

QUEER THEORY IS KID STUFF:
A GENEALOGY OF THE GAY AND TRANSGENDER CHILD

by

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A Dissertation submitted to the

Graduate School-Newark

Rutgers, The State University of New Jersey

in partial fulfillment of the requirements

for the degree of

Doctor of Philosophy

Graduate Program in American Studies

written under the direction of

Professor Frances Bartkowski

and approved by

Newark, New Jersey

May 2015

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ABSTRACT OF THE DISSERTATION

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This dissertation departs from a question generated by the present: how has the child become gay, or transgender? Its four chapters trace a genealogy of these two children that contextualizes their genders and sexualities in a broader recalculation of the political, legal, and medical value of children's bodies to the United States since the late nineteenth and early twentieth centuries. While queer theory and transgender studies, limiting themselves to retrospective narratives of childhood, have been able to understand the child only as symbolic or as a proto-memory of an adult subject, this dissertation approaches the child as a living body and a contested national resource bound to histories of eugenic medicine, policing and incarceration, and the struggle between the state and the family over children as unfinished persons. The first two chapters broach the gay child through the history of bullying and juvenile delinquency, first under the law and in schools, before looking at cyberbullying online. The third and fourth chapters provide an unprecedented history of the transgender child that focuses on the 1960s, while scholars have assumed there was no transgender child before the 1990s. While the gay and transgender child have become recently visible through their apparent newness, "Queer Theory is Kid Stuff" makes the case for critically assessing how their bodies incorporate the horizon of value invested in children to define human life and its viable futures.

Acknowledgments

This dissertation is indebted to an incredible network of mentors, colleagues, interlocutors, and friends. My dissertation committee has guided this project from its earliest stages: my deepest thanks to Ed Cohen, Jasbir Puar, and Whitney Strub. I am very lucky to have had Fran Bartkowski serve as chair.

In American Studies I am thankful for support from faculty at all stages of this project and my doctoral studies: Susan Carruthers, Kornel Chang, Jason Cortes, Ruth Feldstein, Belinda Edmondson, Laura Lomas, Tim Raphael, Beryl Satter, and Timothy Stewart-Winter, in particular. Jyl Josephson and Rob Snyder, as Program Directors, have supported my work immensely. Thanks also to my expanded “cohort” in Newark: Asha Best, Taylor Black, Janessa Daniels, Sara Grossman, Stephen McNulty, Shana Russell, and Erica Tom, in particular. I will forever be indebted to the incredible Georgia Mellos for making American Studies possible. Dean Kyle Farmbry has strongly supported the work and professionalization of graduate students, for which I am grateful. I also want to thank all of the students I had the privilege of teaching at Rutgers-Newark.

Elsewhere and everywhere, I would like to thank the many people who have taken the time to read pieces, think with me, provide mentorship, and give feedback on my work: Aren Aizura, Jamie Skye Bianco, Patricia Clough, Liz Grosz, Luce Irigaray, Rebekah Sheldon, and Kathryn Bond Stockton. I count many fellow travelers in graduate school and beyond as faithful interlocutors and good friends: thank you, especially, Marissa Brostoff, Benjamin Haber, Summer Kim Lee, Chrissy Nadler, Stephen Seely, Jean-Thomas Tremblay, and Hella Tsaconas.

The research for this dissertation benefited from the generous assistance of the staff of the Alan Mason Chesney Medical Archives of the Johns Hopkins University Hospital, particularly Marjorie Kehoe, Phoebe Evans Letocha, and Tim Wisniewski, as well as the staff of the Special Collections branch of the Charles E. Young Research Library at UCLA, the staff at the Harvard University Archives, and everyone at the Rutgers University Libraries. I want to thank Carlos Ball in the Rutgers School of Law for help with legal research and journalist Laura Wexler for generously sharing her time and research. Funding for this dissertation was made possible by a Graduate School-Newark Dissertation Fellowship, the Social Sciences and Humanities Research Council of Canada (SSHRC), the Rutgers Institute for Research on Women (IRW), the Program in American Studies, and the Program in Women's and Gender Studies.

A dissertation is a trace of a living body. My joy and gratitude, then, and always, to my Mom, Dad, and Sebastian. To Erin. Yes, the dog and the cat, too. And without comparison, to my fellow J.

By way of dedication, I mark my very special debt to Jiwan Singh.

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ABBREVIATIONS

ACMA	The Johns Hopkins University, Alan M. Chesney Medical Archives, Baltimore, Maryland
HV	Harvard University Archives, Cambridge, Massachusetts
MSA	The Maryland State Archives, Court Records for Baltimore City, Baltimore, Maryland
UCLA	The University of California Charles E. Young Library Special Collections, Los Angeles, California

There was a child went forth every day,
And the first object he look'd upon, that object he became

—Walt Whitman, *Leaves of Grass*

INTRODUCTION:

Queer Theory is Kid Stuff

This dissertation departs from a question generated within the historical present: how has the child become gay, or transgender? In making the question untimely, it asks after the value invested in children and childhood, as well as how forms of value are precisely incorporated through and as the body of the child, and the concept of childhood. How are values understood to condense naturally, or perhaps with great difficulty, into measurable categories like gender, sexuality, and race, grown and cultivated, with immense optimism or anxiety, in and out of the flesh of juvenile life? The field of transgender studies has yet to broach the question of the child beyond the descriptive or sociological, and still less to theorize it as a concept.¹ Queer theory, on the other hand, has so far largely produced one kind of child, really a proto-gay child, beholden to a sexual pedagogy and a fantasy of a queer state of nature. Both of these projects need to be problematized in the present, when, increasingly, children are understanding and presenting themselves to the adults in their worlds as gay and transgender in the present tense of their childhood. The child *figure*, to which any discussion of the child is

¹ Defining what constitutes “the field” is already to risk imposing more order than is perhaps in keeping with transgender studies’ critical disposition. Nonetheless, transgender studies does seem to be undergoing a moment of unprecedented field formation—this dissertation is certainly self-consciously included within that process. There is to date no in-depth study of the transgender child in the humanities. There are one or two social scientific articles that look at transgender children in the present day (see the third chapter for more on them). However, they are not preoccupied with theorizing the child in relation to the category transgender. As the third chapter explores in greater detail, moreover, they have too readily assumed that the transgender child is an incredibly recent offshoot of adult transgender subjectivity. The genealogy presented in this dissertation completely revises the assumptions of that work. Since there is not an available literature on the child in transgender studies beyond the descriptive or sociological, this introduction focuses on the child in queer theory. This is admittedly problematic to the extent that it implies that the transgender child is “the same” as the gay child, which is certainly not the case. Nevertheless, there is also no transgender child in the field to critically read.

frequently reduced in queer and transgender scholarship, is insufficient to confront the “actually existing” gay and transgender children in our midst today.²

The performative force of *children*—more on what that word might mean in a moment—claiming the categories “gay” and “transgender” is enough to make serious waves in the precincts of law and medicine, two major fields of knowledge and institutional practice that have long spoken authoritatively about and for the child, and which are centrally at stake in this dissertation. Such statements of identity are also enough, however, to upend disciplines. Queer theory, notably, has a lot of kids. These children are not the product of typical modes of reproduction, however; they are the result of a retrospective mode of narration, one that presumes to secure a queer subject out of the damage of an impossible queer childhood that never was. Kathryn Bond Stockton names this maneuver the “backward birth” of the queer child: when a gay adult says, “I was a proto-gay child,” that child is retrospectively born into existence as the impossible origin of the gay adult.³ Where Stockton is referring to narratives that gay people tell themselves, this dissertation turns that description back upon queer theory. The problem becomes how to account for gay and transgender children in the world, the ones that do not reside purely in memory or the imagination of adults. In other words, the retrospective orientation of the backward birth leaves no time for childhood. In relegating the queer child to the status of proto-gay, by making it the property of an

² In referring to the child “figure,” I mean to signal work that sees the child first and foremost as an ideological image or cultural sign, where it is frequently being deployed by and for adults. This contrasts with an account that attends to historically existing children. More importantly, the relation between figurations of the child and historical children is frequently sacrificed in reducing “the child” to “the child figure.” One work that avoids falling into the false opposition is Claudia Castañeda’s *Figurations: Childs, Bodies, Worlds* (Durham: Duke University Press, 2002), where she understands figuration, following Donna Haraway, to be at once “material-semiotic.”

³ Kathryn Bond Stockton, *The Queer Child; Or, Growing Sideways in the Twentieth Century* (Durham: Duke University Press, 2009), 6.

already achieved adulthood, the queer child is subject to a freeze-frame, reducing it to a fable adults tell one another.

If there is no time for childhood in a retrospective or proto-gay temporality, perhaps the stubbornness of the negative is not surprising from queer theory. The child figure has, after all, been quite famously tied to queer theory through the polemical formulation of there being *No Future* at all. Lee Edelman's diagnosis of "reproductive futurism" directs us to how the child figure makes time cohere through a root political value: the child is nothing less than the incarnation of the future in whose name the social is contracted. The child is a central national resource and the welfare of the collective is always reducible to a heteronormative temporality of what is in the best interests of that child's future. In Edelman's Lacanian-Symbolic reading, the child figure's fascist ubiquity, its transcendental value as beyond or prior to politics, is precisely what, in making a single form of the reproduction of time both natural and un-opposable, simultaneously expels queerness to the realm of pure negativity. That being the case, only an affirmation of full negativity, which would comprehend the extermination of the child figure, could hope to overcome this situation. For Edelman, such is the potential and duty of queer theory.⁴

In its reception, *No Future's* treatment of the child as an extreme ideological figure has prompted a host of critical engagements with the possibility of a "queer futurity," one that might not seem so dismissive of actual children. José Esteban Muñoz, notably, underlines the racialized stakes of limiting futurity to a question of sexual re-

⁴ Lee Edelman, *No Future: Queer Theory and the Death Drive* (Durham: Duke University Press, 2004). Edelman is quite clear, though, that the Child-with-a-capital-C precisely restricts our ability to think about historical children. For the purposes of his polemic, he also adds that "the image of the Child" ought "Not be confused with the lived experience of any historical children" (11).

production, which too easily “hand[s] over futurity to normative *white* reproductive futurity.”⁵ Indeed, futurity raises a broader problem of how queer theory understands its relationship to the category of sexuality, with its attendant racialized politics and biopolitics. More than that, however, whether the child is the emblem of a future that must be negated, or the utopian horizon of a queerness to come, neither side of this ostensible debate in queer theory accounts for why and how the child is always available to be instrumentalized in the service of the political. Epistemologically, moreover, queer theory brings us no closer to knowing the child by claiming it for an anti-normative project. The question must first be asked of why the child is understood to condense knowledge, sociality, and politics to begin with.

Queer theory is also hardly unique in instrumentalizing the concept of the child by making it an origin story or allegory for the future. The concepts of the child and childhood are always shuttling between a retrospective and future-anterior tense, forever dividing themselves between “the child I once was” and “the adult I will be.” If, as this dissertation will suggest, queer theory has largely chosen to limit the child to a figure or symbol of past or future, then it has overlooked a more historicized method, one that problematizes gender, sexuality, and race as constitutive dimensions of the living creatures we call children precisely to contextualize the present tense of gay and transgender childhood. The latter approach, which is the method of this dissertation, might allow adults to confront the gay and transgender children increasingly in our midst, though it will first involve returning to the late nineteenth and early twentieth centuries. Nevertheless, more on queer theory’s children first.

⁵ José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York: NYU Press, 2009), 95-96, emphasis added.

Queer Theory's Sexual Pedagogy of Children

The child inhabits queer theory even before it names itself *queer*. Although her essay “How to Bring Your Kids Up Gay” is perhaps more frequently cited as the referential assessment of the ontological precarity of the construction “queer child” (and its close kin, the “gay” or “proto-gay” child), elements of that text are also part of Eve Kosofsky Sedgwick’s introduction to *Epistemology of the Closet*, published a year earlier.⁶ Here Sedgwick, drawing no doubt on the deep reserves of the performative potentiated across the book she is introducing, makes a bold wager: “The ability of anyone in the culture to support and honor gay kids may depend on an ability to name them as such, notwithstanding that many gay adults may have never been gay kids and some gay kids may not turn into gay adults.”⁷ Read today, perhaps less pressing than Sedgwick’s proposition about naming is the historical fate of her qualification. The epistemologically generative field of indeterminacy opened up by the *notwithstanding* clause of her proposition has become astonishingly foreclosed since she framed it as such. Increasingly, in the United States—indeed, perhaps to the extent of producing a feeling of having crossed a threshold—all gay adults *must* have necessarily been gay kids. Perhaps more consequentially, in turn, all gay kids *must* grow up into gay adults.

The introduction to *Epistemology* includes a much cited paragraph, which counsels that “Advice on how to make sure your kids turn out gay” is virtually nonexistent and its absence is registered, no less, in the context of the near universal “scope of institutions whose programmatic undertaking is to prevent the development of

⁶ Eve Kosofsky Sedgwick, “How to Bring Your Kids Up Gay,” *Social Text* 29 (1991): 18-27.

⁷ Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley: University of California Press, 1990), 42.

gay people.”⁸ If such advice on ensuring kids become gay remains as unlikely today, the rapid and visible emergence of a cohort of self-identified gay children whose existence is increasingly *not* to be prevented or impaired, but instead protected, affirmed, and even enhanced by the state, law, education, medicine and cultural fields, precisely so that it can persist into a gay adulthood, confronts queer theory with a number of problems.⁹

If *Epistemology*’s sketch of what would come to be called queer theory is from the outset given in relation to what Sedgwick describes as “a fraught space of life-or-death struggle that has been more or less abandoned by constructivist gay theory: that is, the experience and identity of gay or proto-gay children,” the queer child has only intensified this fractious relation in the intervening years.¹⁰ In the preface to the 2008 edition of the book, Sedgwick reflects on this peculiar effect and its relation to discourses on sexuality:

Among the questions asked by *Epistemology of the Closet* is how we, thinking from one fleeting historical moment, can wrap our minds properly around the mix of immemorial, seemingly fixed discourses of sexuality and, at the same time, around discourses that may be much more recent, ephemeral, contingent. We can’t even tell reliably which ones are which. So it shouldn’t be surprising that, as current as *Epistemology of the Closet* may feel in many respects, in others it bears the mark of its origin in a different decade—not to mention a different century and millennium. The span of twenty years since its writing can register so variously at vastly divergent scales at which discursive history happens.¹¹

This prescient insight can and ought to be extended to think the function of the child in queer theory writ large. The contemporary feeling of disorientation in reading Sedgwick’s vital defense of gay children alongside the calculating juridico-legal armature

⁸ *Ibid.*

⁹ This is not the moment to attempt an empirical justification of that sense—which, as a sense, moreover, rather than a fact, is not necessarily bound to verification to yield the effects for which it is being analyzed here. The first chapter, in any case, will spend time looking at the historical emergence of a sense that there are gay children in the United States. The third chapter performs a similar task for the transgender child.

¹⁰ Sedgwick, *Epistemology*, 42.

