TRANSGRESSING THE CISTEM: GENDER, AGENCY AND CHANGE IN THE SAN FRANCISCO LEGAL SYSTEM

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Abstract:

This project demonstrates how the legal environment in the city of San Francisco transformed over time with relation to its trans* and gender variant subjects through a dual-component thesis-capstone project. Using a law and society approach, the thesis component constructs a history of legal persecution beginning in the Spanish colonial period and ending in the year 2000, especially focusing on the period 1965 – 2000. It locates three distinct legal regimes in the city: a religious-based Catholic mission system from 1776 – 1848, a common law based anti-vice regime from 1863 – 1974, and a common law based anti-prostitution regime that emerges by 1980. While each regime is defined by its own system of jurisprudence and language of power, the thesis argues that all are effectively similar in their repression of gender variance. Beginning in the 1990s, however, the city's legalized system of gender enforcement begins to face substantive change due to the advocacy efforts of trans* and sex worker communities.

The capstone component is composed of a proposed podcast and attached pilot episode with its script. The podcast addresses a general audience and uses a liberatory pedagogical model in its construction. It is based in a specific case study, that of transgender sex worker Victoria Schneider and her legal case against the city of San Francisco in the latter half of the 1990s. The overall project demonstrates how a pedagogical podcast can be constructed to tell the history of trans* legal resistance to a general audience with an eye towards broader liberation.

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1. Introduction

United States trans* history is a relatively new area of study. Its origins can be traced back to the 1980s, but a vast majority of the work done in the field has emerged over the past twenty years. The area of study owes much to the pioneering work of historians such as Susan Stryker, Joanne Meyerowitz, and numerous others; however, in many ways the field still remains embryonic. Much of the scholarship so far has focused on the construction and growth of trans* identities, political activism, and national narratives of resistance. This author will take a different approach. While there exists a small body of literature focused on LGBTQ+ legal history in the United States, there is not yet such a body related specifically to trans* legal history at the local level.

Such a study is necessary as trans* and gender variant individuals have since the middle of the 19th century faced arrest, detention, and humiliation at the hands of various courts and law enforcement agencies across the United States in a way which has set them apart even from other LGBTQ+ subjects. For more than a century these individuals faced a double onslaught of anti-sodomy and anti-gender impersonation/crossdressing laws which created a uniquely challenging set of legal restrictions. In addition, the persistent conflation of trans* identities and associated behaviors with prostitution continues to result in the disproportionate enforcement of anti-prostitution laws against people perceived as trans*.[1] Then, there are the associated fights regarding the housing of trans* inmates in prisons and jail sections which align with their gender. All these battles involve complicated interactions between lawmakers, enforcers, judges, civil society, and individual trans* people to the effect of changing the ways in which trans* people experience their government, community, public

[1] Roman Rodriguez Tejera, "Walking While Trans: Policing Women's Sexuality," University of Miami Law Review, 75, 67 (2020).

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spaces, and, inevitably, themselves. What is more, these battles happened all across the country in different places at different times and while such process have always been interconnected, they have also been greatly informed by local conditions. It has been these individual fights for legal change which served as a central pillar in the political orientation of the first LGBTQ+ and then subsequent, specifically trans* activist movements across the United States; it is impossible to fully understand these movements without adequately understanding the systems they opposed. Furthermore, as legal standards change, law enforcement policies shift and the language of politics evolve, the priorities of trans* activism have adapted in response as well. Thus, in order to understand trans* people—their fears, anxieties and struggles—and to comprehend the political movements these individuals create, it is necessary to have a complete picture of how the mechanisms of oppression which they face have changed through time. This is why a specifically trans* legal history, and in particular its criminal component, is important to the broader field of trans* history and United States history.

In trying to address this significant gap in the scholarship, therefore, the author asks the questions: how do trans* people, communities, and the law construct one another at the local level, how are such processes interconnected with larger shifts at state, national and international levels, and what are the consequences of such for the lives of trans* people? In order to explore this, the author takes as her subject the city of San Francisco from colonial times to the year 2000. San Francisco was chosen because of the relative wealth of material. There exist multiple LGBTQ+ archives in the city which contain relevant material, a long history of sex worker activism, one of the oldest LGBTQ+ publishing traditions in the country, and the city has a relatively well documented history of trans and queer citizens confronting the law going back to the middle of the 19th century. The period in question

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covers three distinct eras of gender enforcement which the author locates thusly: A Catholic Mission regime under Spanish and Mexican rule covering 1776-1848, an anti-vice regime during the early period of American rule from 1863-1974, and an anti-prostitution regime which takes shape by 1980. Between these periods are moments of systemic transition within which legal persecution of gender variance was destabilized. This thesis will focus primarily on the last period of destabilization and what came before and after it. Where this work departs from previous literature and treads its own path is in the research which this author has undertaken to demonstrate both the ruptures and continuities between the anti-vice regime and the anti-prostitution regime. It is through the transition in legal tactics and language in this period that new avenues opened for trans* people to contest the emergent anti-prostitution regime.

The project which the author has used this research to create is composed of a dual-component thesis and capstone. The capstone consists of a pilot episode of a public history podcast. This project proposes to recount some of the significant ways in which specific trans* people have challenged laws and law enforcement practices in San Francisco on the basis of archival documents. The goal is to produce a humanized and engaging telling of a legal history which can be of use to the broader trans* community both by informing future activist work and allowing individuals to more comprehensively understand their relationship to the legal system. The pilot episode itself recounts the experience of Victoria Schneider, a transgender sex worker, and her attempts to seek restitution and a change in jail policy after repeated arrests and humiliating treatment at the hands of police and sheriff's deputies.

The thesis portion of the project is composed of three components. It begins with a background section in which relevant theory, methods, and historiography are explored as such relates to the interpretation of the research. The second section uses archival material to

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construct a history of gender enforcement within the San Francisco legal system. While the bulk of this material focuses on the period of 1974 - 2000, the author touches on relevant material from both before and after this period in order to show relevant continuities and disjunctures. The third section addresses the podcast. It explores the author's approach to the medium as both a form of public history and community activism, as well as explaining the project's construction and what it prioritizes. Finally, the thesis concludes by summarizing the findings of the research, connecting such to larger issues in academia and activism, addressing shortcomings within the work, and proposing future directions for study.

In approaching the topic at hand, the author attempts to interweave a number of different theoretical and methodological approaches. Given the interdisciplinary nature of the project, however, she cannot hope to be exhaustive in her exploration of relevant literature. Within the constraints of a master's thesis, therefore, the author focuses on connecting the theoretical realms of legal anthropology and legal history in order to construct a flexible definition of the law which suits the purposes of this study. She also touches on discussions of archives, academic podcasting, and pedagogy in the creation of this work. Finally, in addressing the existing literature on the subject, the author constrains herself to discussions of a few of the most pertinent works. The project itself connects trans* history, gay history, legal and political history of the US, California and San Francisco, sex worker history, Spanish colonial history, and feminist history. The aim of such diverse inclusions is to develop a more complete view of the past and show how trans* legal persecution is interwoven into the history and efforts of those around them. Overall, the effect is such as to develop a law and society approach to the study of trans* experiences of the legal system within a local context that can be used to help inform people about historical approaches to resistance and activism. It is hoped that such will not only develop a more complete historical

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understanding for people generally but also inspire continued resistance to the various forms of legal repression in the US and globally which are always shifting and changing under the pressures placed on them from both above and below.

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2. Background

2.1 A Brief Note on Language

This work covers more than 200 years of gender history. What is more, it is probably the most linguistically dynamic period for the discussion of gender in world history. The work uses a number of terms to talk about gender in the past, present, and future including trans*, gender variant/variance, gender impersonation, gender norms, gender systems/regimes, assigned gender, and transgender.

The term **assigned gender** refers to the gender category one is assigned at birth in the Western, Christian tradition—either male or female.

The term **gender system/regime** refers to the overarching collection of expected behaviors and limitations imposed by a society on its members through gender.

An overall gender system is composed of individual **gender norms**. Within the hegemonic Euro-American gender system discussed in this work—fixed, binary norms of gender are among its defining features. It is those whose behaviors depart from the gender norms of American society to such an extent as to bring on legal repercussions that are the subject of the given work, no matter their identity.

The author most commonly uses the terms trans* and gender variant/variance. **Gender variance** is used as an umbrella term to refer to any behavior which departs from the gender norms of a given society to such an extent as to bring about the notice of others in society.

The term **trans*** is based on computerized data search protocols wherein the asterisk functions as a wild card operator. That is to say, the asterisk symbolizes all the various terms

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which begin with the letters t-r-a-n-s. The usage within academic literature emerged in the 1990s in order to encompass various identity categories, most significantly transsexual and transgender.[2]

The term **transsexual** emerges in American discourse after the Second World War. It has its origins in the work of European sexologists Magnus Hierschfeld and Havelock Ellis. It was coined as a means of drawing a distinction between those whose gender identity differed from the one they were assigned at birth from those whose sexual desires were directed towards those of the same gender. Before this development in language in the early 20th century, gender variance and sexual variance were conceptualized as the same phenomenon.[3]

The term **transgender** emerged in the 1980s in response to the increasing availability of medical interventions aimed at helping trans* people bring their bodies into alignment with their own perceived notions of their gender. Initially, transgender referred to a person who did not wish to undergo most or any of these interventions. However, overtime transgender simply supplanted transsexual as an overarching term for anyone who choses to use it and identifies with a different gender than the one they were assigned at birth. As such, the term transgender is dominant in the literature relating to gender variance over the past 20 or so years. Because of this dominance, the author occasionally uses the term transgender when discussing the work of others or the specific identity of a historical subject. However, when talking generally, **the author uses the term trans* when referring to gender variant communities beginning in the post-war period. Before then, the author uses the term gender variant people.**

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[2] Susan Stryker, *Transgender History: The Roots of Today's Revolution*, 2nd ed. New York, NY: Seal Press, 2017, 18-19.
[3] Stryker, *Transgender History: The Roots of Today's Revolution*, 39.

The term **gender impersonation** is used when discussing legislative ordinances which prohibit gender variant behaviors. This is used over the term crossdressing, which appears in some of the literature. The author chooses gender impersonation as it indicates a larger swathe of behavior which was used for legal persecution. For instance, gender impersonation arrests were made not just by observing someone's dress but also how one walks, talks and refers to oneself, all of which contributed to arrests under such ordinances.[4]

Additionally, the author uses both the terms **sex worker** and **prostitute** throughout the work. Generally, the term sex worker is preferred as it covers a broader range of subsistence practices. However, when specificity is productive, the term prostitute is used.

2.2 Secondary Literature Review

Stryker's book, *Transgender History,* is a seminal piece in the development of a trans* historical project. First published in 2008, it touches upon a diverse range of topics, starting off with an investigation of the copious and often confusing range of terminology used in the past century to discuss trans* subjects. It then shifts into an intellectual history of the concept of trans* behaviors and identities, starting with early pathologizations in the 19th and 20th centuries and discussing the contributions of critical sexologists and other specialists such as Magnus Hirschfeld and Harry Benjamin. The third section discusses the emergence of early grassroots movements for trans* rights and liberation from the 1950s to the 1970s. In so doing, Stryker highlights key events, organizations, and individuals such as the Compton Cafeteria Riot, the New York activist group Street Transvestite Action Revolutionaries, and

[4] Clare Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, Durham: Duke University Press, 2014, 81-85.

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trans philanthropist Reed Erikson.[5] In the fourth section, the book touches upon the backlash against trans* identities in the 1970s and 1980s from within the LGBT movement as well as from feminist corners and the effects this had on the development of both trans* identities and politics. Finally, Stryker closes by discussing how the HIV/AIDS epidemic brought trans* and other LGBTQ+ groups into greater partnership and how this, along with developments in trans* healthcare, have continued to shape trans* activism and experiences into the 21st century. Overall, this book functions as a classic overview of trans* history in the US from the field's founding academic. As such, it is an indispensable starting point for any exploration of trans* history in the United States. However, the book's overarching approach necessitates that its discussion of legal developments be highly generalized as changes often happened at the state and local level. Thus, from the perspective of trans* legal history, it lacks much. It speaks of a changing legal environment but cannot go into specifics, with the exception of certain major cities like New York, regarding how certain laws and law enforcement practices changed as such developments happened differently and at different times across the country.[6] The work is helpful, however, in providing the larger social context which is necessary for a law and society approach to legal history.

In order to understand how the law and society approach to legal history came about and works, the seminal work *Law and Economic Growth: A Legal History of the Lumber Industry in Wisconsin, 1836-1915* by James Willard Hurst is of central importance. Hurst departed from earlier traditions in legal history by focusing not solely on the decisions of courts and legislative products, but by looking at the law's enforcement as well as its broader impact on society. The book takes as its subject a significant fact: that in the second half of the 19th century, the pine forests which covered most of the state were logged to near

[5] Stryker, *Transgender History: The Roots of Today's Revolution*, 63, 78, 86.
[6] Ibid, 148-149.

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complete eradication. In order to explain this, Hurst explores the legal environment which was created in the middle of the 19th century and delves into how such led to an explosion in the practice of clear cutting. In explaining this phenomenon, he looks to court cases and economic theory. However, one of the defining features of the clearcutting which Hurst is studying is its enormous wastefulness. In order to explain this, Hurst looks to the psychology of American pioneer settlers who developed the lumber industry and came to hold significant political sway in the early years of the state's history. In particular, he notes an individualist, commercial minded ethos which valued the ability of settlers to make fast fortunes over the long-term interests of the state and nation.[7] This combined with an agriculturally oriented land policy in the United States which was ill-fitted for the developing lumber industry in Wisconsin. The result was that more often than not, settlers would buy federal lands at effectively subsidized cost, clear cut and sell the timber, then allow the property taxes to come into arrears, whereupon the government would seize the now depleted lands in compensation for the unpaid taxes.[8] What's more, landowners often logged beyond their legal possession, illegally depleting stocks on public land. Such violations were hardly enforceable, however, as the reach of executive power within the state during this period was minimal.[9] All of these issues were obvious and discussed at the time; it was the power which the lumber industry had over the legislature, Hurst notes, that kept any meaningful reforms from taking place.[10] This is simply one example in which the author discusses the *de facto* realities of Wisconsin in this period and how they shaped the complex relationship between the courts, legislature, police, and people so as to create the given, lived legal realities at the time. This master's thesis, and the larger field of law and society research within which it is situated, is

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[7] James Willard Hurst, *Law And Economic Growth. The Legal History of the Lumber Industry in Wisconsin, 1836-1915*, Madison, WI, University of Wisconsin Press (1984) 49.
[8] Hurst, *Law And Economic Growth. The Legal History of the Lumber Industry in Wisconsin, 1836-1915*, 119.
[9] Ibid,439.
[10] Ibid, 278.

largely indebted to Hurst's work as his muti-factor approach to legal history allows for a more fruitful exploration of how and why legal changes occur or do not occur. Especially when looking at the development of trans* legal repression, understanding how the law develops without addressing its subjects or the influence which civil society and activist groups had on its development would be almost meaningless. Thus, for trans* legal history and LGBTQ+ legal history more broadly, the influence of Hurst is undeniable.

In the field of LGBTQ+ legal history, the 2002 book Gaylaw: Challenging the apartheid of the Closet by William Eskridge takes a Hurstian approach and provides a broad overview of the legal developments LGBTQ+ people have faced in the United States since the late 19th century, though it is in many ways lacking with regards to specifically trans* issues. The first chapter provides a well-developed overview of anti-cross-dressing ordinances from 1880-1946, focusing on their different formulations across the United States and instances of their enforcement. From the perspective of trans* legal history, this serves as the most helpful section, especially as regards its listing of different ordinances across the country and the years they were promulgated, although it still is in many ways lacking.[11] It fails to make note of the common connection law enforcement agents have and still make between cross-dressing, gender variance and prostitution, especially with regards to those assigned male at birth. This overlooking of anti-prostitution ordinances as sites of trans* criminalization is a major hole in LGBTQ+ and legal history more broadly. The lack of trans* specific material in this book is not surprising given that it mostly relies on secondary source material and was published in 2002, well before trans* history had become more than a piece of marginalia. Overall, Eskridge's attempt to provide a broad overview of LGBTQ+ legal history is admirable, though suffers substantially from its lack of trans* perspectives.

[11] William Eskridge, *Gaylaw: Challenging the apartheid of the Closet*, Cambridge, MA: Harvard University Press, 2002, 338-341.

