of financial malpractice. Historian Edward Balleisen notes that anti-fraud measures shifted after the New Deal in the United States. Whereas in the 19<sup>th</sup> century, fraud protections were aimed at protecting consumers from exploitative business practices, in the early 20<sup>th</sup> century, they shifted "toward a logic of caveat venditor (let the seller beware)" (Balleisen 2017, 45). Anti-fraud measures in our contemporary moment indeed are more aligned with protecting business owners, corporations, banks, and the state (the sellers) from consumers than the other way around. Further, as Balleisen highlights, organizations like the Better Business Bureau, intended to protect consumers from fraudulent business practices, neglected to take action against racially targeted frauds, such as exploitative store credit rates in neighborhoods of color (ibid., 49). Who is accused of fraud and who is deemed to be defrauding others is highly racialized and gendered.

Out of all of the focus group participants, Sharon was the only one to mention this requirement to swear that they were not committing fraud during their name change hearing, yet many discussed the effects of fraud accusations lodged at them by other institutions as they sought to make their name changes legible by updating all of their identification documents, official records, and establishing accounts in their new names. Fraud accusations are common occurrences in contemporary trans life. While all (not just trans) name change applicants are asked to declare that they are not changing their names for fraudulent purposes, the association of fraud with trans and gender non-conforming people runs deep in US society, manifesting in politics, popular culture, and interpersonal exchanges. From tropes in television and film that “reveal” a woman to be trans, such as in *The Crying Game*, to “bathroom bill” legislation that restricts access to public restrooms and locker rooms based on natal sex, trans people are persistently portrayed as inappropriately and deceptively occupying their preferred gender identities. Trans subjects are considered fraudulent due to deeply-held social, cultural, and medical beliefs about the biological essentialism of sex. That is, that while gender presentation can change, a person will always “really” be the sex that they were assigned at birth. As Alex Sharpe puts it, “The cultural means through which transgender and fraud become associated is citation through time, a cisgender communal chant, what Butler has described as ‘an imaginary chorus that taunts’ (2017: n.p.). Accusations of trans fraudulence stem from a deeper disapproval of gender transition, embedded in societal investments in cis-normativity, defined as the ways that being cis (non-trans) is

normalized and encouraged through institutional practices, dominant culture, policies, and information systems.

*Digitizing Difference: Fraudulence, Gender Non-Conformity, and Data* traces the specter of fraud in contemporary trans life, across health care administration, consumer credit reporting systems, identity theft management, and intimate relationships. I argue that fraud accusations index and perpetuate *divestments away from trans life*, where the perception of trans fraudulence initiates a range of necropolitical responses: denial of services, physical and epistemic violence, neglect, incarceration, humiliation, and disenfranchisement. This project demonstrates that trans incompatibility with normative ways of accounting for individuals justifies the devaluation of trans life: being seemingly unidentifiable or uncategorizable produces trans marginalization. In some cases, the perception of fraudulence is an unintended consequence of data systems which could otherwise accommodate trans people if they were designed to do so; in others, fraud explicitly condones violence against trans people. I examine how fraud detection logics seep into interactions between trans and cis people, arguing that these are epistemological fraud detection technologies which aim to ascertain the “truth” of a trans person’s identity. This dissertation investigates how ideas about the stability of sex, gender, and identity collide with growing belief in the power of big data analytics to codify the association between gender non-conformity and risk in the private sector. It is the first project to combine transgender studies with critical data studies, articulating an innovative approach to understanding how trans identities are managed not only by the state, but also through the buying and selling of information in consumer data economies

driven by commercial interests. In so doing, I argue that the unwieldiness of data governance in the private sector must be analyzed through a critical trans perspective, and I offer new ways of thinking about the intersections between data, gender, risk, identity, race, and capitalism.

Fraud is a financial term, used to describe an event where one party knowingly deceives another for some financial or social capitalist gain. I use “fraud” specifically to examine how gender non-conformity is devalued through data incompatibilities and fraud detection epistemologies, highlighting how these surveillant practices work in the service of marking and marginalizing racialized and gendered modes of difference. Fraud accusations are nodes of power which reveal how the boundaries of social categories of valuation are constructed and maintained through their elicitations and rebuttals. To be defrauded also marks a loss, being a victim to a fraudster—in each case that I explore in this dissertation, trans and gender non-conforming people are positioned as the source of the fraud, the initiators of loss for financial industries; health insurance providers; and cis, heterosexual people.

As an intersectional analytical lens, fraud presents a way for understanding the effects of racialized capitalism and information capitalism on trans life—examining how fears of unknowability about identity manifest in a data-driven society. Racialized capitalism and information capitalism are two terms that I use throughout this dissertation to examine how financial logics of exploitation and dominance are shaped by racism and trust in data as authoritative. Racialized capitalism has been theorized by many scholars of critical race and ethnic studies, including Nancy Leong (2013), Jodi Melamed (2015),

and Cedric Robinson (1983) to describe the relationship between racism and capitalism, citing their interdependencies in producing exploitation for people of color and bolstering wealth and power for white people. Throughout, I demonstrate that racialized manifestations of capitalism—the uneven distribution of access to resources and the exploitation of poor, (trans) people of color—shape fraud detection technologies that reproduce racialized and gendered violences. Information capitalism has been theorized by scholars in the beginning of what we now call “the information age,” in the 1990s (Davis et. al: 1998). I find this term useful now, especially as it has fallen out of popularity, as it highlights the centrality of data to decision-making to organizations engaged in capitalist practices, even as these practices are normalized and made invisible. Taken together, these two concepts illustrate the constitutive nature of these modes of power, how racialized capitalism utilizes data to justify its exploitations, and how racism and other modes of discrimination are coded into data-driven decision-making. The historical and ongoing work of surveillance has been to produce and make the markers of racialized and gendered difference legible, visible, and searchable, in the service of domination. The proliferation of data and the growing impetus to identify individuals has affected trans subjects whose identity changes confound normative surveillant systems, particularly those trans subjects with other marginalized identities—those who are people of color, poor, disabled, non-citizens, or gender non-conforming.<sup>1</sup> Big data promises to

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<sup>1</sup> The racialized history of identity fraud in the United States is extensive. For instance, Erika Lee details how integral fraud detection was to immigration agents at Angel Island in determining proper and appropriate claims to citizenship, and how Chinese immigrants challenged racist immigration bans during the exclusion era by fraudulently claiming relation to U.S. citizen “paper sons” (Lee and Yung 2013). See also Luibheid 2002, Ngai 2004. For scholarship on biological racial identity tests and accusations of “passing” as fraudulence, see Gross 2008.

predict, know, and identify unknown risks, and the proliferation of information about identities also makes trans subjects with changing data appear suspect.

The threat of fraud emerges during important moments of transition and continues to surface as trans people make life changes—when they move, apply for a new job, apply for loans, and have children—and conduct everyday tasks—go to the doctor, check their credit reports, or use a drug store loyalty card. Fraud accusations can have profoundly negative consequences for trans subjects: causing violence, discrimination, disenfranchisement, neglect, and dispossession. They can also enable moments of resistance to and subversion of identification, verification, and surveillance regimes that shape life in the 21<sup>st</sup> century United States. I demonstrate that examining the infrastructure of systems, epistemologies, and processes that mark gender non-conformity as fraudulent opens up new ways of imagining alternatives to increased surveillance, forced declarations of trans histories, and incorporation into existing identification systems.

The combined effects of big data and racialized capitalism change the ways that trans studies scholars have previously theorized the particular violences of trans identity management by the state. Indeed, the private sector is deeply imbued in these practices, and in the divestment away from trans life. Much attention within trans studies and activism has intently focused on the state, and particularly on the ways the state manages identity and encourages hostility about gendered difference. Indeed, my opening example is about a state anti-fraud measure. In many ways, the state is a natural site for exploration for trans studies due to the numerous interactions trans subjects have with the

state through and after a transition. However, the state is not the only site of conflict for trans subjects, nor the only source of beliefs about the permanence of sex. The state *and* private industries articulate risks of unknowable subjects and demarcate proper subjectivities through data collection, storage, and creation norms. These emergent forms of power—the intersections of big data and racialized capitalism—fundamentally change how trans marginalization manifests, and crucially, how individuals are authorized, and decisions are made for a growing and unwieldy number of events, both mundane and extraordinary.

This dissertation veers away from the realm of the state as the primary site of inquiry for the regulation of trans life, refocusing critical attention towards how the private sector and private actors interpret and apprehend trans bodies, identities, and data in ways that transform the way that transgender studies has previously considered identity management. As previously noted, data about identity is now managed in exponentially greater numbers by private actors, meaning that trans people must contend with data incongruencies in the private sector at greater frequencies. I will argue that these non-state actors—the credit reporting agencies, healthcare providers, credit card companies, banks, parents, landlords, and employers exert considerable influence in regulating gender through fraud prevention measures. Indeed, I demonstrate that while the state is an important site of identity production and management, for trans subjects in the 21<sup>st</sup> century, the private sector asserts a far greater influence in creating, validating, and circulating trans identities in ways that fundamentally alter our conceptions of structural transphobia and the marginalization of gender non-conformity. Fraud prevention

produces a devaluation of trans life that can be traced across time and industry, articulated in the language of deception, risk, and improper access to protected social categories and resources. However, before moving to examine the new ways that the private sector has transformed trans identity management, it is crucial to review the existing literature about the state as a site of identity production.

*Trans Studies and the State: Managing the Production of People*

Research in transgender studies has long documented state mechanisms of legal transition, and especially about how sex classifications themselves create incongruities for trans subjects. When fraud is analyzed in transgender studies, it is often framed as an issue of identification through the state. Dean Spade's body of work, particularly *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*, documents how state-issued sex designations are instruments used to classify individuals in the service of state-building. Spade has demonstrated how sex classifications reproduce inequities, particularly for low-income trans people, in welfare administration, homeless and domestic violence shelters, prisons, public schools, and hospitals by enabling discrimination against gender non-conforming subjects. Sex classifications also enable sex segregation, a topic that political scientist Heath Fogg Davis explores in his book, *Beyond Trans: Does Gender Matter?*. Fogg Davis argues that because state-issued identification documents contain sex classifications, they create "sex-identity discrimination," defined as judgment about whether or not a person fits within the categories of male or female (Fogg Davis 2017). Sex-identity discrimination impacts

gender non-conforming people in multiple public and private spaces but derives from a core problem about the way states assign sex classifications. The state is understood to be the source of sex discrimination in the way that it assigns sex classifications and both Fogg Davis and Spade suggest that eliminating sex classifications would create greater equity for gender non-conforming people. Incongruence between a person's legal sex and gender presentation can become a site of fraud; indeed, Spade's work on welfare administration demonstrates this point.

Scholars have also conducted important work examining how name and sex designation change policies uphold conceptions of sex and gender as unchangeable and transness as threatening to systems of identification. Indeed, the notion that a gender transition would enable trans subjects to avoid identification by the state has justified restrictive policies that make it difficult to change names and sex classifications on state documents. This issue has been explored by Paisley Currah and Lisa Jean Moore, who documented forty years of policy shifts regarding regulations for changing a sex marker on a birth certificate in New York City. Currah and Moore (2009) argue that in the 1960s, New York City bureaucrats were concerned about a trans person defrauding potential sexual partners and the public at large if they could discreetly update their birth certificates to reflect their chosen sex, noting that concerns over legal sex marker changes revealed cultural values about sex and gender as static. The fear that a trans person would "reverse" their transition, which justifies policies that require genital surgeries to change a sex classification on a state-issued ID, suggests less a belief in the staticity of gender, but in its deep instability and the epistemological crisis that instability creates: how will the

state know who a person is if gender is endlessly malleable? The assumption that gender is static, or that it must be stable once a person transitions, governs nearly every fraud prevention logic. Identity is not to be changed over and over again but remain as stable as possible. To act otherwise is to trigger deep suspicion.

State surveillance of trans people rose to particular prominence during the “post-9/11” era, as trans travelers were subject to greater scrutiny at airport checkpoints and identity verification technologies became digitized, enabling greater connectivity between a person’s past and present identity. Toby Beauchamp’s (2009) scholarship has described the processes through which trans subjects are expected to become visible to the state through persistent declarations about their transition in the form of court orders and certified letters from their physicians. These measures ensure continued connection between a past and present self, recognizable and well-documented to the state; they also reflect the state’s investment in reproducing gender normativity. The practice of forging state-issued documents has been examined in the South African context by B. Camminga (2017), who explored how trans asylum-seekers negotiate their sex markers between nations and the problems that arise from possessing documents that list a person’s sex differently.

These scholars demonstrate key state investments in regulating trans identities, but neglect to consider how the private sector also participates in gender regulation. While the state continues to issue official identification documents, identity is largely played out elsewhere: in every place where IDs are presented as proof of identity, in each database where identifying information is collected, and in all of the spaces where data

travels to verify and authorize identity without the presence of an official state-issued ID. The private sector relies upon official proof of identity but also uses other metrics to verify and authorize: credit scores, social media profiles, user-submitted data, metadata, marketing analytics, and more. In each of these interactions, norms about gender, race, and identity are shaped and reshaped. Ultimately, the goal of identification remains the same: reducing risks of unknown subjects through surveillance, but the private sector employs messier, more complex mechanisms than the state to achieve these goals.

### *The Problem of Identification*

Verifying identity is central to state goals of managing populations and importantly, in punishing criminals and assigning individuals to social categories of valuation around race, gender, class, citizenship, and ability. Identity verification is akin to an accountability check in some regards: holding individuals accountable and accounted for crimes committed, benefits distributed, goods purchased, and so on. As one of my focus group participants, Lisa, put it, the courts ask applicants, “to prove that you're not changing your name to avoid responsibility, or avoid identification for the time you blew away a couple of people in a bar fight or something” (Focus Group #2). Identity also solidifies unstable categories, demarcating distinctions between citizens and non-citizens, men and women, and re-codifies racial classifications. What would a society without identity verification look like? How would it function? These questions seem impossible to answer in our current landscape, as identity verification, and the

surveillance it enables, are central to everyday functioning, even when these processes are running in the background of our day-to-day operations.

Scholarship about surveillance has proliferated in the “post-Patriot Act” era, during which the US-Mexico border became increasingly militarized, while airports and other national checkpoints have increased securitization and authentication measures, and biometric technologies have become commonplace in worksites, at universities, and in government agencies. During this same historical moment, more people and agencies got online: people were shopping online, signing up for food stamps online, banking online, applying to college and for jobs online, and individuals’ identities both as consumers and as citizens were becoming digitized. Criminal records, immigration, residency and citizenship papers, and work authorizations became digitally networked, searchable data. This change occurred during a period of intense anxiety, xenophobia, Islamophobia, racial profiling, anti-Black racism, and imperial war. Not only was risk profoundly everywhere (for both those who feared terrorism and those who feared being suspected of being a terrorist), but there was also exponentially more information available to analyze, speculate about, and use to arrest, detain, and harass people based on perceived threat. As identity verification processes become increasingly digitized in the 21<sup>st</sup> century, fraud verification becomes algorithmic, establishing and enforcing norms about gender, race, sex, and identity through code. Anxieties about the unknowability of subjects with unstable identities could be, at least seemingly, assuaged through massive scale data collection and analysis.

While the digital tools being developed to identify 21<sup>st</sup> century risks were indeed novel, the technologies of identifying, racializing, and categorizing bodies are not new. Questions about how states should manage populations and demarcate identity are centuries old and entangled with histories of colonization and domination. State practices of counting and categorizing bodies through statistics have led to the production of racial categories (Zuberi 2001) and identity categories related to social deviance (Hacking 2006). Early fingerprinting technologies were used to identify colonial subjects in India, motivated by British colonial officers' inability to distinguish between Indian people (Cole 2001). Advances in fingerprinting technologies enabled police departments, immigration officials, and other state entities to identify and track criminals, immigrants, and other subjects whose unknowability was understood as threatening. The development of official, networked mechanisms for cataloguing identity were crucial to modern state-building, and particularly important to racializing and colonizing practices of empire. The need for identification was both caused and justified by colonization and slavery, as well as other effects of industrialization: population growth, urbanization, and migration. By the mid-nineteenth century, the ability to know who a person was became pressingly important, due largely to "ontological concerns about the naming and classifying of persons as they moved within and across categories of meaning" (Samuels 2014: 1). The formation of the modern state indeed relied upon this practice of classifying, documenting, and retaining information about bodies. Simon Cole explains, "early modern institutions were evolving into modern bureaucratic governmental institutions, which increasingly saw their mission as generating and archiving knowledge about

individuals, especially stigmatized individuals like criminals” (2001: 9). The collection of information about individuals was and is used towards population management, as a biopolitical exertion of power, leveraged in order to protect and promote the lives of the majority at the expense of those threatening the health, safety, and security of that majority (numeric or political). Recent scholarship has demonstrated how early surveillant techniques in the United States were used in the service of upholding slavery and towards the goals of white supremacy and racialization, and simultaneously in building the modern system of policing in the US (Parenti 2003; Kelley 2000; Browne 2010). Surveillance is a racializing mechanism of power; as Simon Browne argues, antiblackness and racism “sustain the intersecting surveillances in our present order” (2015: 9). Indeed, the historical and ongoing work of surveillance has been to produce and make the markers of racialized and gendered difference legible, visible, and searchable, in the service of domination.

Imagining our contemporary society devoid of identity verification is a challenging task for precisely these reasons: surveillance, classification, and categorization of bodies produce social hierarchies of valuation that structure understandings of safety, risk, security, and belonging. Identity verification is essential to the functioning of modern society in managing—or appearing to manage—these risks. The concept of risk itself is tied to the emergence of identification: identification sought to manage risks by creating knowable, traceable, and identifiable subjects. What Ulrich Beck calls the “risk society” depends upon these historically-specific changes. Beck explains that while risk may appear to be a timeless concept—as risks of daily life surely

have always existed—he explains that what we now think of as “risk” has been understood during other times as hazards that humans could not necessary manage or control. Beck writes, “Pre-modern dangers were attributed to nature, gods and demons. Risk is a modern concept. It presumes decision-making. As soon as we speak in terms of ‘risk,’ we are talking about calculating the incalculable, colonizing the future” (Beck 2002: 40). While there have always been dangers, humans have not always produced systems of managing circumstances in order to reduce obstacles to survival. Importantly, managing risks is a biopolitical endeavor: making decisions and producing methods and structures of decision-making that “accept hazards as simply the dark side of progress” (Beck 1992: 98). These “hazards,” the excesses of risk management, are those bodies and ecologies who are harmed through these processes: bodies who will be identified as “risky” based on their physical characteristics or the information that attaches to their bodies, identifying them as suspect. Trans and gender nonconforming subjects are one of those populations categorized as “risky”—although trans populations are also marked as differentially risky depending on how they are racialized.

Entire categories of people are made suspect based on race, nationality, and religion. Being able to locate danger in these bodies appears to stabilize the threat of risk through domination, epistemological and physical violence. Categories—of race, gender, nation, dis/ability, and sexuality—create imagined boundaries for bodies with meanings that are operationalized for political and social purposes. As detailed here, these categories, in concert with modes of identifying individual people, attempt to secure social hierarchies through perception, verification, and authentication of identity. When

subjects exceed or elide these forms of group or individual identification, they pose a threat to essential mechanisms of control.

Indeed, when subjects are unidentifiable, they may be referred to as “passing” as another, typically “opposite” category. The notion of passing itself is structured by the impetus to categorize and classify bodies for the purposes of valuation. As I explore in the next section, passing is central to identity fraud accusations.

### *Passing & Fraud*

“Unfortunately there's a measuring stick in how people in the public interact with trans people matters a lot how much they pass. I mean not in writing or technically or policies but in [everyday] interaction, it's a big deal.” –Sharon, Focus Group #3

Fraudulence and passing are two sides of the same coin. When trans people evaluate their ability to “pass” in a chosen (binary) gender, they are acknowledging a disconnection between who they are (trans, not “really” their chosen gender), and who they appear to be to others. For this reason, “passing” is often a fraught metric that deems trans subjects as inauthentic and deceptive. To suggest that a trans woman passes as a woman is to declare that she is not a woman, but merely attempting to be seen as one. Passing makes trans people seem ontologically fraudulent and creates hostility and confusion about the authenticity of identity. Indeed, passing also highlights incongruences between the data and the body and can trigger discrimination. Fraud detection technologies attempt to ascertain the “truth” of a person’s identity, examining how subjects might pass into another protected social category, such as another gender.

In the US, where gender presentation is presumed to align with, and in this way, represent, the sex a person was assigned at birth, trans people disrupt the normative

relationship between gender presentation and sex. The slippage in language between gender and sex in popular discourse over the past several decades highlights the conflation between these terms. “Gender” is broadly used in place of “sex” because it is presumed that they are equivalent. As Judith Butler notes, “gender emerges, not as a term in a continued relationship of opposition to sex, but as the term which absorbs and displaces ‘sex’” (1993: xv). Through the displacement of sex with gender, gender comes to signify sex; sex and gender are (again) one in the same. In the realm of sexual relationships, Talia Mae Bettcher has detailed the ways that trans women in particular are marked as deceivers due to the overlay between gender and sex. Bettcher writes, “the very fact that transpeople are viewed as deceivers demonstrates that a representational or communicative relation is taken to hold between presentation and body” (2009: 53). Scholarship has also analyzed the trope of the “deceptive” trans person in popular culture and dominant media, examining the biological essentialist underpinnings of the equation of gender with sex (Serano 2007). When gender presentation does not align with the sex a person was assigned at birth, an epistemological disruption occurs.

Even when trans subjects see themselves as “really” their chosen genders, they engage in this epistemological separation when considering if or how well they “pass.” Passing means passing yourself off as someone you are not. To say someone “passes” as a man or a woman declares that they truly are not one. Moreover, passing refers not just to the ability to appear as a man or a woman, but to appear non-trans, or cisgender. For some, this is an act of protection from harassment or discrimination. For others, it is important to align one’s sense of self with how others read them; for many, both of these

factors are key. The impetus to pass is encouraged by structural forces: the threat of violence from interpersonal and institutional interactions, but also encouraged by gatekeeping medical professionals, and fostered by cultural, procedural, and political norms that mark gender non-conformity as suspect, disgusting, and threatening to heteronormativity and cis-normativity. As a result, many trans people have internalized the pressure to pass and to cease to identify as trans; this was especially true in the mid-to-late 20<sup>th</sup> century, as described by Sandy Stone. Stone writes:

The essence of transsexualism is the act of passing [...] I could not ask a transsexual for anything more inconceivable than to forego passing, to be consciously 'read,' to read oneself aloud—and by this troubling and productive reading to begin to write oneself into the discourse by which one has been written—in effect then to become (look out—dare I say it again?) posttranssexual (1994: 168).

While not all trans people understand themselves in these binary terms, and some like Stone reject the desire to look like cis men and women, still others are content presenting in this binary fashion. Regardless of individual choices about gender presentation and its politics, any interrogation into the gendered anxieties around fraud detection must grapple with passing and the surprise caused either by trans subjects passing or not passing, whether through “failure” to pass or rejection of the impetus to pass as cis.

Passing is temporally specific. Subjects may pass in one context and fail in another; they may pass for one moment and fail in the next. As Patrick, one of my focus group participants explained:

It's this constant state of self-watching. Because I'm not a person who passes 100% of the time, I feel like I have to do extra because in those situations, if I'm passing, passing, passing, and then I get clocked, I get

figured out, it can be an unsafe situation for me (Focus Group #3).

Fraud accusations emerge when a passing subject fails to pass, or when a person who embraces gender non-conformity appears. I use failure here, not to suggest that passing as cis is equated to success, but in line with Judith Butler's theorization about the mandate of sex and gender alignment in *Bodies That Matter*. To become a proper subject, individuals are compelled to identify with their assigned sexes; gender becomes the outward performance of one's sex and an affirmation of proper identification with sex. Butler writes, "The forming of a subject requires an identification with the normative phantasm of 'sex,' and this identification takes place through a repudiation which produces a domain of abjection, a repudiation without which the subject cannot emerge" (1993: xiii). To become a proper subject, one must be properly gendered; to be properly gendered, one must identify with one's assigned sex. Or, to extend Butler's point, one must *pass* as a person who identifies with their assigned sex. The failure to pass is to reveal one's abject status; to be not properly gendered—to be gender non-conforming or trans—is to fail to be fully human. As Butler explains, "We see this most clearly in the examples of those abjected beings who do not appear properly gendered; it is their very humanness that comes into question" (ibid.: xvii).

The effects of this rupture are documented throughout this dissertation. However, it is not only the difference between gender presentation and the body, or gender presentation and the body's identification documents, but also the "representational or communicative relation" between the body and *data* and gender presentation and *data* (Bettcher 2009: 53). To evaluate whether or how well a body "passes" is to engage in

fraud detection. How well does a person fool others about their “true” identity? To pass is always to commit fraud within an epistemological framework where a person’s assigned sex is understood as their true identity. Further, subjects who rarely pass as cisgender, either unwillingly or through active gender subversion, communicate the rupture between sex and gender and become “abjected beings” (Butler xvii). However, passing is not only about how others perceive the outward physical body: its clothing, hairstyle, how it moves, speaks, and gestures. Passing is also digital. A body can be “improperly gendered” in its physical gender presentation but its data may pass as non-threatening. Or, a trans person who passes as cis in daily life may possess data that brings forth their gendered history. A faint suspicion of gender transgression can be confirmed through the presence of a differently gendered name in a person’s account history. Similarly, a person’s given name, if not legally or formally changed, can trigger harassment for a trans person who presents as a gender that does not match that name when they show an ID or are verified against an existing record. Passing, or the failure to pass, generates fraud accusations; the surprise of an unexpected body – that is, a gender non-conforming body – causes an epistemological crisis. Indeed, passing upends worldviews, “rais[ing] the possibility that the difference is imperceptible: the injury is endlessly deferred to the future” (Puar 2007: 185). The effects of this crisis range greatly. Sometimes the surprise of an unexpected body elicits disgust and suspicion from the person or system who is surprised. In other instances, the detector is left confounded as to how to sort, store, and verify people who do not fit within existing systems, often leaving the trans subject to contest their denial or improper categorization.

The “surprise” of unexpected bodies has been theorized by Katherine McKittrick in her work on historical amnesia about Canada’s legacy of slavery. An acknowledgement of this history generates a surprise, both of a national forgetting about this racial violence and of the presence of black Canadians in a place that is presumed to be “blackless” (Behdad 2005; McKittrick 2006). The presence of black people in Canada—historically and in the present—triggers surprise: a shock, an unexpected outcome. Responses to the surprise of blackness range from amazement, fear, and also to wonder. McKittrick’s articulation of the surprise that caused by unexpected blackness is generative for my thinking about the surprise of the unexpected gender non-conforming body. The surprise of the unexpected body comes as a result of this infrastructural difference: no one had anticipated their arrival. Moreover, the moment of surprise covers up the work that has gone into making whiteness and cissexism appear normal. The appearance of the body that disrupts this myth becomes the source of the problem. McKittrick’s conception of the surprise and Puar’s notion of passing concern racial identity and passing. I do not intend to draw an analogy, to say that gendered passing is akin to racial passing, as different relations and legacies of power are involved. However, the notion of passing, from a marginalized identity group into a privileged group, or the surprise of an unexpected body, signal shared cultural anxieties that span both racial and gendered passing. The visibility of difference—manifested as disgust, fear, amazement, and so on—or the fear that difference could go unnoticed undergird both racial and gender passing. Fraud detection logics attempt to identify those who pass and

recategorize these bodies into their “rightful” places of social categorization, often in the service of power and domination.

Participants in my focus group research noticed the surprise that their bodies and data caused. One such person, Sue, a white trans woman in her late 50s, described how her deep voice was a barrier to her employment search, as it caused a surprise when potential employers called her for an interview. She stated, “They would say, ‘Can I speak to Sue?’ Speaking. ‘No, I need to speak to Sue.’ I am. And you hear this blank. And I have to say, ‘I’m transgender. That’s why you hear the male voice’” (Focus Group #1). Sue’s information, her name and female sex classification, informed a set of assumptions on the part of this hiring manager about her body. While on paper, Sue appeared right for the job, the surprise that her deep voice caused forced a moment of disruption. At the time of our meeting, Sue had been looking for a job for over a year. She cited her trans identity as the reason why she believes that she has been unemployed for so long.

The relationship between a body and its data has been explored by scholars interested in examining the effects of digitization on modes of power and governance. In the 1990s and early 2000s, scholars theorized about the effects of the Internet and digitization on human relationships (Stone 1994), identity formation (Nakamura 1995), and social control (Haggerty and Ericson 2000). The Internet was described as the “final frontier,” a space where identity did not matter and anyone could pretend to be someone they are not. A 1993 cartoon in *The New Yorker* that featured a dog in front of desktop computer, captioned, “On the Internet, nobody knows you’re a dog,” encapsulated

anxieties about the anonymity that cyberspace was capable of granting (Steiner 1993). However, even if individuals could don new identities on the Internet, existing social relations of power were enacted online, particularly regarding race and gender. Further, identities were not truly anonymous, as interactions online generated information—metadata—through use. When combined with existing information—such as that held by the state or private information firms—individuals could be more efficiently tracked and monitored through what Haggerty and Ericson call their “data doubles” (Haggerty and Ericson 2000). According to Haggerty and Ericson, new modes of governance converge upon the creation of the “surveillant assemblage,” an amalgamation of different surveillance technologies, norms, and processes that enable the translation of a flesh body into data, turning the human “into pure information, such that it can be rendered more mobile and comparable” (ibid.: 613). A person’s data double supersedes the flesh body as the site of management, yet the data double continues to match the body it represents. While Haggerty and Ericson’s article was groundbreaking in its conceptualization of the connection between a human and its data, their theory relies heavily upon an understanding of the data body as more important than the flesh body in terms of governance. Scholars drawing upon this text have argued that a “data double” not only refers to a human body but shapes the life of that body, meaning that the body is not just producing the data double, but the data comes to determine the body’s experiences. As Craig Willse explains, “data becomes divorced from its referent and takes on a life of its own” (2008: 243). While the data body and the flesh body are presumed to match, when the data “takes on a life of its own,” or, perhaps more accurately, is manipulated by

outside actors who buy, sell, anonymize, analyze, repackage, restructure, and trade it, the data incompletely or inaccurately represents the flesh. Indeed, for nearly all subjects, but trans subjects in particular, the re-stitching of data back to a body it once referenced causes issues because data bodies are presumed to accurately represent their human subject.

The Internet remains a site of profound anxiety about the authenticity of identity and a legitimate link between a person and their data today (del-Teso-Craviotto 2008; Ellcessor 2017; Adrian 2008; Lessig 2006). Fears about people misrepresenting their identities online have led companies to encourage users to provide their “real names” when signing up for accounts. Controversies over Facebook’s “real name” policy, which resulted in LGBTQ, Native, and other people with “non-normative” on their Facebook profiles, generated scrutiny into the platform’s operating logics. Oliver Hamison and Anna Lauren Hoffman’s research into Facebook’s real name policy revealed that concerns about the authenticity of identity on Facebook are not new; as early as 2005, the company employed algorithms tasked with verifying the legitimacy of an account, calculating “a percentage of realness that a person is” based on judgments about the personal data they enter and their connections to others (Stanford Center for Professional Development, cited in Hamison and Hoffman 2016). Enforced authenticity of identity is framed as a safety measure: “people using names that Facebook may not consider authentic are posited as not only fake but also as unsafe and violating the privacy and community standards of the broader Facebook community” (Hamison and Hoffman 2016). The opportunities enabled by social media and the Internet—to present or explore

a new identity—are understood by Facebook leadership as a threat to the overall safety of the broader “community.”<sup>2</sup> Using “real names” encourages people to be accountable for their actions, according to Zuckerberg (ibid.). In this way, Facebook’s enforced authenticity policies mimic and subsequently reproduce ideals about disclosing the “truth” about identity in security-obsessed cultures. Indeed, growing outrage over the bots who posted “fake news” during the 2016 U.S. Presidential election have increased scrutiny over individuals’ identities, requiring additional identity verification steps for any user who posts political advertisements. When authenticity is equated with trustworthiness, honesty, and safety, subjects who refuse to or cannot use their “real names” or “real identities” are categorically understood as fraudulent, deceptive, and risky. Even further, Facebook positions inauthenticity as outside of the realm of the human: fake identities, or identities that appear fake, are bots, spam, or nefarious and fraudulent non-subjects. This dehumanizing effect spills over into the ways that trans subjects are understood as frauds. Trans identities are positioned as inauthentic, non-authenticated, and thus not human.

Even as trans people are gaining visibility in the public sphere, they remain illegible to algorithms aimed at weeding out fraudulent identities. Further, increased

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<sup>2</sup> Concerns about “safety” on Facebook become even more complex when examining their censorship guidelines. In a June 2017 *ProPublica* article, Julia Arwin exposed such processes, demonstrating how Facebook censors are instructed to protect the rights to speech of white men, but not other “subsets” of protected groups. The company’s rationale for this protection is that white men constitute two protected identities: through race and gender, whereas two comparison groups, “female drivers” and “black children” do not receive equal protection because each subset only belongs to one protected class—gender or race. This investigation highlighted the ways that racist speech is permitted on the platform, while speech condemning racism and other forms of oppression, typically expressed by users of color, is routinely targeted, the users temporarily banned. See: Arwin 2017.

visibility may also increase harm experienced by trans people. As one participant, Devon, a trans man in his early twenties, lamented, “The more and more people know about trans topics and stuff like that, the more and more somebody is able to read me (as a trans person)” (Focus Group #3). As identity verification increasingly moves to the private sector, trans visibility may cause exponentially more harm: unlike a name change with the state, in the private sector, a trans person may never be able to update their name in all of the places it appears.

The persistent disclosure of a person’s gendered history aligns with state goals of identification. Indeed, the state produces identities through live birth registrations, driver’s licenses, social security number issuances, and passports. The state’s interest in legal name changes made by transgender people is unsurprising, particularly given the centrality of identification to the production of the modern state. However, less apparent are the long and short-term *effects* of trans name changes on other institutional and interpersonal verification processes, and particularly the role that the private sector plays in administering trans identities. A court ordered name change is a simple legal document. While it changes a name within the courts, it does not trigger changes to occur in all of the other places where a person’s name (and sex classification) matter: on all forms of ID, with banks, creditors, credit reporting agencies, at school and work, with utilities companies, retailers, titles or liens for automobiles, and any other location where a prior name was collected. In each of these locations, a name change must be verified, reported, and updated within the institution’s data systems. What forms of power are being reconfigured when trans name and sex classification changes occur within private

institutions? How does the consumer data economy, which circulates information about our Internet browsing habits, memberships, and financial accounts, transform the ways that trans identities are configured? Further, how do these logics influence the ways that people and institutions think about the permanence of identity and the appearance of risk? How do deeply-held cultural beliefs in the stability of sex and gender shape laws, policies, and data collection standards that further marginalize trans and gender non-conforming people? No scholarship in transgender studies has considered the private sector's role in administrating and verifying identities for fraud, despite fraud's associations with financial loss. As a result, the existing scholarship elides examinations into how commercial interests shape distrust of gender non-conformity and how risk detection techniques employed by private industries reproduce vulnerability for gender non-conforming subjects. Being unknowable is not only threatening to the state, but also to information industries that rely on the ability to report data about identifiable subjects to facilitate the flow of capital. In the following chapters, I investigate how private and interpersonal systems of knowing, sorting, and categorizing individuals assess gender non-conforming and trans people through the framework of fraud, examining how these sites differ from state concerns about identity in ways that reveal particular violences of financialization, capitalism, and valuation. While I venture into unexamined areas by analyzing trans private sector data and the effects of financialization in chapters two through four, I begin by analyzing one expression of fraud detection epistemologies that occur between humans, without the interference of data systems. This first chapter attends to the cultural context for trans fraud accusations, demonstrating their persistence

in trans life and their dire consequences through an analysis of the specter of trans sexual deception in intimate relationships.

### *Methods*

This research employs cultural studies methods to investigate representations of trans fraudulence in social, political, and cultural life, and the production of gender non-conformity *as* fraud through data systems. I analyze how presumptions about the association between gender non-conformity and fraudulence are built into information systems, laws, and policies, and how these presumptions are reflected in cultural texts. I conducted interviews with trans subjects, archival research of legal case files and Congressional hearings, and interdisciplinary discursive analysis of an archive of trans fraudulence that I assembled, containing medical literature, software, case law, documentary film, television, news media, and social media communication. My analysis spans from the US, to the UK, and the Philippines, tracing resonances of trans fraudulence transnationally and through time, from the 1960s to the present. While my primary analysis concerns the US, high-profile cases of trans fraudulence in the UK and the Philippines, and these nations' colonial relationships with the US (the US a former British colony, the Philippines a former US colony with continuing military presence), made these connections important to examine. In the past twenty years, in all three countries, trans subjects have been accused of deceiving a sexual partner about their "true" identity in a court of law and trans subjects have been publicly named as

deceptively criminal, using their gender transgressions to commit some form of identity theft. A transnational approach demonstrates how anxieties about trans deception travel.

My analysis is aimed at producing critiques of the various economies of social valuation by tracing trans fraud detection technologies. I examine fraud prevention techniques, logics, and technologies across four sites: consumer credit reporting; health care; identity theft; and in sexual relationships. The “archive of trans fraudulence” that I assembled for this project enables us to understand these seemingly disparate problems as interrelated, drawing connections, for instance, between big data surveillance and sexual violence against trans women of color. In so doing, I demonstrate how trans people disrupt normative ways of encountering and accounting for individuals and situate associated anxieties over trans fraudulence within broader racialized, nationalist, and economic concerns about identification in the 20<sup>th</sup> and 21<sup>st</sup> centuries. Each technology of fraud detection contributes to new modes of governance over gender non-conforming bodies through different mechanisms. I analyze how these mechanisms function by examining representations and productions of fraudulence at multiple scales, comparing how individuals experience the minutia of fraud accusations to how that fraud is represented in media and in courts, and how it is abstracted through complex financial and data sharing processes. Indeed, I gleaned insights into how institutional fraud detection technologies work in part by examining how individuals experience the effects of these tools and then zoomed out to explore how laws, policies, and practices support and uphold fraud detection technologies.

Long before I began the dissertation research, I had become attuned to how fraudulence, realness, authenticity, and truth verification structured micro and macro-level interactions for trans people: with the state, everyday personal and financial transactions, and in the production of narratives of self. Tests of authenticity structure the conditions by which trans subjects are able to access hormones, desired surgeries, and name changes. However, more interesting and surprising to me was the persistence of these tests after bodies and gender presentations had been altered, names changed, and sex designations switched. This “other side” of transition, as I will imperfectly call it, presents its own set of challenges. While physical and legal changes are sanctioned through often rigorous gatekeeping, on the “other side,” the world is unprepared to account for trans people. This is apparent in the countless micro issues that trans people face: the presence of a previous name on a Walgreens rewards program account, or a long stare after a trans person speaks, studying their body for traces of difference. It may manifest as uncomfortable gendered small talk with strangers, or outright harassment by hostile others. In all of the places and ways that trans people do not fit into normative ways of sorting and categorizing individuals, fraud accusations emerge. These seemingly minor, persistent tests of authenticity and verification of identity can manifest as minor annoyances or result in deeply traumatic backlash. I attend to these small moments, focusing on the details through which gender non-conformity is marked as suspect or sub-human. The details of these interrogations reveal the work that goes into the normalization of the association between trans and fraud and reveals opportunities to challenge this paradigm.

As such, it was important to me to investigate how trans and gender non-conforming people navigated through fraud detection technologies and epistemologies. Trans experiences with these tests of authenticity and identity verification illuminate key logics of these processes that may be otherwise invisible, particularly when it comes to elusive, proprietary data systems. The problems that trans people experience when their bodies and data are incompatible or unexpected illuminate how these systems and epistemologies function, as in the breakdown of expected processes, the internal processes are revealed. As Susan Leigh Starr puts it, “Finding the invisible work in information systems requires looking for these processes in the traces left behind by coders, designers, and users of systems” (1999: 385). This also holds true when examining non-data systems, such as how the law contends with sexual fraud accusations, when trans bodies upend normative understandings of sexual consent.

To explore trans experiences, I drew upon two forms of qualitative ethnographic research: focus group interviews and social media analysis. Focus group research, which I will describe in depth below, enabled me to ask targeted questions to a group of trans identified people and capture a dynamic conversation about a shared experience. In a similar way, the social media research that I conducted provided key information about the ways systems fail to account for trans people and how trans people support each other through these challenging processes. I analyzed discussion forum posts where trans people sought out advice about issues they experienced with their credit reports after a name change, and also Twitter posts sharing negative health experiences using the hashtag #transhealthfail. Each format enabled me to capture detailed information about

obstacles that trans people faced navigating through institutional processes that do not anticipate or do not make space for trans people.

In May 2016, I held two focus group interviews with trans identified adults in Minnesota who had begun the process of legally changing their names as part of a gender transition. A third focus group was run in April 2017. The premise of the group was to discuss the participants' experiences going through a legal name change, as I determined that examining the obstacles associated with a legal name change could reveal key fraud detection logics in each institutional site where the name change needed to be registered. For instance, how does a person go about changing their name in all of the places where data about their name appears?

I recruited participants for these interviews through social media (in queer and trans Facebook groups) and by posting physical flyers in spaces that serve trans people in the Twin Cities metro area: a university counseling center, a community sexual health clinic, an LGBTQ café and meeting space, and a state-wide LGBTQ non-profit that provides legal assistance, among other programs. I required participants to pre-register and aimed to recruit 5-7 participants for each meeting. I ended up with 12 participants over three sessions. For the second session, 6 people registered, but only 3 arrived for the focus group meeting. Participants ranged in age from 20 to 73 years old; the median age was 30. Six of the twelve (50%) identified as male or trans masculine; four of the twelve (33.33%) identified as female or trans female; and two (16.66%) identified as genderqueer or non-binary. Seven (58.3%) held a Bachelor's degree; one (8.33%) held a Master's degree; two (16.66%) had attended some college; and one (8.33%) had earned a

high school diploma. Ten (83.33%) of the twelve identified as white; one (8.33%) identified as black and one (8.33%) identified as biracial. Seven (58.3%) worked full time jobs; three (25%) were unemployed; one (8.33%) worked part-time; and one (8.33%) person was retired. I asked participants how long it had been since they had legally changed their names: this spanned from three weeks to five years.

My participants reflect a number of biases in the research process. They are overwhelming white, reflecting possible limitations in my recruiting method. I distributed print and digital flyers in spaces where trans people congregate or pass through with an eye for racial, gender, and class diversity, however, those who replied and ultimately participated in the group were predominantly white. I attribute this factor possibly to my own white racial identity, which is visible through my Facebook profile which I used to advertise the group, as well as my public University of Minnesota profile, which contains my photo. Limitations in time and funding made it difficult to run additional focus groups to increase the number of participants who identified as people of color, however future research in this area should aim to oversample for racial diversity as it is crucial to include perspectives of trans people of color on this topic: being accused of fraud is likely exponentially more damaging for trans people of color and likely manifests in different ways. The relatively short time span between the participants' legal name change and the focus group interview may also reflect my recruitment design. Many participants learned about the group through the university counseling center, suggesting that they are early in their transitions, as this center provides counseling and authorizing letters for hormone therapy and surgeries. Others discovered the group through a trans-specific Facebook

page, which tends to serve as a digital support network for people figuring out their transitions. The short time span between legal name change and participation in the group may also have to do with the level of interest in the topic. For these participants, their name changes still loomed largely over them. Many still had documents that they wanted to update and frustrations with the process.

Each group met for 90 minutes. Participants were compensated with a \$20 gift card and some snacks to eat during the meeting. I developed guiding questions that I asked each group but allowed the conversations to flow naturally, asking many questions about the tactics the participants employed to get through the complex steps of legally and officially changing their names. A list of guiding questions can be found in Appendix A. I used a digital audio recorder to capture the entire conversation and transcribed the audio verbatim. I then coded the transcripts using an open coding method in ATLAS.ti version 7.5.18. The most common themes that emerged from these groups were: sharing strategies and information about transition with other group members; passing, invisibility, or being recognized as a trans person; misrecognition of a request due to a trans identity; and deflection as a strategy to deal with challenging issues. Participants shared detailed information with one another about the intricate processes they went through in order to legally change their names and update their documents and accounts after their court date. While the sample size of this study is small, the focus group setting allowed me to capture a dynamic conversation among people with shared experiences. In the group conversations, participants' answers reminded others about similar situations in their own lives. This format was particularly fitting for this topic due to the detailed-

nature of the name change process: the frustrations, as well as the successes, are small moments of bureaucratic negotiation, or instances of slipping beneath the radar of a company's policies. These moments can become forgotten over time, but participants were able to collectively create a narrative about these points of negotiation.

An interdisciplinary approach to this research enables me to examine how fraud detection technologies contribute to a divestment away from trans life at multiple scales and across time. In bridging fields, methodologies, and theoretical approaches, I present a textured narrative of the problems that link fraudulence with gender non-conformity, examining these connections in new sites.

### *Ethics of Writing Trans Life & Death*

I have come to learn about the figures that animate this dissertation through a variety of ways: through interviewing trans adults who volunteered their time in order to contribute to a body of knowledge about trans life; reading newspaper stories and case law about trans crime and death; examining medical literature about trans research subjects; and watching cinematic representations of trans dispossession. Writing about figures who have died, been criminalized, and experienced sexual, physical, and epistemic violence is a task with considerable ethical stakes. In academic, activist, and non-profit work, trans subjects are routinely marked as vulnerable to violence, and trans women of color in particular are tied up in narratives of death, disposability, and despair. The figure of the "trans woman of color" is one who is positioned as being in the most need and is the least agential. Writing about figures who have been killed, arrested, or incarcerated produces a particular type of archive that may seem to affirm these ideas

about the vulnerability or criminality of trans subjects. I engage this archive carefully, eager to avoid reproducing this violence. In theorizing writing about the murders of trans people, Eric Stanley cautions, “Writing death tends to reproduce a pornography of violence through which the fleshiness of those we are in conversation with, their material lives, and the politics of their ends are decomposed into tropes of speculative pain and sensational disappearance” (2011: 4). In chapter one, I examine how sexual fraud is used to attempt to justify the murder of trans women; in chapter two, I analyze how medical fraud produces a divestment away from trans life that results in countless life-affirming denials for other trans people. In writing about these deaths, I aim to honor the lives of these subjects, refusing to ignore the conditions that encouraged their disposability, while focusing on those conditions, and not on the gruesome details of their killings. In so doing, I do not intend to sensationalize their deaths, but instead reckon with the injustices that have been dealt to them. In chapter four, where I examine trans fraudsters, I actively read against dehumanizing narratives about trans criminality, attempting to humanize and empathize with these subjects. I read this archive generously, imagining the missing contexts for their crimes and critiquing their representations in mainstream reporting which misgender them and make a spectacle of their gender non-conformity. Throughout, I question the official records of instances of violence, denials, and crimes, disrupting the authoritativeness of police, lawyers, judges, health insurance billing processors, and credit reporting policies.

I counter examinations of trans death and dispossession with analyses of trans vitality, agency, and negotiation. In each chapter, I consider how trans subjects refuse to

participate in systems that do not recognize their identities, bodies, or humanities. In some cases, trans subjects actively subvert these systems; in others, they act in ways that enable greater ease for themselves, if only temporarily. These everyday moments of resistance are crucial. Trans subjects are perpetually positioned as either vulnerable or deceptive; not fully human or wholly conniving. Moments of resistance demonstrate trans humanity; however, more importantly, they illustrate the ways that information systems, capitalism, and interpersonal ways of knowing function. Because trans people present unexpected obstacles to these systems, when they manipulate the cracks in the system, they alert all of us interested in changing inequitable conditions to places of weakness that are ripe for exploitation. Every figure I write about has intentionally or unintentionally broken rules, laws, or assumptions about sex and gender. I highlight these moments of subversion, however large or small, to demonstrate the imperative for a radical rethinking of trans inclusion in legal, medical, and information systems that continue to reproduce inequality and violence.

### *Defining Trans*

This dissertation centers the experiences of trans and gender non-conforming people and examines the ways that data systems and fraud prevention epistemologies reproduce violence against these subjects and divest from trans livelihood. I use “trans” to signify subjects who identify as a gender other than the sex they were assigned at birth. Trans subjects embody a range of intersectional identities: age, race, class, gender, sexual orientation, citizenship status, and ability. Their experiences of transition may diverge

greatly based on their other marginalized or privileged identities. For some trans subjects, fraud accusations may have minimal impacts on their lives. For others, the threat of fraud looms largely over daily tasks. Visible difference, in the body or in a person's data, triggers fraud accusations more frequently than a trans identity. Indeed, subjects may have a trans history or be gender non-conforming and not identify as trans, but still experience the cis-normative effects of fraud detection mechanisms. Gender non-conformity, more so than trans identity, determines the likelihood that a subject will be accused of fraudulence. Further, not all trans subjects experience fraud accusations in the same way. Trans people who pass as cis, or for whom possessing IDs that do not match their gender presentations (such as white trans people and citizens) is less burdensome, experience the impacts of fraud accusations less severely than visible, of color, and non-citizen trans people. This means that people with trans histories but who do not identify as trans can be caught up if their bodies or personal data reveal a differently gendered past.

### *Critical Trans Politics?*

This dissertation engages in critical trans politics, which Dean Spade articulates as “a trans politics that demands more than legal recognition and inclusion, seeking instead to transform current logics of state, civil society security, and social equality” (2011: 19). Critical trans politics critiques trans inclusion within systems that cause violence and harm, refusing solutions that make space for trans subjects by inviting them to participate in the violence that they once experienced as outsiders. Critical trans politics have made considerable traction in refusing to celebrate trans inclusion in the military and the

creation of gender-neutral prison wards. These interventions challenge logics of trans-inclusion, examining how state power invites trans people to participate in empire and celebrate the prison-industrial-complex, among other sites. Critical trans politics have produced generative dialogues in activist and academic circles about the violence of the state and have spread to some popular and more mainstream publics, as well.

I take a broader approach to critical trans politics, envisioning strategies for transforming, upending, and resisting current logics of financialization, racial and gendered capitalism, and epistemologies of identification that reside outside the realm of the state. In other words, I employ critical trans politics in order to understand how economic logics of a risk society fundamentally transform the ways that scholars and activists need to think about identity and identification; and value and valuation. Spade's scholarship on the state management of trans identities is crucial to this work, however, I present a different interpretation about contemporary manifestations of these processes. I demonstrate how financial logics transform trans identity management, strengthening racialized and classed stratifications and enabling widespread economic divestments away from trans lives. Identity is a horizonless frontier in financialization: identity is managed, verified, and valued by financial institutions, and also bought and sold to third party information brokers. Financialization has fundamentally altered expectations about privacy around identity and how information about individuals is structured: identity has become fragmented, mobile, and unattached to any original data source. Further, individuals are required to take responsibility for the security of their identities, protecting this information from theft, misrepresentation, and negative associations.

Nikolas Rose describes this paradigm as the “securitization of identity,” wherein individuals must “continuously and repeatedly evidence one’s citizenship credentials as one recurrently links oneself into the circuits of civility” (2000: 327). Here, Rose posits citizenship as not primarily about status granted by the state, but as “entail[ing] active engagement in a diversified and dispersed variety of private, corporate and quasi-corporate practices, of which working and shopping are paradigmatic” (ibid.). Active engagement includes labor and consumption and securing one’s identity endlessly through multiple points of contact with these sites.

Private procedures of identity verification and valuation are challenging to assess due to their proprietary nature. However, it is clear that private industries, unlike the state, are guided by the tension between the drive for profit and consumer buy-in.<sup>3</sup> Health insurance companies are invested in saving money: only spending on procedures that can be verified and justified. Credit reporting agencies are invested in generating and communicating profitable information to lenders about consumers, but not necessarily in ensuring that information is accurate: damaging inaccurate information could serve in lenders’ advantage as it enables them to charge higher interest rates for credit. A critical trans politics understands that these systems of valuation are oriented towards profit. At some junctures, this may include making space for trans subjects who seek visibility, representation, and accommodation. However, such inclusion may be temporary and ultimately in the service of greater exploitation.