¹¹ *Ibid.*, xiv.

that now, for instance, protects “gay children” at school from bullies by intensifying one of the most violent and racist institutions of the postbellum United States, the prison-industrial complex, is indexical of a deep fracture the child introduces into queer theory, one that has only gotten larger with time. This fracture grows between the queer child as a grammatical or teleological narrative figure, and the child as a living, material body correlate to a historical pedagogy of Western sexuality. In one sense, the fracture is between the queer child that gay adults once were and actually existing gay children in the present of their childhood.

Sedgwick is already deeply attentive to this fracture in 1990. Her reflections on gay children fall under the fourth axiom of *Epistemology*’s introduction: “*The immemorial, seemingly ritualized debates on nature versus nurture take place against a very unstable background of tacit assumptions and fantasies about both nature and nurture.*”¹² Sedgwick raises the problem of the gay child because the child has a polarizing function of developmental recapitulation in Western culture: the child’s growing body makes ontogeny into phylogeny, or it precisely can deny that recapitulation in the case of homosexuality. Either children are born gay and their development into gay adults is natural and irreversible, or else their sexual development is malleable enough to make childhood the period during which homosexuality can most reliably be prevented or extinguished. Yet, if the queer child is initially presented by Sedgwick as a strong case for a kind of antihomophobic strategic essentialism, the victory of a born this way discourse with which contemporary readers are all too well familiar is not dissimilar in form for her from a hygienic, if not outright genocidal fantasy of Western culture: the

¹² *Ibid.*, 40, emphasis in original.

eradication of all gay people, beginning with children.¹³ Such is *precisely* Sedgwick's point: the two positions are ultimately inextricable.

Sedgwick's strategy, then, is both genealogical, in the sense of Michel Foucault's history of sexuality (which she takes as "axiomatic") and deconstructive, in the sense of a mode of reading textuality whose referent is, in no small part, Jacques Derrida.¹⁴ This generative admixture of modes of reading the homo-hetero binary in fact helpfully restages the fracture induced by the child into queer theory: genealogy on the one hand, grammar and totalizing narrative on the other. This dissertation argues, however, that the child has been largely consigned to only one of those two modes of thought since Sedgwick first identified them as inextricable. The first and dominant reading treats the child functionally and grammatically, as the symbolic predicate of the queer subject, a retrospectively named origin or narrative figure in a queer teleology (this is, to be clear, a specific form of totalizing narrative, rather than an attribute of all narratives of childhood or narrative in general).¹⁵ The second, the genealogical reading, examines the historical centrality of children to the modes of juridical and disciplinary power, and a biopolitics of sexuality inherited by the present; indeed, for Foucault, "the pedagogization of children's sex" is one of the "four great strategic unities" of the late eighteenth and nineteenth centuries detailed in the first volume of *The History of Sexuality* to which we are heirs.¹⁶ Sedgwick, with great acuity, mobilizes both and positions the child as irreducible to either.

¹³ *Ibid.*, 40-41.

¹⁴ *Ibid.*, 3, 23.

¹⁵ To be even clearer, then, this dissertation is not entering into the expansive debates in the field of narratology or studies and theories of narrative, literary or otherwise. Those important debates lie outside of the scope of this introduction, which considers a single form of narrative attached to queer childhood by queer theory: a teleological, recapitulative narrative.

¹⁶ Michel Foucault, *History of Sexuality, Volume I* (New York: Vintage, 1990), 103.

If queer theory has treated the child primarily in the grammatical mode as the retrospective origin of its subject, it has done so by in some sense willfully ignoring the genealogy of the sexual pedagogy of children in the West. And it has perhaps done so, if unconsciously, in order to hold onto the symbolic child as the only epistemologically stable origin of queer subjectivity. Yet this consolidation is what leads to the strange vertigo of reading the introduction to *Epistemology* in the light of the criminalization of anti-gay bullying, to take only one example to which this dissertation returns at length. It has become increasingly difficult for queer theory to attune itself to actually living populations of self-identified or administratively interpellated gay children to the extent that it considers the child still primarily at a symbolic, grammatical level and not as a living body in the world.

To better understand how this problem arose, this introduction follows Sedgwick's mapping through two essays published in *GLQ* in the 1990s that first took up the question of the queer child in isolation. The first, Elspeth Probyn's "Suspended Beginnings: Of Childhood and Nostalgia" (1995), considers childhood, following Foucault and Gilles Deleuze, as an event in narrative fiction. Angus Gordon, in "Turning Back: Adolescence, Narrative, and Queer Theory" (1999), then focuses on the retrospective demand for the queer child and a childhood of emotional damage in narratives of queer becoming by excavating Judith Butler's writings on subjectification.

By returning to these two texts, which precede both the rapid rise in national visibility of the identifiably gay child in the United States and more recent work in queer theory on the child,¹⁷ what follows mines the fracture between a genealogical account of

¹⁷ I have chosen not to ground my analysis in more recent work such as the collection edited by Stephen Bruhm and Natasha Hurley, *Curiouser: On the Queerness of Children* (Minneapolis: University of

the child's sexuality and the grammatical, narrative reading of the queer child as a symbolic predicate. Nesting this return to queer theory in 1990s within the arc of Foucault's Collège de France lectures from 1973-1978, which envelop his unfinished history of sexuality and relate his work on disciplinary power, biopolitics, and governmentality, this dissertation argues that even if the two modes of reading the child are in some sense irreducible, queer theory has still problematically ignored its own pedagogy of children's sex for too long. This neglect of the field's incorporation of a technique of power corresponding to a pedagogical sexual subjectification results in the impoverishment of queer theory's capacity to think the living body we call the child today, "queer," "transgender," or otherwise. From this also arise the implications of founding a field's subject on an epistemophilic attachment to children that restages one of the foundational narcissistic fantasies of Western culture. Even if the tension Sedgwick identifies in thinking the child is to some extent epistemologically inevitable, the marginalization of the genealogical in favor of the grammatical is not. It is, rather, a self-imposed limitation on queer theory's thought.

Probyn and Gordon's essays on the queer child, published in the 1990s, contrast in method and conceptual referents. Yet they share two commonalities: they agree that the child is foundational to queer theory's (adult) subject and they turn to teleological narrative forms to describe the mechanism for producing an origin out of childhood, perhaps the only available origin to queer subjectivity. For Probyn, childhood is

Minnesota Press, 2003), Stockton's *The Queer Child* (2009), or Jack Halberstam's *The Queer Art of Failure* (Durham: Duke University Press, 2011) (which will be taken up in light of these 1990s essays at the end of the introduction, however) because the essays by Probyn and Gordon represent perhaps the first stand-alone reckonings with the queer child after Sedgwick. As such, in a genealogy of the child in queer theory, these essays might be dealt with first before attention can be turned to more recent works. I also do not deal with Edelman's *No Future* any further until the conclusion of the dissertation, but his explicitly stated interest in the Symbolic child, rather than actually existing children, puts his project in a clearly different mode from this dissertation.

deployed in queer theory to instantiate a stable beginning. This “queer turn to childhood,” she argues, in the case of an exemplary novel about a lesbian protagonist, produces a structure of feeling according to which “the narrator and the narrative mode are captured within being-child, indeed childhood *is* being itself.”¹⁸ For Gordon, this “seemingly mandatory gesture” of gay and lesbian identity is likewise “a retrospective exegesis, from the perspective of the ‘out’ adult...in which virtually every aspect of his adolescent¹⁹ life can be understood in terms of its relation to the eventual realization of homosexual identity.”²⁰ For both authors, the function of the child within queer theory is overdetermined by the needs of queer adults for identity to themselves. Neither essay has much to say about self-identified gay children, children who are queer in the present tense of their childhood (whether “queer” is reified as an identity or not), for this is precisely what is foreclosed by the grammatical queer child, the queer child as symbolic predicate of the adult.

In “Suspended Beginnings” Probyn writes with a polyvalence that perhaps incarnates her problematization of childhood as event, which she invokes in the sense cultivated by Deleuze.²¹ Against “childhood as structuring *modus operandi* in gay and lesbian writing,” against the function of childhood “as ordinary, as nostalgic, as

¹⁸ Elspeth Probyn, “Suspended Beginnings: Of Childhood and Nostalgia,” *GLQ* 2, 4 (1995): 439.

¹⁹ Gordon elects to use the term “adolescence” in lieu of “child” or “childhood,” a choice that could be contextualized in a longer genealogy of the sexualization of children. Adolescence, the term coined by G. Stanley Hall in his massive eponymous work, emphasizes a developmental, liminal period of growth, a hovering in a particularly sexual stage of becoming an adult—that is, it aims to sidestep some of the controversy of the concept of the sexual infant by making adolescents a little more adult like through the concept of puberty. For the purposes of this introduction, however, those differences are minimal in that the child is also taken to inhabit this sexual, developmental space. For more on Hall and the invention of adolescence in relation to childhood, see chapter one.

²⁰ Angus Gordon, “Turning Back: Adolescence, Narrative, and Queer Theory,” *GLQ* 5, 1 (1999): 1.

²¹ See Gilles Deleuze, *Difference and Repetition* (New York: Columbia University Press, 1994), 124-125, where, in a reading of fantasy in Freud, Deleuze explores the potentiality of thinking of childhood as an event, a “dark precursor” that gives time in a relation other than the succession of a series of presents that become past sequentially, the linearity of lifespan according to which a child eventually becomes an adult.

quintessential, as anecdote, as fiction, as fact,” Probyn, citing Foucault, “would have queer theory use childhood ‘to record the singularity of events outside of any monstrous finality’.”²² This is, in her words, a problematization of “the deployment of childhood: how to write childhood” in queer theory, where the obligation to locate childhood as the past of the subject too often equates with “childhood as an epistemology of origins.”²³ Probyn’s is hence a roaming, restless text that aims to demonstrate the co-existence of a variety of discursive fields imprisoned in the normative child-adult schema: she alternates between close readings of gay and lesbian fiction, policy debates over gay rights in two Canadian provinces, gender identity therapy for children, the utility of nostalgia as mode of reading, and anecdotes from her own childhood. The latter, where she questions the will to compare one’s own childhood to the structures found in fictional narrative, suggests that childhood is itself an overdetermined narrative structure, a way of managing the anxious interplay between the generic and the singular.

Still, Probyn privileges fictional narrative as the form to which childhood is seemingly always given. Her suggestion that “a queer use of nostalgia,” which she extracts from Québécois author Michel Tremblay’s play *La maison suspendue* (1990), would succeed in overcoming the reduction of childhood to origin, leans on her sense of narrative’s capacity to dissolve its extensive teleology. In Tremblay’s play, she argues, the narrative functions “like a Mobius strip,” which is to say it “refuses depth. It draws everything to the surface, it spreads the past across the present, it makes the present as flexible as a well-sprung dance floor.”²⁴ What remains uncertain is whether Probyn’s

²² Probyn, “Suspended Beginnings,” 440.

²³ *Ibid.*, 443.

²⁴ *Ibid.*, 452. There is not adequate space here to evaluate Probyn’s reading of *La maison suspendue* on its own methodological terms, but it seems important to add that it could be argued that Tremblay’s work on

meditation on how to read childhood as event here departs from the trap it has diagnosed because it limits itself to the inside of a narrow kind of fictional narrative in its conclusion. Probyn's ending is instructive; on the one hand, she proposes, "I would suggest that we suspend childhood," but in the preceding breath she writes:

What I want is a present wherein childhood is freed from its moral strictures, where queer kids are not stifled by the confines of a policed family, *where queer grown-ups can write childhood, live childhood, in whatever order we wish*, where we can happily bring up children if we so desire, where images of childhood slowly brush up against other images, where the past quickens a lust for the present and for the possible.²⁵

In other words, Probyn's desire is mostly a wish list for *adults*. Having dissected how queer adults use childhood as substrates for their narrative structures of self, she ends with so many demands that are different only in a narrow sense, that is, by insertion of "queer" before their conventional forms. This seems out of pace with her reliance on Deleuze's suggestion of the autonomous, positively different reality of childhood as event, one lying in wait as a dark precursor below the plane of the subject, queer or not. Why, then, the return to that for which the adult needs the child? Perhaps it is an inevitability produced by the teleology of recapitulation too readily assumed in narratives of childhood from the perspective of adults looking back.

Angus Gordon, writing several years later, clarifies this question with an accent on its formal incarnation in the grammar of autobiographical narrative. His philosophical grounding is Judith Butler's work on subjectification, particularly her amalgamation of Louis Althusser's model of interpellation with Foucault's diagram of disciplinary power, which are threaded through her theory of gender's performativity in

the whole still trades in depth models of interiority and auto/biography, which renders uncertain the "queer" dimension that Probyn attributes to its nostalgia. My thanks go to Jean-Thomas Tremblay for this insight.

²⁵ *Ibid.*, 463, emphasis added.

The Psychic Life of Power.²⁶ Gordon highlights the resemblance between the retrospective gesture of “turning back” to childhood from queer adulthood and Butler’s reading of the subject’s constitution by a similar “turning back,” both the turning of the subject in the scene of interpellation, and the turning back upon the self described by Butler as the foundational scenography of guilt and melancholia in gendered subjectivity.²⁷

From this homology Gordon interrogates “the production of adolescence as a narrativistic field of knowledge” by emphasizing a less visible dimension of Butler’s theory.²⁸ Noting that subject predicates, as logical causes, also occupy anterior temporalities (and spatialities) in Indo-European grammar systems, Gordon eyes a potentially overlooked tension within Butler’s account of *queer* as a catachrestically assumed identity that dramatizes its iterative instability in a self-conscious, political style. If even the most ‘subversive’ queer identity needs a temporally anterior moment of homophobic interpellation from which to draw energy to disrupt the general logic of gendered and sexual subjectification, then “there is a slippage here between historical and individual narratives”; in other words, “there is a danger that the first homophobic interpellation will be taken for granted as the secure, abject origin of the undoubtedly more glamorous subsequent citation.”²⁹ This first interpellation is assumed to be childhood, but as Sedgwick had already pointed out, not all gay adults consider themselves to have been gay kids. As Gordon finesses, *queer* assumes, in its performative iteration, a prior scene of childhood damage, usually contiguous with the

²⁶ Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford: Stanford University Press, 1997).

²⁷ Gordon, “Turning Back,” 1.

²⁸ *Ibid.*, 3.

²⁹ *Ibid.*, 7, 12-13.

closet, whose demand is actually grammar's logical necessity of predication through an anterior temporality, a transposition that effects and covers over a slip from historical to grammatical time, as if they harbor no distinction.

In this light there is a newly visible array of fault lines within the queer performative framework. The reification of the individual grammatical subject as unit of analysis somewhat empties both Althusser and Foucault's projects of their material, historicized cores in favor of general language and the symbolic, severing the entanglement of matter and meaning in the body. The analysis of the metalepsis of sex/gender/sexuality similarly dismisses other scenes of subjection that might be less individualizing or operate through other material signifiers, notably race (the implicit whiteness of 'queer childhood' insists here). And retrospective narratives of childhood are beset by an internally generated, tautological tendency, by which they formally give themselves toward analogizing identity with grammar *tout court*.³⁰

Still, despite Gordon's deconstruction of "the idea that the derivative use of *queer* is based on a founding homophobic interpellation" always already consigned to childhood, he, like Probyn, maintains a conclusive fidelity to retrospective narrative to overcome its own structuring foreclosures.³¹ Meditating on Sedgwick's performative opening of *Tendencies* with the suggestion that "I think everyone who does gay and lesbian studies is haunted by the suicides of adolescents," Gordon speculates "that in narratives of adolescence *melancholia* might take the form of a disavowal of the loss of

³⁰ *Ibid.*, 8.