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Kate Redburn's article, "Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86," provides a rare example of what trans* legal history might look like, though its approach is not without its weaknesses. The piece analyses the development of legal challenges to cross-dressing bans in the United States, focusing on the individuals and organizations who pursued them and the strategies which became common in the period. Whereas Stryker's approach is maximally broad, Redburn is a bit more specific, focusing on the legal challenges and repeal of cross-dressing bans across the nation. However, the article is still quite general in many ways as it attempts to summarize developments nationwide as opposed to delving for an in-depth look at a specific locality.[12] While such a study is without a doubt valuable (especially its chart of anti-cross-dressing ordinances and their date of implementation across the nation[13]), its approach necessitates the excision of specific events from their surrounding context. This approach can be contrasted with that taken by Hurst, wherein a more than 700-page study explores the legal intricacies and broader context within which the Wisconsin lumber industry developed. Redburn's work relies heavily on an impressive collection primary source court documents and newspaper articles but uses fewer secondary sources. This is not surprising, given that there has been very little direct inquiry into this field of study. However, given this fact, it seems difficult to construct a national narrative in fewer than 40 pages without having a foundation of more local narratives upon which to build off. This critical weakness is highlighted in the title of the article itself; is it appropriate to talk of *the* transgender legal movement? It would be more appropriate, this author contends, to speak of different transgender legal movements, each situated within a specific local context, yet interconnected with others around the country. Thus, Redburn's argument could be more thoroughly

[12] Kate Redburn, "Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86," Law and History Review 40, no. 4 (2022): 681.
[13] Redburn, "Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86," 718-723.

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contextualized if in discussing each challenge to anti-gender impersonation laws in different cities and states they situated such not just within a national context, but also more fully within a local context. In order to create a truly robust trans* legal history, then, it is necessary to develop local narratives of change in order to see how such smaller histories connect to larger, national trends.

One such stand-out attempt to do just this—and perhaps the only attempt yet to develop a trans* legal history situated in a specific locality—is Clare Sears's book Arresting Dress: Cross-Dressing, Law and Fascination in Nineteenth-Century San Francisco. By narrowing their inquiry to such a specific focus, Sears is able to delve deep into not just the specifics of the 1863 city ordinance which prohibited so-called cross-dressing, but also its enforcement and the larger implications for understanding the policing of gender norms both in the 19th century and beyond. Sears brings a background in criminology, sociology, queer theory, and transgender studies which informs their work and gives it a strong theoretical foundation.[14] From the very outset, their work attempts to focus less on those who engage in gender variant behaviors and more on cross-dressing as a practice.[15] Perhaps the most interesting portion of Sears's analysis is their investigation of unequal enforcement in chapter three.[16] Such an approach situates the history of anti-gender impersonation laws within an intersectional framework, accounting for how race and class affected people's relationship to the legal system. This is something which many works on trans* history lack, and which is especially important with regards to trans* legal history. By circumventing issues of race and class, the history of gender variant behaviors can quickly become the story of middle-class white individuals. This is why discussions of enforcement are so essential. Many laws in the United States, especially those promulgated since the 1950s, have been *de jure* racially

[14] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 7.
[15] Ibid, 8.
[16] Ibid, 61.

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neutral, but in practice are disproportionately enforced against racial minorities and the poor. As such, understanding the differences in terms of enforcement and experiences between different groups is an essential factor in understanding the policing of gender variance.

2.3 The Law and Enforcement in the US Context

To begin with any inquiry into legal history, one must first determine an adequate definition for what constitutes the law. Such a categorization has a long history of its own; within the Western legal and intellectual context that the US system is a part of, the concept has been variously defined for more than 2000 years.[17] The issue of a broadly applicable definition for the law is thus far from settled and should instead be decided on the basis of usefulness for the given study at hand.[18] This study takes as its starting point a broad and inclusive concept of the law based upon functionality—that is to say that the law is fundamentally defined by what it does.[19] **In this case, law will be defined as the institutionalized enforcement of social norms and ideals, underpinned by the threat of force or other sanctions, in a given society**. In particular, the threat of force and its actual implementation will be largely the focus of this work. The author choses such a definition for the law as she believes such to be the most useful in her approach to a legal history of gender variance situated within San Francisco. This is because the chosen definition centers the law as a lived practice (i.e. the process of implementation) experienced by individuals and not just a theoretical code, allowing an exploration of the continuities and disjunctures of institutionalized oppression through various regimes and languages of power. The

[17]James Donovan, *Legal Anthropology: An Introduction*, Lanham, MD, Altamira Press (2007) 29.
[18] Donovan, *Legal Anthropology: An Introduction*, 27.
[19] Ibid, 31.

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functionalist focus on implementation also allows for an examination of the practice of law making which includes various different institutions including legislatures, courts, police departments, and civil society. In order to demonstrate the value of such a definition, the author will provide a substantive definition of the law for comparison.

One common and intuitive definition for what constitutes law is that it is composed of those products which legislatures create.[20] Such legislative products are, however, meaningless without institutions to interpret and enforce these laws as well as a community over which to enact them; that is to say, law is not just a set of rules laid down by one institution, it is rather a process of negotiating practices between different groups of individuals with sometimes competing goals. Such an ecosystem of actors is in opposition to the classical liberal view of a seperation of powers in which the legislature writes the laws, the judiciary interprets them, and the executive enforces them, with the broader society existing more or less as a mere object for their enforcement.[21] The reality has always been much messier than this.

Within the US context, legislative bodies write out rules which are supposed to be limited within the given constitutional framework of the nation, state, and any other relevant founding framework of an agency such as a school district or public utilities charter. The rules which these institutions create are interpreted by a judicial body such as a state or federal court using various tools. These tools can include legislative text, history, precedent, tradition, purposes, values, and consequences relevant to those purposes among other interpretive implements.[22] What's more, the currency which these various implements hold in the judicial interpretations offered by the high courts of the United States vary over time,

[20] Ibid, 33.
[21] Philip B. Kurland, "The Rise and Fall of the Doctrine of Separation of Powers," 85 Michigan Law Review 592 (1986) 593.
[22] Stephen Bryer, *Reading the Constitution*, New York, NY, Simon & Schuster (2024) 1.

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from court justice to court justice, as well as from case to case. For instance, the relative value placed on purpose can empower legislators to provide briefs to a court explaining their intended purposes which judges may or may not use in their rulings. How much weight a judge gives to intent is context dependent and also largely based on the sort of theory of interpretation which the judge employs.[23] For instance, many legal theorists look at changes in the makeup of the US Supreme Court over the last decade and notice a shift from purpose-oriented interpretive approaches to textualist ones.[24] Such shifts not only decrease the ability of legislators to influence the decisions of courts through briefs, but also leads the courts to make substantive changes to the law. An example of such can be seen the case of *Dobbs v. Jackson Women's Health Organization* where the Supreme Court overturned the previous precedent it had set in *Roe v. Wade* that the US constitution provides a legal right to an abortion. This decision made abortion bans that had been written into legal codes before the decision of *Roe v. Wade* and remained on the books in dozens of states enforceable again.[25] In this way, US courts' interpretive power has a legislative quality and shifts in legal doctrine limit the interpretive influence which legislators can have within the legal system.

In looking at the role of executive power, one sees not only the power to enforce, but in fact a substantial power to interpret and write law. As a matter of practice, while the interpretive authority of courts in the United States supersedes that of any other branch of government, the executive branch is almost always the branch of government given the duty of first interpretation. It is only once someone or some institution challenges the way an executive branch body chooses to interpret and enforce a statute that a court is asked to interpret a law. What is more, within the framework of legislation and court decisions, enforcement agencies enjoy significant leeway. Police, jails, and prisons are allowed to

[23] Breyer, *Reading the Constitution*, 30-31.
[24] Ibid, ii.
[25] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022).

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determine their own policies which dictate how arrests and incarceration should be performed. In this power to write their own policy and procedures, one can locate a kind of legislative power in the hands of the executive branch. Police also determine for themselves which crimes and criminals to prioritize. This can be informed by a number of factors. An example of a crime whose enforcement is controversial is anti-jaywalking ordinances. The State of California decriminalized jaywalking except in instances of obvious and immediate danger in part because of perceptions of unequal enforcement. The State Senate Committee of Public Safety cites the figure of Black Californians being cited 5 times more than the general population for jaywalking before decriminalization. It also argues that previously existing jaywalking legislation was essentially unattainable in its scope given that millions of Californians jaywalk every day and the possibility of citing every offender was unreasonable.[26] Such facts demonstrate how the enforcement priorities and policies law enforcement organizations implement, while constrained by the legislation and holdings of the other two branches of government, have significant power to shape the law as a lived practice.

In the instance of California's anti-jaywalking ordinance and its enforcement history, one can see that the norm being enforced is not just that people should refrain from crossing the street outside of designated crosswalks, but also that the jaywalking of black people in America is in greater need of repression than the same practice when committed by white citizens. This fits in with the larger trend of social control of minority groups in the United States through unequal enforcement. A significant body of literature exists arguing that the explosive growth of the carceral state in the US during the late-20th century functioned as the *de facto* re-institutionalization of the American racial caste system following the repeal of the

[26] California Senate Committee on Public Safety, AB 2147, Subject: Pedestrians, June 21, 2022.

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de jure apartheid of Jim Crow in the 1950s and 1960s.[27] To a lesser extent, there exist works exploring a similar reconfiguration of sexual and gender control from *de jure* models based in anti-sodomy and anti-gender impersonation laws to *de facto* systems wherein lewd conduct and anti-prostitution laws are discriminately enforced to perpetuate the erasure of gender and sexual variance from public spaces.[28] If one considers the above examples within the given definition of law used for this study, both *de jure* and *de facto* systems function in practically the same manner. Whether a person perceived as trans* was arrested in the past under an anti-gender impersonation ordinance or the loitering with the intent to commit prostitution statute, the result was usually similar. In fact, in San Francisco, the punishments for both crimes were exactly the same—both were misdemeanor charges resulting in up to six months imprisonment and/or a fine of up to $1000.[29] Within the given study then, while shifts in the regimes and languages of the law will be examined, this work will always try to keep its eye on the ball: to focus on the substantive changes to trans* experiences of the legal system in San Francisco.

2.4 Methodology, Archives, and the Trans* Sex Worker

This work takes a longue durée approach to gender in San Francisco. Such is necessary as it shows how evolving systems of governance, advocacy, and thought created the intricacies and peculiarities of the system which the capstone proposes to explore. In order to do so, the thesis draws from a variety of sources, especially newspapers, court

[27] Michelle Alexander and Cornel West, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York, NY: New Press, 2020).
[28] Timothey Stewart-Winter, "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States," The Journal of American History 102, no. 1 (2015): 61–72.
[29] San Francisco Board of Supervisor, *Revised Orders of the City and County of San Francisco*, 1863, San Francisco. CA Penal Code § 653.22 (2021).

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documents, and the records of legislatures. It is also largely indebted to secondary works from a number of different fields including legal studies, sociology, anthropology, and of course history. Where possible, the work also uses police records and statistics, though such are often difficult to find both generally and especially in the case being studied. Much has been written about the struggle of researching marginalized groups. In this study, the main component of which is an exploration of the interconnection between the policing of sex work and gender, the image of the trans* and gender variant sex worker takes center stage. It is difficult to imagine a more socially marginalized subject for historical study. As such, locating this group within the historical record comes with great challenges. Where such groups do appear, it is often within the records of systems of power and control: the court, the police, legislative discussions, and the popular press. Needless to say, the available sources do not generally offer a complementary, humanizing view of these people. Nor do they allow for the voices of the trans* and gender variant sex workers being discussed to reach us today, except through systemic efforts of recording and editing made by those who held power over them. In more recent times, as trans* gay and sex worker communities have come into political coherence, the tool of community archiving has allowed us to widen the perspective provided by what Ann Stoler calls "disabled histories," the brief bits of voice and narrative which poke through colonial records and allow the researcher a glimpse at a narrative not told.[30] The relatively late emergence of these community archives, however, provides the researcher with a methodological task. How does one weave together the colonial archive—a product of governance and repression—with the community archive—a product of self-enunciation? What is more, there exist the products of NGOs and academic researchers

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[30] Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, Princeton, NJ: Princeton University Press, (2010) 20.

looking to variously understand, represent, and/or help trans*, gay, and sex worker communities. How do these documents factor in?

To provide an example, in the chapter of this thesis entitled The Anti-Prostitution Regime: The Conservative Turn in Policing Under the Shadow of HIV/AIDS, the author uses sources from various different kinds of sources to create a more complete picture of the legal landscape for trans* people at the turn of the 21st century. One of these sources is police statistics collected by the federal government from local and state law enforcement agencies. These show that anti-prostitution arrests decreased since the end of the 1990s both in absolute terms and as a proportion of total arrests. This is an example of colonial material, the material is framed in the language and methods of a state which seeks to control prostitutes and eliminate prostitution from public space. In order to do so, it must frame police action as legitimate and beneficial. It is also, as a matter of fact, purely quantitative. This serves the interest of maintaining police legitimacy as it does not allow the viewer to dig deeper into what a prostitution arrest actually looks like. In order to provide a fuller picture of what such a decrease in arrests means for trans* people, the author uses two qualitative examples.

The first comes from an NGO report, Amnesty International, which describes a particularly horrific instance of abuse by both police and jail staff of a trans* women placed under arrest in 2002. This organization states its purpose in recording and publishing this instance is two-fold, to bring light to such kinds of abuse and to keep such from happening in the future by encouraging people to write to the police and sheriff's departments asking them to investigate the culpability of involved officers as well as implement new guidelines for their staffs. In this, we can see how the shocking nature of the arrest serves the purposes of Amnesty International. This organization is necessarily one of limited resources, two of which being the time and motivation of those on its mailing list. In this context, the shock

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value of the case serves to direct these limited resources towards the writing of letters, the making of phone calls, and the sending of emails.[31] Thus, the sorts of qualitative material which comes from NGOs like Amnesty International tends to be the most shocking and egregious as it serves the broader purposes of an organization seeking to raise public support for its mission. In the context of this thesis, the author chooses to simply summarize the account in its broadest strokes as the author believes the emotional labor put on the reader in reading such outweighs any sort of insights which the particulars might bring to the work. The reader is also, of course, free to find the report themselves if they so desire.

The third type of material used is from the GLBT archives in San Francisco. This material is constituted by a donation of documents and objects made by Victoria Schneider. Their existence in the archive is thus a result of two decisions, the first by Schneider in deciding that such material is deserving of preservation and the second by the archive in deciding that the historical value of the material to the broader community was such that it justified its consumption of the limited space which the archive has access to. In this sense, it is the collection's significance within the archives understanding of its mission that determines its preservation. This mission is more than simply the preservation of history, it is the uplifting of LGBTQ+ people today and in the future as well as the belief the LGBTQ+ history can help promote civic engagement and social justice in society more broadly.[32] For the documents which Schneider provided to the archive, the value in their preservation can be seen as emanating from their transformative value as opposed to the shock value of the material collected and published by Amnesty International. The collection Schneider donated focuses on her own legal battle to win recognition of the illegality of her treatment by the city's police and sheriff's departments. It is significant in that she won this battle and

[31] Amnesty International, USA California: Transgender woman ill-treated and raped in jail, 2005.
[32] GLBT Historical Society website, Overview and Mission, accessed May 15, 2025.

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successfully forced the sheriff's department to change its policies. This is the transformative value which the collection holds; it shows how the legal system changed due to trans* agency. It is because of this that the author can use the material from these documents to show a more normative experience of law enforcement for trans* sex workers, as the material does not highlight one particularly horrifying arrest but rather demonstrates a repeated practice of less violent, though still jarring, oppression.

It is through these three drastically different sources of information that this work is able to piece together a more complete image of the past. In the instance of colonial archives, it is important to, as Stoler notes, to pay attention to archival form. [33] In particular, in a longue durée approach, the shifting language of governance and the terminology used to justify exclusion and oppression is of significant note. Tracing such constitutes a significant part of the work to follow. In the use of third-party research material from the academy and the NGO sector, mission and funding are of interpretive importance. The same applies to community archives, with the added factor of provenance and understanding the series of decisions which led to the preservation of the collected documents. It is with these various tools, then, that the given study is constructed.

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[33] Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, 20.