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<sup>3</sup> States are also driven by the interests of constituents, and lobbyists, however they are often less able to enact changes to respond to “demands” placed upon them that private industries can.

### *Overview of Chapters*

Chapter one, “Sexual Fraud, Narratives of Deceit, and the Limits of Consent,” examines cases of what I call “sexual fraud” from the 1970s to the present. Sexual fraud describes instances where a trans person allegedly did not disclose their trans identity or gendered history to a sexual partner. Examples of “sexual fraud” are pervasive in popular culture, often depicted in media with a scene in which a trans person’s “true” identity is revealed, and the trans subject is accused of deceiving a sexual partner. This chapter compares how trans men, trans women, and gender non-conforming people are accused of sexual fraud differently. I argue that sexual fraud accusations contribute to a divestment away from trans life in quite literal ways. In each of the six cases I examine, a trans subject was either killed or incarcerated for this alleged failure to disclose, and their killer or accuser describes the trans subject as deceitful. I analyze case law, interviews with key witnesses, and court documents, in addition to dominant media coverage of the cases. This research raises serious ethical questions about the meaning of consent, privacy, and honesty in sexual encounters where one partner is trans. I demonstrate that the threat of violence and interest in protecting one’s identity makes gender non-conforming subjects appear dishonest when refusing or failing to disclose their genital status before sex. I begin with this chapter to demonstrate how the logics of trans fraudulence play out interpersonally and in legal systems, demonstrating their embeddedness in dominant culture. The remaining three chapters illustrate how the association between fraudulence and gender non-conformity in culture becomes coded into information systems, policing, and health care administration.

Chapter two, “Denial: Trans Necropolitics in Healthcare,” examines instances of “medical fraud,” cases where a patient’s sex classification triggers suspicion of inappropriate claims during health insurance billing. Medical billing practices which presume that only coherently sexed bodies – that is, bodies coded as “female” that do not contain any “male” body parts, and vis versa—are legitimate make all trans bodies appear potentially fraudulent. Further, due to insurers’ reluctance to pay for transition-related procedures, trans people are required to jump through numerous and contradictory hoops to obtain coverage, arguing that their needs are “medically necessary.” This reinforces a restrictive paradigm of legitimate versus illegitimate ways to transition and further marginalizes trans people who embrace gender non-conformity. I explore how medical necessity has been employed to restrict trans health care coverage and noting that medical necessity’s opposite is fraud. Healthcare denials lead to serious neglect and I argue, are a form of trans necropolitics which directly divest away from trans life through logics of fraud prevention. Healthcare denials prevent trans and gender non-conforming people from obtaining routine and preventive healthcare, as well as access to transition-related procedures that can be life-saving. However, when trans healthcare is depicted as elective, excessive, and cosmetic, denials can be justified through racialized financial logics, with especially detrimental impacts on trans public healthcare recipients.

The third chapter, “The Afterlife of Data: Identity, Credit Reporting, and the Right to Be Forgotten,” situates my examination of trans fraud accusations within US credit reporting agencies, analyzing how trans name changes appear fraudulent—manifesting as evidence of potential identity theft—and demonstrating how fraud

prevention measures make trans subjects vulnerable to housing, employment and health care discrimination. I examine online discussion forums where trans people discussed the range of issues they encountered with their credit reports after a legal name change –from the presence of their former name listed as “Also Known As” to the absence of a credit record at all. Drawing upon a 2014 case against Google Spain regarding “the right to be forgotten,” I argue for an ethics of reduced consumer data collection and sharing. I place my analysis of trans encounters with credit reporting systems within the context of other credit reporting inequalities: the moralizing and racializing processes that evaluate subjects’ creditworthiness and the predatory nature of the cost of credit and debt in the US.

The final body chapter, “Identity Thieves: Seizing the Means to Gender Self-Determination,” explores instances where trans and gender non-conforming people actively commit fraud for a variety of reasons. I analyze stories drawn from popular media, newspapers, British tabloids, and my focus group interviews to examine how trans subjects take advantage of the opportunities that gender non-conformity and fragmented identification systems grant them. News stories about trans identity thieves portray these subjects as highly deceptive, dangerous, and undeserving. I compare highly sensationalized narratives of these subjects to a sympathetic portrayal of a fictional trans identity thief, Sophia Bursset (played by Laverne Cox), a trans inmate on the television series, *Orange is the New Black*. Trans fraudsters exploit systems that cannot make sense of their bodies and identities in order to access resources that they have been categorically excluded from accessing: identification documents, housing, and money. I

argue for an understanding of identity theft as a small form of resistance for trans subjects and expand the ways we can think about illegal acts outside of the context of mere survival, asking what it would take to justify identity theft, check fraud, and other acts as ways for trans subjects to legitimately thrive in a world that cannot make sense of them.

The conclusion, “Critical Trans Data Praxis & Debugging the Dissertation,” articulates a trans critical data praxis, putting forth a theory of data reduction and rethinking existing paradigms that require trans subjects to demand inclusion into identification systems.

## Chapter 1: Sexual Fraud, Narratives of Deceit, and the Limits of Consent

Consent cannot do the kinds of things we want it to do, cannot divide good sex from bad, harm from freedom, or respond to the kinds of sexual/sexualized inequalities and injustices that pervade late modern life in the United States (Fischel 2016: 7).

What is required to give consent to one or many sexual acts? This question, which is surfacing as the public contends with surfacing sexual assault and harassment allegations particularly in workplaces and on college campuses, is plagued with murkiness. Across the US, states determine what counts as consent in a sexual context. Age of consent laws prohibit minors from engaging in sexual relationships with legal adults, and in some states, with each other. Minors, people under the influence of drugs or alcohol, and those who are unconscious or in another altered state that impacts their capacity to make decisions, are understood to be incapable of consenting to sex, allegedly not able to fully comprehend what they are agreeing to, or not. Consent has been the primary rubric to determine if and how harm is done within sexual relationships. Though age of consent laws were first adopted by states in the 1880s, mid-20<sup>th</sup> and early 21<sup>st</sup> century feminist organizing has changed conversations about sexual consent, pushing for a broad public consciousness about combatting sexual violence with consent. However, proving that consent was given—implicitly or explicitly, depending on the state—is messy. Recent affirmative consent laws require that all persons must actively consent to sexual acts throughout. Consent is not only about getting one yes but determining how that “yes” was elicited (through coercion?), and if it continues to hold true through the entire sexual act. Consent has a temporality and an affect.

Consent also relies upon a shared understanding between all parties about the nature of the sexual acts. Under the rubric of consent, all parties should agree to participating in sex in the ways that sex plays out between them. What happens, however, when an unspoken assumption about how sex will occur fundamentally changes the terms of the agreement? In this chapter, I explore how assumptions about what type of genitals a person possesses challenge the limits of consent and further expose the faults of consent as a legal concept. I argue that trans subjects, especially those who “pass” as cis, and do not disclose their trans history to a sexual partner, upend typical understandings about sexual consent because the truth about their bodies that they hold is often incompatible with the way their partner perceives their body. While a trans person may wish to keep their trans history or status private during casual sexual encounters, a cis partner may consider this information about the body’s sexed history and anatomy crucial to participating in sex, thus allegedly voiding any consent given. Trans bodies become ontologically fraudulent when engaging in sex in this way: they become either “not really” the gender they identify as, reduced to their natal sex, or secretive and deceptive about the “true” nature of their bodies. Transness, that is, a history of a gender transition or the state of being and identifying as trans, is treated as something that a partner has the right to know, akin to a disease that must be disclosed. Failure to disclose can retroactively revoke consent, leading to charges of sexual assault lodged at trans subjects, or justifications for murder. Indeed, in many instances, failing or refusing to disclose a trans history results in violence: trans people are killed or arrested for looking like cis men and women, but possessing unexpected body parts in intimate encounters. In this

way, this chapter demonstrates key investments in cisnormativity that underwrite the association between gender non-conformity and fraudulence throughout trans life. As I will demonstrate, to possess an unexpected body is to lie about the truth of one's identity and that supposed lie justifies the incarceration or murder of trans subjects, a literal divestment away from trans life.

This chapter explores legal cases where trans subjects have been killed or charged with sexual assault for their alleged failure to disclose their trans statuses within the context of sexual relationships. In each case, the trans subject is accused of instigating sexual violence by virtue of an alleged non-disclosure of their transness, and these claims are tied up in accusations that the trans subject has committed fraud. They are characterized as tricking, scamming, and stealing from their cis, heterosexual partners. In a legal context, fraud is defined as an instance where one party knowingly misrepresents facts in order to convince another party to act in a way that causes loss, injury, or damage to the second party (and typically, gain for the first party). Fraudulence voids consent in these cases, posing a deep epistemological challenge to the ways individuals understand the conditions through which people can agree to sexual acts. Cis partners claim that they did not know that their sexual partner was trans—that they were deceived—and that sexual contact with a trans body caused them psychological harm. However, this narrative, that trans subjects deceive their sexual partners by failing to disclose their trans history, is often not true. The story of the “discovery” or “panic” at the sight of unexpected body parts on a trans person is part of the official record, told to juries, police, friends, and family by a cis partner. It may or may not be true. The narrative, that

a trans woman is “really a man,” justifying a violent reaction to the discovery of her penis, is *traded on* by her cis male partner, accused of killing her in a moment of panic. It may grant him mitigated sentencing, rationalizing his actions as justified, or understandable, given the circumstances. But he may have always known, or suspected, and grasped at this available excuse to reduce punishment for a crime that is encouraged by societal marginalization of gender non-conformity. He is able to extract value from the trans body, and particularly, value from the narratives equating trans with deception, disgust, and excess, to justify his violence.

In what follows, I analyze a number of sexual fraud cases spanning the United States, United Kingdom, and the Philippines. The legal systems in these three nations share a common root. The US is a former British colony, and the Philippines, a former US colony. As such, the occurrences of sexual fraud accusations across these three locales makes a degree of sense: within the law, there is basis for prosecution. However, these accusations are also justified through social and cultural norms about the equivalence between gender and genitalia, and the devaluation of trans and gender non-conforming bodies. In each country, these social and cultural contexts differ, yet the legal rhetoric employed to justify criminalization or murder of trans people cohere. I compare cases of sexual fraud accusations, examining how trans men and trans women experience the consequences of these accusations differently, particularly along racialized lines. While (predominantly white) trans masculine people and lesbians are criminalized for sexual fraud, trans women of color are killed in state-sanctioned acts of violence. The delineation of violence along these racialized and gendered lines demonstrate that while

many types of trans subjects may be accused of fraud, not all sexual fraud is the same. For trans women of color, fraud accusations serve as justification for murder; fraud becomes a rationale for homicide. By reading the differential treatment of trans feminine people of color against trans masculine people, I demonstrate how gendered and racialized responses to fraud protect heterosexuality differently: each through violent means of incarceration or murder, but with trans masculine people serving jail time while trans feminine people of color are killed by intimate partners.

There is an economic logic to this mode of rationalization. Trans bodies threaten the heterosexuality of those who desire them, triggering an intangible and invaluable loss. The fiercely held belief in the naturalness of cisgender bodies and the disgust of gender non-conforming bodies becomes an asset that must be protected at all costs. When understood in this way, gender non-conforming bodies are held accountable for their gender transgressions through state and state-sanctioned violence, accused of or charged with deceiving their partners about their bodies and rupturing the stability of the connection between a body's outward gender presentation and their genitalia. Indeed, testimonies from partners of trans subjects—both men who killed trans women and women who accused trans men—demonstrate how the value of heterosexuality and cisnormativity is protected in the courts. Gender and sexuality become protected categories, like property, that can be defended against trans, queer, and gender non-conforming people. I argue that the financialized language of scam, theft, and fraud produces a transactional logic about the threat of gender non-conforming bodies that is also deeply racialized, gendered, and classed. This logic makes gender non-conforming

subjects the source of risk and disruption, and enables the sexual partners of trans people to trade on narratives of trans fraudulence in retaliation, even in instances when they knew or suspected their partner was trans. These cases reveal a fundamental flaw in legal concepts of sexual violence and consent, allowing lawyers to insinuate that failing to disclose genital status or a trans history is equivalent to rape. Further, this line of thinking marks trans subjects as the aggressor but never the victim of sexual violence, even when they are killed by a sexual partner.

Fraud accusations describe trans and gender non-conforming people as lying about their bodies and their gendered histories. In doing so, I argue that they draw attention to what it means to tell the truth and complicate understandings of consent, honesty, and culpability about sex, sexuality, and sexual violence. In naming the failure to disclose a trans history or identity a fraudulent act, and as an act of sexual assault, the legal system devalues the lives of trans people in order to preserve protect the value of their cisgender sexual partners. *Sexual fraud*, accusations that a trans person failed to disclose their bodily anatomy before a sexual encounter, challenges the meaning of consent and strengthens the rationalization of violence against trans people. Sexual fraud is made possible due to this incompatibility between gender non-conformity and cisnormative ideals about gender, sex, and genitalia. The incompatibility between gender non-conforming subjects' bodies and presumptions about the coherence of sex and gender justifies violence and criminalization of discretion about a trans history. Sexual fraud accusations criminalize already scrutinized populations, utilizing state surveillant apparatuses such as Child Protective Services, statutory rape laws, and parole officers to

police trans masculine sexualities. They also excuse and condone the murder of trans women of color through mitigated sentencing for the men who kill them. As such, sexual fraud is a legal mechanism that divests away from trans life and reinforces the marginalization of gender non-conformity, especially for trans women of color and low-income and criminalized trans masculine people. Sexual fraud accusations not only mark trans subjects' incompatibilities with cis normative understandings about bodies and sexuality, but also marginalized peoples' incompatibilities with normative modes of policing and punishing poverty and racialization.

The existing literature on gender non-conformity, trans people, and sexual fraud has produced a crucial foundation for understanding how fraud accusations, and the logics that undergird them, contribute to the devaluation of trans life. In her 2007 article, "Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion," Talia Mae Bettcher demonstrates how the presumption of congruence between gender presentation and genitalia marks trans women in particular as deceptive and justifies violence against them. Bettcher writes about Gwen Araujo, a 17-year-old Latina trans girl who was murdered by male sexual partners, to advance this theory, explaining that Araujo was in an impossible bind when it came to the decision to "come out" or not as trans, writing, "it was effectively impossible for Araujo to 'come out as herself' at all. Clearly, if she had publicly declared her trans status, she would have simply been constructed as a 'boy living as a girl' or as a 'boy pretending to be a girl.' She still would have been vulnerable to the deceiver/pretender construction" (Bettcher 2007: 54). In other words, Bettcher suggests that if Araujo had told her sexual partners, she would be

seen as not really a woman; if they saw her as a woman and she saw herself that way, there is no reason to state otherwise. Bettcher argues that the notion that trans women are “really” men underpins sexual violence against them and marks all trans people as frauds, “this representational system actually prevents transpeople from existing at all (except, of course, as fakes and frauds)” (ibid.: 55). While I agree with Bettcher that trans and gender non-conforming people become vulnerable to misidentification if they are required to disclose their gendered history to a sexual partner who perceives them to be cis, my analysis provides a different interpretation. I suggest that violence is not only rooted in the belief that trans women are “really” men, but in a deep-seeded disgust of gender non-conformity and the ways the *value* of that disgust is appraised over the value of trans peoples’ lives. I demonstrate this argument through my own reading of Araujo’s case later in this chapter. Further, my emphasis on the question of consent shifts the focus away from the question of the authenticity of trans person’s identity and towards an analysis of systemic mechanisms of exclusion that open trans subjects up to sexual violence while naming them as the perpetrators of that violence. Trans people challenge normative understandings of consent regardless of how they identify: if they are perceived differently than their bodily anatomy, they challenge this epistemological system.

Legal scholar Alex Sharpe has written extensively about a string of sexual fraud cases in the UK in the past decade involving trans masculine people, lesbians, and gender non-conforming people who were assigned female at birth. Sharpe’s work raises crucial ethical questions about disclosure in trans sexual encounters, critiquing the courts’

willingness to side with cisgender complainants’ “right to know” their trans partners’ gendered history or genital status. This scholarship is focused towards legal reform, posing pressing critiques to the field of legal studies. I draw upon Sharpe’s research in this chapter, but I write towards different goals. I am less concerned with the work of transforming the legal apparatuses that codify these types of violence, though this is important work, and more interested in challenging the social and cultural logics that undergird these legal decisions. My emphasis on the financial framework used to describe sexual fraud takes up this goal: aiming to identify how trans and gender non-conforming bodies are devalued through the mechanisms that mark them as deceptive and fraudulent.

In criminal cases involving the murder of trans people in the midst of a sexual encounter, defense lawyers employ a strategy referred to as “trans panic defense,” arguing that their clients killed due to the panic that their trans partner triggered. Trans panic, and its earlier iteration in gay or homosexual panic, has been written about by legal scholars aimed at challenging its legitimacy in the courtroom. Legal scholars Cynthia Lee and Peter Kwan (2014) contribute to this body of literature by arguing for better training to combat the logics that justify trans panic defense strategies: homophobia and heteromascularity. I write towards similar goals in this chapter, outlining how the devaluation of trans life is codified into law and encouraged through cultural norms about how gender non-conformity is deemed threatening and disgusting. Trans panic has gained visibility in the past several years, as attention to growing numbers of murders of trans women of color is increasing in the public sphere. While those who are murdered are

clear victims of sexual violence, they are described by their male partners as the perpetrators. Examining how trans panic is evoked demonstrates the key investments in heteronormativity and the devaluation of trans life that are animated through cis-trans sexual encounters.

Before examining cases of trans sexual fraud, I explore the history of homosexual panic, tracing shifts in its usage, from psychiatry to law, over the 20<sup>th</sup> century. Trans and homosexual panic defenses are controversial but continued to be used to mitigate sentencing for men who kill their trans sexual partners. The continued use of this defense strategy demonstrates the normalization of violence against trans, gender non-conforming, and queer subjects, justifying their murders as a natural response to the terror induced by an epistemological crisis over the killer's own sexuality and gender. Trans and gay panic defenses encourage jurors to empathize with men who kill queer and trans people, attempting to normalize this violence by arguing that any reasonable person might act similarly if they discovered a sexual partner had the wrong type of genitalia. Crucially, the history of homosexual panic alerts us to a latent desire for gay and trans bodies, suggesting that the "panicked" act of violence might be triggered not by the surprise of the body, but the shame associated with queer desire. Examining these historical cases illustrates how sexual fraud accusations are rooted in logics of psychological loss, establishing key precedents for sexual fraud as a tool to divest away from trans life.

I intervene in the existing scholarship in these fields by considered how these economic logics of sexual fraud manifest through racialized, gendered, and classed ways,

especially through the surveillant arm of the state and extralegal justifications of murder. I demonstrate that sexual fraud accusations are not only about transphobia or transmisogyny, as Bettcher suggests, but that they demonstrate how key logics of trans marginalization are situated within a value system of racial capitalism that particularly devalues racialized and low-income gender non-conforming subjects while valuing cis, heterosexual panic and psychic loss over trans life. Cis accusers make propertied claims to heterosexuality through the language of sexual fraud and the framework of sexual consent, which has the potential to claim that any sexual encounter with a trans person was non-consensual as retaliation. Further, I demonstrate that sexual fraud reduces complicated power dynamics to the trans subject's alleged gender deceptions, eliding any nuanced examinations of harm that cannot be accounted for by the law. Overall, my intervention provides a comparative and intersectional analytic that illuminates how fraud accusations are weaponized to devalue trans lives in particularly racialized and gendered ways, situating sexual fraud accusations within broader state and interpersonal violences that include but are not exclusive to transphobia.

*Content Note: Writing Death and Violence*

Sexuality studies scholar Salvador Vidal-Ortiz calls for academics writing about trans people to think critically about their usage of the figure of the trans woman of color, a figure who has populated writing on the Left in academic, activist, and non-profit sectors as one who experiences destitution, the worst types of oppression and violence, and is in the most need. Vidal-Ortiz explains that it is imperative to expose and denaturalize “the problematics associated with the figure—especially when common

referents are about how this figure is raped, killed, ‘discovered,’ or confronted as ‘not being’ what she desires to be” (2009: 102). In this chapter, I engage with the experiences of two trans women of color who are killed for their gender non-conformity, a common trope not only in academic writing, but increasingly, in dominant and progressive news sources. There is a great discomfort in the act of writing within this trope, and in writing about the murders of trans women by angry men. To produce a “trans woman of color” as a figure who is only “discovered,” experiences violence, or is killed, is to engage in epistemic violence against the spectrum of trans women, girls, and feminine people of color who might occupy this category. Eric Stanley asserts, “Writing death tends to reproduce a pornography of violence through which the fleshiness of those we are in conversation with, their material lives, and the politics of their ends are decomposed into tropes of speculative pain and sensational disappearance” (2011: 4). It is also an injustice to refuse to remark upon the ways trans women’s lives are routinely taken by their male sexual partners, or men who desire them, and to fail to investigate the logics which animate these violences. I write with the intention to avoid replicating harm against these subjects, or against those who may read these words and identify with the experience of fearing violence when alone with a stranger. By offering a different interpretation on the causes of this violence, I aim to highlight the nuanced complexities of their lives, not just the horrific details of their deaths, in order to honor them.

### *The Genealogy of Trans Panic*

The “trans panic defense” is a defense strategy used in criminal law to mitigate a defendant’s sentencing based on the argument that he panicked when he discovered that a

woman that he was interested in or having sex with was trans.<sup>4</sup> In other words, the trans panic defense attempts to normalize or contextualize the killing of a trans woman. The trans panic defense is a controversial strategy that the National LGBT Bar Association is attempting to ban across the US on the basis that it encourages jurors to sympathize with transphobic acts of violence. Defense attorneys argue that in the moment of this revelation, usually caused by seeing a trans woman's genitals, defendants are sent into a fit of disgust and uncharacteristic rage, which leads them to kill the instigator of this rage, the trans woman. Becoming aware of her penis within this sexual context activates anger, loss of self-control, and violence for men who were expecting their sexual partner to possess different genitalia.<sup>5</sup> If successful, the trans panic defense can reduce a murder charge to voluntary manslaughter, a crime which carries a shorter sentence. Voluntary manslaughter also signifies a moral distinction from murder; murder is an unjustified killing of another human being while voluntary manslaughter is described as a crime of passion caused by a provocation. For a person to be charged with voluntary manslaughter, the provocation must be interpreted by the judge and jury as one that "might naturally cause a reasonable person in the passion of the moment to lose self-control and act on impulse and without reflection" (Electric Law Library). While

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<sup>4</sup> While the trans panic defense could hypothetically be used by a woman who murders a trans man or trans woman after the "discovery" of a trans status, overwhelmingly, it is used for heterosexual men who kill or harm trans women. I will detail the different ways that the gender of both the attacker and the trans person matter greatly when it comes to who experiences violence and is susceptible to murder based on gender, and also race and class, further in this chapter.

<sup>5</sup> Some trans women may not describe their genitalia as "penises." I use the term here to avoid other, in my opinion, more offensive phrasing, such as "male genitalia," or "male sexual organ," which suggests that all males possess penises and to have a penis means a person is male. Penis, the anatomical term for this sexual organ, though imperfect, describes the genitalia without necessarily gendering it as male.

defendants are not exonerated of their crimes, their killings are put into context and jurors are asked to rationalize the killing of trans people based on a presumed shared disgust about their bodies.<sup>6</sup> The trans panic defense strategy reveals the entanglement of cultural investments in heterosexuality, cis-normativity, and white supremacy (as these cases typically involve the murder of trans women of color) by garnering empathy for those who kill queer and trans sexual partners. Further, it marks trans bodies as outside of and incompatible with normative ways of encountering individuals; trans people trigger epistemological crises.

The element of surprise embedded in the trans panic defense marks it as fundamentally different from gay panic. Whereas in a situation of gay panic, all parties share an understanding of the queerness of the encounter, trans panic makes queerness a surprise, altering the temporality of consent and alerting the cis partner to the unknowability of the sexed body. This surprise marks trans bodies as fraudulent when they do not disclose immediately to any potential sexual partners. Further, trans people become ontologically fraudulent in this scenario: due to the ways women's bodies are sexualized by heterosexual men, the moment that a trans woman is seen by a man, she can be perceived as lying. If his attraction to her is based on her appearance as a cisgender woman, her disclosure is always too late. Sara Ahmed's discussion on disgust helps to illuminate this point further. In *The Cultural Politics of Emotion*, Ahmed (2015

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<sup>6</sup> While the disgust I reference here is about a trans woman possessing a penis, David Valentine discusses another type of disgust around trans people's genitals, expressed by feminist and queer people. For Valentine's analysis of feminist and queer judgements over trans people's decisions to undergo genital surgeries, see Valentine 2012.

[2004]) explains that an object is not inherently disgusting, but its disgust relies upon “contact or proximity” to other objects, and a cultural history that informs the way the disgusting object is understood. Ahmed writes:

an object becomes disgusting through its contact with other objects that have already, as it were, been designated as disgusting before the encounter has taken place. It is the dependency of disgust on contact or proximity that may explain its awkward temporality, the way it both lags behind and makes an object (2015 [2004]: 87).

It is the heterosexual man who becomes “disgusting” or disgusted, through contact or proximity to a trans woman. Her body, “designated as disgusting before the encounter has taken place,” transfers disgust to the men who desire her. While a heterosexual man may feel disgust by being in close intimate proximity to another man, the disgust is heightened when the woman he desires turns out to be trans; the element of deception or surprise uproots what he believed to know about gender and sexuality. The trans panic is spurred by an epistemological shock rooted in disgust of queerness, yet it also importantly hinges upon this notion of being able to assume a person’s sex by looking at them, and experiencing anger, confusion, and reorientation when these assumptions do not match reality. In most trans panic cases, however, it is not clear that the killer was unaware of their victim’s trans history or status. Indeed, of nearly all of the trans people killed in 2017, many were killed by an intimate partner or within the context of a sexual relationship. Trans and gay panic, then, justify violence against queer desire or trans bodies and reifying the disposability, particularly of trans feminine bodies of color, through commonsense notions of disgust and panic. The “panic” becomes the cover to disguise desire for trans bodies.

Beginning in 1967, lawyers first used the homosexual panic as a defense strategy to bolster claims of mental defect in a defendant who allegedly acted in self-defense against homosexual advances by a stranger. In *People v. Rodriguez* (1967), the defense argued that the “defendant did not know the nature and quality of his act at the time of the attack and was acting as a result of an acute homosexual panic brought on him by the fear that the victim was molesting him sexually.” Rodriguez, a teenager at the time of this crime, was accused of killing a man who grabbed him from behind in an alley. Just before the incident, Rodriguez was with a friend at a bus stop when his friend decided to steal a woman’s purse. The woman screamed, and Rodriguez took off on foot. He ran to an alley and, once out of sight of his friend’s crime scene, found a place to urinate when a man came up from behind him, yelling, and grabbed him. The defendant used a stick he found nearby to beat the man to death. By claiming homosexual panic, Rodriguez’s defense highlighted the vulnerability of the teen in this scene: in an alley, with his penis exposed, and his back to a man who grabs him from behind.

In a 1975 case in Missouri, *State v. Thornton*, the defendant, Robert Thornton, admitted to killing a man who made homosexual advances on him in a private residence. After spending the day drinking alcohol and smoking marijuana, Thornton began talking to his neighbor outside of their apartment building, and agreed to join him upstairs in his apartment, where they watched television together on his bed. The neighbor allegedly began kissing and touching Thornton, at which point Thornton fought the neighbor, brutally stabbing him to death. Psychiatrists testified that Thornton was in a state of “homosexual panic” during the killing. He was found guilty of manslaughter by a jury, a

charge mitigated by Thornton acting in “self-defense” against unwanted sexual advances by the victim (*State v. Thornton*). Panic, a “sudden, uncontrollable fear or anxiety, often causing wildly unthinkable behavior,” was convincingly used as justification for murder (Oxford English Dictionary 2017). Panic itself is not a state that psychiatry defines: while individuals may have panic attacks or panic disorders, “panic” is a fleeting occurrence that may more fittingly be a legal term than a diagnostic one. Yet, efforts to justify criminal acts by psychologizing defendants’ motives systemically devalues queer and trans lives. Jurors attest: Thornton acted as any reasonable man might in this situation, protecting his heterosexuality by any means necessary.

The concept of “homosexual panic” derives from psychiatry. In 1920, Dr. Edward Kempf coined the term to describe people who experienced “panic due to the pressure of uncontrollable perverse sexual cravings,” or homosexual desire, particularly in same-sex environments (1920: 477). A person experiencing homosexual panic becomes delusional, according to Kempf, “hallucinating” the occurrence of homosexual acts to “gratify the craving” (ibid.: 478). Kempf asserts that perverse desires and hallucinations derive from the ego; the person experiencing homosexual panic disassociates from their body and this disconnection causes strife to the individual. Panic can last from a few hours to several months, causing the panicked to experience increased heart rate, irritability, insomnia, and restlessness. Notably, this first instantiation of “homosexual panic” describes an individual who imagines himself engaging in gay sex or intimacy. The individual is panicked due to his own internal desires, not by an advance made by another person. This diagnosis is distinct from its contemporary usages, where homosexual or trans panic is

experienced by a person who, allegedly, is the object of queer or trans desire, not the one desiring queer or trans sex. Kempf's descriptions of his patients' responses resemble a form of psychosis, brought on by internalized feelings of homophobia: they fear their same-sex desires to the point of disassociation. Homosexual panic was introduced into the *Diagnostic and Statistics Manual I* in 1952, but it did not reappear in the second volume in 1968. Even by 1952, many psychiatrists avoided using the diagnosis, believing its conclusions to be largely unfounded (Lee 2008: 483).

It is crucial to note that in both of these legal cases, homosexual panic as a defense strategy diverges from Kempf's clinical definition of the same term. According to Kempf, homosexual panic refers to a person with underlying homosexual desires who feels panicked when they surface. However, the panicked subject in Kempf's clinical definition acts remarkably differently than defendants employing the homosexual panic defense in legal cases. First, in Kempf's definition, the panicked subject is "offer[ing] himself as a sexual object," he is not being unwillingly propositioned by another man (1920: 480). While he may dis-identify with his solicitation of homosexual sex, he is the one doing the asking. Kempf's subject desires homosexual sex, but he feels anxiety about the same-sex attraction. Most importantly, Kempf's subject experiencing homosexual panic retreats into himself, becoming withdrawn and anxious, in what Kempf describes as a state of psychosis, full of delusions about having same-sex relationships with or being called gay by people around them. None of his patients have killed in response to a homosexual advance. As a legal defense strategy, the person who is allegedly or seemingly being propositioned for homosexual sex is the panicked party. He responds to

homosexual advances with violence and the homosexual panic defense is used to attempt to convince juries that any reasonable person might act in a similar way if they were being propositioned for gay sex. In other words, while Kempf described patients who had latent gay desires or curiosities, as a defense strategy, the homosexual panic defense is enacted by men who express violent repulsion to gay acts. While a psychosis induced by gay desire may indeed be an expression of internalized homophobia, the use of the term is markedly different: in Kempf's studies, it describes a person who is suffering, but in the courts it attempts to make jurors empathize with homophobic rage.

Highlighting the tension between Kempf's understanding of the term and its use in legal cases beginning in 1967 reveals an important yet buried assumption embedded in the diagnostic use. While never stated explicitly, and indeed, rigorously challenged, expert testimony claiming that men who kill other men who proposition them for gay sex are experiencing homosexual panic implicitly names the *killer* as latently gay. People with latent homosexual desires experience homosexual panic. Homosexual panic causes people with buried homosexual desires to act uncontrollably. Defense attorneys attempt to argue that men who kill in self-defense against gay advances do so because they are heterosexual rely upon a diagnosis that names the defendants as latently homosexual. However, defense attorneys rigorously argue that the men who kill other men after a sexual advance are heterosexual, thus justifying the killing. As Thornton stated in his testimony where he confessed to killing the man who allegedly made a gay advance towards him, "Queers and freaks upset me a lot and I try to stay away from them as much as possible" (*State v. Thornton*). Thornton went on to explain that stabbing his victim was

purely an act of sexual self-defense, declaring, “I know that he was trying to queer me and I just blew up and started stabbing him. He had not made any threats to me” (ibid.). The “threats” Thornton refers to are threats of physical violence. He claimed that his victim did not hit or threaten him; his life was not in danger, just his psychic sense of self. Despite this absence of physical danger, jurors sympathized with Thornton, based on his lawyer’s persuasion. When tasked with considering what *they* would do if they were propositioned for gay sex, they agreed: the threat of gay sex was panic-inducing, and the subsequent stabbing was a reasonable reaction to this panic, an action that Thornton only took based on this exceptionally threatening circumstance.

Juror empathy with Thornton may suggest an understanding of his actions as self-defense in the face of sexual assault. Though he stated he was not threatened by his victim, Thornton described a scenario where he was allegedly receiving repeated unwanted sexual advances. The disgust of the homosexuality of the encounter, not the threat of sexual assault, was central to his defense. Then and now, the types of acts that Thornton alleged would likely not qualify as sexual assault in a court of law. This is of course a practical reason as to why this was not the strategy his lawyer employed. However, his description of the incident reveals that the threat of queerness, less so threats of assault, were imminent. He stated twice that he did not feel threatened by his victim, but that he did not want to be “queered,” and that he tried to stay away from “queers and freaks.” The queerness of the interaction justified Thornton’s murderous act.

While I am not particularly interested in arguing that defendants who employ the homosexual panic defense are “really” gay or not, it is crucial to note that this diagnosis,

used for heterosexual men who are threatened by queerness, was developed to describe people who experience latent, yet torturous, homosexual feelings. Aggressively heterosexual and latently gay collapse onto one another. Indeed, the threat of being perceived as gay animates the homosexual panic, for those who have latent homosexual feelings and those who claim to not. The man who kills out of homosexual panic may experience some of the same feelings as the latent homosexual: fear of being called gay by the people around him, fear of being accused of being gay afterwards, and fear of loss of proper heteromascularity even through an unwanted homosexual act. Gay or trans panic enables those regrettable or shameful sexual acts to be framed within the narrative of victimhood for the cis and heterosexual subject: their consent violated, their bodies threatened.

In contemporary trans sexual fraud accusations, these two narrative frames—consent and fraud—work in the service of protecting individual and collective investments in hetero- and cisnormativity. In the cases that follow, I examine how accusers and killers of trans subjects position themselves as victim to their partners' deceptions, drawing upon rhetorics of sexual assault and psychic loss to do so. This framing marks trans bodies as incapable of being victims of sexual violence, their bodies ontologically deceptive and guilty. Sexual fraud accusations reproduce a divestment away from trans life, drawing into question what can be, and what should be, known about a sexual partner before a sexual encounter occurs.

*Heteromasculine Value, Trans Feminine Threat*

Gwen Araujo was 17-years-old at the time of her murder. She lived in Newark, California, twenty miles north of San Jose. The details about what occurred on the night of her death tell a partial story: one that her killers and their friends told the police and their lawyers, verified by analysis of her body by the coroner. While the body can affirm some basic facts—how she was killed, if and how she fought back, and what they did with her body afterwards—it does not confirm or deny what they claimed: that they never know she was trans, and that “discovering” her unexpected bodily anatomy triggered unthinkable violence. If we cannot know what really happened, we can examine the logics that justify the act.

These are the details of the case that have become known through numerous criminal trials. On October 3, 2002, Araujo attended a small party at a house rented by José Merél. Michael Magidson, Jason Cazares, and Jaron Nabors, were in attendance at the party, as were Merél’s brother and his girlfriend, Nicole Brown. Before the night of the party, Araujo had sexual relationships with both Magidson and Merél, and both men claimed to the police and lawyers that they did not know that she was trans. However, over the course of the party, Nicole Brown allegedly became suspicious that Araujo wasn’t “biologically female,” and suggested that Magidson “check” Araujo’s genitals to determine her sex (St. John 2004). Upon Brown’s provocation, Magidson went to confront Araujo in a bathroom, yelling at her, demanding to know if she is male or female. Brown entered the bathroom and grabbed under Araujo’s skirt to feel for her genitals. When Brown felt Araujo’s penis, she began yelling, asking the others what they were going to do now that they knew. Merél, who had previously had sex with Araujo,

allegedly started crying, declaring that he was not gay, and that he did not like men (ibid.). Araujo attempted to leave the party, after what was surely a traumatic assault, but she was stopped by the men. They brutally attacked her, eventually killing her, and buried her body in El Dorado National Forest.

Jaron Nabors went the police a few days later, turning himself in and negotiating a reduced sentence in exchange for his testimony against the three other men and information about the location of Araujo's body. Magidson and Merél, the two men who had previous sexual relationships with Araujo, were found most culpable for her murder. Cazares claimed that he only assisting in burying Araujo's body, that Magidson and Merél were the ones who killed her. Both of the men's lawyers employed a gay panic defense to attempt to mitigate their sentences.<sup>7</sup> Michael Thorman, Magidson's lawyer, suggested a manslaughter charge. Bill DuBois, Merél's lawyer, argued that Araujo's genitalia incited upheaval in Merél that led him to murder her; it was not premeditated but a response to a shocking revelation. DuBois and Thorman both argued that Araujo's deception caused their clients to react in the heat of the moment; that they would not have killed her if she was a cisgender woman; and that her trans body pushed them into a state of psychic upheaval. They questioned their sense of heterosexuality and masculinity because they were attracted to and had sex with someone with a penis. As Vicki Haddock of the *SF Gate* reported, Thorman argued, "This crime didn't occur because Mike had a bias. It happened because of the discovery of what Eddie [sic] had done. This is a case

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<sup>7</sup> Journalists at the time of her trial referred to the defense strategy as "gay panic defense." I use gay here to draw attention to how the defense attorneys positioned Araujo as a man and their clients experiencing gay panic.

that tells a story about [...] the tragic results when that deception and betrayal were discovered” (2004: n.p). Using Araujo’s former male name, Thorman places blame squarely on her shoulders: she lied to the men about her true identity. Further, Thorman argues that this crime was not premeditated: his client did not have a “bias” against Araujo but reacted to the revelation of the alleged “deception and betrayal.” Whereas killing Gwen because she was trans (or in their understanding, gay) would constitute first-degree murder, killing in self-defense of one’s masculinity and heterosexuality could be manslaughter.

Araujo was accused of confusing the presumed alignment between sex and gender. Magidson, Merél, and their friends allegedly presumed what her genitals looked like based on her gender presentation. The “misalignment” between gender presentation and genitalia causes the alleged epistemological shock, confusing truths that are deeply held, that gender presentation indexes genitalia. Even though the type of sex she had with Magidson and Merél allegedly did not involve using her genitals, Araujo is accused of making them question their heterosexuality because they did not know, but assumed, what her genitals looked like.

If we assume that Magidson and Merél did not know that Araujo was trans, and that they had sex which did not involve her genitalia, questions about whether or not she was deceptive hinge upon centering the experiences and feelings of the two men. If they believed her to be a cis woman, and she saw herself as a woman, disclosing her trans history would rupture this shared understanding, as is evident by the ways she was described in court, as her previous male name and with male pronouns. Being honest

about her gendered history might have changed the way her partner(s) understood her, in such a way that does violence to her identity. Might it not also be non-consensual for the men to describe and see her as male? If we assume that they did know, or suspected, that she was trans, they were able to *trade on* the narrative of gay and trans panic to recuperate social capital and reestablish their claims to heteromascularity. The temporality of consent is altered by the trans body who refuses disclosure. Magidson and Merél are retroactively queered by the encounter, by their desires for a person who they, allegedly after the fact, perceive as male.

Trading on the narrative of gay and trans panic legitimizes Araujo's killers' fears of her queerness and transness. This narrative affirms an investment in heterosexuality and cissexism, an investment so great and so valuable that it must be protected by any means necessary. The investment in cissexism might be thought of as akin to what Cheryl Harris identifies as a propertied investment in whiteness. Harris argues that property is both racialized and central to the functioning of US law, demonstrating how personhood is defined as being capable of owning property and not being owned as property, and how whiteness, and contestations over who was white, determined the boundaries of the human and the law. Protecting whiteness through processes of exclusion that racialized others occurred through scientific and socio-legal mechanisms. Harris writes, "American law has recognized a property interest in whiteness that, although unacknowledged, now forms the background against which legal disputes are framed, argued, and adjudicated" (1993: 1713-4). The history of racialization in the US is intertwined with processes of solidifying the boundaries of sex and gender. Protecting fragile and unstable categories of

men and women, heterosexual and queer, entails legal, scientific, and social processes of making meaning of and defending these categories. While avoiding an analogy between a propertied investment in whiteness and a propertied investment in cisness and heterosexuality, as it is clear that these categories are both intertwined and divergent, gay and trans panic defenses reveal a similar logic: an investment in cis life, an exclusion and devaluation of trans life, “forms the background against which legal disputes are framed, argued, and adjudicated” (ibid.). Indeed, Magidson and Merél cite their imperative to protect their heterosexuality, even at the expense of killing the person they identified as threatening it. Further, the narrative of Araujo’s deception is readily available to defense attorneys, digestible to jurors, and used to justify actions taken to protect the integrity of her killers’ sexualities. Jurors were asked to empathize with this justification and presumed to understand that heterosexuality is a property that should and could be protected from alleged queer and trans deceptions. Indeed, a propertied investment in whiteness is predicated upon an investment in proper heterosexuality, a repudiation of queerness, and also sexual violence against non-normative sexual subjects, especially those of color (ibid.; Somerville 2000).

This investment in cisness also depends upon a notion of sex and sexuality as property, as things that sexual partners can claim ownership, and importantly in contrast, injury, over. The surprise of the unexpected body parts, misaligned with a person’s gender presentation, allegedly triggers anger over what could have been, upending the assumptions about what type of sex might have occurred and the cis partner’s “right” to that sex. Transphobia may be defined as outrage over this investment in sex as (public)

property. Hilary Malatino argues that sex circulates as property, consolidating the fragmented and contradictory meanings about sex into a stable category that moves beyond the body. Malatino writes:

Sex as property can be personal or private property ('I have a sex'), medical property ('The physician has decided what sex I am'), or state property ('I have the proper clearance to change the sex assignment on my birth certificate'). In each of these instances, a reductive condensation has occurred in order to transform the complexities of sex into a discrete object, a piece of property that can circulate, transfer hands, that relies on a circuit of exchange that, in turn, relies on sex as a tangible, transparent, and ultimately discernable entity" (2013: 243).

Sex as a propertied thing, as having properties that can be discerned and utilized in personal, medical, and state business to ascribe meaning and categorization, can also be understood as a thing that property interests are asserted upon. Personal or private property over sex might not just be "I have a sex" as Malatino puts it but instead *You* have a sex (and I have an interest in what that sex is). Protecting cis people's propertied interests on trans bodies through trans and gay panic defense strategies solidifies structural divestment away from trans life.

After her death, Araujo was accused of being deceptive, and therefore culpable for her murder, because of her alleged failure to disclose her gendered history. Their cases hinge upon Magidson and Merél not knowing this key detail to justify the shock triggered by this surprise. We cannot know what these men believed to be true about Gwen Araujo before that night. They may well have known that she was trans, or perhaps believed her to be gay, and reacted violently only when their friend's girlfriend drew attention to Araujo's difference. Perhaps their version of the story is true, and they never

suspected a thing. Maybe another type of altercation occurred, resulting in Araujo's death, and this story about the "discovery" of her genitalia seemed most believable to tell the police.

If they believed her to be trans or not before that night, her killers may have already understood her body as disposable, as a young, trans feminine, Latina, high school dropout. Her devaluation was readily understood, already in motion. Though her mother expressed support of Gwen when she came out to her family at the age of 14, she experienced aggressive bullying at school from students and the refusal of accommodations from the administration, pushing her to leave school (Ritter 2002). As Linda Heidenreich puts it, "Gwen did not drop out of school; she was pushed out by an administration that supported a harassing climate and that could not understand the necessity of using a bathroom" (2006: 75). While her life was valued by her family and by the gay and trans communities who came to know her name after her death, in many aspects of her daily life, Araujo was marked as abject. Compared to the death of Matthew Shepard just four years prior, which received national outrage at its homophobic motives, Araujo's murder received little attention from the media or national disavowal of the violence committed against her. Referencing attention to Shepard's murder, Heidenreich (2006) asks, "Because U.S. popular culture has traditionally portrayed bodies of color as sexually predatory and/or out of control, we might ask, can a queer of color ever be identified and marketed as 'sexually nonthreatening'—'a friend and son'?" (70). Araujo's life was devalued, not just for her gendered difference but also for the other ways her body was marked as excess: for her race, her age, and her femininity. While transphobia

and homophobia are weaponized as causes of the violence, both on the side of the prosecution and the defense, the context for Araujo's death cannot be so neatly contained. Sarah Lamble explains, "Without history or context, the systemic roots of violence are rendered invisible; violence is comprehensible only at the micro-level whereby individual transphobia becomes the only viable explanation" (2008: 28). It is within this framing, without the context about forces of power and the devaluation of bodies like Araujo's, that the act of violence can be examined through the lens of consent.

For centuries, the rape of black, indigenous, and Latina women was a not a crime in the US. These violences formed the foundation of white supremacist power, enabling the perpetuation of slavery, settler colonialism, and other projects of racialization (Gunning 1996; Smith 2006; Falcón 2001). Indeed, for women of color, sex as property takes on an additional meaning. Rape was and continues to be a racialized form of gendered violence. That the men who killed her allegedly felt violated by Araujo's body demonstrates the ways that Araujo could not be framed as a victim in this case, even though she was killed, because her body already signaled guilt through its difference. Narratives of her disposability predate her body, accessible to her killers as they justify their actions. When we layer on these factors—the uncertainty of what occurred, her vulnerability to violence, her perceived disposability—the rationale, that the men never would have consented to sex had they known about her past, falls apart. The alleged shock of her body justifies the violence against her because of a shared, societal disgust in the multitude of Araujo's subject positions, expressed through this "panic."

In the early 2000s, the rationale that Araujo violated her killers' consent was implicit, articulated solely through the language of gay panic. A 2015 case suggests that a shift in understandings about sexual consent has occurred over a span of a decade, one that enabled a man to claim that he was raped by the trans woman he killed in an act of alleged panic. On December 1, 2015, US Marine Joseph Scott Pemberton was charged with homicide for killing Jennifer Laude, a trans Filipina woman, during a sexual encounter in Olongapo, a city northwest of Manila in the province of Zambales, Philippines. The two had met at a bar on the night of October 11, 2014 and returned to a hotel room for sex. Pemberton's lawyer described Laude as a sex worker, as did some of her friends, though it's not clear if she was being paid for sex by Pemberton on this particular night. Pemberton was stationed in Olongapo, at the US Naval Base Subic Bay. According to Pemberton, he did not discover that Laude was trans until they had begun having sex, at which point he physically attacked her and left her for dead.

Pemberton's attorney, Rowena Garcia-Flores characterized the conditions that led up to Laude's murder using the financial language of fraud, declaring, "Pemberton was 'a victim of the fraud committed by a sex worker—Laude—and lashed out upon discovering that he'd been 'scammed'" (ibid.). Laude, who was killed by Pemberton, is accused of sexual fraud, and of scamming Pemberton, of money and proper heteromascularity. Through this reasoning, Pemberton's crime is explained, justified, and contextualized, and Laude is accused of wrongdoing for allegedly deceiving him. Further, Pemberton claimed that he was not only scammed but sexually violated by Laude. He testified that he felt like Laude had raped him by not disclosing her trans history, causing

him repulsion and anger (Stern 2015).<sup>8</sup> According to his attorney, Pemberton reacted out of anger a result of the violation of his consent. Garcia-Flores argued that Pemberton was harmed by Laude, justifying his murderous actions, declaring, “He was repulsed, felt violated and angry; that he would not have agreed to sex with him [sic] if he knew he [sic] was a man [sic]” (Whaley 2015). In this rendering, Pemberton’s trust was betrayed by Laude’s gender presentation, revoking the consent he initially gave for the sexual act. The language of sexual consent was mobilized to generate empathy for Pemberton’s actions as a male victim of sexual assault, and a victim of trans deception.

Framing this encounter as sexual assault against Pemberton marks a notable shift in the ways sexual assault is understood, at least in the court of public opinion. It has not always been the case that an adult man could allege that he was raped. This is evident in the ways that unwanted sexual attention is described in each of the previous cases in this chapter. Men did not cite their alleged disgust of queer encounters as incidents of sexual assault or sexual harassment. During these moments, the language of sexual assault was not available to men, whether or not sexual assault actually occurred or not. There are a number of factors which may have made sexual assault an available frame for Pemberton. Growing awareness of sexual violence against men, as a result of feminist and queer organizing, may have enabled him to claim that he felt raped by Laude. His position of power as a US Marine, as a cis and allegedly heterosexual man grants him authority to establish the narrative of the events, even as he was the primary suspect in the case. Asking the judge to

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<sup>8</sup> I refer to Laude’s trans status as a trans history because it is unclear if she identified herself as trans or not. I use trans history, as opposed to trans status, to signify that some people transition and no longer identify as trans, but they are still marked, in instances such as these, with a history of transition, either on their bodies or psychically.

understand his actions as self-defense against an act of sexual violence positions Laude as the perpetrator of violence and Pemberton as a victim of her deceit. Framing the killing as a response to a sexual fraud – deceptions that are akin to sexual violence and a scam, according to Pemberton – demonstrates how fraud is employed to devalue the lives of trans women of color. Her death is blamed on her alleged lies. His consent was violated even as she was killed in the middle of sex.

This case illustrates key logics about the embeddedness of trans necropolitics in law across nations. Due to US colonial rule in the Philippines from 1898-1946, the Philippine legal system shares many similarities to the US legal system (American Discovery 2008). In the US and the Philippines, trans bodies are criminalized for the challenges they pose to legal notions of consent and blamed for the violence enacted towards them. The presiding judge found this argument convincing, reducing Pemberton's sentence from murder to homicide, a charge that carried a lighter sentence, just six to ten years, as opposed to forty. The case was tried in a Philippine court, but Pemberton will serve his sentence on a US army base in Quezon City. He was also ordered to pay the equivalent of \$130,000 (USD) in fines to Laude's family.<sup>910</sup>

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<sup>9</sup> This restitution is particular to the Philippines-U.S. military relationship, wherein Philippines government has begun to demand monetary compensation for violence committed by the U.S. military against Filipinas. *USA Today* reported (2015) that Pemberton's case has re-ignited protest of U.S. military presence within the Philippines.

<sup>10</sup> Laude's murder and Pemberton's sentencing sparked protest among Filipina/o people over the Philippines-United States Visiting Forces Agreement, which enables the US government to retain the right to refuse to arrest or detain US military members charged with crimes by Philippine courts. Though Pemberton was charged and sentenced, many believe that his relatively light sentence reflects disrespect for and devaluation of Filipina/o life and that the Visiting Forces Agreement influenced his sentencing.

By affirming Pemberton's defense rationale, the judge marked Laude as partially responsible for her own death by failing to disclose her genital status before agreeing to have sex with Pemberton. Unlike Magidson and Merél, Pemberton was successful in convincing the judge to reduce his sentence based on a trans panic defense. Julita Laude, Jennifer's mother, found the judge's ruling unfair. She told *BuzzFeed News*, "It's like if I wore the mask of a younger woman then he killed me when he found out that I am old. The judge wants to say it's my fault. It's just not right" (Talusán 2016). Equating the failure to disclose that Jennifer was trans to wearing a mask to appear younger, Laude's mother highlights the problems inherent in labeling failure to disclose as fraudulent. To some, the appearance of a younger woman is appealing, and it would not matter much if later it was discovered that she was disguising herself. However, for others, the disguise is covering an undesirable trait that the other party would never have consented to sex with if he had known. By drawing this comparison, Laude's mother blurs the line that defense attorneys attempt to draw between clear deception and murky self-fashioning.

