# I'M ON THE WRONG TRACK BABY, I WAS MADE THIS WAY: HOW GENDER ESSENTIALISM AND CISNORMATIVITY DISCIPLINE THE TRANSITION PROCESSES OF TRANSGENDER INDIVIDUALS

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ABSTRACT

*Transgender individuals are heavily regulated through American law, particularly through the administrative state, which presents challenges in terms of housing, identity documents, prisons, and immigration, among others. There are many determinative factors which create this trans-antagonistic administrative framework, and I investigate two key norms – gender essentialism and cisnormativity. These norms are (re)produced and naturalized through the mutually enforcing epistemological frameworks of law and medicine through their competing projects of bringing transgender individuals under their authority in such a way as to hierarchize transgender communities and identities. This paper explores how these conceptual frameworks undergird the administrative state's theorization of gender, the ways in which the law is guided in the regulation of transgender individuals, the epistemological framework of the medical model employed by the law in realizing those norms, and how the administration of these regulations disciplines the transition processes of transgender individuals. My analysis contributes to the work of Dean Spade, Ian Haney López, and other critical legal scholars by explicating*

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*the nature and function of the law in the lives of transgender individuals with respect to gender essentialism and cisnormativity. Through interrogating these norms as a framework upon which the administrative state is constructed, I advance the concept of the self-determination model and make recommendations to increase the personal and collective autonomy of transgender individuals with respect to their transition processes.*

## TABLE OF CONTENTS

> "But there is also another debate about sex and gender, one that is not getting the same television and print media attention as the same-sex marriage debate. It centers on the issue of whether transgender persons are male or female for various legal purposes."[1]

## INTRODUCTION

In August, 2017, President Donald Trump announced via Twitter that the United States Government would reverse course and ban transgender people[2] from openly serving in the military, ultimately relying on transphobic reasoning that portrays transgender people as disruptive, and our healthcare needs as burdensome.[3] While there has been an outrage at the President's tweets from across the political spectrum[4] and throughout society,

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[1] Ally Windsor Howell, Transgender Persons and the Law 1 (2013).

[2] This article uses the term "transgender" as an umbrella term to mean those individuals who do not identify with their sex assigned at birth, in part or in full, *and* who use the term to describe their gender identity. While many transgender people participate in medical procedures that bring their bodies in alignment with their gender identity, this is not true of all transgender people, and should not be used as a litmus test for legitimate transgender identity. The term "transgender" is preferable to other general terms for just this reason, as it is does not connote a medicalized understanding of gender identity. As an umbrella term, "transgender" encompasses a wide range of individuals who may or may not use other primary terms to identify themselves, including but not limited to the following: transsexual, genderfluid, genderqueer, agender, and nonbinary.

[3] Donald Trump, *Twitter*, July 26, 2017, https://twitter.com/realDonaldTrump/status/890193981585444864; Alex Ward, "Trump just announced a ban on transgender military service on Twitter, *Vox*, Jul 26, 2017, https://www.vox.com/policy-and-politics/2017/7/26/16034008/trump-transgender-troop-ban-twitter ("After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow transgender individuals to serve in any capacity in the US Military," Trump tweeted. "Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail.").

[4] Ellis Kim, "Where Republican lawmakers stand on transgender troops," *Public Broadcasting Service*, Aug 1, 2017,

his statement is neither surprising nor novel.[5] Indeed, this idea of transgender as burden is pervasive in the law, among other institutions.[6] Most clearly, transgender individuals in the United States have been deeply impacted by the administrative state,[7] particularly with respect to the intersection of law and medicine.[8] While there have been some prominent cases including transgender individuals, we have yet to see any reach the Supreme Court.[9] Within the context of administrative law, we see the regulation of transgender individuals in terms of housing, identity documents, prisons, and immigration, among others.[10] But what are the norms

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http://www.pbs.org/newshour/rundown/republican-lawmakers-stand-transgender-troops/.

[5] Susan Stryker, Transgender History 14-15 (2008) ("In spite of its being an official psychopathology, "treatments" for GID [gender identity disorder] are not covered by health insurance in the United States because they are considered "elective," "cosmetic," or even "experimental.").

[6] Dean Spade, Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law 19 (2011) [hereinafter Normal Life] ("Trans people are told by the law, state agencies, private discriminators, and our families that we are impossible people who cannot exist, cannot be seen, cannot be classified, and cannot fit anywhere.").

[7] Normal Life at 12 ("[A] distributive analysis suggests a focus on laws and policies that produce systemic norms and regularities that make trans people's lives administratively impossible."). Additionally, because gender is primarily regulated through the administrative state, and because transgender people are assigned a gender at birth that does not match their actual gender identity, the administrative state is key in distributing resources, benefits, and life chances according to an imposed gender classification that places transgender people in opposition to being legally, appropriately gendered.

[8] Stryker at 36 ("Medical practitioners and institutions have the social power to determine what is considered sick or healthy, normal or pathological, sane or insane—and thus, often, to transform potentially neutral forms of human difference into unjust and oppressive social hierarchies. This particular operation of medicine's social power has been particularly important in transgender history."). See also, Georgiann Davis, CONTESTING INTERSEX: THE DUBIOUS DIAGNOSIS (2015).

[9] *Gloucester County School Board v. G.G.*, *Supreme Court of the United States Blog*, last accessed Nov 15, 2017, http://www.scotusblog.com/case-files/cases/gloucester-county-school-board-v-g-g/.

[10] See generally, Howell.

and assumptions that undergird the administrative state? In what ways does administrative law theorize gender, and how does it realize the norms and assumptions that construct its framework? While there is a growing body of transgender legal scholarship[11] addressing many of the issues I raise here, my focus in this article is to investigate the conceptual frameworks that are creating many of the problems analyzed within this field through examining the administrative state's pathways required to have our transitions[12] legally recognized. This article examines how two interrelated norms – gender essentialism and cisnormativity – guide administrative law in the regulation of transgender individuals, establish the epistemological framework of the medical model employed by the law in realizing those norms, and influence the

[11] See generally, Normal Life; Howell; Mogul, J. L., Ritchie, A. J., & Whitlock, K., Queer (In)Justice: The Criminalization of LGBT People in the United States (2011) [hereinafter Mogul].