³¹ *Ibid.*, 14. Suggesting that, in particular, Gordon is working within the very perilous aporia that deconstruction aims to dilate within the dialectic until it can no longer operate, but that always risks being reinscribed in the play of reversal of binaries.

the closet itself.”³² In executing such a “naming that is necessarily a misnaming but that nevertheless must take place,” Gordon sees the renewed promise of catachresis for a retrospective queer politics of childhood through melancholia.³³ The productive intricacies of melancholia set aside for the moment, it is striking that Gordon’s conclusion nevertheless itself collapses historical temporality with the grammatical temporality of subject predication. He assumes, more precisely, that the closet will continue to remain the referential scene for queer subjects—or that it has been referential for such subjects so far.

Yet, as children self-identify or are identified as gay younger and younger in the contemporary United States it is no longer clear that the closet has the temporal or logical purchase that could be more easily assumed by queer theory in the 1990s.³⁴ That both Probyn and Gordon, having opened up the assumption of the child as epistemological origin of the queer adult, ultimately return to retrospective, recapitulative narrative (and this, to the exclusion of other historical or genealogical temporalities) points to the limitations and seductions of any totalizing narrative, fictional or otherwise.³⁵ That being the case, the genealogical mode of thinking the child identified as necessary by Sedgwick, but ultimately left aside by both Probyn and Gordon, can offer a different set

³² Gordon, “Turning Back,” 19-20, emphasis added. Eve Kosofsky Sedgwick, *Tendencies* (Durham: Duke University Press, 1993), 1.

³³ Gordon, “Turning Back,” 20.

³⁴ Which is not to fault Gordon for being a poor fortuneteller of the future; it is rather a diagnostic point.

³⁵ I cannot stress enough the “totalizing” of this sentence. It is a constitutive worry of this introduction that it could be read as a harangue against narrative or literary texts, a kind of poorly conceived materialist attack on culture as the unreal symbolic domain of an indulgent queer theory. On the contrary, the introduction spends as much time as it does with Sedgwick to emphasize the epistemological inextricability of narrative and grammar from materiality and history in the case of the child as a concept and historical body. Nevertheless, in the case of the problem for queer theory of actually existing gay children, I do think the forgetting of Foucault’s work on the pedagogization of children’s sex warrants its magnification; hence the long examination of and emphasis on his work after Probyn and Gordon’s. This is not an oppositional epistemology or a dialectical move aimed at synthesis of two contradiction positions, but rather an invitation to understand how the sexual child was invented globally, in addition to but also inclusive of, grammar and language.

of tactics for overcoming the erasure of actually existing children in queer theory.

Through a careful reexamination of the pedagogization of children's sex perhaps it will indeed be possible to one day "suspend childhood" by problematizing it.

On The Genealogy of Children's Sexuality

It is not presumptuous to say that the problem of the government of children is a central node through which Foucault's work on disciplinary power, biopolitics and governmentality takes shape. What's more, the child's body is perhaps *the* vital site for the coagulation of a discourse on sexuality. One of the unwritten volumes of *The History of Sexuality* apparently would have been titled *La Croisade des enfants*.³⁶ And the frequency with which Foucault's lectures throughout the 1970s have recourse to the child as a generative locus of inquiry deserves consideration in light of queer theory's neglect of the genealogy of children's sexuality in favor of the child's grammatical function in the constitution of the queer subject. In the case of genealogy, for Foucault the past harbors a very different potential: to meticulously dissolve all origins.³⁷

In the courses *Psychiatric Power* (1973-1974) and *Abnormal* (1974-1975) the child is nothing short of center stage. Both sets of lectures develop the analysis of disciplinary techniques of individualizing power in the context of a re-evaluation of what Foucault considers the weaknesses of his method in *History of Madness*. Dropping the institutionalist understanding of psychiatry and the representational analysis of its discourse, both epistemology and material techniques involving living bodies are placed

³⁶ Michel Foucault, *Abnormal: Lectures at the Collège de France, 1974-1975*, translated by Graham Burchell (New York: Picador, 2004), xvii.

³⁷ Michel Foucault, "Nietzsche, Genealogy, History," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. D.F. Bouchard (Ithaca: Cornell University Press, 1977), 139-165.

instead “within a political history of truth,” a set of struggles over truth-effects.³⁸ Across these lectures Foucault dilates not only on his method for analyzing the exercise of disciplinary power in the case of psychiatry and the invention of normalization, but he does so through an inventory of a set of figures or personalities that correspond to these techniques of power, a series of doublings of juridico-legal subjects.³⁹ In this way, to maintain the example of psychiatry, Foucault is able to understand the appearance in the early twentieth century juvenile courtroom of the psychiatrist, whose expert opinion on delinquency will make the abnormal child, a verifiably dangerous risk to society, treatable in an extension and generalization of disciplinary techniques through their infection of the regnant juridical mode of modern Western states.

The genealogy of disciplinary power is examined across *Psychiatric Power*, *Abnormal*, and later, in *Security, Territory, Population* (1977-1978), in part as a mutation in and secularization of a Christian, pastoral power of direction, obedience, and confession that dates from the second or third century. In the latter set of lectures, in which this analysis is most developed, Foucault understands pastoral power as a problematization within Christianity of the government of souls in this life, which entails a precise and total direction of the conduct (*conduite*) of men, of their entire lives, down to the most mundane detail, their souls now firmly enfleshed in their living bodies.⁴⁰ Twinned with this ongoing pastoral mode of government is the emergent concern, come the sixteenth century, with pedagogy, of “precisely the ‘government’ of children.”⁴¹ In

³⁸ Michel Foucault, *Psychiatric Power: Lectures at the Collège de France, 1973-1974*, translated by Graham Burchell (New York: Palgrave Macmillan, 2008), xvii.

³⁹ Foucault, *Abnormal*, 14-15.

⁴⁰ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*, translated by Graham Burchell (New York: Picador, 2009), 123-28, 193-94.

⁴¹ Foucault, *Abnormal*, 48-49.

all three lectures Foucault refers to the problematization of the education of children, of their pedagogical training, which comes about first in the religious academies of the sixteenth century and serves as a field in the invention of disciplinary techniques that will later spread to the school, the prison, the hospital, and the barracks. Indeed, this problem of pedagogy, of the pedagogization of children, is the same vocabulary Foucault employs in volume one of *The History of Sexuality* to describe the investment in children as one of the “four great strategic unities” of the discourse on sexuality in the nineteenth century.⁴²

However, Foucault meticulously details the invention of the sexual child through an entirely *non*-sexual and, especially, non-psychoanalytic pedagogy. Both *Psychiatric Power* and *Abnormal* can be read in part as aiming to deliver a blow to the scientific grounding and positivist confidence of psychoanalysis, especially its “discovery” of infantile sexuality, in part by repeatedly deferring its epistemological authority. Foucault only mentions psychoanalysis as a derivative-effect of the historically precedential techniques of psychiatric power and discipline upon which he focuses his lectures.⁴³ One of the central arguments built throughout *Psychiatric Power* is that the child *is* its central target, that it is through the child and childhood that psychiatric power is able to extend itself beyond the restricted treatment of madness in the asylum and into an unlimited field of application, not just in other disciplinary institutions, but into the family.⁴⁴ Yet, as Foucault stresses, this great expansion of psychiatry in the early nineteenth century took place not through the simple application of psychiatric power to children by investigating

⁴² Foucault, *History of Sexuality*, 30.

⁴³ Notably, and in a remarkable set of concluding lectures to *Psychiatric Power*, Foucault (308-323) all but says that we owe psychoanalysis to the hysterics, to the women whose incredible victory over psychiatrists in mid to late nineteenth century introduced the sexual body into the equation of psychiatric power by forcing them to listen to a recounting of every little mundane sexual detail in their lives.

⁴⁴ *Ibid.*, 201.

the mad child. Instead, psychiatry globally reinvents itself through the investigation of a new disciplinary personality, the “imbecile” child, in whose name psychiatry will become a developmental discourse. The imbecile child, the idiot child, and the retarded child are precisely not “mad” as that term signified in the preceding century; rather, these children are a new problem of incomplete development. An imbecile child is either arrested at a particular stage of development, or else developing too slowly.⁴⁵ The imbecile *is* childish.

The effect of this psychiatrization of childhood is immense, for “development is common to everyone,” as Foucault puts it, “but it is common more as a sort of optimum, as a rule of chronological succession with an ideal outcome. Development is therefore a kind of norm with reference to which one is situated.”⁴⁶ The strategic function of the psychiatrization of childhood is the introduction of developmental normalization into the social body through psychiatry, making its power applicable universally by yoking children to adults as their ontogenetic cause in a line of normal and abnormal growth that requires therapeutic supervision.⁴⁷ As Foucault puts it, “the adult will appear,” henceforth, “as both the real and ideal end of development; so the adult will function as the norm.”⁴⁸ Pathologies of this ideal development, or rather abnormalities in children, are no longer indicative of discrete disease, but rather a deviation or perversion from the (adult) norm understood in reference to “some kind of childhood average,” according to which psychiatric treatment can be prescribed.⁴⁹ The psychiatrization of childhood

⁴⁵ *Ibid.*, 202-207.

⁴⁶ *Ibid.*, 208.

⁴⁷ In this Foucault also reflects the influence of his mentor, Georges Canguilhem; see *The Normal and the Pathological* (New York: Zone, 1991), which is also taken up in chapter four.

⁴⁸ Foucault, *Abnormal*, 208.

⁴⁹ *Ibid.*, 209.

places the child at the very heart of the invention and widespread diffusion of a technique of disciplinary power in Europe. Through the child, psychiatry gains access to everyone.

In the early nineteenth century, well before Freud, psychiatry is now confronted with the problem of explaining the mechanism of arrested or slow development, of what it is, precisely, that causes the idiot child to behave so willfully. At this point a discourse on “instinct” comes about, the quasi-biological, natural “will not to will,” a will in children not to obey adults, that is normal at first but must be overcome by enlightened pedagogy.⁵⁰ This is also the first moment of an explicitly sexual understanding of the child, of the child’s developmental sexual instinct, both natural but fragile, subject to a latent threat of perverse deviation from the norm if not for the intervention of trained pedagogues. In *Abnormal*, Foucault greatly elaborates on the invention of a discourse on sexuality through the body of the child via the figure of the masturbating child.

The masturbating child has received strangely little attention in queer theory relative to the invention of the homosexual as a “species” in Foucault’s genealogy of Western sexuality.⁵¹ Yet it is central to the history of techniques of power in which the sexuality of children is pedagogized well before psychoanalysis argues that infants are from birth sexual, or the queer subject finds itself on a retrospective identification with an abject childhood sexuality (an identification that, moreover, could be argued *is* auto-erotic). The larger context for the emergence in the middle of the eighteenth century of a fervent social campaign against masturbation in Protestant European countries, followed swiftly by Catholic states, is an unresolved problem transplanted from pastoral

⁵⁰ *Ibid.*, 215.

⁵¹ One examination of this history is Thomas Lacquer’s *Solitary Sex: A Cultural History of Masturbation* (New York: Zone Books, 2004). In a somewhat different register there is also, of course, Eve Kosofsky Sedgwick’s incredible essay “Jane Austen and the Masturbating Girl,” *Critical Inquiry* 17 (1991): 818-837.

government. The great emphasis on confession in the preceding two centuries had so intensified and grown in its intricacy and penetration of the individual body that it had produced the effect of “the flesh being pinned to the body,” the production of “an economy pain and pleasure” linking body to soul, always in danger of over-exciting the flesh of the confessor and the parishioner during the long recounting of carnal transgression.⁵² The first outbreak of anxiety over masturbation, not surprisingly, took place in the religious seminaries and colleges of Europe populated by young students.⁵³

Foucault recounts in detail the strategies of the campaign, which in no way resemble the later discourse of *Psychopathia Sexualis*⁵⁴: what is at stake is not a discrete perversion or a scientific discourse on sexual pathology, but “a veritable campaign more than one of scientific analysis.”⁵⁵ Amongst “the immense jabbering” on onanism from this period are found innumerable tracts of advice to parents and children, including children’s books and even a masturbation wax museum in France that exhibited deformed and destroyed figurines of onanists to visiting families. There is also the sordid litany of anti-masturbation orthopedic instruments, including chastity belts, the tying of naughty children’s arms and legs to the bed, the fitting of bells to their fingers so that if they stirred at night a parent was alerted, not to mention partial castrations and clitorodectomies.⁵⁶ In examining these strategies, Foucault pauses to make what one can only imagine was in part also a pedagogical digression in reaction to any ambient giggles

⁵² Foucault, *Abnormal*, 188, 181.

⁵³ *Ibid.*, 193.

⁵⁴ The 1844 title of a book by Heinrich Kaan, and then, more famously, the encyclopedia of perversion first published by Richard von Krafft-Ebing in 1886.

⁵⁵ Foucault, *Abnormal*, 234-35.

⁵⁶ *Ibid.*, 233, 252-53.

in the lecture hall. In all this voluminous literature on childhood masturbation, he concedes,

The words, the very terms of desire and pleasure, never appear. For a number of months I have gone through this literature with some curiosity, but also with some boredom, and in all I found just one comment: “Why do adolescents masturbate?” and around 1830-1840, a doctor suddenly had the idea: “But it must be because it gives them pleasure!” This is the only time.⁵⁷

We can only speculate if there was a pedagogical grin on Foucault’s face as he reported his *boredom* in reading stacks of texts on masturbation. Nevertheless, there is an important point to Foucault’s insistence on the absence of the terms of desire and pleasure in the campaign against child masturbation: it is *not* an erotic discourse or corresponding technique, it does not concern pleasure. And yet it *is* a modern discourse on sexuality—indeed, one of the (if not *the*) first, preceding even hysteria.

To emphasize Foucault’s point it is helpful to return to his analysis of strategy. What are the effects of the campaign against childhood masturbation? The one of which we can be certain is that it did not eradicate masturbation. Rather, onanism inserted sexuality into a new and fecund somatic pathology that dovetails with the effect of the psychiatrization of childhood: henceforth, almost any illness or abnormality can be attributed to childhood masturbation. Foucault terms this “the inexhaustible causal power of infantile sexuality,” established long before psychoanalysis, whereby “masturbation is established as a sort of diffuse, general, and polymorphous etiology that enables the whole pathological field, including death, to be connected to it, that is to say, to be connected to a certain sexual prohibition” (think again of the deformed and frozen corpses in the wax museum). “In short,” he emphasizes, “childhood is assigned

⁵⁷ *Ibid.*, 234.

pathological responsibility.”⁵⁸ This discourse on children’s sexuality has no need for erotic verifiability since its strategy is to bring the entirety of the pathological field under the domain of an emergent pedagogical and medical authority of sexuality, not to actually repress autoeroticism once and for all.