Further, debate over whether or not Laude was a sex worker weighs heavily in this scenario. In Olongapo in particular, a city with a strong US military presence, representing an ongoing militarized imperial relationship, Laude's body is imbued with meaning about her use as a sexual subject. US military presence in Olongapo has encouraged the growth of sex industries and violence against sex workers is common (Chang 2001). With growing U.S. military occupation in the Philippines in the second half of the 20<sup>th</sup> century, Olongapo transformed from a fishing town to one geared toward the entertainment of soldiers, containing a plethora of "hotels, saunas, parlors and

prostitutes” (ibid.: 627). While the Philippine government is in support of these commercial sex zones around military bases economically, they produce conditions of insecurity for everyday Filipina/o people. Pemberton may have felt emboldened to kill Laude because he believed she was disposable, not only as a trans woman or a Filipina but as a sex worker. As Aren Aizura notes, southeast Asian women are particularly marked by “an orientalist discourse about South East Asia, in which Thai and Filipina feminine bodies in general are naturalized as particularly adept at, or—in its more contemptuous formation, as ‘only fit for’—prostitution and other forms of care work” (2014: 135). To occupy this role, as a body who exists only for the pleasure and care of others, is to become disposable when the body can no longer serve her function.

The devaluation of Laude’s body makes Pemberton’s alleged “panic” make sense. Like Gwen Araujo’s murder, we cannot know what Pemberton knew or guessed about Jennifer Laude before he killed her. He may have been shocked to learn about her trans history in that hotel room, or he may have been aware, trading on the narrative of trans panic, and her disposability, when he was caught. Whether or not Laude disclosed her trans history, she was vulnerable to violence at the hands of a man capable of killing her. Each of these cases illustrate how narratives of trans disposability are supported by the logics of fraudulence in law. Gender non-conforming subjects are marked as the source of risk and danger, and their killers are able to trade on narratives of fraud and panic to mitigate their crimes. There is a financial, racial, and imperial logic to these types of justifications that hinge upon seeing trans feminine bodies of color as instigators of sexual violence, even when they are killed by their sexual partners. Fraud becomes a

cover for their killers, to redirect blame back to trans subjects for their deaths, recuperating heteromascuine value.

In either scenario—disclosing or failing to disclose—Laude could be construed as fraudulent, for passing as cis by failing to disclose, or by disclosing and disrupting Pemberton’s perception of her body (or the story he told others about her body, if he assumed that she was trans, but was ashamed to admit his attraction to her to his peers). Her fraudulence is ontological: located in the body, and (nearly) incapable of separation. Further, the colonial relationship marks Laude’s body as intended for Pemberton’s sexual consumption. His violence towards her cannot be separated from this presumption. In the following section, I explore cases that illustrate this ontological fraudulence through a different register. While Araujo and Laude’s cases demonstrate how fraud accusations lodged against trans women mark their male killers as vulnerable and transness as threatening to heteromascularity in particularly racialized ways, accusations lodged at trans masculine subjects trade on narratives of female innocence and the vulnerability of teen sexuality. In what follows, I contrast cases where trans masculine and gender non-conforming subjects who were assigned female at birth are accused of sexual fraud, demonstrating how the criminalization of trans masculine sexuality poses challenges to legal conceptions of consent through the narrative of female vulnerability to sexual violence.

### *Differentiated Harm: Criminalization of Trans Masculine Bodies*

Whereas trans women and trans feminine people in the previous section were killed for their alleged failure to disclose their gendered histories to male sexual partners,

trans men and trans masculine people often face different, carceral consequences. In this section, I analyze cases where trans and gender non-conforming people who present as masculine are criminalized for allegedly failing to disclose their gendered histories to female sexual partners. As it was with trans feminine people, it is clear that female partners (and sometimes their parents or legal guardians) of trans masculine people traded upon narratives of trans deception in order to press criminal charges, despite evidence that suggests that no deception occurred. Young female sexuality is protected from trans bodies and queerness through rubrics of sexual assault and sexual fraud, and as a result, trans sexuality is criminalized. The varied responses to alleged sexual fraud mark the differentiated value of trans masculine and trans feminine subjects. There are gendered, racialized, and classed reasons for these varied responses. Laude and Araujo's cases demonstrate how trans women of color are devalued, their killings justified due to the threats they posed to racialized heteromascularity and their lives deemed disposable due to their race, age, and positions of vulnerability compared to their killers. These men felt emboldened to kill in order to reassert heteromascularity. The cases involving trans masculine people or gender non-conforming people assigned female at birth demonstrate a different logic. Rather than pursue extralegal violence, cis women and girls are encouraged to seek protection from the state. In several cases, the trans masculine subjects are punished due to increased state surveillance, either through Child Protective Services, parole officers, or increased police presence in their neighborhoods. The state understands young women and girls' sexuality as something to protect, thus sexual fraud committed by trans masculine people is readily understood as an act of sexual assault. In

these cases, sexual fraud accusations are utilized to punish gender non-conformity in already marginalized subjects.

Beginning in 2012, at least five gender non-conforming people have been charged with sexual fraud related charges. This series of sexual fraud prosecutions in the United Kingdom drew scrutiny and concern from feminist and trans legal scholars and activists. Sexual fraud is not only regulated to the policing of trans bodies, but to many who transgress normative expectations about gendered bodies and sex. While the surge in these types of cases is currently located in the UK, trans masculine people in the US faced similar types of charges in the 1990s. I analyze the logics that animate the most recent sexual fraud trials in the UK and dig deeply into one particular US case that illustrates how anxieties over gender non-conformity serve as the motivation for criminal charges. These cases also challenge the concept of sexual consent, questioning how and when consent functions in sexual encounters where one partner is trans or gender non-conforming. Overall, sexual fraud accusations against trans masculine people demonstrate how fraud detection epistemologies in sexual relationships lead directly to divestments away from trans life and presume fraudulent intent with gender non-conformity is present.

In July 2017, Gayle Newland was sentenced to six years and six months in jail. She was convicted of three counts of sexual assault and one count of fraud for engaging in a sexual relationship with a woman who claimed to have been tricked by Newland about her gender (Wilkinson 2017). Newland's accuser declared that Newland deceived her, pretending to be a man and non-consensually penetrating her with a dildo, which she

believed to be Newland's penis. Newland and her accuser had an extended sexual relationship; over the course of two years, they met up for sex ten times. During those encounters, her accuser claimed that Newland made her wear a blindfold when they met to aid in the deception. Newland countered that the other woman knew the entire time that she was a woman and that her masculine identity, a person she referred to as "Kye Fortune," was part of a consensual role play. Newland denied requiring the accuser to wear a blindfold during sex or any other activities, such as watching television or sunbathing, as the plaintiff testified (Press Association 2015). The judge was not convinced. Judge Roger Dutton, who presided over her hearing, described Newland as "an intelligent, obsessional, highly manipulative, deceitful, scheming and thoroughly determined young woman" (Halliday 2016). Newland's various gender-transgressive acts—dressing in masculine clothing, using a dildo during sex, taking on a male persona in person and through text messages—each demonstrated to Judge Dutton her concerted and dangerous fraudulent acts. Playing with gender as Newland did was evidence of malicious intention.

The central question in this case is whether or not Newland's accuser consented to sex with Newland—not as a person but as a woman. Further, Newland transgressed heterosexual and cis gender norms about what being a woman in a sexual relationship entails. Newland's accuser did not claim that Kye Fortune coerced her into sex, but that upon the alleged discovery of Newland's identity, their previous sexual encounters were non-consensual due to Newland's gender deception. According to Newland, her accuser knew that she was not a cis man and no such deception occurred. Despite Newland's

testimony, her regular gender-transgressive acts were understood as sexual assault and fraud.

In 2012 and 2013, two other individuals were charged with sexual assault for allegedly “pretending” to be men in order to have sex with girls in the United Kingdom. Justine McNally, then 17-years-old, served 82 days in jail for having sex with a 12-year-old girl who believed McNally to be a man named Scott (*The Huffington Post UK* 2013). She was sentenced to three years in jail on six counts of sexual assault but was released upon appeal. Gemma Barker, then 19-years-old, served 30 months in prison for sexual assault and fraud for “kissing, cuddling and groping” two 16-year-old girls while presenting as male (*The Telegraph* 2012). Both Newland and Barker identified themselves as lesbian women, not as trans men or genderqueer. In media coverage of each case, the accused are described as having trouble with their sexuality, suggesting that they struggled to identify as queer or lesbian and exploited their victims to gain access to a relationship with girls without having the risk of rejection or embarrassment of being identified as gay. McNally’s case differs somewhat as right around the time of her alleged deception, McNally identified as a man and expressed interested in medically transitioning, however during her trial, she presented a female identity consistent with her sex assigned at birth (Sharpe 2015).

While the three cases described above all involve people who more or less identify as women, Kyran Lee’s case is markedly different. Lee, a 25-year-old trans man, received a two-year suspended sentence for having sex one time with a woman who

allegedly believed him to be a cisgender man (Agency 2015).<sup>11</sup> Lee was not accused of impersonating a man, as he had legally changed his name and was undergoing hormone replacement therapy and surgeries to masculinize his appearance. Lee identified as a man since he was 15-years-old, 10 years prior to meeting the woman who would accuse him of sexual assault based on fraud (Sharpe 2015). During their one sexual encounter, the woman alleged that she did not know that Lee used a dildo to penetrate her, believing the dildo he used was a flesh penis. Lee accepted a plea deal, accepting the charges in exchange for the more lenient suspended sentence. Despite identifying and “passing” as male and undergoing medical treatment for a gender transition, Lee was accused of fraudulently representing himself by failing to disclose his gender history and genital status and for having penetrative sex with a non-biological penetrative object.

This string of cases in the UK have generated recent attention, particularly as they occurred during a period of increased trans visibility in media. In the US in the 1990s, two cases involving trans men engaging in relationships with cis women and girls evoked similar logics and carceral responses, suggesting that though cultural shifts have occurred from 1997 to the late 2010s, the logics that govern the protection of female sexuality against gender non-conformity persist.

From January 1993 through October 1994, Sean O’Neill had relationships with four teenaged girls; one was over the age of fifteen, and the rest were younger. O’Neill was eighteen and nineteen-years-old at the time and lived in Colorado Springs, CO. Like

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<sup>11</sup> A suspended sentence is essentially a probationary period, often given to first-time offenders of minor crimes. If no additional crimes are committed during this time, the charges may even be removed from the criminal record, though it depends upon the judge.

Barker, Lee, and Newland, O'Neill was accused of deceiving his sexual partners about his gender identity. Facing a possible minimum twenty-year jail sentence, O'Neill pled guilty to second degree sexual assault, resulting in a 90-day sentence. O'Neill's was the first case in the U.S. where a trans person was charged with sexual fraud for failure to disclose his trans status. Each of these cases of trans-masculine sexual fraud, demonstrate how gender non-conformity can be framed as sexual assault in the law, particularly when young women and girls allege that they were tricked into queer sexual acts. Trans activists feared the precedent his case would set. *In Your Face*, a newsletter published by the group Transsexual Menace, worried that O'Neill's case had far-reaching implications for trans people's sexual autonomies. In a Fall 1995 issue, editor Riki Wilchins warns, "If successful, the case would effectively equate failure to disclose one's genitals/genital status as a 'criminal deception' and any resulting sex, consensual or not, as 'sexual assault' or rape" (1995: 3).<sup>12</sup> Indeed, two years later in the state of Washington, Jesse Clarke, a 20-year-old white trans man, was charged with third degree rape for having sex with a 15-year-old black girl, Crystal.<sup>13</sup> Clarke pled guilty to this charges brought against him and was sentenced to 27 months in prison.

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<sup>12</sup> The Fall 1995 issue contained other (then) recent stories of violence against trans people. May 1995 saw the beginning of John Lotter's trial, who was accused of killing Brandon Teena, a trans man in Nebraska whose story was later represented in the film *Boys Don't Cry*. Tyra Hunter was killed in August 1995 due to medical neglect, as emergency medical technicians (EMTs) refused to treat her when they discovered she had a penis as she bled profusely after being hit by a vehicle. In September 1995, Deborah Forte, a trans woman from Haverhill, MA was stabbed to death by Michael Thompson who confessed that he killed her after discovering her penis.

<sup>13</sup> Both Jesse and Crystal are pseudonyms. Because of the girl's age at the time, her name has been redacted from all court documents that are available to the public. The available language to describe her is highly politically charged: "victim," which the state uses marks her as non-agential and wholly wronged; "ex-girlfriend" denotes a consensual relationship; and "accuser" is inaccurate, it was her foster mother and aunt who accused Clarke. Clarke's case has been cited in

In what follows, I explore Clarke’s case in-depth, analyzing the rationales employed in his case to understand how Clarke’s gender transgression, and his alleged failure to disclose his genital status, rather than the age difference between himself and Crystal, influenced the investigation around his arrest, guilty plea, and sentencing. I draw upon documents from his case file which spans from January 1997 through April 2011 and contains all paperwork related to his arrest and sentencing—pretrial hearing schedules, bond release agreements, sentencing criteria, statement of guilty plea and written confession, summations of detective interviews notes, statements from affected parties (Crystal’s legal guardians and Jesse’s friends and ex-girlfriends), statements from psychiatric evaluations, and appeals petitioning his sex offender status. These documents present a glimpse of the situation: of Jesse and Crystal’s three-month relationship and her foster mother’s disapproval of it, and of how Jesse’s body and sexuality were subject to intense scrutiny in a small, working-class town in the Pacific Northwest.<sup>14</sup> The story these documents tell is filtered through detectives, psychiatric understandings of “transsexualism,” and rhetoric about vulnerability around young, female sexuality. They demonstrate how narratives of trans fraudulence and deception are used to criminalize trans people, drawing scrutiny to relationships that may have otherwise been dealt with outside of the courts had both parties been cis and heterosexual. The documents do not capture other nuances, particularly about power dynamics between Jesse and Crystal that may have influenced their relationship and the subsequent criminalization of it: about

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other scholarship, but no other work has closely examined his entire case file. For this reason, I have chosen to change his name to protect his privacy as best as I can.

<sup>14</sup> According to the 2000 Census, in the town where Jesse and Crystal lived, 19.5% of families and 23.3% of people were living below the poverty line.

explorations and exploitations around race, class, queerness, and gender. As such, I read the documents with their purposes and limitations in mind, analyzing how gender non-conformity is marked suspicious and a sign of fraudulence, while simultaneously adding back in layers of complexity that are stripped away as information about the case is filtered through detectives, lawyers, judges, sentencing algorithms, and hundreds of pages of court paperwork with boxes to check.

Throughout the investigation, Clarke was described as deceitful and dangerous, causing significant harm to the girls he dated over the years due to his trans status. This distinction is crucial. Although he was charged with “rape of a child in the third degree,” a crime that concerns age differences between sexual partners, however his gender was at least as important as age in motivating the investigation. Questions about his gender, sexuality, and the harm caused by his alleged deceit saturated his case file. While I do not want to downplay the power dynamics between Clarke and Crystal due to their age, and as I will explore later, their racial identities, class, and relationships to abuse (including allegations of abuse within the relationship), it is remarkable that Clarke’s gender, not any of these other factors, was singled out as the cause of harm in the relationship in all written documentation with Crystal’s guardians and testimony from neighbors from his small town. In reading Clarke’s case, I demonstrate how his alleged gender deception came to stand in for all of these other, adjacent violences, flattening a nuanced analysis of a complicated situation.

Clarke was arrested due to Crystal’s guardian’s involvement. Crystal’s former foster mother, Teri Rowe, reported him to Child Protective Services (CPS), who then

filed a report with the local police. Police were able to make an arrest once Crystal agreed to comply with the investigation, though she was hesitant at first, suggesting perhaps that the adults in her life encouraged her involvement. Rowe was the dance teacher at Crystal's high school and became her informal foster parent when Crystal's mother was unable to care for her. Through letters to the judge and witness statements given to investigative detectives, Rowe presents herself as a highly protective and concerned guardian. Rowe was not only concerned about Clarke's involvement with Crystal, but also other high school girls. In the letter that she wrote to the judge, Rowe explained that her suspicion of Clarke led her to investigate his past. During this period, Rowe learned that Clarke was trans, or as Rowe put it, "really a female," who had prior relationships with other girls. Rowe writes, "All of their stories were the same. Jesse lied and deceived them. They had been unknowingly duped into a homosexual relationship" (*State v. REDACTED*).<sup>15</sup> Clarke's gender was particularly threatening. While his age was a factor that caused Rowe to be initially suspicious, it was his gender, not his age, that ultimately left his ex-girlfriends tormented, according to Rowe. Indeed, Rowe explained that some of Clarke's previous girlfriends did not "come forward" about their relationship because they were embarrassed, or others did come forward, "but were unable to press charges because their ages were too close to allow prosecution" (*ibid.*). In other words, no crime had occurred. She describes Clarke as a sexual predator, "moving rapidly from victim to victim when her [sic] disguise is exposed...She [sic] chooses victims that are usually

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<sup>15</sup> In order to protect the privacy of the defendant, I have changed his name to "Jesse Clarke." I obtained his case file from the Franklin County Clerk (WA), who sent me digitized copies of its contents. The case number for this file is 97-1-50056-6.

young, naïve, with low self-esteem or a weakened family support system” (ibid.). Clarke is positioned as a person who uses his age, his gender “disguise,” and his preference for girlfriends who may share some of his own personality traits and lived experiences (i.e. “low self-esteem or a weakened family support system”), as weapons for predation.

Police paid significant attention to the mechanisms of Clarke’s “disguise,” the items he used to present as male. Indeed, these technologies were central to understanding Clarke as deceptive and to prosecuting the statutory rape charges. On February 21, 1997, police searched Clarke’s residence, a trailer home owned by his grandmother. They discovered what they called a “fake penis,” a second “dildo device,” and a “Velcro fabric device which was used to restrain Clarke’s breasts” (ibid.). This search, along with Clarke’s statement that he had a sexual relationship with Crystal, led to his arrest. The legal definition of rape in this state required “forcible sexual intercourse without the victim’s consent.” These gender technologies—the dildos, “fake penis,” and chest binder—were central to defining sexual acts between Clarke and Crystal as rape, revoking her consent due to the alleged deception, and demonstrating that sexual intercourse occurred. Police reported, “On February 24, 1997, a Probable Cause was filed with the...Superior Court alleging that between September 1, 1996 and December 31, 1996, the victim had been tricked into believing Clarke was a male through Clarke’s use of a strap on penis impersonation device” (ibid.). In witness testimony, Clarke was described as wearing baggy clothing in order to “masquerade as a boy” (ibid.). The evidence mounted against Clarke suggests malicious intent in wearing masculine clothing, binding his chest, and having penetrative sex using a dildo. Any discussion of

Clarke's physical appearance is markedly absent from these reports, however. At the time of his arrest, Clarke had been taking masculinizing hormones for nearly three years and reportedly wore a full beard.

Clarke told police that Crystal did know about his gender history. He reported that he shared this information with Crystal one week after they met and before they had sex. Detectives also reported that Clarke appeared shocked to learn that he was in violation of age of consent laws. In the report, police wrote, "Clarke stated she [sic] believed that the age difference was five years to have legal sexual contact with a minor person. Detective Walker told Clarke that the difference was 48 months. Clarke then became very upset" (ibid.). Age of consent or statutory rape laws, especially when they target relationships between teenagers and young adults, criminalize potentially otherwise consensual sexual acts. Legal scholar Frances Olsen explains that statutory rape laws are a double-edged sword for feminists. They offer some legal protection against the sexual abuse of children, yet they also increase scrutiny over teenaged girls' sexualities. Age of consent laws draw a line between child and adult that criminalizes any sexual acts that occur between people on opposite sides of that line; they have been used by parents of teenaged girls to press charges against older sexual partners, even when the relationships are consensual. In this way, these laws produce female sexuality as inherently valuable and deserving of state protection, for better or worse. Olsen remarks, "The state restricts the young woman's sexual behavior for reasons related to sexist notions of what makes females valuable. The state does not merely restrict the young woman's freedom; it also treats her sexuality as a thing that has a value of its own and must be guarded" (1984:

406). The guarding of young female sexuality produces its value, and subsequently the criminalization of those who threaten that value.

Crystal's statements to the police contradict Rowe's assertions that Clarke deceived her about his gender. Crystal told police that she did not know about Clarke's gendered history until after the first time they had sex, but that they had sex two additional times before ending the relationship. While the charges brought against him were for statutory rape, Clarke was interviewed by detectives in-depth about his past relationships with girls that did not constitute statutory rape. This attention to his relationships with girls and women was centered on his alleged gender deception to them, not the age difference, which was legally insignificant. Rowe pleaded with the judge sentencing Clarke to consider the psychological effects of his alleged deceit, writing:

These girls are left to deal with the fact that they have had a homosexual experience. Imagine how they feel when their peers at school learn the truth, and they do find out. Jesse's picture was in the news and it is the topic of conversation at the high school. The long lasting effects, both psychologically and socially, can only be imagined (*State v. REDACTED*).

Crystal made a similar claim to Officer Walker, the investigating detective. Walker reported, "The victim indicated she had been deceived into having sex with someone of the same gender and that she was not attracted to females. She indicated that this took from her, 'inner being.' She stated that her life has been devastated and nothing is the same" (ibid.). An ex-girlfriend of Clarke's shared these sentiments, writing to the judge, "Imagine being with someone the same sex as you and not knowing and told lies that were believable. I think that she should get the most time possible and some kind of counseling" (ibid.). Similar to claims made by Gwen Araujo's killers, Clarke is accused

of forcing girls into queer intimacy by allegedly failing to disclose that he is trans. Further, this queer intimacy via deception is narrated as deeply traumatic, shaming them at school, destroying their “inner beings,” and shaking their trust in determining the gender of their sexual partners. The judge presiding over this case had conflicting stories about what Clarke disclosed to the girls he dated, between Crystal, Teri Rowe, this other ex-girlfriend, and his own account. Perhaps he did not tell his other ex-girlfriend about his gendered history. Or perhaps he did, and she was trading upon existing narratives about his deception that were circulating through the small town. Whether he did or did not tell, failing to disclose this information is not a crime, unless being trans is understood as revoking consent to sex or a relationship. These statements mirror Thornton’s comments during his gay panic defense trial, where he stated that he wanted to say away from “queers and freaks” (*State v. Thornton* 1975). The girls did not cite feeling afraid of Jesse, but that his queerness was deeply unsettling to them – or their image as heterosexual girls in a small town – once it was revealed, either to them or the broader public.

Throughout the case documents, Clarke is referred to using both masculine and feminine pronouns. Despite his recognizably masculine legal name, Jesse Bryan, Clarke was regularly referred to as “she,” “her,” or a “woman” throughout the detective’s narrative and within official court documents. He was addressed using both male and female pronouns in written memos. For instance, in a letter requesting a psychological evaluation, “TO: Jesse Bryan Clarke; AND TO: Rembert Ryals, *her* attorney,” (*ibid.*, emphasis mine) or alternatively for sorting the payment for that same evaluation, “the

Defendant, JESSE BRYAN CLARKE, appearing by and through *his* attorney, Rembert Ryals” (ibid., emphasis mine). In the psychologist’s report, Clarke is described using female terms. Dr. Michael Henry wrote, “Jesse believes that she was born as a female trapped in a man’s body, however, for the purpose of this report, Jesse will be referred to as a female to avoid confusion for the reader, since she has not had a full gender change or pre-op transsexual counseling as of this date” (ibid.). Clarke’s legal sex is listed as female in a presentence investigation identification information sheet, which may explain the preference for female pronouns. However, the use of male pronouns in some documents suggests an important confusion about Clarke’s identity for a case that relied in part upon whether or not Crystal understood Clarke to be a man or woman.

Although Clarke’s legal name at the time of arrest in 1997 was Jesse Bryan, he was sometimes described using his previous female name (“Jessica” or “Jessi”) by detectives when speaking with witnesses and most curiously on a CPS report from 1999, during his probationary period. While the Department of Corrections uses Jesse Clarke to identify him, CPS cites “Jessica Clarke” as violating the terms of his parole. The confusion about what language to use to describe Clarke persists throughout hundreds of pages of documents about his case. While Clarke’s legal sex was indeed female at the time of his arrest and sentencing, his name had been legally changed to Jesse and he had been undergoing hormone-replacement therapy for over three years. However, as his masculine appearance was cited as deceitful, references to Clarke as “she” or a woman or using his previous legal name work to highlight his gender as fraudulent, even when his name was legally changed or his body medically altered.

Clarke served out his sentence and adhered to the terms of his parole, save for one instance when he slept in the same room as his step-brother, who was a minor. Some months after his release, he broke a window so that he could return to jail. Upon his final release from jail, he began dating an adult woman, took a job at a Dollar Tree and then a sandwich shop. He was fired from both jobs and looking for work at a local Wal-Mart. He was administered regular polygraph tests as part of his parole. He attended sex offender treatment. In 2011, after 10 years of no further sexual offenses, Clarke petitioned to be removed from the sex offender registry in his state based on the evidence that he had not re-offended, had stable employment, had gotten married, and he has been continuing sex offender treatment beyond his court-mandated period. His appeal to the state included a letter from his therapist who specializes in sex offender treatment. Peterson argued that Clarke's past criminal acts were rooted in his untreated gender identity disorder (GID). Peterson wrote:

When [GID] is complicated by a history of sexual abuse and familial domestic violence, such as Mr. Clarke's, individuals also develop feelings of confusion, shame, guilt and fear. They feel shame regarding what they believe society considers being sexually perverse activities. Closely associated with shame is guilt over being dishonest by hiding secret needs and desires from family, friends, or society. All of this then leads to the fear of the object of ridicule. With some justification, gender dysphoric people fear being ostracized by peers, family and society (ibid.).

Peterson went on to argue that Clarke may have been deceitful about his gender identity to avoid ridicule from his peers. Indeed, as evidenced from the letters written by some of his ex-girlfriends, Crystal and her foster mother, and his aunt, many did find his gender and sexual orientation to be "sexually perverse." Clarke told police in 1997 that he "believes that [his] gender issue was the biggest issue regarding this case and that [he]

has become a victim of the community and society at large” (ibid.). However, Peterson attested that Clarke had appropriate treatment for GID and is unlikely to reoffend. She noted that he had disclosed his trans status to his employer and in all relationships since being released from jail. Disclosure signifies a mark of responsibility and adjustment to society. As a result of this letter, his years of treatment, and successful polygraph tests, Clarke was successfully removed from the sex offender registry in 2011.

This case is complicated by many factors. Clarke was accused of being controlling of Crystal, which undoubtedly influenced her foster mother’s decision to report the relationship. Clarke experienced childhood sexual abuse by his adult neighbor and boys at school, physical abuse from his mother and step-father, abusive relationships as a teenager and young adult, and was targeted by many in the small community he lived in for presenting as male. He told detectives that he hung around with teenagers because he is “emotionally immature,” due to childhood trauma, though he did not want them to think he was making excuses for having a relationship with Crystal. He understood after his arrest that it was illegal (though not before), but he attempted to explain that it was not intentionally predatory. He described having relationships with women who were 25-years-old when he was 16 and shared that when those relationships became abusive and he went to the police, nothing was done. Both Clarke and Crystal lacked consistent adult support as children and both lived in a low-income community and in impoverished conditions, meaning their lives were subject to increased surveillance from CPS, Clarke’s probation officers, and increased police presence. Clarke also had a series of prior non-violent juvenile arrests and a few adult misdemeanors on his record, all of which

increased his jail time. Just like Sean O'Neill, Clarke was arrested after adult guardians of their teenaged girlfriends interfered, and notably, O'Neill and Clarke were each accused of emotionally abusive behaviors by their ex-girlfriend's parents. Teri Rowe accused Clarke of threatening Crystal's relationship with the Rowe family, placing a racial wedge between them. Clarke allegedly told Crystal that the Rowe family lived in a "white bread world" that did not understand Crystal, and perhaps also by extension, Clarke. Allegedly, Clarke positioned the Rowe family, presumably white and middle-class, as an antagonistic force in Crystal's life, not understanding her racial or class background, and scrutinizing Clarke's gendered and classed differences that were seen as intrusions, threats to the family. It is clear that Clarke broke the law by having sex with someone under the age of 16 and greater than 48 months younger than him. However, had Clarke been six months younger, there would be no legal basis for his prosecution. The other forms of violence that ricochet between Crystal and Clarke—shame around queerness and gender non-conformity; toxic masculinity; violence informed by cycles of abuse and neglect; racialized power dynamics in their intimate relationship; surveillance by the state, the police, the school, and the family—made Clarke's gendered history, secret or not, a tangible, locatable wrong. Something that could be named, sent to counseling, sent to jail, removed, and punished.

Accusations of sexual fraud in the US demonstrate how the criminalization of trans masculine sexuality is intertwined with other processes of state violence and surveillance over the lives of poor people and people of color. Both Clarke and Crystal were subject to increased scrutiny by these institutions. Crystal was readily understood as

a victim of sexual assault due to her age and gender, yet also already marked as a vulnerable subject due to issues with her family of origin that led to her placement with the Rowe family. Clarke's gender non-conformity and alleged sexual deceptions exacerbated the threat that he already posed as a juvenile offender, and perhaps as a companion to Crystal in an interracial relationship. These forms of harm cannot be fully reduced to the sexual fraud allegations themselves. Rather, the different forms of violence and neglect that circumscribed Crystal and Clarke's lives were re-narrated through the sexual fraud so that Clarke's gendered transgressions could be blamed as the source of harm.

### *Sex by Deception*

Each of the cases in the previous section involve an element of alleged deception, where a trans masculine or gender non-conforming subject was accused of manipulating information about their gender identity in order to assault a sexual partner. In US law, "sex by deception" is one of the legal definitions of rape. In this final section, I explore how sex by deception has been utilized in law to demonstrate that this difficult to prove motive often does not hold when used against cis assailants. Sex by deception, then, may be useful only in prosecuting gender non-conforming subjects' sexualities.

In US law, there are two distinct types of fraud that could constitute rape, fraud-in-the-factum (fraud in the material subject of the contract) and fraud-in-the-inducement (fraud caused by deceit, leading to the signing of a contract under false pretenses). Legal scholars Cynthia Lee and Peter Kar Yu Kwan note that fraud is one the possible means through which rape is committed (along with force and coercion), though the

circumstances of the fraud or deception matter greatly. According to Lee and Kwan, “sex-by-deception constitutes rape only when the victim is deceived as to the nature of the act” (2014: 115). In other words, sex by deception occurs when a person is tricked into a sexual act, not when a person is deceived as to the identity of the person with whom they are engaging in the sexual act. According to New Jersey Assemblymen Troy Singleton, Gabriela Mosquera and Pamela Lampitt, laws around fraud-as-rape are not strict enough. In December 2014, Singleton, Mosquera and Lampitt introduced NJ A3908, a bill that would make presenting yourself fraudulently in order to have sex with someone a form of sexual assault. If the bill were to pass, a person could be charged with sexual assault if “committed through fraud whereby the victim submits to the act under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief” (NJ A3908, 2014). In their rationale for this bill, the Assemblymen cited a case of a woman, Mischele Lewis, who was a dating a man, William Allen Jordan, who told her he worked in secret operations for the British military in order to swindle money out of her. The man was successfully charged with fraud for deceiving the woman of \$5,000, but she was unable to charge him with sexual assault for portraying himself as someone he was not, a member of the British military (Marcotte 2014). Assemblyman Troy Singleton was alerted to Lewis’s story and drafted the legislation, which has not passed as of this writing. According to an *NBC News* article about her case and the impending bill, Constitutional law scholar Jed Rubenfeld stressed that NJ A3908 was so vaguely worded that it hedged upon being

unconstitutional. In essence, anyone who misrepresents themselves—someone who removes their wedding ring or pretends to have a better job to flirt or pick up strangers—could be accused of rape by deception (Schuppe 2015). What counts as egregious, however, is not settled, as evidenced by cases involving trans subjects who fail to, or allegedly fail to, disclose their gendered histories. Is refusing to share information about one’s gendered past the same as removing a wedding ring before going to a bar to meet a date, or is it more akin to a serial, malicious person like Jordan who has a pattern of deceit? To some, refusing to share information about sex and gender is intentionally malicious.

Lewis’s case against Jordan highlights gross inequities between the ways cis and trans people are treated in courts. While Jordan accepted a plea deal for charges related to convincing Lewis to pay him \$5,000 for a fraudulent security clearance process, sexual assault charges were thrown out by the courts. Even though Jordan represented himself as someone he was not—he was married, was not in the British military and had been convicted of bigamy, in addition to a range of other crimes in the UK—it was a stretch to say that he forced Lewis to consent to sex because she thought he was being fully honest about himself to her. However, this is precisely why Sean O’Neill, Gayle Newland, Gemma Barker, and Kyran Lee were charged with sexual assault when they allegedly failed to disclose their gendered histories or “truths” about their genital statuses to their sexual partners. Lying about non-sexual aspects of your identity, such as where you work or by wearing a mask, Julieta Laude, Jennifer Laude’s mother suggested earlier in this chapter, are deemed less threatening than failing to reveal what your genitals look like, or

even what genitals you were born with. Further, for Araujo and Laude, allegedly misrepresenting their sex incited violence and murder.

One crucial question animates all of the cases involving trans masculine people or gender non-conforming people who were assigned female at birth: is it legal to have sex with someone with something that resembles a penis, but is not one? If a person who otherwise identifies as male but does not possess a flesh penis uses a dildo during sex, are they required to disclose the sex they were assigned at birth and the nature of the penetrative object? Does consent require this level of disclosure? According to the British courts, apparently yes. Ethically, this argument gets a little more complicated. Refusing to disclose their genital and/or trans status before a sexual act may preserve the emotional and physical safety of trans people. Certainly, trans people should not be murdered or face jail time for failing to disclose. On the other hand, there are legitimate reasons that the person being penetrated should have a say as to what types of objects and organs enter their bodies. Someone with a silicone allergy, for instance, would want to know if a dildo, as opposed to a flesh penis, was being used. For others, being penetrated with a dildo may feel wrong for other reasons. They may hold strong moral or religious beliefs about sex and sexuality, which they are entitled to. But being entitled to say no to sex with a dildo, or to a trans woman with a penis, is not the same as being entitled to prosecute or kill trans partners for having consensual sex with the bodies they possess. In each of these cases, the cis partner's desire to be aware of their partners' trans history or status outweighs the gender transgressive individual's desire to not disclose this information, valuing cis life over trans life, and cis comfort over trans safety. While sex

by deception of identity is rarely prosecuted as rape for cis people, trans subjects' alleged deceptions play an important role in determining their punishments, even as simply existing as themselves constitutes deception.

Comparing cases of sexual fraud demonstrate that there are clear differences between how different trans bodies are valued or devalued. For trans feminine women of color, simply possessing a penis could incite violence, even if the trans woman's penis is not involved in the sexual encounter. Sexual fraud allegations grant license to kill for already devalued subjects, demonstrating fraud's power as a tool of racialized and gendered punishment. While overwhelmingly, economic rhetoric of loss is traded upon by cis partners of all genders, the consequences of these sexual fraud accusations are distributed differently, marking the different valuations of trans subjects along racial, gender, and class lines, and the different retaliatory tactics that are made available to sexual fraud accusers as recourse. Accounting for these violences requires close attention to the logics that structure the rhetoric of vulnerability to sexual violence. Even when they were killed in a sexual encounter, the trans women of color in this chapter were not understood as being vulnerable to sexual violence, while cis women and girls are readily framed as susceptible to the deceptions of trans masculine predation. Cis men are encouraged to protect themselves from queerness and transness through violence and understand themselves to be victims. Sexual fraud accusations allow these nuances to be elided: placing blame on trans and gender non-conforming subjects for sexual violence, even when they are killed in retaliation or incarcerated. Sexual fraud accusations name the gender non-conforming body as the source of violence and psychic loss.

### *Conclusion*

The cases described in this chapter detail how trans and gender non-conforming people are accused of fraud for living in bodies that challenge normative expectations about sex and about the consequences of challenging these expectations. These assumptions about the stability of sex and gender underwrite fraud detection technologies across trans life: rooted in a belief in the coherency of sexed bodies and suspicion of gender non-conformity.

Each case raises important questions about what constitutes consent in a sexual relationship where one partner is accused of lying about their identity and how the framework of consent can be weaponized against trans people as retaliation. Trans and gender non-conforming subjects' bodies are construed as sites of deceit, where the incongruence between their gender presentation and their genitals can be cited as evidence of fraudulence in court. The different responses to this alleged lie—murder and physical violence for trans feminine people, criminalization for trans masculine people—result in distinct understandings of sexual vulnerability along gendered lines. Men exhibit homicidal rage at trans feminine people; women and girls turn to the state to punish trans masculinity. In each scenario, trans life is devalued as heterosexuality and gender conformity are conditionally recuperated. Failing to disclose a trans history or identity in a sexual relationship opens up big questions about consent. Joseph Pemberton proclaimed that the consent he gave to have sex with Jennifer Laude was falsified due to her lack of disclosure. Sean O'Neill was charged with sexual assault and criminal impersonation for allegedly leading his ex-girlfriends to believe he was a cis man. Detectives, prosecutors,

defense attorneys, and concerned parents made alleged gender deception a moral issue, where consent could not be freely given if all the information about a person's sex was not present. Joseph Fischel argues that consent has been given too much power to delineate exploitative sex versus acceptable sex. Fischel writes, "Consent cannot do the kinds of things we want it to do, cannot divide good sex from bad, harm from freedom, or respond to the kinds of sexual/sexualized inequalities and injustices that pervade late modern life in the United States" (2015: 7). In other words, consent is an imperfect tool to use to combat sexual assault, especially as it is taken up by those who argue that a trans woman's penis or a trans man's dildo revokes an otherwise agreeable sexual encounter. By weaponizing consent and valuing cis anxieties over trans lives, fraud serves as justification for the murder of trans women of color, the incarceration of trans masculine people, lesbians, and gender non-conforming people. The ethical problems that arise from these cases demonstrate the limitations of consent as a metric of harm in sexual relationships. Even if sex was mutually agreed upon, cis subjects can claim that they were deceived to justify retaliation against trans partners. When a person's sex or gendered history is considered vital information when granting consent, trans and gender non-conforming subjects are always at risk of sexual fraud accusations.

Crucially, the cases in this chapter demonstrate how sexual fraud codifies a divestment away from trans life through state-sanctioned violence: either criminalization of trans masculine sexuality or the excused killing of trans women of color, even and especially when it is clear that no such fraud took place, that transness was not a secret deception. Sexual fraud operates on financial, racialized, gendered, and classed logics

about sex as a property of whiteness, cisness, and heteromascularity. Cis people are able to trade on narratives of trans fraudulence and deception to enact punishment against gender non-conforming subjects in especially racialized and classed ways as the surveillant apparatuses of the carceral state, the legal system, and white supremacist heteropatriarchy each enable sexual fraud accusations by devaluing the lives of trans people of color and poor trans people and granting protection and understanding for those allegedly tricked by the gender transgressions of their sexual partners. The devaluation of trans life through sexual fraud accusations is bolstered by the existing devaluation of the lives of sex workers, people (and especially women) of color, young people, poor people, people with criminal records, and queer people. Indeed, the propertied investment in sex is imbricated in propertied investments in whiteness that involve repudiating queerness and non-normative sexual subjects of color often through sexual violence. These mechanisms are not exclusively transphobic in nature, but they enact specific effects on trans people. As such, my definition of sexual fraud differs from existing scholarship on this topic from the field of trans studies, which focuses on how sexual fraud specifically justifies transmisogyny. While transmisogyny is indeed a factor in sexual fraud accusations, I have demonstrated that sexual fraud logics are tied up in broader forces of policing and devaluation of life that are distinctly racialized and gendered, articulated through economic frameworks of loss and value. In other words, sexual fraud accusations codify particular forms of trans marginalization into legal systems that already devalue the lives of marginalized people. The particularity of trans bodies marks a perpetual vulnerability to sexual fraud accusations, as it is evident that even in cases where it is

clear that a trans history was known to all parties, sexual fraud accusations were still traded upon to recuperate social and heterosexual value for the cis accuser. As such, it is imperative to examine the mechanisms of sexual fraud accusations using an intersectional analytical framework to understand how they function within broader systems of policing and surveillance *and* how sexual fraud accusations are situated within a value system of racial capitalism. The loss that cis, heterosexual people narrated in this chapter after having sex or relationships with trans people is valued over trans life, enacted against trans women of color and low-income, predominantly white trans masculine people. Sexual fraud accusations reproduce these types of racialized, classed, and gendered valuations, centering and investing in cis, heterosexual narratives of loss and panic over the experiences of trans and gender non-conforming people's lives and desires.

Still, these cases are messy. Jesse Clarke's story illustrates this clearly. We can critique the ways that Clarke was framed by detectives, his ex-girlfriend's guardians, and his peers as a conniving person, hiding the "truth" of his identity by passing as a cis man. The narrative of his gendered deception was a key factor that influenced his ex's guardians to file a police report. However, he was also accused of being abusive to his ex, playing out racialized and gendered power dynamics in their relationship. Even though there was a clear age difference between Jesse and Crystal that constituted illegal sexual activity, I demonstrated that Crystal's guardians and peers were intently concerned not about Jesse's age but about his gender. Locating the harm of that relationship in his alleged gendered deceit allows sexual fraud to stand in for all of the other forms of violence that cannot be so neatly represented or adjudicated. This case also points to how

these forms of intimate partner violence, particularly against black girls and women, are disregarded by law enforcement. The narrative of sexual fraud may have harmed Crystal, too, as she may have been encouraged to understand her relationship with Jesse as deceptive by the adults in her life once it became clear to them that he was trans. While she may not have wanted to be with Jesse because of his harassment, the narrative of sexual fraud may have caused additional shame around queerness or her desire for gender non-conforming bodies as her adult guardians pushed her to verify Jesse's alleged deceptions. Regardless of the complexity of this case, it was narrated by detectives, Crystal's guardians, and media coverage as a story about gender deception, illustrating how sexual fraud is able to stand in for a range of power dynamics that circulate in sexual relationships.

I have argued that fraud accusations justify a divestment away from trans life. We can see this clearly when fraud is evoked to reduce the sentencing for the brutal murders of Gwen Araujo and Jennifer Laude, or when Gayle Newland was sentenced to six years in jail based on testimony that she tricked her partner into believing she was a cis man using a blindfold, a dildo, and a male name. Jesse Clarke's future was harmed by his incarceration, too, but his case demonstrates the complexity of these allegations and the failure of the legal system to account for harm or deliver justice. Sexual fraud allegations stoked the fire of his investigation, charging him with a crime that may have otherwise gone unnoticed.

In this chapter and the ones that follow, fraud accusations serve as the basis for divestment away from trans life. The unknowability or unexpectedness of trans bodies

becomes the source of harm, violence, disruption, and loss. Fraud accusations trade upon trans illegibility and existing narratives of trans deception to devalue trans life. In some cases, fraud resulted from an incompatibility between how trans people are seen by cis people and how they see themselves. In others, honesty about trans history or status enabled cis people to trade upon disgust of transness and gender non-conformity, as cis comfort was valued over trans life. Within sexual relationships, these complex dynamics are flattened into legal decisions about guilt and harm. However, perceptions of trans fraudulence are enabled by other infrastructures of meaning-making, outside of the law.

## Chapter 2: Denial: Trans Necropolitics in Healthcare

During a focus group interview, Devon,<sup>16</sup> a 20-year-old white trans man described his anxieties associated with changing his sex classification with his health insurance company. He remarked:

I've been scared to change my gender marker on my health insurance, so mine says "female" right now just because I'm scared that if I want to get a hysterectomy or anything like that, [my insurance company] is not going to cover it for somebody who is male [...] Like, obviously I would like it to say "male" but I'm just scared that they won't cover something if I need it (Focus Group #3).

Devon had been taking testosterone for five years and has undergone a double mastectomy, a procedure which constructs a masculine-looking chest for people assigned female at birth. In the state of Minnesota, where Devon lives, evidence of this surgery is enough medical proof to legally update his sex with his health insurance company to male, however he knows that his sex classification greatly impacts his ability to receive care in the future. In other words, Devon fears that if he were to change his sex to male with his insurer while he still possessed "female" body parts, he may be accused of fraudulently seeking procedures intended for female patients and denied the procedures he requires based on the data his insurance company maintains about his sex. The appearance of fraudulence, or inappropriate access to this surgery, could trigger a denial.

Trans healthcare is saturated with denials. Access to hormones and surgical transition-related procedures require prior authorizations and determinations of medical necessity, verified through sworn testaments by psychiatrists and medical specialists.

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<sup>16</sup> All names of focus group participants, and some of their identifying details, have been changed.

Trans subjects must articulate a medical need for such interventions to obtain these authorization letters, making a compelling case to the professionals who will swear on their reputations that their patients require the kinds of care they prescribe, or the surgeries they perform. Even with evidence of the necessity of these types of claims, health insurance companies regularly deny transition-related care for patients. Requests for particular treatments must be exacting, justifying the rationale for the procedures in precise detail. Even when health insurance companies have policies that govern authorization for transition-related procedures, they mishandle requests, leaving trans subjects to regularly contest denials for care, causing delays for surgeries and gaps in access to medications. Denials are built into the administration of trans healthcare, from the process of obtaining prior authorization, to interpersonal bias and discrimination from medical professionals, to the data systems that do not comprehend the needs of trans bodies or their changing identities.

The primary argument in this chapter is that denial is a form of trans necropolitics, a mechanism for promoting the untimely deaths and prolonged suffering of poor, of color, and gender non-conforming subjects. In this chapter, I explore how fraud detection technologies in healthcare trigger denials and delays in care for trans and gender non-conforming people, particularly impacting trans people of color and low-income trans people. I analyze how medical billing software reproduces regimes of normalization about bodies and trace the implications of these binary, sex-centric data systems in trans life. Medical fraud prevention technologies penalize patients with non-normative bodies by delaying or denying care as claims processing becomes increasingly

automated, generating denials as seemingly “objective” divestments from trans life. However, while advances in medical fraud prevention amplify denials in trans healthcare, denials do not originate with these tools. This chapter also explores a longer genealogy of denial in trans healthcare, tracing a history of exclusions for transition-related procedures through an investigation into how “medical necessity” has been used to deny payment for medical transition and solidify linear norms about gender transition that adhere to white, middle-class, able-bodied notions of gender normativity. “Medical necessity,” fraud’s opposite, has been used to authorize payment for procedures that align gender non-conforming people to hegemonic ideals of gender normativity that are inflected with ideals about whiteness, able-bodiedness, and middle-class behaviors. I demonstrate that confusion about and disgust for gender non-conforming bodies – those that contain parts of “both” sexes – within data systems and medico-legal epistemes, has contributed to a sustained divestment away from life and trans futures, resulting in laws which require trans sterilization to update state-issued identification documents and policies that ban public health insurance coverage for gender affirmation surgeries.<sup>17</sup> Fraud accusations enable healthcare denials, justified on racialized, gendered, and classed assumptions about who is a proper recipient of healthcare funds. While section 1557 of the Affordable

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<sup>17</sup> Gender affirmation procedures refer to a range of different treatments that work to align a trans or gender non-conforming person’s body to their gender identity: hormone therapy, tracheal shave, breast augmentation, double mastectomy, orchiectomy, and so on. Throughout this chapter, these procedures may be referenced as “sex reassignment” or “sex conversion” procedures, as I cite historical and present state and medical texts that use a range of language. While some trans people use “sex reassignment” to describe surgical interventions, I use gender affirmation to refer to a broad range of treatments and disrupt a binary notion of a sex that can be singularly and surgically reassigned.

Care Act made discrimination in healthcare based on gender identity illegal in 2010, in practice, trans and gender non-conforming subjects continue to face confusion, hostility, and denials based on their unexpected bodies and data. Further, these protections are currently being threatened by the Trump administration, which seeks to roll back the non-discrimination ordinance in the Affordable Care Act (Pear 2018). My research demonstrates how denials—from health insurance companies, medical providers, and state Medicaid boards—constitute a form of necropolitics, reducing the life chances of trans and gender non-conforming people. Denial is a slow death, chipping away at trans life, justified through automated fraud prevention technologies, diagnostic codes, and rationales about the absence of “necessity” for caring for trans bodies or promoting trans futures. I argue that trans studies must consider the minutia of healthcare denials as part of a system of racialized surveillance and encouraged gender normativity.

### *Trans Necropolitics and Reproductive Justice*

Denial is a form of trans necropolitics, aimed at halting, slowing, and delaying the life of gender non-conforming subjects. Two theories of power, the proliferation of life—as described by Michel Foucault as “biopower” (1979)—and the propagation of death or slow death, as described by Achille Mbembe as “necropolitics” (2003)—particularly congeal around trans politics, demonstrating racialized and classed distributions of opportunity and violence. While biopolitical measures may ensure that some privileged trans subjects accumulate life-sustaining resources, necropolitical violence marks trans of color, disabled, gender non-conforming, immigrant, and poor trans subjects as vulnerable to social or actual death. In describing denial as a technology of necropolitics, I draw

upon the work of C. Riley Snorton and Jin Haritaworn, who argue that trans necropolitics is an apt theoretical framework for understanding the expansion of liberal LGBT politics amidst its simultaneous “complicity with racism, Empire, border fortification, gentrification, incarceration and the ‘war on terror’” (2013: 66). While some trans subjects are offered opportunities for life proliferation – through access to healthcare, as just one example – trans subjects of color, gender non-conforming people, disabled people, and poor people are often targeted for denials and refused life-sustaining care. Snorton and Haritaworn draw upon an example of state-sanctioned medical violence to illustrate their theorization of trans necropolitics. In their 2013 essay, they describe how the death of Tyra Hunter, a black trans woman who was killed through medical neglect when an emergency medical technician refused to treat her for injuries related to a car accident after he discovered that she was trans in 1995. First responders gathered around her body, making transphobic and racist remarks instead of treating her, as her condition worsened in front of them. While Hunter’s death has been categorized as an incident of medicalized transphobia, the authors push for a more expansive understanding of the violence, of trans necropolitics which describes “the way power and life are maintained and reproduced through the deaths of certain others” (ibid., 69). My use of trans necropolitics is in this vein: seeking to understand the reorientations of power that occur through the denial in particularly racialized and capitalist ways.

The sites of my analysis, however, differ from Snorton and Haritaworn’s. Instead of examining how spectacles of violence involving trans of color subjects, I explore how the minutia of delays and denials of care contribute to the slow deaths of marginalized

trans subjects. Slow death, as described by Lauren Berlant (2007) and refers to the ways that populations are worn down by relentless racialized, capitalist, imperialist, and gendered modes of violence. The effects of these violences sometimes reveal themselves in a spectacle-like event which appears to be a crisis that has just suddenly appeared. Berlant argues that the slow death, the enduring violences of structural dispossession, is a way of rearticulating these systemic forces which promote the death of marginalized people. Slow death is a mode of understanding how trans necropolitics are enacted, not always through spectacles of violence, but through everyday acts of divestment away from trans life, in particular for trans subjects who are multiply marginalized by their race, class, disability, and citizenship status. Denying payment for hormones, transition-related procedures, or other medical treatments for a trans person's natal sexual organs can cause the death of trans subjects, either immediately due to a medical or mental health emergency, or slowly, wearing down their bodies and psyches over time, adding stress, shame, and anxiety to their burdens by asking them to repeatedly fight for access to basic medical care. Trans healthcare is necropolitical in the way that the necropolitical is a theoretical "tool to make sense of the symbiotic co-presence of life and death, manifested more clearly in the cleavages between rich and poor, citizens and non-citizens (and those who can be stripped of citizenship); the culturally, morally, economically valuable and the pathological; queer subjects invited into life and queerly abjected populations marked for death" (Haritaworn, Kuntsman, and Posocco 2014: 2). Some trans subjects—those with cultural, economic, and racial capital; those with US citizenship; those who strive towards binary gender presentations, or at least know how to

narrate a coherent gendered history full of dysphoria and a future of gender conformity—are able to access the types of treatments that will prolong their lives. Others may gain temporary access to hormones and other procedures that change their bodies or psyches, but intermittent access to healthcare may cause long-term harm.