3. History

3.1 The Emergence of the Anti-Vice regime: The New City of San Francisco and the Taming of the Wild West

The history of gender and gender variance in San Francisco and California stretches back to Colonial and pre-colonial times. From the first arrival of Spanish colonizers to the territory of the future state, a conflict emerged as Europeans attempted to impose a foreign cultural schema upon a diverse landscape of indigenous peoples as well as maintain the same schema's dominance over its own settler population. In attempting to impose European gender norms on the population of California, the Mission system of Spanish and Mexican rule gave way to a municipal anti-vice regime that came to fruition under the new American government. The transition between the two, while creating a brief period of relative freedom, reproduced a legal environment in which gender variance was effectively, if not completely, suppressed in public spaces.

During the period of Spanish and Mexican control, the Catholic Church attempted to convert the population and impose a Christian world view over the indigenous population. This world view included specific ideas about how society should be divided and organized. Part of this included gender norms which saw people categorized into an immutable binary of men and women, determined at birth, and wherein men were dominant and expected to lead public life while women were subservient and expected to maintain the domestic, private

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sphere.[34] During this phase of history, however, the church and state authorities lacked real control over most of the territory. Outside of the Catholic Mission settlements and the few colonial towns which were in the process of emerging, the European colonial project lacked the real power to impose its authority on both the indigenous population and the non-native colonizers.[35]

In the territory which the State and church did have authority, including the emerging city of San Francisco, the recreation of the Spanish family structure was of significant concern. Initially, the Catholic Mission system attempted to impose this regime of sociopolitical control through the forced conversion and the imposition of Catholic marriage on those indigenous people who lived within Mission settlements. This system especially encouraged the marriage of indigenous women to the soldiers whose presence ensured the dominance of the Catholic mission project. Such marriages were seen as more likely to result in the recreation of the Catholic family unit than the marriage of newly converted indigenous people to each other.[36] However, as the military-religious system of colonization first established in San Francisco in 1776 began to give way to a more complex, settler-colonial project around the dawn of the 19th century, the influx of European and mestizo families from Spain and the rest of the Spanish colonies became of increasing significance in the imposition of Catholic family structures in the territory.[37] Through the imposition of Catholicism on the Native population and the settling of Christian migrants in the territory of Alta California, indigenous gender regimes were largely supplanted by the patriarchal, binary gender system of 18th and 19th century Europe.

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[34]Antonia I. Castañeda, "Engendering the History of Alta California, 1769-1848: Gender, Sexuality, and the Family," California History 76, no. 2/3 (1997): 232-234.
[35] Robert Heizer, "Impact of colonization on the Native California societies," The Journal of San Diego History 24, no. 1 (1978): 124.
[36] Castañeda, "Engendering the History of Alta California, 1769-1848: Gender, Sexuality, and the Family," 239
[37] Ibid, 241.

With the eventual annexation of the territory of California by the United States in the 1848 Treaty of Guadalupe Hidalgo following the Mexican-American War, much would change in terms of the colonial gender regime in the territory. With the end of Catholic rule and the dispossession and disenfranchisement of most of the previous Californio elites, the centuries old system of Spanish and Mexican rule would rapidly change. While the Ayuntamiento (city council) of Mexican San Francisco had been under the control of European American settlers since 1846, upon its annexation the city lacked a single police officer or jail; the previous regime had relied on religious authority to maintain moral order.[38] In addition, the discovery of gold at Sutter Mill in the same year would lead to a massive influx of American settlers, the vast majority of whom were young men.[39] The concomitant collapse of the preexisting regime for moral and gender enforcement along with the explosive growth in a young, male population that was mobile and untethered from the expectations of their natal communities created an environment wherein the social, religious, and state pressures that were responsible for maintaining the hegemonic gender system were largely absent. Additionally, the gender imbalance in the new state made the reproduction of the family as the foundational sociopolitical unit unfeasible. It is this absence which is in part responsible for the emergence of the so-called wild west, a significant part of which included 'wild' explorations of gender and sexuality.[40]

It is because of the relative weakness of social control that areas of Westward colonization in the 19th century provide the greatest number of examples of gender variance

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[38] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 51.
[39] Ibid, 24.
[40] Peter Boag, "The Trouble with Cross-Dressers: Researching and Writing the History of Sexual and Gender Transgressiveness in the Nineteenth-Century American West," Oregon Historical Quarterly 112, no. 3 (2011): 322-324.

from this period.[41] Additionally, as these areas experienced rapid growth and towns transformed into cities, the West also saw a great number of adoptions of anti-gender impersonation ordinances in order to limit gender variance.[42] This includes San Francisco, which by the time of its adoption of an anti-gender impersonation ordinance in 1863 had already transformed into a sizeable city and one of the largest on the Pacific coast of North America.[43] Over the next 111 years, dressing in clothing deemed to belong to the opposite sex one was assigned from birth would remain a criminal offence in the City.[44]

At the same time as the weakening of the system for moral and gender enforcement was allowing greater explorations of gender variance, that same weakening saw an explosion in sex work. This growth in sex work was also largely influenced by the gender imbalance brought to California by gold rush migration. The large population of unmarried, young men drove many to seek a sexual outlet through prostitution.[45] This growth in demand for sex work, the largely male population, and the loosening of traditional gender systems created a larger than usual niche for both male prostitutes and gender variance within sex work. These gender variant expressions in sex work mostly encompassed people presenting themselves through dress, speech, and other behaviors in ways that ran counter to their assigned gender. Such expressions, whether they be men embracing femininities, women embracing masculinities or people adopting genders different from the ones they were socially expected to perform, were all generally seen as behaviors associated with prostitution and vice in the Euro-American context of San Francisco at the time.[46] What is more, this growth in the sex

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[41] Boag, "The Trouble with Cross-Dressers: Researching and Writing the History of Sexual and Gender Transgressiveness in the Nineteenth-Century American West," 330.
[42] Redburn, "Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86," 718-723.
[43] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 5.
[44] San Francisco Board of Supervisors, *Journal of Proceedings*, July 22, 1974.
[45] Albert L. Hurtado, "Sex, Gender, Culture, and a Great Event: The California Gold Rush," Pacific Historical Review 68, no. 1 (1999): 6.
[46] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 42-43.

work industry in California throughout this period largely centered on the rapidly growing city of San Francisco. With gold mining being a seasonal business at this point in history and San Francisco the only developed commercial port in the region, the city functioned as a nexus point with gold flowing out, migrants and supplies shipped in, and seasonal workers flooding the city during the winter months with whatever gold they had mined in the previous year. The business and wealth which all these exchanges entailed made San Francisco not just the commercial capital of 19th century California, but the sex work capital as well.[47]

As the chaos of the gold rush years began to wane, the new legal order in San Francisco outlawed gender variant behaviors through the criminalization of "appearing in public in a dress not belonging to his or her sex."[48] The reassertion of traditional gender norms in this period differed from that of the Mexican and Spanish period. Whereas the previous regime had relied on the Catholic church and cited cannon law, the newly emergent political system of American San Francisco relied on secular police power and the legislative authority of the municipal and state governments.[49] The law was not merely a symbolic act: records exist for more than 100 arrests made in the first 40 years of the law.[50] The 1863 anti-gender impersonation ordinance was part of a larger reform of the city municipal codes which marked a significant shift in the role of San Francisco city governance as regards the moral order of society. For decades after 1863, the city would continually add anti-vice ordinances which sought to contain and eliminate practices which had remained unregulated since the annexation of California by the United States. In the 1863 ordinance, the city attempted to regulate crimes of public indecency including gender-impersonation, prostitution, public

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[47] Hurtado, "Sex, Gender, Culture, and a Great Event: The California Gold Rush," 5.
[48] San Francisco Board of Supervisor, *Revised Orders of the City and County of San Francisco*, 1863, San Francisco.
[49] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 39-40.
[50] Ibid, 2.

intoxication, and the use of profane language.[51] The city would go on to pass laws prohibiting or limiting other practices on moral grounds including gambling, spitting, and the sale of alcohol.[52]

What is more, the state also introduced laws which sought to curb vice, especially in public space, including its "crime against nature" statute as well as anti-vagrancy laws, public nuisance laws, and laws against "keeping or residing in [a] house of ill-fame" in its first Penal Code enacted in 1872.[53] The crime against nature statute, Penal Code (PC) §286, referred to any form of sodomy, oral copulation, or bestiality and was used primarily to target homosexuals and gender variant people assigned male at birth who engaged in, sought, or solicited sex in public. The penalty under this law was a felony prison sentence of no less than five years.[54] The state's anti-vagrancy laws, PC §647 were a direct descendant of Elizabethan poor laws and developed from an earlier anti-vagrancy act promulgated by the state in 1855.[55] These laws were meant to prohibit the idle poor and other undesirables from moving through public space. This included a labeling of "common prostitutes" as vagrants with a misdemeanor punishment including a jail sentence of up to six months and/or a fine of up to $500.[56] The public nuisance statutes, PC §370 and §372 define an offence as:

"Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of

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[51] San Francisco Board of Supervisor, *Revised Orders of the City and County of San Francisco*.
[52] Ibid, 44.
[53] Richard Sims, Walter Brann, Henery Deering, *The Penal code of California, enacted in 1872: as amended up to and including 1905, with statutory history and citation digest up to and including volume 147*, California reports, San Francisco, CA: Bancroft-Whitney (1906) §286, §315, §370, §372, and §647.
[54] Richard Sims, Walter Brann, Henery Deering, The Penal code of California, enacted in 1872: as amended up to and including 1905, with statutory history and citation digest up to and including volume 147, California reports, San Francisco, CA: Bancroft-Whitney (1906) §286.
[55] California Statutes, Chapter 175, "An Act to Punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons," (1855), 217; Risa Lauren Goluboff, Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s (New York, NY: Oxford University Press, 2016) 15.
[56] Sims, Brann, and Deering, *The Penal code of California, enacted in 1872: as amended up to and including 1905, with statutory history and citation digest up to and including volume 147*, §647.

life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway…"[57]

These statutes made such behavior a misdemeanor offence, punishable by a jail sentence of up to six months and/or a fine of up to $500.[58] The statute relating to houses of "ill-fame," PC §315, referred to brothels and prohibited people from living in or maintaining them, the punishment for which was the same as in the anti-vagrancy and public nuisance statues.[59] It was these state laws along with the city's anti-gender impersonation and anti-prostitution ordinances of 1863 which would remain the main tools for state repression of gender variance for the next century.[60]

This shift towards anti-vice law was influenced in large part by civilian anti-vice groups advocating for the protection of women. The city of San Francisco saw a marked shift in the gender disparity of its population in the 1850s, going from 2% of population being recorded as female in 1849 to 39% in 1860.[61] This rapid influx of women was largely a result of the end of the gold rush as men formally settled down in the city and many sent for their families to come to the city from across the continent. The emergent anti-vice movement focused largely on the prevalence and visibility of sex workers, with campaigners calling for sex work to be banned from major thoroughfares in order to protect the dignity of the burgeoning Euro-American, female population.[62] The reforms were successful in limiting prostitution and outward expressions of gender variance to certain vice districts of the city

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[57] Ibid, §370.
[58] Ibid, §372
[59] Ibid, §315.
[60] Redburn, "Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86," 681-682.
[61] Ibid, 27.
[62] Ibid, 50.

through to the 21st century.[63] In the late 19th and early 20th century, the vice district in San Francisco was centered in the Barbary Coast but slowly shifted to the Tenderloin in the first half of the 20th century as anti-vice reformers forced prostitution to less central parts of the city.[64]

This anti-vice era of the city would last until the 1960s, with campaigners successfully partnering with city government in order to mobilize police power to limit gender variance, prostitution, and other practices deemed morally objectionable to unofficially designated vice districts which themselves were subject to sporadic police raids and largely controlled by organized criminal groups.[65] While the openness of prostitution and gender variance would wax and wane over the century following the adoption of the 1863 anti-vice ordinance, the general strategies for their suppression would remain the same.[66] It was not until the 1960s that nascent sex worker and trans* activism would emerge, along with the shifting priorities of government, to challenge the legal regime that oversaw their repression.

3.2 The Liberal Moment: Civil Liberties in the Reshaping of the San Francisco Legal Landscape

The mid-20th century saw seismic shifts in the legal and broader political landscape of San Francisco, California, and the United States more generally. The New Deal reforms of the Roosevelt era and the dawn of the Cold War had reshaped the role of government at the

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[63] Ibid,
[64]Neil Larry Shumsky and Larry M. Springer, "San Francisco's Zone of Prostitution, 1880-1934," Journal of Historical Geography 7 (1981): 71.
[65] Susan Stryker, *Transgender history: The roots of today's revolution*, 87-89.
[66] Sears, Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco, 60.

national level. Increasing state involvement in the economic affairs of the nation, the growing power of the executive branch, and the rapid expansion of the American middle class, among other shifts, led to new understandings of the role of government and with it, new interpretations of the fundamental laws of the nation.[67] This reframing of the constitution precipitated a deluge of changes, from increasing the power of the state to regulate labor and commerce to overturning *de jure* racial segregation. Central to these changes for the legal experience of trans* and gender variant people in San Francisco and the United States was the development of substantive due process and a general expansion of civil liberties under the Warren Court.[68] At the same time as this shift in United States Constitutional law was taking place, newly emergent advocacy groups were calling for the legalization or decriminalization of many of the same behaviors outlawed by the anti-vice regime first established in the city of San Francisco in 1863. In the end, while this shift towards civil liberties would lead to an unprecedented rollback of anti-vice ordinances in the city, the liberal moment would only go so far. While the expansion of civil liberties in the city of San Francisco would culminate in the repeal of the city's anti-crossdressing ordinance in 1974 and the reform of the state's crime against nature law in 1976, it would fail in creating lasting changes in the legal landscape for sex workers with the state's vagrancy and public nuisance statutes remaining on the books. Such shifts, while superficially eliminating legal restrictions for trans* and gender variant individuals to exist in public space, led to little substantive change in this respect.

The expansion of constitutional civil liberties under the Warren Court created legal precedents that strengthened the rights of the individual against the government. Most

[67] Mark Tushnet, *The Warren Court in Historical and Political Perspective*, (Charlottesville, VA: University Press of Virginia, 1995).
[68] The Warren Court refers to the United States Supreme Court between the years 1953 and 1969 when Supreme Court Justice Earl Warren served as Chief Justice.

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significant among these precedents is the reconfiguration of Substantive due Process. Substantive due process itself is the notion that the courts may protect certain laws and fundamental rights from government interference through the reading of unenumerated rights into the constitution. These unenumerated rights are supposed to come from a reading of the 5th and 14th amendments to the constitution. Specifically, they emerge from how different supreme court justices have chosen to interpret the notion of liberty within the Due Process clause of the 14th amendment.[69] This clause states that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[70] Throughout the late 19th and early 20th century, this clause was repeatedly interpreted to limit government attempts to regulate economic and working conditions.[71] This interpretation was overturned in the 1937 *West Coast Hotel Co. v. Parrish* decision of the supreme court, which eliminated the economic Substantive Due Process interpretation.[72]

A new substantive Due Process interpretation emerged under the Warren Court, however, which created an unenumerated right to privacy. This right was first outlined in the 1965 case *Griswold v. Connecticut* which held that there is a marital right to privacy protected by the constitution that prevents states from prohibiting spouses obtaining and using contraceptives.[73] This first expression of a constitutionally protected right to privacy came not, however, from a reading of the due process clause of the 14th amendment. It was instead stated by Associate Justice William O. Douglas "that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life

[69] Erwin Chemerinsky, *Constitutional Law*, New York: Wolters Kluwer (2019) 584.
[70] U.S. Const. amend. XIV, § 1.
[71] Chemerinsky, *Constitutional Law*, 585-597.
[72] *Parrish v. West Coast Hotel Co.*, 300 U.S. 379 (1937).
[73] *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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and substance. Various guarantees create zones of privacy."[74] Specifically, Douglas cited the first, third, fourth, fifth, and nineth amendments as creating a zone of constitutionally protected privacy.[75] This right to privacy would be expanded in future cases, although the language of emanations and penumbras would be replaced. Future rulings would cite the right to privacy through reference to Substantive Due Process and an understanding of the right to privacy as emerging from the constitutional forbearance on the deprivation of liberty without sufficient purpose. These cases include *Roe v. Wade*, *Lawrence v. Texas*, and *Obergefell v. Hodges*. It would be these landmark decisions that created a legal right to an abortion in 1973, overturn anti-sodomy laws in 2003, and legalize same-sex marriage in 2015 respectively, all through reference to substantive due process. [76]

Further expansions of civil rights under the Warren Court, in particular those granted to people placed under arrest, served to create a more favorable legal environment for trans* and gender variant people as well. The 1966 decision in *Miranda v. Arizona,* for instance, required that police inform those placed under arrest of their right to an attorney and their right to not speak with the police should they so choose.[77] Additionally, in the 1963 decision of *Gideon v. Wainwright*, the Warren Court created the legal right to counsel, before which the impoverished and socially marginal could had great difficulty in finding legal representation in criminal cases. This change guaranteed that trans* people and everyone else in the United States would receive legal counsel in criminal court if and when charges were brought against them by the police.[78] Although California had, by this point, a well-established tradition of providing criminal legal defense to all going back to 1872, the

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[74] *Griswold v. Connecticut*.
[75] Ibid.
[76] *Roe v. Wade*, 410 U.S. 113 (1973); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015).
[77] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[78] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

expansion of rights for those placed under arrest in *Miranda v. Arizona* and *Gideon v. Wainwright* reflect the liberalizing legal atmosphere created by the Warren court—one which would continue into subsequent decades.[79] These shifts also demonstrate a growth in the rights of citizens against the state and that, in principle, these should apply to those citizens who find themselves under arrest.