What, after all, does the campaign against masturbation call for? In a word, pedagogy, a massive dose of pedagogy. If this eventually involves doctors and schoolteachers, it first of all involves parents. The campaign’s first goal is expelling servants, whose domestic intimacy with children is laced with a prurience that ought to be replaced by parental supervision. The campaign against childhood masturbation has the goal of getting bourgeois parents simply to take charge and take care of their children (the campaign will turn to the working classes later, with almost opposite dictates but identical motivations).⁵⁹ The prescriptions then intensify to a remarkable degree, with parents being advised to constantly investigate their children, keep watch over them, even sleep in the same bed with them and peek under their covers at regular intervals, or smell their sheets. “It is this incest,” Foucault notes, “this epistemophilic incest of touch, gaze, and surveillance that was the basis of the modern family.”⁶⁰

Incest to what end, though? The nuclear family cell constituted as a result of this sexual pedagogy of children is far from intrinsically valuable to the state or industrial wage labor.⁶¹ Instead, Foucault argues, “The sexuality of children was a trap into which

⁵⁸ *Ibid.*, 240, 242.

⁵⁹ *Ibid.*, 268.

⁶⁰ *Ibid.*, 249.

⁶¹ Foucault is criticizing contemporary framings of sexuality as repressed under industrial capitalism in order to save the energy of the worker’s body for laboring—a hypothesis that he does not see supported in the historical record, nor for its theoretical assumptions. This critique is aimed in *Abnormal* at Jos Van Ussel’s *Geschiedenis van het seksuele probleem* (1968) translated into French as *Histoire de la répression sexuelle* (1972), whose “explanatory schema,” Foucault remarks, “is hastily drawn from Marcuse” (236).

parents fell.”⁶² The family was thereby brought under the jurisdiction of a disciplinary power manifest both in psychiatry and medicine, transacted through the sexual knowledge produced by the campaign. At the same time, demands by the state are made on parents for the bodies of their children, notably in compulsory primary schooling. The invention of children’s sexuality enables these transactions that reorganize the relations amongst the family, disciplinary institutions, and the state, because, precisely, masturbation is *not* an autoerotic matter. Children do not masturbate, according to the experts, because it is pleasurable or because of biological tension. “Seduction by an adult,” reports Foucault, “is the most frequent cause of masturbation invoked by the crusade.”⁶³ This constitutive incest will then be colonized by psychoanalysis to reassure parents, now deprived of the old Roman ideal of *patria potestas* by the demands of a disciplinary society and growing administrative state. Even if the doctor or schoolteacher accrues authority over their children in certain spaces, their sexuality will always belong to the family space, to the parents, for the seduction of children by adults will be inverted into the Oedipal desire of the infant for the mother and the father. “So not only is the child’s body in some sense their material possession,” says Foucault, “but even more they also control the child’s desire, which is available to them because it is directed toward them.”⁶⁴

This disciplinary dimension of the campaign against masturbation is also joined by a biopolitical problematization of children’s sexual development as living bodies.⁶⁵

⁶² *Ibid.*, 257.

⁶³ *Ibid.*, 243.

⁶⁴ *Ibid.*, 267.

⁶⁵ “One way to coagulate the conjugal family was to make parents responsible for their children’s bodies, for the life and death of their children, by means of an autoeroticism that had been rendered fantastically dangerous in and by medical discourse” (265).

Here, Foucault's earlier genealogy of the imbecile child connects to the sexualized child through the problems of heredity and degeneration. The worry about the transmissibility of inferior characteristics arrives after a more basic reproductive concern over the body of the masturbator. In *Society Must Be Defended* (1975-1976) Foucault returns to the masturbating child to illustrate the meeting point of disciplinary and biopower through sexuality: "A child who masturbates too much will be a lifelong invalid: disciplinary sanction at the level of the body. But at the same time, debauched, perverted sexuality has effects at the level of population, as anyone who has been sexually debauched is assumed to have a heredity."⁶⁶ Eventually, a kind of "race suicide" through endemic childhood masturbation could be imagined, reaching the threshold of the theory of degeneration. The biopolitical dimension of children's sexuality accents how sexual pedagogy is always implicated in racial hygiene. As Foucault emphasizes in his discussion of the advent of European racism as a kind of "internal war" within the body politic, race becomes the dividing line between "making live [and in what way, according to what norms,] and letting die."⁶⁷ Taking care of children's bodies and providing them with the right pedagogy are henceforth central to the most vital projects of Western racial hygiene: eugenics and colonialism.

With a developmental function for the child as its modern definition, as both the origin of the normal adult and the polymorphous cause of all of the adult's deviations or perversions, children's sexuality demands, by the nineteenth century, a pervasive pedagogy that can govern children according to the dictates of the normal, employing both disciplinary molds and biopolitical techniques of care. The result is the

⁶⁶ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*, translated by David Macey (New York: Picador, 2003), 252.

⁶⁷ *Ibid.*, 247.

establishment, via children's sexuality, of the relay system of modern subjectivity that psychoanalysis later makes famous and to which we are heirs: the child as the retrospective past-tense of the adult she once was and the child as the future-anterior of the adult she will become. Indeed, Foucault gives us the genealogical origin of the structure that Probyn and Gordon derive from queer narratives of teleology and retrospection. Or, as Foucault puts it: "Consequently, all of the child's conduct is thoroughly scoured since it may contain an adult fixation within it. Conversely, adult conduct is scrutinized for any possible trace of infantilism."⁶⁸ Queer theory, in its transposition of this pedagogy to the realm of retrospective narrative and subject predication, is an heir to this relay system, but a conspicuously blind heir, given the unremarked proximity of the masturbating child to the homosexual in Foucault's history of sexuality. If queer theory has been recalcitrant on this point, perhaps its own desires for the child are the cause.

Queer Childhood and the State of Nature

Childhood is the first manifestation of the deficiency which, in Nature, calls for substitution [*suppléance*]. Pedagogy illuminates perhaps more crudely the paradoxes of the supplement. How is a natural weakness possible? How can Nature ask for forces that it does not furnish? How is a child possible in general?
—Jacques Derrida, *Of Grammatology*

Nature would have children be children before being men...Childhood has its own way of seeing, thinking, and feeling, and nothing is more foolish than to try to substitute our own for them.
—Jean-Jacques Rousseau, *Émile*

Queer theory's sexual pedagogy of children reaches a certain apogee not simply by the normative or tautological merger of the sign "queerness" with childhood or childishness, but when the two concepts in turn call upon, for self-referentiality, the impossible terrain of the passage from the state of nature to society imprinted on the West by the European

⁶⁸ Foucault, *Abnormal*, 305.

Enlightenment. In *The Queer Art of Failure*, Jack Halberstam aims no less than to return children, as especially queer creatures, to the state of nature, from which adults can then derive a model for an anti-social, anti-capitalist sexual and gender politics that they desire. Halberstam grounds queerness in childhood not through Rousseau, but through mass marketed animated films, adopting a corporate name, Pixar, for the neologism given to what is presented as a politically subversive genre, “Pixarvolt” (Pixar + revolt).⁶⁹

Halberstam argues that he knows what children are: that they are queer (and that he therefore also knows what “queer” is). This knowledge is verified through the now familiar retrospective structure of queer theory: “Childhood, as many queers recall...” opens the first chapter of *The Queer Art of Failure* and leads into the unsayable problem of the state of nature, the unthinkable exclusion structuring the text’s discourse.⁷⁰ There are other aspects of this chapter that could be taken up, too. Notably, there is a chain of supplements that links child to animal, but since the animal functions in an analogy to the child and vice versa, the animal can be read into what follows here.⁷¹ Relatedly, Halberstam hurriedly dismisses race as a relevant category of childhood and politics,

⁶⁹ Jack Halberstam, *The Queer Art of Failure* (Durham: Duke University Press, 2011), 29.

⁷⁰ *Ibid.*, 27.

⁷¹ For example, these two sentences contradict one another: “Most often we project human worlds onto the supposedly blank slate of animality, and then we create the animals we need in order to locate our own human behaviors in ‘nature’ or ‘the wild’ or ‘civilization.’ As the *Chicken Run* example shows, however, animated animals allow us to explore ideas about humanness, alterity, and alternative imaginaries in relation to new forms of representation” (31-32). The “however” in the second sentence is a misnomer, for what the example of *Chicken Run* “shows” in the preceding several pages is exactly what the first sentence describes: an anthropomorphic project of the human onto the animal in order to negotiate the passage from nature to the social. In the subsequent paragraph, Halberstam analogizes animated “animals” (which aren’t really animals at all, but their animated representation in a film) to “transbiological” bodies like cloned sheep through the work of Sarah Franklin and Donna Haraway, suggesting they are equivalent in their hybridization of technology and living matter. The analogy is then left alone, unsubstantiated. Additionally, Halberstam suggests that “we might think of animation as a way of maintaining the animality of animal social worlds” (37), a sentence founded on a massive set of Western assumptions about the line between human and animal, political and natural. The opposite would seem to be far more likely from the evidence provided by the chapter. Halberstam’s affirmation of “queer penguins” (41) in a reading of *March of the Penguins* (2005) operates through the same structure as the child.

claiming that “despite the inability of these films to reimagine race”—which means more precisely their deliberate perpetuation of racist iconographies of animals and animation—“the Pixarvolt features have animated a new space for the imagining of alternatives,” with those alternatives being admittedly confined to sexuality and gender nonconformity as if purified from the question of race.⁷² Halberstam briefly rehearses the work of Sianne Ngai on “animatedness” as a category of American racial representation in *Ugly Feelings* and concedes that the Pixar children’s films fail to do what Ngai’s examples and readings do to deconstruct the suturing of race-as-racism to animatedness in American culture. Nonetheless, gender (in the representation of a society of female chickens, for instance) and sexuality (in the representation of gay penguins, in another) are prioritized over race and racialization as the only relevant constituents of queer childhood and its emergence from the state of nature.

This chapter from *The Queer Art of Failure* becomes queer theory’s rewriting of Rousseau, but in order to read Rousseau in the gaps in the text where he appears without appearing, we have to briefly turn to him. In *Of Grammatology*, Derrida dilates in Rousseau’s work “that dangerous supplement” of writing, the mark of culture and society, which is transmitted by pedagogy.⁷³ The logical paradox unfolds itself through a series of close readings: if speech, for Rousseau, is desired to be naturally self-present, while writing therefore comes from the outside as a corrupting, if civilizing tool, then it acts as a supplement to a Nature that contradictorily exhibits an interior lack where there should be none. At one and the same time, Nature is inherently good and complete because self-present in the voice, *and* inherently lacking and incomplete because

⁷² *Ibid.*, 48.

⁷³ Jacques Derrida, *Of Grammatology*, translated by Gayatri Chakravorty Spivak (Baltimore: The Johns Hopkins University Press, 1974), 140.

necessitating a supplement to achieve the social contract written in the name of culture and society. Writing is, likewise, both the useful supplement that compensates for Nature's lack by inscribing a certain incorporation of culture and society, *and* a poisonous addition that instantiates a fall from an original naturalness. In this, as Derrida suggests, Rousseau is not especially unique, but rather reinvests for the Enlightenment a very old symptom of Western logocentrism that can be followed to Plato's denunciation of writing in the *Phaedrus*. As concerns Rousseau, though, the logic of the supplement characterizes the undecidable passage from the state of nature to civil society, that which the child is made to embody. Or, as Derrida puts it in general terms: "the logic of supplementarity, which would have it that the outside be inside, that the other and the lack come to add themselves as a plus that replaces a minus, that what adds itself to something takes the place of a default in the thing, that the default as the outside of the inside, should be already within the inside, etc."⁷⁴ This paradoxical logic of the supplement is replicated in and as the passage from childhood to adulthood.

Derrida suggests that, for Rousseau, "Childhood is the first manifestation of the deficiency which, in Nature, calls for substitution."⁷⁵ This might also be read as proposing that children are always only partially emergent from the state of nature, that the delay or deferral of adulthood constitutive of their strangeness speaks to their incarnation of the impossible gap between nature and society. Indeed, children produce so many logical problems as incomplete, unfinished humans, that Rousseau has to write *Émile* in some ways as an attempt at accounting for the impossibility of "natural

⁷⁴ *Ibid.*, 215.

⁷⁵ *Ibid.*, 146.

education,”⁷⁶ a pedagogy of the child that ensures the proper passage from nature to civil society via the passage from childhood to adulthood (the age of reason).⁷⁷ “Natural education” is an impossibility insofar as for Rousseau it consists in an education—a *cultivation*, or *culture*—guided by the dictates (or, more difficultly, *laws*) of Nature, but that must also necessarily go beyond and supplement that Nature which was insufficient in and of itself to form the child as an autonomous and reasonable being. On this point, Derrida adds, “one can follow everywhere in Rousseau’s work a theory of *innateness* as *virtuality*, or of naturality as sleeping potentiality...It asks us to think of nature not as a given, as a real presence, but as a *reserve*.”⁷⁸

The paradox of natural education is that Emile becomes such a reserve, thus failing to respect the division between the state of nature and the society he is being prepared to join, where “prepared” means both being sheltered from and led towards something at the same time. This trap plays itself out in the fundamental problem for the tutor of teaching reading and writing: Rousseau counsels very strongly against grounding education in books, for giving children free reign with the signs of language as writing allows them to cheat nature and manipulate adults with the *appearance* of reason: “In general, never substitute the sign for the thing itself,” Rousseau impresses, “save when it is impossible to show the thing; for the sign absorbs the attention of the child and makes

⁷⁶ Rousseau, *Emile, or On Education*, translated by William H. Payne (Amherst, New York: Prometheus Book, 2003): “Allow Nature to act in her place, for fear of thwarting her operations” (68); “I am preaching to you a difficult art, that of governing without precept, and of doing all while doing nothing” (86).

⁷⁷ For instance, Rousseau explains in the opening of *Emile* that we should be thankful that we are born incomplete, as children: “People pity the lot of the child; they do not see that the human race would have perished if man had not begun by being a child. We are born weak; we have need of strength...All that we have not at birth, but which we need when we are grown, is given us by education” (2). Yet later he adds that “man is general is not meant to remain always in a state of infancy. He passes out of it at a time prescribed by Nature; and this critical moment, though very short, has lasting influences” (192).