[12] James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, at 47 [hereinafter USTS] ("Transitioning is a process by which a person begins to live in a gender that is different than the one on their original birth certificate. Not all transgender people have transitioned or intend to do so, but many do. Gender transition can involve many different aspects, including changing one's clothing, appearance, name, and identity documents (such as driver's licenses or passports) and asking people to use different pronouns (such as he, she, or they) than the ones associated with the gender on one's original birth certificate. Transitioning may also include undergoing medical procedures, such as hormone therapy or surgeries, to change one's physical characteristics. Some people make many of these changes while others do not, depending on their needs and resources. Additionally, some transgender people may desire and make some of these changes even if they do not intend to live full time in a gender that is different than the one on their original birth certificate. However, many people who want to take these steps are not able to do so because of financial constraints, safety concerns, fear of discrimination and rejection, and other barriers.").

administration of these regulations to discipline the transition processes of transgender individuals.

In the first section, I build on the work of Dean Spade, Ian Haney López, and other critical legal scholars to explicate the nature and function of the law in the lives of transgender individuals with respect to gender essentialism and cisnormativity. In the second section, I apply that conceptual framework to the aspects of administrative law that most prominently regulate the transition processes of transgender individuals. Finally, I build on the concept of the self-determination model[13] and make recommendations to increase the personal and collective autonomy of transgender individuals with respect to their transition processes.

## I. LAW, MEDICINE, AND TRANSGENDER INDIVIDUALS

### a. Law Machine as Tactics

To begin, I start with a question that, on its surface, seems rudimentary: What is law? While there are many straightforward answers, I take a closer look by synthesizing two conceptions of the law from critical theory and comparative law. First, there is the simple answer that law is merely a collection of legal rules, a construct that may satisfy a large majority of legal scholarship. However, comparative legal scholars push us to understand law as

[13] Frank H Romero, *Beyond a Medical Model: Advocating for a New Conception of Gender Identity in the Law,* 36 Colum. Hum. Rts. L. Rev. 713, 738 (2005).

more complex, giving us a term that expands our notion of the nature and function of law: the "law machine."[14] The "law machine" is composed of "legal structures, actors and processes,"[15] and I use this concept in my understanding of law for this article because I am interested in the legal system in America as it relates to transgender individuals. [16] Thus, while my primary concern is with the legal structure, I am also concerned with the actors that function within that structure and the processes through which transgender individuals are disciplined. In contrast to this comparative complex, however, I do not view the boundaries between the various components of the "law machine" as being fixed in the ways that this tradition treats them. Thus, my analysis of the law based upon an understanding of the law machine treats these components as fluid, overlapping categories.[17]

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[14] John Henry Merryman, David S. Clark, & John Owen Haley, Comparative Law: Historical Development of the Civil Law Tradition in Europe, Latin America, and East Asia 86 (2010).

[15] *Id.* ("Legal structures" are defined as "the composite units that do the work of the system," such as "Courts, legislatures, *administrative agencies*, law schools, and bar associations." (emphasis added). Additionally, "'Legal actors' refers to the professional roles played by participants in the system," and "'Legal processes' refers to legislative and administrative action, judicial proceedings, the private ordering of legal relations, and legal education.").

[16] *Id*. at 87 ("However, if we are really interested in knowing something about the legal system in any society we quickly have to expand our vision to include the law machine—the complex of legal structures, actors, and processes.").

[17] Through this statement I mean that the divided components are mutually informing, such that legal actors cannot act independently of the legal structures – namely, the administrative agency – with which they enact legal processes. The administrative action as legal process, then, is informed by the legal actors and the essentialist framework on which the legal structure is built. Conversely, I do not mean to say that legal actors are themselves legal processes, or that legal structures are legal actors, though they often perform each other's roles in one way or another through the biopolitical framework referenced in Dean

Second, the law can be understood as tactics, which initiates an investigation into the ideologies and identities for which the law is designed and for which it disciplines.[18] Here, I am concerned with the disciplinary aspects of the law, or the ways in which it "establishes norms of good behavior and ideas about proper and improper categories of subjects."[19] As I will explain later, the law establishes norms of gender essentialism and cisnormativity, which, in turn, discipline the transition processes of transgender individuals through categorization into "proper" and "improper" categories of gender embodiment. Taken together, these two ideas – the law machine and law as tactics – provide a methodology which understands the law as multi-faceted beyond legal rules and simultaneously disciplining subjects through the norms that the machine establishes.

b. Gender Essentialism and Cisnormativity

Now that I've laid out my methodology for examining the law, I turn to the norms that are established and reified through the law machine as tactics. First, gender essentialism refers to a strain of essentialism that argues that gender has an essence, or an objective and fixed nature that can be perceived. The law is overwhelmingly steeped in essentialist assumptions, from how it

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Spade's *Law as Tactics*, 21 Colum. J. Gender & L. 40, 44-47 (2012) [hereinafter *Law as Tactics*].

[18] See generally, *Law as Tactics*.

[19] *Id.* at 40.

treats emotions,[20] to how it understands race,[21] and ultimately how it views sex, gender, and sexuality.[22] However, essentialism, as a matter of scientific inquiry, has been studied and disproven by a wide range of scholars across many fields of study and replaced with a social constructionist framework that far more accurately accounts for the phenomena in question.[23] Gender, as the primary category at issue here, is a social construction, as are the categories of physiological sex and sexuality.[24] This is not to say that there is no objective, material reality to sex, gender, or sexuality; there certainly is. The point that social construction makes is that we make meaning from these material facts, and with very real and direct

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[20] Lisa Feldman Barrett, How Emotions Are Made: The Secret Life of the Brain 220 (2017) ("For centuries, laws in the United States have been shaped by the classical view of emotion, steeped in the essentialist view of human nature. Judges, for example, attempt to set emotion aside to render a decision by pure reason, a belief that assumes emotion and reason are distinct entities. [Author further discusses essentialism in legal settings, particularly among legal actors]. All of these assumptions – born of essentialism – are baked into law at its deepest levels, driving verdicts of guilt and innocence and gauging punishments on a massive scale, even as neuroscience has been quietly debunking them as myths.").