At the same time as the expansions of civil liberties under the Warren Court occurred, forces were converging to bring about a rise in civil activism and resistance among gay, trans*, and sex worker communities in San Francisco. Such shifts would eventually spawn the gay and sex worker advocacy movements. These large shifts began in earnest in the 1970s, although they were prefigured by several social movements and spontaneous uprisings. Such a rise in different forms of resistance were in many ways tied to the policies of the Lyndon B. Johnson administration, in particular the war in Vietnam and the war on Poverty. As had become common practice in large American cities during wartime, police instituted a harsh crackdown on sex work and increased raids on gay bars during the Vietnam war so as to prevent the spread of venereal diseases among troops before they shipped out.[80] This increase in policing made it harder for trans* people and sex workers to make a living, especially in the Tenderloin district where almost all of these people's income came from street based prostitution.[81] At the same time, anti-poverty organizing increased in the Tenderloin as President Johnson's introduction of his War on Poverty program in 1965 promised increased funding and social service provisions to areas that could demonstrate an economic need. In order to do so, church organizations such as Glide Memorial United Methodist church and others in the area took the lead in going door to door documenting the

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[79] Sims, Brann, and Deering, *The Penal code of California, enacted in 1872: as amended up to and including 1905, with statutory history and citation digest up to and including volume 147*, §681.
[80] Stryker, *Transgender History: The Roots of Today's Revolution*, 84-85.
[81] Donald Webster Cory and John P. LeRoy, *The Homosexual and His Society: A View from Within*, New York, NY: Citadel Press (1963) 69.

poverty and social needs of the district. Many of these organizations saw their mission as extending beyond getting the Tenderloin access to federal funding however. Glide in particular played a significant role in bringing civil rights inspired civic organizing to the trans*, gay, and sex worker hub of the city. It was this church which provided resources for the creation of Vanguard in 1965, the first group to organize both sex workers and trans* people living in the Tenderloin. Under the initial leadership of Adrian Ravarour, a minister who took on the project as part of Glide Memorial United Methodist Church's anti-poverty organizing efforts, this group sought to raise the consciousness of the street youth of the district. This organizing took place largely among gay and trans* sex workers and hustlers, encouraging them to clean and maintain the streets so that the district could be a safer place for them to exist and work in. This was the first group which offered a place to trans* people to come together and discuss their specific needs in society, introducing the consciousness raising approach which was central to the growth of feminist and black civil rights movements of the same period. Significantly, Vanguard also organized trans* people in alliance with other groups of sex workers and so-called street youths in the area.[82] This initial openness to the organizing of different groups under one organization which Vanguard pioneered in the Tenderloin would be short lived, however, as gay, trans*, and sex worker advocacy would come to diverge over the proceeding decade.

In the history of the San Francisco trans*, gay, and sex worker rights movements, the violent uprising at Compton Cafeteria in the Tenderloin district in 1966 demonstrated growing frustrations with the anti-vice regime's repression of gender and sexual minorities as well as sex workers. The uprising occurred as a response to aggressive policing and a lack of access to public spaces which plagued the gay, trans*, and sex worker communities at the

[82] Stryker, *Transgender History: The Roots of Today's Revolution*, 86-87.

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time. Compton Cafeteria was one of the few places where such people could gather and socialize without great risk of being harassed. As such, it became a hub for these communities. However, in the months leading up to the uprising, the owners of the cafeteria had become frustrated with many of their customers for spending long periods of time in the restaurant without purchasing much food or drink. They began instituting a service charge for customers who stayed too long and enforcing it disproportionately against certain groups, especially trans* people and sex workers. The cafeteria even hired security and increasingly found itself calling the cops to remove patrons. In response, Vanguard organized a picket of the restaurant; however it was unsuccessful in changing the owner's policy. Eventually, the tension these policies exploded into violence one night in July of 1966 with various drag queens, trans* people, sex workers, and others assaulting a police officer who had been called to remove a patron of the restaurant. The fight spilled out onto the street and more cops were called. The fighting continued and eventually the police were successful in quelling the unrest. Although Compton Cafeteria never changed its policy and soon went out of business, this fight marked the first instance of recorded mass violence in the fight for gay, trans*, and sex worker rights in the city of San Francisco.[83] It also further showed how the beginnings of the trans*, gay, and sex worker advocacy movements were initially linked in resistance to over policing and the poverty which the anti-vice regime forced these people to live under.

Such changes formed part of the larger civil rights movement in the United States during this period, including second wave feminism and the larger countercultural movement wherein many started to challenge existing gender divisions. Part of this involved challenges to gendered expectations of dress. For women, such challenges had been raging in the United States going back to first-wave feminists' advocacy of bloomers and functionalist dress

[83] Ibid, 89-90.

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reform. The 1960s counterculture took this a step further as blue jeans on women and men with long hair came into fashion. Such shifts made existing anti-gender impersonation laws less coherent, as the lines between what constituted male and female dress began to blur.[84] What is more, the earlier connection between crossdressing practices and sex work had in someways diminished. It was no longer a common assumption that women wearing men's clothing were advertising themselves for sex work. The reform movement of first and second wave feminists made such ideas a thing of the past.[85] Such could not, however, be said for the dominant views of men in society. Despite small shifts in acceptable male fashion towards certain traditionally feminine signifiers in the 1960s (ex. long hair, floral prints, bright colors), the adoption of traditionally female dress remained almost entirely taboo and continued to hold connotations of sex work.[86] Such remains true to this day, with significant consequences for the legal experiences of trans* women and other gender variant people assigned male at birth who continue to face disproportionate levels of arrest under anti-prostitution policing.

The intersection in this period of anti-poverty organizing, feminist thought, anti-vice enforcement, and the larger civil rights atmosphere spawned two key organizations in the 1970s, the Gay Liberation Movement (GLM) and Call Off Your Old Tired Ethics (COYOTE). The GLM was formed in direct response to the Stonewall uprising in New York City in 1969 and was in many ways a successor to the earlier Vanguard organization. Vanguard itself fell apart in 1967 as the rising tide of police repression and the uprising at Compton Cafeteria led to divisions between more and less radical activists. Some of the more radical of these went on to found the Committee for Homosexual freedom in 1969 which was

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[84] Ibid, 80.
[85] Sears, *Arresting dress: Cross-dressing, law, and fascination in nineteenth-century San Francisco*, 145-146.
[86] Stryker, *Transgender History: The Roots of Today's Revolution*, 103.

then renamed the GLF in the same year.[87] The organization took as its model third-world liberation movements, aligned itself with militant organizations in the United States such as the Black Panther Party, and described itself as "a revolutionary group of men and women formed with the realization that complete sexual liberation for all people cannot come about unless existing social institutions are abolished."[88] The new organization spread quickly from the San Francisco Bay Area, forming a lose association of groups in various cities including Los Angeles, New York, and Chicago.[89] In this new ideology of gay resistance, one can see the same liberal tendency which underpinned the Warren court's expansion of civil liberties, but with a radically different approach to and scope of their desired change. Whereas the Warren court used an incrementalist approach to expand the so-called penumbras of civil liberty protections provided by the American constitution, the GLF embraced the radical left-wing politics of its time to call for a complete abolition of the existing systems. While at first glance, such approaches may seem to be mutually exclusive of one another, the actual actions of the individuals involved were far more nuanced. For instance, among the founders of the GLF was Morris Kight, a long-time gay rights advocate living in Los Angeles, California. Kight would, in the years following the GLF's foundation, organize pickets of anti-gay businesses, press for legislative and police reforms, and form the Stonewall Democratic club. This organization continues to operate today as one of the largest LGBTQ+ political lobbies in the United States and has its primary association with the Democratic Party. Kight would also play a significant role in pushing for the eventual reform of California's crime against nature law in 1976.[90] Such a confluence of radical and institutional politics demonstrates the

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[87] Betty Hillman, "'The Most Profoundly Revolutionary Act a Homosexual Can Engage in': Drag and the Politics of Gender Presentation in the San Francisco Gay Liberation Movement, 1964–1972," Journal of the History of Sexuality 20, no. 1 (2011): 167.
[88] GLF Statement of Purpose, July 31, 1969, reprinted in RAT, August 12, 1969.
[89] Stryker, *Transgender History: The Roots of Today's Revolution*, 100.
[90] Mary Ann Cherry, *Morris Kight: Humanist, Liberationist, Fantabulist: A Story of Gay Rights & Gay Wrongs*, (Port Townsend, WA: Process Media, 2020) 458-468.

diversity of approaches which individuals and organizations can take as well as the interlinkage of different strains of political praxis.

The GLF itself, much like Vanguard, had a short life span but formed an important moment in the development of gay rights organizing and tactics. Unlike Vanguard, however, it marks a period of departure from big tent politics. At its formation, trans* and gay people as well as sex workers had been organized under umbrella organizations in the Tenderloin such as Vanguard. The rise of the GLF and the increasing involvement of middle-class white men in what was initially a more marginal movement led to the sidelining of sex worker as well as trans* voices and issues within the growing gay rights movement.[91] Additionally, the gay white men which came to be dominant in these organizations centered themselves in the more upscale Castro district of the city. This geographic separation was of significant and continuing importance in the political landscape of the city. Even today, the Castro district is synonymous with the city's LGBTQ+ culture.[92] Yet it is in the Tenderloin, the area of the city with the highest rates of crime, where the city's official transgender district is located.[93] It was in part due to these shifts then that increasingly the most politically significant arms of what would come to be called the LGBTQ+ rights movement would center the more politically acceptable voice and interests of white gay men who, at the same time, increasingly came to inhabit entirely different parts of the city from the trans* people and sex workers who had helped form the gay rights movement. The marginalization of trans* people and sex workers within the movement did not necessarily lead to a complete divergence of interests, however. Trans* people and sex workers benefitted from the expansion of gay rights as the eventual reform of the state's crime against nature law spearheaded by the gay

[91] Stryker, *Transgender History: The Roots of Today's Revolution*, 100.
[92] Stathis Yeros, *Queering Urbanism: Insurgent Spaces in the Fight for Justice*, 1st ed., University of California Press (2024) 143.
[93] The Transgender District, accessed May 18, 2025, https://transgenderdistrictsf.com/.

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rights movement would remove a legal restriction which effected both groups.[94] It would also be the success of the gay rights movement which would serve as a model for the other nascent movements, including the sex worker and trans* advocacy movements, as they grew into greater political maturity.[95] Additionally, the fracturing of solidarity between these groups would not be permanent. The HIV/AIDS crisis in the 1980s would lead to significant changes. It was only with this global pandemic and the concomitant retrenchment of anti-gay political reaction in the United States that the political organization of gay men, sex workers, and trans* people would reconverge.[96]

As the GLF was fracturing in the early 1970s and civil rights were expanding, feminists in the San Francisco Bay area were organizing COYOTE. COYOTE came about in 1973 as an organization for sex workers and their allies to advocate for decriminalizing prostitution, to destigmatize prostitution among the public, and to promote the formation of policies aimed at supporting the wellbeing of prostitutes and sex workers more generally.[97] As a sex worker advocacy group, COYOTE's goals overlapped with some of the interests of the trans* community. In this period, almost all trans* people in San Francisco and the United States more generally were sex workers.[98] The city had yet to introduce an anti-discrimination law and with anti-trans* attitudes forming a considerable roadblock to mainstream employment, trans* people were almost always forced into prostitution.[99] That being said, COYOTE did not center trans* specific experiences of sex work or the unique interests of trans* sex workers. In this it was similar to the post-GLF politics of the gay rights

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[94] Eskridge, *Gaylaw: Challenging the apartheid of the Closet*, 14.
[95] Valerie Jenness, "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem," Social Problems 37, no. 3 (1990): 411.
[96] Stryker, *Transgender History: The Roots of Today's Revolution*, 141.
[97] Jenness, "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem," 405.
[98] Cory and LeRoy, *The Homosexual and His Society: A View from Within*, 69.
[99] "S.F. OKs Ban on Bias Against Transsexuals," *LA Times*, December 31, 1994.

movement: while its interests may in some ways have aligned with that of the trans* community, it was not an organization they had influence within.

A large part of COYOTE's success in the organization and creation of a larger, national and international movement for sex work decriminalization came from the efforts of its founder, Margo St. James. St. James was herself a former prostitute and grew COYOTE from its foundations in the city of San Francisco into an influential, international organization.[100] Her advocacy for sex worker liberation extended beyond the bounds of her work with COYOTE as she gave lectures at universities, organized forums on sex workers rights, and attended international events such as the United Nations Decade Face of Women Conference in Mexico City and the Tribunal of Crimes Against Women in Brussels.[101] What is more, although the work of COYOTE was not oriented towards trans* specific issues, St. James herself did work in helping to advocate for trans* rights, including a campaign to help a trans* woman fired from the Ralph K. Davis Center at Franklin Hospital in San Francisco after undergoing a "sex change operation."[102] Her work combined a whole spectrum from international to local advocacy. Her work in San Francisco brought her into connection with a number of influential politicians from the city. Of perhaps the greatest significance was her connection to the Burton Political Machine, an informal collection of progressive political elites who held significant influence within the California Democratic Party from the 1960s to today. These politicians, whose eponymous brothers' Philip and John Burton had mentored and guided to power, held significant influence and oversaw much of the liberal shift of this

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[100] Jenness, "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem," 403.
[101] Ronald Weitzer, "Prostitutes' Rights in the United States: The Failure of a Movement," The Sociological Quarterly 32, no. 1 (1991): 24.
[102] "Rights of Transexuals," Berkeley Barb, August 28th, 1975.

period within the politics of the city of San Francisco and the state of California.[103] St. James developed close connections with this political group—including future mayor of San Francisco George Moscone.[104] It was these connections which would allow her to influence city politics in San Francisco throughout her life, including an attempt at running for a seat on the San Francisco Board Supervisors in 1996.