The exorbitant cost of most transition-related surgeries has historically effectively barred low-income trans people from accessing surgeries, as these procedures were excluded from the majority of public health insurance programs. Presently, only ten states and the District of Columbia explicitly include transition-related care for trans people in their Medicaid programs.<sup>18</sup> In thirty-two states, Medicaid programs still explicitly ban gender affirmation procedures, barring low-income, disabled, and elderly trans people from accessing the means to medical transition (National Center for Transgender Equality 2016).<sup>19</sup>

The “co-presence of life and death, manifested more clearly in the cleavages between rich and poor” in trans healthcare is administered through what is often called a “denial of services”, or simply *denial*. Denial is a technology of trans necropolitics with broad applications. By referring to denial as a technology, I am arguing that is a mechanism of power, employed by a range of actors, which can be altered but ultimately

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<sup>18</sup> The states and district that explicitly include coverage for transition-related care are: California, Connecticut, Illinois, Maryland, Massachusetts, New York, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia.

<sup>19</sup> Further, the Trump Administration aims to roll back non-discrimination protections offered by the Affordable Care Act, specifically enabling medical providers to refuse to treat patients based on religious beliefs. Critics understand this move as one that explicitly targets trans and gender non-conforming patients, sanctioning discriminatory medical practices through the denial of care (Pear 2018).

which serves the goal of divesting away from trans life. As a technology, denial includes denial of authorizations for payment; denial to be seen by competent physicians; denial of using the restroom while waiting for a medical appointment; denial of continued hormone therapy while incarcerated; denial of access to hormones due to mental illness diagnoses; denial of access to other medications once a patient's sex is legally changed; denial of the existence of policies that are supposed to ensure coverage and fair treatment; and other refusals of care or consideration we may not be able to imagine. Healthcare denials are common and shared experiences among trans people. Even the most privileged of trans subjects face information systems that cannot comprehend their bodies and people who do not want to serve them. Denials can be challenged by people with the time and resources to wait on the phone, raise their voices, threaten to sue or actually do it, apply pressure, speak to managers, and write appeals. Denials may be issued inappropriately, breaking laws that are supposed to protect people from discrimination. For those without the time or resources to fight back, however, even an illegal denial remains a roadblock. For white trans people, class and ability may determine how long they must struggle with their insurers: over an afternoon, a month or until the neglect eventually kills them. Trans people of color in best case scenarios, with opportunities and access to good physicians and comprehensive health coverage, may face additional racism and discrimination within their clinics, in negotiating with insurers, at work (thus jeopardizing any private health insurance they may have) and often also within trans communities. To understand how trans necropolitics is enacted through the denial, I explore the minutia of details of the denial: the paperwork, petitions, interactions with

providers and insurers, and opinions of lawmakers and judges who determine what is appropriate coverage for transition-related care.

In this chapter, I analyze processes that derive from an important shift that has occurred within healthcare broadly, that has specific implications for the administration of trans healthcare. This shift is one from medicalization to biomedicalization.

Scholarship about trans healthcare has explored how trans people have been produced through medicalization, the process of understanding the body through the lens of medical disorder (Spade 2003; Gorton 2013; Meyerowitz 2002). A diagnosis of transsexuality, gender identity disorder, or gender dysphoria authorizes a range of treatments and importantly seeks to understand gender non-conformity or desires to transition as based in medical pathology, whether based in genetic mutations, hormonal imbalances, or mental illness. Medicalization, as described by Peter Conrad (1992), facilitates this process, turning human conditions into medical problems that can be treated and corrected through regular and increased interactions with medical providers. In this framework, the physician has claimed a position of increased authority over a patient's life: determining a broad range of behaviors, beliefs, and desires to stem from medical problems.

Shifts in the delivery of healthcare over the past thirty years have required new ways of thinking about the relationships between bodies, medicine, and power.

Biomedicalization, as defined by Adele Clarke et al. as the “increasingly complex, multisited, multidirectional processes of medicalization that today are being both extended and reconstituted through the emergent social forms and practices of a highly

and increasingly technoscientific biomedicine” better describes how contemporary modes of power enacted through healthcare (2010: 2). Biomedicalization marks the splintering of the healthcare system in the US in the pursuit of optimization of life for some and neglect of healthcare needs for others along highly racialized lines. The pursuit of medicalization—of treating a growing number of conditions as medical problems—coupled with technological advances, enabled biomedicalization, this proliferation of opportunities for optimizing and enhancing health. Surveillance and risk management are central technologies of biomedicalization: collecting data to manage and understand risks. Whereas prior to this moment, physicians held the most power over an individual patient to administer or deny care, biomedicalization enables a wide range of players to gain control over granting access to care as these processes require the cooperation of a multitude of actors: insurance claims processors, nurses, pharmacy technicians, case workers, clinic intake workers, and software developers each have the power to produce the conditions for the denial of care. Indeed, Christoph Hanssmann argues that some physicians have become trans health advocates, deeply involved in transforming standards of care, challenging new gatekeepers, the health insurance companies (2016: 124). Others have demonstrated how interactions with clinic staff, pharmacists, and insurance representatives cause stress to trans people, particularly when trans patients have complicated medical histories or present in gender non-conforming ways (Thompson 2016; Feinberg 2001; Malatino 2013). This shift in the site of the denial, from provider to a distributed network of actors and data systems, requires renewed analysis of these processes. Biomedicalization, along with trans necropolitics, offers a

theoretical framework to understand how delays and denials in healthcare, predicated upon the threat of medical fraud, contribute to a systematic divestment away from trans life.

I suggest that to meaningfully challenge denial as a technology of trans necropolitics, we must employ a reproductive justice political framework for a few reasons. First and mostly directly, trans healthcare is often reproductive healthcare, concerning the care of reproductive and sexual organs and hormones. As I will discuss later in this chapter, trans people's desires to biologically reproduce complicate existing notions of what constitutes trans healthcare. Secondly, trans healthcare is fundamentally an intersectional issue that draws upon a long legacy of intersectional health movements. Reproductive justice activists, such as the organization SisterSong Women of Color Reproductive Justice Collective, understand reproductive justice to extend beyond access to reproductive health care, but to also include resources to promote bodily autonomy, safety, and overall wellbeing, especially for marginalized people. While a liberal or civil rights approach to the disparities trans people face in healthcare may focus on legal reform or education, a reproductive justice framework understands that these moves alone will only generate surface victories that fail to address deeper, systemic issues of racialized and classed disparities in healthcare. Understanding attacks on trans bodily autonomy as a reproductive justice issue connects trans health care with a longer history of reproductive violence against women of color,<sup>20</sup> Native people,<sup>21</sup> immigrants,<sup>22</sup>

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<sup>20</sup> See: Roberts 2016 (1998); Washington 2005; Ross 2006; Hartmann 1995.

<sup>21</sup> See: Smith 2005.

<sup>22</sup> See: Park 2011; Luibheid 2002.

queers,<sup>23</sup> disabled,<sup>24</sup> incarcerated,<sup>25</sup> and poor people<sup>26</sup> in this country. Trans reproductive justice necessitates a deep engagement with the policies, procedures, and economies that constrain the choices of trans people. In particular, it requires centering public health beneficiaries and other low-income trans people who are often forced to make a decision between physical safety, reproductive health, and bodily autonomy because obtaining a state-issued ID that matches their gender expression often depends upon undergoing intensive and expensive sterilizing medical procedures. This requirement, which I will explore later in this chapter, demonstrates just one of the reasons why a reproductive justice framework is necessary to challenge the necropolitical practices that govern contemporary trans life. A reproductive justice framework centers the futures of the most marginalized of trans subjects, critiquing tactics that increase their barriers to bodily autonomy, health, safety, and quality of life, even and especially those that promote the lives of privileged trans subjects. Gender non-conformity, defined as divergence from white, middle-class, ableist, and heterosexist norms about gender presentation, less so than identifying as a trans person, determines the issuance and rebuttal of a denial. As such, tactics used to challenge the effects of the denial must attend to the logics that mark all of these divergences from normativity as suspect, threatening, and inappropriate.

While the denial is not a new technology, digitization has changed how health insurance companies and medical providers conceptualize the administration of care and gender non-conforming bodies as potential risks. I begin this chapter with an examination

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<sup>23</sup> See: Terry 1999; Somerville 2000.

<sup>24</sup> See: Kallianes & Rubenfield 1997; Shakespeare 1998.

<sup>25</sup> See: Gossett 2014.

<sup>26</sup> See: Solinger 2005; Roberts 2016 (1998).

of these technologies, presenting the landscape of contemporary healthcare administration, then move to trace more analog forms of the denial. In so doing, this chapter begins by analyzing a tool that claims to bring greater efficiency to a messy problem—potential healthcare fraud and abuse—and peels back the layers of the assumptions it is built upon, demonstrating how norms about appropriate use of healthcare funds are constructed through the devaluation of non-normative, gender non-conforming bodies. These fraud prevention programs generate denials for claims that appear to be inappropriate, creating a web of denials and delays for bodies that exceed normative expectations about sex, data, gender, and identity.

#### *A Note on Research Methods*

When I began the research for this chapter, I was interested in studying if and how trans medical claims were understood as fraudulent due to a mismatch between a patient's sex as it is represented through medical billing codes and their anatomical bodies. I knew about the occurrence of these incidents anecdotally and wanted to pinpoint how information systems were mishandling trans medical care reimbursement processes. The route I took to explore this question involved figuring out how these information systems work, and the logics that undergird them, by analyzing human experiences of them. Much of the existing scholarship about trans medical billing takes a data systems approach, exploring data infrastructure or using quantitative methods to understand trans health problems. In these studies, trans health disparities are understood to derive from bias and ignorance from medical providers, as well as insufficient information management protocols. A growing area of research within this field explores alternative

modes of data collection, primarily analyzing the impacts of data systems that can capture information about sex and gender identity, preferred and legal names (Thompson 2016; Dunne et al. 2017). Some of these infrastructural changes have the capacity to alleviate mismatch errors, though other research has found that expanding data fields actually may exacerbate confusion and harm (Ingraham, Pratt, and Gorton 2015; Johnson 2015). Some researchers examine patient medical records to explore trans health disparities (Proctor et al. 2016).

The problems I am interested in studying do emerge through medical billing records and pertain to information management systems but approaching this problem from a feminist studies perspective required taking a different approach from the existing research. Though I am interested in these more empirical studies and their implications for healthcare delivery, the methods I employed in this chapter piece together a bigger picture, one that zooms out from individual errors between medical providers, insurers, and patients to situate medical billing errors and the denials they generate within the context of broader systems of power. In order to understand the denial as a technology of trans necropolitics, or as a mechanism to divest away from trans life, I needed to analyze the data systems in conjunction with laws, policies, and human experiences of denial. As such, the analysis in this chapter draws from a range of sources, including focus group interviews, medical literature, annual reports from the Center for Medicaid and Medicare Services, Congressional hearings, case law, and Twitter. In bringing together these sources, I trace how the denial is enacted through multiple channels, from state Supreme Courts down to clinic receptionists and claims processors. Medical billing code errors are

but one piece of a larger problem within trans healthcare, as I will demonstrate in this chapter, that justify structural divestment away from trans life.

*Predicting Medical Fraud: Data-Driven Denials*

Data scientists have touted the potential of big data analytics in healthcare, citing advances in drug research and development, disease outbreak and transmission patterns, and large-scale medical research, as well as individual-level interventions: analyzing patient medical histories and genomic information for micro-level improvements. Big data analytics are also positioned as an important approach in fraud analysis, “identifying, predicting and minimizing fraud by implementing advanced analytic systems for fraud detection and checking the accuracy and consistency of claims” (Raghupathi and Raghupathi 2014: 3). Medical fraud and abuse are pervasive, costly, and complex problems. Each year, health care professionals and medical supply companies bill Medicaid and Medicare for billions of dollars of fraudulent claims, causing a significant burden on Medicaid and Medicare beneficiaries and the overall US economy. Big data analytics promise to correct and halt fraud, seeing patterns in abusive billing that may elude the human eye due to the massive scale of such claims.

Insights from big data analytics promise to improve patient care and reduce costs, however they rely upon increasing scrutiny over what is normal, appropriate, and reasonable care. In so doing, big data analytics increase scrutiny over the ab/normalcy of bodies and a shift in approaches to care, from patient-driven to data-driven. At each step of data creation, collection, and analysis, a patient’s health data is shaped to fit within pre-determined categories with specific parameters. Detailed notes about a patient’s

experiences with chronic pain after an injury are reduced to a check box or two, and/or a diagnostic code. Their sex is represented as male or female, and each sex is associated with specific sexual organs that can be examined and treated. If a requested procedure does not align with the assumptions about a patient's body or the type of care that body should receive, it is flagged as a site of potential fraudulence. Digitization fundamentally changes how patients are conceptualized: as a set of data that must cohere and make sense within established medical billing norms. Craig Willse explains in his essay that explores how digitization has shifted social service administration, "thinking in terms of logics of organization reminds us that each system offers constraints on not just the organizational mode, or sets of possible relationships, but also on the form of the compositional elements themselves" (2008: 234). In this way, fraud prevention technologies that use big data analytics rely upon flattened accounts of human health needs to determine appropriate access to care. While gender non-conforming bodies have confounded medical billing and authorization practices before digitization, increased automation in these decisions speeds up denials.

Big data analytics have recently been employed in the management of public health insurance claims in ways that can specifically target trans public insurance beneficiaries. In 2011, the Center for Medicare and Medicaid Services (CMS) launched a new program that promised to reduce illegitimate Medicare and Medicaid spending by predicting instances of fraud and abuse before claims were paid out. The Fraud Prevention System (FPS), a data analysis technology, fundamentally shifted CMS's fraud combatting processes. Whereas before, CMS primarily detected fraud after

reimbursement was complete, FPS enables security analysts to deny payment for any claims that appear fraudulent, reducing the need to recall fraudulently reimbursed funds. As Shantanu Agrawal, CMS deputy administrator put it, “results of the Fraud Prevention System demonstrate our commitment to high-yield prevention activities, and our progress in moving beyond the ‘pay and chase’ model” (CMS 2015). FPS develops algorithms to identify unusual billing patterns, drawing on a combination of human insights and ongoing machine-learning. Promoters of FPS insist that computers are far more effective than humans in determining fraudulent activity, particularly amongst millions of claims. FPS is effective at halting payments: from 2011-2015, \$1.47 billion in fraudulent claims were halted through the use of FPS (CMS 2016). FPS can detect abnormalities in patterns and behavior that may elude the human eye.

Medical fraud primarily derives from provider abuse. Patients themselves are rarely in a position to overbill for medical care. Physicians and medical supply companies bill for procedures not performed, services not rendered, and unnecessary drugs and supplies. Patients are often unaware that these services have been billed at all. The medical billing system and the privatized health insurance market enable the proliferation of fraud through the complex reimbursement processes and growing costs of medical procedures. However, the system itself presumes fraudulent intent on the part of patients, and thus makes individual patients bear the burden. Further, patients with medical needs that look like fraud—because they mimic the patterns of a physician attempting to maximize profits through excessive or inappropriate procedures—become targets of automated medical fraud detection technologies. The threat of medical billing fraud in the

United States evokes deeply racialized, gendered, and classed cultural discourses about who deserves to access public health care and what type of service public health care beneficiaries should receive. As social welfare programs, the scope of Medicare and Medicaid spending are regularly contested by federal and state legislators. Medicaid recipients in particular are framed in similar ways as other welfare recipients: as lazy, undeserving, and a drain on tax payer's contributions (Peffley et al.: 1997). The pervasiveness of Medicaid and Medicare fraud further mark public health care programs as excessive, wasteful and in need of greater regulation or abolishment. In this environment, Medicaid and Medicare beneficiaries are subject to increased scrutiny over their health insurance claims. If a requested procedure appears fraudulent, patients may be denied or procedures delayed until their insurers are convinced of the legitimacy of the request.

While it is highlighted as a strength of the program, algorithmic risk assessment techniques encourage denial for any abnormalities, erring on the side of denial, rather than payment, even for claims that end up being legitimate. An August 2017 Government Accountability Report on FPS declared that though FPS sped up the process of identifying potential fraud, it did not speed up the investigation time. In short, claims were targeted more quickly, though the process of determining the scope, extent, and existence of fraud did not change. The Government Accountability Report explains these changes are due to automation: "FPS denies individual claims for payment that violate Medicare rules or policies through prepayment edits—automated controls that compare claims against Medicare requirements in order to approve or deny claims" (2017: ii). FPS

rates provider riskiness – assigning scores to providers based on the number of services they bill per day compared to other providers and evaluating their billing patterns – and denies individual payments that it determines to be improper. These denied prepayments directly impact individuals with non-normative or illegible health needs who seek legitimate procedures as their ordinary healthcare needs appear to be incidents of fraud. Trans and gender non-conforming people are at particular risk of this prepayment risk assessment system. CMS cites a mismatch between a patient’s sex and the sex associated with a medical procedure as a clear indicator of potential fraud, specifically remarking that physicians who order pregnancy tests for male patients commit fraud. During a 2009 Congressional hearing on the impacts of Medicaid and Medicare fraud, then Florida Senator Mel Martínez remarked that this type of illegitimate billing is pervasive, stating, “There are oft-cited examples of Medicaid paying for hysterectomies or for birth control for a male patient, things as crazy as that” (111<sup>th</sup> Cong. 2009). Patients with a male sex designation who may also identify as trans masculine or feminine could legitimately require hysterectomies or birth control. The conflation of these medical needs with fraud flags gender non-conformity as a site of fraud, potentially triggering a denial.

Janet Campbell, a software developer at Epic, one of the largest electronic health records software companies in the US, shared in interview with *Wired* magazine that her first project with Epic in 2003 was building in the type of sex-based fraud verification mechanisms into its programs. Campbell was tasked with “building a feature that could restrict diagnostic codes to patients of a specific sex” (Landman 2017). During this project, Campbell recognized the limitations of the patient sex field, noting that Epic

software had no way to capture information about gender identity in addition to sex. Sex classifications collapse conflicting information for trans and gender non-conforming subjects: current legal sex, sex assigned at birth, and sometimes gender identity. She began working on educating her colleagues about the differences between gender and sex, advocating for an expansion of categories and modes of data collection about these categories. Rather than remove this sex-verification check, Campbell sought to multiply the data about sex and gender within healthcare information systems. Expanding the information collected about gender and sex does not fundamentally resolve the core fraud prevention tool Campbell was tasked with creating, which Epic soon discovered when they were tasked with separating information with sex out from gender identity.

In 2015, a new policy from the Office of National Coordinator of Health Information Technology mandated that any outpatient clinic receiving federal incentives for utilizing electronic health record systems must collect information about sexual orientation and gender identity. Epic, the software provider for 80 percent of outpatient clinics, needed to overhaul its data collection methods to accommodate this change. In each place that sex appeared, Epic staff attempted to parse what information was being collected: sex assigned at birth, gender identity, or legal sex. Sex was imbricated in Epic programs, scattered across hundreds of locations for a single patient, making this an onerous task that fundamentally restructured the data organization systems. Another representative from a smaller electronic medical records company declared that capturing information about gender identity had the potential to upend their systems. Sex was attached to so many other pieces of data that attempting to split sex into sex and gender

identity had the potential to corrupt their entire information organizational system. As *Wired* reported, “the code base used to write their sex data collection tool is older and less flexible than newer areas of the program. Huge amounts of data are attached to the field—and losing any of them while remapping to new values is a developer’s worst nightmare” (ibid.).

Electronic health record management companies are making changes, mandated by the federal government, to begin to enable new ways of understanding sex, gender, and appropriate care. Campbell hopes that expanding the ways that Epic can collect and make sense of sex and gender will prevent fraud accusations or denials of service. However, they must first be clear on what sex means in particular contexts. One trans person’s sex may vary greatly from another’s, even if they are both the same gender and were assigned the same sex at birth. For example, two trans men might both be legally male, assigned female at birth, but one possesses “female” sex organs and the other does not. How would Epic classify each of these bodies to ensure that physicians and medical billing companies comprehend their needs if procedures are verified by evaluating a patient’s sex? Software may allow for these categories to expand, but fraud prevention rules still associate sex incongruencies with fraud and depend upon trans-competent providers’ willingness to translate the needs of their patients into the narrow language of binary-sex medical codes for reimbursement. Anything short of a personalized anatomical checklist could flag a trans person’s medical claim as fraudulent, as their bodies present unexpected challenges to the insurers’ fraud detection rules. Medical professionals who are not trained about the impacts of this proliferation of information

could end up causing more confusion for trans patients, sending information about gender identity to a medical insurer when information about legal sex is required. Indeed, the two-step data collection method championed by this new regulation, asking patients to first disclose to their medical providers their gender identity and then the sex they were assigned at birth, has already produced privacy violations, transmitting the wrong set of data to requesting parties, or identifying patients as trans who would not identify themselves in that way (Ingraham, Pratt, and Gorton 2015; Thompson 2016).

Predictive fraud detection is a form of racializing and gendering surveillance. As black feminist surveillance studies scholar Simone Browne explains, “racializing surveillance is a technology of social control where surveillance practices, policies and performances concern the production of norms pertaining to race and exercise a ‘power to define what is in or out of place’” (2015: 16). When machines are given the authority to mark medical claims as normal or abnormal, people with seemingly fraudulent medical claims are flagged as threatening and their medical services are denied and delayed. Browne argues that when bodies are understood to be out of place, they are made “ontologically insecure” in a process that alienates the body, “producing a truth about the racial body and one’s identity (or identities) despite the subject’s claims” (ibid.: 110). This dissonance between the truth of one’s body as told by surveillance technologies and the body as a complex and changing thing that may not always align with its data is highly apparent in health insurance billing claims. When a legitimate health claim fails to match to its body, or that matching triggers suspicion of fraud, gender-normative bodies are reproduced as the norm. Because the risk algorithms are developed within a

framework that centers cisgender bodies, trans claims appear out of place. In practice, prepayment denials automate discrimination in an era of non-discrimination laws.

Patients whose procedures are miscoded, whose physicians misgender them or do not spend the time to ensure the procedures will be covered, are made suspect by fraud detection technologies. The truth of their bodies cannot be accounted for by software that uses and upholds binary and cisnormative sex classifications to verify identity and appropriate treatments.

The process of medical transition that is recognizable to insurers as a treatment for trans identities is itself formed through whiteness. Particular modes of transition are legible to medical providers and insurers, even when specific claims are flagged as potential instances of fraud.

Scholars in the field of trans studies have examined how medical practitioners and policy makers exert power over trans and gender non-conforming subjects through gatekeeping and pathologization of gender non-conformity. In the US and Europe, medical interventions to trans people throughout the second half of the 20<sup>th</sup> century aimed to correct their gender non-conformity, and trans subjects sought out hormones, surgeries, and psychotherapy to alter their bodies and psyches (Meyerowitz 2002; Serlin 2004; Terry 1999; Reay 2016). Indeed, the category of “transsexual” was produced to describe a disorder to be corrected through medical technologies (Hausman 1995; Valentine 2007). In order to access medical care, trans people learned to narrate their long and persistent experiences of gender dysphoria and their subsequent desires to conform to an “opposite,” binary gender (Spade 2003; Meyerowitz 2002). Many shared information

about how to talk about their gendered experiences in order to obtain the hormones and surgeries they desired, whether or not they fit within the diagnostic parameters that psychiatrists, surgeons, endocrinologists upheld. The World Professional Association for Transgender Health (WPATH) Standards of Care (formerly the Harry Benjamin Standards of Care) dictates the appropriate process for transition, which have historically included living in one's preferred gender for at least one year before beginning any medical interventions, extensive psychological evaluations, and eventually surgeries. The goal of each of these interventions was to produce a "post-transition" body that adhered to white, middle-class gender norms. Physicians encouraged patients to adopt traditional male and female behaviors that conformed with dominant understandings of gender roles, replete with racialized mandates that privileged traditional and dominant white gender roles (Hastings and Markland 1977). A successful trans woman would become heterosexual, pass as cis, and hide her transition from the world, performing a white femininity without any trace of queerness or transness.

Since its release in 1979, the Standards of Care produced a legible trajectory of transition that begins with a diagnosis and ends with a person who can pass in their preferred gender role. These norms have subsequently shaped how medical insurers understand transition, if and when they do, and how physicians treat trans patients who do not choose to follow a path towards becoming gender-conforming. Toby Beauchamp argues that this medicalized understanding of a successful transition relies is highly racialized and classed: to properly transition, individuals are expected to "alter one's gender presentation to conform to white, middle class, able-bodied, heterosexual

understandings of normative gendering” (2009: 357). Linear understandings of transition, from one sex to another (i.e. “male-to-female” or “female-to-male”) privilege binary understandings of sex and gender, but also subsume intersectional understandings of gender: gender normativity is racialized, shaped by discourses of ableism, colonialism, and capitalism.<sup>27</sup> Those bodies who refuse linear narratives of transition become further illegible to technologies that provide access to medical care. Medical interventions that challenge the medicalized, linear transition narrative spark fraud accusations. This may manifest in a variety of ways: from physicians failing to advocate for patients who do not conform to this narrow framework for transition, to insurance companies refusing to cover transition-related surgeries for patients who do not want to undergo hormone replacement therapy. Like other forms of prediction which reproduce racializing violence—data-driven “smart” policing; “random” searches of bodies of color for citizenship papers, weapons or drugs; and credit pricing by zip code—medical fraud prevention relies upon established norms of whiteness, health, and class to determine risky behavior.

Algorithmic fraud assessments identify characteristics of risk based on highly racialized, gendered, and classed assumptions about the needs of normal, expected, and typical bodies. Those bodies that appear “out of place,” as Browne describes, are marked outside of the parameters of care, subject to extra scrutiny over their medical claims. Surveillance over medical billing claims is a racializing and gendering process that reinforces narrow understandings of gender transition as a linear process, aimed at

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<sup>27</sup> *See also:* Bhanji 2013; Fajardo 2011; Clare 2017.

achieving gendered embodiment that aligns with white, middle-class, able-bodied norms. Automatic denials based on these abnormalities trigger algorithmic discrimination, especially for those patients whose bodies exceed these norms. Medicaid and Medicare fraud detection technologies are championed as a means to reduce waste and redirect funds back to *deserving* recipients. Undeserving recipients, those with complex and illegible medical needs, face greater restriction as medical fraud detection expands. In the following section, I delve into the complications caused by restrictive medical fraud detection protocols, highlighting how sex classifications, which verify legitimate identities, structure access to and, importantly, denials for, healthcare for gender non-conforming people.

*Epistemology of the Denial: Navigating Sex Classification Data through Medicare*

Zeke,<sup>28</sup> a biracial trans man in his mid-twenties, faced a difficult decision during the process of changing his legal name and sex classification: if he changed his sex to “male,” he would probably lose coverage for his Polycystic Ovarian Syndrome (PCOS) treatment and other on-going preventive reproductive health care. PCOS is categorized as a “menstrual or other female reproductive system disorder” with the International Classification of Diseases-10 (ICD-10), the standard medical classification list used by physicians around the world and managed in the U.S. by the Center for Medicaid and Medicare Services. Thus, as a disease that only occurs in females, or as ICD (2017) describes it, “a set of symptoms due to elevated male hormones in women,” he may be

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<sup>28</sup> Focus group participants’ names and some identifying information have been changed to protect their privacy.

unable to receive on-going care for this health problem. Zeke has health insurance through Medicare. He qualified as a teenager for Survivor's Benefits when his mother died. During our focus group meeting, he described the process of discussing his transition and his health care needs to his case manager. He explained, "She was like, 'Just so you know, if you change your gender marker [...] if you need to get any sort of health exam that has to relate to sex [...] our insurance might not pick it up for you'" (Focus Group # 2). Changing his sex to "male" could cause complications, not just for continuing his regular medication regime but for accessing any care related to his "female" reproductive organs in the future. His case manager issued Zeke a warning for a situation in which he could not win: if he changed his sex marker, he might lose coverage related to preventive sexual health care; if he retained his female sex marker he would continue to fight to gain coverage for hormones, surgeries and other transition-related procedures. His sex classification made either mode of transition potentially fraudulent and full of denials.

Though framed as a choice, Zeke's sex classification is not entirely up to him, but dictated by a network of laws and policies pertaining to legal name changes. Per Medicare protocol, procedures are checked against a patient's sex as it is listed in with the Social Security Administration (SSA) before they are reimbursed. Even though Zeke's case manager warned him against changing his "gender marker" with his health insurance plan, the decision may have already been out of his hands. If he had already updated his Social Security record to "male," his Medicare coverage might be denied if

he *did not* update his sex marker with his health insurance.<sup>29</sup> Updating the sex classification in a Social Security record has been particularly important for trans people. Up until November 2011, the SSA would send “no-match” letters to employers who submitted new hire verification paperwork for employees whose sex listed on their I-9 forms did not match the sex listed in their SSA record. In 2010, SSA sent out 711,488 no-match letters due to a “sex incongruence” (Hudson 2011). According to a National Center for Transgender Equality (NCTE) report, the SSA removed gender from the Social Security Number Verification System (SSNVS), the largest database used by employers to verify a new hire’s citizenship and work authorization status, after lobbying from the NCTE. However, some employers (especially state governments) check directly against SSA records, which may result in “outing” a trans employee (NCTE 2013). No-match letters and the Department of Homeland Security’s E-Verify program both draw from SSA’s database to determine whether an employee’s social security number matches their name and sex marker. While the risk that a “no-match” between an I-9 form and the SSNVS would occur has been relatively low since 2011, there is still a chance that failing to change a sex designation with the SSA could out trans people to a future employer. Further, while the SSA has removed gender from the SSNVS, there is no guarantee that it could not be reinstated in the future, particularly under a political administration hostile

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<sup>29</sup> The language about sex and gender is very messy here. While the Social Security Administration collects data about sex, not gender, it calls sex “gender.” While naming sex “gender” may be a way to denote that the SSA enables people to change their designation fairly easily compared to other agencies (by merely providing a letter from a physician stating that a medical transition has occurred, no surgery required), gender is still either male or female and dependent upon biological determinants of sex: hormone therapy and/or surgeries. When quoting an agency or individual who represents an agency, I reflect the language they use, but use “sex” instead of “gender” in my analysis if the criteria is referring to sex rather than gender.

to trans rights. Because Zeke receives his health care through Medicare, he is forced to weigh his health care needs against his employment needs in this decision. Zeke was unemployed due to health issues at the time of the focus group meeting, making any barrier to obtaining employment an added stressor.

Despite the warning from his case manager, Zeke eventually decided to petition to change his sex classification with Medicare. He was worried about not being able to receive on-going care for existing medical conditions but decided that he would rather work with his providers to code procedures in a way that his health insurance would cover rather than live with a female sex designation on all of his medical records. If they want to, medical providers are able to circumnavigate some of the issues related to medical coding by employing generic diagnostic codes that are unattached to sex categories for some procedures, most notably for hormone replacement therapy, which can be billed as a general endocrine disorder. Christoph Hanssmann (2016) notes that some “trans-friendly” doctors have been on the forefront of pushing for expansive medical billing codes and that they can be important advocates for trans patients. Many trans people rely upon their physicians to advocate for them with their insurers. While some physicians are able to do this advocacy, those working in under-resourced community clinics which may be friendlier and more accessible to trans people who are low-income, queer, of color or immigrants, may have neither the time nor resources to provide this service.<sup>30</sup> Even in larger clinical settings, trans patients of color may be

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<sup>30</sup> For a discussion on how resources impact community clinics’ abilities to accurately collect preferred names, *see*: Dunne, et al., 2017.

assigned to less qualified physicians who are unwilling to take on this work.<sup>31</sup> In Zeke's case, should he choose not to update his sex marker, he would be listed as "female" for all medical appointments and at pharmacies he uses to pick up medications. Zeke expressed that seeing "female" on his records was upsetting to him, but moreover, his masculine appearance made him vulnerable to harassment when others in the clinic or pharmacy saw his female classification. Health informatics researcher Hale Thompson explains that when a patient is outed as trans at a clinic, they are prone to discrimination. In his study of trans patients in Chicago, Thompson (2016) found that when clinic staff discovered that a patient was trans or that their legal sex differed from their gender presentation, patients experienced high levels of harassment: from having their gender identities spoken about loudly in the presence of other patients, being misgendered or misnamed in the waiting room, or having the police called when using the restroom.<sup>32</sup> White trans patients experience these moments of harassment or discomfort with greater ease and security than trans people of color, particularly those who are also immigrants and/or HIV-positive (ibid.). Each of these forms of harassment causes significant stress to trans and gender non-conforming patients and potentially cause long-lasting health consequences. Miranda, a white trans woman in her early thirties, shared that going to the doctor caused relentless stress in her life because her name change had not fully been processed with her health insurance company. She explained that navigating health care systems as a trans person is hard enough, but worse yet was:

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<sup>31</sup> Dorothy Roberts writes about this phenomenon in her 2011 book, *Fatal Invention*, p. 101.

<sup>32</sup> See also: Chisolm-Straker et al., 2017; James, et al., 2016; Gehi and Arkles, 2007.

to have this constant fear that you would call someone on the phone and have to go through Trans 101 every time, which ended up being true. I eventually had this little script prepared so when people would [confuse my name and gender] I would say, 'No, actually my name is this because I'm a trans woman, and trans people usually...' (Focus Group #1).

For Miranda, the stress of going through her “Trans 101” speech with medical staff forced her to seek alternative providers, though at the time of our focus group meeting, she was still struggling to find a clinic.

Thompson’s research also revealed that when trans patients change their names and sex designations, Chicago’s public health insurance service County Care routinely issues denials for trans healthcare procedures “until patients can successfully appeal the decision, ostensibly to prove that the change is not for the purposes of committing fraud” (2016: 212). This practice of denying necessary care for trans Medicaid recipients presumes fraudulence at the expense of trans people’s health and wellbeing. Denials of hormone coverage could lead to a lapse in treatment, with symptoms ranging from “nausea, vomiting, cramps, dizziness, weakness, bruising, depression, suicidal feelings, hot flashes, and reversal of some of the effects of hormones, among other symptoms” (Gehi and Arkles 2007: 14). Alternatively, if hormones cannot be obtained legitimately through health insurance, they can be bought internationally, obtained from friends or from other channels which may be less regulated and riskier than using hormones prescribed to them.

It is of course not uncommon for people receiving public benefits to be subjected to intensive and time-consuming tests of eligibility, even at the expense of their health and wellbeing. Lisa Sun-Hee Park’s study of surveillance of pregnant immigrant women

using Medicaid in California highlights the slow and violent processes of verifying Medicaid eligibility for women of color: the paperwork is lengthy, confusing and time-consuming. Many applications are denied because their paperwork is incomplete, and many more applications are never submitted due to the complexity of the forms and the amount of documentation required as proof of identity and income. This method of verifying identity and eligibility prevents many applicants from enrolling in coverage (Park 2011: 36-37).

Denying coverage after a name or sex classification change work in a similar manner to prevent trans people from accessing care. Assumptions of fraud disrupt continuity of care and forces low-income people to take time out of their schedules to petition the county. The bureaucratic processes that require people to submit documentation of an ongoing need for public benefits or residency demand significant time and energy from already highly governed populations. Changing one's name and sex classification generates a significant amount of paperwork: court orders, application forms, previous and current forms of identification, letters from physicians, therapists and surgeons. Maintaining this paperwork is especially challenging when one is homeless, move frequently, or live in unsafe or hectic environments. Most government programs will require a certified court order, which costs some money to obtain and must be notarized, proving that a name change has occurred. All of these factors—the amount of required documentation, the cost of name change application fees and obtaining certified copies, and the lengthy petition process—make the process of updating and maintaining documentation especially cumbersome for low-income trans people. As Dean Spade

argues, the “administrative violence” enacted on trans people is “exacerbated by the ways gender is an organizing principle of both the economy and the seemingly banal administrative systems that govern everyone’s daily life, but have an especially strong presence in the lives of poor people” (2011: 11). Indeed, Zeke sees these types of denials as exploitation of low-income people. He explained:

The state insurance, the federal insurance, they like to play games. They don’t want to have to pay for anything. They’re in the business of making money [...] I was frustrated before transitioning. I’m more frustrated with insurance after transitioning [...] On the bright side, it’s easier to get my hormones, because it says male on there. They still don’t want to cover other things, or other medication that I might need for my PCOS. They don’t want to pay. It’s hard (Focus Group #2).

Zeke notes that his testosterone, a drug predominantly prescribed for males, is now covered without a fight, while medications related to his reproductive organs, such as his PCOS medication, are denied. His male sex classification marks treatment for his ovaries as fraudulent, or at the very least, deniable. Being deniable means that even if a treatment is legitimate, the appearance of potential fraud, or non-normativity, gives leeway to insurers to deny, delaying payment as a precautionary measure.

Challenging a denial for medication can take a significant investment of time and money. Another focus group participant, Devon, a 20-year-old white trans man, shared that in order to get his testosterone prescription covered by his insurer, he had to threaten to sue them, a process that took over six months from his initial denial to his final appeal. He remarked, “Once you appeal them the first time, they just deny it anyways. They don’t even look at the appeal. So you have to keep pushing them to do it” (Focus Group #3). Devon shared with focus group participants that he had utilized a free legal service

that specializes in gender discrimination disputes to work with him on his appeal process called Gender Justice. However, not all trans people have access to these types of services. Indeed, low-income trans people may have fewer resources (financial savings, networks through which they can borrow money, or time spent on the phone) to cover additional costs to pay for medications out-of-pocket or fight with insurance companies.

If left untreated, Zeke's PCOS could have caused long-term health problems. PCOS occurs when a person with ovaries produces an excess of testosterone, often resulting in cysts on the ovaries. Five to ten percent of people assigned female at birth are diagnosed with PCOS, making it "one of the most common hormonal disorders" in this group (Baba et al. 2007). Researchers in Japan determined that trans men exhibit higher rates of PCOS: 58% (40) of 69 subjects in a 2003-2006 study exhibited signs of PCOS (ibid.).<sup>33</sup> PCOS can lead to diabetes, hypertension, heart disease, and breast and ovarian cancers. PCOS also affects a person's ability to get pregnant (Ehrmann 2005). Despite the clear health risks associated with this condition, and Zeke's prior documentation of PCOS in his medical records, his health insurance company denied his claims, forcing him to pay out-of-pocket for the necessary medication. It is crucial to note that Zeke has an established history of PCOS in his medical records, and with his medical insurance company. Despite this documented history, his transition made his PCOS completely illegible to his insurer and his claims ineligible for reimbursement. Zeke is not trying to hide his trans identity. There is simply no way for his insurer to make sense of his health

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<sup>33</sup> All of the subjects in this study identified as "female-to-male" transsexuals and had never taken testosterone. The determination of PCOS was based upon this "pre-testosterone" state.

needs after his transition because of its understanding of sex as binary, coherent, stable and authorizing, despite the log of his health history within its own systems. Because sex data is used to verify and authorize, Zeke is left to periodically contest these denials that should be glaring obvious to any skilled human claims processor. The lack of attention to Zeke's need for PCOS medication signals a disregard for his health and a lack of trust that the medication prescribed to him is for legitimate health problems.

The neglect of Zeke's health needs may end up causing him long-term reproductive health issues, demonstrating a divestment from his life that is justified by economic logics. Insurers issue denials to reduce risks—overpayment and liability—at the expense of gender non-conforming subjects with incompatible and incongruent data. Zeke and Devon's stories illuminate how insurance denials based on sex classification shape mundane experiences of healthcare for trans subjects today, humanizing moments of conflict between trans subjects and algorithms that exclude them. In the following section, I examine debates within medical and legal communities about what type of care people seeking medical gender affirmation interventions should receive and who should pay for it. I examine how “medical necessity” has been used to deny payment for and access to medical transition. These determinations shape if and how trans and gender non-conforming subjects access care today, demonstrating how denials are justified by moral and economic arguments that devalue trans life.

*“I don’t think it’s something many of our tax payers want to be paying for with their taxes”*: *Medically Necessary or Economically Burdensome?*

The genealogy of the denial begins long before the moment of petition with an insurer. Denials may be inappropriately issued, as in Devon and Zeke’s cases, or they may be justified by coverage exclusions for procedures deemed to be not “medically necessary.” In this section, I explore how medical necessity has been employed as a tool to categorically exclude health insurance coverage for transition-related procedures. Medical necessity, I demonstrate, is a mechanism of denial that contributes to a systemic divestment away from wide swaths of trans life.

In the United States, insurers intensely scrutinize requests for gender affirmation surgeries, requiring evidence of the medical necessity of these procedures. Most US states explicitly ban any Medicaid coverage for gender affirmation procedures, even when evidence of medical necessity is provided, deeming gender affirmation procedures too “experimental,” “elective” or a burden on taxpayer’s funds. Even as Medicare loosened restrictions on gender affirmation procedures in 2014, all but ten states have failed to follow suit. Legal scholar Patricia Butler argues that “medically necessary” is a vague term that is defined by the medical community and lawmakers differently depending upon the context. For access to abortions, for example, many states define a procedure as medical necessary if it will save the life or prevent permanent impairment of the natal parent. Physicians who perform abortions may not require the life or impairment of the natal parent in order to consider the procedure medically necessary, but may perform these procedures based on the informed consent of the natal parent. In this way, medical necessity becomes tool of denial for treatments that are considered morally

objectionable. Butler writes, “Medical necessity is a red herring issue that states have raised to camouflage their philosophical opposition to funding the procedure” (1977: 954). Health policy researcher Linda Bergthold (1995) argues that medical necessity has shifted since its inception in the 1940s, yet it remains pointedly vague. She attributes the increased reliance on medical necessity requirements to the advent of public health care, advances in expensive medical technologies, and the growth and fragmentation of the private health insurance industry, all of which put financial demands on health insurance companies to pay out expensive claims. These causes could also be described as biomedicalization: the fragmentation and rising costs of healthcare. Medical necessity is a deliberately vague roadblock which can be used to categorically restrict procedures at an insurer’s discretion, typically tied to economic and moral rationales. Crucially, the inverse of “medical necessity” is fraud. If a procedure is not medically necessary, it cannot be reimbursed. All billable procedures should be medically necessary for a patient, yet few of them are marked as such in health insurance policies. Gender affirmation surgeries are the exception to this rule. Most private health insurance policies, even if they will cover some aspects of medical and surgical transition, categorize these procedures as “excluded, unless medically necessary.” By configuring trans health care coverage in this way, surgical and medical transition procedures are subject to increased scrutiny.

Debates about which procedures should be covered by federally funded insurance plans illuminate the necropolitical logics of the exclusion and denial in trans healthcare. Judges, legislators, and state bureaucrats draw upon moralizing arguments about the

perversity of trans bodies and the excessive costs of risky procedures to divert resources away from trans life. State Medicaid programs will pay for trans beneficiaries to access therapy to talk about their gender identities, receive blood testing and physical exams as preparation for hormone treatment, and sometimes even reimburse hormone prescriptions. Yet they draw a line at performing surgeries that would legally alter a person's sex. As Andi, a white trans woman in her late-50s from my focus group research puts it, "they're allowing you to change your body and then cutting you off. Which to me is discrimination" (Focus Group #3). In this section, I examine how these arguments are made by analyzing how the perception of public disapproval of gender affirmation surgeries is used as justification against covering these procedures by tracing shifts in Minnesota Medicaid coverage for gender affirmation procedures from the 1970s to 2015. I focus on public health insurance specifically, even though private insurers also exclude gender affirmation procedures, because public debate about these procedures is framed as an economic and moral burden to taxpayers in a way that demonstrates broader social disapproval and divestment away from trans life. Private insurance plans often follow the norms (and laws) established by Medicare, meaning the distinctions between public and private plans are typically minor, save for specific state laws which restrict federal or state funding for procedures deemed morally questionable, such as abortion care. In the cases I examine, gender affirmation surgeries are treated as a burden to already underfunded Medicaid programs, asking tax payers to fund procedures deemed deviant and "elective," funneling money away from more deserving Medicaid recipients. While the state seems to have an interest in encouraging gender conformity by requiring

medical proof of transition in order to update identification documents, the refusal to fund transition surgeries for Medicaid recipients demonstrates an overall neglect of low-income trans people, and a racialized and classed hierarchy, produced and upheld by the state.

In August 1977, the Minnesota Supreme Court ruled in favor of Jane Doe, a Minnesotan trans woman who petitioned Medical Assistance, Minnesota's Medicaid program, to cover her genital reconstruction surgery. Doe was a subject in the University of Minnesota's "transsexual program" which provided patients with hormone therapy and genital surgeries free of cost as part of an experimental pilot study. However, the funding for the program had run out before Doe was able to undergo surgery. As a Medicaid recipient, she requested that Medicaid cover the procedure. Her initial petition was approved by an officer of Hennepin county, but later her case was referred to the state of Minnesota Department of Public Welfare (DPW) which overruled the county, denying her request on the grounds that Doe failed to prove that she would become "self-supporting" after the completion of the surgery (*Doe v. State of Minnesota* 1977). This rationale required Doe to prove that she would cease using Medicaid after her surgery. When she could not prove that she would not be dependent upon the state, DPW denied her claim. This statement marks Doe's request as excessive and her reliance upon public funds for her transition and ongoing health care as a detriment to Minnesota's public health funds. DPW's denial demonstrates how cis life is valued over trans life. The Supreme Court of Minnesota reversed this decision, citing that the requirement to be self-

supporting is not legal and would not be required as pre-authorization for any other type of procedure.

At the time of the ruling, the Minnesota Medical Assistance Program handbook explicitly excluded “transsexual surgery” from coverage. Further, transsexual surgery was the only procedure listed in the handbook that was outright excluded, even if a physician deemed it appropriate treatment. The Minnesota Supreme Court found this exclusion to be in violation of Medicaid law, which states:

the State may not arbitrarily deny or reduce the amount, duration, or scope of, such services to an otherwise eligible individual solely because of the diagnosis, type of illness or condition. Appropriate limits may be placed on services based on *such criteria as medical necessity* or those contained in utilization or medical review procedures (*ibid.*, emphasis added).

Medical necessity was required to determine who could and could not access transition surgeries through Minnesota Medicaid, but the condition of transsexuality could not make a patient ineligible for coverage.<sup>34</sup> Though the Court ruled in favor of Doe, they added a medical necessity requirement, declaring, “The determination of medical necessity through a thorough medical evaluation of the individual applicant will ensure

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<sup>34</sup> Trans people’s diagnoses have rapidly changed from the 1970s to today. In 1977, the *Diagnostic and Statistical Manual of Mental Disorders II (DSM-II)* categorized gender transgression as a “sexual deviation.” Though physicians were using “transsexualism” to describe trans people at the time, the *DSM-II* does not list it. It references “homosexuality,” “transvestitism,” and “other/unspecified sexual deviation.” Transsexualism appears in the *DSM-III* in 1980, listed under “gender identity disorders.” In 1994, the *DSM-IV* was released, replacing transsexualism with “gender identity disorder.” In 2013, the *DSM-V* replaced “gender identity disorder” with “gender dysphoria.” The gender dysphoria is intended to expand access to hormones and surgeries to non-binary and gender non-conforming people, though it only applies to diagnoses; it does not ensure that care will be covered by insurance. The *DSM* is used in psychology, marking gender issues as psychological. The International Statistical Classification of Diseases Related to Health Problems (ICD) also lists transsexualism and gender identity disorder as medical disorders.

that those individuals genuinely requiring sex conversion surgery will be able to obtain it but will deny benefits to persons not demonstrating such medical necessity” (ibid.). Medical necessity would ensure that “sex conversion surgery” would not be administered without careful consideration. Intensive psychiatric and physical evaluations, hormone replacement therapy and time spent presenting as the preferred gender must come prior to surgery. Those who did not meet medical necessity standards would be denied.

Chief Justice Sheran concurred with the overall ruling but added that Doe’s ruling does not answer the question of whether or not Minnesota can limit the funds used for transsexual surgeries. This question continues to influence the debate over thirty years later. Following *Doe*, Minnesotan Medicaid recipients were able to access transition-related care from 1977 until 1998, as long as it was deemed medically necessary by their physicians. Minnesota granted unprecedented access to gender affirmation procedures for Medicaid recipients during this period. However, it did not last, in part due to concern over Justice Sheran’s concern about the potential costs of these procedures. Attempts to restrict gender affirmation procedures began in 1994, after the passing of the 1993 Human Rights Act, which banned discrimination based on sexual orientation or gender identity. Backlash to this bill drew attention to Minnesota’s Medicaid policy and in 1994, the legislature successfully passed a bill that curtailed coverage for gender affirmation procedures. That bill was vetoed by the governor, Arne Carlson. The Department of Human Services advised legislators during that 1994 session to ban transition-related procedures outright, suggesting the language of “not covered,” rather than “not medically necessary,” as they believed that “the assertion that transition surgery is not medically

necessary could not be successfully defended in court” (*OutFront Minnesota v Piper* 2015). In other words, DHS understood these procedures to be legally permissible, but undesirable. In 1998, the legislature was successful in restricting access to gender affirmation procedures: the statute was amended to exclude hormone therapy and surgeries from Medicaid coverage, unless the patient began treatment before July 1, 1998. In 2005, the statute was amended again, removing restrictions on hormone therapy and absolving the grandfather clause, which allowed continued coverage for anyone who had begun hormone therapy before 1998. Gender confirmation surgeries shifted from being excluded except in cases of medical necessity to being outright excluded.

Medicaid bans on gender affirmation surgeries restrict access to medical and surgical transition for low-income people, but the effects of these policies may also be intended to send a broader message of disapproval of transition. To understand how state disapproval of socially deviant procedures can manifest through spending, we can look to the passing of the 1976 Hyde Amendment, which restricts access to abortions for public health insurance recipients. Representatives in the 1976 House reportedly struggled with how to deal with the recently affirmed *Roe v Wade* decision. *Roe v Wade* not only made abortion legal but forced the government to fund abortions through Medicaid and Medicare reimbursements. The Hyde Amendment sought to challenge this. Hyde prohibits the use of federal funds for “elective” abortions, or abortions of pregnancies that are not life-threatening to the gestational parent or as a result of rape or incest. Hyde significantly impacts the ability of low-income people from obtaining abortions by framing abortions as elective procedures that are not necessary for a person’s health.

During the 1976 legislative session, Representative Daniel Flood (D-PA) remarked that Hyde discriminated against low-income people, while doing nothing to stop middle- and upper-class people from obtaining “elective” abortions. Flood explained that Hyde:

does not require any change in the practice of the middle-income and the upper-income people. Oh, no. They are able to go to their private practitioners and get the service done for a fee. But, it does take away the option from those of our citizens who must rely on Medicaid (Vinovskis 1979: 1794).

Representative Robert Bauman (R-ME) responded, arguing that he does not value the life of middle- and upper-class children more, but that restricting federal funds for abortions was the only option Congress had to reduce the number of abortions. Bauman declared, “But the fact of the matter is, under Medicaid and other programs that are financed in this bill, the Federal Government has been paying for more than 300,000 abortions annually at a cost of \$40 to \$50 million” (ibid.: 1794-5). According to an article written by economists, sociologists, and population experts, when Hyde passed, “no one had determined at the time just how many abortions had been publicly funded” (Trussell et al. 1980: 120). Nonetheless, Bauman’s argument about the high tax payer cost of abortions ultimately persuaded his colleagues to pass Hyde. Congressmen opposed to abortions used the only mechanism they had to obstruct what they saw as an immoral procedure: prohibiting the use of federal funds for the poor. Tax payers, Congress argued, should not be responsible for funding the destruction of life.

Gender affirmation surgeries are far more cost prohibitive than abortions, ranging from the tens to hundreds of thousands of dollars. While trans people with access to this kind of capital or with health insurance plans that cover their requested procedures can “get their service done for a fee,” trans Medicaid recipients in forty states are de facto

barred from surgeries due to exclusionary policies. Medicaid exclusions express legislators' and state agencies' opinions about necessary and legitimate health care, and importantly, what types of procedures tax payers condone funding. While at the federal level, Medicare recipients were granted access to transition-related surgeries in 2014, Medicaid, a program administered at the state level, remained free to exclude these procedures as long as their exclusions were justified.