[21] See generally, Ian Haney López, White by Law: The Legal Construction of Race (2006).

[22] Andrew Gilden, *Toward a More Transformative Approach: The Limits of Transgender Formal Equality*, 23 Berkeley J. Gender L. & Just. 83, 89 (2008).

[23]See generally, Steven Seidman, The Social Construction of Sexuality (2003); Davis; Feldman Barrett; Haney López; and Anne Fausto-Sterling, Sexing the Body: Gender Politics and the Construction of Sexuality (2000).

[24] Fausto-Sterling at 3 ("One of the major claims I make in this book is that labeling someone a man or a woman is a social decision. We may use scientific knowledge to help us make the decision, but only our beliefs about gender—not science—can define our sex."); see also Gilden at 89 ("By creating the appearance that gender identity is rooted in biology, biological essentialism casts the primary means of gender perpetuation, the category of 'sex,' as outside the realm of social construction as an aspect of one's pre-social self. If situated as prior to being, 'sex' cannot be deconstructed and reformulated as more inclusive of human diversity because it appears as if it has never been constructed at all.").

consequences.[25] Essentialism, then, is an ideology, not supported by evidence, that has been socially constructed in part through the concepts of sex, gender, and sexuality, that form a basis for the laws that regulate these constructions.[26]

The importance of understanding essentialism and social construction is to determine where they are present and how they bear on the law machine. In terms of legal structures, essentialist ideology informs the administrative agencies, the law schools, the courts, and others, providing a narrow and inaccurate lens through which knowledge is produced and regulations are administered. This is true of legal actors and legal processes as well. Importantly, renowned legal scholar Ian Haney López has examined how the law participates in the social construction of race. Building on Haney López's critique of race in American law,[27] I argue that the law

[25] Fausto-Sterling at 30-31 ("European and American culture is deeply devoted to the idea that there are only two sexes… Whether one falls into the category of man or woman matters in concrete ways… It might mean being subject to the military draft and to various laws concerning the family and marriage… But if the state and legal system has an interest in maintaining only two sexes, our collective biological bodies do not. While male and female stand on the extreme ends of a biological continuum, there are many other bodies [*sic*] that evidently mix together anatomical components conventionally attributed to both males and females.").

[26] Judith Butler, Gender Trouble: Feminism and the Subversion of Identity 10 (1990) ("Gender ought not to be conceived merely as the cultural inscription of meaning on a pregiven sex (a juridical conception); gender must also designate the very apparatus of production whereby the sexes themselves are established. As a result, gender is not to culture as sex is to nature; gender is also the discursive/cultural means by which 'sexed nature' or 'a natural sex' is produced and established as 'prediscursive,' prior to culture, a politically neutral surface *on which* culture acts." (emphasis in original)).

[27] See generally, Haney López. Additionally, it should be noted that while I draw on the observations Haney López and others make about race in the U.S. legal system, my adoption of their analyses should not be construed as

participates in the social construction of gender, sex, and sexuality.[28] Through the administrative regulation of transgender individuals, especially with regard to transition processes discussed more in depth in Part C of Section I, the law coercively influences the material reality of transgender bodies and the material reality of entire gendered populations through the historic regulation of gender transgression. Through this coercion, the law views gender similarly to race, as "pre-legal categories on which the law operates, but which the law does not in many ways create."[29] In treating transgender individuals this way, the law conceptualizes us as inherently transgressive, a population of "improper" subjects to manage in ways that reinforce the supposed essentialism of gender and sex. In doing this, Haney López explains the true function of the law: rather than simply bringing gender identity within its jurisdiction through the legalization of binary gender categories, the law "defines as well the spectrum of domination and subordination

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analogizing race to gender identity. Rather, I am adopting the interrogation methods used by critical race theorists to determine the ways in which the law has constructed regimes of domination according to gender, as it has done for other identity categories. (Following Spade's explanation in NORMAL LIFE at 11, my work "draws from the insights of Critical Race Theory and also modifies and reworks these insights for the specificities of a critical trans analysis"). Further, race and gender are fundamentally different categories that always work through one another. There is no racial formation that is not gendered in American society, and there is no gender category that is not raced. Within the transgender community, those most punished by the legal system and by society-at-large are not white transgender individuals like myself, but most often transgender women of color.

[28] Fausto-Sterling at 3 ("Furthermore, our beliefs about gender affect what kinds of knowledge scientists produce about sex in the first place.").

[29] Haney López, at 9.

that constitutes" gender relations.[30] This "spectrum of domination and subordination" can be most simply defined through the second norm present in the legal system with regard to the management of transgender populations: cisnormativity.

"Cisnormativity" is a term that describes both a set of beliefs – namely, that cisgender experience is the norm and should be centered in our understanding of the world and analysis of social problems – and a set of processes – namely, that cisgender experiences should be normalized. In other words, transgender experiences should be made suspect because cisgender identity is the embodied norm, and individuals should strive toward this "proper" cisgender identity. Although cisnormativity most deeply impacts transgender individuals, it disciplines cisgender individuals who do not conform to hegemonic standards of "manhood" or "womanhood" as well. These hegemonic standards function through essentialism and cisnormativity in the law, manifesting as "ideal types" that erase the reality of variation for which social constructionism accounts. For example, in the case of equal protection jurisprudence, there is an ideal individual – in cases of race, gender identity, sexual orientation, alienage, etc. – that is employed to create the analytical framework that produces the legal

[30]Haney López, at 8.

rules regarding the class of persons in question.[31] Essentialism in equal protection jurisprudence, like in the administrative state, constructs a class of persons to analyze that is entirely dependent upon power relations, undermining the essential nature of the very classes it has constructed. In the case of transgender people, the essential nature of gender is reinforced by cisnormativity in such a way as to create the "ideal" transgender person – if there must be one – who strives to be as cisgender as possible. In contrast to the ideal type is the archetype, which ultimately portrays transgender people as harmful to society.[32] The archetype is a controlling force in the law,[33] and through "constant institutional and cultural repetition" it bears not only on the law through the principle of stare decisis, but through the cognitive functioning of our brains.[34]

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[31] While this shows up in a number of cases, it is perhaps most prominent in *Frontiero v. Richardson* through its analogy of race discrimination to gender discrimination. In comparing race to gender in this context, it is clear that women of color are absent in the Court's mind, or at least not representative of the category "woman." See also Jill Elaine Hasday, "Women's Exclusion from the Constitutional Canon," 2013 U. Ill. L. Rev. 1725-26. For more on the significance of this, see *supra* note 27.