The emergence of these civil rights movements came at the relative highwater mark for the liberal moment in San Francisco and the United States. The early and mid-1970s saw the culmination of the rise of civil liberties first initiated by the civil rights movement and the decisions of the Warren court. In 1971, California would adopt an amendment to its state constitution which created an explicit right to privacy, echoing the decision of the Warren court in *Griswold v. Connecticut*.[105] In 1974, the San Francisco board of Supervisors would repeal the city's anti-gender impersonation ordinance along with various other anti-vice policies.[106] In 1976, California would reform its crime against nature statute to legalize sodomy and oral copulation. And in 1976 as well, through the advocacy of St. James, Moscone would, in his capacity as the newly elected mayor of San Francisco, put a moratorium on prostitution arrests.[107]

As the various changes of the 1960s and 1970s took place, the shifts in policy and civic activism also reconfigured the language of government. In particular, the growth of civil liberties against government interference and the creation of a right to privacy reshaped the language of many among the governing class. Such is visible in the heated rhetoric around

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[103] Lincoln Mitchell, "A San Francisco Politics Origin Story: The Burton Machine," San Francisco Examiner, October 6, 2021; John Trinkl, "Gay Socialist's Uphill Fight for Congress," The Guardian, 25th March, 1987.
[104] Randy Shilts, *Mayor of Castro Street: The Life and Times of Harvey Milk* (London: Atlantic Books, 2022) 200-202.
[105] Kenneth Cory, "letter to the legislative file," California Constitutional Right to Privacy, ACLU of Northern California (n.d.), at 1-2.
[106] San Francisco Board of Supervisors, *Journal of Proceedings*.
[107] John Bryan, "Hooker Fumes: 'Politicians are Whores, Tricks, and Pimps,'" Berkeley Barb, March 31, 1977.

the 1976 reform of California's crime against nature law. The so-called Consenting Adults Sexual Acts bill was first spearheaded in the state assembly by Burton Machine member Willie Brown in his capacity as assemblyman for the city of San Francisco. It was only narrowly passed by the state senate in 1975 after the lieutenant governor, serving in his role as president of the senate, cast the tie breaking vote in favor of the law's passage. It was another Burton Machine member and the state senator for the city of San Francisco at the time, Moscone, who played a central role in the law's narrow passage. He served as the Senate sponsor for the bill and advocated its passage in terms clearly expressing that the state has no business legislating the morals of citizens. Arguing in favor of the bill to legalize sodomy and oral copulaiton in the Senate chamber, he claimed that the Consenting Adults Sexual Act bill was "the most important bill ever introduced in this body on the critical question or victimless crime," and that to "impose your moral codes upon the public. That's not the business of the state."[108] This attitude towards victimless crime and the legislation of morals would be one which not only defined his senate career, but also largely influenced his policy decisions when he eventually instituted the moratorium on prostitution arrests as mayor of San Francisco in 1976.

Other State Senators who spoke both in favor of and against the bill explicitly did so in reference to the right of privacy. It was Senate Democrat for the city of Hollywood, David Roberti, who along with fellow Senate Democrat Albert Rodda for the city of Sacramento gave one of the most detailed rebuttals against opponent claims that the repeal of moral regulations would lead to the collapse of civilization. This opposing argument was strongly put forth by Senate minority leader George Deukmejian, a Republican representing Long Beach, who argued that

[108] Douglas Sarif, "Consenting Adults Bill Passes," Gay News Alliance/News West, 1975.

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"There is something missing in these people (homosexuals)… which compels them to have sex in public. The facts are that there is something in their nature—I don't know what it is—but they seem to have something that drives them to desire to have this exhibition-type demeanor… civilizations have collapsed because of rampant immorality."[109]

Here can be seen the dual argument propounded by opponents of the bill. Firstly, that homosexuality is immoral. This is an argument which goes back to the religious underpinnings of the state's initial imposition of their anti-sodomy and oral copulation statute back in 1873 and can be seen in this law's referral to sodomy and oral copulation as "the infamous crime against nature".[110] The second argument is a newer one, namely that homosexuals are innately drawn to engage in public sex acts.[111] Such a framing of homosexuality as an inherently public act attempts to place it discursively outside the private sphere and thus within the legislative purview of the state. This was an argument which the Long Beach Police Department sought to buttress through their advocating against the bill's passage. The LBPD shared statistics showing that of the 179 arrests they had made in 1974 for oral copulation and sodomy, 175 were done in public places.[112] Roberta and Roddi rebutted the arguments of opponents, in part, through a long historical argument. Citing Edward Gibbon and John Stuart Mill among others, they argued that it was Christianity and not immorality, as Deukmejian had argued, that had led to the fall of civilizations, in particular the Roman empire.[113] Roberti, in his statement in the Senate chambers, claimed that it was in fact "the subordination of the right of privacy to the power of the state," that led

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[109] Gerald Hansen, "Brown Signs Sex Reform," Contact, June 18, 1975.
[110] Sims, Brann, and Deering, *The Penal code of California, enacted in 1872: as amended up to and including 1905, with statutory history and citation digest up to and including volume 147*, §§286-287.
[111] It is beyond the scope of this paper to delve into the origins of this argument. However, such lie in the development of gay cruising culture. See Wannes Dupont, "The Two-Faced Fifties: Homosexuality and Penal Policy in the International Forensic Community, 1945–1965," Journal of the History of Sexuality 28, no. 3 (2019): 357–95. for a more complete understanding.
[112] Hansen, "Brown Signs Sex Reform."
[113] Ibid.

to the fall of Rome.[114] Such argumentation shows how important notions of the right to privacy which had been created by the Warren court in the 1960s and introduced to the state constitution in 1971 had come to form a central understanding of the role of government both in the state of California and among the leaders of the city of San Francisco.

The liberal moment peaked for the city of San Francisco in 1976, with the mayorship of Moscone. Moscone's rise to the office was prefigured by that of Sheriff Richard Hongisto 1971. Both managed to come to office through outsider coalitions. As such, both their policies reflected an interest in supporting minority rights, in particular those of gay people and sex workers.[115] This was reflected in Hongisto's hiring of openly gay and lesbian sheriff's deputies for the first time in the city, his allowing COYOTE to set up and run classes in the city's jails to help teach prostitutes how to take care of themselves on the street, and his participation in the city's annual gay pride parade in 1977.[116] For Moscone, his significant contribution was the 11-month moratorium he placed on prostitution policing at the beginning of his tenure.[117] This brief pause, in the scope of trans* legal persecution in the city, marked a high-water mark for the ability of trans* people to access public space. With the previous removal of the city's anti-gender impersonation law, there remained little which trans* people could be charged with as a pretext for removing them from public space. In addition, Moscone appointed Charles Gaine as police chief in 1976. Gaine had a short and controversial career in this position. He was heavily criticized for attending COYOTE's annual hooker's ball in 1977, the primary fundraising event for the sex worker advocacy group, and his implementation of Moscone's prostitution arrest moratorium.[118]

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[114] Ibid.
[115] Howard Klein, "Gays Well Organized, Ready to Win Public Office," Berkeley Barb, January 6th, 1977.
[116] Ibid; Kathie Streem, "Loose Women No Longer Coy Just Coyotes," Berkeley Barb, August 2nd, 1973.
[117] Bryan, "Hooker Fumes: 'Politicians are Whores, Tricks, and Pimps.'"
[118] Charles Foley, "Fury at police chief who went to prostitutes' ball," The Press, December 6th, 1977.

In spite of these concessions, the Moscone regime did backtrack on its anti-vice reforms beginning in 1977, with the return of enforcement for anti-prostitution laws. Such a retrenchment led to police raids across the city, with more than 200 prostitution arrests a month in the first quarter of the year, targeting prostitutes across the city, including the general street hustler scene of the Tenderloin district that remained the only bastion for many trans* individuals.[119] The anger and growing sense of alienation which trans* and LGBTQ+ people in the Tenderloin felt from the larger gay rights movement could be scene in a picketing campaign along Polk street, the main thoroughfare of the Tenderloin, following the reinstitution of police raids.[120] One unidentified picketer, echoing the growing divisions in trans*, gay and sex worker activism, told the Berkeley Barb newspaper in 1977 that:

> "This street is where we live. We have as much right to use the sidewalk as the business men and their customers. This is an all-out roust against gays masterminded by other, right-wing, 'respectable' gays who want to pretend we don't exist. Well, we do exist. We intend to stay here. This is our street, too."[121]

This period of limited reform under Moscone would come to a complete end in 1978 with his assassination as well as that of the first openly gay elected official in the US, San Francisco Board of Supervisor's member Harvey Milk. The death of Moscone led to the appointment and subsequent reelection of the moderate Dianne Feinstein, whose administration would significantly walk back Moscone's more liberal positions on crime and prostitution.[122] Police Chief Gain's reformist mindset in the end led to him being pushed out as police chief by the new Feinstein administration in 1980, marking the end of progressive

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[119] Bryan, "Hooker Fumes: 'Politicians are Whores, Tricks, and Pimps;'" John Bryan, "S.F. Cops Roust 'Polk Punks,'" Berkeley Barb, October 27, 1977.
[120] Bryan, "S.F. Cops Roust 'Polk Punks,'"
[121] Ibid.
[122] Weitzer, "Prostitutes' Rights in the United States: The Failure of a Movement," 33.

police reform in the city for more than a decade.[123] In the end, it was the short-lived concomitance of Moscone and his allies' moratorium on prostitution arrests and the repeal of the city's anti-gender impersonation ordinance that created a brief period of legal reprieve for the city's trans* inhabitants.

In the decades to follow, the rightward political return of the neoliberal consensus would create a retrenchment of trans* legal repression. As the liberal moment came to an end in the late 1970s, the failure of sex worker advocacy groups to decriminalize prostitution would majorly limit the gains trans* and gender variant individuals made in their ability to access public space with the 1974 repeal of the anti-gender impersonation law. The politics of the 1980s and 1990s would lead to a harshening of legal repression in a number of areas. This period would see the massive growth of the US prison population, predominantly through the detention of people of color, as a new Jim Crow took shape around the unequal enforcement of certain laws to the effect of limiting the gains racial minorities had made during the civil rights era.[124] In a similar fashion, the 1980s and 1990s saw the use of anti-prostitution ordinances to reconstruct the repression of trans* individuals in the city of San Francisco. It would be in the years following the assassination of Moscone, then, that this new system would take shape.

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[123] "San Francisco Mayor Calls for Police Chief to Quit," New York Times, July 6 1979.
[124] Michelle Alexander and Cornel West, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 14.

3.3 The Anti-Prostitution Regime: The Conservative Turn in Policing Under the Shadow of HIV/AIDS

Following the assassination of Mayor Moscone, a conservative shift in San Francsico, California, and United States politics took place. The emergence of HIV/AIDS not only ravaged trans* and sex worker communities, it also led to a spate of harsh laws penalizing HIV positive sex workers, with especially negative consequences for trans* people. This devastating pandemic led to significant political shifts in the organizing of gay, trans*, and sex worker activism with a retrenchment of coalition politics and a strengthening of alliance networks that led to successful efforts by trans* people and sex workers to improve their conditions in the 1990s. This resurgence would continue into the 21st century and result in lasting, meaningful changes in the ability of trans* people to access public space in the city.

A rightward shift in the Supreme Court of the United States following the retirement of Justice Warren in 1969 led to fewer expansions in civil rights, though the jurisprudence of the Warren era continued to underpin many rulings—some of which shaped trans* activism and underpinned the resistance to the emerging anti-prostitution regime. In particular, the subsequent Burger court expanded upon the rights of the incarcerated in such a way as to lay the groundwork for future expansions of trans* rights while in custody. In the 1979 decision of *Bell v. Wolfish*, the Supreme Court set the precedents which would be used to justify the forbearance of strip searching as a supposed means of ascertaining gender status. *Bell v. Wolfish* held, in part, that visual body-cavity searches may be performed in prisons and jails with less than probable cause justification. However, in supporting this ruling, the court noted that incarceration did not completely negate a person's right to due process and against

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unreasonable searches. In its decision, the court set out smuggling concerns as the justifying factor and stated that:

> "We do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt, as the District Court noted, that on occasion a security guard may conduct the search in an abusive fashion. Such abuse cannot be condoned. The searches must be conducted in a reasonable manner."[125]

Here one can see an appeal to the right to privacy as a limiting factor in the use of invasive search practices on inmates. The court, while "Assuming that a pretrial detainee retains a diminished expectation of privacy," was at the same time "Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates…"[126] The court was thus taking the right first established by the Warren court in *Griswold v. Connecticut* and defining a similar, though more limited, zone of constitutionally protected privacy for pretrial inmates, although in this case not through substantive due process but rather through the protections against unreasonable search in the fourth amendment. Thus, by setting out cavity searches of pretrial detainees as an area of heightened concern, the holding *of Bell v. Wolfish* set up the legal contestation of pretrial cavity searches where no guidance is provided for such on the basis of smuggling concerns.

Additionally, in the 1972 case of *Papachristou v. City of Jacksonville*, the Supreme Court limited the ability of cities and states to pass anti-loitering and vagrancy ordinances—one of the main tools police used in San Francisco and across the country to target people perceived as sex workers. In this case, the Supreme Court declared sections of the city of Jacksonville, Florida's vagrancy laws to be unconstitutional because their archaic language and the outdated social arrangements they initially sought to curtail created vagueness in their

[125] *Bell v. Wolfish*, 441 U.S. 520 (1979).
[126] *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

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modern context. The court found that the anachronistic vagueness of these laws was such that the average person "would have no understanding of their meaning and impact if they read them" and that "The Jacksonville ordinance makes criminal activities which, by modern standards, are normally innocent."[127] The result of this decision was such that vagrancy and loitering in and of themselves could not be illegalized. Instead, laws had to have greater specificity and clarity about what behaviors were to be prohibited so that undue power would not be given to the police. Associate Justice Douglas, in penning the decision in this case, highlighted specifically the concern that:

> "Those generally implicated by the imprecise terms of the ordinance -- poor people, nonconformists, dissenters, idlers -- may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.'"[128]

Additionally, he stated that "[a] direction by a legislature to the police to arrest all 'suspicious' persons would not pass constitutional muster. A vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest."[129] Such concerns rather succinctly sum up the strategy of the anti-prostitution regime which was to emerge in the years following this decision. With the repeal of the city's gender impersonation ordinance in 1974, there existed no law explicitly outlawing trans* and gender non-conforming people from public space. Instead, the police, courts, and politicians of San Francisco would reyl on public nuisance laws and the anti-prostitution component of the California's vagrancy law, this section of which was not

[127] *Papachristou v. City of Jacksonville*.
[128] Ibid.
[129] Ibid.

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covered by the *Papachristou v. City of Jacksonville* forbearance of unconstitutional vagueness, to keep trans* people from public space.

The Feinstein's mayorship in San Francisco from 1978-1988 saw a disavowal of the liberal police policies of Moscone, Hongisto, and Gain with regards to sex work. Whereas Moscone and Hongisto had been elected through a coalition of marginalized groups, many of whom faced disproportionate levels of policing, Feinstein abandoned certain constituencies which her predecessor had courted. The limited walk-back of the Feinstein coalition was in many ways informed by the aftermath of her predecessor's assassination. It was the lenient sentencing of Milk and Moscone's assassin, Dan White, and the resultant White Night Riots of 1979 that confirmed this shift in politics. The riots themselves were the largest outburst of gay violence in the United States since Stonewall. After a peaceful march in protest of the assassin and ex-cop's 7-year manslaughter sentence, the mostly gay demonstrators arrived at City Hall, where they proceeded to attack the building, breaking windows and defacing the front of the edifice. Cops soon arrived and attacked the group, dispersing them. The cops then traveled to the city's Castro district, where they raided a gay bar—the Elephant Walk—attacking its patrons before moving into the streets and attacking passersby indiscriminately. Police chief Gain, who had specifically ordered his officers aginst engaging in such retaliations, traveled to the Castro district to stop the violence, though he was only able to do so after more than two hours of unrelenting attack. In the end, 61 police officers and more than 100 members of the public were hospitalized. In the following days, the leaders of the gay community in San Francisco refused to apologize for the violence.[130] Feinstein, with the next mayoral election just months away, courted the gay vote by promising to appoint more gay officials while at the same time seeking to repair the strained relations between the city

[130] Shilts, *Mayor of Castro Street: The Life and Times of Harvey Milk*, 326-333.