In 2015, OutFront Minnesota filed a lawsuit against the Minnesota Department of Human Services on behalf of Evan Thomas, a trans Medicaid recipient seeking coverage for a double mastectomy as part of his gender transition.<sup>35</sup> This suit challenged the 2005 ban, seeking to return access to gender affirmation procedures to Minnesota Medicaid recipients. In their complaint, OutFront argued that though the 2005 ban of “sex reassignment” was often justified as an economic rather than medical issue. The ban was not based on the actual cost of these procedures to tax payers but rather the *idea* of the cost. They write, “According to one of the state senators supporting the legislation, Medical Assistance had paid for only three surgeries in the past three years at the cost of \$20,000. The senator said, ‘I don’t think that’s a lot, but I don’t think it’s something many of our tax payers want to be paying for with their taxes’” (*OutFront Minnesota v Piper* 2015). The State of Minnesota estimated that if the Medicaid ban on gender affirmation surgeries was overturned, the impact on the state would be “\$130,000 in FY 2017, \$156,000 in FY 2018, and \$156,000 in FY 2019;” the total expected budget for

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<sup>35</sup> OutFront MN is a non-profit LGBTQ organization that offers a range of services, including legal and public policy work in the state of Minnesota.

Health and Human Services in FY 2017 is \$17,146,040,000 (ibid.). The cost of gender affirmation surgeries is cited as not particularly excessive and yet not something tax payers “want to be paying for.”<sup>36</sup> According to OutFront’s lawyers, during the 2005 session where gender affirmation surgeries were outright excluded from Medicaid coverage, several senators were recorded audibly laughing at the idea of covering these procedures. OutFront won the suit, in part based on section 1557 of the Affordable Care Act. The Department of Human Services admitted that the statute discriminates against trans people, and the statute was overturned, granting access to gender affirmation procedures to trans Medicaid recipients.

These shifts in Minnesota’s Medicaid coverage policies for gender affirmation procedures demonstrate how medical and surgical transition are framed as moral issues that can be halted through economic divestment away from trans lives. In Minnesota, objections to gender affirmation procedures are narrated as economic losses to a general, disapproving public. While Minnesota is generally understood as a politically progressive state for LGBT issues, evidenced by the 1993 passing of the non-discrimination ordinance which protected trans and gender non-conforming people, gender affirmation procedures were hotly contested for two decades in the legislature. Surgeries for trans people were deemed too morally damaging and wasteful, as a dog whistle for conservative politics in Minnesota. A case in New York state from 2008 illuminates another economic logic utilized to deny access to gender affirmation procedures for

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<sup>36</sup> A similar rhetoric was employed by President Donald Trump on July 26, 2017, when he tweeted that transgender people would no longer be allowed to serve in the U.S. military, citing the “tremendous medical costs and disruption that transgender [sic] in the military would entail.”

Medicaid recipients: liability. In the next section, I explore how transition-related procedures are positioned as too risky and experimental to be funded by the state, demonstrating how trans lives are devalued in this equation as liabilities to the state.

### *The Necropolitics of Liability*

In 2008, Terri Casillas, a 48-year-old Latina trans woman from the Bronx, unsuccessfully sued the New York State Commissioner of Health for Medicaid coverage of genital reconstruction surgery. Casillas's attorneys argued that by denying her the right to surgeries that would be allowed for another diagnosis, the Department of Health was in violation of the Equal Protections Clause of the Fourteenth Amendment. The procedure she desired, an orchiectomy, was covered by Medicaid in the case of testicular cancer but was not for gender affirmation at the time of her suit. District Court Judge Kevin Castel disagreed, declaring that it was not discriminatory to refuse coverage for a certain procedure based on the diagnosis: while an orchiectomy was a suitable treatment for testicular cancer, it was not for gender identity disorder. Castel declared that the removal "of normal organs for which there is no medical necessity because of underlying disease or pathology in the organ, remains an experimental treatment, associated with serious complications" (ibid.). Castel's interpretation of the Equal Protections Clause differs from the Minnesota's Supreme Court ruling which granted Doe access to surgeries. While the Minnesota Supreme Court argued that Doe could not be banned from accessing procedures due to her diagnosis as a transsexual, Judge Castel declared that the *types* of procedures that Casillas requested were not appropriate for her diagnosis. In essence, Casillas was not barred from all treatment due to her gender identity disorder, but she was

barred from the particular procedures, namely genital surgeries, because they were deemed too experimental and risky.

Casillas's case demonstrates a key feature of the denial as a form of trans necropolitics, namely in what I describe as the necropolitics of liability. The state cites the alleged risks of gender affirmation procedures to justify its refusal to fund these treatments for low-income trans people. Despite presenting documented medical rationales for the procedures she requested, Casillas' requests were deemed too risky for the state to fund. The state's interest lies in protecting itself and providers against potential lawsuits, not with the trans patient's need for medical treatment.<sup>37</sup> In this case, the necropolitics of liability makes "sense of the symbiotic co-presence of life and death, manifested more clearly in the cleavages between rich and poor," where trans Medicaid recipients are barred from accessing procedures that are deemed appropriate and medically necessary by private insurers (Haritaworn, Kuntsman, and Posocco 2014: 2). Though Casillas is described as suffering due to her inability to access surgeries and coverage for hormone therapy, economic logics of liability and risk are used to restrict necessary medical treatments. Akin to the contestations over Medicaid coverage for gender affirmation treatments in Minnesota, economic rationales are employed to divest from trans life. The consequences of this denial mean that Casillas would continue to struggle to pay for hormone therapy and would not be able to obtain identification documents that label her as female, perhaps producing cascading effects that would

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<sup>37</sup> The way Casillas' case was presented situated her as requiring medical treatment for her gender identity disorder. I frame the situation in this way to highlight how even when her desire for surgery is legible in medicalized terms, the state seeks to reduce its own burden of risk, rather than provide adequate treatment.

impact her ability to work or rent an apartment. Risk management is valued over trans life.

This argument that gender affirming procedures and treatments are too risky or experimental has been used by physicians to issue denials to trans and gender non-conforming people for care. Physicians who are untrained or undertrained in trans healthcare are weary to treat trans patients, fearing potential medical malpractice suits. Endocrinologist Michael Irwig determined that 47 percent of endocrinologists were unwilling to provide care to trans patients, and only 41 percent felt “at least somewhat competent” in treating trans people (2016). Primary care physicians similarly express hesitation in providing care for trans patients, citing lack of training as their rationale. Helen Webberly, a British general practitioner who regularly sees trans patients, explained that her colleagues are hesitant about recent guidelines put forth by the General Medical Council about prescribing hormones to patients without a gender identity disorder diagnosis on an informed consent basis. One such practitioner stated that the guidelines “would place GPs in a difficult position, forcing them to prescribe outside the limits of their competence” (Webberly 2016).

Trans people confirm that these types of rationales are presented to them as roadblocks to healthcare, sharing that doctors refuse to administer hormone replacement therapy because of concerns related to liability and risk of unknown side effects. In a Twitter campaign centered around sharing negative healthcare experiences using the hashtag #TransHealthFail, trans patients shared that they receive this messaging from their providers. One Twitter user, Megan, wrote, “That time Spiro dropped my BP [blood

pressure] so far it almost killed me, Endo ended my treatment said transition was too risky and to quit #transhealthfail” (@TakMysh 2015). Megan’s experience with her endocrinologist evokes some of the fears held by physicians about treating trans patients. When Megan’s blood pressure dropped due to her spironolactone, a drug that is used as part of feminizing hormone replacement therapy and as a treatment for high blood pressure, her endocrinologist told her to “quit” transition, rather than seek out alternative methods. Miranda, a participant in my focus group research, shared a similar experience. She lamented about the long delays in finding a provider who would monitor her hormone therapy based on her individual needs, explaining that providers were hesitant to change her dosage due to unknown risks. She explains:

this touches on the thing that I’ve repeatedly encountered which is this sense that trans care is exceptional, trans care is special [...] This question of like, well, before making those changes we need to evaluate the risk. You know, the thing that’s in everybody’s SOPs (standard operating procedures), like what’s the chances of it happening, what’s the consequences of it happening, and then you end up with like, should we or should we not do that? There’s like two of us that go to the clinic, okay, maybe it’s low-risk, they think. And they don’t bother with it (Miranda, follow-up interview, June 2016).

The idea that “trans care is exceptional, trans care is special,” is a barrier to trans healthcare that justifies the denial. Another Twitter user, Kid-St.Jimmy, illuminates this notion in their Tweet, demonstrating how trans bodies are produced as “other” by medical providers, demarcated as special cases that require second opinions and extreme caution when performing regular medical procedures. Kid-St.Jimmy tweeted:

GIC (gender identity clinic): prescribes hormones  
GP (general practitioner) to me: bring us a guide on how to do injections on trans people  
#transhealthfail @CissexismDaily (@Kid7295 2017).

There is no special way to “do injections on trans people,” and the general practitioner’s comment places a barrier of liability between their practice and the needs of their trans patient, asking the patient to acquire supporting evidence on injection methods on their own. Any physician should know how to administer an injection, yet by asking how to “do injections on trans people,” the practitioner makes the trans patient a potential liability for their difference. Similarly, both Megan and Miranda’s doctors failed to treat them like other patients when their hormone regimens required adjustment. For most any other medical condition, patients would not be told to give up on their treatment if the medication was causing adverse effects, yet transition is treated as an elective process that can be stopped at any time. Instead, they were told to “quit,” or delayed, ignored, denied. Concerned with liability, undertrained, and perhaps also biased against trans people, physicians issue denials based upon this argument about the risk of experimental treatments, often requiring trans patients to acquire second opinions, educate themselves and their peers about their health needs, or obtain treatment through informal channels.

Experimental treatments are not uncommon in medicine, particularly for life-threatening conditions such as cancer. Gender dysphoria, or the desire to medically transition, is not understood as life-threatening or as a serious condition warranting “experimental” or “risky” treatments that could potentially bring liability suits to the supervising physicians. The inability to access hormones or surgeries may indeed be life-threatening to trans and gender non-conforming people. Trans people are nearly nine times more likely have attempted suicide in their lifetime than the overall population (James et al. 2016: 10). Though I am not suggesting a direct correlation between

suicidality and lack of access to transition-related care, the daily stress and devaluation associated with fighting for access to healthcare takes a heavy emotional toll that could exacerbate existing suicidality. Indeed, many trans people experience the inability to access hormones and surgical procedures, and the dehumanizing process of slogging through bureaucratic systems to fight for access, as an additional negative health experience. Casillas' attorneys described her surgical needs as a solution for a mental and physical anguish, stating that she "needs gender reassignment surgery in order to achieve the capacity to live a life without terrible suffering" (*Casillas v Daines* 2008). Despite this framing, the court denied her appeal. This denial marks a divestment away from Casillas' life and a disregard for her "terrible suffering" on the basis that the procedure was not worth the risk, that the state risked too much in administering it, and valuing their liability against her life.

Judge Castel's framing of Casillas' request as the removal "of normal organs for which there is no medical necessity because of underlying disease or pathology in the organ" evoked a Medicaid policy which restricts procedures that will result in sterilization without the consent of patients, except in the case of a medical emergency. This policy comes as a result of decades of forced sterilizations of primarily Black and Latina low-income women, who unknowingly and involuntarily had hysterectomies performed on them as practice for medical residents. As Dorothy Roberts argues, controlling the reproductive capabilities of Black people has been "critical to the entire U.S. political order," and sterilization has been one immense tool in this eugenic project (2016: xvi). This practice of coercive sterilization capitalized upon two converging goals:

restricting Black and Latina women's reproductive capabilities and training physicians to perform these procedures at maximum profit to the hospitals. Hysterectomies were more expensive than other reversal fertility restricting procedures, such as tubal ligations, thus physicians could bill Medicaid at higher costs. Black and Latina women's bodies were and continue to be the sites of experimental medicine, experimented *upon* in clinical trials, teaching hospitals, and in the origins of gynecological medicine (Briggs 2000, 1998; Washington 1999; Roberts 2016). As sites of experimentation, they generated profits for medical institutions, free or cheap training for new doctors, and data about the effectiveness of treatments. The Medicaid policy aims to correct these past exploitations, protecting low-income women of color against eugenic, forced sterilizations by requiring recipients of any sterilizing procedure to consent to the procedure and in some cases, wait a period of time before the procedure can occur. However, in evoking this policy in a case where a Latina trans woman was seeking coverage for a procedure that would sterilize her as part of a gender transition, it is clear that the policy may also help to restrict bodily autonomy for Black and Latina trans people.

Casillas' case reveals an important contradiction in the way trans bodies are managed by the state and medicine. Casillas' reproductive organs are deemed "healthy," despite her gender identity disorder diagnosis and the affirmation that treatment for GID would be appropriate and medically necessary by her physician. The removal of healthy reproductive organs may be in violation of the Medicaid policy, however in this and other similar cases brought to trial, trans hopeful patients exceedingly consented: they were pleading the state to fund their surgeries. The procedure is deemed too risky and

experimental, despite her documented suffering due to withdrawal from her hormone regimen and her inability to access genital surgeries. Necropolitical cycles of neglect reproduce themselves. The Department of Health justified its exclusion of gender affirmation treatments from Medicaid coverage by citing lack of research about the long-term effects of hormone therapy. Without enough research, treatment is too risky, yet restricting access to hormone therapy also reduces the available pool of research subjects.

Most insidiously, refusing access to gender affirmation procedures for Medicaid recipients effectively bars low-income trans people from obtaining identification documents that match their gender presentations. Many states still implicitly require genital surgeries before state-issued identification documents can be altered. This requirement has a greater impact on low-income people who either cannot afford to pay out of pocket for transition surgeries or who are insured through Medicaid, which, in most states does not cover any sort of transition-related surgery. In these thirty-two states where Medicaid does not cover gender affirmation surgeries, low-income trans people are effectively pushed out of formal identification systems. Crucially, these requirements have been enacted to prevent identity and gender fraud, as state legislators fear that trans subjects could trick the general public about the truth of their identities if their sex classification on an ID does not match their genitals (Currah and Moore 2009).

The denial of coverage for gender affirmation procedures is a form of trans necropolitics, as the state and insurers refuse to cover life-sustaining healthcare. The alleged liability of these procedures is valued over trans life, and as a result, low-income trans people face substantial obstacles to obtaining identification documents that match

their gender identities and may live in anguish due to gender dysphoria. While experimental treatments are common in healthcare, gender affirmation treatment for Medicaid recipients are deemed too risky, not worth the risk. These denials have potentially deadly effects on trans lives.

### *Halting Trans Reproductive Futures*

In this final section, I explore the racial, gendered, and classed politics of trans reproductive healthcare. Thus far, I have demonstrated how trans people's experiences of healthcare depend upon being legible to data systems that process billing claims, and having the economic, racial, and gender privileges to be able to access the types of doctors that will provide proper medical treatment. These hierarchies of care are necropolitical in nature, encouraging death by denial for subjects who cannot become legible or afford the types of treatments that will make their bodies and identification data match. The inability to remove reproductive organs causes on-going issues for trans patients who fight to be seen by doctors and insurers to either treat or surgically remove these parts. But what about those subjects who want to biologically reproduce? This final section explores the necropolitical politics of trans infertility care, pushing for an expansive understanding of trans health that includes access not only to sterilizing gender affirmation procedures, hormones, and other non-transition related care, but also to comprehensive reproductive and sexual healthcare. As stated earlier in this chapter, a reproductive justice approach to trans health is one of the strongest challenges to the necropolitical logics that delay and deny trans livelihoods.

Perhaps the most well-known trans reproductive public figure is Thomas Beatie,

proclaimed by mainstream media as the first ever pregnant man. While Beatie is certainly not the first man to become pregnant, his 2008 *Advocate* article, chronicling his experiences with pregnancy entitled “Labor of Love,” catapulted his story to the national stage. Beatie was not only the “first” public, pregnant trans man, but he represented a highly invisible subset of the trans population, an Asian-American trans man. During a moment when nearly all representations of trans people on television depicted trans women of color who were either sex workers and/or victims of violence on crime procedurals, Beatie’s Asian-American pregnant male body shocked audiences, not only for his apparent biological feat but for what his body represented, the reproduction of undesirable and devalued subjects.

Attention to Beatie and the possibility of trans male pregnancy has overshadowed trans women’s reproductive desires, and indeed, this distinction between the association of trans women of color with death and trans men with life persists. micha cárdenas explains that her paths to parenthood have been foreclosed by “the doctors and brochures,” but also by resources produced by and for trans people that focus on trans men’s reproductive capabilities (such as the 2014 book *Trans Bodies, Trans Selves*) while excluding detailed information about how trans women can produce and preserve their sperm. cárdenas sees this elision of information about trans women’s reproductive needs as part of a broader marginalization of trans women, critiquing the ways that trans women of color have been utilized as figures within queer and feminist studies “as the image of death and our desires for family as a symptom of heteronormative false consciousness” (2016: 55). Indeed, as she articulates, the formulation of “queer time”

relies on setting “queer” apart from the heteronormative practices of bearing and raising children within a monogamous relationship. While queer of color theorists critiqued this notion of queer time as necessarily revolving around the white heteronormative family, few have explicitly imagined queer or trans of color reproduction as an alternative (Muñoz 2009). For cárdenas, imagining ways to live beyond mere survival is a reproductive justice issue. Quoting Morgan Robyn Collado’s presentation at the Civil Liberties and Public Policy Conference, cárdenas explains, “violence against trans women of color is a reproductive issue because we are prevented from living long enough to realize our dreams of having children (Collado 2014). I want more than just to live” (2016: 55). cárdenas describes a radical imaginative practice, where trans women are central reproductive actors, taking control of their own lives and fighting representations that presuppose their untimely deaths. Despite being told by doctors that it would be impossible to produce enough sperm to biologically reproduce, she engages in a people’s science, tracking her own sperm production and consulting with other trans women online about how best to increase sperm counts after feminizing hormone replacement therapy.<sup>38</sup>

Importantly, she notes that it was not only that doctors, brochures, and trans health experts that prevented her from monitoring her sperm production through formal medical channels, but infertility treatments were prohibitively expensive. Costs include frequent trips to the doctor, annual fees for sperm storage, in addition to any costs associated with medically-assisted insemination of the gestational partner or surrogate.

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<sup>38</sup> For more on “people’s science,” see Benjamin 2013.

While a November 2017 *Independent* headline declared, “Trans Women Could Get Pregnant ‘Tomorrow,’ Fertility Professor Claims,” citing advances in womb transplantation, the availability of these reproductive technologies certainly does not ensure the delivery of reproductive services to low-income or even middle-class trans people (Young 2017). The devaluation of her desire to reproduce and the prohibitive cost of treatment led cárdenas to seek alternative methods. She writes, “Sadie said, get a microscope/don’t pay hundreds of dollars for doctor visits to check your semen/with a \$50 kids’ microscope/you can see sperm” (cárdenas 2016: 48). Access to infertility and contraceptive care are unequally distributed along class lines in the US, promoting the reproduction of middle-class people and curtailing the reproduction of the poor.<sup>39</sup> Public health care beneficiaries can receive contraceptive care for free, but fertility care is not often covered. This delineation is based in racist and eugenicist policies which promote the reproduction of wealthy and predominantly white, infertile parents and discourage the reproduction of poor, disabled, people of color. As a result, infertility has been constructed as a problem of the wealthy (Bell 2009). Poor and working-class women are imagined to be hyper-fertile, having unwanted pregnancies rather than being unable to get pregnant, and their reproduction is discouraged by the public assistance programs they rely upon for healthcare. Public health insurance largely does not cover the costs of artificial insemination, egg freezing, or pre-natal hormone treatment. In contrast, while Medicaid does not cover a majority of infertility treatments, it does cover contraceptive

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<sup>39</sup> Further, the fertility industry is a for-profit, transnational and neocolonial enterprise that increasingly relies upon the reproductive labor of the Global South to birth U.S. and European babies. *See*: Mamo and Alston-Stepnitz 2014.

care. Further, while Medicaid is mandated to cover contraceptives across the US, private insurance plans, often the same ones which pay for infertility treatment, are not required by law to provide any contraceptive care coverage. Middle and upper-class women are encouraged by their health insurance plans to reproduce and poor women (and trans and gender non-conforming people) are encouraged to restrict their reproduction (King and Harrington Meyer 1997).<sup>40</sup>

This distinction between publicly funded contraceptive care and privately funded fertility support helps middle- and upper-class people reproduce and effectively curtails the reproduction of poor and working-class people that if they experience infertility issues. As Dorothy Roberts explains, in our contemporary moment, “[m]any family-planning clinics, with the support of Medicaid, are already encouraging young Black women to keep the risky device [Norplant] implanted into their arms, at the same time that a fertility industry, helping to support the reproduction of middle-class families, is rapidly growing” (2016: 4). Technologies that prevent poor, Black people from becoming pregnant co-exist with those that imagine and enable the proliferation of middle-class, predominantly white families. Birth control, or the means to access infertility treatment, is always a necropolitical form of population control; some are enabled to reproduce and others are not.

In the early 1990s, states began restricting access to infertility treatment for poor women, remarking that it was not a good use of funds to “help a woman get pregnant

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<sup>40</sup> I use “women” here instead of “people with uteruses” because the policies are intended to promote pregnancy in women, not trans men or gender non-conforming people.

when she can't even pay her own medical bills" (King and Harrington Meyer 1997: 23). The push to support contraceptive care, but not infertility treatment, for poor women was part of a broader neoliberal welfare reform, incited during the Reagan administration. Senator Ted Kennedy (D-MA) came down against offering infertility treatment to Medicaid beneficiaries, stating, "Our goal in using tax dollars wisely is to reduce welfare dependency, not create more of it" (ibid.). Fears of the overdetermined figure of the "welfare queen," imagined as a young, black, unmarried woman with multiple children who does not work and lives off public funds, are infused in statements like Senator Kennedy's. Indeed, the specter of the "welfare queen" generated enthusiasm for legislative overhauls that slashed funding for public assistance programs and increased restrictions on those receiving benefits.<sup>41</sup> Providing aid to low-income parental hopefuls "create[s] more" dependency, according to this sentiment, exacerbating the drain that their already excessive bodies put on state resources. The threat of the dependent trans of color subject evokes similar fears as the welfare mother, as particularly evidenced by the Minnesota DPW's efforts to deny Jane Doe's request for surgery unless she could prove she would be self-sufficient afterwards. Both subjects – the "welfare queen" and the trans Medicaid recipient – are positioned as queer in relation to the state, as in Cathy Cohen's formation of an intersectional understanding of queerness as non-normative. Cohen writes, "how would queer activists understand politically the lives of women—in particular women of color—on welfare, who may fit into the category of heterosexual, but whose sexual choices are not perceived as normal, moral, or worthy of state support?"

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<sup>41</sup> See: Fraser and Gordon 1994.

(1997: 442). Both subjects are figured as morally abject, economic drains on tax payer contributions. Attempting to utilize public funds to alter their sex or to reproduce, trans Medicare and Medicaid recipients spark familiar debates between lawmakers, trans advocates, lobbyists and the general public about the proper use of funds and about what types of subjects deserve costly health care procedures. Low-income trans people are positioned as inappropriately accessing protected social goods and threatening perceived shared moral standards about families and child-rearing. Concerns about improper use of public funds spark fears of welfare fraud. As evident from discourses about the “welfare queen,” public funds that are used to help welfare recipients do more than barely survive are considered excessive and fraudulent. Again, accusations of fraudulence are used to divest resources away from the lives of marginalized subjects in particularly racialized, classed, and gendered ways.

cárdenas notes that outside of the excessive costs of infertility care, physicians warned her that she may be unable to reproduce after extended periods of hormone replacement therapy. Trans patients are told that cross-sex hormone therapy damages reproductive organs, making reproduction nearly impossible. There is currently no research on the impacts of hormone therapy on trans people’s reproductive capabilities, yet this narrative is prevalent, issued as a warning to patients. This type of discouragement from physicians divests resources and support away from trans people’s bodily autonomy. The multiple incompatibilities in trans reproductive healthcare create uncomfortable environments of delay and denial, based upon assumptions about what trans bodies can and cannot do, and do and do not want. Infertility care is highly

gendered and sorted based on biological essentialist notions of sex and gender. “Men” seek treatment for sperm banking and analysis; “women” have eggs harvested and are inseminated. These procedures may take place in “women’s health clinics,” where trans bodies appear starkly out of place. Because reproductive health centers around sexed organs, barriers to care are not only based in racialized and classed Medicaid exclusions but also in data-driven denials. As noted earlier in this chapter, pregnancy tests for “men” are cited as clear instances of fraud. Other infertility treatments, such as prenatal care, for instance, are prone to be flagged as well. Unlike hormone replacement therapy which can be categorized using broad diagnostic categories to attempt to ensure coverage by trans-friendly physicians, infertility treatments prescribed for a person with incoherent sex data are not as easily hidden from fraud detection technologies.

Trans public health insurance recipients are given limited choices: transition but forgo reproductive assistance in the case of infertility; begin hormone therapy but cease coverage for existing reproductive organs; remove reproductive organs altogether and hope that the state continues to cover hormone therapy for the rest of your life.<sup>42</sup> This racialized and classed infertility/contraceptive care divide means that a majority of trans people are unable to access infertility treatments because of insurance and financial barriers, and they also lack access to physicians willing to treat them. The necropolitics of trans reproductive healthcare center around this stratification of access, information, and research about the long-term effects of various gender affirmation procedures. They are

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<sup>42</sup> Without any natural hormone production or hormone replacement therapy, a person would die, making any sort of procedure that removes a body’s natural hormone production sites (testicles and ovaries) risky.

highly racialized, gendered, and classed. The most devalued of subjects, the ones most prone to death by denial, are those with the fewest resources—economic; social, racial, and gendered capital; time; and energy—to challenge the conditions of their devaluation.

Trans life is halted when the most marginalized of subjects cannot envision their own futures. Reproduction is not the only way to imagine a future, but as is evident, the regulation of non-normative sexual practices and the reproduction of undesirable bodies deemed excessive by the state and the public is an attempt to strip away strivings for a future. This regulation does not only impact reproductive capabilities, but the autonomy to choose how to live in one's body and the access to medical care for whatever that body contains or looks like. As so much of trans health advocacy focuses on access to procedures with sterilizing impacts, thinking through what it would take to include trans people who want to use their natal sexual organs to reproduce, who require care from the most sex-segregated of clinics, and whose use of their bodies in this way challenges existing paradigms of trans healthcare.

I have argued that denials in healthcare are articulated in financial logics of risk, liability, and excess. Trans and gender non-conforming people, especially those who are of color and low-income, are positioned as too risky to invest in. Their healthcare needs or desires are positioned as excessive, suspect, and a financial drain on the imagined broader public. When trans subjects aim to use their natal reproductive organs, they are heavily scrutinized: for the incongruence of their bodies, for challenging assumptions about trans bodily feelings, and perhaps for striving towards a heteronormative or cisnormative life. Their difference is brought to the surface in seeking reproductive

healthcare, not easily hidden from providers or recoded to avoid insurance confusion and denials. In this section, I have argued that imagining alternative futures might be one way to challenge these restrictive paradigms. Trans women teaching each other how to examine their own sperm with toy microscopes circumvents some of the mechanisms that attempt to prevent them from biologically reproducing. Trans and gender non-conforming people reproduce themselves in other ways, too, when they attempt to challenge fraud accusations. They build communities of knowledge about how to get around medical billing codes that will trigger a denial and care for each other when they cannot afford to go to the clinic or fear what might happen to them if they do.

### *Conclusion*

This chapter explored how denials constitute a form of trans necropolitics that are highly racialized, classed, and gendered. Economic logics of liability, loss, and financial drain on the public are used to justify the devaluation of trans life through the exclusion of transition-related procedures or denial of appropriate medical care. Trans and gender non-conforming bodies exceed normative expectations about sex, data, gender, and identity, and data systems are presently not able to comprehend the complexities of their needs. The automation of denials based on presumptions of fraudulence speeds up the divestment away from trans health, wellbeing, and life, but the mechanisms of denial are built into the administration of healthcare. As medicine and electronic health records management begin to reckon with the subjugation of trans and gender non-conforming people with these fields, it will take more than expanding categories of data collection to include gender identity, or available diagnostic codes to classify trans bodies to correct

these systemic devaluations. In other words, while changes have been made to expand the availability of medical codes which account for bodies that contain both “male” and “female” organs, binary sexed medical codes are a symptom, not the cause of, deep inequities in trans healthcare. These expanded codes did not alleviate Zeke’s issues—we can see that even with documented evidence of Zeke’s transition available to his insurers, their primary goal was not to accommodate the needs of his differently sexed body, but to make him fight for coverage. The ability to change sex and data about identity deeply disrupts normative ways of accounting for individuals and assessing riskiness. The incoherence of gender non-conforming bodies is rendered as a risk by fraud prevention algorithms, and it also justifies medico-legal codification of exclusion. Illegible, incompatible, or suspect, their bodies and identities signal immense risk and waste.

Denials of trans healthcare have a long genealogy, as I traced in this chapter. They are justified by determinations of medical necessity which mark transition-related procedures as too risky or morally abject. Exclusionary policies—such as those that ban Medicaid recipients from obtaining gender affirmation surgeries or receiving infertility care—draw upon racialized, gendered, and classed anxieties about welfare fraud as their justifications. Any procedure that helps low-income people do more than barely survive—that helps them reproduce or obtain a body that relieves some anguish—is positioned as excessive, siphoning funds away from more deserving recipients. A mismatch between a trans body and its medical billing codes or infertility treatment for a welfare beneficiary each signal this excess: the threat that a subject is attempting to occupy a protected social space that they have been systematically excluded from. The

research in this chapter demonstrates that the issues that trans people face within health information systems – being flagged for procedures based on a sex mismatch, being referred to by the wrong name in a clinic, and the harassment that comes with each – are larger than data management problems. Trans health advocacy and activism that seeks to correct these problems must situate their analyses and demands within a broader framework, which understands these data issues as one piece of the problem that is interconnected with the divestment away from trans life through the denial. Healthcare in the US is deeply financial. These economic logics enable the denial, producing the slow or actual deaths of trans people. A broader vision for trans health advocacy and activism should include a dismantling of privatized healthcare, refusing to value the needs and desires of some bodies over others.

In the next chapter, I move to explore how trans incompatibilities with information systems shore up another form of divestment and dispossession of life, for all subjects with suspect or non-normative identification data.

### Chapter 3: The Afterlife of Data: Identity, Credit Reporting, and the Right to Be Forgotten

Posting to a discussion board on a website for trans people, Caitlin expresses frustration that the three major U.S. credit reporting agencies (CRAs), Equifax, Experian, and TransUnion, will not acknowledge her legal name change.<sup>43</sup> She writes:

I have had no luck getting the three credit bureaus to stop reporting my old name under my S[ocial] S[ecurity] N[umber], they just tell me to change my name with my creditors. I was told by an Experian rep to file a request online and upload proof of my identity. I did all that and just got a letter saying they couldn't find credit history for my new name.

Caitlin describes a common experience among trans people attempting to navigate administrative systems that presume identity is stable, consistent, and coherent. After making legal name changes, reporting the changes, and documenting the provenance of their identification data, Caitlin and people like her cannot tie their new legal identities to their credit histories. Why does this happen? Although she obtained a legal, court-ordered name change, Caitlin's outdated identification data sticks to her because of the massive collection and coordination of data by financial institutions. These data are intended to protect individuals from identity theft and to protect lenders, employers, and landlords from making risky investments by verifying and authorizing a person's identity across time through financial actions. Unlike a (cis) woman who changes her surname after marriage, Caitlin's first name change is illegible and suspect to credit reporting systems,

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<sup>43</sup> All names of trans discussion forum participants and some identifying details have been changed. Credit reporting agencies are frequently referred to as credit bureaus.

even when it is legally sanctioned and documented.<sup>44</sup> She remains marked as her previous (male) name on her credit report, which is used to determine her trustworthiness as a consumer, employee, and tenant. Outdated data stick, maintaining a connection between a past and a present identity and drawing a trans history into focus.

Caitlin's predicament illustrates what I refer to as the "afterlife of data," defined as the extended period of circulation and use of outdated consumer and identification data. With advances in big data storage, consumer data in particular no longer has a shelf life: it is valuable to capitalist and national security industries years after its creation, and it can be stored relatively cheaply and analyzed to attempt to predict and reduce risks. As such, outdated data—such as Caitlin's former legal name—remains attached to her identity. The afterlife of data attempts to ensure that people do not escape their pasts with a name change, evading debts or criminal records. However, name changes are facilitated through the state and all prior names are linked to an individual in government records. In essence, the risk of a person shedding their prior identity is managed by the state; outdated consumer data need not remain attached. Consumer data takes on a new life of its own as it sticks to individuals, shifting the site of identity production to the private sector. Financial institutions in particular are invested in collecting, circulating, and valuating consumer data to generate data-driven profit for themselves. In Caitlin's case,

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<sup>44</sup> A trans woman also would likely be able to change her surname after marriage or divorce with little trouble, but I emphasize that cis women's last name changes are legible to these types of information systems because it demonstrates how information systems are built with assumptions about what data needs to be collected and how it might change. Cis, heterosexual women are presumed to change their last names after marriage, so that field might be designed in a way that it can be altered. First name changes are less expected and may be harder to facilitate within information systems.

her lack of credit history in her new name will ensure that any future debt she acquires is offered at a high interest rate, as the absence of history as a debtor grants creditors the authority to charge more to balance the risk of an unknown borrower.

In this chapter, I examine the effects of the “afterlife of data” on trans and gender non-conforming peoples’ credit reports. As Caitlin’s story demonstrates, a mismatch between legal and other names in a credit file separates people from their credit history or raises suspicion of a fraudulent or trans identity. Indeed, the afterlife of data demonstrates the centrality of consumer data in producing and verifying identities, and also in marking subjects with unexpected data as fraudulent or risky subjects. Indeed, examining how the financial sector manages trans identities changes the ways that trans studies has thus far understood how identity is administered. Scholarship in trans studies has documented how the public sector administers official trans name and sex-designator changes (Spade 2008, 2011; Currah and Moore 2009). While the state plays an important role in facilitating the issuance of identification documents (or refusing to), I demonstrate that financialization has extended the space, time, and scale of identity management for trans subjects: identity has become a horizonless frontier with endlessly moving parts. Trans subjects may have to contend with pieces of data that are decades old, and that are no longer owned by the original creator of the data, when attempting to change all of their personal information to reflect their current and preferred name after a legal name change. I argue that my research challenges the ways that trans studies has previously conceptualized administrative governance: the state is no longer the primary site of trans identity management, the private sector is increasingly producing and verifying identities

through fraud detection and other data-driven technologies. Scholars such as Dean Spade and Toby Beauchamp have considered the effects of neoliberalism on the state's management of trans subjects, yet their analytical frameworks cannot account for the distinct ways that financialization splinters identification data in order to produce value and profits for financial institutions and vulnerability for individuals, or how information capitalism has made data profoundly valuable, as a commodity that can generate profits. Data has become a commodity through financialization and financial institutions now wield the power to produce or disappear subjects outside of traditional state processes. This shift in the site of trans identity management has profound effects: information about identity exceeds legal and state protocols, governed instead by capitalist demands for risk management and profit through information sharing economies. I demonstrate that, for trans people who change their names to match their gender identities (as many but not all people do), the effects of financialization produce increased vulnerability, as well as temporary moments of opportunity. It is crucial that trans studies examines these emerging modes of power.

This splintering of consumer data occurs because data brokers buy and sell datasets, circulating data to a range of information industries: marketers, security firms, researchers, credit bureaus, and so on. For instance, an account set up with a car insurance company in 2006 may continue to generate offers for competing firms in 2018, with all outdated information. Financial logics of risk management – managing the risk of an unknown borrower or increasing the risk that a borrower must take on, justified by a “bad” or no credit history—shape these data collection and circulation practices. The

more data that exists, the smarter and more efficient a decision can be, or so big data researchers and firms declare. For trans people, the financialization of identity and the afterlife of data that it produces means increased insecurity in their own personal data management. Their previous names may appear unannounced during a background check or in a credit file, and information industries present no clear path to remove this data as it generates value for these industries. The state may still issue the documents that people use to identify themselves in day-to-day life, but the logics of trans identity management are deeper and more complex, requiring attention to these financial logics of risk management through information production, retention, and circulation.

Due to this consumer data economy where outdated information circulates, credit reporting systems can produce or expunge trans identities through consumer data, even when no legal basis for this action exists. These financially forged identities force trans and gender non-conforming people to persistently disclose their trans histories when attempting to access basic necessities: employment, housing, and health insurance. Credit reports verify identity and influence the price of debt (through interest rates) by reading an archive of consumer behavior information. The more information, the more informed the decision, or so proclaim the credit reporting agencies and other proponents of information capitalism and data-driven decision-making. This insistence to collect and evaluate all data attached to an individual produces an environment where trans people cannot escape their past identities, identity theft flourishes, and credit reporting agencies hold immense power to determine where people can live and work, as well as the cost of their credit and insurance. A person's credit report shapes access to fundamental

necessities for daily life and thus the data that makes up a credit report wields profound influence over the ways people are able to live. Examining the production of identity through the private sector reveals how debt, credit, and capital produce legible identities and how consumer data sharing reproduces housing and employment insecurity for trans people through their credit reports.

The afterlife of data is a fraud prevention measure, aimed at reducing the risk of fraud for financial institutions, employers, landlords, and insurers. Trans people who legally change their name but whose former name continues to appear on their credit report, or whose credit history is unlinked from their present identity, as was the case for Caitlin, appear fraudulent due to their unexpected name changes. First names are presumed to be stable identifiers: when a first name is changed, it appears suspicious, perhaps as evidence of identity theft. As such, trans people are often forced to combat fraud accusations, or face the consequences of being marked as a risky subject. In the previous chapters, I explored how sexual and medical fraud were necropolitical in nature, encouraging a divestment away from trans life. In this chapter, I demonstrate that the afterlife of data is also a mechanism that divests away from trans life, reproducing trans economic vulnerability, and making it more difficult for trans people to obtain employment, housing, credit, and insurance due to this circulation of their outdated consumer data. The afterlife of data divests from trans life while producing value for financial institutions.

A participant in my focus group research described credit reporting agencies as “omnipotent.” Indeed, from the processes used to collect information, dispute errors, and

generate credit scores, to the fragmented customer service experience, bouncing from one representative to the next, the credit reporting industry can feel like an all-powerful and unknown entity that shapes access to necessities of life under neoliberal capitalism.

Where does the information on a credit report come from? Who controls it? Who sees it? How can an individual challenge information or remove it? I work through those questions by tracing a known variable: a first name change. First name changes are unexpected modifications to credit reports; the presence of multiple names on a credit report typically signals identity theft or fraud. When no processes exist to streamline this procedure, errors, frustrations, and delays occur. But in the waiting period, some of the hidden logics of the credit reporting system reveal themselves. Tracing where and when a former name appears shows us the shape of where former name data travels and how long it sticks around. As Susan Leigh Starr puts it, “Finding the invisible work in information systems requires looking for these processes in the traces left behind by coders, designers, and users of systems” (1999: 385). My primary site of analysis focuses on online forum discussions between trans people, where individuals share their struggles changing their names on their credit reports and advice about the process. Analyzing these personal insights illuminates the inner workings of the credit reporting agencies at the micro level; studying the traces of a former name (or lack thereof) reveals the assumptions and “invisible work” that fuel the credit reporting industry. I examined discussions on three separate online forums, written by trans people who experienced issues with their credit reports because of a legal name change, and those who gave advice to their peers about credit reporting and debt. All three forums cater specifically to

trans participants. Two of the three are hosted on websites dedicated to trans people, and the third is a subsection of a larger, general, popular discussion forum website. The two trans-specific sites are well established web-based communities that are frequented primarily by trans women. The third site, which existed as a sub-community on a general forum, was populated by a mix of trans people, spanning a range of ages and gender identities.

Trans people use discussion boards as spaces to strategize how they might manipulate and resist oppressive policies, procedures, and systems across different experiences. Online forums and social media networks have been important tools for trans people in seeking support through transition, as online spaces enable trans people to connect across long-distances, selectively disclose pieces of their identities, and connect with others like them to understand shared problems (Cannon et al, 2017; Cipolleta, Votadoro, and Faccio 2017; Dame 2016; Haimson et al 2015). Trans people are minoritized both numerically and socially, so being able to connect with others online grants trans subjects a sense of community and generates knowledge about violences, such as issues related to credit reporting, in health care, and so on, that can be shared and made visible. Because the impacts of the afterlife of data are long-lasting and unpredictable, it is difficult to ascertain the long-term effects of the strategies trans people employ to manipulate credit reporting data. Further research into this question is necessary, though the question may be elusive precisely because identification data reemerges unexpectedly. However, discussion board posts demonstrate the range and complexity of the problems trans people encounter with their credit reports. While nearly

all commentators said that their name change interferes with their credit in some way, they report a spectrum of different experiences about if and when a former name appears on a credit report. While none of the commentators mentioned the impact that their subject positions (beyond identifying as trans) have on their access to their credit history, this range of experiences is undoubtedly influenced by the commentators' race, gender, class, and citizenship statuses.

While online forum discussions turned out to be fruitful sites of analysis, when I began this research, I intended to interview credit reporting agency staff to ascertain how they understood the challenges that trans people faced when processing a name change with their companies. I reached out to representatives from Equifax, Experian, and TransUnion with interview requests. Equifax and TransUnion did not respond at all to my requests for phone conversations. I was able to correspond with a public relations representative from Experian, however this request did not yield an interview, only brief answers delivered via email. I sent an initial email requesting a phone conversation to the Experian representative on April 14, 2016, inquiring if there was anyone I could speak with on the phone to receive an answer to three questions: 1. What happens when a consumer submits proof of a name change? 2. How is Experian alerted when a consumer has changed their name? 3. What signs determine that something fraudulent may be occurring? Initially, the representative informed me that he would locate someone to answer my questions, but months passed without a response. When I had not heard back from him by August, I prodded again. He replied two days later with an email containing brief answers to each question, but I was not able to speak with anyone directly or to ask

any additional questions. The difficulty I faced obtaining interviews demonstrates the culture of credit reporting agencies, obstructing information about internal processes. Though I reached out public relations staff who are responsible for corresponding with journalists and the public, my requests were ignored or refused. Like the impenetrable, proprietary nature of their credit scoring algorithms, credit reporting agencies produce a barrier between researchers and information about internal processes.

Centering trans identities in credit reporting practices reveals everyday strategies for manipulation and resistance against capitalism, identification, and surveillance. Trans people reshape their relationships with credit in a number of creative ways, managing to push through difficulties, at least temporarily, by taking advantage of errors, glitches, the kindness of some customer service representatives, and the naiveté of others. The ways they are able to navigate through these webs of conflicting data and policies highlight the inconsistencies in the systems and can shed light on the ways that they work (or sometimes, fail to work). Or, at least when the problems that trans people encounter are narrated as glitches, credit reporting agencies are able to define the problem as an isolated, not structural, issue. To the credit reporting agencies, glitches or errors confirm that the system functions overall, except in these problem areas. As Safiya Umoja Noble argues, “Stories of ‘glitches’ found in systems do not suggest that the organizing logics of the web could be broken but, rather, that these are occasional one-off moments when something goes terribly wrong with near-perfect systems” (2018: 15). Indeed, errors, incompatibilities, and failure are not “one-off” moments in software development but central to the evolution of programs. Even multi-million-dollar technology companies

release software with bugs, discovered only after users begin to interact with the program. A key component of software development is attempting to break the code through user interaction in order to make it stronger. While these “glitches” could be corrected by software developers, the credit reporting agencies instead retain and report outdated information in the service of greater data transparency for their customers, the financial institutions. Trans name changes highlight just one way that credit reporting agencies, and the consumer data economies that they rely upon, are flawed, built upon data systems that often fail to account for their identities in an ethical manner. They also demonstrate how the prevalence of errors, bugs, and glitches can sometimes be harnessed to push back at a surveillance system that prides itself on information transparency.

These moments of micro-successes within a deeply unjust system are reasons to celebrate. However, fixing one or two issues, such as when, where, and if a previous name appears on a credit report, does not achieve lasting change. While some of the problems that trans and gender non-conforming people encounter with their credit reports can be solved by a combination of patience, persistence, and persuasion, other issues are less easily corrected: precisely because they are deeply embedded practices that perpetuate racialized and gendered legacies of disenfranchisement and oppression. Indeed, credit reports reproduce racial, gender, and class inequality by using metrics to justify discriminatory financial practices, enabling: redlining,<sup>45</sup> racially-based pricing and disproportionate offloading of risk to Black and Latinx people,<sup>46</sup> and credit report

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<sup>45</sup> See: Rugh and Massey 2010; Hernandez 2009.

<sup>46</sup> See: Wyly et al. 2009.

informed job offers that increase the stratification between working and middle-class people.<sup>47</sup> The financialization and datafication of identity have normalized these processes, further cementing a belief in the objectivity, neutrality, and efficiency in data in making decisions about risk. I situate my analysis of trans people's negotiations with credit reporting systems within the context of consumer data economies, scholarship on big data, and racialized neoliberal capitalism. I aim to denaturalize the creep of privatization, wherein a person's ability to rent an apartment or obtain a job depends upon a credit check.

Credit reporting agencies reproduce norms about the benefits of massive data collection, declaring that individuals with "bad" or no credit history are risky subjects, and that the more information financial industries have about individuals, the better suited they will be to serve creditors and consumers. However, I demonstrate in this chapter that increased data collection makes all people insecure as data errors are common, data breaches massive, and data itself racially biased, used to codify discriminatory practices under the guise of objectivity. For all of these reasons, I challenge the assertion that credit reporting agencies need only to include trans people more seamlessly into their systems, and instead argue for a dismantling of these logics of information industries. I argue for a transformation of financial and political systems in which trans people, people with "bad" credit, no credit, and those with unstable or inconsistent identities are subject to administrative and state violence because of their financial, criminal, or trans histories.

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<sup>47</sup> See: Rivlin 2013.

In the following section, I explore the concept of big data, demonstrating how advances in data storage, computing, and analysis have enabled data-driven thinking to prevail in financial industries. Belief in big data—in the idea that data must be retained because it might reveal something unseen by the human eye or intellect—justifies the afterlife of data that makes all subjects, but particularly trans people and people of color, increasingly vulnerable to the predatory practices of financial and information industries. Fraud detection relies upon data-driven algorithms to determine and make sense of risks. Through data, contemporary subjects become risky borrowers, renters, and workers. Through data, trans subjects are outed or disappeared in their credit reports.

### *Haunted by Data*

“The Internet doesn’t forget.” – Jef Ausloos

The software developer Maciej Ceglowski compares big data to nuclear waste. In a keynote address at Strata + Hadoop World 2015, an international big data conference, Ceglowski remarked, “The data we are all collecting around people has the same really odd property [as nuclear waste]: it has a lifespan that is longer than any institution that manages it” (2015, n.p.). Addressing the crowd of data scientists, software engineers, corporate executives, and others who spend their days creating and making sense of consumer behavior data, Ceglowski solicited a warning: the code you are writing, the data you are creating, and the information you are analyzing will outlive you, your project, and your company. Like nuclear waste, data will live on, unable to be properly disposed of. These data are the remains of a project that collects information in

an attempt to understand behaviors, both human and nature, to reduce risks—and often maximize profits—through prediction.

This quality of big data, that it can outlive the institutions that create or manage it, is a consequence of what danah boyd and Kate Crawford (2012) describe as the “mythology” of big data. As a mythology, big data is positioned as uniquely capable of solving pressing problems in business and national security.<sup>48</sup> Big data is touted by this growing cadre of commercial sector adapters as a key to leveraging greater profits and efficiency through large scale data analysis. Mark Andrejevic and Kelly Gates define big data as “both the unprecedented size of contemporary databases and the emerging techniques for making sense of them” (2014: 186). The more information that businesses are able to capture, analyze, and understand, they believe, the more prepared they are to make smart business decisions. Retail stores, for instance, are able to use data insights to determine stocking and staffing in order to maximize profits, while destabilizing employees’ abilities to secure full-time work and regular, predictable, weekly schedules (Van Oort forthcoming). Those who believe in the mythology of big data seek answers through analytics that can only be seen when the scale of data is large enough to ascertain patterns about behaviors that would escape detection on smaller scales. Individual pieces of data may not be valuable on their own, but when combined with other data, these pieces of information can unlock valuable insights.

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<sup>48</sup> The Strata + Hadoop World conference positions itself as a place to highlight how big data can spur transformations in business, and to train practitioners to leverage data insights into “business advantage.”

Big data can refer to a wide range of datasets—from weather and traffic trends to disease outbreak incidents—but it typically refers to information collected through human interactions with computers. Information about how people spend their time on the Internet (what sites they visit, how much time they spend looking at particular articles or items for sale, which headlines or advertisements they click on, who they correspond with via email or instant messaging programs, and what they enter into search engines) enables direct, personalized marketing which is valuable to companies. The scale of this data is massive. Data from each user is collected by web browsers and Internet Service Providers, creating unthinkable scales of information. The promise of big data is to render this information comprehensible, and part of the power and legitimacy of big data analytics is in this capacity to promise to make sense of unruly information. John Cheney-Lippold explains that the authority of big data rests upon turning the messy unknown into insights, “The implicit disorder of data collected about an individual is organized, defined, and made valuable by algorithmically assigning meaning to user behavior” (2011: 170). Through chaos, big data analytics offer order. The promise of big data analytics to make sense of this chaos and disorder, and the broad trust in big data analytics overall, has made distinctions between data insights and “truth” murky. As Tyler Reigeluth argues, “the proliferation of digital technologies and the rise of Big Data, this tendency towards a naturalization of data, endowed with inherently ‘objective’ qualities and capable of ‘speaking the truth,’ has compressed qualitative and epistemological differences between data, information and knowledge” (2014: 243).

Datafication, the process of turning every interaction between humans and computers into data, produces new regimes of truth and in turn, makes data into a valuable commodity.

Data also drives the development of new technologies and enables existing businesses to hone and refine their practices. Startup companies in particular are advised to leverage big data and “become data-driven” in order to succeed (Fedak 2017). Data is a currency in these markets, one with the potential for limitless profit that can be analyzed in greater depth and larger scales, and big data has opened the field for a new economy of data speculation. Third-party data brokers buy and sell datasets to companies and organization who seek to identify and predict consumer’s desires through histories of their Internet usage. Third party data brokerage has produced an economy of consumer data, where data circulates between companies for analysis, data-driven decision making, and risk management. Indeed, Rita Raley argues that data has been treated as a highly lucrative resource that has garnered the attention of investors. Raley writes, “Data has been figured as a ‘gold mine’ and as ‘the new oil of the Internet and the new currency of the digital world,’ the engine driving our latest speculative bubble. (Around the time of the worldwide financial crash, venture capital began pouring into online tracking)” (2013: 123). These third-party data brokers also sell lists of consumer information to generate credit card offers by mail, for instance, and facilitate the circulation of information used by credit bureaus and other authorizing agencies to link a person’s past financial actions together in a centralized location. In 2015, the Federal Trade Commission brought charges against LeapLab, a consumer data broker, for selling payday loan applications to marketing companies seeking to target economically needy consumers. One of

LeapLab’s buyers used the payday loan information to steal millions of dollars from the applicants’ bank accounts (Electronic Privacy Information Center 2018). The circulation of consumer data is both lucrative and risky. This data economy is justified by the value that big data analytics brings to commercial markets and ensures that past information continues to circulate with relevance because of the promise of what large-scale datasets can reveal.

To return to Ceglowski’s description, the cultural and bureaucratic imaginary fantasize about big data as nuclear and toxic. It decays and deteriorates as it ages and it must be transferred to and stored in secure locations. Like nuclear waste, the lifespan of data is far longer than that of the company that created it, particularly for short-lived startups that so often offer their products for free in exchange for extensive user data which they can monetize. Further, data requires physical storage, and like nuclear waste, big data storage affects the local economies and environments that surround them.<sup>49</sup> Big data is stored in warehouses full of servers that require electricity to keep them running and space to hold them. Indeed, “the cloud” does not actually exist in the air, but in warehouses of computers.<sup>50</sup> To laypeople, “the cloud” is an abstract idea, what Tung-Hui Hu describes as “something that that constantly fluctuates and is impossible to know [...] While the thing that moves through the sky is in fact a formation of water vapor, water crystals, and aerosols, we call it a cloud to give a constantly shifting thing a simple and more abstract form” (2015: x). As an abstract concept, the cloud obscures what it

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<sup>49</sup> See: Masco 2006.