⁷⁸ Derrida, *Of Grammatology*, 185, emphasis in original.

him forget the thing represented.”⁷⁹ And yet, at the same time, there is eventually no other way for Emile to learn than by imitating his mentor and risking only learning the appearance of reason by repeating his educator’s words without at first understanding them:

The apparent facility with which children learn is the cause of their ruin. We do not see that this very facility is the proof that they are learning nothing. Their smooth and polished brain reflects like a mirror the objects that are presented to it; but nothing remains, nothing penetrates it. The child retains words, but ideas are reflected. Those who hear the words understand them, but the child who utters them does not.⁸⁰

Pedagogy produces, to answer a lack attributed to nature, the impossible situation of imitation, corruption, and perversion in the cultivation of a natural capacity, one intrinsic to education as a supplement.⁸¹ The supplement of pedagogy, as Derrida reads it, suggests both that the supplement is itself originary (of the distinction between nature and culture, between child and adult) and so “adds nothing.”⁸² Pedagogy and education name the paradox of imitation: the child cannot but learn by example, lacking reason, and yet imitation of nature is precisely what corrupts it. This paradox demonstrates itself once again, as is Derrida’s concern in *Of Grammatology*, through the problem of the child’s speech—who can ask the child to speak and who will hear the child’s speech?:

Without the summons of the supplement, the child would not speak at all: if he did not suffer, if he lacked nothing, he would not call, he would not speak. But if supplementarity had simply been produced, if it had really begun, the child would speak knowing how to speak. *The child speaks before knowing how to speak.* He has language, but what is lacking in it is the power of *replacing itself*, of substituting one sign for another, one organ of expression for another; what he

⁷⁹ Rousseau, *Emile*, 141.

⁸⁰ *Ibid.*, 69.

⁸¹ Another example from *Emile*: “But a common error, and one from which we must preserve ourselves, is to attribute to the ardor of talent the effect of occasion, and to take for a marked inclination toward such or such an art of the imitative spirit which is common both to man and monkey, and which mechanically leads both to wish to do whatever they see done without knowing very well what it is good for” (181).

⁸² Derrida, *Of Grammatology*, 203.

lacks, as the *Essay [on the Origin of Languages]* said, let us recall, ‘a power proper to man’.⁸³

The child speaking, perhaps even the infant crying, is always only emergent from the state of nature, in the unfinished process of making natural progress while also being educated from the outside, and so the child forever denies the possibility of drawing a line between itself and reason or civil society, not to mention drawing a line between the itself and the adult. No wonder, then, that adults are contaminated by the children they thought they once were, and any attempt to think the child without the adult is contaminated from the very start.

Halberstam never raises these problems in such terms, but *The Queer Art of Failure* cannot refuse them, trapped as the child is in a fantasy of a queer state of nature. The phrase “queer state of nature” means to read Halberstam as locating children’s queerness as their innocence in the face of the social, with its attendant heteronormative and gender normative rules, and capitalism, with its demands for success and interminable growth. To these orders Halberstam opposes children as queer denizens of anti-social revolt. “If you believe that children need training,” he writes early on in the chapter, for instance, “you assume and allow for the fact that they are always already anarchic and rebellious, out of order, and out of time.”⁸⁴ Given the logic of the supplement always already attached to any concept of “training” (or its opposite), however, children will always inhabit a zone of indistinction between the two, contaminating anarchy and rebellion with order and submission. Indeed, the only way to make children’s queerness useful is to completely cut it off from actually living children, to relocate children back in the state of nature, now stamped with queerness:

⁸³ *Ibid.*, 247, emphasis in original.

⁸⁴ Halberstam, *The Queer Art of Failure*, 27.

The Pixarvolt films, unlike their unrevolting conventional animation counterparts, seem to know that their main audience is children, and they seem to also know that children do not invest in the same things that adults invest in: children are not coupled, they are not romantic, they do not have a religious morality, they are not afraid of death or failure, they are collective creatures, they are in a constant state of rebellion against their parents, and they are not the masters of their domain. Children stumble, bumble, fail, fall, hurt; they are mired in difference, not in control of their bodies, not in charge of their lives, and they live according to schedules not of their own making.⁸⁵

It is worth pointing out that this is also a form of commodity fetishism: the imbuing of the film with lively qualities and relations that appear entirely independent of their conditions of production and circulation in a capitalist economy.⁸⁶ This matters insofar as Halberstam takes the social relations represented in the film for granted as anticapitalist “Marxist allegory” and “neo-anarchistic narrative” without accounting for them as representations sold in a marketplace.⁸⁷ Hence, when he adds that “recent animated films actually revel in innovation and make use of the wonderfully childish territory of revolt,” what is offered as subversive works just as well as a description of the logic of capital’s appropriation of dissent and subversion.⁸⁸ Halberstam lauds Pixar for having inaugurated “a new era” of animation with *Toy Story* in 1995 and follows its filmography up to the present. In the year leading up to the publication of *The Queer Art of Failure*, in what feels important but is missing from the book, Pixar’s total revenues

⁸⁵ *Ibid.*, 47.

⁸⁶ Marx (famously): “A commodity is therefore a mysterious thing, simply because in it the social character of men’s labour appears to them as an objective character stamped upon the product of that labour; because the relation of the producers to the sum total of their own labour is presented to them as a social relation, existing not between themselves, but between the products of their labour. This is the reason why the products of labour become commodities, social things whose qualities are at the same time perceptible and imperceptible by the senses... There it is a definite social relation between men, that assumes, in their eyes, the fantastic form of a relation between things.” <https://www.marxists.org/archive/marx/works/1867-c1/ch01.htm#S4>, accessed March 20, 2015.

⁸⁷ Halberstam, *The Queer Art of Failure*, 29.

⁸⁸ *Ibid.*, 28.

exceeded \$11 billion.⁸⁹ Halberstam is able to avoid this problem only by stripping away entirely the historical means of production and relocating children, through the trope of queerness, to a state of nature before the contamination of capital. It is a most Rousseauian dream of purity and one that is hardly surprising in its failure. Making children anti-social ignores that they are always already the terrain on which the social is cultivated out of its impossible relation to the natural. And it takes us even farther away, under the guise of drawing closer, from asking questions about children as living, historical bodies.

The Growing Body of the Child: Race, Gender, and Sexuality

The four chapters of this dissertation take up case studies in the genealogy of the gay and transgender child. Cumulatively, they do so by leaning on the second of the methods examined earlier, understanding the child's body as the target and correlate of a historical pedagogical system of gender and sexuality, rather than ascribing queer or transgender as symbolic or grammatical predicates—though it is worth reiterating that the two methods are ultimately, per Sedgwick, irreducible in some way. As Derrida's reading of Rousseau underlines somewhat differently, the very concept of a child or of childhood inaugurates contradictions inherent to the distinction between nature and culture that will not resolve except for making the heavy-handed maneuvers of logocentrism. Foucault's historical rigor adds that the child will never yield anything but a contingent "truth" to desiring, inquiring adults. At stake in this project is a history of the body of the child in the United States that gives context to the apparent newness of gay and transgender children in the

⁸⁹ "Pixar Animation Studios Inc.," *Google Finance*, <https://www.google.com/finance?q=ed+catmull&fstype=ii>, accessed March 20, 2105.

present, a body incorporated through and as not just gender and sexuality, but crucially, a racial formation. As strange, growing creatures, children embody human life in particular and peculiar ways that grow out of a preoccupation with the cultivation of biological and cultural value.⁹⁰

In *The Queer Child*, Stockton notes that modern American childhood, defined by a temporality of delay—delay of labor, delay of knowledge, delay of sexuality—is profoundly white, for children of color are precisely refused the privilege of being designated creatures of delay.⁹¹ In *Racial Innocence*, Robin Bernstein elaborates in great detail on how children of color, more precisely, are barely children at all: black children, in particular, are withheld from the scenography of naiveté and plastic receptivity cultivated in white childhood since the nineteenth century.⁹² As the first chapter of this project examines in greater detail, when modern American childhood was being constructed out of Progressive Era projects like mass public schooling and juvenile delinquency, the broad goal of getting children off the streets or factories and into school or juvenile penal and psychiatric facilities was executed through a racializing differential that calculated which children’s bodies would be valued as malleable or plastic, and which ones would be seen as already too grown up, too knowledgeable, too culpable for reform. That differential formed a specific color line, with white Anglo children and white ethnic immigrant children positioned as able to be saved or improved, while black

⁹⁰ In asking after the value incorporated through and as the body of the child, this project is again indebted to Castañeda’s approach in *Figurations*, where she understands “the child as a material-semiotic entity” (8) that accrues value across both scientific and cultural domains. This dissertation also draws on her commitment to a simultaneously feminist, postcolonial, and science and technology studies framework.

⁹¹ Stockton, *The Queer Child*, 13-16.

⁹² Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: NYU Press, 2011).

and brown children were treated as deserving of punishment and stricter discipline to manage inherent racial inferiority.

There is also, however, a broader mode of racial fantasy and racial formation entangled in the modern body and concept of the child, one that does not always coincide with identitarian or representational differences between white, black, and brown children. In *Figurations: Child, Bodies, Worlds*, Claudia Castañeda points out that “It is not simply that ‘the child’ is a sign, category, or representation that can be read in multiple ways. What is distinctive about the child is that it has *the capacity for transformation*.”⁹³ This capacity for transformation, cultivated as at once biological and cultural, has also been termed the “plasticity” of the child.⁹⁴ This quantum of childish plasticity, the capacity of the child’s form to be transformed by medicine, law, education, and other forms of pedagogy, has yet to be theorized in queer theory, transgender studies, or even childhood studies, as a racial formation or racial normativity that subtends the concept of the child in general and the body it incorporates. However, as the discursive zones taken up in each of the chapters of this project emphasize, the law, education, biology, and medicine have theorized the racialized value of children’s plasticity since at least the nineteenth century.

To existing work on the racialization of the child and childhood, this dissertation argues that the very concept of the child, and the body it is meant to incorporate, is a racial formation. Not only that, but also that sex (and, historically later, gender) and sexuality are specific qualities or dimensions of that formation. The child names a broad problem of organic form that takes on a specific urgency in the nineteenth century, the

⁹³ Castañeda, *Figurations*, 2, emphasis added.

⁹⁴ See, for instance, Heather Warren-Crowe, *Girlhood and the Plastic Image* (Lebanon, NH: Dartmouth University Press, 2014)

problem of human life's growth from embryonic cells to full social and cultural maturity. As unfinished creatures, children are understood as especially porous, receptive to manipulation and cultivation, at once natural and social. Influencing the growth of the child becomes, in a specific sense examined in this project from the late nineteenth century onward, a question of racial formation. In the following four chapters, the growing body is examined through developmental discourses that aim to order the plasticity and potentiality of the child's body towards normative ends. This problem of developmental form frequently centers on the careful cultivation of sex, gender and sexuality, certainly in the cases of the gay child and transgender child, but far more broadly in the case of all children, too. Since at least the late nineteenth century, then, the child's body has been constituted as a eugenic creature, incarnating the most utopian promises of medicine, law, education, and politics for the perfectibility of human form and species through enlightened care of childhood. Through the same gesture, the child has become simultaneously a deep reservoir of anxiety over the latent possibility of abnormality, pathology, and degeneration of the human through compromised development or runaway growth. While the gay and transgender child, then, could be taken up in an intersectional framework that points out the categorical whiteness of these two figures by juxtaposing them with gay and transgender children of color, this project attend to the broad racialization of the concept of the child and the body it yields. And while race may not always be explicitly visible in all facets of the four case studies of this dissertation, the project proposes as its point of departure that cultivating the growing bodies of children is always entangled in a racial logic of forming the human and the species.

Outline of the Dissertation

The first chapter, “America, the Bully Society: Race and Sexuality, Punishment and Prevention,” investigates the centrality of the gay child to the ongoing criminalization of bullying in the United States. To avoid the limited parameters of the contemporary opposition of partisans of criminalization and critics of its complicity with “the school to prison pipeline,” the chapter contextualizes the administration of bullying in public schools within the history of juvenile delinquency. The contemporary appeal to or critique of criminal law and the police to arrest and punish bullies takes on a different light when the school and the juvenile court are understood historically as mutually informed Progressive Era projects aimed at getting children off the streets, sheltered from labor, and into disciplinary spaces that could shape both their imagined vulnerability and tendency towards violence. The entanglement of the discourse on the punishment of bullying with that of its prevention yields a more complex account of the racialization of sexuality embedded in the production of the vulnerable white gay boy as the representative victim of bullying.

The second chapter, “The Unruliness of the Cyberbully,” moves online, examining how the child’s sexual and social body on the Internet restages the century-old struggle between the state’s demand for the bodies of children and the middle class family’s cherished jurisdiction over the sexuality of its children. Although cyberbullies can increasingly be punished under the law in the twenty-first century, this chapter argues that the panic over containing children’s digital lives actually serves to dismiss and domesticate the question of technology and brings adults no closer to knowing what

children are actually doing online. That gesture, moreover, is far from new, but instantiates a digital version of a much longer struggle over who should retain the mandate to govern the child.

The third and fourth chapters provide an unprecedented history of the transgender child that upends the available historiography by focusing on the 1960s, while scholars have assumed there was no such thing as a transgender child before the 1990s. Chapter three, “Assembling the Transgender Child Since the Nineteenth Century,” opens with a 1965 case in which the first official sex reassignment surgery for a transgender person in the United States was ordered by a Baltimore court for a teenager. To understand how this case might have been ignored by transgender studies, the chapter returns to the foundation of endocrinology and its vision of the hormonal cultivation of the organic form of sex in the child’s growing body. Childhood and juvenile forms have long taken center stage in the life sciences’ preoccupation with eugenic projects of human perfectibility. The third chapter focuses on the interwar period, endocrinology’s early heyday in Europe, where the hormonal body was incorporated as a medical and political project of the eugenic cultivation of sex.

With the eugenic implications of endocrinology made clearer, the fourth chapter, “The Technical Invention of Gender and the Postwar Transgender Child” re-assembles the history of the transgender child from the mid-century context in which “gender” was invented by endocrinologists and psychiatrists treating children they understood as “transsexual.” Building greatly on the 1965 case in Baltimore, this chapter examines children diagnosed and treated by the founding generation of transgender medicine in the United States. Even in the case of psychiatrists who felt strongly that their ultimate goal

was to eradicate transgender identity, the power of childhood in their understanding of the acquisition of gender identity led them to oversee the gender transition of children and teenagers they felt they could no longer redirect to the sex assigned at birth. In examining these cases from the 1960s, this chapter also argues for understanding gender not only as a psychic identification, but equally as a material artifact of the technical apparatus of mid twentieth century medicine.

Although the gay and transgender child are closely related figures in the contemporary United States, the four chapters of this dissertation have a somewhat estranging effect in their accumulation, moving in divergent genealogical directions that resist synthesis and continuity. The conclusion, then, returns to the question that animates the project as a whole: how do sex, gender, sexuality, and race inflect the ongoing incorporation of the value of the child and childhood? While the gay and transgender child have become recently visible in the United States through their apparent newness and vulnerability, “Queer Theory is Kid Stuff” makes the case for critically assessing them as one iteration in a much longer history of the value invested in children to define human life and its viable futures. In so doing, the project also argues for changing the conversation about the child in queer theory and transgender studies from a question of the symbolic or gramamtical towards a material account of the history of children’s bodies.