[32] Mogul at 23 ("The specter of criminality moves ceaselessly through the lives of LGBT people in the United States. It is the enduring product of persistent melding of homosexuality and gender nonconformity with concepts of *danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery,* and *violence*." (emphasis in original)).

[33] Mogul at 26 ("The archetypes and their accompanying scripts are remarkably powerful in directing not only the initial gaze, but also subsequent interpretations and actions, of police, prosecutors, judges, juries, and prison authorities.").

[34] Mogul at 26 ("According to cognitive linguist George Lakoff, the constant institutional and cultural repetition of an image or idea—that is, a mental structure for organizing and interpreting information—can literally produce changes in the brain… This research suggests that criminalizing frames for understanding perceived departures from (white supremacist, colonial, patriarchal, gendered, and heterosexual) norms, reinforced in infinite ways,

Through cisnormativity, then, the law does more than discourage transgender embodiment, it condemns it by mandating that transgender individuals transition in ways that will bring their bodies into alignment with the ideal cisgender body or remain in a perpetual gender purgatory wherein we are nothing more than archetypes, regardless of the real barriers to reaching such an embodiment or the desire to do so. Finally, cisnormativity, like essentialism, presupposes a binary system, excluding entirely the reality of non-binary genders within a Eurocentric framework and the multiplicity of genders outside of a Western framework.[35] This is reflected in the law in many ways, and will be discussed in more detail in Section II.

Together, these norms operate through the law to discipline transgender individuals not only in cases of antagonism, but in cases of supporting transgender individuals as well. It is perhaps through transgender-affirming arguments that essentialism has been allowed to thrive unchallenged as it purports to aid transgender people. My primary concern, however, is which transgender people? Who is

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consciously and unconsciously over hundreds of years, can literally change *how* we are able to think about these issues."). See also Feldman Barrett, especially Chapter 8 at 152.

[35] Mogul at 3 ("The imposition of the gender binary was also essential to the formation of the U.S. nation state on Indigenous land. As Smith explains, 'in order to colonize a people whose society was not hierarchical, colonizers must first naturalize hierarchy through instituting patriarchy.' Although Indigenous societies are widely reported to have allowed for a range of gender identities and expressions, colonization required the violent suppression of gender fluidity in order to facilitate the establishment of hierarchal relations between two rigidly defined genders, and, by extension, between colonizer and colonized.").

served by essentialist arguments, and who is harmed by them? Through my analysis, I reach the conclusion that it is largely binary transgender people[36] who benefit, though not all. More specifically, those who benefit are binary transgender people who identify with and perform the popularized narrative of knowing their gender identity from a very early age and whose transition goals reflect most closely cisgender embodiment.

Within the law, gender has most often been addressed through a lens of difference. In addressing the question of how to deal with difference, Martha Minow explicates a three-stage analysis developed by the feminist movement, with the third stage most directly addressing difference as a mode of analysis.[37] In this "third-stage" of analysis, the focus "on the similarities and differences between men and women threatens to preserve men as the starting point for analysis."[38] As another legal scholar explains, the invocation of a "real difference" between genders – in this case the differences between women and men – does not challenge gender inequality, but rather reflects it.[39] Combining these analyses,

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[36] "Binary transgender people" is a term that refers to individuals who identify fully as men or women, just as their cisgender counterparts do. This is in contrast to non-binary transgender individuals who, at least in part, do not identify with the sex assigned to them at birth, nor do they identify with either binary category of man or woman.

[37] Martha Minow, *Introduction: Finding Our Paradoxes, Affirming Our Beyond*, 24 Harv. C.R.C.L.L. Rev. 2-3 (1989).

[38] *Id.* at 3.

[39] Deborah L. Rhode, Justice and Gender: Sex Discrimination and the Law 3 (2009) ("Too often courts have treated gender as a matter of immutable difference rather than as a cultural construct open to legal challenge and social

I contend that gender essentialism and cisnormativity function in such a way as to preserve "cisgenderness" as the starting point for analysis within a framework of "real difference" that does more to sanitize the inequalities and injustices faced by transgender individuals than it does to challenge the gender-based hierarchy that creates them. These norms do not function merely through the law, however. Gender essentialism and cisnormativity are sustained through the law's use of the medical model of understanding transgender identity and experience.

c. Critiquing the Medical Model

The medical model of conceptualizing and administrating transgender identity within the law is fraught with problems. First, cisnormativity is a controlling feature of the medical model. Modern medicine has a number of treatment options available to transgender people.[40] However, instead of viewing them as a menu of individual treatments that can be pursued in a number of combinations to fit the needs and desires of each individual, cisnormativity guides the medical model by packaging these treatments in a linear fashion according to an ideal cisgender embodiment. In other words, the

change. Reliance on 'real difference' has deflected attention from the process by which differences have been attributed and from the groups that are underrepresented in that process. Such an approach has often done more to reflect sex-based inequalities than to challenge them.").

[40] WPATH Standards of Care, Version 7, http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926.

narrative of the medical model presumes that each transgender person will seek all treatments associated with "full" transition. Not only does this line of thinking perpetuate a rigid binary system of gender, it centers cisgender embodiment and, ultimately, gender essentialism. Indeed, this centering of cisgender embodiment defines the epistemological framework of the medical model: knowledge about transgender people is not drawn from our varied experiences with our bodies and with gender, but is produced through institutional frameworks that reinforce gender essentialism and cisnormativity.

Data show that, when transgender people desire gender-affirming medical treatments, they often seek them in a variety of combinations.[41] Moreover, some transgender people do not want any medical treatments related to their gender identity at all, much less to be required to participate in them, to be seen as a legitimate transgender individual by the state. Furthermore, the medical model ties these linear, binary treatment plans to an individual's ability to change their identification documents within the administrative state. Through adopting the medical model, the law ignores the

[41] USTS at 99-100: Desire for transition-related medical care is broken down in the following ways among respondents to the transgender survey: 77% of transgender people want counseling as part of their transition; 78% of transgender people want hormone therapy as part of their transition; and non-binary respondents vary greatly in their desire and access to transition-related medical care, with nearly half the amount of non-binary people (49%) wanting hormone therapy compared to binary transgender people (95%).

reality that not all transitions follow a narrative that transforms an individual from (trans)gender transgressive to (cis)gender conforming.