<sup>50</sup> See: Miller 2017; Aschbrenner 2017.

contains: the data, servers, fiber optic cables, copper wires, Internet Protocols, hard drives, and networks that enable the Internet to function in its current form, as market for data as commodities.



Figure 2: Facebook Data Center, Altoona, IA

Though material limits on how much data can be created and retained exist—physical space constitutes the major limit—there is a strong belief that data is inherently valuable that ripples through business, data science, and research institutions. Even if stored data is not presently useful, it could be at some point. Those who espouse big data believe that humans are less adept at understanding the value of data than computers who can analyze enormous datasets. As Mark Andrejevic explains, “the goal of both data mining and predictive analytics is to generate useful patterns that are far beyond the ability of the human mind to detect or even explain” (2013: 26). Particularly because big

data analytics require massive, growing datasets in order to draw inferences unseen to the human eye, data disposal is not taken lightly. Indeed, for data brokerage companies, such as ChoicePoint or Axciom, the data resale industry means large profits. Data brokers draw in “revenue derived from data whose costs had already been defrayed” (ibid., 27). As the cost of data creation and storage decrease, and the value of data increases, we are encouraged towards increased disclosure of personal information, with potentially grave consequences.<sup>51</sup>

This context – of the fragmented yet networked consumer data economy and the ideology that more data produce more accurate insights – means that information about consumer behavior and identity can come to haunt us, as data outlives its relevance but retains its authority to define. Because of this, people who change their identities can find themselves stuck to their pasts. The consumer data economy and advances in big data storage have intensified information industries, funneling larger amounts of data into their processing systems and overloading them with potentially outdated and incorrect data. Ceglowski’s metaphor about big data as nuclear waste, and data outliving its usefulness, is instructive for thinking about the lives, and afterlives, of trans identification data. The identification data created about trans people do not disappear when individuals change their name and gender marker. Although one’s former name describes an identity that may no longer exist (legally or otherwise), it lives on, tied to trans people’s other identifying characteristics: their Social Security number (SSN), last known addresses, or

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<sup>51</sup> I use data creation rather than data collection to highlight the ways that data does not just exist, waiting to be collected but is created based on human interventions, namely the development of code that decides what type of information should be recorded and creates storage systems which also shape the “collection” process.

debts. Outdated data may be sold by third-party data brokers, surrendered to the police and the federal government by search engines and social media sites, or stored indefinitely in data warehouses. Data stick to individuals, matching them to moments when their past selves made contact with the Internet, the state, retailers, and banks. After a legal name change, a trans person's previous name sticks to credit reports, background checks, and other privately owned and operated authentication technologies that reference a past. Its value may decay over time, but it is still capable of causing harm.

In this way, trans identity management has a queer temporality.<sup>52</sup> As most trans people who legal change their names cannot change all their data, at some or most points in time, they may legally exist as (at least) two identities. Kadji Amin remarks, “Transgender experiences are constituted by yet exceed normative temporalities” (2014: 219). The very trouble that trans identities pose to administrative systems is this capacity for multiplicity that makes it possible for trans people (at least through their data) to exist in multiple forms in the past, present, and future. Trans people are indeed haunted by identification data in their credit reports; their previous names have an afterlife that extends indeterminately, sometimes long after a legal name change. Avery Gordon describes haunting as “one way in which abusive systems of power make themselves known and their impacts felt in everyday life, especially [. . .] when their oppressive nature is denied (as in free labor or national security)” ([1997] 2008: xvi). The “abusive systems” of identification haunt trans people, as the state and financial sectors’ investment in data collection as a risk-aversion and capital accumulation measure ensures

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<sup>52</sup> See: Halberstam 2005.

that a trans person's former name might stick to that person indefinitely, emerging in unforeseen moments. Big data surveillance and credit reporting practices tie traces of a trans person's former identity to the present or, as in the opening example, make a trans person's legal identity questionable and thus effectively invalid. Advances in big data storage have intensified the consumer data economies, strengthening the financial industry's reliance on data-driven analytics. In this environment, individual consumers are rendered into data files and consumers with the most amount of data are considered lower risks: their financial pasts are visible and known.

Credit reporting agencies rely upon massive amounts of data circulation to value individuals' creditworthiness. In the next section, I explore how data retention logics reproduce racialized, classed, and gendered violences of financialization, justified by the alleged "objectivity" of data in decision-making. As illustrated by the opening example of this chapter, credit reporting agencies wield the power to out or disappear trans subjects depending on how they report information. Though credit reporting agencies rely upon data that is error-prone and sometimes outdated, they are entrusted to evaluate consumer, renter, and employee riskiness. In an environment where the more data the better, credit reporting agencies trade in information, regardless of its accuracy, for profit.

### *Credit Reporting Agencies: Context and Impact*

Credit reporting is a form of financial monitoring that produces identity out of economic activity. Structured by federal legislation and the needs of financial institutions, contemporary Credit Reporting Agencies (CRAs) track and report consumer credit history, enabling financial data to stand in for a person's identity as a potential debtor,

consumer, employee, and tenant. Media and critical data scholar Kelly Gates explains that prior to the 2008 financial crisis, US financial institutions constructed “an expansive network infrastructure” that was capable of systematically identifying and monitoring individuals (2010: 419). She attests, “Thanks significantly to this process, ‘identity’ itself came to be understood as a disembodied aggregate of transaction-generated data, a digital representation of the person constructed over time and space based on the perpetual collection of more data” (ibid.). Contemporary CRAs are at the center of this network, collecting data, and representing individuals in the form of credit reports and credit scores.

Credit reports disclose information about consumer credit history and current accounts, including medical debt, mortgages, education loans, open and closed credit cards, and any accounts sent to debt collection. They include an archive of a consumer’s debts, closed accounts, and bankruptcies, as well as all known current and previous names and addresses, arrests, and criminal charges. Credit reports were once used solely to determine individual creditworthiness, but in the past several decades they have become a tool for other authentication processes: applications for employment, property rentals, and home, health, and automobile insurance. In other words, credit reports now authorize activities not directly related to one’s capacity to take on debt. In this way, credit reports are a tool of neoliberal capitalism, which privatizes access to basic goods and services, rewarding individuals capable of self-management in an increasingly precarious financial landscape, however, these “rewards” are impermanent and often a “cruel optimism” (Berlant 2011). The centrality of the credit report’s use in such broad

authorization is troubling. Credit reports and credit scores seek to individualize blame for problems caused by neoliberalism and racial capitalism: centuries of disenfranchisement of Black, Latinx, Native and Asian-American people in the US, decades of deregulation of financial markets, the dismantling of the welfare state, and on-going manifestations of racism, sexism and xenophobia in schools, workplaces, police departments, government, and public spaces.

The notion that an individual's credit history could and should be used in this manner is perhaps unsurprising within the US political economy, which doles out opportunities based on vastly unequal and prejudicial systems of power and oppression. The first credit reporting agencies in the U.S. emerged in the 1840s; they produced "handwritten reports, correspondence, ledges, notes, and later, printed reference volumes and newsletters that compressed an individual life into a brief statement of creditworthiness, ultimately represented by a numerical value" (Lauer 2008: 302). These early credit reports sketched a picture of a person's habits and vices, building a reputation based upon moralizing judgements about the ways a given person spent their time and the company they kept. These reports signaled not only a person's ability to repay a debt but their overall character. As Lauer explains, "It was not simply a matter of whether one had the means to repay one's debts, but whether one was the sort of person who felt sufficiently constrained, by conscience or social obligation, to do so" (2008: 307). Indeed, the most important elements of a credit report included "personal opinion, informed hearsay, rumor and anecdotes judiciously culled from local news and conversation" (ibid.: 309); it mattered less if a person had access to funds and more that

they appeared to be the kind of person who would repay their debts. Personal grudges and prejudice shaped these early reports, even among the primarily white, male group of credit-seekers. These biases are embedded into the credit report's evaluative processes today. Annie McClanahan argues that spending habits influence a person's credit score today. She writes:

[Lenders] observed, for instance, that consumers who bought premium birdseed, rooftop snow rakes, and furniture-leg pads to protect floors from scratches were unlikely to miss payments, whereas those who purchased generic motor oil and "chrome-skull car accessories" were highly likely to default (2014: 38).

These assessments, a person's likelihood to purchase car accessories and motor oil versus premium birdseed, are racialized and classed. They codify assessments about who is a trustworthy borrower and who is not based on stereotyped judgements about a person's purchasing history. People who invest in their homes, by outfitting them with bird feeders, and protecting their floors and roofs from damage are codified as responsible, people who are unlikely to miss a credit card or loan payment. A good credit subject makes purchases using credit for items that demonstrate their responsibility, not frivolity. Buying flashy car accessories and "generic motor oil" suggests irresponsible spending: failing to invest in quality maintenance ("generic motor oil") while simultaneously purchasing showy details. Indeed, credit scoring turns these racialized assessments into quantitative scores that are lauded as objective evaluations of risk.

A "good" credit score enables a proliferating number of life chances, while a "bad" credit score or no credit history is a sign of riskiness and a failure to adhere to proper self-management. Skipping credit card payments, defaulting on loans, or letting bills get sent into debt collection will generate a bad credit score. Further, even people

who consistently pay their credit card bills on time may not have a great credit score. Two of the weighing factors in determining a credit score are diversity of credit accounts and length of time as a debtor. Without a mortgage, your credit score drops. Indeed, credit reports and credit scores are racialized and classed calculi. Access to mortgages, especially those with affordable interest rates, is uneven along race and class lines. Because of these discriminatory practices, of color and undocumented people in general have lower credit scores and as a result, pay more for credit.<sup>53</sup> McClanahan explains, “Contrary to the credit institutions’ claim that credit scoring does not discriminate by race, gender, age, or class, the allocation and price of credit in the United States is in fact stratified along precisely those lines” (2014: 47). The racialized, gendered and classed distribution of credit bears socio-political consequences, as privatization of the state and corrosion of social services has required individuals to take out debt and manage investments to secure basic needs, rather than rely on the state.

The types of positive accounts reported in a credit file are those associated with the middle class: prime mortgages, automobile and education loans, and credit cards. Making consistent payments on these accounts generates a positive credit report. Alternatively, histories of predatory lending make it more likely for low-income, Black, and Latinx people to have negative credit histories, as high interest rates cause many to default on payments and file for bankruptcy (Rugh and Massey 2010; Wyly et al. 2009). For people of color sold subprime mortgages prior to the US housing market crash, a low

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<sup>53</sup> According to Strike Debt “About 42% of Latino/as and nearly half of Black people in the United States have credit scores under 660, compared to just under 20% for Whites. While the median credit score for Whites rose from 727 to 738 during the 1990s, it decreased for Blacks from 693 to 676, and for Latino/as from 695 to 670” (2014, n.p.).

credit score not only raises interest rates on their debts but also decreases their ability to obtain employment and rental housing. Credit scores produce a cyclical perpetuation of inequality, calculated through proprietary software that offer little transparency into their decision-making processes. While credit scoring companies provide some public information about how they calculate credit scores, their algorithms are kept secret. Mark Andrejevic argues that one priority of feminist surveillance studies is to

excavate the various interests, pressures, prejudices, and agendas obscured by the technocratic alibi of the algorithm and its analogs—that is, those forms of control that operate in the name of security, efficiency, risk management, and so on, while simultaneously obscuring the forms of gendered, raced, classed, and sexualized discrimination they advance in the name of an allegedly general interest (2015: xii).

Credit scoring and the credit reporting industry are prime examples of the uses of algorithmic obscuration: using secret evaluative measures to reproduce “gendered, raced, classed and sexualized discrimination.” Credit scoring is enabled by big data analytics: without massive datasets, the scoring algorithms would not function. These calculations require datasets to establish norms to evaluate all consumers against. A low credit score and history of bankruptcy enable landlords and employers to rescind offers and lenders to raise interest rates, generating capital for financial corporations. Further, low credit scores encourage individuals to seek out more debt. As Strike Debt (2014) explains, “Low scores virtually guarantee punishing credit terms and ruinous cycles of debt. And because someone won’t have a credit score unless they use credit, it penalizes people who do not use credit products.” Indeed, by punishing those who do not use credit, this process encourages people to become debtors: without a history of repaid debt, it is nearly impossible to rent an apartment, obtain a mortgage, or increasingly, get a job. Bad credit

or the absence of a credit history further exploit low-income people, people of color, and those working in informal economies. Credit reports codify bankruptcies, defaulted payments, and closed accounts as the failings of risky persons, stripping away any consideration of the structures that enforce poverty and encourage debt: centuries of economic disenfranchisement, state policies, and the financial institutions themselves.

Credit reporting practices are an instructive example of what Spade calls “administrative violence,” defined as “administrative norms or regularities [that] create structured insecurity and (mal)distributive life chances across populations” (2011: 29). When creditworthiness is tied to the necessities of daily life, such as employment and housing, credit history and credit scores come to stand in for a person’s potential trustworthiness as an employee or tenant. Further, being outed by a credit report in a job or rental property application process increases the housing and employment insecurity trans people already face. 44 percent of trans people report being denied a job because of their gender identity. Trans people of color face unemployment rates at four times the US national average, and 30 percent of trans people report experiencing homelessness at some point in their lives. Housing and employment are two major indexes of discrimination for as trans people are subject to the whims of bosses and landlords. For trans people with the economic means, home ownership may alleviate some of this stress, however, trans people of all races own their homes at vastly disproportionate rates than the general public. While 63 percent of the overall US population owns their own home, just 16 percent of trans people own the homes they live in (James et al 2015). If a credit

check out a person as trans, it can have profound impacts on their ability to obtain housing and employment.

Anyone with an SSN or an Individual Tax Identification Number is eligible for a credit report. However, credit files are generated only when individuals take out credit and creditors report debt or make an inquiry on a person's account (e.g., when an individual applies for a credit card). Equifax, Experian, and TransUnion each produce credit files with reported credit data. While credit files generated by each CRA should be identical, they sometimes differ, particularly because smaller financial institutions might report to just one or two of the CRAs to avoid the fees required to set up an account with each agency (Equifax 2014). Further, the three CRAs are private corporations, each with proprietary products for sale in consumer, business, and government markets.

The credit reporting industry is fundamentally unfair and reproductive of racialized and gendered violence. Further, it is also poorly managed. Selective reporting and widespread errors cause inconsistencies among reports generated by different CRAs. In 2013, the Federal Trade Commission (FTC) reported that 40 million people in the United States have errors on their credit reports and 26 million have lower credit scores because of errors. During a 2014 congressional hearing on this issue, several US representatives remarked that they had errors in their credit files they had trouble correcting. Representative Ed Perlmutter (D-CO) expressed his concern, stating, "This is the kind of situation where you are guilty until proven innocent, and given that situation, you have to get the reporting right the first time." When getting data "right the first time" is a prerequisite for accurate credit reports, trans people and others whose identification

data change over time in unexpected or suspect ways can expect little recourse.

Representative Mimi Walters (R-CA) echoed this sentiment:

Sadly, the burden is too often placed on the consumers to prove information on their reports as false rather than on the consumer reporting agencies and furnishers. Errors on credit reports are very difficult for consumers to dispute, and it is even harder to have these inaccuracies actually removed from reports, causing heartache and pain for millions across the country. It is time to change that paradigm and ensure that a bad credit score will no longer haunt a consumer for years on end.<sup>54</sup>

Indeed, the dispute process is notoriously frustrating. While the Fair Credit Reporting Act (FCRA) enables consumers to check and challenge the accuracy of their credit reports, the process favors the creditors and debt collectors over individuals. During the dispute process, CRA employees categorize dispute narratives into two or three-digit codes, translating written or telephone complaints explaining errors into a single code. These employees have no interaction with the people filing the complaints: they are tasked with making snap judgements about the nature of the dispute, assigning it a code, and sending that code to the creditor (Wu 2009). Chi Chi Wu of the National Consumer Law Center explains, “Workers do not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute” (ibid. 2). Once received, the creditor is required to investigate the dispute, however often this entails the creditor checking the dispute against the information it furnished to the CRAs, without investigating the legitimacy of that information. In other words, if a consumer disputed a

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<sup>54</sup> US Congress, House Committee on Financial Services, *Overview of the Credit Reporting System: Hearings*, September 10, 2014, 113th Cong., 2nd sess. (Washington, DC: GPO, 2015), [financialservices.house.gov/uploadedfiles/113-97.pdf](http://financialservices.house.gov/uploadedfiles/113-97.pdf).

credit card account that was opened under their name but that they did not open themselves, the credit card company may only verify that the credit card account exists under that consumer's name, using only the code sent by the CRA to investigate. This cyclical process leaves individuals effectively powerless over their financial identities. As

Wu puts it:

Creditors and collectors are allowed to take action against consumers without being required to justify their contentions. Consumers now have the burden to prove a negative - that they do not owe a debt – and are rebuffed when they attempt to do so. When they fail because the deck is stacked against them, the creditor or collector will continue to report the consumers as liable (2009: 28).

Credit reporting agencies' customers are the creditors, not individual consumers, as a result, their allegiance to creditors supersedes the work they do for individuals who dispute claims. Indeed, even though CRAs know that millions of files contain errors, they have not taken steps to reduce errors because creditors prefer files that contain more data, even if that data is incorrect. According to a Federal Trade Commission (FTC) report, "lenders may prefer to see all potentially derogatory information about a potential borrower, even if it cannot all be matched to the borrower with certainty" (ibid. 8).

A credit report full of difficult-to-remove inaccuracies resonates with other documents that record a history of state-imposed identification on trans people: birth certificates that cannot be changed and IDs that do not match one's gender identity or preferred name. Credit reporting systems can and do accommodate name changes, for instance, for people who change their last names after marriage. However, trans first-name changes require different considerations. When a name change is acknowledged by

a CRA, all known previous legal names are listed in the demographic section of the credit report, either as “Formerly Known As...” or “Also Known As...”

Across credit reports, a trans person may be formerly and also known as their previous name, suggesting that the past slips readily into the present, confounding the logics of normative time.

This practice, which is much less likely to cause issues for a cisgender married person’s name change, outs trans people to those accessing the report, leaving trans people unable to choose if, when, how, and to whom they disclose their trans history or identity.<sup>55</sup> The difficulty of removing errors or outdated information from a credit report forces trans people to either persistently reveal their trans history to employers and landlords or establish new credit identities by taking on risky, high-interest debt. When the impetus rests on individuals to verify their identities and prove their trustworthiness through their credit histories, the credit report can indeed “haunt a consumer for years on end,” particularly for trans people whose bodies and identities are already illegible to these systems.

A 1976 Congressional Committee tasked with assessing the implementation of the Privacy Act remarked that credit reports were an area of particular concern for

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<sup>55</sup> It was not always the case that name changes through marriage or divorce were easy for cisgender women, however. In the 1970s, women were expected to apply for credit under their husbands’ names; if they divorced, she would be unable to obtain any credit. Louis Hyman explains, “A woman found that even though she might have paid her bills diligently for years, she was a person without a past and unable to get any form of credit whether at a department store or at the gas company” (2011: 214).

consumers' privacy due to the ways they facilitated the widespread sharing of individuals' financial pasts. The Committee remarked:

The competing interest is the individual's need to control the use of credit records as an important dimension of his confidential financial life. The automated disclosure procedures that exist today afford the individual little leverage to preserve the confidentiality that he may assume to exist with such information. Because credit records are used for purposes unrelated to the extension and control of credit, the individual may want and deserve to have increased control over this dissemination process ("Issues and Options: Credit Grantors" 1976: 27).

Despite the then recent passage of the Fair Credit Reporting Act (FCRA) in 1970 which intended to restrict abuses by the credit reporting agencies, the Committee had little faith that individuals' privacy could be protected given the widespread uses of the credit report and indeed, the problems identified have only worsened over time.

#### *Fraud Alert: Trans Credit Reporting*

"In a connected world, a life can be ruined in a matter of minutes, and a person, frozen in time." – Meg Leta Jones

Posting to a thread about credit report inconsistencies, Kim expresses frustration at the impossible bind she finds herself in. She cannot access her credit report because of a name change that occurred seven months earlier. Kim is attempting to rent an apartment, but the landlord cannot validate her credit history as part of the application because her name change has not been reported to the CRAs. Her previous name is associated with her credit history, leaving her current name creditless. She explains:

In other words, they won't [update my credit report] until I have credit in my new name and I can't get credit in my new name because there is no official file in that name. I currently do not have any credit cards or debt [...] I am applying for a rental and will have to include a letter stating that I am a transsexual and give my prior name so they can run a credit check.

Kim voices her complaint to inquire if this has happened to anyone else. In response, a forum participant posts a template letter that Kim can use to request a name change in the credit agency's systems. A few weeks later, Kim posts again in this thread. She writes that she submitted a letter with proof of her court-ordered name change to all three CRAs. TransUnion sent her a credit report with her previous legal name listed as her primary name and her current legal name underneath as "Also Known As." Equifax did not change her records at all and sent her a report with only her previous name listed, stating that her name did not match any records in their system. Amid this frustration, Kim writes that what is most troublesome is that her credit report will reveal her trans status when she applies for housing. Indeed, landlords running the credit check will continue to have a relationship with Kim if she becomes their tenant. Being outed as trans in this situation has potentially longer-lasting consequences and larger risks than credit checks conducted for other types of applications, such as for a loan or credit card.

Kim states that even though she lives in Oregon, where it is illegal to discriminate based on gender identity, that discrimination is hard to prove and frequently occurs. She declares, "I know that it is illegal in [OR] for discrimination against trans folk but we all know how easy it is to get around that." A housing discrimination test in the Boston metro area revealed significantly significant discrimination against gender non-conforming and trans apartment rental applicants. In Massachusetts, gender identity is protected under anti-discrimination law. In a Suffolk University Law School study, researchers found that trans and gender non-conforming applicants were less likely to be

offered financial incentives or be referred to by their names by the person showing the apartment; they were also shown fewer rental units and not told about extra amenities compared to the control group of cis applicants. In one interaction, a trans applicant was told that the landlord would call references and past landlords and needed to verify their income, while the cis applicant was merely asked where they worked and was not required to verify their income (Langowski et al. 2017). Trans and gender non-conforming applicants were given fewer perks to encourage them to sign a lease and were required to jump through more hoops than their cis counterparts. A résumé-testing study conducted in Washington, DC, also demonstrated significant bias against applicants presumed to be trans on paper. DC's antidiscrimination laws protect gender identity, but researchers found that 48 percent of tested employers preferred less-qualified cisgender applicants to more-qualified trans applicants in the first stages of the job application process (Rainey and Imse 2015). Kim's fears about revealing her gender history are well founded, even in a state where gender identity is a protected status.

In the scheme of things, Kim appears to have significant economic privilege. The Federal Reserve reports that as of October 2015, US consumers owe \$3.48 trillion in debt. Kim's conundrum of carrying no debt puts her in an atypical position. At the same time, her case is important for examining why commonplace reliance on credit reporting in employment and housing decisions is particularly harmful for trans people, beyond what we already know about a credit report's ability to reify racialized and classed discrimination. Her credit history, used to evaluate her trustworthiness as a tenant, is associated with her previous name, and thus Kim cannot connect her credit history to her

current name without coming out as trans. Further, her credit history reflects what she owes or has owed, not how much she earns. To obtain an apartment without coming out to the landlord, Kim is required to have debt, or a recent history of indebtedness, under her new name. A record of debt, rather than earning power, determines her capacity as a tenant. This is not a question of whether Kim makes enough money per month to pay rent. Her future landlord could verify this information with her employer. Rather, the credit check brings about another set of questions: Does Kim carry too much debt? Does she pay her bills on time? Who has trusted her before? Donncha Marron explains that the credit report “provides a central resource for future credit consumption, presenting itself as a report card of the individual’s capacity to self-govern” (2009: 108). A “good” credit report contains a long history of open accounts, no missed payments, and a low proportion of debts to total available credit. In other words, though having no debt may functionally make Kim more likely to pay her rent on time, using a credit report for a rental application actually requires that she have some well-managed debt under her current name rather than none at all. Importantly, debt would validate Kim’s name change in ways that her court order cannot.

Kim encountered a particular problem based on how credit reports manage data. Unlike “credit invisibles,” the 26 million, predominantly young, low-income, Black, and Latinx people in the United States without formal credit histories, Kim has been in debt, but it has been repaid in full (Holland 2015). CRAs collect and report what creditors disclose about their account holders. For Kim’s credit file to list her name as the primary account holder, her creditors must affirm that she owns her accounts and report this

information to the CRAs. TransUnion's 2017 customer service page states that a name change should be processed with a person's creditors, not the CRA:

Creditors add your name into their records exactly as you have provided it to them. They then report your name to TransUnion as it appears in their records. If you would like to ensure your name appears differently on your credit report, contact your creditors directly.

Another commentator, Brittany, criticizes the CRAs' practice of reporting outdated information. She declares, "I find it absurd that it is my responsibility to correct their data. I didn't ask them to collect it in the first place. Now that it is required to have their data to rent a house or get a loan or apply for a job, it seems that they should have legal requirements to be accurate." Brittany highlights a key contradiction of credit reporting practices: though credit check verifications are required for rental housing, job, and loan applications, credit reporting agencies claim no responsibility for the accuracy of the data they report, sending consumers to chase down any past creditors to force an update.

When Kim requested that the CRAs update her name, she was unsuccessful because she has no open lines of credit and thus has no creditors to report her updated name. Though Kim has paid off her debt, there is no way for her potential landlord to access this information because the CRAs will not change her credit file until her creditors verify the change. Though Kim is legally "Kim" with the state, her data cannot change until she becomes a debtor again. That is, "Kim" as a financial subject is made legible through recurring debt. Maurizio Lazzarato explains, "Credit has not been given in order to be reimbursed but rather to be in continual flux" ([2013] 2015: 89). In other words, when Kim's debt is repaid, her legal identity comes under scrutiny. Without a

legible identity as a debtor, Kim cannot use her legal name safely when applying for housing. The particular way that data about Kim's identity as a financial subject circulate, or, in this case, do not, shapes where and how she is able to live. Kim's repaid debts render her an illegible subject: useless to financial institutions that verify identities based upon a history of indebtedness. Debt is intended to be "in continual flux." A legal name change for a person without debt disappears the subject.

Forum participants suggest that Kim can force an update on her credit report by taking out debt. One commentator, MJ, suggests that Kim should open an account at a different bank and apply for a credit card to force her previous credit history to merge with her new name. She will have to disclose her trans identity to bank tellers there, but the embarrassment will not last long, and she could close the account after a few months. MJ writes, "Start a new bank account at another bank, do what you have to do. Once everything is done, close it. Yes, you would be outed, but it's not in a place you regularly do business with and odds are they would quickly forget about you." MJ went on to state that Kim should take out a small personal loan and pay it back immediately to establish a credit history, "I am also self-employed, and they almost begged me to take a card, of course they are begging me to take every option with it they can sell me now." These suggestions emerge across multiple discussion threads: open a new credit card, take out a loan, and borrow money to establish financial subjectivity through debt. In another thread, responding to a 23-year-old trans woman's post about the disappearance of her identity after a legal name change, a trans masculine commentator suggests that if the original poster was unable to out herself to the CRAs, she would "need to rebuild [her]

credit history from scratch” by taking out credit cards. Kim’s insistence on remaining debtless may be her largest obstacle: credit, especially in the form of a credit card, is easy to come by, and debt is valued and encouraged. Since the 1978 deregulation on consumer interest rates, credit card companies have drastically raised rates and extended credit to riskier borrowers, capitalizing on revolving debt remaining in their accounts each month. By the early 2000s “consumer credit became the most profitable sector of banking” (Gates 2010: 420).

While Kim stresses that she wishes to avoid taking on debt, even if she wanted to, she may have trouble opening a new account. Her previous name is still attached to her SSN in her credit file, which would produce a fraud alert if she attempted to apply for credit under the name Kim. She writes, “Getting credit is not easy under any circumstances and I don’t want any debt. The only reason I want my [credit check] records changed is to rent a new place without coming out to the landlord.” Indeed, without evidence linking Kim to her SSN in her credit file, Kim would likely be denied a credit card, even if she wanted one. Another forum poster remarks:

[It] makes no sense how you can go through so much trouble [...] to change name [sic] because they are like “We want to make sure you aren’t avoiding taxes, or debts, or changing your name for a bad reason” and then your name is changed, the S[ocial] S[ecurity] A[dministration] has the changed name, and even with your SSN being the same these credit companies are like “fraud alert.”

A fraud alert triggered by a trans person using a new name demonstrates key logics of the surveillance of trans subjects. Indeed, trans subjects are expected to declare themselves to the state, linking their past selves to the present, as Toby Beauchamp argues, “Concealing and revealing trans identity actually depend on one another,

demonstrating the impossibility of thinking these actions as binary opposites. To conceal one's trans status under the law requires full disclosure to the medicolegal system, which keeps on public record all steps taken toward transition" (2009: 361). However, as the issues that trans people face with their credit reports reveals, trans identification data exceed public records; this data is also managed in the private financial sector. Many trans people are required to fully and persistently disclose their trans history, not just "under the law," but also to the countless private institutions that collect, manage, and report their consumer data. Trans people may not only medically and legally transition but also (attempt to) transition the innumerable remnants of the consumer data connecting their former name to their current name. This is a nearly impossible task, as these traces of a person's former name are fragmented, and often bought and sold by data brokers. The original author of the data no longer controls it, forcing those who want a change to chase down numerous third parties to petition a change. Financialization has extended the space and time of identity management for trans subjects: identity has become a horizonless frontier with endlessly moving parts. The "administrative violence" of trans identity management, as documented by Dean Spade (2011), and Beauchamp, fundamentally shifts when trans identities are verified and authorized through financial institutions. As the forum poster noted above, despite the steps taken to disclose "all steps taken toward transition" to the state, financial institutions wield the power to override legal determinations, marking trans subjects as fraudulent for their unexpected identity changes. Financial institutions authorize and produce legible subjects through their histories of indebtedness, eliding the state's mechanisms of identity production.

Trans name changes are flagged as potentially fraudulent because they change in unexpected ways. Experian (2015) explains that previous names are reported on credit reports to protect consumers against fraud: “Name variations and unknown names can be an indicator that an identity thief is using your identity to apply for new credit. If that happens, the list of names on your report can enable you to take rapid action to prevent ongoing credit fraud.” Removing a former or incorrect name from a credit report is nearly impossible for this reason: all names associated with an individual continue to be reported to prevent fraud. However, retaining an incorrect or former name on a credit report also legitimizes the connection between those names and the credit file, thus enabling fraudulent activity (any person listed on the credit report can claim ownership of the credit history) and outing trans people. This practice makes verification ineffective, yet profitable to creditors who can use derogatory credit history as justification to charge higher interest rates.

In another thread, Derek presents a way to build a “stealth” credit profile. Derek created a new financial identity by applying for an introductory-rate credit card in his new legal name. He explains, “You can start with store cards, an [...] introductory card, a phone contract. [...] That’s how I did it and there is literally no record of my previous existence in the system.” Rather than link his previous credit history to his present, Derek elects to start over by obtaining high-interest credit. For Derek, an empty credit file is more desirable than having his previous name listed on his credit report, especially if his concerns are finding a job or an apartment. A landlord or employer may not care how long Derek’s credit history is, just that he has one. However, the cost of obtaining high-

interest credit to avoid revealing a trans history is high if Derek needs a loan: potential lenders will likely see Derek's lack of history as a liability.

In what seems the opposite of Kim's concerns, another participant, Chris, begins a discussion thread inquiring about the absence of his previous name on his credit report. He wonders: has his credit been erased because he changed his name? Chris checked with all three CRAs and found no trace of his previous name, unlike many other participants whose names appeared on one or more reports as "Formerly..." or "Also Known As." When Kim spoke to the CRAs, she was told that if they changed her primary name in her credit file, her previous name would always be listed as well. She remarks that her former name might be removed only if she contacts every creditor she has ever had and asks them to report her name change. Chris experiences his name change with the same CRAs differently. He is not even sure that his previous credit history is connected to his identity any longer. A trans woman who took her problems with the CRAs to the Consumer Financial Protection Bureau's complaint process shared Chris's issue. After her name change, she had three new credit files that were in her new name but they were each completely blank. In her complaint, she remarked upon the amount of time she had to spend attempting to correct this issue. She declared, "It has been a HUGE time-consuming process. Many days' worth of time spent on the phone to correct this issue which NEVER should have happened." She goes on to state that she doesn't think that most other trans people would spend as much time as she did in order to correct this issue to "go through the long wait times on the phone and the getting run around [...] when

they have XXXX records that should just get merged.”<sup>56</sup> Unlike Derek who desired a fresh start, this woman had twelve years of credit history that she hoped to retain. She also crucially notes that being severed from her past credit identity has led her to notice a glaring fallacy within the credit reporting system: “If someone starts using another person’s SSN with whatever name they want, they can build a credit history,” thereby enabling identity theft. This difference in experiences recurred throughout discussion threads: the most common experience trans people relayed about their credit report was confusion and inconsistency. Actions taken by any one person frequently yielded vastly different results when done by another. While Kim is an exception for having no creditors, other trans participants who do have open credit lines report seeing former names on their reports, unlike Chris.

Although Chris’s previous name does not show up in his file, his prior identity is not fully subsumed in his name change. Chris notes that he receives credit card offers in the mail for his birth name but not his legal name. While Chris’s previous name is not listed on his credit report, he is extended credit in that name—a name that for all intents and purposes should not identify him any longer. The practice of receiving “preapproved” credit card offers in the mail began in the 1990s, when consumers previously deemed too risky to be extended credit were seen as highly profitable markets

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<sup>56</sup> This record is derived from the Consumer Financial Protection Bureau’s (CFPB) Consumer Complaint Database. CFPB redacts certain identifying details, replacing them with “XXXX.” “Trans” was redacted throughout her post, but other context clues led me to discover that she was discussing her trans identity. For instance, she began the complaint by stating “I am a XXXX woman and I was having trouble getting credit after my transition;” and “Being a XXXX person in this society is hard enough. Why do we have to start our credit history all over when we are just trying to live as ourselves.”

for high-interest-rate credit cards. McClanahan explains, “Such consumers were inundated with aggressive direct-market campaigns: rather than requiring consumers to apply for a credit line directly, creditors sent offers, even the cards themselves, to consumers who had not requested them” (2014: 37). The haphazard extension of high-interest, predatory credit cards to two identities with the same SSN is evidence of the infrastructure of credit card company databases that do not erase past demographic (or third-party) data, the fractured nature of identities, and the aggressive and expansive extension of credit for profit.

Extending credit to individuals who may no longer legally exist illuminates the structuring logics underlying the use of credit reports in employment and housing decisions. Credit reports aim to protect the transference of property to “proper” financial subjects; a credit report generated for a nonexistent person with good credit and consistent gender identification might be more likely to result in a successful application than one of a person with a visible trans history. Further, depending on which name(s) are present on a credit report, a trans person may apply for credit cards under two different names, be approved for one, both, or neither. This proliferation of identities is profitable for credit card companies so long as account holders remain responsible for paying back their debts.

Major credit card companies’ aggressive extension of credit also presents an opportunity for trans people. Some trans forum participants commented that before a legal transition, they are able to add authorized users to their credit card accounts in their preferred names. People who have not changed their name but have a credit card in their

birth name could request a card for an authorized user in a name that better aligns with their gender identity. Some credit card companies allow primary account holders to add authorized users by simply providing the user's name and address. These users' identities need not be further authenticated as long as the primary account holder is liable for their purchases. While this is a practice that might benefit trans people who cannot or do not want to legally transition, it also points to the fractured, inconsistent practices of financial institutions' management of consumer data, which put private information at risk.

Identities can be easily created through debt, but how are they accounted for later? As another poster remarks, "It's funny, apparently it's easy enough for our identities to be stolen [. . .] but so hard for us to prove who we are." A high-interest credit card forces a new credit file after a name change *and* puts trans people at higher risks of debt accumulation. The afterlife of trans identity data enables Chris and his previous name to exist simultaneously in different spaces of the financial sector, tucked deep in database fields that customer service representatives do not know how to, or perhaps do not want to, change. Current and previous names circulate as commodities and indictments.

### *The Right to Be Forgotten*

"Before the digital, the past was a rotting place." – Andrew Hoskins

"The 'default of forgetting' has gradually shifted towards a 'default of remembering.'" – Jef Ausloos

While the mythology of big data encourages the retention of data to drive data-driven decisions, people and organizations have challenged this practice, demanding greater accountability for their data. On May 13, 2014, the Court Justice of the European Union ordered Google to remove search results that included information about Mario

Costeja González's financial dealings. González had asked the newspaper where the information was published to delete the link to the online version of the story. When they refused, he petitioned Google to unlist the story: if the newspaper would not remove it, at least he could prevent others from finding it. When Google refused, González sued. The Court Justice of the European Union sided with González, stating that the information in the story was "inadequate, irrelevant, or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine" (Jones 2016: 1). González's case has incited dialogue between legal scholars and computer scientists interested in this complicated question about the rights individuals have to "be forgotten" in a digital landscape that thrives off of perpetual remembering, archiving, copying and sharing.<sup>57</sup> Indeed, this case set a precedent, requiring Google Europe to evaluate future removal requests from individuals who wish to remove negative, embarrassing or outdated information about them from search results. As it turns out, González was not the only person who wished to decrease visibility of their information: "Within the first thirty-one days, Google received a reported 70,000 requests to remove 250,000 search results linking individuals in the EU to information they would rather be disassociated from" (ibid.: 27). While the courts ruled that Google must remove González's story from his search results, they did not provide definitive guidance about how Google must decide what stories are relevant or excessive for future disputes. Indeed, Google is tasked with weighing the potential harm that information causes an individual against the broader public interest of the information. The processes Google

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<sup>57</sup> See: Ausloos 2012; Tsesis 2014.

uses to weigh these decisions are private, in part because the nature of the cases— involving requests for reduced visibility of personal information—require discretion. However, we would be remiss to fail to notice that Google is a corporation that profits from data, and particularly personal data. As Safiya Umoja Noble puts it, “Google creates advertising algorithms, not information algorithms” (2018: 39). Their interest in weighing personal harm versus public good is undoubtedly also influenced by a third factor: the commercial value of this data.

Determining the line between personal harm and public interest is politically loaded. Indeed, Google could reasonably argue that a trans person’s former name is a matter of public interest. In February 2016, a Georgia judge prevented Rowan Feldhaus, a trans man, from changing his name (to Rowan, from a female name), because Rowan was a man’s name.<sup>58</sup> Judge Roper justified his ruling by declaring that it was the court’s responsibility to protect the public from fraud, stating that allowing a person that he believed to be female to legally possess a man’s name would be “a type of fraud on the general public” (IN RE: Feldhaus). According to Judge Roper, it is in the public’s interest to know that Feldhaus is trans by refusing to change his name: enabling him to pass as cis would cause harm to the general public who could be tricked by his masculine name and appearance. Trans people’s requests to remove traces of their former identities from search results may garner similar denials. Some would argue that if trans people can

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<sup>58</sup> I would be remiss to fail to connect to restrictions on a name change in Georgia to Georgia’s 2018 voter ID laws, which many have cited as being racially motivated and intended to restrict black Georgians from voting. Concerns over authenticating individuals based on race and gender are connected, and here, the state aims to curtail access to proper IDs which are necessary to engage in voting.

evade their former identities, the general public would be harmed. While name change applicants are required to swear that they are not seeking a name change for fraudulent purposes or to avoid past debts, it becomes clear that a name change may actually trigger fraud accusations and (at least temporary) severance from past debts for trans and gender non-conforming people. A name change itself can be construed as fraudulent: if a trans person changes their name, they may be able to perpetually pass in their chosen gender; an act that is perceived as deceitful and dishonest. In a 1968 case, a judge ruled against a person charged with cross-dressing, declaring, “‘cross-dressing’ must be punished because ‘the desire of concealment of a change of sex by the transsexual is outweighed by the public interest for protection against fraud’” (Franke 1995: 58). Of course, as demonstrated by the ways trans people cannot escape their previous names on their credit reports and within the broader data sharing economy, Judge Roper’s concern that Feldhaus would defraud the general public by legally assuming a male name is mitigated by all the places Feldhaus’s previous name remains. Feldhaus’s name change request was approved by the Georgia Court of Appeals in January 2017, but his prior name may still emerge to haunt him on his credit reports, background checks and in hundreds of databases where his previous identity is catalogued.<sup>59</sup> A similar rationale is employed to defend the public’s “right to know” about criminal records, and especially those entailing sexual and violent offenses, of their neighbors, coworkers and dates.<sup>60</sup> Indeed, both criminal offenses and former names are the two details that will indefinitely remain on a

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<sup>59</sup> Rowan Felhaus died due to complications related to surgery in May 2017.

<sup>60</sup> The private background check industry has largely emerged to enable individuals to conduct this type of lateral surveillance. For a fee, individuals can receive detailed information about their peers’ criminal backgrounds.

person's credit report. Crucially, some subjects are expected to disclose their pasts: the embarrassing, outdated or irrelevant details about their lives are cast as information that the public needs to know.

The European Union extends greater data protections to its residents than the United States, even if the process for determining who is harmed is vague and controlled by a company with a vested interest in retaining personal data. However, US legislators do understand the need to remove outdated information, as evidenced by the guidelines established by the Fair Credit Reporting Act which restrict the amount of time debts, bankruptcies, and civil judgments can appear on a person's credit report. Any paid and closed accounts are to be removed from a person's credit report after seven years; "civil suits, civil judgements, and records of arrest" should be removed after seven years; and bankruptcies should be removed from a credit report after ten years (15 U.S.C. § 1681). These limits demonstrate an understanding that some past actions should cease to impact a person's future after a period, however some offenses—criminal charges and name changes—should continue on.

The right to be forgotten is a theoretically interesting and politically important tool to intervene in the expansive use of data for identity verification and financial decision-making. However, as computer scientist Jef Ausloos (2012) argues, it is limited in its reach because it does not fundamentally change the way technology is designed. While the right to be forgotten enables some people to remove or hide their information after the fact, it does not prevent the collection of this information in the first place. Ausloos notes that anything on the Internet can be copied and re-shared elsewhere: the

right to be forgotten may be directed at the author or original owner of personal information, but it would be nearly impossible to track down all the places data travels afterwards. Indeed, even if information is no longer visible, it may still be circulating, “Notice and take down procedures might take content out of (public) sight, but do not normally result in removal from the data user’s servers” (Ausloos 2012: 148). To use trans name change requests as an example, a user’s primary name might be updated and publicly displayed but their previous name may still exist in a non-visible data field that can be accessed by employees or pulled by a script generating a mass mailing campaign. This data might still circulate—to credit bureaus, background check companies, or to data brokers—and remain in use, despite a legally mandated change. In order for the right to be forgotten to attend to the problems caused by data hoarding, it must alter the expectations about data creation, collection, storage and circulation. Further, it will require producing ethical evaluative measures to determine what personally embarrassing or negative data is of public interest. As Meg Leta Jones argues, “It is not hard to establish a historical, statistical, or scientific justification for keeping any data” (2016: 50); nor, crucially, a national security or economic justification. Only a critical interrogation into the authority invested into data and a critical, social justice-centered commitment to reducing data creation can begin to reduce this harm.

The right to be forgotten may challenge the mythology of big data, that prizes data collection over the concerns of those sources of data—the humans who generate it or it describes. As Feldhaus’s case demonstrates, even when some subjects are understood to have the “right to be forgotten,” some information, such as a person’s trans history, is

presumed to be in the public's interest. The presumption of fraudulence – of a stolen identity or improper representation of one's gender – strips away consideration for keeping previous names private, as is evidenced by state laws which require that legal name changes be announced in local newspapers to alert the public. Credit reporting agencies, too, operate under these logics, as I demonstrated earlier. Past debts, accounts, and histories of repayment remain useful for seven years, but a person's demographic information—prior names and known addresses—will continue to be reported indefinitely.

### *The Promise of Data Errors?*

Financial and legal identities are made up of keystrokes, faxed pages, photocopies, data fields, and phone calls. While for many, errors on their credit reports cause serious issues, data errors also present an opportunity to manipulate identification systems. Especially prior to the contemporary moment of increased trans visibility in dominant media, trans people who are able to “pass” as cisgender have successfully convinced data entry clerks that the “M” or “F” on their IDs were erroneously entered. Banking on clerks' limited knowledge about trans people and passing privileges, trans people have been able to obtain legal sex changes at institutions such as the Department of Motor Vehicles without authorizing letters from medical professionals. One such person shared her story on a popular trans-oriented website:

I just told the clerks that my license said I was 5'8" and that I was male (!!). I told them that, well, I'm female and 5'6" and they graciously changed it without requesting the letter from my doctor I had with me. The clerk that finally entered the data correction said that the person who entered the data [. . .] “must have had their

fingers on the wrong keys.” The moral of the story is, approach the sex change on the license as a mistake in data entry and you might have a very easy time (James 2015).

While discussion board participants report that databases’ inability to accommodate gender transitions cause issues for credit reports, this contributor’s comments pervade stories about legal transition. Just like sex, data are socially constructed. In this case, the data about one’s sex can be changed with a keystroke. This point is crucial: “Approach the sex change [. . .] as a mistake in data entry and you might have a very easy time.” The notion that a mistake in data entry would benefit someone flies in the face of the cases above, where data inconsistencies cause denials. Identification information is supposed to be an accurate, reliable, and unique technology to identify individuals, yet such data are constructed by multiple offices and produced, edited, and maintained by humans who interpret information differently and make errors. The person requesting that her driver’s license read “F” instead of “M” appeared female to the clerk, and the clerk read her identification card as having an error. While other trans people who want to change their sex on their licenses may have to have expensive or unwanted medical interventions to obtain this change, for this woman, this proof was unnecessary. Data about sex could be changed on the spot.

Errors on credit reports are far more common than errors on driver’s licenses, often with long-lasting negative effects. One discussion board commentator suggests that the high prevalence of credit reporting errors might work to the advantage of trans people who cannot remove a former name from their report. She explains that the large number of errors in credit reports can help trans people, “If someone asks me, ‘why is this other

name on your credit report?’ I can just say, ‘haha, guess some guy named Michael has a similar SSN as me and someone at a bank screwed up somewhere.’” Another poster commented that if her employer ever asked her why there was a male name on her credit report, she would say that the male name is her brother, and when they were children, her mother mixed up her SSN with her brother’s when setting up a bank account, thus leaving his name permanently attached to her credit report. Indeed, mixed or merged credit files are common: over forty percent of complaints to the Federal Trade Commission are regarding mixed or merged credit files (Wu 2009). While the disconnected yet interrelated processes that go into producing a credit report are a bureaucratic nightmare for some, these examples demonstrate that the materiality of the bureaucracy may work in the favor of illegible subjects at certain moments, disrupting the presumed omnipotent power of data systems to tell the truth of a person’s identity. Trans people take advantage of the confusing and chaotic processes of data identity production and push back against neoliberal capitalism, surveillance over their bodies, and the assertion that institutions must have the final word on which data are produced about them.

The pervasiveness of errors on credit reports demonstrates that the afterlife of data does not only affect trans people, but also a growing majority of US residents. The promise of data errors suggests a different political strategy for dealing with massive scale information vulnerability created and maintained by financial institutions. Credit reports cannot be trusted. Even the financial watchdog organization created to contend with the fallacies of the credit reporting agencies, the Consumer Federal Protection

Bureau, was limited in its power under a supportive presidential administration. Under the Trump administration, the CFPB is being systematically dismantled by director Mick Mulvaney. Policy changes will be crucial to addressing the scale and scope of the problems of credit reporting errors and broader exploitation by financial institutions, but I suggest that they should be focused on reducing the legitimacy of credit checks and stripping away their power to authorize life-sustaining resources: housing, employment, and access to credit.

Subjects are produced, verified, and authorized through their financial data. The existing analytical frameworks employed by trans studies scholars – those that explore administrative violence and the effects of neoliberalism on the state’s management of trans subjects – cannot account for the ways that financialization changes the space, time, and scale of trans identity management. While the state remains a key actor in its role in authorizing name changes in court and issuing identification documents, a legal name change can be negated if a credit check does not verify that identity. Scholars who study the administrative violence of trans life must contend with these factors: the unruly nature of consumer data and the effects of neoliberalism on administrative governance that go beyond the privatization of the state. As each of the examples in this chapter demonstrate, the afterlife of data is not about privatization of state processes but the imbrication of financial processes into applications for basic necessities: housing and employment. The messiness of this data presents a crucial opportunity for trans studies scholars to closely analyze these emerging modes of power. The afterlife of data leaves traces that we can follow to see how our data travels, where it has been, when it eventually dies, and how it

continues to impact subjects long past its legal relevance. Tracing this data trail might just illuminate other inner workings of this data-driven racial capitalism.

### *Conclusion*

The long afterlife of data is clearly traced by examining where outdated information continues to circulate for trans subjects who make changes to their legal and consumer identities. Trans peoples' experiences with their credit reports draw our attention to how bodies are governed not only by legal administrative systems but also increasingly through their consumer data. Trans identities challenge the assumptions of credit reporting systems that equate multiple names with fraudulent activity and push us to think beyond the reliance on error-laden credit checks for broad verification and the increased securitization of identities. I have demonstrated that the explosion of big data has facilitated greater insecurity for all people, asking individuals to account for information that is circulated endlessly without their consent, data that comes to stand in for their trustworthiness as consumers, workers, and renters. The data that credit reporting agencies use to determine riskiness reproduce racialized inequalities and as I have demonstrated, also put trans people with conflicting credit histories at risk of exposure and further dispossession. The afterlife of data, the endless circulation of consumer information, reorients the relationships between consumer and debt, individual and identity, and data and knowledge. Through financialization, identity management has turned into a horizonless frontier, one that must be endlessly managed as outdated data changes hands through sale and circulation. The mythology of big data as being uniquely capable of solving problems "objectively" and more efficiently, reducing the risks taken

by financial industries, businesses, landlords, and employers, reproduces inequalities by quantifying subjective assessments of risk.

Both the predatory logics of neoliberal capitalism and opportunities for subversion are revealed when looking to the credit report as a site where trans identities are produced and managed. Debt propels the afterlife of trans identity into the future and halts illegible, improper subjects in the past. Those who encounter trouble accessing debt or verifying their identities—undocumented immigrants, sex workers, trans people with inconsistent IDs—live in shared housing, work in informal economies, pay with cash, use payday loans and high fee check-cashing services, and, overall, pay more for services than those with established credit histories. When all available information is considered relevant to determine an individual’s riskiness, trans people with conflicting former data will continue to be outed by their credit reports and background checks. However, as is also demonstrated, the errors in credit files and the disorder of big data opens opportunities to rethink reliance on these systems. Trans subjects are able to creatively rewrite credit histories, as illustrated by some of the tactics they employ to temporarily obtain empty credit files after names changes, gain access to credit cards in their preferred names, or blame the presence of a former name on a credit file on on-going data breaches and pervasive identity theft. These tactics for resisting some of the violences of financialization and digitization of identity are temporally bound. They may enable some trans subjects to avoid being connected to their pasts temporarily, but the endless circulation of this type of data threatens to sync these stray evasions, relinking the data to the body. Further, trans people who do not easily “pass” as cis, or who are presumed to

be deceitful or fraudulent due to their race or citizenship status, may not be able to explain away inconsistencies in their data, limiting the potential of these tactics to the right circumstances and to subjects with passing, racial, and other privileges.

The issues trans people face with credit reporting demonstrate that it is imperative that we no longer rely on perpetual indebtedness, or extensive data sharing and identity verification, to access the means to livable lives. These issues demonstrate how trans subjects are flagged as fraudulent due to consumer data practices, and how the threat of identity theft justifies massive data collection and retention, even while identity theft is *enabled* by this consumer data economy. Trans name changes demonstrate one set of problems caused by financialization, and importantly how consumer identities and data economies are increasingly producing legible identities, but these predatory practices effect all subjects. The massive collection and circulation of consumer data threatens the legitimacy of credit reporting agencies, as information is routinely “stolen” or mismanaged, resulting in errors on credit files or breaches in information systems. Equifax’s 2017 data breach shook consumer confidence, exposing consumer information of 143 million people in the US, nearly 44% of the overall US population. 143 million people are subject to increased risk of identity theft, exacerbating the risk of credit file errors and financial losses. The risks caused by advances in data collection and storage produce greater insecurity for individuals in the service of power and profit for corporations. The aftermath of this and countless other data breaches could provide an opportunity to rethink reliance on big data analytics and surveillance to identify, authorize, and value people. Rather than work to repair credit reporting systems, the

public could demand to abolish this system of accounting that is already failing, built upon inequality and structured vulnerability to risk. Credit reports could and should be understood as inaccurate documents that are constructed in the service of power and profit and stripped of their authorizing power in decisions related to housing, employment, and insurance issuance, at the very least, and at the very most, also in credit extension decisions. The status of credit shifted drastically in the United States over the twentieth century. In the early 1910s paying for goods with credit signaled a lack of personal responsibility, but by the 1960s, credit was a marker of high social status (Hyman 2011). In the beginning of the twenty-first century, with consumer debt at an all-time high and millions struggling to repay their debts, another relationship with credit, debt, and data is possible.