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administration and rank and file police officers.[131] Gain was forced to resign and upon her reelection and Feinstein appointed Cornelius Murphy as chief of police. In order to balance the competing political interests of cops and gays in the city, Feinstein and Murphy oversaw a retrenchment of anti-prostitution arrests and police power more generally, while also hiring more gay and lesbian police officers than ever.[132] By 1980, 1 in 7 new police recruits would be gay or lesbian. In contrast, the city would only hire its first openly trans* cop in 2014.[133] This reconfiguration of political power, with gays and lesbians increasingly finding themselves integrated into the machinery of government and less likely to be victims of it, allowed Feinstein to maintain the gay component of the Moscone coalition while also maintaining a law and order messaging that could appeal to more conservative voting groups.[134] Among the victims of such a shift, however, were sex workers and trans* people. The result of the rightward political shift of California Democrats during Feinstein's Mayorship left the once progressive Burton Political Machine substantively less radical.[135]

The weakening of sex worker advocacy in the city of San Francisco in the 1980s also allowed for a retrenchment of anti-prostitution policing in the city. This weakening was in many ways a result of the growing rightward shift in the politics of the Democratic party. Whereas in 1973 St. James had described prostitution as "in" among leftwing activists and intellectuals, by the 1980s, sex worker advocacy and the goal of decriminalization had lost much outside support.[136] Such was in part a result of a shift in feminist thought towards sex work. While in the 1970s feminist discussions on sex work were hotly contested, by the 1980s a discourse which saw prostitutes as essentially slaves forced into sex work by

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[131] Ibid, 340.
[132] Ibid, 341-342.
[133] HRC Staff, "First Transgender Police Officer Joins San Francisco Police Department," Human Rights Campaign, News, August 20th, 2014.
[134] "Feinstein Elected Mayor In San Francisco Runoff," The Washington Post, December 12th, 1979.
[135] Trinkl, "Gay Socialist's Uphill Fight for Congress."
[136] Streem, "Loose Women No Longer Coy Just Coyotes."

patriarchal domination had won out. This shift can be seen in the growth of Women Hurt in Systems of Prostitution Engage in Revolt (WHISPER). Similarly to COYOTE, WHISPER advocates decriminalization of prostitution. However, for WHISPER decriminalization is only an interim measure. Their goal is the ultimate abolition of prostitution on the grounds that it is inherently a form of oppression.[137] Such a shift towards this understanding of prostitution is embodied in article 6 of the 1979 United Nation's Convention on the Elimination of All Forms of Discrimination against Women, in which all ratifying nations agree to take measures to stop prostitution.[138] This change meant that COYOTE and other sex worker advocacy groups pushing for decriminalization saw decreasing support among feminists and their supporters throughout the 1980s.[139] It would not be until the 1990s, with the emergence of more sex-positive, third-wave feminism that sex worker advocacy would see a resurgence in popularity among feminist groups. This decrease in feminist support along with a rightward shift among the political elite of the city led to financial woes for COYOTE that deeply limited its ability to organize and advocate for political change in the city.[140] The weakening of COYOTE and sex worker activism more generally through its loss of financial and political support perpetuated for the emergence of the anti-prostitution regime and would weaken the ability of prostitutes to respond to the impending HIV/AIDS crisis and the anti-sex worker rhetoric which it would spawn.

The reconfiguration of the San Francisco political system in the late 1970s and early 1980s was marked by a language of moral neutrality that facilitated the emergence of the third phase of gender enforcement in the city. Whereas the previous anti-vice regime had no

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[137] Weitzer, "Prostitutes' Rights in the United States: The Failure of a Movement," 34-35; Jenness, "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem," 412-414.
[138] United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, Adopted December 18th, 1979, entered into force September 3rd, 1981.
[139] Weitzer, "Prostitutes' Rights in the United States: The Failure of a Movement," 35.
[140] Ibid, 33.

issue with portraying sex works, gay people, and trans* people as inherently immoral and thus deserving of removal from public spaces, the new regime had to take a different tact. Such can be seen emerging in the late stages of the Moscone mayorship. During the 1977 anti-prostitution raids on the Tenderloin district, Murphy, who was at the time police captain for the city's Northern police station which oversaw law enforcement activity in the Tenderloin, was characterized by the Berkeley Barb as claiming "that the crackdown is not really 'anti-gay' in nature but simply an attempt to clean out 'undesirables' who give the street a bad name and make life pleasant again for all the 'little shops and restaurants' which long have dominated the area."[141] This characterization of small businesses as the victims of prostitution was also echoed in Moscone's Press Secretary, Cory Busch's, justification of the raids. He was quoted by the Berkeley Barb as stating that:

> "If it's a matter of mere carnal knowledge between two people, it's really nobody's business… It's a victimless crime at that stage and really shouldn't be of concern to government or law enforcement. When it leaves that plateau and does involve third parties that may become victims, then it's a different story. And the situation that existed in certain parts of San Francisco developed that way... We had a phenomenal number of phone calls and letters from little shopkeepers, you know, on Eddy Street, on Ellis Street, on Post Street -- people whose entranceways were blocked, people who were really being hurt by the tremendous influx of prostitutes. Third parties who were being victimized by the situation that existed on the streets."[142]

This characterization of prostitution as a public nuisance that victimizes those around them by their mere presence on the street mirrored the tactics of the initial anti-vice campaigners of the 1860s. Whereas those advocating the ghettoization of prostitution in the 1860s used the propriety of white women as their justification, the advocates of anti-prostitution arrests in city government in 1977 used the livelihoods of small business owners. In both cases, the presupposition was that the presence of sex workers in public areas and

[141] Bryan, "Hooker Fumes: 'Politicians are Whores, Tricks, and Pimps,'"
[142] Ibid.

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their attempts to earn a living was offensive—to white women in the case of the anti-vice regime and to potential customers in the case of the anti-prostitution regime—and thus legitimated their removal from public spaces through mass arrest. Where these two regimes differ in language is that the anti-prostitution regime required a second jump in logic. In the case of the anti-vice regime, the mere offence which prostitutes were supposed to have to women and the general moral wellbeing of the community was enough to justify their removal as the duty of government in maintaining a moral order among the general population was presupposed. In the case of the anti-prostitution regime, however, simply offending people and upsetting the moral order was not enough; a victim and an injury had to be located. In the case of prostitution, this injury was located in the business community, with the economic interests of small business owners providing a politically palatable justification for the removal of prostitutes, and those whom police officers supposed to be prostitutes, from public space. In the anti-prostitution regime, this removal was often achieved through so-called "sweeps" of street-based sex workers and others caught up in these raids.

It is such street "sweeps," in which police pick up every person that they interpret as a prostitute, that created the greatest opportunity for selective enforcement. Such is exactly what happened in 1977 under Moscone. While merely loitering with intent to commit prostitution did not become a crime in California until 1995, public nuisance statutes were used in the city before then to arrest suspected and "known" prostitutes for simply existing in public spaces.[143] In particular, PC § 370 and § 372 were used in order to arrest people who loitered on the streets and were seen as likely to be prostitutes. The final report of the San Francisco Task Force on Prostitution, a city sponsored inquiry into the status of prostitutes and the enforcement of anti-prostitution laws, found in 1996 that:

[143] Office of the Chief Clerk, "STATUTES AND AMENDMENTS TO THE CODES 1995," Volume 4, Sec. 981, California State Assembly (1995) 7468-7470.

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"[t]he practice of the police, as reported to the courts, is to admonish 'suspected prostitutes in the Tenderloin area that they were a public nuisance, recorded the time and place of the admonishment and photographed the individual. When the same individuals were subsequently encountered in the area engaging in suspected prostitution activities, they were arrested for maintaining a public nuisance.'"[144]

Such was common practice as the anti-vagrancy law in California, PC § 647, was reformed in 1961 in order to remove the same vagueness which led to the *Papachristou v. City of Jacksonville* decision in 1972.[145] In this reformation, simply being a prostitute was no longer classified as a crime. Instead, soliciting prostitution became a criminal offence under subsection (b) of the code.[146] However, such a reform limited enforcement to sting operations in which police pretended to be seeking out sex and only once a prostitute accepted money from an officer could they be arrested.[147] This shift addressed the same concern Justice Douglas expressed in his 1972 ruling in terms of mass arrests of "suspicious" people. However, no such reform was ever undertaken for PC § 370 and § 372, which continued to be used for mass arrests of people under suspicion of prostitution. While a case, *Pain v. Municipal Court of the City and County of Sail Francisco,* was brought in federal court in 1968 to challenge these codes on the basis of unconstitutional vagueness, the court found they were not so and the subsequent appeal to the Supreme Court by the defense was denied.[148] Thus, PC § 370 and § 372 continued to be used as a workaround for the newfound difficulty in using PC § 647(b) in sweeps to arrest suspected prostitutes *en masse*. Thus, Douglas's concern that "A vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest," reemerged in

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[144] San Francisco Task Force on Prostitution, *The San Francisco Task Force on Prostitution: Final Report*, March 1996, 70.
[145] Risa Lauren Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s*, New York, NY: Oxford University Press (2016) 71.
[146] Office of the Chief Clerk, "STATUTES AND AMENDMENTS TO THE CODES 1961," Volume 1, Sec. 560, California State Assembly (1961) 1672.
[147] San Francisco Task Force on Prostitution, *The San Francisco Task Force on Prostitution: Final Report*, 71.
[148] *Pain v. Municipal Court of the City and County of San Francisco* (1968) 268 Cal.App.2d 151.

the use of PC § 370 and § 372 as a cloak for a conviction which could not be obtained on the real but undisclosed grounds of arrest, that being PC § 647(b). What is more, the label of suspected prostitute was especially used to target trans* women, as gender variance among those assigned male at birth was still largely conflated with an advertisement for sex work. In the same 1996 report on prostitution, vulnerable groups "including African American, transgender, and immigrant women," were listed as being targets for disproportionate levels of arrest in anti-prostitution policing.[149] Additionally, in the city's 1994 Investigation into Discrimination Against Transgender People, one trans* woman, Anne Ogborn, reported "that police sometimes mark off an area within which officers enforce 'every law they can think of,'" and "that they suspect every transgendered woman who lives in the Tenderloin of being a prostitute, and as a result transgendered women are frequently harassed simply for walking in the streets."[150]

This situation exactly demonstrates the further concern voiced by Justice Douglas in the case of Jacksonville's vagrancy law that "Those generally implicated by the imprecise terms of the ordinance -- poor people, nonconformists, dissenters, idlers -- may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts." It is in this same way that the enforcement of PC § 370 and § 372 not only came to be used in leu of PC § 647(b) when such evidence as a conviction under this law required could not be obtained, but these two statutes were also used in leu of the city's now-repealed anti-gender impersonation ordinance. Thus, these two laws came to function as a means of enforcing upon trans* people a lifestyle deemed appropriate by the San Francisco police, namely the same expectations of assigned, binary gender norms that were first imported to California and enforced in the Spanish colonial period by the Mission system.

[149] *The San Francisco Task Force on Prostitution: Final Report*, 13.
[150] San Francisco Human Rights Commission, *Investigation into Discrimination Against Transgender People*, September 1994.

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The leeway which police received in enforcing the anti-prostitution regime was further enhanced in 1995 when the state added § PC 653.22, loitering for prostitution. This section of the penal code stated that:

"It's unlawful for someone to loiter in a public place with the intent to commit prostitution. The intent is shown by evidence of acting in a manner and under circumstances that openly demonstrate a purpose to induce, entice, or solicit prostitution or procure someone else to commit prostitution."[151]

This law was especially injurious to trans* people as interpreting the intent was left up to police officers who used the common signs that they associated with sex work to determine someone's intent in the same way in which they used PC § 370 and § 372. In addition, the mere possession of a condom could be enough to justify arrest under this statute. The law thus not only pushed trans* people out of public space, but also encouraged them to not carry condoms for use. When this law was eventually repealed in 2022, its disproportionate use against LGBTQ+ people—in particular trans* women—and people of color was sighted as the main reason.[152]

Once arrested under PC § 370, § 372, § PC 653.22, or § 647(b), sex workers and those arrested on suspicion of sex work were then given the legal label of known prostitute. This could make life even more difficult for sex workers, especially any sex worker who sought to find forms of legal employment. As the report of the San Francisco Task Force on prostitution notes, "[o]nce a person gets a rap sheet as a known prostitute, she/he may be trapped and stigmatized for life, and may be unable to pursue other jobs."[153] In the case of trans* people, the already non-existent employment protections in the case of anti-trans* bias in hiring and the workplace, the common assumption that trans* people walking the streets

[151] Office of the Chief Clerk, "STATUTES AND AMENDMENTS TO THE CODES 1995," 7468.
[152] Gavin Newsom, "Letter RE: SB 357," Office of the Governor, Sacramento, July 1st, 2022.
[153] San Francisco Task Force on Prostitution, *The San Francisco Task Force on Prostitution: Final Report*, 8.

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were prostitutes, and the labeling of those arrested by police as known prostitutes made it incredibly difficult for trans* people to make a living except through sex work. Thus, trans* people found themselves in a double bind under the anti-prostitution regime: they were expected and systemically encouraged to perform sex work because they were trans* and at the same time punished for existing because they, as trans* people, must be sex workers. Under these circumstances, trans* people continued to participate in sex work in disproportionate numbers throughout the 20th century because they could only rarely find other forms of employment.[154] At the same time, their disproportionate participation in the sex industry reproduced common assumptions about trans* people as inherently sex workers, thus continuing discriminatory enforcement of anti-prostitution laws and perpetuating the same derogatory stereotypes that formed the foundation of anti-trans* bias in the workplace and in broader society.

Trans* people placed under arrest and incarcerated also continued to experience disproportionately high levels of abuse from police officers, sheriff's deputies, and jail inmates during this period. Such can be seen in the case of Victoria Schneider, a transgender woman who brought a case against the San Francisco police and sheriff's department on the grounds that their strip search policy violated her constitutional right to privacy. In arguing her case, she showed that through multiple arrests on prostitution charges, she was repeatedly subject to cavity searches when she complained about being housed in the men's section of the jail. The cavity searches were done as a means of determining which gendered section of the jail she should be housed. In arguing her case, she showed that in spite of repeatedly undergoing this humiliating procedure and providing the sheriff's department with documentation of her legal gender change, she was still being housed in the men's section of

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[154] San Francisco Human Rights Commission, *Investigation into Discrimination Against Transgender People*, 43-47.

the jail at each arrest and forced to undergo a cavity search upon her complaint against such.[155] A similar experience was reported by Ogborn in the Investigation into Discrimination Against Transgender People where she reported "prison personnel examined her, also 'to see what a transsexual woman looked like.'"[156] The commonality of this experience and its disproportionate use against trans* people in this period is also demonstrated in a report by Amnesty International that "At a demonstration that took place in 2003, most of the transgender activists who were detained were reportedly subjected to strip and cavity searches while reportedly very few of the other detainees were searched."[157] The legal case won be Schneider in 1999 challenging such practices formed the beginning of the end for this common form of humiliation. In a case which depended on the precedent set in *Bell v. Wolfish*, Schneider and her lawyers successfully won a sizeable settlement from the city, which also agreed to update their guidance on strip searches and implement training for sheriff's officers.[158]

A more extreme example of police abuse is contained in the same Amnesty International report describing a 2002 arrest in the nearby city of Sacramento. Though just outside the temporal and geographic scope of this study, it is still applicable in the broad outlines of what the worst police abuse could look like in late 20th century San Francisco. In this report, the arrest of Kelly McAllister is described wherein the police beat, choked, bit, pepper sprayed, hogtied, and raped McAllister among other horrific acts. The full report of

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[155] Karen Snell, *PLAINTIFF VICORIA SCHNEIDER'S SETTLEMENT CONFERENCE STATEMENT*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[156] San Francisco Human Rights Commission, *Investigation into Discrimination Against Transgender People*, 33.
[157] *United States of America Stonewalled : Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S.*, Amnesty International (2005) 46.
[158] *POST VERDICT SETTLEMENT FORM*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

police conduct in this case is more disturbing than required for a full recitation in this study, however suffice it to state that as the report summarizes:

"The alleged targeting of LGBT individuals for sexual, physical or verbal abuse occurs in many different situations and contexts… Sexual, physical and verbal abuse frequently occurs together… and physical abuse by law enforcement against LGBT individuals are often accompanied by homophobic and transphobic slurs."[159]

The report lists all such behaviors as being reported in San Francisco in the early 2000s.[160] It can thus be construed that such abuses are continuations of behaviors beginning in earlier periods when protections against and reporting of trans* abuse was more limited.

The HIV/AIDS pandemic created a harsher legal environment for sex workers as well, especially trans* street prostitutes. In particular, the 1988 introduction of PC § 1202.6 required that anyone arrested on a charge of PC § 647(b) be tested for HIV while the introduction of PC § 647(f) in the same year required that anyone guilty of soliciting prostitution while knowingly HIV positive receive a minimum 16-month felony sentence to be served in state prison.[161] Such state laws disproportionately affected trans* women, as studies done between 1990 and 2003 frequently reported rates of HIV infection as high as 30% among trans* women in San Francisco.[162] This combined with a legal and employment system that drove trans* women into sex work made survival even more precarious. On top of this, a felony conviction in this time period in California led to disenfranchisement while in prison and on parole and to this day requires one to report the offense if asked in the job

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[159] *United States of America Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S.*, 55-56.
[160] Ibid, 56.
[161] Office of the Chief Clerk, "STATUTES AND AMENDMENTS TO THE CODES 1988," Volume 2, Sec. 524 California State Assembly (1988) 1957-1959.
[162] Jeferrey Herbst et. al., "Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review," AIDS and Behavior 12 (2008) 4-7.

hiring process.[163] What is more, in 1994 California introduced its three strikes law, under which a third criminal offence following two felony convictions led to a required sentencing of 25 years to life.[164] Not only did the introduction of PC § 647(f) increase the legal jeopardy for trans* people in the age of HIV/AIDS, but it also encouraged trans* people to have more dangerous sex. In a legal context where carrying a condom can justify an arrest and knowing one is HIV positive can lead to increased penalties, there is significant motivation to not use condoms and avoid getting tested for HIV. When all of this is considered, the introduction of PC § 647(f) can be seen not just as a drastic escalation in the anti-prostitution regimes targeting of trans* people for arrest, but also as an assault on the health and wellbeing of trans* people, sex workers, and their clients.