A recent 7th Circuit case[42] demonstrates the ways that the medical model affects the lives of transgender individuals, and how, even in the support of transgender individuals, it perpetuates gender essentialism and cisnormativity. Ashton Whitaker's mother brought suit against the Kenosha Unified School District on his behalf under Title IX and the Equal Protection Clause.[43] In discussing the procedural history, the court notes that Ash publicly transitioned and saw a therapist who diagnosed him with Gender Dysphoria.[44] Further, Ash began hormone replacement therapy in July 2016, and has lived full-time as a boy since 2014. After discussing the school's policy regarding sex-segregated facilities, the Kenosha Unified School District directed Ash to change his sex designation within the school's official records, which could happen through "unspecified 'legal or medical documentation.'"[45] After providing two letters from his pediatrician "identifying him as a transgender boy and recommending that he be allowed to use male-designated

[42] *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).
[43] *Id.* at 1040.
[44] *Am. Psychiatric Ass'n, Diagnostic & Statistical Manual of Mental Disorders* 452 (5th ed. 2013) (Gender Dysphoria is defined as "a marked incongruence between one's experienced/expressed gender and assigned gender…").
[45] *Whitaker* at 1041.

facilities at school," the school deemed those documents insufficient and directed him "to complete a surgical transition" before they would consider allowing him to use male-designated facilities.[46] The court duly notes that surgical procedures of this kind are not allowed for individuals under 18 years of age, that the school district did not provide an explanation for this policy, and that there was no written documentation of these requirements whatsoever in the school district's official policy or their guidance for Ash.[47] Much like the administrative framework for changing one's gender category, the Kenosha Unified School District provided a haphazard, at times contradictory and even impossible, process for Ash to navigate to have his gender category changed to reflect his gender identity. Appealing to the medical model, the Kenosha Unified School District implied that, to be a fully realized gendered being, one must not only undergo all medical procedures available, but one must *complete* them before having the transition considered adequate enough to change documentation.

Although the court in *Whitaker* firmly rejects the classificatory scheme that subjects transgender individuals to different standards for completing a legally accepted transition,[48] the

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[46] *Id.*
[47] *Id.* ("In fact, the School District has *never* provided any written document that details when the policy went into effect, what the policy is, or how one can change his status under the policy." (emphasis in original)).
[48] *Whitaker* at 1053 ("[I]t is unclear that the sex marker on a birth certificate can even be used as a true proxy for an individual's biological sex… Moreover,

court is nonetheless guided by gender essentialism and cisnormativity, primarily through an appeal to the "biological/social" dichotomy and the perpetuation of sex segregation. Despite a brief discussion of intersex individuals,[49] the court consistently uses phrases such as "female anatomy" when referring to the bodies of transgender men. Phrases such as this erase the variation present among individuals in terms of physiological sex, reinforce that there is one "female anatomy" – itself an "ideal type" – and perpetuate sex segregation as a natural outgrowth of this supposed fixed nature of biological sex. Citing *amici* briefs, the court in *Whitaker* also discusses how Ash's use of the appropriate sexed facilities does not cause harm to a gender essentialist system, but reinforces it.[50] This is clearly meant to be a victory for

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while it is true that in Wisconsin an individual may only change his or her designated sex on a birth certificate after completing a surgical reassignment [citation omitted], this is not universally the case… [For example, Minnesota provides for a birth certificate change without surgical reassignment]. Therefore, a student who is born in Minnesota and begins his transition there, obtaining a modified birth certificate as part of the process, could move to Kenosha and be permitted to use the boys' restroom in one of the School District's schools even though he retains female anatomy").

[49] *Id.*: The court discusses the variation in in genitalia and chromosomes, including how various combinations can occur. See also, Davis at 2 ("Although *intersex* is itself a term whose meaning is contested, in general it is used to describe the state of being born with a combination of characteristics (e.g., genital, gonadal, and/or chromosomal) that are typically presumed to be exclusively male or female… According to Intersex Society of North America (ISNA), there are approximately twenty different intersex traits." (emphasis in original)).

[50] *Id.* at 1055 ("Although the School District argues that implementing an inclusive policy will result in the demise of gender-segregated facilities in schools, the *amici* note that this has not been the case. In fact, these administrators have found that *allowing transgender students to use facilities that align with their gender identity has actually reinforced the concept of separate facilities for boys and girls*." (emphasis added)).

transgender individuals, as a way to normalize our existence and "properly" situate us within public space. However, this ultimately reinforces gender essentialism through reifying the sex/gender binary, and it perpetuates cisnormativity through the production of "properly" sexed individuals according to existing conceptions of cisgender embodiment.[51] A more apt approach to this issue will be discussed below, but I'll note here that the maintenance of such a system does not serve gender non-conforming individuals, whether cisgender or transgender, and especially remains hostile to non-binary individuals.

By continuing to apply the medical model, the law does not challenge the distribution of resources and life chances according to sex/gender categorization and the ways that this distribution negatively impacts transgender individuals.[52] To see how gender

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[51] Marc R. Poirier, *Hastening the* Kulturkampf: Boy Scouts of America v. Dale *and the Politics of American Masculinity*, 12 Law & Sexuality 271, 304 (2003) ("Part of the standard strategy for constructing gender identity appears to be to essentialize it, pretending that the process of social construction is not occurring in any important sense. This deception and self-deception is functional. A widespread expectation that gender is natural helps to insure the reproduction of socially constructed gender behaviors. This is partly because 'natural' behaviors and characteristics are valorized at the expense of nonnatural behaviors and characteristics, which are stigmatized. But it is also partly because *the attribution of naturalness connotes inevitability. Essentializing rhetoric encourages the individual to overlook or discount the norming processes, and keeps the gender construction process under wraps, almost invisible; as such, it is much harder to resist*." (emphasis added)).