CHAPTER ONE

America, the Bully Society: Race and Sexuality, Punishment and Prevention

Emily Bazelon, editor at *Slate* magazine, opens her 2013 national bestseller *Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy* with the kind of sweeping proposition that makes it an archetypal text of the discourse on children and bullying that has taken shape in the United States over the past several years. “For centuries, if not forever,” she declares, “children have bullied each other, and for almost as long, adults have mostly ignored them.”⁹⁵ Amalgamating social scientific and psychological data, self-help narrative, and soliciting overlapping “intimate public spheres”⁹⁶ of concerned adults—represented mostly as women and mothers—the discourse framing anti-bullying initiatives is animated by the worry over whether or not America is a full-blown “bully society,” as sociologist Jesse Klein’s recent monograph puts it.⁹⁷ The mainstream consensus attached to invocations of bullying is that it is now a pervasive problem, even an “epidemic” or public health issue, and the disease metaphor has come to center especially on schools, where increasingly all children are vulnerable to be categorized as potential victims and potential bullies.⁹⁸

⁹⁵ Emily Bazelon, *Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy* (New York: Random House, 2013), 6. There are a host of similar popular press books available today. The filmic counterpart to these books is *Bully* (2011, director Lee Hirsch).

⁹⁶ See Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham: Duke University Press, 1997), 4-24.

⁹⁷ Jesse Klein, *The Bully Society: School Shootings and the Crisis of Bullying in America’s Schools* (New York: NYU Press, 2012).

⁹⁸ For an example of the journalistic use of the language of the epidemic, see Jessica Bennett, “Is the ‘Bullying Epidemic’ a Media Myth?” *Newsweek*, October 1, 2010, available online, <<http://mag.newsweek.com/2010/10/01/is-the-bullying-epidemic-a-media-myth.html>>. For a social scientific example, see “Jorge C. Srabstein, Benjamin E. Berkman, and Eugenia Pyntikova, “Antibullying Legislation: A Public Health Perspective,” *Journal of Adolescent Health* 42 (2008): 11-20.

If America today risks the label of a bully society, Bazelon's assertion of the ahistorical stretch of bullying is amended by its simultaneous presentism: the assumption that widespread public awareness of bullying is a recent phenomenon, so that policy makers, school officials, parents, and civil society groups must exploit the actionable quality of the present to remedy the epidemic before it proceeds any further, particularly in the case of anti-gay bullying, which has become associated with the suicide of gay children.⁹⁹ The evidence that bullying has become a central preoccupation of liberal LGBT organizations, schools, and policy makers abounds.¹⁰⁰ In 2010, the year of Rutgers University freshman Tyler Clementi's highly mediatized suicide, some 21 states passed or amended anti-bullying legislation. In 2011, another 23 followed suit.¹⁰¹ By 2012, a full 98.8% of school districts in the country had an anti-bullying policy in place.¹⁰² As the anti-bullying law heavily rewritten in New Jersey after Clementi's death went into implementation in the 2012-13 school year, critics of the intense flurry of legislative, administrative, and judicial activity that took place during the intervening years have also emerged. The Gay Straight Alliance (GSA) Network, loosely representing the national constellation of school-based GSA groups, partnered with two civil rights organizations to author a report criticizing the complicity of anti-bullying initiatives with zero tolerance

⁹⁹ Social scientific correlations of bullying with depression and suicide are too numerous to review here, but for one typical example, see Anat Brunstein Klomek, Frank Marrocco, Marjorie Kleinman, Irvin S. Schonfield, and Madelyn S. Gould, "Bullying, Depression, and Suicidality in Adolescents," *Journal of American Child and Adolescent Psychiatry* 46, 1 (2007): 40-49. See also the section on LGBT people in the U.S. Department of Health and Human Services Office of the Surgeon General and National Action Alliance for Suicide Prevention, *2012 National Strategy for Suicide Prevention: Goals and Objectives for Action* (Washington, DC: HHS, September 2012), 121-123.

¹⁰⁰ At least 14 suicides of children were mediatized in connection to the emergent discourse on anti-gay bullying in 2010. See Jim Dubreuil and Eamon McNiff, "Bullied to Death in America's Schools," *ABC News*, October 15, 2010, available online, <<http://abcnews.go.com/2020/TheLaw/school-bullying-epidemic-turning-deadly/story?id=11880841>>.

¹⁰¹ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Programs Service, *Analysis of State Bullying Laws and Policies* (Washington, D.C., 2011), xi.

¹⁰² U.S. Department of Health and Human Services, Center for Disease Control, Division of Adolescent and School Health, *Results from the School Health Policies and Practices Study 2012* (Atlanta, 2013), 95.

disciplinary policies and the mechanisms of “the school to prison pipeline.”¹⁰³ Journalists and activists in New Jersey and New York also criticized the narrative of criminalization and individualized, moralizing punishment that had resulted from the verdict handed down in the Dharun Ravi-Clementi case in 2012, including its potential effects on school-aged children now vulnerable to the same framing.¹⁰⁴

Yet, both the partisans of anti-bullying policies and the critics of its de facto criminalization leave out large elements of the genealogy of bullying, as well as the historical interdependence of the school, the court, and the prison in managing juvenile delinquency, bullying’s conceptual parent.¹⁰⁵ This genealogy reaches back to at least the foundation of the mass public school system in the US, which, in the Progressive Era, emerged in tandem with the newly created juvenile court system to take vulnerable children off the streets. Although bullying was for most of the twentieth century considered only a single and rather unremarkable symptom of juvenile delinquency, the genealogies of these two concepts give context to their partial differentiation in the 1990s, when school safety became synonymous with aggressive policing and zero

¹⁰³ Gay Straight Alliance Network, *Two Wrongs Don’t Make a Right: Why Zero Tolerance is Not the Solution to Bullying*, June 2012.

¹⁰⁴ Richard Kim, “Against ‘Bullying’ or On Loving Queer Kids,” *The Nation* October 6, 2010, <http://www.thenation.com/blog/155219/against-bullying-or-loving-queer-kids#>; William Dobbs, “Letters to the Editor: Rutgers U. Tragedy Is Not a License to Destroy Individuals,” *The Chronicle of Higher Education*, October 10, 2010, available online, <<http://chronicle.com/article/Rutgers-Tragedy-Is-Not-a/124868/>>; and for an example that predates 2010, see Associated Press, “School Bullying Laws Give Scant Protection,” *USA Today*, September 14, 2009, http://usatoday30.usatoday.com/news/education/2009-09-14-bullying-laws_N.htm (accessed February 6, 2014).

¹⁰⁵ At the national level, after the suicide of a gay child in New York state Lady Gaga called for a federal anti-bullying law, tweeting that bullying “is [a] hate crime.” See “Lady Gaga Advocates for Anti-Bullying Laws after Jamey Rodemeyer Suicide,” *International Business Times*, September 22, 2011, available online, <<http://www.ibtimes.com/lady-gaga-advocates-anti-bullying-laws-after-jamey-rodemeyer-suicide-316766>>. New Jersey senator Frank Lautenberg announced he would introduce a bill in the Senate to require colleges and universities to adopt a uniform anti-bullying policy after the suicide of Clementi in 2010. See “Lautenberg to Introduce College Anti-Bullying Bill,” *NY1 News*, October 7, 2010, available online, <<http://www.ny1.com/content/126723/lautenberg-to-introduce-college-anti-bullying-bill/>>. The bill has yet to be adopted.

tolerance policies in the wake of school shootings like that at Columbine in Colorado in 1999. While the discourse aimed at stopping bullying that has led to legislative reform like that in New Jersey suggests a blanket universalism for protecting children and punishing bullies at all schools, historicizing its key concepts makes better legible their actual effects, which continue to differentiate amongst children through not only the cultivation of sexuality as a form of protectable vulnerability, but the related racialization of the juvenile delinquent understood as the latent threat.

Bullying's selection as the intense focus of legal and administrative reform in recent years has been neither the culmination of a progressive acquisition of rights for newly identifiable LGBT students, nor a phenomenon fully absorbed by the school to prison pipeline. What both partisans and critics of dominant anti-bullying initiatives ignore is that their opposed positions are already contained within a single administrative system. The sometimes-criminal pursuit of bullies, as well as the liberal critique of its complicity with the prison to school pipeline, are contained by a single system that profitably fractures along two tendencies: punishment and prevention. The two tendencies are mutually dependent strategies of governance whose historical arrangement dates to the Progressive Era. This chapter contextualizes the concern over anti-gay bullying in American schools and the contemporaneous rise in visibility of the gay child through the longer history of juvenile delinquency and its reliance on the coordination of the public school and juvenile court. While the advocates of bullying's criminalization as a new frontier in gay identity politics and its liberal critics consider race and sexuality as separable constituents of the student body in this debate, this chapter emphasizes the interdependency of the school and the juvenile criminal system to consider how a

racialization of gender and sexuality enables the collusion of punishment and prevention in a single system for unevenly administering childhood. Punishment and prevention, in fact, are in fact key factors in the modern invention of childhood.

Bullying as a Form of Juvenile Delinquency

The bully is an incredibly recent arrival as a stand-alone figure in the cast of characters of the schoolyard. The word “bully” first appears in English as a noun in the sixteenth century as a term of endearment, often appended to other affectionate appellations. A number of Shakespeare’s plays from the first decade of the century make mention, for instance, of a “lovely bully,” a “bully doctor,” or, in *Midsummer’s Night Dream*, “bully, Bottom.”¹⁰⁶ Toward the close of the same century, bully began to accumulate a negative connotation as a cognate for a “swashbuckler,” or “a tyrannical coward who makes himself a terror to the weak.”¹⁰⁷ The association of aggression and moral cowardliness continued to sediment in the eighteenth century as bully came to refer explicitly to pimps. During the same century it also passed into gerund form as an act that anyone could commit.¹⁰⁸ By the nineteenth century bullying had solidified enough to attach to certain types of characters through their dispositions, including an adult who mistreats children, with Charles Dickens giving a by then common-sense description of Mr. Bumble in *Oliver Twist* as someone who “had a decided bullying personality, derived no

¹⁰⁶ The phrase “lovely bully” is from William Shakespeare, *Henry V*, IV, I, 49; “bully doctor” is from *Merry Wives of Windsor*, II, iii, 17; “bully, Bottom” is from *Midsummer Night’s Dream*, III, i, 8.

¹⁰⁷ “bully, n.1,” *OED Online*, September 2013, Oxford University Press, <http://www.oed.com.proxy.libraries.rutgers.edu/view/Entry/24601?rskey=Te64BC&result=1&isAdvanced=false> (accessed October 19, 2013).

¹⁰⁸ *Ibid.*

inconsiderable pleasure from the exercise of petty cruelty, and consequently was (it is needless to say) a coward.”¹⁰⁹

The notion of a bully as a pathological type of person, however, does not figure in the concept’s genealogy, in which the label is much more mobile and can attach to any number of anti-social and cruel figures. Bullying as an act, nonetheless, began to take on a specific intimacy with childhood in the late nineteenth century, as the child became a central figure of the Progressive Era. The reinvention of childhood as an idealized shelter from labor and the invention of adolescence by the social sciences and psychology intensified the tension between a concept of children as vulnerable to harm because of their incomplete development and innocence, on the one hand, and children as barbarously violent and naturally delinquent, on the other.¹¹⁰ For ego psychology, the primacy of aggressive instincts and cruelty in childhood naturalized the play of good and bad forces within the human psyche that seemed at the heart of social ills in both children and adults. Children thus occupied the embryonic position in biological, psychological, and socio-cultural etiologies of crime and anti-social behavior. Freud, for instance, labeled cruelty an instinct intrinsically present in the infant prior to acculturation,¹¹¹ while Melanie Klein’s later psychoanalysis of children outlined in great detail a mechanics of vicious sadism immanent to children’s fantasy life.¹¹² Ego psychology of this sort

¹⁰⁹ Charles Dickens, *Oliver Twist; or, the Parish Boy’s Progress* (Philadelphia: Lea and Blanchard, 1850), 143.

¹¹⁰ David I. Macleod, *The Age of the Child: Children in America, 1890-1920* (New York: Twayne, 1998), 1.

¹¹¹ Sigmund Freud, *Three Essays on the Theory of Sexuality* (New York: Basic Books, 2000), 58.

¹¹² Melanie Klein, *The Psycho-Analysis of Children* (New York: The Free Press, 1975), 150: “Analysis of the deepest mental levels uncover a flourishing sadism of which comparatively little is visible in the small child.” Klein’s speculations on the consequences of the inherent sadism of children primarily revolve around the question of psychosis. In her view, it is entirely healthy and normal that small children pass through psychotic phases during their adjustment to reality, but if these early attempts at mastering anxiety and the early superego are not managed well, “criminal behavior” is one possible outcome (143).

weighed heavily on the “storm and stress” definition of the new age category adolescence popularized by G. Stanley Hall in its most psychobiological manifestation in the first few decades of the twentieth century.¹¹³

This modern restaging of the tensions inherent to the definition of children as emergent from the state of nature finds them to be violent because of their naturally uncultured state, while also innocent and vulnerable to harm for the same reason. Whichever tendency is emphasized, proper education, governance, and social control became the privileged methods of the twentieth century medical, psychological, criminal and educational fields for ensuring that the latent violence of children did not lead to the total delinquency of youth in general. Even in Hall’s version of the theory of recapitulation, according to which the childhood of each individual plays out the sum total history of “the race,” the hereditary and constitutional etiology of violence still terminates in the potential of nearly all children to be rehabilitated by scientifically enlightened guidance.¹¹⁴ The bully also appears several times in his monumental work, *Adolescence*. Hall mentions bullying as one of many symptoms of the tension between unchecked, pathological “hoodlumism” and the natural expression of aggression in boys that could be tamed by rational parenting and education. In a rare candid moment, he suggests that children themselves were already, at the opening of “the century of the child,”¹¹⁵ preoccupied by the bullies in their midst, even if the adults who governed them assessed the situation differently. “Children’s views of their own faults and those of other children,” writes Hall, “lay a very different emphasis [than the views of adults and

¹¹³ G. Stanley Hall, *Adolescence, its Psychology and its Relations to Physiology, Anthropology, Sociology, Sex, Crime and Religion* (New York: D. Appleton and Company, 1905).

¹¹⁴ *Ibid.*, 216-222.

¹¹⁵ See Mcleod, *The Age of the Child*; also Kent Baxter, *The Modern Age: Turn-of-the-Century American Culture and the Invention of Adolescence* (Tuscaloosa, AB: University of Alabama Press, 2008).

educators]. Here fighting, bullying, and teasing lead all others; then come stealing, bad manners, lying, disobedience, truancy, cruelty to animals, untidiness, selfishness, etc.”¹¹⁶

Regardless of the extent to which the children Hall studied may have inverted the hierarchy of values the child sciences were establishing in the early twentieth century, bullying persisted as only a single example of juvenile delinquency whose broader impact grew in magnitude over the ensuing decades, reaching its apogee in the mid century. Indeed, for Hall, bullying was not enough in and of itself to distinguish a normal child from a delinquent, for the distinction between the two tended to dissolve in aggregating individual cases even when an overt reliance on notions of hereditary mental defects or other eugenic concepts was meant to guarantee the physiological validity of his classificatory and diagnostic mode.¹¹⁷

The science and social scientific study of juvenile delinquency that continued to expand in the wake of Hall and others was anchored institutionally in the school, the juvenile court, and the psychiatric clinic, with a great amount of overlap, until by the mid century the focus shifted from the distinct “problem” child to the latent potential for problems in the “normal” child.¹¹⁸ Whether these psychologists, psychiatrists, criminologists, sociologists, social workers, and educators believed that delinquency was caused by innate factors, or else was a product of compromised socialization and an immoral environment, they tended to all agree that, first, “The child psychopath has the

¹¹⁶ Hall, *Adolescence*, 347.