In the next chapter, I shift to explore how trans and gender non-conforming subjects capitalize upon their gendered incoherence and incompatibility with fraud prevention technologies, demonstrating how in some instances, gender non-conformity enables trans subjects to cash in on material resources that they have been categorically excluded from accessing. The fourth chapter offers an alternative perspective on the problems of gender and sex incoherence, examining what stealing, rather than asking for inclusion into administrative systems, opens up for trans subjects.

## Chapter 4: Identity Thieves: Seizing the Means to Gender Self-Determination

“Moral turpitude will always be found where fraudulent intent is an element of the crime.” – Ann Benson, Directing Attorney, Washington Defender Association’s Immigration Project

Fraudulence is a denigrated act. Those who intentionally deceive others for personal gain are presumed to be morally corrupt, selfish, and greedy. As I have described in the three preceding chapters of this dissertation, when trans people are presumed to be fraudulent after changing their bodies and identification data, they experience discrimination, dispossession, and physical violence. Fraud detection technologies and epistemologies of risk detection contribute to the devaluation of trans life, as suspicion of fraudulence, or inappropriate access to protected social goods by gender non-conforming bodies, justify a structural divestment away from trans life. Due to the moral associations attached to fraud, trans and gender non-conforming people are positioned as dishonest; their identities incompatible with risk detection software, medical billing systems, and cissexist assumptions about gender and genitalia. Presumptions of fraudulence derive from this incompatibility: trans identities and bodies did not fit within operating norms about health care, sexual misconduct laws, or credit reporting. Gender non-conformity is *made* fraudulent by these processes of misrecognition, and trans and gender non-conforming people seek to challenge fraud accusations or evade the consequences of them. In this chapter, I examine cases where trans and gender non-conforming people intentionally commit fraudulent acts as means of survival or resistance to transphobia, racism, and capitalism. Through forgery, thievery, deceit, and sometimes greed, trans and gender non-conforming people, at least

temporarily, seize the means to gender self-determination through stolen identities, cash, and credit. As discussed in chapter two, the threat of identity theft often makes trans name changes appear fraudulent in the private sector. The idea that a trans person could legitimately possess two differently gendered names signals a risk of fraud. In this chapter, I analyze instances where trans people *do* commit identity theft, using their gender non-conformity to aid them in this task. Further, I demonstrate that the very mechanisms that mark legitimate trans name changes as potentially fraudulent enable trans and gender non-conforming subjects to temporarily multiply their identities for financial gain. Because personal information freely circulates to proliferate the flow of capital between financial institutions, trans subjects are able to utilize their gendered difference – their abilities to possess multiple names and gender presentations – to benefit from the chaos that financial institutions produce.

Trans fraudsters exploit systems that cannot make sense of their bodies and identities in order to access resources that they have been categorically excluded from accessing: identification documents, housing, hormones, and money. Identity theft allows trans subjects to temporarily circumvent the barriers to gender self-determination—medical gatekeeping, forced declaration of past identities in a legal name change, data systems that retain and circulate their names assigned at birth, exorbitant costs of surgeries and hormones, and so on—to shape their genders and lives. This chapter argues that fraud is a technology of gender self-determination that gleans the excesses of a predatory, racialized capitalism, enabling gender non-conforming subjects to experience moments of temporary freedom, seized through stolen cash, IDs, and goods.

Under certain conditions, fraud may serve marginalized people by redistributing resources. Eithne Luibheid considers the political potential of fraud in her 2002 monograph, *Entry Denied: Controlling Sexuality at the Border*. She argues, “‘Fraud’ itself can be usefully read as a competing system of knowledge that is brought against the state” (2002: 138). As noted in the epigraph to this chapter and by Luibheid, fraud threatens the state’s authorizing power, particularly as it relates to immigration and citizenship. The state demarcates distinctions between citizens and non-citizens by authenticating legitimate citizenship documents. When immigrants obtain fabricated identification documents in order to work, they challenge the authenticity of these documents, at least temporarily, and as Luibheid suggests, produce a “competing system of knowledge” that demonstrates some of the state’s limitations in issuing and verifying identities. While these fraudulent acts do not disrupt state power overall, they demonstrate how everyday modes of survival reveal complex relationships between the state and marginalized people. Indeed, the state simultaneously punishes identity fraud committed by immigrants through arrests and deportations *and* encourages its continuation by relying upon a class of exploited people to labor for the US economy.

This chapter centralizes Luibheid’s observation but turns the productive potential of fraud away from the state and towards the private sector. While identity theft is often framed as a crime committed by an individual against another individual (or group of affected persons), I argue that trans identity theft can be imagined as a “competing system of knowledge” against capitalist industries that marginalize gender non-conforming people. While previous chapters argued that fraud accusations contribute to

the divestment away from trans life, this chapter considers how fraudulent acts might actually temporarily enhance and extend the lives of trans people, seizing upon the excesses of messy and exploitative financial processes that rely upon data verification and make identities vulnerable.

Gender self-determination here means embodying a desired gender presentation or identity, regardless of medical, state, or social approval. Gender self-determination necessarily implies overcoming a struggle between an individual and an authorizing institution, as it is the self that labors towards the conditions for a desired life against the institutional barriers. When medical, psychiatric, or legal authorities prevent trans and gender non-conforming people from accessing resources they require or desire, they can take matters into their own hands in a variety of ways. They may lie to medical gatekeepers to obtain surgery authorization letters; borrow, steal, or import hormones outside of the purview of their physicians; use a friend's ID to avoid harassment; dress how they like at home but pass as cis as work. For many trans subjects, these tactics of survival are common: as they navigate through systems and worlds that do not understand their identities, or demand that their transition be well-documented, cohesive, and binary, it is easier and more advantageous to lie, borrow, steal, or deceive, if only temporarily. Rather than allowing the state or medical professionals decide what is allowed or appropriate, trans subjects can manipulate these processes, sharing information with one another or taking advantage of the relative naivete about trans people to do so.

While some trans subjects are able to achieve the bodies and conditions that they desire through official channels or small manipulations of truth, for others, fraud is the only mechanism to achieve gender self-determination. Prior criminalization, unstable living conditions, financial barriers, or the inability to access regular medical care puts some trans subjects into positions where identity theft and check fraud are feasible and lucrative options. This chapter presents stories of these types of fraudulent acts, examining the productive potential of financial and identity fraud committed by trans subjects. By committing identity theft, check fraud, or credit card fraud, the trans and gender non-conforming figures that I analyze temporarily seized opportunities for gendered freedom, but their freedom was fleeting, tied up in their subsequent criminalization. As Eric Stanley describes it, “gender self-determination at its most basic suggests that we collectively work to create the most space for people to express whatever genders they choose at any given moment” (2011: 5). I use Stanley’s definition of gender self-determination as a starting point but expand to think about it as more than just about gender expression but a greater freedom from the violences associated with racialized and gendered modes of surveillance and punishment, especially the carceral state and logics of racialized capitalism. I imagine gender self-determination as more than just the ability to be affirmed in one’s chosen gender but also in seeking freedom in a multitude of ways, legal and illicit, to live a desired life.

Accusations of unintentional (chapters two and three) or ontological (chapter one) fraudulence, such as those instances documented in the previous chapters, demonstrate the ways that cis-normativity is embedded in laws and policies, producing a systemic

divestment away from trans life. This chapter serves as a counter to what could be an otherwise normalizing, inclusionary corrective to the problems raised in this dissertation. While laws and policies should be altered to make life easier for trans subjects, not all trans and gender non-conforming people can be accommodated by inclusionary tactics to make their name and gender changes legible. For many trans and gender non-conforming people, inclusion into information systems and legibility in the law may not alleviate the multitude of ways that they are devalued and marginalized. In other words, examining instances of intentional trans fraudulence forces a different type of response to everyday fraud accusations lodged at trans and gender non-conforming people: some trans people *are* fraudulent. Fraud might be a productive mechanism for fashioning a life for subjects who live at the margins.

Further, imagining identity theft as a technology of gender self-determination puts forth a new way of thinking about the production of trans subjectivities—through subversive practices, rather than through formal medical or legal channels. In this way, stealing gender self-determination mirrors some of the mechanisms by which trans identities are produced through data, as documented in chapters two and three. By eliding the formal mechanisms for forcing identity changes – in courtrooms and examination rooms—trans fraudsters temporarily produce the means to new identities by seizing the excesses of massive and insecure financial data. In chapter three, I demonstrated how credit reporting bureaus create legible financial identities through the consumer data economy, authorizing subjects who may or may not legally exist in credit files. Credit bureaus and creditors themselves are less concerned with the authenticity of the data they

collect and report, as errors in the data increases a consumer's riskiness, and subsequently, increases the price of credit for that consumer. The massive circulation of consumer data aids financial institutions in the processes of extending credit offers to consumers and the pervasiveness of errors generates increased profits for these industries, as consumers have few other choices but to accept the credit rates they are offered based on their credit scores. This drive for profit also enables identity theft. Fraudsters are granted an opportunity to take on new identities to obtain credit cards, rental properties, phone contracts, and the like because financial institutions have made "identity" a commodity that is capable of being stolen through assembled pieces of data. The fact that an identity can be stolen is only possible due to the predatory and fragmented nature of racialized capitalism, where personal data circulates freely and insecurely to generate profits for financial industries. Identity thieves glean the excesses of these practices, and the multiple forms of vulnerability that financial industries produce, for temporary gains. My intervention in this chapter is to think about identity theft as a form of gender self-determination that mirrors some of the mechanisms of financialization. How might stealing enable greater freedom for trans subjects? Further, I ask: If we understand gender self-determination as something that is fleeting and always tied to carceral and capitalist unfreedoms, how does that change the way trans studies must understand gendering and racialized technologies of self-making?

While chapters one through three demonstrated that trans and gender non-conforming people are perceived as fraudulent even when they followed the rules, that changing their bodies and identities precludes them from dominant understandings of

honesty, this chapter argues for an expansive disruption of the moralizing dimensions of fraud accusations. Indeed, while some of the figures in this chapter turn to crime as a result of institutional neglect or because they did not have the time, money, or other resources to challenge discriminatory denials detailed elsewhere in the dissertation, others saw the multiplicity of their identities as an opportunity for exploitation and gender self-determination.

### *Methods*

This chapter examines stories of trans fraudulence, drawn from an archive of trans identity theft that I assembled out of dominant US and British news sources, British tabloid papers, and popular media.<sup>61</sup> I first came across a story about a trans con artist in late 2013. Jean Morrow, whose case I analyze in this chapter, was a white British trans woman who was accused of impersonating her own sister in order to commit massive stock and real estate fraud. Media coverage of Morrow described her ability to shift her gender presentation as central to her deceptions. This story captured my attention because it seemed related to but distinct from other stories of trans fraudulence in media that I was aware of concerned alleged sexual fraud, as I describe in chapter one, about a trans person who allegedly deceives a sexual partner about their gendered history. However, instances of trans fraudulence seemed to be a rhetorical strawman, held up to make trans name changes more difficult and to villainize trans people as particularly and

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<sup>61</sup> British tabloids, unlike U.S. tabloids, tend to report legitimate stories, just in a highly-sensationalized manner. While US and Canadian tabloid stories can be entirely fabricated, British tabloid papers by and large do not make up stories, however they do focus intently on scandals, particularly those dealing with morality, sex, and politics.

ontologically deceptive. Jean Morrow’s story confirmed what the general public fears about trans name changes: that they could enable trans people to elude their pasts and deceive others about their “true” identity. This story made me wonder about other documented instances of trans fraudulence. I began collecting other stories of trans identity theft, conducting searches of newspapers and periodicals and paying attention to themes about trans fraudulence that appeared in dominant media. These stories were not particularly common: I discovered ten documented cases of trans identity or check fraud in media over the past twenty years in the US and UK.<sup>62</sup> However, the ways these fraudsters are depicted – as particularly deceptive due to their gender transgressions – and the insights they provide about the texture of trans life, are significant. They both confirm the findings that I’ve detailed thus far in this dissertation, about the ways that gender shiftiness threatens how we make sense of identity and risk prevention, and demonstrate the ready association between gender non-conformity and fraudulence. In particular, the spectacle around these stories, despite their relative insignificance, illustrates public curiosity about the capacities of gender non-conforming subjects to disrupt, steal, and confuse. These stories illustrate how criminalized trans subjects were able to steal pieces of their freedom, even if only temporarily. It is also significant to note that it is likely that other trans and gender non-conforming people commit identity theft without being caught. In this way, we can imagine stealing the way to gender self-determination as an act that may not result in incarceration; as illicit but not necessarily tied to unfreedom.

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<sup>62</sup> Like chapter one, this chapter draws upon stories from the US and UK. In both countries, narratives of trans fraudulence are present. The congruences here suggest the potential for a future comparative study.

The news sources I draw from primarily consist of local newspaper stories about criminal allegations. Crime reporting overwhelmingly uses court records and interviews with police officers to author stories, excluding or minimizing the narratives of the accused or convicted in their own terms (Mogul, Ritchie, and Whitlock 2011: 25). Stories about trans and gender non-conforming people in the news, and particularly in tabloids, are shaped by cultural values about gender and sexuality. Isabel Molina Guzmán explains, “news media draw upon routine professional practices and socially available and widely circulated narratives to tell their stories [...] stories that perform beyond the function of information” (2005: 182). The stories tend to pathologize trans fraudsters, emphasizing their gender non-conformity as a factor in the crime. They frequently misgender them. One story about a trans woman that I analyze refers to her as a “transsexual man,” and uses male pronouns with her legal (male) name. Because these stories are written from a perspective which privileges the voices of law enforcement and the cis gaze, I read this archive “against the grain,” contextualizing what often falls flat or is absent from these narratives.

In the final section, I contrast news stories with a popular depiction of trans fraudulence, portrayed in the Netflix original series, *Orange is the New Black* through Sophia Buset’s storyline. Sophia was incarcerated for committing identity and credit card fraud in order to pay for her gender affirmation surgery. Her story, arguably one of the most complex depictions of a black trans feminine character in a popular television series, demonstrates key interdependencies of fraudulence and gender self-determination.

I read one episode of the series, where Sophia's backstory is featured, to examine how Sophia's character is actualized through criminal acts.

I have changed the names of all of the accused fraudsters in order to avoid subsequent, re-criminalizing harm to them through my writing. The names of all detectives, judges, and other public officials are unchanged.

### *Reclaiming Criminal Acts*

Fraud accusations lodged at trans people declare that trans bodies and identities are suspicious, deviant and abnormal. However, as the previous chapters have shown, refuting fraud accusations can be a nearly impossible task, particularly for racialized trans people. If fraudulence cannot be refuted, trans people are left with few options: work to change the systems that exclude them, attempt to fly under the radar, or exploit these systems by breaking the rules. The laws and policies that make trans identities and bodies illegible, impoverish and marginalize them, push many trans and gender non-conforming people into situations where identity theft seems feasible, if not one of their only options to survive.

By committing crimes in order to survive, trans fraudsters are cast as immoral subjects who challenge social norms that equate being law-abiding with being a good and trustworthy subject. Criminal acts, particularly those associated with stealing (identities, cash, or assets) from unsuspecting others, mark trans fraudsters as undeserving, immoral subjects. Law-breaking is a particularly ripe site of exploration for examining how social value is allocated in US society, as crime determines the boundaries of what is condoned, often in ways that re-solidify racialized, gendered, and classed forms of power. Critical

race theory articulates how social, political, and economic relations of racialized power are codified into law, making the perpetuation of inequities appear neutral, objective, and rational by the virtue that they are legal.<sup>63</sup> The law is authoritative in this way: a complex set of rules and social norms that we are expected to follow to avoid punishment, but also as a moral obligation to produce a particular type of society, one that is founded upon racialized principles that privilege capitalist profit. As Joey Mogul, Andrea Ritchie, and Kay Whitlock state, “The very definition of crime [...] often has more to do with preservation of existing social orders than with the safety of the larger populace” (2011: x). The racialized enforcement of the law and the moral obligation to avoid law-breaking together reinforce a racialized hierarchy of morality, wherein criminals, especially those of color, are precluded from being understood as moral or deserving people. As Lisa Cacho explains, “Because the law is presumed to be both ethical and irreproachable, the act of law-breaking (legitimate or not) determines whether a person is moral or immoral” (2012: 4). When laws are created and enforced in ways that reify racialized, gendered, classed, and economic oppression, marginalized subjects who break these laws are considered unethical, immoral, and burdensome to society.

Though marginalized formally through law and social practices, some criminalized, racialized, and otherwise marginalized people have attempted to use capitalist uplift—pulling oneself up by their bootstraps—as a strategy for recuperating their own value as proper subjects by contributing positively to society. This tactic reproduces the marginalization of subjects who are unable to choose to be non-criminals,

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<sup>63</sup> See: Crenshaw et al. 1995.

those for whom law-breaking is required to survive, or for whom intensive policing means that any minor infraction will result in criminalization. Indeed, Lisa Cacho argues that “repudiating criminality and recuperating social value so often reproduces the problems we mean to solve” (ibid.: 13). In other words, when trans activists and the mainstream trans civil rights movement fight the devaluation of trans people by asserting their social value and rejecting truly fraudulent, criminal or deviant trans subjects, they reproduce the hierarchy that equates gender non-conformity with fraudulence. Many trans subjects have been encouraged to prove their worth as socially-acceptable subjects through their productivity in capitalist and neoliberal terms, rejecting any interrogation of the relationship between racialized capitalist exploitation and the oppressive regime of binary sex and cis-normativity. Sexologists from the late 19<sup>th</sup> through the mid-20<sup>th</sup> centuries believed that the desire to transition was strongly linked to a person’s propensity for narcissism and destructiveness. Because trans people were so intently focused on their gender anguish, they were un-productive workers and family members. In his discussion of sexologist David Cauldwell’s writings about a trans male patient named Earl, Dan Irving explains that gender dysphoria was understood to cause broader social consequences:

he understood Earl’s potential to cultivate his talents and contribute to society as thwarted due to his fixation on expressing his masculine identity. Indeed, Cauldwell asserted that such fixations would most likely result in Earl engaging in *criminal activity* (2013: 18, emphasis mine).

Other medical professionals during this time echoed this sentiment, describing trans people as “narcissistic, destructive, and self-loathing”; these qualities not only impacted trans people themselves but threatened to erode society (ibid.: 22). Trans people would

end up becoming burdens of the state, incarcerated or committed to a state hospital, due to their frivolous and selfish obsession with gender. Cauldwell understood the connection between gender non-conformity and criminality to be detrimental, and indeed, news and popular media representations of trans fraudsters that populate this chapter reflect Cauldwell's position. Trans fraudsters are depicted as narcissistic; their "fixations" on their gender a detriment to their ability to work or stay out of trouble. Many end up in jail. According to these narratives, breaking the law, even if it is in the service of alleviating "gender anguish" is irreprehensible due to the harm it causes to its victims: those who had their identities stolen, family who must work harder to supplement the losses caused by the trans subject's narcissism.

Scholarship and advocacy contesting the narrative of the narcissistic, criminal trans subject has countered Cauldwell's pathologizing claims, and instead insisted that trans people are valued contributors to society: they have families, hold jobs, and achieve success if supported by their communities and the medical profession.<sup>64</sup> This strategy values trans subjects only if they are normatively productive. Rather than encourage trans fraudsters to become productive workers and consumers, reclaiming their criminal acts, as I do in this chapter, critically examines how identity theft might be a tool to disrupt deeply unjust distributions of money, access, safety, and power in the US. Indeed, perhaps Cauldwell's assessment is true: trans people's "obsessions" with their gender undermine their abilities to contribute to the reproduction of cis-normativity (described

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<sup>64</sup> This has been the strategy of mainstream trans and LGBT organizations, highlighting representations of LGBT subjects as family-oriented, employed, monogamous, and gender-normative.

by Cauldwell simply as “society”). Though intended as a pathology, Cauldwell’s assessment might be repurposed as an anti-capitalist and anti-racist strategy for gender self-determination. Trans refusals to contribute to a society that negates their existence creates space for alternative forms of living. When trans advocates refute Cauldwell’s characterization that trans subjects are narcissistic and unproductive, they potentially also elide the potential inherent in being unproductive, siphoning value away from capitalist reproduction. Embracing trans propensity for “criminal activity” admits that trans people can be duplicitous, selfish, and destructive, and also honors the ways that these traits can produce profound critiques of capitalism and oppression. Indeed, though narrated as narcissism, trans resistance to capitalist production and the propensity to steal might otherwise be construed as a political act that exceeds the individual. Trans narcissism, or “obsessions” with gender, might be better understood as trans people decentering cis imperatives, refusing to assimilate in ways that creates a capacious space for gender divergence and greater freedoms, not through neoliberal self-making but by challenging capitalist power in small but subversive ways. Trans “narcissism” may make space for collective trans resistance to the violences of cisnormativity and racial capitalism.

None of the figures in this chapter who actively commit fraud articulate their crimes as an explicit political statement about the violence of capitalism, at least in the narratives available to us in newspaper stories, or even in more sympathetic and humanized accounts on *Orange is the New Black*. Their actions occur within their specific contexts and for a range of reasons, nearly all of them personal. They might be

described as what Cathy Cohen calls deviant acts, transgressive moments that result in a realignment of power relations, at least temporarily. Cohen explains:

I hypothesize that most acts labeled deviant or even defiant of power are not attempts to sway fundamentally the distribution of power in the country or even permanently change the allocation of power among the individuals involved in an interaction. Instead, these acts, decisions, or behaviors are more often attempts to create greater autonomy over one's life, to pursue desire, or to make the best of very limited life options (2004: 40).

The deeply personal, what Cauldwell might call selfish, effects of identity theft enable trans and gender non-conforming subjects to fashion their own identities and gain access to resources through illicit means. Not all deviance or intentional fraudulence is intended to “sway fundamentally the distribution of power in this country,” but they do open up spaces of possibility for reimagining what gender self-determination might look as a challenge to racialized capitalism and cisnormativity. Deviant acts create moments of subversion, even if they are only intended to generate a little cash in the short-term. When trans subjects use their pieces of their identities that have been marginalized in order to steal, they refuse an imperative to assimilate to a binary, linear gender transition or to moral imperatives about being “good” subjects. The stories that I move to describe in the next section detail how trans and gender non-conforming people's actions capitalize upon fragmented and chaotic processes of capitalism and policing to create moments or sometimes lifetimes of ease on their own terms. These acts do not fundamentally disrupt capitalism or the carceral state, but they do take advantage of these systems of power in meaningful ways, challenging us to rethink how their criminal acts might be legitimate means of gender self-determination, fashioned not through visits with psychiatrists and physicians, but forged documents, bank accounts, and credit cards.

*“The Biggest Check Fraud Artist in Florida”*

In the fall of 1997, Brandon Scott was accused of orchestrating a “transsexual fraud ring” in the Tampa Bay area, recruiting trans women to write and cash bad checks. The detective responsible for tracking Scott down, Pat Hall, explained, “The transsexuals used their shifting masculine and feminine appearances to assume both female and male identities to fraudulently open bank accounts and cash checks” (Herdy 1999). According to the *St. Petersburg Times* story detailing this fraud spree, Scott allegedly was looking to buy a house in 1997 and began counterfeiting checks in order to collect \$17,000 towards the down payment and purchase some home furnishings. Scott and others involved would steal driver’s licenses, state IDs, and checkbooks from Jacksonville area nightclubs, the University of South Florida and from cars all across Florida. Hall noted that some of their victims spanned as far as from Texas.<sup>65</sup> They would then use the IDs to set up illegitimate bank accounts and the checks to purchase big-ticket items. Stealing from both men and women, the trans fraudsters are painted as particularly dangerous in their ability to disguise their identities and freely shift between genders. They gained temporary access to money that they could not otherwise legitimately earn because of their gender non-conformity by switching their gender presentations when it was advantageous to do so. The duality of the fraudster’s identities overwhelmed the judge ruling on Scott’s case. Indeed, shifting genders signaled an overall shiftiness. Upon hearing from witnesses who

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<sup>65</sup> The term “victim” is loaded with moralizing implications. I use it for a few reasons. First, it is concise. There are other ways to describe “victims,” such as: people who have been defrauded, or targets of identity theft, etc., but these lengthy phrases are cumbersome and awkward in repetitive use. Second, in using the term but divorcing it from its implications—of innocence and interpersonal harm—I attempt to chip away at some of its power to denote these meanings.

described defendants using both male and female names, Judge Merryday declared, “Let’s just refer to them by their legal name to cut down on this confusion” (ibid.). Despite the headline which suggests that all fraudsters were trans, Scott is described as “gay, though not a transsexual” (ibid.), marking a distinction between Scott as the alleged ringleader of the operation and the trans women who worked the fraud ring.<sup>66</sup> Scott was sentenced to six years in jail, while the women who worked for him were doled out shorter, two-year sentences.

Detective Hall identified some motivations for crime involvement, citing structural barriers to stable employment and access to expensive medical care as factors that could have motivated the trans women to participate in fraudulent activity. Hall explained:

When they fill out a job application, they look like women but are functioning males [...] Some have been terminated (from regular jobs) for falsifying an application [...] because they claim to be women but are really men. Many are supporting drug habits [...] Another reason is to support their need for female hormones without insurance [...] and also surgical procedures they want done (ibid.).

Hall’s assessment of the reasons why trans women turn to crime highlights the ways that trans people are punished for their perceived fraudulence. From being fired from a job for identifying as female to funding their transition-related medical care without access to health insurance coverage, the trans women involved in this Tampa Bay area fraud

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<sup>66</sup> As there is no clear indication of how Scott identified, I use male pronouns to refer to him. On the other hand, another major player in this scheme is a person named Veronica California, who is described as using an “alias,” not to pass checks but in her daily life. I use female pronouns for California, as I am more certain that she identified as a trans woman.

network drew strength from a part of their identities that was already criminalized and marginalized by society.

Some of the participants may have been motivated by these structural barriers, but also by seeking to escape the effects of prior criminalization. The *St. Petersburg Times* notes that some of the women were recruited in jail. Veronica California, a black trans woman involved in the check fraud network, allegedly offered to bail out Stacy Carpenter in exchange for her participation in the fraud ring. According another investigator on this case, recruiting in jails was common. Detective Bask explained, “In exchange for being bailed out, the recruits would be matched with stolen IDs to which they bore a resemblance” (Herdy 1997). Scott posted the money necessary to release Carpenter, furnished her with a fake ID and some checks, and explained that she was required to pay back her debt to Scott through check forgery (Herdy 1999). Carpenter was caught attempting pass a bad check at a grocery store, which triggered a warrant to search her residence and for her arrest after police discovered stolen IDs, checkbooks, computers, and a car they believed was purchased with bad checks. Carpenter informed police about Scott and California in exchange for a reduced sentence. In Carpenter’s case, participation in the fraud ring enabled her some flexibility as she awaited trial, until she was caught passing a bad check at a grocery store and re-incarcerated. Fraud enabled Carpenter’s gender self-determination in unique ways, allowing her temporary mobility, such as the ability to go to the grocery store while out on bail. Gender self-determination here was not necessarily about Carpenter changing her name or taking feminizing hormones but moving through space in a freer way. The freedom that identity theft

allowed Carpenter was bound on either end by incarceration: she was invited to participate in the check fraud ring due to her incarceration and some connection that the ring had to inmate at this jail. Her “freedom” was tied to an obligation to pay back her bail bond to Scott, but with it, she was able to escape the jail cell, until she was caught breaking the law again. Her knowledge of the fraud ring also became an asset, as she accepted a plea deal in exchange for turning Scott and his ring in. Fraud granted her freedom of mobility and from the violence of the jail cell and its enforced sex-segregation, at least temporarily.

Even when Detective Hall remarked upon some of the motivations that led trans women to commit check fraud—to fund their medical transitions—they are framed as victimizing more deserving subjects. Scott was described as living a “lavish” lifestyle despite not holding a job: owning a large home, a Mercedes, designer clothing, leather furniture, electronics, and satellite television (*ibid.*); though his associates are described by detectives as living “transient” lifestyles, perhaps profiting less from this scheme than Scott (Herdy 1999). Meanwhile, the victims of the fraud—namely, University students and local business owners—were “unfortunate,” experiencing extensive loss from the operation. While Detective Hall pointed to some of the reasons why trans women, especially those who already have a criminal record, might get involved in a check fraud scheme, the fraudsters are not offered much sympathy. Instead, Scott and his “ring” are portrayed as menacing, conniving, and particularly deceptive, robbing the good, productive citizens of Florida (students and business owners) in order to fund their perverse lifestyles. Scott is described as “the biggest check fraud artist in Florida,” with

his network of gender-bending, elusive underlings. Detective Hall estimated that “close to a thousand transsexuals” in Florida are involved in criminal activity, from check fraud to robbery, explaining that “just about every police agency in the [Tampa] bay area is working a major case involving transsexuals” (ibid.).<sup>67</sup> Hall’s suggestion that “close to a thousand” trans people in Florida are involved in criminal activity evokes a panic about gender non-conforming criminal bodies and the lurking presence of deceptive individuals who can easily pass between genders in order to defraud. While Scott could be portrayed as exploiting those who allegedly worked for him—as vulnerable and exploited subjects who are trying to survive—the trans women involved are also framed as duplicitous. Indeed, all racialized, gender non-conforming bodies depicted as undeserving perpetrators, despite their differing levels of malice and access to the stolen funds. Barred from stable employment and health care due to policies that mark trans subjects as suspicious and excessive, they steal to pay for basic necessities, or in the case of Scott, to live comfortably.

What was life in Florida like for Veronica California, Brandon Scott and their group of trans, formerly incarcerated fraudsters? Just two years before their arrests, Polk County passed an ordinance that included sexual orientation in its anti-discrimination law. In May 1995, over 700 angry Tampa residents attending a public hearing demanding the ordinance be overturned, proclaiming that Tampa “thwarted the will of the people” by

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<sup>67</sup> While there are few reliable estimates as to how many transgender people lived in Florida during this time period (nor a good consensus on how to count transgender people at all), the Williams Instituted estimated that in 2016, 100,300 transgender people lived in Florida, making it the state with the 6<sup>th</sup> largest trans population. Perhaps close to a thousand of them were involved in crime, but Detective Hall’s claim is unsubstantiated.

passing it (Terl 2000: 851). Up until 1990, queer inmates in the Polk County Jail were required to wear pink bracelets and were segregated from other inmates allegedly for their own protection (ibid.). Legislatively, gay and lesbian rights in Florida during this time period focused intently on criminalizing consensual gay sex, banning gays and lesbians from adopting children, and challenging anti-discrimination protection for sexual orientation. While these issues could be portrayed as mainstream and only affecting privileged people, the criminalization of gay sex significantly impacts low-income people who are subject to greater forms of surveillance and scrutiny over their sexual practices (Hanhardt 2008; Shah 2011, 2001; Somerville 2005). Further, these laws and debate about protection for gay and lesbian people signals that the climate in Florida was not good even for privileged gays and lesbians, and likely worse for black trans women.

As black, feminine and gender non-conforming people in south Florida in the 1990s, Scott and California were already marked as suspicious and deviant before their arrests for check fraud. Indeed, their bodies signaled multiple forms of risk, threatening disease transmission, sexual predation, and physical violence. Joey Mogul, Andrea Ritchie and Kay Whitlock (2011) explain that the archetype of the queer criminal intruder, inspired by stories of black lesbian gangs indiscriminately harassing men, “fuses demonizing images of young gays who congregate in major urban areas—often represented as ‘hustlers’—with an expansion of longstanding criminal representations of youth of color as violent, hypersexual, and predatory” (41). Headlines that describe their criminal activities as a “transsexual fraud ring” evoke images of gang activity, organized crime, intentional, and potentially violent fraudulent activity. This language taps into the

queer criminal intruder archetype that mark groups of queers of color as dangerous. Scott's lawyer denied that he was overseeing a grand scale operation, declaring that the accused each acted on their own, however this narrative of the "transsexual fraud ring" remained intact, perhaps because he did orchestrate a network of trans fraudsters, but also perhaps because this framing is readily accessible and exciting to newspaper readers due to their associations between gender non-conformity, queerness, femininity, blackness, and criminality. Despite the motives for these fraudulent acts, the "transsexual fraud ring" is framed as an uncontained economic and sexual threat.

Their capability to pass as both men and women, compounded by the threat of criminality that their race signifies, signals a risk associated with identification. The ability to change gender presentations threatens to make a subject unidentifiable. Indeed, anxieties over gender transition are rooted in this fear that a trans person could deceive the general public about their "true" identity. Trans people who actively shift gender presentations in order to deceive confirm these fears, demonstrating how trans bodies challenge norms about identification.

The threat of expansive trans crime ring, in both their numbers and their geographic range, play into a racialized and gendered epistemology about criminality. Indeed, these precise fears, of unknown and mobile racialized, gender transgressive bodies—more specifically, white anxieties about "out of place" black subjects—formed the foundation of modern policing (Parenti 2004; Browne 2010; Kelley 2000; Hadden 2001). The earliest forms of modern policing in the US, local slave patrols, forged the foundation of racialized surveillant systems, seeking to identify and track enslaved people

deemed out of place. Christian Parenti writes:

denying the slaves *identity* made their physical identification more complicated. At one level planters sought to merge slaves into a single category of subhuman, passive ‘Blackness.’ But since slaves could escape, plot, steal, set fires, travel between plantations without permission, and even kill whites, the master class was compelled to create systems of identification and routine surveillance (2004: 14).

Surveillance over enslaved people was central to the maintenance of white supremacy.

As Parenti states, surveillance was not only a mechanism through which enslaved people could be punished for being out of place, but also a protective measure for white people against the threats of black freedom of mobility. By creating systems of identification and surveillance—passes, patrollers, and militia—these threats could be contained. The way that the trans fraud ring is described mirrors anxieties about black mobility, or about black people being “out of place.”<sup>68</sup> Part of an expansive, uncontrolled and uncontainable network of unidentifiable, racialized, criminalized, gender non-conforming bodies, these trans fraudsters produced an epistemic panic in Tampa area residents about race, identity authentication, and gender transgression.

Comparing Scott’s crimes to a white British trans woman in her seventies reveals the racialized and classed stratifications in punishment for fraud. Jean Morrow was most recently sentenced to five years’ imprisonment for massive fraud. Morrow, along with her two associates, a married couple in their fifties, sold stocks for a non-existent

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<sup>68</sup> These narratives are pervasive and highly evident in recent high-profile instances of white people calling the police on black people for occupying space in what they perceive to be the wrong way, such as the story of the Yale graduate student who called the police on a black graduate student sleeping in a common area of their residence building, or the Stanford professor (“BBQ Becky”) who called the police on a black family for grilling at a public park in Oakland.

company and collected fees for non-existent timeshare properties. These crimes were just the latest of a lifetime of fraudulent schemes for Morrow. She had served three years in jail after a 2000 arrest for a fraudulent stock scheme (Bains 2013). In 2012, she was accused of deception for taking out credit cards and loans under both male and female names. She avoided jail time, despite her substantial criminal record, because her lawyer convinced that judge that she has “grown up” and, importantly, that her gender identity put her at risk of harassment in prison (Reynolds 2012). For this 2012 offense, Morrow was sentenced to fifteen months of supervision, even though she had previously fled to Spain to avoid trial and had 23 counts of deception in her criminal record. While Scott’s black, trans crime ring is portrayed as out of control, expansive, and in need of containment, Morrow’s whiteness positions her as less of a threat. Describing a white woman in her seventies as having “grown-up” indicates immense privilege, wherein white adults are framed as innocent and naïve children and on the other hand, children of color are positioned as malicious and threatening subjects who should be tried as adults. Whereas black trans feminine people who can pass as both male and female elude identification by white police officers, Morrow’s whiteness makes her identifiable to white police officers and grants her empathy and understanding from judges and juries. Though she works with others, she is not portrayed as influencing others in the same way that Scott is shown to recruit gender non-conforming fraudsters. There is a virality to black trans feminine crime that does not appear in narratives about Morrow: it spreads easily and threatens innocent people. The discourse about her crimes reveals the specific ways that white trans people are represented as fraudulent but detectable. Morrow’s

whiteness enables her trans deceptions to appear less threatening. Her crimes are familiar to whiteness: they are white-collar, dealing in stocks, timeshares, and securities. Her trans identity is exposed, not feared.

Morrow also used her ability to pass as both male and female to commit some of her later frauds. According to an article about the 2000 trial entitled, “The Conman Who Was His Own ‘Sister,’” Morrow fooled detectives into believing that a brother and sister duo were behind a sale of fraudulent bonds totaling 100 million USD, as Morrow took on both male and female identities in the process of the solicitation. The author declared, “A transsexual fraudster was so convincing as a woman that detectives failed to realise his true gender even after they arrested him. Gene Morrow, 60 and balding, became Jean Morrow as he [sic] attempted a \$100 million fraud” (Johnstone 2000). In suggesting this smooth transition, from “60 and balding” to a woman capable of stealing \$100 million from wealth investors, the author reminds readers of who Morrow “really” is: a balding, aging man; a man with failed masculinity (as evidenced by the gender transition) and who subsequently failed even at completing a lucrative scam. Further, in misgendering Morrow, reporters and the police demonstrate their ability to identify her, linking her to her prior identity. Even when she is understood to be transgender (as evidenced by the judge’s assessment that sending her to a men’s prison would subject her to harassment), Morrow’s transition is partially framed as a deception. Indeed, she is not accused of deceiving others of being trans, but of being a woman. Julia Serano (2013) argues that trans women are generally represented in dominant media as either a “deceptive transsexual” or “pathetic transsexual.” The “deceptive” trans woman passes as a

cisgender woman, fooling the general public and particularly male sexual partners. Serano explains, “they are positioned as ‘fake’ women, and their ‘secret’ trans status is revealed in a dramatic moment of ‘truth.’ At this moment, the ‘deceiver’s’ appearance (her femaleness) is reduced to mere illusion, and her secret (maleness) becomes the real identity” (2013: 227). Indeed, the author described Morrow as “so convincing as a woman” that she tricked detectives about her “true gender” even after her arrest (Johnstone 2000: n.p.). Her true gender is understood as male and her female presentation as a disguise she uses in order to deceive. Further, her feminine gender is portrayed as a costume that she puts on in order to avoid detection and multiply the number of identities she can assume in her pursuit of cash and luxury goods.

While Serano’s conceptions of the deceptive and pathetic transsexual archetypes are used to describe trans women who are not intentionally deceiving others but are rather accused of inappropriately assuming female identities, the deceptive transsexual archetype applies to Morrow who did use both male and female gender presentations to intentionally deceive. In numerous articles, “Gene” is revealed to be Jean’s true identity. Her financial deceptions through her fraud schemes are mapped onto her gender deceptions. Though she did take advantage of passing as both male and female to commit some fraud, she had reportedly been committing similar crimes for the past 25 years in her former male identity. Other than obtaining credit and loans in both male and female names, Morrow’s fraud had little to do with her gender and yet her trans identity took priority in news coverage of her arrest and sentencing. Because this narrative of trans fraudulence is so strong, the British tabloids, as well as some mainstream newspapers,

seized the opportunity to report on the ways her gender allegedly enabled her fraudulent acts. Evoking Morrow's former male identity and printing photos of her as "Gene" works to erode Morrow's identity as a woman, "revealing" the truth about her gender. While Jean may be capable of deceiving detectives and the victims of her scams, the press can punish her by drawing her trans status into focus. Further, Gene is depicted as "pathetic": a balding, aging, thieving liar who is not properly masculine. Printing photos of Morrow as Jean and Gene, side-by-side, as many papers did, removes Morrow's power to further deceive by publicly linking Jean to Gene and attempts to make a mockery of her identity as a woman, marking it as excessive and put on in the service of her crimes.

The "before and after" pictures of Gene and Jean are a familiar trope in media reporting on trans people. Much like photos which illustrate massive weight loss found in women's or fitness magazines, trans before and after photos sensationalize the act of transition and attempt to draw attention to the falsity of a trans person's gender presentation. As Serano remarks:

the media often dwells on the specifics of the feminization process, showing trans women putting on their feminine exteriors [...] it is their intent to capture trans women *in the act* of putting on lipstick, dresses and high heels, thereby giving the audience the impression that the trans woman's femaleness is an artificial mask or costume (2013: 229).

By showing audiences the "feminization process," from getting dressed to displaying "before and after" photos of a trans person, media sources reinforce the notion that trans women are artificial women, donning a "mask or costume" to temporarily and incompletely become women. In this way, their female presentations are marked as excessive: too feminine, too made-up, and over the top. The connection between the

artificiality and excessiveness of trans femininity seeps into the ways Morrow's criminality is described.

An article in *The Mirror* opened by declaring, "These are the two faces of an elderly transsexual who stole thousands of pounds to fund a lavish lifestyle—by posing as a dad and his daughter" (Stretch 2012). Indeed, Morrow's crimes are described as "lavish" and excessive, mirroring the judgements about her gender transition. As one reporter explained, she "posed as both male and female acquaintances, taking out loans and credit cards in their names. Morrow used the money to fund a lavish lifestyle and was travelling in a chauffeur-driven Bentley" (Bains 2013). Posing as both her (male) ex-business partner and his daughter, Morrow acquired a £15,000 loan and a department store credit card. During the search of her home, police found receipts for jewelry, spa visits, and expensive vacations, allegedly paid for with funds from this scam (Reynolds 2012). Both Morrow and Scott, the check fraudster, were depicted as using the money they scammed from others to fund their "lavish lifestyles." Lavish is "sumptuously rich, elaborate or luxurious" (Oxford English Dictionary 2017). Revealing the "two faces of an elderly transsexual" constitutes a double undoing: revealing the fraud (the details of the crime) and revealing the fraudster's "true" identity. Underneath statements admonishing the lavish lifestyles of trans fraudsters lays a message: fraudsters do not deserve to live lavishly and nor do trans women, who live their genders excessively. This language reinforces a dichotomy between the deserving and undeserving, which frames Morrow not only as a fraud but as excessively immoral in both her greed for money and the lifestyle—expensive, elaborate, and female—that it funded.

Morrow was also accused of cashing her deceased sister's benefits checks and holding passports in female names. These actions signal a number of possible motivations: the desire to possess identification documents that reflect a female identity, cash scarcity, or perhaps greed. Morrow might have had a difficult time holding down a job through her gender transition, or obtaining a name change with her extensive criminal record. While Morrow's crimes could be construed as selfish and greedy, or perhaps as evidence of the consequences of trans narcissism, they also offer a different way to think about the true source of exploitation. Her attempts at living a comfortable life are framed as immoral, living well off of trickery of others, but left unexamined are the conditions which both made financial fraud a viable option for Morrow: loose financial regulations and the fragmented system of identification which bolster exploitative capitalist activity.

While some trans and gender non-conforming people live lucratively through theft, others commit identity theft primarily to obtain gender-affirming identification documents. In 2005, a black trans woman named Merlene Potts used Karen Lewis's name and social security number to obtain a driver's license, a car loan, a rental apartment, and Internet service. An *Inland Valley Daily Bulletin* (2005) article noted that Potts purchased cosmetics with checks in Lewis's name, highlighting the association between criminality and gender transgression. This was not Potts's first offense. According to the Deputy Attorney General, Reza Sadeghi, Potts repeatedly commits identity theft between bouts of incarceration: "Every time he's [sic] been out of prison he's [sic] stolen someone else's identity or stolen their credit" (Leveque 2005). Potts is painted as a repeat offender, a person who causes long-term harm and does not change

her behavior. Potts is referred to as a “transsexual man” in the *Inland Valley Daily Bulletin* article and by a male name, suggesting that she has not taken steps to legally change her name. Her on-going acts of identity theft may be her attempts to possess female identification documents: enabling her to rent an apartment, buy a car, and establish Internet service as a woman. Each of these tasks are difficult for someone like Potts, a black trans woman with a criminal record, making identity theft and check fraud perhaps two of her only viable options to live comfortably after being released from prison.

Lewis lamented that Potts’s eight-year sentence was nowhere near long enough, stating that she will be dealing with the effects of the identity theft well after Potts is released from jail. Identity theft impacts millions of people in the U.S. each year, and indeed, the effects of identity theft are long lasting. Representative Sam Johnson (R-TX) described identity theft as a devastating crime, explaining:

Victims spend years having to prove who they are, while monitoring credit reports, fending off collection agencies or the IRS for charges they never made or wages they never earned. Some are picked up by law enforcement by crimes committed by the ID theft using their name. Americans have every reason to be concerned (112<sup>th</sup> Congress 2011).

Due to its ubiquity, identity theft is understood as an issue that impacts a broad swath of people, namely citizens, who share a universal interest in preventing it. Identity theft victims can spend years contesting fraudulent charges and removing false addresses or aliases from their credit reports. It should come as no surprise that the problems identity theft victims face also plague trans people who legally change their names: long petition periods, loss of control over one’s identification data, the inability to make one’s legal

identity legible, hours spent on the phone contesting information, and piles of documented evidence of one's identity history that must be presented over and over again.

Identity theft relies primarily on the theft of a social security number (SSN), along with its corroborating evidence: the SSN holder's name and address. One primary function of the SSN is to demarcate citizens from undocumented immigrants.<sup>69</sup> Anxieties about misuse of the social security number do not only concern the threat of identity theft but are also about the ways that undocumented immigrants fabricate or steal SSNs to access forms of economic citizenship, such as obtaining over-the-table work, renting or buying a place to live, opening bank accounts, accessing public assistance, and obtaining higher education. Indeed, using a fraudulent or stolen social security number is a deportable offense for immigrants, a problem that is framed by Immigrations and Customs Enforcement (2017) as a national security and public safety threat. Identity theft committed by undocumented immigrants signals a racialized concern for containment, similar to the phenomenon I described with the "transsexual fraud ring" in Tampa. Obtaining fraudulent or stolen identification documents enables undocumented immigrants to appear as documented immigrants or citizens. Because the US economy relies upon distinguishing between citizens and the different categories of non-citizens, when undocumented immigrants can "pass," as documented or as citizens, they challenge the state's authority to grant documents and are (contingently) able to move more freely through daily life.

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<sup>69</sup> Documented permanent residents are eligible for a social security number.

Expanding uses of the social security number reveal a number of concerns about identity, citizenship, and economics in the late 20<sup>th</sup> century. The decade in which Immigration Reform and Control Act of 1986 was passed, which made it illegal for employers to knowingly hire immigrants without authentic social security numbers, saw an increasing use of the SSN as a tool for limiting federal benefits, and measures to protect the social security card against counterfeiting. It is similarly telling that SSNs began being assigned at birth during this time, signaling a heightened anxiety around citizens' claims to economic opportunities enabled by holding SSNs. Fears of welfare fraud fueled increased surveillance, in part through tracking the SSN, of welfare applicants and recipients. In other words, fears of identity theft may be rooted in anxieties about the wrong types of people gaining access to goods and services that they are barred from due to their class, race, citizenship status, or credit history.

Stealing or forging SSNs is a keen example of how “deviant practices” can illuminate new ways of challenging oppressive systems (Cohen 2004: 33). As Cathy Cohen writes:

through a focus on “deviant” practice we are witness to the power of those at the bottom, whose everyday life decisions challenge, or at least counter, the basic normative assumptions of a society intent on protecting structural and social inequalities under the guise of some normal and natural order to life (2004: 33).

Indeed, Potts' repeated identity theft charges illuminate the access Potts had been barred from as a trans woman with a criminal record: nice things, a place to live, and a female name and sex classification on her IDs, and a job. By seizing the information she needed to obtain affirming identification documents, she asserted a form of gender self-determination. When she could not obtain an ID in her female name, or rent an apartment

given her criminal record, Potts relied upon what she knew to get by. Lewis is harmed by Potts' crimes, but how else might we imagine relations of harm between Lewis and Potts? Lewis may have been victim to Potts' crime, but Lewis also holds power over Potts, as a person who is empowered to call the police to report identity theft, as a cis person, and as someone who has the time to be concerned about her credit and identity data. Although she experienced some loss from Potts' actions, Lewis also benefits from Potts' incarceration. Psychically, Lewis can feel at ease knowing Potts is back in jail; indeed, she feels so strongly that Potts belongs in jail that she sees eight years as too short of a sentence for a repeat offender like Potts. Lewis and people like her may feel safer knowing that someone like Potts is incarcerated. Potts' incarceration promises her continued marginalization, reducing her ability after release to find good paying work, adequate housing, affordable health care, and opportunities for a life like the one that Lewis protects.

In each of these stories, fraudsters took something they were not supposed to have: an ID that matched their identity, money, and expensive material goods. Comparing Morrow's case to Potts' and the "transsexual fraud ring" in Tampa reveals how whiteness enables mobility and trust, even to a person with a substantial criminal record, and the response to black crime is panic and the need for containment. Whereas identity theft can sometimes be temporarily justified if it is intended to fix an unfair circumstance, such as the inability to obtain an ID in a person's chosen gender, this act signals an exponential risk. If IDs can be forged, the state's authority as an identification-grantor is challenged. Anyone can pose as a woman, a citizen, or someone without a

criminal record. The excess associated with transition—its alleged narcissism and superficiality—is matched in the excess of identity theft. In each case, transition and identity theft, something undeserved is taken.

Because the threat of identity theft signals a broader threat over the right to an identity, the problem of identification, and fraudulent embodiment, narratives of trans fraudulence condemned these actions, even when it is clear that they faced challenging obstacles to a livable life. Their criminal transgressions outweighed the obstacles they faced caused by racism, transphobia, and misogyny. In the next section, I examine a case of a fictional trans fraudster, Sophia Burset, a character on the popular Netflix series, *Orange is the New Black*, whose crimes are contextualized as part of her transition narrative. While her motives—the strong need to transition—make her a likable character, she is nonetheless also portrayed as selfish, excessive, and singularly focused on her gender identity. Burset’s story demonstrates how seizing the means to gender self-determination may require that a person commit fraud, even for middle-class trans people. For Burset, fraudulence is the only way to gender self-determination.

*Becoming a Woman, Becoming a Criminal*

“We are only required to give her enough to maintain. It is a federal system. If he [sic] wanted to maintain his [sic] girlish figure he [sic] should have stayed out of jail. Why would anyone ever give up being a man? It’s like winning the lottery and giving the ticket back.” – Natalie Figueroa

Hovering over a coffee dispenser, Counselor Sam Healy pleads with his supervisor, Natalie Figueroa, to reconsider pulling funds away from the pharmacy at Litchfield federal prison. All medications have been switched to generics, which is

causing problems for the incarcerated women. Healy exclaims, “I’ve got a tranny camped out in my hallway yelling about her hormones” (“Lesbian Request Denied” 2013). Earlier that day, Sophia Buset, played by Laverne Cox, a black trans woman incarcerated at Litchfield, was informed that her prescription for estrogen had been altered and her dose cut in more than half. The epigraph to this section is his boss’s response: they are not required to provide her with her desired dose of hormones, “If he [sic] wanted to maintain his [sic] girlish figure he [sic] should have stayed out of jail” (ibid.). However, as viewers learn in this episode, Sophia Buset *ends up* in jail because she committed credit card fraud to fund her transition. Throughout the episode “Lesbian Request Denied” (season 1, episode 3), of the Netflix series, *Orange is the New Black*, Sophia is confronted with this admonishment from prison physicians, Counselor Healy, other prisoners, and her wife. She is told that as a criminal, she does not deserve the medication that will keep her alive because her estrogen is understood as cosmetic, supplementary, and a perk rather than a necessity. Indeed, her quest for her “girlish figure” positions Sophia as selfish and undeserving.