[52] Jonathan L. Koenig, Note, *Distributive Consequences of the Medical Model*, 46 Harv. C.R.-C.L. L. Rev. 619, 629 (2011) ("Reliance on the medical model in law produces distributive consequences in the allocation of social goods to trans people that we can and should interrogate… The distribution of these goods reflects multiple themes. First, distributive consequences flow from the differential resources of trans people. Second, distributive consequences depend on the extent to which one's body and psychology conform to the medical

essentialism, cisnormativity, and the medical model discipline the transition processes of transgender individuals, I turn now to the administrative framework for gender/sex categorization.

## II. ADMINISTRATIVE LAW

The administrative state regulates identity according to a number of categories: race/ethnicity, ability, immigration status, and sex/gender, to name a few. For transgender people, there are at least two separate processes that occur when changing documentation: name change and gender change. Given the current administrative framework, however, gender change is only possible for binary transgender people.[53] For those who wish to reclassify their gender legally, whether they are non-binary or not, there is an administrative process, built on the norms discussed above, which (theoretically) allows for such a change. However, this system ignores the massive barriers that transgender people face in changing their documentation.[54]

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understanding of trans identity. Third, distributive consequences depend on the extent to which one's political conception of trans identities comports with the medical model. Fourth, redistributive benefits accrue to those whose views of gender are so flexible as to allow them to exploit systems grounded in the medical model.").

[53] USTS at 89: Fourty-one percent of respondents indicated that there was no gender marker that matched their gender identity. Furthermore, there is no federal recognition of non-binary genders, and only a few states offer third gender markers on state ID's; these ID's are not compliant with the REAL ID Act and cannot be used in federal proceedings or on federal documents such as passports (see Dean Spade, *Documenting Gender*, 59 Hastings L.J. 731 (2008) [hereinafter *Documenting Gender*]).

[54] USTS at 89: Thirty-two percent of respondents indicated that they could not afford to change their gender legally; 26% did not know how to change their

Such a system is conceivable under the medical model listed above, wherein the administrative framework is created through an epistemology that centers gender essentialism and cisnormativity. These are not the only ideologies driving the administrative policies that govern transgender people's lives or discipline our transition processes. As Dean Spade notes, our current administrative state is deeply informed by the War on Terror, particularly as a state-building project that is increasing its reach and power through standardization.[55] In analyzing the administrative state as a legal structure (see Section I for more on the law machine), we must understand standardization and categorization as *tactics* of law which "are assumed as basic truths about distinctions existing in the world."[56] For example, standardization in the law works through categorization to cement the popular narrative of transgender identity – as an unrepresentative subset of the various experiences of being transgender – in the national legal imagination.[57] This

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gender legally; 25% believed they were not allowed to change their gender legally; 25% worried that legally changing their gender would lead to them losing benefits or services; and 25% worried that changing their gender legally would effectively "out" them, not giving them the option to conceal their transgender status in potentially dangerous or life-threatening situations.

[55] *Documenting Gender* at 738 ("As local practices of gender definition are eclipsed by "War on Terror"-motivated policies of national standardization we can see the standardization of classification at work, and discuss that as a state-building project, a project that increases the reach of the state through the use of a national standard.").

[56] *Documenting Gender* at 745.

[57] Haney López at 91 ("Legal language can allow ideas of race to transcend their historical context through precedent, and also can contribute to the construction of race by providing a new vocabulary with which to take note of, stigmatize, and penalize putative racial differences."). Here I am building on Haney López's analysis of the legal construction of race. For transgender people, legal language

assumption of natural distinctions regarding gender – in terms of both cisgender and transgender experiences – is the foundation of gender essentialism. In this way, we should view the administrative state not merely as a value-neutral regulatory apparatus, but rather as a deeply essentialist complex working in tandem with the inaccessible medical system to subjugate transgender individuals.[58] The administrative state is, in a sense, hostile not only to social construction, but to gender embodiment that transgresses its cisnormative framework.[59]

Next, the legal actors within the law machine play a significant role in disciplining the processes of transgender individuals by enacting gender essentialist and cisnormative tactics

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too has used the single transgender child narrative as a basis for creating administrative rules – which build on themselves through precedent – to instruct legal actors and processes to penalize putative differences among transgender people according to the popular narrative as the only acceptable experience, to stigmatize all transgender people, and to create a new vocabulary of transgender experience and embodiment steeped in gender essentialism and cisnormativity.

[58] *Documenting Gender* at 753 ("Concerns about accessing health care affect transgender populations at two primary levels. First, lack of access to general health care leads to negative health consequences. Second, and more specifically, lack of access to gender-confirming health care is connected to both negative health consequences and difficulty navigating administrative requirements for gender reclassification."). Furthermore, respondents to the USTS noted that they face structural barriers to accessing health care via health insurance. USTS at 93.

[59] *Id.* at 746. After discussing the differing policies within the administrative state, Spade argues that "rules related to government gender classification do not simply discover and describe maleness and femaleness, but instead produce two populations marked with maleness and femaleness as effects and object of governance."

through negative interactions with us.[60] As one respondent noted in the USTS:

> I was intentionally misgendered and continually verbally harassed by DMV employees. Even after paying for proper identification to be issued, they refused to send the identification because my female photo didn't match my 'M' gender marker.

Transgender individuals also experience discrimination through the health care system, which, as I explained above in critiquing the medical model, is necessarily part of the administrative state because rules for gender reclassification require medical evidence.[61] Finally, the legal processes of the law machine discipline our transition processes, primarily through the administrative state's manifold localized policies. As Spade notes, the "rules of gender reclassification… differ across jurisdictions and 'expert' agencies responsible for creating and enforcing these policies, producing bureaucratic confusion and serious consequences for those directly

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[60] USTS at 83-84. In interacting with judges and court officials, respondents had a variety of experiences. "Of the 84% who believed that the judges and/or court staff thought or knew they were transgender during their interaction, three-quarters (75%) felt they were always treated with respect, almost one-quarter (22%) felt they were only sometimes treated with respect, and 2% felt they were never treated with respect. Reports of only sometimes or never being treated with respect were higher for certain groups of people, including people who were currently working in the underground economy, such as sex work, drug sales, or other work that is currently criminalized (41%), and people who had not had any hormonal or surgical treatment (35%)."