¹¹⁷ Criminality remains a more intractable, physiological problem in Hall’s biological racism, while mental pathology is not necessarily evidenced by bullying behavior. See, for instance, *Ibid.*, 358: “Some of the psychic rudimentary organs, which in degenerates so often develop into crime, are seen in the teasing and bullying so common among children...If children were to grow up with all their psychic propensities developed in due proportion from such a state, some of them would be insane, but most of them would be criminals.”

¹¹⁸ For an exhaustive history of this process, see Joseph M. Hawes, *Children Between the Wars: American Childhood, 1920-1940* (New York: Twayne, 1997).

embryonic personality traits of the adult psychopath” and that, second, “antisocial behavior has its onset, for the most part, in childhood, adolescence, or early adult life.”¹¹⁹ Delinquency, in other words, became a properly childlike or, increasingly, adolescent condition; moreover, its practical management for children as a group was understood to involve both the school and the juvenile court. The two institutions children emerged out of a common concern over the scientific governance of children.¹²⁰

By the 1950s the hegemony of ego psychology in the United States, combined with an ascendant sociological fascination with structures and systems, entailed a shift towards an environmental and cultural consensus around bad behavior in children. Fritz Redl and David Wineman’s psychoanalytic 1951 study of “children who hate” summarizes this consensus as the consequence of an underdeveloped superego in children, such that to compensate for the “decomposition of behavior controls” in antisocial kids, a proper “control system” had to be rebuilt in therapy, making up for the inadequacies of the child’s environment.¹²¹ In a decade during which deviant behavior

¹¹⁹ William McCord and Joan McCord, *Psychopathy and Delinquency* (New York: Grune and Stratton, 1956), 99; Aaron S. Rosanoff, Leva M. Handy and Isabel Rosanoff Plesset, “The Etiology of Child Behavior Difficulties, Juvenile Delinquency and Adult Criminality with Special Reference to their Occurrence in Twins,” *State of California Department of Institutions Psychiatric Monographs* No. 1 (January 1941): 183, emphasis in original removed. In the 1930s and 1940s, when the previous hegemony of psychobiological explanations of delinquency as an inherent defect had not yet given way to the primacy of environmental explanations, the Crime Commission of New York State, in *A Study of Problem Boys and their Brothers by the Sub-Commission on Causes and Effects of Crime* (Albany, NY: J.B. Lyon Company, 1929), summed up the middle-ground conclusion of experts thusly: “Delinquency...is a product of a thousand different influences” (12). For an academic version of this hybrid explanation, see William Healy and Augusta F. Bonner, *New Light on Delinquency and its Treatment* (New Haven: Yale, 1936).

¹²⁰ A useful Progressive Era document that condenses and maps these connections is the collection of essays edited by Jane Addams, originally delivered “at a joint commemoration of the twenty-fifth anniversary of the first Juvenile Court and of the fiftieth anniversary of the first Psychopathic Institute” (1): *The Child, The Clinic, and the Court* (New York: New York Republic Inc., 1925).

¹²¹ Fritz Redl and David Wineman, *Children Who Hate: The Disorganization and Breakdown of Behavior Controls* (Glencoe, IL: The Free Press, 1951), 26-27. For another classic monograph from this body of literature, see Lowell Julliard Carr, *Delinquency Control*, Revised Edition (New York: Harper, 1950), 482: “not only must the modern child *know* more, he must be a *better-adjusted personality* than was his grandfather if our new powers are not to add to human misery and suffering...the modern child must be *emotionally healthy*” (emphasis in original).

seemed to be on the rise, especially among youth, and figures like James Dean in *Rebel Without a Cause* (1955) served as a flashpoint for anxieties over the potential nihilism of adolescence, the association of children who bully with a simultaneously romanticized and threatening suburban, middle-class whiteness and homosocial masculinity began to cohere as a cultural trope.¹²² For girls, on the other hand, delinquency was almost always framed as a question of sexual impropriety, while for Black, Latino and immigrant children, especially, the stigma of criminality that attached to their antisocial behavior carried the full force of social death and imprisonment rather than the cultural humanism that dominated ego psychology.¹²³

Indeed, from the late nineteenth century onward, there is an increasingly distinct racialization of juvenile delinquency that serves to criminalize blackness and effectively preempt the childhoods of black children, making them appear like hardened criminals bearing full adult responsibility for their behavior, rather than innocent kids.¹²⁴

Researchers in the child sciences, political reformers, and educators on the other hand characterize white children, including many immigrants, by a potential for rehabilitation. From the late nineteenth century, the discourse of juvenile delinquency aimed to get children off the streets and out of factories, but envisioned school as a place of rehabilitation for troubled white children, whereas black children would be punished by the new juvenile court system. Within this matrix, the differentiation of white childhood

¹²² *Rebel Without a Cause* (dir. Nicholas Ray, 1955).

¹²³ See Michael A. Rembis, *Defining Deviance: Sex, Science and Delinquent Girls, 1890-1960* (Chicago: University of Illinois Press, 2011). For an example of the sociological fascination with different strata of deviance, see Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Touchstone, 1986).

¹²⁴ See Khalil Gibran Muhammad, "Incriminating Culture: The Limits of Racial Liberalism in the Progressive Era," in *The Condemnation of Blackness* (Cambridge: Harvard University Press, 2010), 88-146; Geoff K. Ward, *The Black Child Savers: Racial Democracy and Juvenile Justice* (Chicago: University of Chicago Press, 2012). On the racialization of childhood innocence, see Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: NYU Press, 2011).

is founded on specific historical modes of racialization, including, frequently, gender and sexuality, which serve as qualities that make white bodies vulnerable in order that they might be protected and rehabilitated by the state. The case of anti-gay bullying fits into this larger genealogy insofar as “queerness” here refers to a racially normative formation of whiteness that makes (white) gay children protectable by drawing on and intensifying the association of aggression and delinquency with blackness and brownness. This racialization of sexuality and childhood internal to the history of juvenile delinquency, a discourse born between the school and the juvenile court, reverberates through more recent applications of hate crime and anti-bullying legislation.

Within the history of the normal and the pathological child, bullying remained an unexceptional symptom of a larger anti-social problem seen as endemic to childhood but always opening onto the possibility for rehabilitation and rational education should the child be understood as deserving. Not until the 1980s and 1990s did bullying come to take on the very different urgency on which the contemporary proponents of its criminalization and prevention rely, as the question of what defined “safe schools” was raised by anxieties over school shootings like that at Columbine, and bullying began to be linked to the ascribed vulnerability of the self-identified gay child.

The First Generation of Gay Millennials

Before gay children incarnated a national problem of bullying their rapid rise in visibility in the 1990s was filtered through a related concept of sexualized vulnerability that drew on the model of hate-crimes legislation and lent itself to the political project of enacting anti-discrimination policies at the school-level. In this first decade of the emergence of

gay children bullying was not named as a particular or urgent problem, nor were school-aged peers the primary figures upon whom the focus of harm settled. Instead, the entire school system was indicted as a dangerous environment that could lead to academic failure, mental health problems, and the suicide of gay children and teens during a decade in which suicide was seen as an underappreciated public health problem for adolescents.¹²⁵ A legal structure also began to form during this decade through the lenses of hate crimes and anti-discrimination statutes in order to make gay children protectable in a way that prefaces the advent of bullying as a central concern of school safety.

Media interest in gay children and youth often explicitly cited the murder of Matthew Sheppard in 1998 as a catalyst. A first wave of ethnographic-style, journalistic exposés also offered as evidence a string of 1990s studies that reported a drop in the “median age” at which children were coming out of the closet, drifting down from college to high school and even middle school.¹²⁶ The narrative these media accounts work to establish is internally beset by the contradiction of the sexual child, the child queered by the sexual knowledge she is not supposed to possess by dint of being a child.¹²⁷ One strategy for managing this crisis of gay childhood as a precocious fall into knowledge is to draw on other developmental categories: “gay youth” or “adolescents” are often the preferred descriptors to incorporate puberty and the teenage years into childhood and avoid ascribing sexual subjectivity to children. This sexualized child

¹²⁵ U.S. Department of Health and Human Services, *The Surgeon General’s Call to Action to Prevent Suicide* (Washington, D.C., 1999). The Surgeon General’s “Call to Action” did not mention gay children, which was the result of political maneuvers on the part of certain members of Congress.

¹²⁶ See, for the social sciences version, Gilbert Hardt and Andrew Boxer, *Children of Horizons: How Gay and Lesbian Teens are Leading a New Way Out of the Closet* (Boston: Beacon Press, 1996). For the medico-psychological version, see Richard R. Troiden, “Homosexual Identity Development,” *Journal of Adolescent Health* 9, 2 (March 1988): 105-113.

¹²⁷ See Kathryn Bond Stockton, *The Queer Child, Or Growing Sideways in the Twentieth Century* (Durham: Duke University Press, 2009) and James Kincaid, *Erotic Innocence: The Culture of Child Molesting* (Durham: Duke University Press, 1998).

thereby produces at the same time an asexual sentimental figure, lonely and under attack from all sides. An article published on *Nerve.com* in 2000 offers that “These kids are sweet-faced, but they’re also, often literally, battle-scarred: foot soldiers of desire.” Mentions of self-harm and violent attacks from peers are countered with a tone of awe at the mere existence of gay children at all. “Conversations like these,” the journalist confesses at one point in discussing her online correspondence with gay children, “tend to give one a kind of futuristic feeling.”¹²⁸ Despite the constitutive confusion over what exactly defined a gay child in terms of age, identity, and sexual knowledge or experience,¹²⁹ the description of gay childhood as a form of vulnerability to harm is already present in this first cluster of media. In a 2000 New York Times article, “Lonely Gay Teen Seeking Same,” the author substantiates the importance of her subject matter with the evidence that “according to a 1996 study of the Seattle public schools, one in six gay teenagers *is beaten so badly during adolescence that he requires medical attention.*”¹³⁰ These millennial articles, however, do not use the term “bullying” to describe the forms this threat of violence takes, perhaps in order to distinguish it as homophobic violence from the presumed latent but ambiguously directed violence of school-aged children.

¹²⁸ Stacey D’Erasmus, “Getting Out Early,” *Nerve* September 7, 2000, <<http://www.nerve.com/content/getting-out-early>> (accessed February 5, 2014).

¹²⁹ The comments posted on D’Erasmus’s *Nerve* article are an illustrative mix of the two positions. One reader concerned about the sexual knowledge attributed to gay children posted: “Am I missing some point here, in celebration of some wharped [*sic*] sense of gay pride? These are CHILDREN having SEX, people. Gay or straight sex, it does not matter-where are their parents when they are on the computer with WHOMEVER, gay or straight, dyke or femme.” Another reader who doubted the very category of gay children posted: “Do these kids really exist? It’s a first for me to hear of a 13yo crossdressing boy with breasts. Let’s get real here...”

¹³⁰ Jennifer Egan, “Lonely Gay Teen Seeking Same,” *New York Times* December 10, 2000, <<http://www.nytimes.com/2000/12/10/magazine/lonely-gay-teen-seeking-same.html?pagewanted=all&src=pm>> (accessed February 5, 2014), emphasis added.

A 2001 Human Rights Watch report, “Hatred in the Hallways,” narrates the lives of gay children at school in the late 1990s through the proto-example of “Dylan,” whose example opens the report as “a story of deliberate indifference by school officials who disclaim any responsibility for protecting Dylan or ensuring his right to education; a story of escalating violence; a story of the failure of legal protection; and finally, the story of a young man denied an education because of his sexual orientation.”¹³¹ The report does not use the word bullying either, but rather sketches a pervasive environment of harassment, violence and intimidation. Name-calling is recast as a form of hate speech, as well as the economy of rumors and other psychological stressors that accompany the latent threat of being beaten up.¹³² The aggressors in the report are not limited to students, but explicitly include school officials and lawmakers. An anti-discrimination framework for sexual orientation and gender identity that had become the centerpiece of liberal LGBT organizing after Shepard’s murder is the centerpiece of the report’s recommendations, which it analogizes to liberal policies on race-based discrimination.¹³³

The HRW report, like the journalistic accounts of gay children that populate its footnotes, is a document of the post *Nabozny v. Podlensky* (1996) era. The key federal court case in a cluster of analogous decisions in other states, *Nabozny* established that school administrators had violated a gay student’s rights under the Equal Protection Clause by ignoring systemic incidents of violence and intimidation on campus, including sexual harassment and battery. The judgment held that Nabozny had experienced discrimination based on gender and sexual orientation when compared to girls at his

¹³¹ Human Rights Watch, *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools* (New York, Human Rights Watch: 2001), 2.

¹³² *Ibid.*, 42, 57.

¹³³ *Ibid.*, 3.

school who had been harassed by the same boys.¹³⁴ Nabozny was later awarded \$900,000 for his claims and subsequent decisions in other federal courts have since regularized this type of suit on the part of gay students.¹³⁵

A related cluster of cases in this legal genealogy simultaneously established the right of children to freedom of expression of sexual orientation at school, or the “right to be out” vaunted in media coverage from the period.¹³⁶ Although there is a long-standing principle in US law that schools have the purview to tightly control children’s expressive behavior and utterances—to a degree to which the state cannot approach with adults—a series of cases in the 1960s and 1970s dealing primarily with the Vietnam War first established the right of students to freedom of expression on campus, even if that expression advocated politically unpopular or illegal points of view.¹³⁷ The issue of “the right to be out” in the 1990s was primarily filtered through the controversy over Gay Straight Alliance (GSA) clubs on campus. In 1997, in *Gay Lesbian Bisexual Alliance v. Pryor*, an Alabama law that prohibited any allocation of state funds for the promotion of sodomy was invalidated in its application to disband a pro-gay student group. By 2003, with the increasing ubiquity of GSAs nationwide, federal courts in California, Utah and Kentucky had all consolidated the right of students to form “gay-positive” student groups.¹³⁸

¹³⁴ *Nabozny v. Podlesny*, 92 Federal 3d 446 (1996).

¹³⁵ Clifford J. Rosky, “No Promo Hetero: Children’s Right to Be Queer,” *Cardozo Law Review* (forthcoming), 24.

¹³⁶ See, for example, Chris Bull, “Ahead of the Class: Anthony Colin and His Peers Take on a School District for their Right to Be Out,” *The Advocate*, April 11, 2000, 24-27; Tracy Dell’Angela, Students Push for Policy Against Homophobia,” *The Chicago Tribune*, May 24, 2000, <http://articles.chicagotribune.com/2000-05-24/news/0005240128_1_student-group-anti-discrimination-policy-school-administrators>; John Cloud, “The Battle Over Gay Teens,” *TIME*, October 2, 2005, <<http://content.time.com/time/magazine/article/0,9171,1112856,00.html>>.

¹³⁷ Rosky, “No Promo Hetero,” 40, 11.

¹³⁸ *Ibid.*, 14-15.