While gay, trans*, and sex worker communities suffered dramatically with the emergence of the HIV/AIDS pandemic, the reconfiguration of their politics which the disease wrought led to a reconvergence of activist networks. The initial disregard which governments—federal, state and local—paid to the rapidly growing pandemic and the communities which it hit hardest led to the formation of new groups specifically around the issue of the disease. Organizations like the AIDS Coalition to Unleash Power (ACT UP) and Queer Nation recreated similar forms of big tent politics as had existed in the 1960s.[165] What is more, as HIV/AIDS continued to spread—increasingly effecting less marginalized groups—and activist organizations gained more and more traction, governments began spending increasing amounts of money on outreach and community support in the fight against HIV/AIDS. Such efforts to stem the growing tide of the infections were directed

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[163] Nicole D. Porter and Morgan McLeod, "Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023," The Sentencing Project, October 18th, 2023.
[164] "The Three Strikes and You're Out Law," Legislative Analyst's Office, State of California, February 22nd, 1995.
[165] Stryker, *Transgender History: The Roots of Today's Revolution*, 142-143.

largely at those groups at greatest risk.[166] Such included both trans* and sex worker communities. The inflow of money for outreach, testing, and support programs led to the hiring of trans* people as the best possible candidates for preventing the spread of the disease within their own community. By the late 1980s and early 1990s, there was a small but significant cohort of trans* people whose job it was to connect other trans* people to resources, developing connections and the financial stability required for the future boom in trans* activism beginning in the 1990s.[167] Such can be seen in San Francisco's Investigation into Discrimination Against Transgender people, wherein many of the organizing groups and interviewed individuals are associated with HIV/AIDS advocacy groups.[168] One of the earliest and most significant trans* advocacy groups to emerge from this milieu was Transgender Nation. Initially formed as a focus group within Queer Nation by the same Anne Ogborn who was quoted in the Investigation into Discrimination Against Transgender People. Although the organization was short lived, it took many actions to both advocate for trans* rights and trans* inclusion within the wider umbrella of the emerging LGBTQ+ movement.[169] A similar transformation was taking place within the sex worker community, as the once declining COYOTE experienced a resurgence in the 1990s and new activist organizations emerged from AIDS organizations such as the Bay Area Sex Worker Advocacy Network (BAYSWAN), which spearheaded the city's task force on prostitution.[170]

Sex Worker and Trans* advocacy, which had been revitalized by HIV/AIDS, was successful in winning major changes in the 1990s. The resurgent strength of these two movements is embodied in their successful lobbying for the creation of the Investigation into

[166] Ibid, 140.
[167] Ibid, 140.
[168] San Francisco Human Rights Commission, *Investigation into Discrimination Against Transgender People*, 16-42.
[169] Stryker, *Transgender History: The Roots of Today's Revolution*, 143-144.
[170] San Francisco Task Force on Prostitution, *The San Francisco Task Force on Prostitution: Final Report*, 63-65.

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Discrimination Against Transgender People and the San Francsico Task Force on Prostitution. The Investigation into Discrimination Against Transgender People demonstrated the daily threat of violence, disproportionate levels of policing, the near impossible task of finding legal employment, and the general struggles which trans* people faced in the 1990s in San Francisco.[171] Not only was it the first concerted effort at cataloging the struggles which trans* people faced in the city, it was also sponsored by the city which, in the same year as its release, past one of the first anti-bias ordinances in the country which provided legal employment protections for trans* individuals.[172] The San Francsico Task Force on Prostitution, which included representation for COYOTE in the person of St. James and other sex worker advocacy groups including the US PROStitutes Collective and BAYSWAN, called for a shift in approach to the issue of prostitution. While the report did not go so far as advocating for decriminalization, it did strongly state that the existing approach taken by San Francisco law enforcement was ineffective and harmful to sex workers and the broader society.[173] In the years following this report, prostitution arrests began to decline and those that still occurred came to focus more and more on those looking to purchase sex and less on those trying to sell it.[174] Thus, while sex worker advocates are still seeking decriminalization in California through the repeal of PC § 647(b), their efforts in shifting negative perceptions of sex workers and the abusive tactics in the enforcement of anti-prostitution laws have yielded success.

It was not until the coming of the 21st century, however, that with decreasing prostitution arrests the expansion of trans* rights came to meaningful fruition. With the

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[171] San Francisco Human Rights Commission, *Investigation into Discrimination Against Transgender People*, 43-47.
[172] "S.F. OKs Ban on Bias Against Transsexuals."
[173] San Francisco Task Force on Prostitution, *The San Francisco Task Force on Prostitution: Final Report*, 4-6.
[174] Lydia Sidhom, "Sex work and the city: How the policing of prostitution in San Francisco has evolved," Local News Matters Bay Area, August 17th, 2023.

increasing ability of trans* people to access public space without the threat of arrest, the legal protections provided by the city in employment and the greater visibility which trans* people were gaining in public life as a result of their own advocacy, came greater possibilities and a higher quality of life. Increasing incomes allowed more and more trans* people to move out of the Tenderloin and into less heavily policed areas of town.[175] The continuing shift in policy towards more trans* friendly law led to the eventual repeals of PC § 647(f) in 2017 and PC § 653.22 in 2022. While anti-trans* discrimination is still rampant to this day and prostitution remains illegal, the first quarter of the 21st century would mark a time when sex workers, trans*, and gender variant people in the city of San Francisco could enjoy expanding freedoms they had never had before.

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[175] Stryker, *Transgender History: The Roots of Today's Revolution*, 170-171.

4. Podcast

4.1 Academic Podcasting as Pedagogy and the Goals of the Project

The capstone component of this project is meant to serve as a pilot for a larger series of pedagogical podcasts that teach a history of trans* resistance of policing to a general audience. In so doing, the larger envisioned product seeks to accomplish a number of things. Firstly, it aims to show the agency which trans* people have within history, their local community, and the legal system. Secondly, it attempts demystify the American legal system for an envisioned audience of people who know little about how such a system functions. And thirdly, the project attempts to demonstrate how the issues which effect trans* people today are historically interconnected with issues in other marginalized groups including gays, lesbians, sex workers, and people of color. These three goals have been selected as the author believes them to be key components of developing a robust civic community that can work towards liberation for themselves and others.

The selection of these goals as central to the podcasting project is inspired by liberatory pedagogical theories. In *Teaching to Transgress: Education as the Practice of Freedom*, Bell Hooks emphasizes that teaching is an inherently performative act "that offers the space for change, invention, spontaneous shifts, that can serve as a catalyst drawing out the unique elements in each classroom."[176] Hooks was writing her work on pedagogy from 1993, before the explosive growth in internet technologies created the field of digital pedagogy and the internet-mediated dissemination of audio storytelling that is contemporary

[176] Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom*, New York, NY: Taylor & Francis Ltd (1994) 13.

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podcasting. In this sense, the author seeks to imagine Hooks's conception of the classroom in an expanded way with the podcast as creating a sort of classroom space, in which the author literally performs the work as the voice actor, and as one in which people are not just invited to learn but also encouraged to act.

In this sense, the author also imagines the podcast as working against the banking model of education and towards *conscientização* as expressed in Paulo Freiere's work *Pedagogy of the Oppressed*. As Freiere himself notes, in order for political action to be truly liberatory, it must be pedagogical and for libertarian pedagogy to be effective, it must be humanizing. Such a humanizing approach has to respect the agency of all others to be on the same level as one's self and thus equally respected in classroom setting. Freiere states:

> "The correct method for a revolutionary leadership to employ in the task of liberation is, therefore, not 'libertarian propaganda.' Nor can the leadership merely 'implant' in the oppressed a belief in freedom, thus thinking to win their trust. The correct method lies in dialogue. The conviction of the oppressed that they must fight for their liberation is not a gift bestowed by the revolutionary leadership, but the result of their own *conscientização*."[177]

It would be a mistake to create an academic podcast which simply aims to disseminate research findings, then. It is thus also the goal of this podcast to encourage people to imagine themselves as historical actors and provide a space to discuss what this means. As such, an internet-mediated dissemination method is especially appropriate as comment sections allow participatory discussions in which listeners can interpret and debate the material contained in the work. The project creator can also read this section, participate themselves, and use these discussions in the creating of future material. It is these key ideas around pedagogy as performance and *conscientização* from Hooks and Freiere respectively which serve as the theoretical foundations justifying the goals and format of the project.

[177] Paulo Freire, *Pedagogy of the Oppressed: 30th Anniversary Edition*, New York: Bloomsbury Academic, (2014) 67.

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In order to encourage this, the podcast focuses on the stories of individuals and their relation to systems of oppressive state power in the form of the law. The pilot episode uses Victoria Schneider's experience of the legal system to show how even a severely marginalized individual—in Schneider's case a poor, transgender sex worker—can impact history and change systems in such a way as to move everyone closer to liberation. Additional episodes will cover such individuals in the history of San Francisco, such as Janetta Johnson and her running of the Transgender and Intersex Justice Project (TGIJP), an organization which advocates for incarcerated trans* people of color in the State of California. Difficulties arise, however, from a lack of archival material on such matters. The author had initially hoped to gain interviews with people involved in the legal history of trans* people in the city of San Francisco, however the changes in the legal environment following the reelection of Donald Trump as president led to issues in securing such in time for the completion of this project. However, the hope would be that future episodes could include oral history components as such would not only enrich the history being explored but also provide a diversity of voices to the podcast product.

In centering the stories and voices of individuals from history in this way, the podcast aims to show how complicated systems of power are shaped by the individuals living within them. The previous history section provides a broader understanding of how such systems developed historically and justify the inclusion of stories like Schneider's within a construct the author is terming trans* legal history. The provided pilot episode serves as a microhistory, one which shows how the story of an individual is wrapped up in the larger development of the US common law system. In showing this, the author hopes that listener can become better acquainted with how this common law system works while also allowing the listener to hopefully see themselves in its subject and encourage them to engage in similar forms of

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resistance. In the current legal context which trans* Americans inhabit, such is more important now than any other time in this century.

Finally, it is also hoped that the project can inspire a big tent, coalition approach to civic activism by including intersectional perspectives. The story of Victoria Schneider shows how trans* rights and sex worker rights are interconnected and that sex workers have played a pivotal role in the realm of trans* resistance and trans* activism. The imagined future episode including Janetta Johnson on the TGIJP would show how the issues which black Americans face are intertwined with trans* resistance and politics as well. Possible future inclusions could be looking at the formation of Queer Nation and the activism of Anne Ogborn in the early 1990s in order to show how trans* activism has historically functioned both with and against the larger LGBTQ+ advocacy movement in San Francisco. Such stories, overall, would show not just how intersectional politics benefits individual movements, but also how attempts to interrelate the issues of different communities can create stresses that benefit everyone when they are overcome.

Overall, the podcast aims to provide an individualized, human approach to the same sort of history which is told in a more academic way in the earlier section. It also attempts to bring the listener into a more active understanding of their place in their community, their legal system, and within history. A podcast is well suited to such a mission, as it allows for a plurality of voices, public commenting, and the humanizing element of the voice. The podcast is thus an inherently liberatory product, one which helps people understand the world around them and shape it with an eye towards freedom.

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4.2 Script: Trans*ing the Legal Cistem: How Transgender People Challenge the Law and Change the World

It is 10PM on a Thursday and Victoria Schneider is standing on the side of the road near the corner of Sutter and Larkin streets in San Francisco, California just outside the city's traditional vice hub: The Tenderloin. As she waits, a car pulls over to the side of the road, the man inside rolls down his window, and she approaches. As Victoria leans over, she asks the man if he likes breasts to which he responds yes. Soon she is in the passenger seat headed for a parking lot she has suggested nearby at the corner of Cleary and Geary streets. Once there, the man asks Victoria, "how much," to which she tells him, "make me an offer." The man tells her $40, $40 for a blowjob. She agrees to this and takes the $40 from the man, placing it in her pocket before reaching into her purse and pulling out a condom. It is then that the man reveals his identity: He is Officer Porter with the San Francisco Police department and he informs her she is under arrest. From there, she is taken to the San Francisco county jail where she is booked, held over night, and released early next morning.[178]

In the vast majority of prostitution arrests, this is about the sum total of information which is written down about the case. Aside from the brief narrative section of the initial police incident report, there is basic documentation regarding the suspects biographical information, such as height, eye color and gender. There is also the official legal code violations that led to arrest, and identifying information of the arresting officer. In addition, there are pro forma jail documents recording the same sort of biographical information as well as time of booking and release. Aside from these sparse records, little gets recorded and

[178] Robert Porter, *Incident Report*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

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even less makes it down to historians.[179] Those who live later are thus too often left with a one-sided picture of these affairs, where the perspective of those arrested is completely absent. The previous story of Victoria's arrest is based solely on the Incident Report produced by the arresting officer, what would normally be the only information available to the public. If it weren't for the subsequent lawsuit which Victoria filed and the vast quantity of printed and written material it produced, the brief narrative previously provided would cover about all the available information. What's more, if Victoria had not gone on to win the lawsuit which she filed and obtained through the court system meaningful changes in San Francisco jail processing policies, the thousands of police, courtroom, and personal documents which were created as a result of Victoria's battle would likely not have merited storage in the GLBT archive in San Francisco, a small community archive where physical storage space is often at a premium. It is because of the devoted efforts of this one woman to challenge the policies and practices of the San Francisco police department and sherrif's office, that we can trace a more robust version of the story of Victoria, a trans sex worker who challenged and changed the way gender is policed in one of America's most iconic cities.

What is to follow is a retelling of Victoria's arrest, detention, and court case on the basis of archival documents, highlighting the key events and arguments made by both sides and the eventual outcome. Through this telling, you will hear Victoria's experience of police arrest and jail booking, the exceptional efforts she went through to get the police to recognize her gender, the illegal strip search she was subjected to at the hands of jail staff, and the results of her eventual victory in court. Through this narrative we can see how a trans sex worker came to challenge the authority of the state and win meaningful changes for her

[179] John Bickford and Molly Bickford, "Evoking Students' Curiosity and Complicating Their Historical Thinking through Manageable, Engaging Confusion," The History Teacher 49, no. 1 (2015): 71.

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community. It is a story which shows the power an individual can have when she stands up for her rights and the rights of everyone.

This is a pilot episode of Trans*ing the Legal Cistem: How Transgender People Challenge the Law and Change the World. In this podcast series, you will hear the stories of individual trans people and how they, with the support of their communities, work to challenge oppressive laws and make meaningful changes to the legal system. Throughout these stories, we will take a broad view of what a legal system can be, including not just legislation, but how courts have interpreted it, police, jails and prisons have enforced it, and how people and civil society have responded to it. I am the creator, Elia Sanchez, and I hope that you enjoy.

It is on December 12th 1996, six months after Vicotria's initial arrest, that she, with the help of lawyer Karen Snell, officially files a complaint with the City and County of San Francisco through the office of the City Attorney. In her complaint, she provides a different picture of her arrest than that recorded by officer Porter, one which highlights completely different details than that in the initial arrest report and focuses on the ways in which her gender was perceived and contested throughout the night of her arrest. According to her attestation, Victoria made clear she was a woman from the very beginning of her detention, telling officer porter that she was a woman. In spite of this, her gender was marked as M, on the incident report from the night of her arrest. Vicotria also complains that, once transported

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to the jail, Porter attempted to place her in a holding cell with male detainees. When Victoria noticed this, she insisted that she be housed with other women and told Porter that he should check her rap sheet to see that she had been processed as a woman following previous arrests. According to the complaint, Porter told her that he did not have time to do so and instead arranged for a female officer to perform a strip search and visually inspect her genitals and breasts. It was only after this inspection that Vicotria was finally housed in the women's section of the jail.[180]

The complaint claimed that this treatment violated Victoria's fourth amendment right against unreasonable search and seizure.[181] Such an argument was built on court precedent. In the US legal system, courts have a large role to play in the development of the law. Unlike in many other countries, US law is not just built upon statutes passed by a parliament or congress. In the US, courts give a great deal of weight to the decisions and logic higher courts have used in the past in order to apply them to novel scenarios. This is a defining feature of what is called a common law system and it means the logic and decision a judge applies in ruling on one case can become crucial in how future cases get decided.