[61] USTS at 93 ("One-third (33%) of respondents reported having at least one negative experience with a health care provider in the past year related to being transgender, such as verbal harassment, refusal of treatment, or having to teach the health care provider about transgender people to receive appropriate care. In the past year, 23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person.").

regulated."[62] To highlight the obstacles presented by the administrative state's legal process for reclassifying gender, I turn to the rules regarding identity documents.

The administrative framework for gender reclassification is varied at best, though it should be viewed from the standpoint of a transgender person: as a labyrinth designed to make gender self-determination as difficult as possible, ideally unattainable. For example, while in some states individuals can change their gender classification through the Department of Motor Vehicles (DMV) without sex reassignment surgery, in others it is required.[63] Spade further elaborates by explaining that "multiple policies with conflicting criteria for gender reclassification operate within single jurisdictions and upon individuals."[64] To highlight the problem in practical terms, some jurisdictions require an amended birth certificate to change gender on government identification, but not all states allow for a change of gender on birth certificates.[65] In equal protection terms, similarly situated transgender people do not receive equal application of the laws for nothing more than being born in the wrong state.

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[62] *Documenting Gender* at 734.
[63] *Id.* at 822.
[64] *Id.* at 737.
[65] *Id.* at 822. While Massachusetts requires an amended birth certificate, individuals born in places like Idaho are not eligible to change their birth certificate, meaning they are barred from ever changing their documentation unless they move to a state with a different administrative framework for changing gender on legal documents.

As discussed in my analysis of *Whitaker* above, the medical model falls short in allowing autonomy in transitions among transgender individuals. When people do have the ability to seek gender affirming health care, they still are subject to the administrative guidelines dictating the quality and quantity of medical evidence required to reclassify their gender legally. Through this process of gender reclassification, the institution of medicine is further intertwined with the law through state practices of standardization. In effect, insurance companies function as legal structures, medical providers function as legal actors, and medical treatments function as legal processes. Beliefs about how transgender people should relate to their bodies and identities, informed by gender essentialism and cisnormativity, guide health care interactions and create gendered populations by granting legitimacy only to those who fit the "proper" narratives.[66] It is only these transgender people who are able to access the medical authority – through obtaining the appropriate insurance, interacting successfully with medical providers, and completing prescribed medical treatments – that are deemed legitimate enough to be eligible to change their identity documents.[67] The rest of us are left

[66] See generally, Dean Spade, *Resisting Medicine, Re/Modeling Gender*, 18 Berkeley Women's L.J. 15 (2003) [hereinafter *Resisting Medicine*].
[67] *Documenting Gender* at 759-60, 746. In discussing the function of law, Spade notes that law should not be theorized "as strictly prohibitive of certain behaviors, but rather a context-setting incentives that structure entire fields of behavior and relations." Thus, acting through medical authority, the administrative state structures gender relations, here between transgender and

to roam in gender purgatory until we gain the access necessary, or adapt our lives sufficiently to access the resources and benefits we need to survive. I now turn to my recommendation section to address these problems.

## III. TOWARD A SELF-DETERMINATION MODEL

In his 2005 article, Frank H Romero suggests that to honor transgender individuals' identities and transition processes, the law must move beyond a medical model[68] and adopt a self-determination model.[69] In recommending this, Romero recognizes the limits of the medical model, noting that it "privileges [those] who have the ability to access health care and choose to undergo all available medical procedures to modify their bodies, while providing very limited protection, if any, to those who do not."[70] While unequal in effect, it is also unequal on its face, in a manner of speaking, as the medical model uses medical evidence to establish the legitimacy of one's transgender status.[71] As discussed previously, this is problematic because medical evidence itself has been produced through an epistemological framework that is bound by gender essentialism and cisnormativity. Furthermore, the legal

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cisgender individuals. Employing tactics of gender essentialism and cisnormativity, medical authority as law machine creates and disciplines gendered subjects, with "a significant impact on the lives of people who are difficult to classify or contest their classification under this rule system."

[68] See generally, Romero.

[69] Romero at 738-39.

[70] Romero at 730.

[71] Romero at 724.

regulation of (trans)gender transgression, dating back to at least 1696 in America[72] with a resurgence starting in 1848,[73] has materially affected the bodies and identities that have been studied by medical disciplines to produce the knowledge that has been used as medical evidence to regulate transgender people in conjunction with the law. In effect, transgender people have long been subjected to a tautology that simultaneously denies our existence and reifies our gender transgression through the interlocking epistemological framework of law and medicine. It is based on this analysis that I argue for a self-determination model of gender in the law. The following recommendations aim to allow transgender people to bring their bodies into alignment with their gender identity without the legal coercion present in the current administrative framework.

Building on Romero's general principle of variation in gender identity as inherently healthy challenges gender essentialism and cisnormativity, but he does not go as far as to provide a framework wherein a self-determination model can overcome the challenges of these ideologies. I argue that in order to institute a self-determination model of gender identity in the law, we must push for

[72] Michael Bronski, A Queer History of the United States 13-14 (2011) ("All the colonies had laws regulating dress, usually with the intent of maintaining class distinctions, but in 1696 Massachusetts passed a law that explicitly forbade cross-dressing."). See also, Mogul at 2 ("The construction of gender hierarchies and their violent, sexualized enforcement was central to the colonization of this continent.").
[73] Stryker at 32-33.

a social construction framework across all areas of law, thereby rooting out the stain of essentialism that restricts legal theorizing. While not a fully developed legal framework, moving toward social construction in law implies the following: (1) a critique of gender essentialist arguments across the administrative state, in both rulemaking and adjudication; (2) a refusal to produce and defend gender essentialist arguments, which are inherently hostile to the known variation in sex, gender, and sexuality;[74] and (3) a shift in the legal scholarship from developing jurisprudential theories – such as the right to privacy and equal protection – which reinforce gender essentialism, to theorizing a body of law rooted in standpoint epistemology[75] and social construction.