The episode opens on the remains of a fire-damaged residential building. A firefighter enters what appears to be a home office cautiously, scanning the room before approaching a file cabinet. The firefighter is Sophia, before her transition. She opens a file cabinet drawer and pulls out a white man’s passport and a credit card statement. Hastily, she snaps a few photos of the credit card statement just as another firefighter enters the building and asks her what she’s doing in there. She shoots a photo of the wall behind the file cabinet, declaring that she was ordered to take some pictures of the

damage. This is a first glimpse at the crimes that lead to her incarceration. Back at the fire station, Sophia changes out of her uniform in a bathroom stall, to prevent her coworkers from noticing the pink lingerie she wears underneath. She is still outwardly presenting as a man. She approaches the bathroom mirror and examines her face: she has not yet begun hormone therapy and her face is bearded. Running her fingers over her beard, she looks solemnly into the mirror. Within a second, the scene cuts to Sophia, now with a softer face and clean-shaven, looking at herself in the mirror in the bathroom of Litchfield women's minimum-security federal prison. She is smiling while she creates lipstick out of Kool-Aid and Vaseline, applying it with a cotton swab. Sophia steps away from the mirror and examines her body: she is topless, admiring her own breasts. In this scene, Sophia's transition is actualized, but becoming female came at the cost of incarceration. From hiding in the fire station bathroom behind her beard to living fully as herself but in a federal prison, Sophia's transition is framed from the outset as impossible: either way she is unfree.

In many ways, Sophia's story is atypical of trans women's experiences with incarceration. She is housed in a women's prison and she shares a cell with other women. Because she has undergone genital surgery, she is considered female by the federal government. Most trans women have not had genital reconstruction surgeries and thus end up housed in men's prisons if they are incarcerated. Many are placed in long-term solitary confinement, allegedly to protect them from violence caused by other prisoners, a practice that further traumatizes trans prisoners.<sup>70</sup>

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<sup>70</sup> See: Sumner and Jenness 2014; Andasheva 2016.

Throughout the episode, objectifying and dehumanizing references are made to the constructed nature of Sophia's female body, comments which undermine her status as a woman and her decision to transition. A group of prisoners were discussing Sophia's role as the prison hairstylist. One remarked, "I wouldn't let that he/she touch me with a ten-foot pole," and another replied, "Sophia's pole is now a hole" (ibid.). Correctional officer (CO) Mendez, in a conversation with his coworker, CO Bennett, described her genitals as "cyborg pussy," declaring, "I bet it's fucking perfect" (ibid.). Red, who works in the prison kitchen, complained to Sophia about other prisoners stealing her phallic vegetables. As she raced around the kitchen in search of a zucchini, she exclaimed that she was not in the business of supplying dildos. Discovering one, she lays the zucchini on a cutting board, chops it swiftly in half, turns to Sophia and says, "Sorry, too soon?" When Sophia replies, "A little," Red shakes her head and says, "I don't understand you. I have three sons and if they tried to do what you did, I'd chop off their hands before I'd let them get rid of their baby makers" (ibid.). Sophia's genital surgery, which she funded through her credit card fraud, is a topic of intense interest and transphobic violence.

Further, unlike many other incarcerated black trans women, Sophia is markedly middle-class, housed, and married to a woman who is generally supportive of her transition. She lives in relative comfort with her family; they own a two-story house and have full closets of clothing. Even with these privileges, Sophia turned to credit card fraud to fund expensive transition procedures. Perhaps she lost her job after coming out and beginning feminizing hormone therapy. Even if she was still working as a firefighter,

her family income likely was enough to live comfortably on but nowhere near enough to pay for tens of thousands of dollars' worth of procedures.

Sophia's difficulty obtaining hormones in prison is an experience she shares with many other incarcerated trans people; through this challenging situation, Sophia's transition is framed as excessive and burdensome to the prison medical staff and overall operating budget.<sup>71</sup> Unlike trans people who have not undergone any sort of genital surgeries, Sophia had her testicles removed, meaning that her body cannot naturally produce any hormones required to keep her alive. Without some form of hormone therapy, she will not only experience the symptoms of menopause and a reversal of some of the feminizing effects of estrogen, but trouble functioning in all aspects of her day, including sleeping and eating. Despite her pleas to increase her dosage back to her normal prescription, she is denied by Counselor Healy. When she asks to see a physician, he explains that she can only see one in an instance of an emergency; this issue does not constitute an emergency. In a move of desperation, Sophia grabs a plastic toy off of Healy's desk, tears the head off and swallows it, declaring, "I'd like to report an emergency" (ibid.). Sophia's body is illegible to prison staff: even though they are required to keep her alive, barring her access to her prescription is understood as a non-emergency.

Sophia's move grants her an appointment with the doctor, but she is worse off for it. The doctor informs Sophia that after reviewing her bloodwork, she will be ceasing her hormone treatment altogether due to signs of potential liver damage. Sophia pleads,

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<sup>71</sup> See: Arkles 2009.

“Listen Doc, I need my dosage. I’ve given five years, \$80,000 and my freedom for this. I’m finally who I’m supposed to be. Do you understand? I can’t go back” (ibid.). Sophia articulates clearly that her crimes produced her own gender self-determination. Sophia seized the body she desired in exchange for \$80,000 and her freedom. The doctor is not swayed by her contestations, stating that it may be several months until she can gain access to her medication again. The severity of this decision is not lost on the doctor; as a consolation she says, “I can offer you an anti-depressant” (ibid.). Sophia understands her doctor’s decision to be punitive: the doctor is not certain that her hormones are causing liver damage. She exclaims that elevated AST and ATL levels<sup>72</sup> could be caused by any number of things, information she’s likely had to learn to teach other physicians about administering hormone therapy for transition. Despite all that Sophia has done, “given five years, \$80,000 and [her] freedom” for her transition, her arrest and incarceration strip her of her bodily autonomy, the very thing she sought out through her credit card fraud. Even after genital surgery which makes her female according to the federal prison regulations, her physical transition can be halted by gatekeeping prison officials who restrict her on-going hormone treatment. Fraud granted Sophia bodily autonomy, but incarceration revoked it.

Sophia’s desperation to remain on her estrogen regime eventually leads her to ask her wife Crystal for help. Throughout the episode, we see the support that Crystal gave to Sophia’s transition before her arrest, despite her moments of discomfort. They kiss and show love for each other; Crystal helps Sophia pick out “classy grown-up lady” clothing

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<sup>72</sup> AST stands for aspartate aminotransferase and ATL stands for alanine aminotransferase.

(ibid.), even as she pleads for Sophia to keep her penis. However, when Sophia makes the request to her wife, the mood in the prison's visitor's room is tense and dense with emotions. Sitting across from her wife, Sophia shares that prison officials have denied her access to hormones. Crystal expresses sympathy, at which point, Sophia says, "I'm losing my shit, Crystal. I don't want to have to ask you, but I don't know what to do...I need you to sneak them in" (ibid.). Immediately crossing her arms and sitting back in her chair, Crystal is outraged. She exclaims, "You want me to shove them up my ass? Take them out in the bathroom? Then what? Put them in my mouth so I can kiss you? Have you lost your fucking mind?" (ibid.). Sophia acknowledges that the idea is far-fetched but stresses her desperation. Crystal's anger at Sophia radiates out of her body. She goes on, "You want me to get locked up too? Oh, that's perfect. Yeah, Michael can go live with my mother who won't speak to me anymore, at all. But you? Well you'll have your smooth skin and your lady curves, so it will all be worth it" (ibid.). Sophia's transition is marked as relentlessly selfish, destroying her family. Asking Crystal to illegally sneak in estrogen risks their son Michael's only parental support after her arrest. Overcome with self-centeredness, Sophia is the cause of her loving wife's suffering. Her transition transformed her not only from male to female but from a responsible, caring father to a selfish criminal who has embarrassed and alienated her son. While Sophia gets her "smooth skin and [...] lady curves," Crystal is working two jobs, raising their son alone, fighting the bank who is attempting to seize their house, all the while alienated from her mother, her church, and friends who do not condone Sophia's multiple transgressions. This exchange highlights the pain that both Sophia and Crystal feel about Sophia's

transition. Each woman is portrayed as rightfully upset about the scenario they are in. Crystal places blame on Sophia for breaking the law and breaking up their family. Though it is clear that faced with a series of expensive procedures, Sophia had few options, seizing the opportunity to steal rather than prolong her waiting until she could save tens of thousands of dollars. Nonetheless, the consequences of her actions have profound impacts on her family. At every step, Sophia's actions are marked as selfish, frivolous, and cosmetic; she is chastised for seeking out a livable life for herself.

The flashbacks viewers see about Sophia's life before incarceration are a recurring trope in *Orange is the New Black*, which regularly uses this narrative tool to hone in on one character's backstory during an episode. Flashbacks serve to humanize inmates, often depicting them experiencing hardships that contextualize their crimes that landed them in prison. Many flashbacks contain stories about family and intimate relationships that seek to demonstrate a softer side of the characters. In this episode, which focuses intently on Sophia's backstory, the flashbacks orient viewer's attention and care to Sophia's family, demonstrating the pain that she has caused them through her narcissism and vanity. While Sophia is granted sympathy, it is Crystal who audiences are instructed to empathize with: Crystal who now bears the cost of Sophia's transgressions.

Sophia temporarily seized the means of her gender self-determination and transition by playing credit card companies at their own game. Instead of contributing wealth to financial institutions, she steals from them. A June 2016 report declared that credit card issuers lose \$7.6 billion each year to credit card fraud (LexisNexis 2016: 5). Because most credit card holders are not liable for paying back fraudulent charges

associated with their accounts, credit card companies pay for fraud. However, credit card companies are hardly innocent victims. Credit card companies are highly exploitative, encouraging consumers with little or no credit history to apply for cards charging double digit interest. Consumers with no credit history may be fabricated identities or generated out of an amalgam of stolen identification information; they may also be young people, immigrants, or trans people who have recently changed their name. Because interest rate pricing is based on a person's creditworthiness, individuals with little or no credit history are highly profitable for credit card companies: their interest rates are highest. In an effort to aggressively encourage consumers to take on debt, credit card companies have made identity theft unthinkably simple. As a fraud executive at a major international financial institution explained:

The most significant challenge would probably be an increasing desire by the business to offer instant approval via the web. Apply online, get instant ability to purchase. It is problematic because it defeats a pretty key control of being able to mail a card to an address. When you give up mailing of the plastic, it opens up the door for someone to apply with true victim info (ibid.: 17).

To encourage consumers to open new credit cards, the application and approval process has sped up. This practice enables identity theft, but also large profits for financial institutions. Credit card companies may lose billions of dollars each year to fraud, but they stand to gain much more than they lose by the predatory extension of credit with astronomical interest rates. Individuals like Sophia are blamed for identity theft, but financial institutions and consumer data collection practices put identities at risk. While Sophia took advantage of this vulnerability, she was enabled to do so because of the risk that financial institutions produced. It took a substantial amount of money for Sophia to

become the woman she wanted to be, and the long-term costs exceed the sum she paid to her surgeons. The on-going financial costs of this punishment are exponential. Her felony conviction will impact where she is able to work, as will her new gender presentation. Her family earnings may decrease if Crystal ends up deciding she wants to leave Sophia. The psychological damages she is incurring in prison incur psychic costs, medical bills, and perhaps impacting her ability to work in the future.

While the other stories about trans fraudulence reveal short snippets of the impacts of fraud, Sophia's story accounts for the multiple forms of harm that ricochet between the trans fraudster and her victims. We see the pain inflicted on Crystal and their son Michael, who eventually turned Sophia in, as clearly as we see Sophia's suffering. At the end of their conversation, Crystal explains that she used to be willing to stand by Sophia because she saw the pain that she was in living as a man. However, when she began committing crimes, she crossed a line. Crystal declares, "I put up with you becoming a woman, but I never signed up for a life with a criminal" (ibid.). These two states—becoming a woman and becoming a criminal—are intertwined for Sophia. Without becoming a criminal, she could not become the type of woman she wanted to be. Crystal fails to recognize the ways that Sophia's criminality was a piece of her transition, and that perhaps instead, capitalism itself is criminal. Indeed, it is the drive for profit that makes transition surgeries prohibitively expensive; that enables identity thieves to apply for and use credit cards with relative ease; and that builds prisons to create a permanently criminalized class of people who will labor inside and outside of prison walls for menial wages in dehumanizing conditions. What if Crystal saw capitalism as immoral, exploiting

not only Sophia but herself, as well? Both of their suffering is shaped by these violent forces.

Crystal could handle Sophia's "becoming a woman," but not her incarceration, a statement that mirrors what Dan Irving describes as neoliberal pressures to prove that trans people deserve respect because of their productivity. He writes, "To move toward achieving social recognition, the transsexual body must constitute a productive working body, that is, it must be capable of participating in capitalist production processes" (Irving 2013: 17). For Sophia, being able to participate in "capitalist production processes" entails subverting her relationship to capitalism: stealing instead of producing; draining value rather than creating it. Choosing to steal the money required to become herself meant sacrificing her family and her morality, and importantly, challenging the norms of capitalism that enable corporations and financial institutions to coercively extract wealth from individuals but criminalize individuals who do the same. In an interview reflecting upon Sophia's moral compass, Laverne Cox asserts that Sophia, like many other trans people, pushes the limits of her own morals in order to become herself. In prison, where punishment hinges upon a loss of control over one's environment, body and routine, a person often must break the rules in order to live more comfortably. Cox says, "Morality is something that's very complicated in prison, because when one is doing what one needs to do to survive, morality becomes very complicated. I think Sophia is infamous 'cause she's broken the law to be true to who she is" (Dickson 2013). *Orange is the New Black* contextualizes and humanizes Sophia's motive for committing fraud, justifying her decision to break the law in order to live authentically. Her story has

been described as “heartbreaking” by mainstream news outlets (ibid.; Paige 2015). While her story is indeed sad, it is tempting to make a re-moralizing move that distances her from her crimes in order to declare that she is a good person who would not have normally broken the law, if not for this exceptional circumstance. That rhetorical move justifies the law and the political and economic conditions that push Sophia towards fraud. Further, it casts others who break the law as “true” criminals, especially if they are repeat offenders, like Merlene Potts who committed identity theft each time she was released from prison. As Cacho (2012) puts it, “recuperating social value *requires* rejecting the other Other” (17). Without a paradigm shift, re-asserting Sophia’s value without denigrating repeat offenders, violent criminals or unrepentant inmates is unthinkable. She is unlike them; thus, she is redeemable. She was desperate; thus, she can be forgiven. Sophia is depicted as excessive and burdensome, selfish, and destructive. Becoming a woman by becoming a criminal, her story may be heartbreaking, but her actions not redeemable.

These two states—becoming a woman and becoming a criminal—are intertwined for Sophia. Without becoming a criminal, she could not become the type of woman she wanted to be. Choosing to steal the money required to become herself meant that she could live in the body she desired sooner. Sophia’s crimes illustrate the contradictions of capitalism that enable corporations and financial institutions to coercively extract wealth from individuals but criminalize individuals who do the same. The problem of “identity theft” misdirects blame away from institutions that have made “identity” a commodity that can be stolen and from financial institutions that profit from the vulnerability of

consumer data. Though she is punished for her crimes, Sophia was able to obtain the surgeries she desired and her form of gender self-determination through stolen credit. Even though her freedom is bound by incarceration, she bought something the state cannot fully seize back. They may lock her body up and refuse her hormones, but they cannot reverse the surgeries she stole to obtain. Her body remains her own, shaped in her desired image, even when incarcerated. This point is important, even if it seems small. I do not mean to suggest that Sophia may ever be truly free after serving her sentence, as the exponential effects of incarceration are sure to impact her as she is on parole, applies for jobs with felony convictions, and grapples with the relationships that she may or may not have upon release. But unlike others who steal and are caught, the state cannot revoke her body. She may well have to repay the debts and more, but she will do so in the body she desires. The funds she stole may have been temporary, but the body they bought will remain after she is released.

### *Conclusion*

This chapter details some of the political and economic conditions that push trans and gender non-conforming people towards fraudulence. For Sophia, becoming a woman necessitated becoming a criminal. For Merlene, Veronica, and Stacy, their small criminal acts stole moments of freedom – driving a car bought under someone else’s name, trips to the grocery store while out on bail, IDs that match their gender presentation or obscure their legal identities and the pasts they drag along with them. Stealing an identity buys some time, buys the body that will keep you alive. Identity theft may be a way to recuperate the costs of vulnerability—those produced by reckless financial institutions,

by the carceral state, those associated with being in a body that is black, gender non-conforming, and feminine. Seizing gender self-determination in the cracks left by racialized capitalism. I have argued that thinking of identity theft as a technology of gender self-determination reorients how we can think about what it means to have gendered freedom, and about how exploitative capitalist and criminalizing processes may be exploited to produce moments, or lifetimes, of subversion.

Due to the fragmented, predatory nature of racialized capitalism, trans subjects often cannot afford the lead the lives they desire and have an opportunity to exploit the systems that oppress them. While a tempting way of explaining a trans fraudster's excess might be to narrate their heartbreaking stories of desperation, I hope it is clear that these stories are not so quickly reducible. What if trans fraudsters just like to steal? What if they want to get rich by exploiting the rules that have marginalized them?

A moment within my focus group research revealed a propensity to commit small acts of fraud that may help flesh out this point. Two participants spoke about the ways that they capitalized upon an opportunity presented by a legal name change in order to save small amounts of money. Ryan, a white focus group participant in his mid-twenties, shared this exchange with Smith, another white trans man in his twenties, about benefiting from a new customer deal with his phone company after his name change:

*Ryan:* It's funny that you mention that because I actually just got a new phone. So, switching over, [the sales representative] says, "Well, we have to buy you out of this plan in your old name, but the new account is your new name." But I logged into both accounts and they actually think I'm a whole new different person, so I got the brand-new deal all over again [laughter]. They're like, "Wait, you've already been with us, but, nope, I'm a new person, so..."

*Smith:* I've gamed that a bit. I'm like, "Free audiobook? I'm gonna get two free audiobooks."

*Ryan:* I'm like, "That's awesome. Gonna save a lot of money." But it raised a red flag for me because I was like, "Well when are they gonna catch this? Or am I still a new customer with this deal? This account should not be here." Well they're like, "You have no account, you have no devices on this account." But I'm like, "I do. I have two [laughter]" (Focus Group #1).

Ryan expresses both concern and excitement about accessing a new customer deal when he was only technically a new customer. Becoming Ryan made him into an entirely new customer with his phone company, despite the fact that his other identifying information—address, Social Security number, and even his phone number—should have linked his “two” identities together. In a different type of scenario, Smith shares that he “gamed” the system a bit by signing up for free trials of an audiobook service with both his previous and current names. Each of these incidents entail minor gains—a free book, a reduced phone bill—as consumers. They are not radically challenging the exploitations of capitalism, but momentarily saving some money. Ryan and Smith’s small instances of fraud are directed at companies, not individuals. They are similar to what most of us have done to get a little something extra for free. Phone companies in particular are extractive and exploitative of consumers with a near monopoly on the market. From data overage charges, high monthly service charges, and hidden fees, phone companies amass high profit margins in a near non-competitive market. They are able to offer discounts for service because the costs of these incentives are already built into the cost of service.<sup>73</sup> When accessing a discount, even fraudulently, consumers are not so much as taking

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<sup>73</sup> See: Dedrick, Kraemer, and Linden 2010.

advantage of a company but paying closer to the true cost of the product. They are seizing back some control over a market that makes competition between companies essentially obsolete. Further, this discount retains Ryan as a customer, which benefits the company in the long-term.

Another focus group participant, Sharon, shared that she did not commit any sort of fraud through her name change process, but that if she had, it might have made things easier.

*Sharon:* [laughing] Oh so if I was married then this would be really easy but since I changed my name and my gender, then it's gotta be hard you know? But yeah, if I had been married, as it sounds like you experienced, “oh yeah, no problem.” [laughter] I should have just lied (Focus Group #3).

Sharon’s declaration that she “should have just lied,” highlights the way that telling the truth about trans and gender non-conforming identities creates problems that may have otherwise been easily resolved. Lying can be a strategy to make life easier for subjects whose identities and bodies are constructed outside of the norms of laws and policies.

These types of acts can be described as selfish, narcissistic, and destructive. They may seem to confirm the opinions of medical professionals who perceive trans people as so tormented by their genders that they harm others. But they also demonstrate the violence of fraud detection. The problem of “identity theft” misdirects blame away from institutions that have made “identity” a commodity that can be stolen and from financial institutions that profit from the vulnerability of consumer data. Trans fraudsters who take advantage of the systems that have excluded and marginalized them draw attention to this injustice. Further, they push us to embrace the messiness and complicated ethical questions that saturate concerns about identification and ownership over identity.

Imagining gender self-determination in this way—as forged through illicit acts, tied to subverting capitalist, racialized, and carceral violences—challenges the moralizing judgments attached to identity theft. Understanding identity theft as a technology of gender self-determination, especially for black trans feminine people, reimagines fraudulence as a tool for trans liberation that centers trans of color experiences, while highlighting the violences of financial institutions that endlessly reproduce inequality. Thinking of theft as a means of gender self-determination must also change the way that trans studies and trans advocacy conceptualize tactics for trans liberation. Seeking trans inclusion into identification systems may make identity theft more challenging and does not adequately address poverty, criminalization, racialization, and other forms of marginalization for trans people that are enhanced by surveillance. It is crucial to note that though the fraudsters in this chapter were caught and punished with incarceration for their crimes, identity theft does not always result in incarceration or arrest. I am not advocating for a form of gender self-determination that relies upon incarceration as a possible outcome but pushing scholars and activists to push through difficult questions about respectability politics; the violences of property and capitalism; and the moralizing consequences of law-breaking for subjects who are marginalized by the law. For some, stealing is a mode of freedom that could not otherwise be achieved. Conceptualizing gender self-determination as more than just incorporation into identification systems through legal name changes and medical bodily changes fundamentally expands trans politics, pushing us to see freedom of mobility, the freedom to be unknown, and the freedom to obtain one’s desired body by any means necessary as worthwhile goals. More

expansively, trans politics can embrace an unproductivity, pathologized by Dr. Cauldwell. This trans unproductivity, the siphoning away the excesses of capitalism in order to survive and thrive in a cisnormative world, is a form of trans power. While trans subjects face severe consequences for appearing fraudulent, embracing fraudulence seizes some of the means of gender self-determination back into the hands of trans people.

In this chapter, I have worked to contextualize the stories of fraudsters without reducing them to destitution or valorizing their acts as pure forms of political resistance. While there are generative political implications for siphoning away some of the excesses of capitalism, there is an important ambivalence in embracing the messiness of fraudulence—in its differentiated harm—that can guide our thinking.

## **Conclusion: Critical Trans Data Praxis & Debugging the Dissertation**

To conclude this dissertation, I would like to offer three ruminations, each connected to what I am calling *critical trans data praxis*, a new way of thinking about the relationship between software, data, difference, and knowledge.

As I wrap up my writing, we are seeing shifts in these relationships. More states are allowing people to legally designate their sex on their driver's licenses to a non-binary "X," for instance. Colorado became the fifth state to offer this option, following California, Minnesota, Maine, and the District of Columbia, in November 2018 (Schmelzer 2018). Some states have begun issuing birth certificates with the "X" sex designator. People who were born in New York City can now change the sex on their birth certificate to "X" without any documentation from a physician (Reuters 2018). New York City mayor Bill de Blasio declared that this law gave New Yorkers the ability to "tell the government who they are and not the other way around" (ibid). While many trans and non-binary people welcome this option, the move opens up a wide set of concerns for cross-document authorization. Notably, someone born in New York City could change their birth certificate without medical authorization, but New York state still requires a physician's note to change the sex designation state-issued driver's license. If a person's birth certificate declares a non-binary sex but their driver's license is binary, which information should be collected by the state or federal government? How should they be classified by states that do not utilize these categories? These IDs also take away the option to selectively pass as a binary gender for safety reasons. On the other hand, many non-binary people remark that the option to have their gender identity

represented on a state ID is validating and affirming, with some remarking that being “out” on paper removes the impetus to consistently verbally come out as non-binary. A critical trans data studies perspective must weigh both of these contexts: concerns over the increased surveillance over trans lives and difference against the wants and needs of actual trans people. Feminist praxis is about applying theoretical insights to improve the conditions of marginalized peoples’ lives. In other words, while my gut instinct as a critical data studies scholar is to reject the expansion of data categories and validation of identity through the state, I also recognize the nuance and complexity of these issues by looking to human and embodied responses to these offerings.

In the first section, I provide a case study from my time serving on a committee at the University of Minnesota that was concerned with administrative trans name changes. Throughout my time in graduate school, I have been engaged with doing this work alongside my scholarship: working to create incremental change to make life a little easier for those impacted by restrictive policies. I share some reflections on these processes, as well as the limitations of working within institutions to enact these changes, in the second section.

The second section of this conclusion is a sort of performative practice that I call “debugging the dissertation.” Any good software application goes through extensive testing: ensuring that when it is released to production, the program will continue to operate on its own, when hundreds, thousands or millions of users query and engage it. In development, a program should be tested – by developers, quality assurance engineers, and automated programs – to ensure this continuity of functionality. Testing is like

revision, ensuring that an argument holds up over time and through extended use by different audiences. As I reach the end of this dissertation, I am thinking a lot about revisions – the process of researching, writing, re-writing, and workshopping ideas over the course of many years. Software development is a lot like scholarship in this way: iteratively developing knowledge for broad utilization, working within communities of peers to improve a shared base of knowledge, and repetitively releasing drafts to see the results. In this section, I engage in a pseudo-debugging process: walking through each chapter’s core argument and pieces of evidence to illustrate a final point about thinking like a machine.

I close with a list of principles for critical trans data praxis.

### *Moving Towards Critical Trans Data Praxis*

Critical trans data praxis understands the potential harms of big data, surveillance, fraud detection technologies, and other data-driven analytics, while also engaging with and participating in the production of technology.

Many of the questions that arise in this dissertation are about how information about humans is created and subsequently how we make sense of that information. Whether it is about how to determine a person’s sex classification, or how to store multiple names for one person over time, questions of fraudulence derive from attempts to make sense of identity for seemingly unknowable subjects. Trans people have struggled within binary administrative systems, petitioning to update their names and sex classifications within institutions that have not anticipated their unique needs. At colleges and universities in particular, advocacy around the use of preferred names within data

systems has pushed conversations about identity data storage and made some meaningful changes. In this section, I will explore one example of such advocacy, examining how the University of Minnesota has slowly allowed students, faculty, and staff to use a “preferred name” on official University ID cards and communications.<sup>74</sup> This story illustrates some of the ways that institutions can change to accommodate people with incoherent identity data and also how adjustments to be more inclusive are met with resistance for the broader problems that this restructuring might introduce.

From 2013-2016, I served on the Transgender Commission Leadership Team at the University of Minnesota. This volunteer organization was responsible for pushing many of the policy-level changes to make the University of Minnesota more trans-inclusive, including pushing the University to remove restrictions for transition-related procedures on all of the health insurance plans it offers, transforming sex-segregated single-stall bathrooms into gender-neutral bathrooms, and pushing multiple information systems to display a preferred name instead of a legal name: such as on ID cards and classroom rosters. I participated in a number of these on-going initiatives as a member of this organization, but I was most heavily involved in the execution stages of the preferred name policy. This policy interested me for a number of reasons, but most importantly, it directly and positively impacted students, staff, and faculty who wished to keep a legal name private when conducting everyday business at the university. This policy also was

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<sup>74</sup> A “preferred name” is a name that a person uses that is not their legal name. A person’s preferred name is for all intents and purposes their name. A name does not need to be legal for it to be legitimate. However, the University and other institutions use legal names to report wages and tax information, and to report information about citizenship, visas, and criminal activity. Thus, as they require a legal name for certain tasks, the “preferred name” comes to signify a name that is used for non-business purposes.

deeply related to my research project, understanding how information about identity is made sense of by institutions.

In July 2016, I conducted an interview with a member of the Transgender Commission Leadership Team who worked in information technology (IT) for the University. For the purposes of anonymity, I will refer to this informant and colleague as Ann. During our interview, Ann told me about the long process she and other members of the Transgender Commission went through in order to finally get the University ID card office (UCard) to print “preferred names.” As an IT professional, Ann had deep knowledge of the information systems on this large campus, and she also knew that getting systems to display a preferred name essentially required changing just one line of code. However, she also knew that the splintered nature of the University’s databases and concerns about identity authentication would cause pushback and issues as offices and departments were asked to implement the request to privilege preferred names.

A group of trans advocates at the University of Minnesota first began requesting official use of “preferred names” as far back as the 1970s. Ann shared that the most recent attempt that she recalls of was in 2006, when a former Chair of the Transgender Commission asked UCard to print IDs that list preferred names. According to Ann, in 2006, UCard stated that it would be impossible to do this for legal reasons, halting the conversation for another six years. She told me, “I think maybe the lesson in that is no doesn't always mean ‘no.’ Ask somebody else. Ask somebody else until you find out actually how the process works and verify that ‘no’ is the actual right word. Because in that case, ‘no’ was not accurate. ‘No’ was their assumption.” The specific concern was

pertained to a relationship that the University had with a bank that had a branch and multiple ATMs on campus. Incoming students were encouraged to sign up for a bank account with this bank and informed that they could use their student ID as an ATM card to retrieve cash. Because ID cards were linked to bank accounts, the UCard office believed that legal names must be present on the card. Of course, as mentioned in chapter three, trans people have been able to obtain credit cards in their preferred names by requesting cards for “authorized users.” Further, changing the UCard would not change a student’s debit or credit cards, but nonetheless, this rationale halted conversations about allowing this change. By the time the UCard office ceded, it was clear that there was no legal rationale for preventing them from printing a non-legal preferred name on a student ID, even if it was linked to a bank account. This assumption—that the legal name was legitimate and the preferred name potentially dangerous or causing the university a liability—needed to be changed by advocacy efforts.

By 2012, Ann joined the Commission and took the lead on this initiative. She knew that the University was about to implement large-scale software changes that would make privileging preferred names possible. While the University has a central Office of Information Technology and central data systems, most offices and departments built their own programs to manage data. Ann estimated that there were over 600 what she called “shadow databases” across the University. These shadow databases varied: some asked users to fill out information as they registered, like the University Recreation and Wellness Center, meaning the information provided could differ from the centrally managed data that the University held on that user. Others pulled information from the

central database, but decided which fields they wanted, meaning they would pull “legal name” and not “preferred name,” and no central software update could force them to change which field they privileged since they did not request the preferred name field. The decentralization of the data meant that any policy that required a preferred name to appear would mean getting every data system to pull from the same source. Indeed, I experienced this issue even after my name was legally changed. Though I had a UCard that listed my name as “Lars” because I had filed paperwork to legally change my name within all university systems, one of the many places that my former name still appeared was in the libraries database. This meant that every time I picked up a book from interlibrary loan, the undergraduate clerk tried to reconcile the (feminine) name printed on the book slip with my ID and my physical (masculine) appearance. The libraries were pulling outdated information, even though my legal name change had been reported to human resources and reflected on my ID card. Ann lamented, “When I started at the University [16 years ago], it was like we were 59 corporations because there are 59 units on campus.” Though connected by a campus, a population of workers and students, most units operated independently, at least from a data perspective. In 2013, an upgrade to the primary identity management software on campus, PeopleSoft, provided a timely opportunity to update the code and force these disparate units to pull their data from one central source.

PeopleSoft has offered a preferred name field since the 1980s, and students, faculty, and staff have been able to enter a preferred name, but that name was not privileged, meaning most systems used the legal name field as the primary name. As Ann

explained, making the preferred name field the primary name was simple, but most units did not know it was possible since they were not involved with designing the code.

Simply put, administrators did not think to ask to privilege this field or know that this functionality could be available because the software developers did not communicate its availability. Indeed, she highlights a crucial insight about database and software design: the gap in understanding between programmers and non-programmers means that software is sometimes developed without fully meeting the end-user's specifications.

Ann explains:

Most people haven't been using [preferred names] properly or really realizing that, oh yeah, we could make that the primary one. And all we have to do is say, if it's blank, use the other one. So that again is a lack of technical knowledge [...] Our programmers are in the last several years just reinforcing the fact to our IT staff that, your job isn't just to do what the customer asks. It's to think about what they're asking and what they want to do and let them know if what they're asking you to do is going to do what they want or not. Because they're not technical necessarily. They just know what they want to have the outcome be.

Though programmers know that it would be easy to make the preferred name primary by writing one line of code (if the preferred name field is blank then use legal name), they do not communicate this to the client – the administrators of various units—because the client does not ask for it or does not know it is a possibility. Ann stresses that it is important for programmers to do more than just fulfilling what the client wants and to think critically about the implications of software development.

Aside from the pressing technical concerns about shadow databases and inconsistent data across campus, much of the resistance to using preferred names was voiced as a concern about fraud. During Transgender Commission meetings, those working on this initiative shared that administrators were concerned that if anyone could

enter a preferred name, students might change their names to “Donald Duck” or something inappropriate, misrepresenting themselves. Ann explained, “The rationale was again that of legality. They [...] thought it would be some sort of misrepresentation of who the person was.” This concern is deeply rooted in the arguments made in this dissertation: that, given the opportunity, trans people will deceive others about their “true” identity, and perhaps allowing trans people to change their names will legitimize other, more risky subjects to do the same and avoid detection by surveillant systems. These forces combined—concern about fraudulence, missed opportunities to communicate the potential of the software to end-users, and the fragmented nature of the hundreds of shadow databases—meant that offering the option to have a preferred name appear on class rosters and ID cards took decades of advocacy work. As trans, gender non-conforming, and non-binary students, staff, and faculty are a relatively small (but growing) population on campus, the safety and well-being of this group had to be communicated alongside broader positive impacts of this policy, the effects it would have on cis people, too. The Transgender Commission was able to make a persuasive argument to University administrators about the importance of this change and stress that cis people would also benefit from it—not to deceive others, but to have the names they actually use on their IDs and records. Ann shared that one of her superiors was convinced when she informed him that he could list his middle name—the name that he goes by—on his card if this change went through. She mentioned this type of tactic multiple times: stating that she would ask her cis colleagues, “Wouldn’t you want your ID to say ‘Bob’ instead of ‘Robert’?” When the risks associated with legitimizing a preferred name were

contained—only a first name could be altered with a preferred name field, many types of people would benefit, most users will not be tuned into this option because there would not be a university-wide announcement, there is no legal barrier to printing a preferred name on a student ID—the policy went live. Anyone could update their UCard to have their preferred name printed for the price of a replacement ID card. Further, the success of this policy has paved the path for a gender identity policy which would allow students to have their pronouns listed on a class roster.

Still, there are places where outdated data continues to emerge. One informant from my focus groups who works at the University shared that her former name continued to show up in mailings from various events on campus long after her name change went through. I discovered that my former name was appearing in my email address for contacts I made before my name change went through. The University Google email server does not pull to refresh for demographic updates, meaning anyone who contacted me before I changed my name still could see my former name unless they manually edited it in their email address book. While the PeopleSoft upgrade in theory reduced these data inconsistencies across campus, like any information system, there were unexpected gaps in its effectiveness.

This case is one example of a critical trans data praxis. The Transgender Commission (now the Trans Advisory and Action Team) has advocated across campus for thoughtful data creation and storage guidelines. Their official recommendation for all units across campus regarding the collection of data about sex, gender, names, and identity is to consider the utility of such data. Stef Wilenchek, the then-director of the

Gender and Sexuality Center for Queer and Trans Life, the unit that provided financial and administrative support for the Transgender Commission, shared with me in an interview in July 2016 that rather than encouraging the proliferation of data collected about gender across the board—for example, asking students to declare their specific gender identities—the Transgender Commission advises units to consider why they are collecting information about sex and gender at all. If information about sex and gender is important—such as to track sex and gender disparities or representation in regard to hiring or retention for students and staff—then consider what type of information is required and why. Is legal sex more pertinent than gender identity? For what reasons? In the Gender Identity Policy, which among other things, mandates the use of a person’s preferred name and pronouns, the Trans Advisory and Action Team declares that the University should “where possible...explain the reason for requesting or reporting on the information and how the information will be used” when asking for information about gender identity (Office for Equity and Diversity 2018). If there is no clear reason to track information about sex and gender, consider removing it from data collection norms altogether. This recommendation to collect data about sex and gender only when necessary, and to expand gender categories only when necessary, is an important step towards reducing data collection about identity. While it is clear that there are large hurdles to overcome to challenge assumptions that information about sex and gender is always necessary, continued advocacy in this area has the potential to make meaningful changes to how the university does business.

While the preferred name policy has overall been a positive step for many, particularly alleviating the requirement that students obtain an expensive name change, syncing all of the University's databases does have possible complications. For instance, students, staff, and faculty may have previously enjoyed the splintering of information about their names and presumed gender identities and the ability to use a legal name with some offices but a preferred name in others. With the PeopleSoft upgrade and the centralization of data storage, this is becoming obsolete, meaning one name will be used across the university. For many, having one name is desirable. However, the uniqueness of the university as an ecosystem where a person may be both student and staff, means that there are likely many people who would want to go by a preferred name in one or more classrooms, but keep a preferred name private at their work-study job or in a hostile class. Whereas previously, students still had relatively small amount of control over when and where data appeared, the centralization of this information, while at once potentially freeing for a large majority of trans, gender non-conforming, and non-binary students on campus, also potentially takes away some control for those who prefer to be selectively "out" about their gender identities.

A critical trans data praxis would allow full control over data: enabling people to decide where a preferred name appears and where a legal name appears. It would also shift consciousness over data collection norms altogether, challenging assumptions that data about sex and gender are always necessary to obtain and retain.

Critical technological literacy is crucial. This is a conclusion that I have come to as I've reached the end of this project. Writing about the effects of these technologies

without fully understanding *how* they work—not on a theoretical level but a practical level—has felt like a futile exercise. Speaking to an audience of other critical thinkers, distrustful of technology and surveillance, is like shouting in the abyss. As Ann put it, technical people and non-technical people need to speak to one another to understand the stakes of software design and its implications for reproducing inequalities. This is my goal in developing principles for critical trans data praxis. It is not enough to create scholarship that critiques systems and epistemologies that we know cause violence. Working to translate these insights into action, even if only in small steps, makes iterative change possible. It is important that scholars not only know how to critique these systems but that they know how to build alternatives, whether that mean building coalitions of radical technologists, or building momentum to change policy, change attitudes, and change the minds of people who make these decisions.

### *Debugging the Dissertation*

While there is always more to say, it is time to conclude and to embark on what I am calling “debugging the dissertation.”

Debugging is a common practice in software engineering, aimed at correcting issues that cause a program to break. To debug a program, a developer can utilize a range of tools first to identify the source of the problem, then to identify a solution to it. Developer tools built into the Chrome web browser, for instance, allows developers to walk through a program line by line to detect where a program is breaking and what happens when it runs, correctly or incorrectly.

In many ways, I think of the introduction and four body chapters of this dissertation as an interdependent program. Each chapter relies on the introduction and the arguments made in the other chapters to make its own contributions. The key concepts are introduced and built upon as the project progresses. The overall argument needs these components to be well articulated throughout. To check that I have made my arguments, and to think through how I would change this work as the project shifts from a dissertation to something else, I will run through the dissertation (the program) in this conclusion, before moving onto some broader conclusions about critical trans data praxis. Through this approach, I identify bugs in the program that are beyond the scope of this dissertation: directions for future writing, research, reformatting, and reframing. Further, debugging the dissertation is a performative practice, simulating machine-thinking for a project deeply invested in interrogating the ways algorithms and machines can reproduce inequality and vulnerability. In thinking like the machine, I aim to build towards what I have been calling critical trans data praxis.

### *Running the Debugger*

function introduction(“Tracing Fraud Through Trans Life”) {

let claim1 = “Identity verification is becoming a regular facet of daily life”;

let claim2 = “Trans identity changes mark a glitch in information systems, as their information often cannot be fully accounted for in a meaningful way”;

let claim3 = “Trans subjects are considered fraudulent due to deeply-held social, cultural, and medical beliefs about the biological essentialism of sex”;

`let claim4 = “Data about identity is now managed in exponentially greater numbers by private actors, meaning that trans people must contend with data incongruencies in the private sector at greater frequencies”;`

`let claim5 = “Fraud accusations index and perpetuate divestments away from trans life, where the perception of trans fraudulence initiates a range of necropolitical responses: denial of services, physical and epistemic violence, neglect, incarceration, humiliation, and disenfranchisement”;`

`let claim6 = “Trans incompatibility with normative ways of accounting for individuals justifies the devaluation of trans life: being seemingly unidentifiable or uncategorizable produces trans marginalization”;`

```
if (claim1 && claim2 && claim3 && claim4 && claim5 && claim6) {  
  console.log(claim1 + “: true”);  
  return true;  
} // end conditional  
} // end introduction
```

```
function chapter1(“Sexual Fraud, Narratives of Deceit, and the Limits of Consent”) {  
  let claim1 = “Trans subjects, especially those who ‘pass’ as cis, and do not disclose their trans history to a sexual partner, upend typical understandings about sexual consent because the truth about their bodies that they hold is often incompatible with the way their partner perceives their body”;  
  let claim2 = “Failure to disclose can retroactively revoke consent, leading to charges of sexual assault lodged at trans subjects, or justifications for murder”;  
  let claim3 = “Sexual fraud accusations justify a divestment away from trans life”;  
  let claim4 = “Sexual fraud detection technologies equate natal sex with truth”;
```

```
let claim5 = “The value of cis disgust is appraised over the value of trans
life through legal and epistemological fraud detection technologies”;
let claim6 = “Assumptions about the stability of sex and gender
underwrite fraud detection technologies across trans life: rooted in a belief
in the coherency of sexed bodies and suspicion of gender non-
conformity”;
```

```
if (claim1 && claim2 && claim3 && claim4 && claim5 && claim6) {
  console.log(claim1 + “: true”);
  return true;
} // end conditional
} //end chapter1
```

```
function chapter2(“Denial: Trans Necropolitics in Healthcare”) {
```

```
let claim1 = “Denials in healthcare—of coverage, procedures, or fair
treatment—are a form of trans necropolitics, a mechanism for promoting
the untimely deaths and prolonged suffering, particularly for trans people
of color, poor trans people, and trans disabled people”;
```

```
let claim2 = “Medical fraud prevention technologies penalize patients with
non-normative bodies by delaying or denying care as claims processing
becomes increasingly automated, generating denials as seemingly
“objective” divestments from trans life”;
```

```
let claim3 = “A distributed network of actors participates in the denial:
human insurance claims processors, algorithms, physicians, nurses,
pharmacists, human resources staff, judges, legislators, state bureaucrats,
and so on”;
```

```
let claim4 = “Classification determines life chances, opportunities for
safety and health”;
```

`let claim5 =` Treatments for transition are “too risky,” gender dysphoria is not seen as life-threatening, not worth the risk of potential liability suits or cost to the public”;

`let claim6 =` “Expanding codes for gender identity does not fix deep issues of inequality in healthcare”;

```
if (claim1 && claim2 && claim3 && claim4 && claim5 && claim6) {  
  console.log(claim1 + “: true”);  
  return true;  
} // end conditional  
} //end chapter2
```

`function chapter3(“The Afterlife of Data: Identity, Credit Reporting, and the Right to Be Forgotten”) {`

`let claim1 =` “The explosion of big data has facilitated greater insecurity for all people, asking individuals to account for information that is circulated endlessly without their consent, data that comes to stand in for their trustworthiness as consumers, workers, and renters”;

`let claim2 =` “Financialization has extended the space, time, and scale of identity management for trans subjects: identity has become a horizonless frontier with endlessly moving parts”;

`let claim3 =` “Trans people are haunted by identification data in their credit reports; their previous names have an afterlife that extends indeterminately, sometimes long after a legal name change”;

`let claim4 =` “The ‘afterlife of data’ is also a mechanism that divests away from trans life, reproducing trans economic vulnerability, and making it more difficult for trans people to obtain employment, housing, credit, and insurance due to this circulation of their outdated consumer data”;

```
let claim5 = “Data errors can produce both opportunities and barriers for trans subjects, especially when errors multiply and cause confusion within and between information systems”;
```

```
let claim6 = “The right to be forgotten through data might better be framed as the right to go unrecorded”;
```

```
if (claim1 && claim2 && claim3 && claim4 && claim5 && claim6) {  
  console.log(claim1 + “: true”);  
  return true;  
} // end conditional  
} //end chapter3
```

```
function chapter4(“Identity Thieves: Seizing the Means to Gender Self-Determination”) {  
  let claim1 = “Fraud can be a technology of gender self-determination that gleans the excesses of a predatory, racialized capitalism, enabling gender non-conforming subjects to experience moments of temporary freedom, seized through stolen cash, IDs, and goods”;  
  let claim2 = “Financial institutions have made “identity” a commodity that is capable of being stolen through assembled pieces of data”;  
  let claim3 = “Not all trans and gender non-conforming people can be accommodated by inclusionary tactics to make their name and gender changes legible”;  
  let claim4 = “The excess associated with transition—its alleged narcissism and superficiality—is matched in the excess of identity theft”;  
  let claim5 = “This chapter argues for an expansive disruption of the moralizing dimensions of fraud accusations”;  
  
  if (claim1 && claim2 && claim3 && claim4 && claim5) {  
    console.log(claim1 + “: true”);  
  }  
}
```

```

        return true;
    } // end conditional
} //end chapter 4

function dissertation() {
    introduction(); // true
    chapter1(); // true
    chapter2(); // true
    chapter3(); // true
    chapter4(); // true
}

```

The functions above are a representation of my dissertation as pseudo code.<sup>75</sup>

They represent some of the processes that would be involved in debugging each chapter and the dissertation overall. Each chapter is formatted as a function which checks to see if each claim that makes up the chapter evaluates to true. If the claim is true, the statement will log onto the console browser and declare that it is true. So claim1 from my introduction function/chapter would log out as: “Identity verification is becoming a regular facet of daily life: true.” As I run each individual function/chapter, I can evaluate whether or not each claim is true and overall, if all of the claims are true, ascertain that my argument is valid. The dissertation function takes each chapter function and runs them in succession. If I ran dissertation(); I would hope to see that every claim has evaluated to true. This exercise, in essence, creates a reverse outline of the dissertation,

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<sup>75</sup> This “code” has been formatted for easy reading by non-computers and it mimics many of the properties of workable JavaScript code. In fact, it could technically run and return true, but it would evaluate only in stating that each claim has been declared and has a value.

declaring five or six key claims in order to see them all in the same place. They constitute a dissertation; that is true. What the debugging doesn't show, however, is how useful these claims and chapters are together. Just being "true" does not necessarily mean that they fit together as a manuscript, or that the evidence to support each claim is also all true. A program could, in theory, test these questions, but how? A machine knows to evaluate based on the inputs of the users. It is my declaration that these claims are all true, based on the information I provided, that would make `dissertation(); return true`. It is also true that I created the functions and determined the claims based on my own judgments about good software development (again, for a pseudo form of code). They returned "true" because I set them to be "true," based upon consensus from a shared community of scholars – feedback from my advisors and readers, input from peer writing groups, and citations from other scholars. Based on these rules of what constitutes scholarship, my claims return true. In other words, the machine evaluates the information that I input and tells me that I have created a cohesive argument because I have decided that at this point, all of my claims are true. In a real programming language, these claims would return true if they met criteria designed by a community of software engineers, people who contribute to open-source software to determine the idiosyncrasies of different programming languages and overall principles of computer science. Knowledge is constructed and co-constituted through these iterative truth-determining processes.

Beyond providing a reverse outline of the dissertation, this exercise highlights these limitations of software in doing certain types of critical analysis. If `claim2` ends up returning false, I can locate it in my text and try to make it true, but the root of the

problem may be much deeper than that sentence itself being false: what made it false?  
How did I arrive at that conclusion?

If I were to theoretically debug the dissertation, moving through each claim to ensure that it builds upon what has come before, makes room for future claims, and builds my overall argument, I would likely not have such an orderly console full of true statements. This project was a result of three years of thinking about how classification, algorithmic thinking, and epistemologies of fraud detection shape trans life. I wanted to understand how data travels and how it impacts people whose data looks suspect. Some chapters of this work do this, others investigate questions that emerged along the way, or about how the association between gender non-conformity and fraud haunts subjects, pre-dating the big data moment. Chapter 1 is most distinctly different from the others. It is a bridge between trans studies and data studies in many ways, setting the theoretical foundation for the big argument: that fraud accusations justify a divestment away from trans life. While chapter 1 is analog, it examines cultural understandings of trans fraudulence that shape the algorithmic thinking that would follow. In future iterations of this work, in whatever form they might take, this chapter may play a smaller role. Perhaps it will stand alone as a separate project, while I explore other questions about data, algorithms, identity, and risk in a new way.

Each chapter/function coheres around a key theme: fraud accusations justify a divestment away from trans life. These divestments manifest differently, but in each the appearance of difference, of unexpected bodies or suspect data and identities, reproduces trans marginalization. These practices are occurring in the private sector as data-driven

decision-making is expanding and the software used to make important decisions is made proprietary, hidden from view of the public. Or, if it is available, lay-users cannot understand how it works, an effective black-box of information due to its incomprehensibility. These techniques of sense-making are not new—difference has been coded as suspect long before this era—but new forms of power are congealing around these mechanisms.

In order to understand how these processes are working, and to challenge the association between difference and fraudulence, a new critical literacy is required. Critical trans data praxis requires engagement with technology in new ways: understanding how algorithms work to categorize and marginalize beyond the theoretical and into the practical. We are beyond the point of ubiquity in the “digital age.” A critical trans data praxis requires making pointed critiques of the ways that data and algorithms harm marginalized people *and* producing technological insights, platforms, and tools of our own.

Trans people have been doing this: building software to help people find affirming physicians (RAD Remedy) or trans-only social media platforms to document their transitions in a safe space (Trans Time).<sup>76</sup> These platforms actively work to challenge norms of software development that reproduce inequalities. Trans Time, for instance, declares that they will never sell user data and further, that when a user deletes their information, it will truly be deleted. They write, “make both public and private posts, and when you delete them, we’ll delete them, too.” Giving users control over the

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<sup>76</sup> RAD Remedy ([www.radremedy.org](http://www.radremedy.org)) and Trans Time (<https://www.transtime.is/>), respectively.

visibility and lifespan of their authored content and data is uncommon and a radical move towards a critical trans data praxis. Rather than presuming that all data could be useful at some point, they recognize the value in data expiration and disposal. After all, they know the harm that can come from outdated or “outing” data. These types of projects inspire me to think about what’s next to come from this work, to think about how to apply these principles to pressing challenges.

Finally, I want to conclude with a list of principles for what I have been calling critical trans data praxis. This list is a draft, sure to change with shifts in technology, policy, engagement, and knowledge. I offer it as a set of guiding principles for our contemporary moment, and a way to orient our thinking and strategizing as we, and I, embark on new futures.

### *Principles for Critical Trans Data Praxis*

- Data is not inherently bad, but how people use data often has harmful consequences.
- Algorithms can tell multiple truths.
- Data has an expiration date.
- Variables change – everything will change.
- Difference != risk or threat.
- Humans create tech. Humans turn humans into data.
- Expanding data’s potential may bring unexpected consequences.
- Knowing is deeper than data.
- Invest in trans futures.

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## **Appendix A: Guiding Questions for Focus Group Interviews**

What has the process of changing your name and sex marker been like?

Tell me about a time when you ran into an issue with your name because of your gender identity.

How often would you say you have issues related to your name?

What is the strangest issue you've run into?

What has most surprised you about changing your name?

What was the most challenging part of changing your name?

Where did/do you find support through the name change process or issues arising from your name change?

How did staff at X place treat you through your name change?

What have been the consequences of changing your name? What has been positive about this experience?

Have you ever had an issue with a bank, a credit check or a background check?

Have you ever been accused of committing fraud or not being who you said you are due to your name change?

Has your name change affected your credit report or credit rating?

Has your name or sex marker change impacted your access to health care or health insurance claims?