In Victoria's legal argument, one particular ruling is of key importance: the 1984 appeals court ruling in the case of Giles v. Ackerman.[182] Because this case was decided by a federal appeals court, the precedent it set holds significant weight. The only court with a higher authority to determine issues of federal law is the US Supreme Court. In this instance, the appeals court heard the case of a woman who was arrested on minor charges and subjected to a strip search as a matter of jail policy. The jail argued that such searches were necessary in order to prevent contraband from being smuggled into the facility, while the

[180] Karen Snell, *Claim Against the City and County of San* Francisco, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[181] Snell, *Claim Against the City and County of San* Francisco.
[182] Ibid.

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plaintiff argued that such a search violated her fourth amendment rights.[183] In the ruling, the court recognized that there was a need to "balance the security needs of local jail facilities against the privacy interests of arrestees charged with minor offenses."[184] In the end, the court held that:

"[a]rrestees charged with minor offenses may be subjected to a strip search only if jail officials possess a reasonable suspicion that the individual arrestee is carrying or concealing contraband. Reasonable suspicion may be based on such factors as the nature of the offense, the arrestee's appearance and conduct, and the prior arrest record."[185]

As Vicotria was arrested on misdemeanor charges only, the complaint is essentially arguing that the lack of any articulable suspicion that Victoria was concealing a weapon or narcotics renders the strip search which she was subjected to unconstitutional.

It takes nearly six months after this initial complaint is filed for the office of the city attorney to finally provide a response. They deny the claim.[186] It is just ten days after receiving this denial that Victoria and her counsel take the next step and file an official complaint seeking damages in federal court.[187]

In her initial court filing, Victoria lays out not just the abuse she faced at the hands of police and jail officials in her most recent arrest, but describes previous similar experiences and the great lengths she went to in order to try and prevent such dehumanizing treatment in the future. In making her argument, Vicotria describes a 1993 arrest in which she was at first

[183] *Giles v. Ackerman*, 559 F. Supp. 226 (D. Idaho 1983) 615.
[184] *Giles v. Ackerman*, 617.
[185] Ibid, 617.
[186] Louise Renne, *Re: Claim of VICTORIA SCHNEIDER / Claim Number 97 - 01903*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[187] Karen Snell, *COMPLAINT FOR DAMAGES*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

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housed in a male section of the San Francsico County Jail. Much as in her 1996 arrest, Victoria insisted multiple times to jail personnel that she was in fact a woman. However, they ignored her protests. After hours spent in this cell and having to endure the degrading experience of peeing in front of the male inmates, Vicotria requested she be strip searched, believing it to be her only means of demonstrating her status as a woman in a way that jail staff would believe. She was right. It was only after this strip search that she was finally housed in the women's section of the jail. Victoria was so distraught by this whole experience that afterwards she went to the Chief of Staff of the San Francisco County Sheriff's Office and showed the chief copies of her birth certificate and passport so that her gender could be validated and officially logged into the jail database in order to prevent similar ordeals from happening in the future.[188] The claim filed in federal court additionally lists jail and police officials as well as the police department, sheriff's department, the city, and the county of San Francisco as defendants to be held liable in the case. It goes on further to demand a jury trial and compensation under three causes of action. These form the specific legal foundations for what Victoria and her legal counsel aim to prove in the case. The first cause of action is for violation of federal civil rights, to prove this the case must show how Victoria's constitutional rights were violated. Under this cause of action, Vicotria claims that it was not just the individual police officers and jail personnel that deprived her of her constitutionally guaranteed rights. It was also the result of larger policy failures by the police and sheriff's departments as well as the city and county which led to her rights being violated. Under the second cause of action, Vicotria claims that police and sheriff's deputies violated California state law when they subjected her to a strip search. The final cause of action is intentional infliction of emotional distress. In this cause of action, Victoria claims that the illegal actions

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[188] Karen Snell, *PLAINTIFF VICORIA SCHNEIDER'S SETTLEMENT CONFERENCE STATEMENT*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

of those being brought to trial were done so in an extreme or outrageous way meant to cause her emotional suffering.[189] In a common law system, being able to prove such increases the liability of those being sued and results in greater cash payouts to those bringing the suit.

After this initial court filing, Victoria and her counsel extend a settlement offer of $35,000 along with a demand that the city adopt a standard procedure for determining gender humanely along with mandatory training for the police force on how to deal with sex workers and transgender people respectfully. The defense decline this option, however, instead offering a mere $5000, less than Victoria's attorney fees at this time and a clear indication of the defense's confidence in their ability to try the case.[190] It is just after this early offer was extended that the defense home in on a pivotal strategy. Initially, the city attorney representing the defense, Hajime Tada, claimed that no strip search ever occurred. However, during the deposition of one of the men involved in Vicotria's jail processing, sheriff's officer Lew, when pressed on the matter insisted that while he had no specific memory of the night, he would have ordered a strip search of Victoria given that her statewide rap sheet shows her having been arrested under the influence of a controlled substance in 1995.[191] This was an enormous setback for Victoria's case. She had indeed been arrested while high on drugs in this case, giving the police a plausible reason under the precedent set in the Giles v. Ackerman decision to require a strip search. All of a sudden, it no longer matters that the police had refused to accept Victoria was a woman or that their had been no suspicion that she was high at the time of her 1996 arrest; her strip search is being recontextualized by the defense as part of the standard procedure for processing a detainee with a history of drug-related arrests.

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[189] Snell, *PLAINTIFF VICORIA SCHNEIDER'S SETTLEMENT CONFERENCE STATEMENT*.
[190] Karen Snell, *PLAINTIFF'S CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[191] Hajime Tada, *DEFENDANTS' MOTIONS FOR PARTIAL-SUMMARY JUDGEMENT*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

As the case proceeds through the courts, however, an additional component of Vicotria's legal strategy is being compiled. Cases such as Victoria's do not just involve legal issues alone, often times when someone is advocating for the rights of themselves and their community, their community will come out in support. Within the mess of legal files which Vicotria donated to the GLBT archives there are copious letters written to the city attorney on her behalf from organizations such as Community United Against Violence, The San Francisco Human Rights Commission, The Harvey Milk Gay/Lesbian/bisexual Democratic Club, ACT UP SF, The Lambda Letters Project, and many more organizations advocating for trans and sex worker rights. One organization, the coalition on prostitution which as a network of sex workers and their allies provides services to women through outreach and advocacy, writes to the city attorney in a letter that:

"Ms. Schneider has worked with our project extensively for many years, providing health related out-reach services to hard to reach populations. She is extremely dedicated and her work has been invaluable to women on the streets and to the city. In fact, Ms. Schneider is the only outreach worker who maintains contact with a number of populations. Ms. Schneider regularly attends conferences, trainings and updates in her field. For many years she has spent all her holidays serving food to the poor through Haight Ashbury food program. She has participated in community advisory groups, including a recent project designing treatment on demand for women through the Drug Abuse Advisory Board. Ms. Schneider is obviously an asset to our community!"[192]

Character letters such as these are meant to sway the opinion of the people they are sent to and in doing so show one of the ways in which civil society organizations interact with and advocate for institutional change within the legal system. They also help to show a

[192] Carol Leigh, *Letter in Support of Victoria Schneider*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

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fuller picture of the people who are involved in these processes. In the letters sent on Victoria's behalf, we can see these organizations speaking to the work Victoria has put into community activism, the negative impact of policing practices on trans people and sex workers, and because of this requesting that the city agree to Victoria's settlement terms. In the context of a case where the plaintiff is a trans sex worker with previous drug related arrest records, advocacy such as this can go a long way to countering pre-existing biases against such groups.[193]

As dozens of letters of support pour into the city attorney's office and with Victoria's case looking bleak in the face of her previous arrest record, her lawyers come across the key document which will make her argument. Given that the defense had changed their strategy from one of denial to one of justification, the city attorney had made the significant step of granting that the strip search central to Vicotria's case had indeed occurred and that Vicotria's 1995 arrest was the reason that the search took place. It is during the process of discovery, the period before trial when each side requests access to documents in the other side's possession that may be of significance on the case, that Victoria's legal team confirm there was no other possible reason that such a search would have been legally ordered. After this, they discover through independent investigation that the California Department of Justice keeps a record of every request to access someone's statewide rap sheet, the document which Sheriff's officer Lew claimed had been the reason for Victoria's strip search, through a database which it maintains. Upon receiving permission from the court to re-open discovery, Vicotria's attorneys obtain access to the database which showed that Deputy Lew never accessed Victoria's statewide rap sheet on the night of her arrest, thus showing that he had no way of knowing that Vicotria had been arrested on a drug related offense at the time of her

[193] Barrett Anderson, "Recognizing Character: A New Perspective on Character Evidence," The Yale Law Journal 121, no. 7 (2012): 1926.

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arrest.[194] With these facts, the case goes to trial one month later and the jury finds in favor of Victoria, ordering that she be paid $750,000 dollars in compensation from the city and $5000 from Sheriff's Deputy Lew.[195] Additionally, in the post verdict settlement conference, the city also agrees to change its official written policy regarding strip searches and implement training that directs police to only perform strip searches in compliance with federal and state law, clearly laying out that they are unacceptable as a means of determining some one's gender.[196] This is the first time that the San Francisco Police Department makes a clear policy regarding the use of strip searches as a means of determining a person's gender, a huge step in guaranteeing of humane treatment for trans people held detained in the city of San Francisco.[197]

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Included in Victoria's file at the GLBT archives is a picture of Vicotria with her legal team. They stand in front of an enormous print out of the jury verdict, almost the same height as the four women smiling in the photo. The printout has attached to it 7 and a half one hundred grand candy bars, a sweets-based reference to the enormous monetary victory they had won. Vicotria stands with a broad, open smile in a black blouse and floral skirt as her lawyer rests

[194] Snell, *PLAINTIFF VICORIA SCHNEIDER'S SETTLEMENT CONFERENCE STATEMENT*.
[195] *SPECIAL VERDICT FORM*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[196] *POST VERDICT SETTLEMENT FORM*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[197] Karen Snell, *SIMULTANEOUS BRIEFING ON THE CONSTITUTIONALITY OF THE SAN FRANCISCO SHERIFF'S DEPARTMENT POLICY REGARDING THE STRIP SEARCH OF MISDEMEANOR DETAINEES*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

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her head on her shoulder.[198] Just next to this picture In the same folder is a photo of Victoria celebrating in a different context. In this picture, she is marching in the 1999 gay pride parade. Holding a flag for the sex worker advocacy organization COYOTE as she commands a whole section of the street on her own.[199] It's these moments of private and public celebration that show the significance of this victory to both Victoria and the broader community. In victory, she not only won recognition and compensation for the wrongs she had suffered, but also played a small role in the shaping of a more trans-friendly legal system by challenging the tactics used to intimidate and humiliate the trans people who find themselves detained within it. It is through her efforts and that of innumerable other individuals that our courts, legislation, and police function in the way that they do. Our society and the many communities which make it up have a large role to play in determining how the legal system works and as we face an increasing tide of transphobia within a larger role back of human rights in the United States and countries across the world, the choices we as individuals and communities make will continue to play a key role in shaping the rule of law. It is only through our resistance in the face of oppression that we can continue to secure ourselves against the bigotry and tyranny all around us.

This has been an episode of Trans*ing the Legal Cistem: How Transgender People Challenge the Law and Change the World. I hope you enjoyed.

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[198] *Office Party*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.
[199] *Victoria Schneider with COYOTE sign*, Victoria Schneider papers, Collection Number: 2000-57, GLBT Historical Society.

4.3 Podcast Link

https://drive.google.com/file/d/10JPn5ldoOnPVMvWJBmq4v2S5yzZ5uYAT/view?usp=drive_link

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5. Conclusion

Through the research put forward in this paper, it is hoped that one can see how the legal persecution of trans* people and gender variance in the public sphere developed in the city of San Francisco. The movement as described in this work from Mission system to anti-vice regime to anti-prostitution regime is a model which, while in its intricacies is specific to the case of San Francisco, in its generalities can be seen to occur similarly in cities across the state, country, and to some extent the world. However, while previous works have explored the explicit legal exclusion of gender variance from public life and others have indicated how anti-trans* bias continued to lead to negative experiences of the legal system, a cohesive historical study of how *de jure* systems of legal exclusions moved to *de facto* systems in a specific locality have until now remained unexplored.

In this sense, not only does this work address a significant gap in existing scholarships, but it also points a way for future research work. A local situated legal history such as this one not only allows for a deeper understanding of San Francisco, but if other locally based histories like this one are developed, regional and national narratives can be constructed in a more cohesive manner. By comparing locally situated works, entanglements and synchronicities, both geographically and between different minority groups, can be better ascertained than any sort of top-down approach to the subject matter has previously allowed. What is more, the development of microhistories in the story of trans* legal history such as the one explored in the podcast can demonstrate the specific, tangible experiences which is necessary to ground any law and society approach. Without such lived experiences, the study of the law and its histories risks falling into abstractions detached from actual practice.

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The podcast as a work in liberatory pedagogy also points the necessary path towards a politically active approach to trans* history. With the rising tide of transphobic sentiment, laws, and jurisprudence seen in the United States, United Kingdom, and many other parts of the world in recent years, any pretense of political neutrality is absurd. Work in trans* history, especially trans* legal history, needs to be produced with an eye towards the current political context. In this sense, an approach which centers the interconnectedness and affinities of trans* activism with gay activism, sex worker activism, and black activism among others is essential.

While this project is robust in many respects, it suffers from certain shortcomings. The greatest of which was the lack of oral history interviews, which the author initially intended to implement into the project. Unfortunately, the shifting legal landscape of the United States created a difficult environment for obtaining interviews. Such an approach to the history discussed would be incredibly useful as the history of trans* sex workers, black trans* people, and black, trans* sex workers is difficult to uncover through archival material. While such certainly exists, as exemplified by the story of Victoria Schneider, such stories are disproportionately excluded from the historical record. Another weakness is the lack of depth which the history section is able to develop. In approaching the history, the author initial wished to focus on the period following the 1974 repeal of the city's anti-gender impersonation law. However, as her research progressed, she realized that this change in the law was more a symbolic shift, one which was a product of larger shifts in the language and jurisprudence of the legal system in the United States, California, and San Francisco. In order to demonstrate these changes then, the author had to expand the scope of research both temporally—in order to show the continuities and disjunctures between the different gender enforcement regimes—and in terms of the federal principle—namely to show how local

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legal realities emerge as a product of local, state, and federal practices. Because of this, the history section only occasionally touches on specific examples. In a certain way, the podcast addresses this lack of depth; however, it only covers one case in great detail. The work would benefit from a number of more specific examples of individual experiences that do not necessarily go into such detail in order to show a greater diversity of experience.

The research explored in this project could be expanded in a number of different directions then. The most obvious option is to continue the podcast as proposed. Another possibility is to expand the history section by going into greater depth on the legal developments explored and what influenced such developments. Future research could also look at a different major US city such as New York or Los Angeles in a comparative approach with the work put forward in this piece. Another direction might also be to look more closely at the interrelation which trans* legal developments in the city has with another specific movement in San Francisco such as the black or Latino civil rights movement. A more regional approach might be taken as well; many of the activists discussed in this piece did not contain themselves to San Francisco alone—there are numerous other large cities in the greater San Francisco Bay Area that saw similar legal shifts occur which many of these activists were involved in. One could also look at the more recent history and current events with the past 25 years offering perhaps the most robust selection of available material as well as a slew of significant changes which have yet to be explored in terms of their connection to the historical systems explored in this work. The options are truly numerous as the relatively unexplored areas of trans* and sex worker histories remain an extremely ripe area for academic explorations of all kinds. Thus, it is hoped that this work cannot just inform but also inspire. The history of trans* people, sex workers, and minority groups of all varieties still

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largely wait to be told. Going forwards, their creation will continue to expand our understanding of the world and enable us to work within it in more harmonious, freer ways.

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