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[74] A weak example of social constructionist legal thinking can be found in Justice Kennedy's opinion in *Lawrence v. Texas*, 539 U.S. 558, 568 (2003) ("The absence of legal prohibitions focusing on homosexual conduct may be explained in part by noting that according to some scholars the concept of the homosexual as a distinct category of person did not emerge until the late 19th century.") This statement recognizes in part the social construction of sexuality without using that fact to invalidate non-heterosexual orientations or the real discrimination that has been a prominent feature of our lives. The same can be said of transgender individuals: While we have not existed as a distinct category of person throughout history, we are still legitimate, and the social construction of gender still places us at the bottom of a hierarchy according to gender relations constructed, at least in part, through the law. To recognize this is not to delegitimize our identities or our struggles. It is, in a more profound way, to understand that such struggles and gender relations are not inevitable; it is to understand that liberation is possible.

[75] Beth E. Ritchie, Arrested Justice: Black Women, Violence, and America's Prison Nation 129 (2012). In discussing standpoint epistemology in the Black Feminist tradition, Ritchie explains that it is "the notion that in research and representations of Black women, *their* experience should be at the center of analysis." Similarly, a standpoint epistemology in terms of transgender individuals should place our experiences at the center of legal research, legal analysis, and the creation of legal rules. Importantly, we must also be guided by Crenshaw's work so as to not fall into the trap of creating another 'ideal type' of transgender person that will, inevitably, be only representative of the most privileged within our community. (For more on Crenshaw's analysis, see

As stated above, gender essentialism in the administrative state precludes variability through the homogenization of categories and through population-level management.[76] A social construction framework would necessarily break down arbitrary categories that benefit the administrative state's operation and management of populations at the cost of self-determination, and ultimately the safety and life chances of marginalized communities. Just as our equal protection jurisprudence recognizes the danger in allowing sex-based discrimination for administrative convenience,[77] so too should our administrative framework when it comes to transgender individuals. Ultimately, I argue for gender to function within the law

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Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991)).

[76] See generally, Normal Life, *Law as Tactics*, *Documenting Gender*, and *Resisting Medicine*.

[77] *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973) ("[A]ny statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily [violates equal protection].")

While not yet accepted by the Supreme Court, discrimination against transgender individuals as sex-based discrimination has been adopted by several lower courts through applying *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). For more examples of this expansive view of sex-discrimination, see the following: *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Chavez v. Credit Nation Auto Sales, LLC,* 641 F. App'x 883, 884 (11th Cir. 2016); and *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).

To see how this reasoning has been applied specifically in Title VII claims, see the following: *Valentine Ge v. Dun & Bradstreet, Inc*., No. 6:15-CV-1029-ORL-41GJK, 2017 WL 347582, at 4 (M.D. Fla. Jan. 24, 2017); *Roberts v. Clark Cty. Sch. Dist.*, 215 F.Supp.3d 1001, 1014 (D. Nev. 2016), *reconsideration denied*, No. 2:15-CV-00388-JAD-PAL, 2016 WL 6986346 (D. Nev. Nov. 28, 2016); *Fabian v. Hosp. of Cent. Conn.*, 172 F.Supp.3d 509, 527 (D. Conn. 2016); *E.E.O.C. v. R.G. & G.R. Harris Funeral Homes, Inc*., 100 F.Supp.3d 594, 603 (E.D. Mich. 2015); *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F.Supp.2d 653, 660 (S.D. Tex. 2008); *Schroer v. Billington*, 577 F.Supp.2d 293, 305 (D.D.C. 2008).

according to the principles laid out by transgender activist and scholar, Dean Spade[78]:

> I am not arguing for a gender-blind society in which all people are similarly androgynous, but instead for a world in which diverse gender expressions and identities occur, but none are punished and membership in these categories is used less and less to distribute rights and privileges.[79]

To work toward social construction in the law, particularly with regard to gender, is not to advocate for a refusal to recognize gender. On the contrary, social construction requires us to see how gender is constructed through the law, how it creates gendered subjects, and how those gendered subjects are regulated. With this knowledge, we must continue to push for gender self-determination in the law, not the corroboration of medical authority, which is inherently unequal given the manifold challenges to access at all levels through the law machine which requires our engagement with medical authority.[80] Finally, moving toward a self-determination model requires that we understand gender "as a fundamental aspect of human life, which every person has the capacity and inherent right to control."[81]

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[78] *Documenting Gender* at 750 ("I argue that reliance on gender as a point of data and classification in these systems has less value than is assumed and should be reduced.").
[79] *Resisting Medicine* at 29.
[80] Romero at 739 ("Moreover, in contrast to the medical model, access to legal protections regarding gender under a self-determination model would not be dependent upon a person's ability and choice to access gender-related medical procedures.").
[81] *Id.*

## CONCLUSION

This paper has interrogated both law and medicine because they are mutually informing institutions and epistemological paradigms. Put simply, legal conceptions of sex and gender have been maintained through research produced by medical authority, and medical authorities have gained their knowledge of sex and gender through the study of bodies, communities, and cultures which have been socially and materially constructed through laws. This interlocking view of law and medicine demonstrates the need to shift the epistemological nature of medical and legal conceptions of transgender identities from a top-down project to a standpoint paradigm, from a medical model to a self-determination model. In other words, we need to change to an epistemological paradigm in which knowledge is theorized, produced, analyzed, and formed into policy by those who experience the issues directly with the support of institutions, rather than the other way around.

In the domination by medical authority, we have been transferred from the gallows to the asylum, and from the asylum to the office, perpetually confused and deceptive until treated or corroborated by medical providers. The sheer scope of the project of domination of gender and sexual deviants by medical authorities is astounding, ranging from cultural representations to legal conceptions. Throughout this paper I have argued against the

medical model of gender, as it is a product of gender essentialism and cisnormativity in the law. Instead, I argue for a self-determination model of gender based on social construction which can be enacted through an epistemological framework that centers those of us at the margins. In doing so, gender as a regulatory category will become less and less determinative in distributing life chances and safety among transgender individuals, and will not coercively discipline our transition processes. To push us toward such a model, I leave you with a quote by transgender scholar and activist, Dean Spade:

> New capacities for caring for one another, reflecting on our work, and changing ourselves and our relationships to each other and the planet are emerging alongside worsening material conditions that threaten life on every front. At this time, our participation is critically important.[82]

[82] Normal Life at 161.