Perhaps the most far-reaching reading of First Amendment case law to produce a protectable gay child at school is *Harper v. Poway* (2006). In this California district court judgment the gay child is both explicitly incarnated as a legal personality and given a broad mandate of protection from anti-gay bullying. *Harper* involved a straight student wearing a t-shirt to school reading “BE ASHAMED, OUR SCHOOL EMBRACED WHAT GOD HAS CONDEMNED” on the front and “HOMOSEXUALITY IS SHAMEFUL” on the back, which he intentionally wore in response to a LGBT organization-sponsored Day of Silence on campus in support of gay student visibility, tolerance and anti-bullying initiatives. Harper was forced to remove the shirt by school administrators but was not otherwise punished under the school’s anti-bullying policy.¹³⁹

In affirming but revising the district court’s upholding of the punishment on appeal, the Ninth Circuit employed a rarely used provision of the First Amendment reference case for schools, *Tinker v. Des Moines* (1969), which gives officials the authority to punish students for speech that “colli[des] with the rights of other students to be secure and to be let alone.”¹⁴⁰ What follows is an unprecedented (and interestingly, perhaps legally unnecessary, for the purposes of the case at hand) affirmation of the gay child as a distinct legal personality through the trope of vulnerability: “Public school students who may be injured by verbal assaults on the basis of a core identifying characteristic such as race, religion, *or sexual orientation*, have a right to be free from such attacks while on school campuses.” In deeming this a matter of “the right to be let alone,” the court adds that it “has been recognized by the Supreme Court, of course, as ‘the most comprehensive of rights and the right most valued by civilized men’.” “The

¹³⁹ *Harper v. Poway Unified School District 20*, 455 Federal 3d 1052 (2006).

¹⁴⁰ Cited in *Ibid.*, 7.

demeaning of young gay and lesbian students in a school environment,” the court declares, “is detrimental to not only their psychological health and well-being, but also to their educational development,” and the decision cites several law review articles and reports by liberal LGBT political organizations that correlate anti-gay bullying to depression, anxiety, and poor academic output, including the HRW report “Hatred In the Hallways.”¹⁴¹

This affirmation and definition of the gay child as protectable by analogy to discrimination against women and racial minorities incited a virulent repudiation in the dissenting opinion. Justice Reinhardt there writes that he finds in the reference case *Tinker* “ludicrously weak support for banning Harper’s t-shirt on the ground that it would ‘materially disrupt classwork’.” He also spends several pages protesting the court’s affirmation of the gay child on the grounds of “tolerance toward homosexuality and homosexual conduct,” which he contends was unfairly politicized by the GLSEN (Gay Lesbian and Straight Education Network)-sponsored Day of Silence. “Tolerance is a civic virtue,” concedes Reinhardt, “but not one practiced by all members of our society toward all others. This may be unfortunate, but it is a reality we must accept in a pluralistic society.” The dissent goes on to criticize the “sua sponte lawmaking” of the portion of the majority opinion that establishes harm done to the gay child by bullying, warning that although “What my colleagues say could be true,” the insufficient evidence “they provide [is] a few law review articles, a couple of press releases by advocacy groups and some pop psychology.” “The fundamental problem with the majority’s approach,” Reinhardt summarizes in a concession to the performativity of the majority

¹⁴¹ *Ibid.*, 8, emphasis added.

opinion, “is that it has no anchor anywhere in the record or in the law. It is entirely a judicial creation.”¹⁴²

Reinhardt then interestingly casts doubt on the legality of the school’s anti-bullying and harassment policy “on grounds of substantial overbreadth.” The Poway district policy, from 1997, is itself quoted at length into the dissent and Reinhardt appends to it a point-by-point explanation of his misgivings about the validity of its scope and reach. His central objects are that it is neither restricted to vulgar speech, as mandated by the Supreme Court decision *Fraser v. Bethel* (1986), nor to the substantial disruption of the school formula established by *Tinker*. “The types of speech that could be banned by the school authorities under the Poway High School hate policy are practically without limit,” determines Reinhardt. In his conclusion, he goes as far as to say that, as a result, “Perhaps *Tinker* should be overruled.” “But,” he adds, “that is a job for the Supreme Court, not for us.”¹⁴³ The subsequent and most recent affirmation of the gay child on extremely similar terms in two gay marriage cases dealing with Proposition 8 in California and the federal Defense Against Marriage Act, *Perry v. Schwarzenegger* (2011) and *Windsor v. United States* (2013), suggest that Reinhardt’s First Amendment critique has little traction against an ascendant politico-juridical consensus that the gay child is a vulnerable subject requiring state recognition and interventionist governance.¹⁴⁴ Indeed, the very concept of a gay child is as a result of this process intimately tied to a constitutive vulnerability to bullying, which in addition to civil rights challenges in

¹⁴² *Ibid.*, 21, 23, 26, 28.

¹⁴³ *Ibid.*, 28, 32, 34-35.

¹⁴⁴ On these two cases, see Cliff Rosky, “Is Queer Legal Theory for Kids? DOMA, Prop 8, and the Liberation of Children’s Queerness,” unpublished manuscript, 2014.

federal court has been codified through state-level anti-bullying statutes and the discourse of school safety.

Safe Schools and the Prison to School Pipeline

*"It's like the court system and the judges are bullying the kids."*¹⁴⁵

Georgia passed the first anti-bullying legislation at the state level in 1999 in response to the shooting at Columbine High School, linking anti-bullying initiatives to a new set of school safety technologies put together in the 1990s and 2000s.¹⁴⁶ The convergence of bullying and school safety led, among other things, to a joint Secret Service and Department of Education task force to establish threat assessment technologies to prevent future school shootings. While the Secret Service, having applied its methodology for profiling political assassins to school children, ultimately conceded that there is no meaningful profile of the school shooter, it simultaneously endorsed anti-bullying initiatives in its final report's recommendations, speculating that school shooters tend to have been harshly bullied.¹⁴⁷ Other than some similarly transitory speculation that Dylan Klebold and Eric Harris, the Columbine shooters, were secretly gay, however, the link of bullying to the new demand for heightened school safety and security remained separate

¹⁴⁵ Quoted in Michael Harris, Deborah Fowler, and Dustin Ryders, Complaint to U.S. Department of Justice, June 12, 2013, *Texas Appleseed*, available online, <http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=966&Itemid=>, 22.

¹⁴⁶ U.S. Department of Education, *Analysis of State Bullying Laws and Policies* (Washington, D.C., 2011), xi.

¹⁴⁷ United States Secret Service and U.S. Department of Education, *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States* (Washington, D.C., 2002), 19, 21.

from the question of the specific vulnerability of gay students until an unprecedented mediatization of gay teen suicide began in 2010.¹⁴⁸

Although school shootings catalyzed media attention and legislative and administrative reform in the 1990s, the hegemony of “safe school” discourse has its antecedents elsewhere. The War on Drugs that accompanied the ascendancy of neoliberal governance, which greatly accelerated incarceration rates in the United States to unprecedented historical and global levels, including the staggeringly disproportionate criminalization of Black and Latino populations, women, and minors, was coupled with the development of aggressive law enforcement practices typified by Mayor Rudolph Giuliani’s “zero tolerance” policy in New York City.¹⁴⁹ While the public education system was subject to the privatizing dictates of neoliberal state economics, increased investment in the presence of armed guards and law enforcement in schools was pursued as part of the adaptation of zero tolerance to school discipline policies. Indeed, it was under Giuliani that the NYPD took over the management of school safety in New York City, creating the School Safety Officer (SSO) unit that would be, were it free-standing,

¹⁴⁸ Dave Cullen, “The rumor that won’t go away,” *Salon*, April 24, 1999, available online, <<http://www.salon.com/1999/04/24/rumors/>>. Nevertheless, there is a group of social scientists who, seemingly in the tradition of G. Stanley Hall, are interested in using correlationist statistical data to make an associated between child bullies and future hardened criminals. See Laurie L. Ragatz, Ryan J. Anderson, William Fremouw, and Rebecca Schwartz, “Criminal Thinking Patterns, Aggression Styles, and the Psychopathic Traits of Late High School Bullies and Bully-Victims,” *Aggressive Behavior* 37 (2011): 145-160; and Gianluca Gini, “Associations Between Bullying Behavior, Psychosomatic Complaints, Emotional and Behavioural Problems,” *Journal of Paediatrics and Child Health* 44 (2008): 492-497.

¹⁴⁹ On zero tolerance, see Andrea McArdle and Tanya Ezren, eds., *Zero Tolerance: Quality of Life and the New Police Brutality* (New York: NYU Press, 2001). On the restructuring of institutions of governance and administration according to the logic of mass incarceration, including the school, see Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

the tenth largest police force in the United States, bigger than the existing forces of either Washington, D.C or Boston.¹⁵⁰

The contours of what is now more commonly referred to by scholars and activists as “the school to prison pipeline” combines zero tolerance policies with aggressive policing in order to criminalize an expansive field of quotidian behavior at school that, notably, has no adult criminal equivalents.¹⁵¹ This “pipeline” is not a ubiquitous phenomenon, but rather is highly stratified and uneven in its practice as a strategy of security and discipline. The zero tolerance framework for the pipeline’s organization draws its conceptual grounding from the “broken windows” philosophy of extending control and policing to the most minor of events.¹⁵² Zero tolerance in schools applies a blanket formula of severe punishment, regardless of the context of specific events, with the dual aim of removing disruptive children from schools and deterring their peers from anti-social behavior.¹⁵³ Its privileged strategies are out of school suspension, transfer to another school, expulsion, and referral to law enforcement. The arrest, prosecution or misdemeanor citation of children for otherwise noncriminal offenses relies on the increasing availability of police and juvenile courts to school officials. While these policies were ostensibly designed to target weapons, drugs, and violent crimes at school,

¹⁵⁰ New York Civil Liberties Union, *Criminalizing the Classroom: The Over-Policing of New York City Schools* (New York, 2007), 4.

¹⁵¹ The phrase is increasingly popular in the media. See Molly Knefel, “When High School Students Are Treated Like Prisoners,” *Rolling Stone*, September 12, 2013, <http://www.rollingstone.com/politics/news/when-high-school-students-are-treated-like-prisoners-20130912> (accessed February 6, 2014).

¹⁵² George L. Kelling and James Q. Wilson, “Broken Windows,” *Atlantic Monthly*, March 1, 1982, available online, <<http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>>.

¹⁵³ American Psychological Association, “Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations” (2006), 26.

they focus in their practice on banal and quotidian events, especially truancy, tardiness, and challenges to adult authority or complaints about abuse and unfair treatment.¹⁵⁴

One of the strongest differentiating variables of this security-driven system is the presence of metal detectors in schools in large cities. Although by any measure of the data on which education policy relies, all forms of nonfatal crime and violence at schools have been on a steady decline across the United States since statistics began to be gathered after Columbine, during that same period controlled access to school grounds, faculty ID badges, security cameras, and armed guards in school migrated from restricted to endemic phenomena.¹⁵⁵ Students in a 2013 Bureau of Justice national study only report metal detectors in one tenth of schools. The Bureau explains, however, that those schools are in fact the ones subject to a unique category of maximum security infrastructure and the ones that have been most devastated by decades of neoliberal disinvestment. Using poverty as a related variable, it found that 11% of so-called “high poverty schools”

¹⁵⁴ In Texas, which has handed out the largest amount of misdemeanors to school-aged children in recent years, a suit filed by civil rights organizations against several counties details the operation of one of these criminalizing strategies. In Dallas, school attendance forms are fed into a computerized e-filing system that automatically sends out criminal charges to children for the misdemeanor Failure to Attend School (FTAS) if they have been recorded absent enough times in one week. Children as young as twelve are routinely prosecuted criminally for truancy, without access to counsel or their parents to represent them in juvenile court, and are given sentences of community service, prohibitively high fines and court fees, and illegal threats of arrest or jail time. Black and Latino students and students with disabilities make up the massive majority of students put through the truancy court system—some 97%—and stories of children prosecuted for missing school for surgery or to work to feed their families abound in the case studies detailed in the suit. See Deborah Fowler, “Criminalization of Truancy in Texas: Prosecution of ‘Failure to Attend School’ in Adult Criminal Courts,” available online, <http://texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=934&Itemid=>. A similar practice of mass citation in Los Angeles that led to extensive pushback from community organizers includes officers posted at the entrances to schools waiting to give tickets with fines and summonses to students arriving a few minutes late in the morning. Black students in LA are ticketed at twice the rate of their demographic weight in the school district. See “Los Angeles school police still ticketing thousands of young students,” *The Center for Public Integrity*, December 27, 2012, available online, <<http://www.publicintegrity.org/2012/12/27/11984/los-angeles-school-police-still-ticketing-thousands-young-students>>.

¹⁵⁵ Simone Robers, Jana Kemp, and Jennifer Truman, *Indicators of School Crime and Safety: 2012* (NCES 2013-036/NCJ 241446), U.S. Department of Education, Bureau of Justice Statistics (Washington, D.C.: 2013), 11, 83.

conduct random metal detector searches of students, compared to a statistically insignificant 1% of so-called “low poverty schools.”¹⁵⁶ In New York City, the largest school district in the country, those schools assigned permanent metal detectors run by the SSO are disproportionately poor and nonwhite compared with the rest of the city. At the level of funding, a student attending a school with permanent metal detectors in New York City is allocated on average \$9,601 of funding for the school year, compared to the citywide average of \$11,282 per student. The majority of schools with permanent metal detectors also qualify for the designation of “drop-out factories,” which indicates that less than 60% of ninth graders make it to the twelfth grade.¹⁵⁷

These local strategies that accrue the momentum of a prison to school pipeline are not the unique cause of the population racism they execute through unevenly distributing life chances via funding and harsh policing and punishment, but rather a symptom and a technological strategy of the neoliberal American state’s administration of childhood. Nor are they entirely recent formations; a School Resource Officer Program designed to tailor policing to schools was first established in the 1950s in Flint, Michigan.¹⁵⁸ Social scientists interested in the correlation between school punishment and race have also consistently found since the first study of its kind in 1975 that black students tend to be punished at a rate two to three times higher than white students and that many of those punishments are for events that would not even be categorized as anti-social in white children.¹⁵⁹ Nevertheless, the use of zero tolerance style policies and targeted referral of students to the juvenile justice system for nonviolent behavior is a specific arrangement

¹⁵⁶ The Bureau of Justice defines school poverty levels according to the percentage of students who qualify for free lunches, *Ibid.*, 164.

¹⁵⁷ NYCLU, *Criminalizing the Classroom*, 20-22.

¹⁵⁸ APA, “Are Zero Tolerance Policies Effective in the Schools?” 74.

¹⁵⁹ A host of these studies are cited in *Ibid.*, 55, 74

resultant of the post Columbine era, the context in which some of the earliest state anti-bullying laws, such as Georgia's and New Jersey's, were enacted. Zero tolerance was also the reigning philosophy of school disciplinary policies when bullying became a newly urgent cultural, legal, and policy issue through the lens of gay children, rather than only school shootings, in 2010.¹⁶⁰

While the school to prison pipeline, as a metaphor, suggests a material flow of students designated undeserving of optimized life chances out of education and into incarceration via a pervasive criminalizing apparatus, bullying is in general approached differently as a question of the internal, administrative governance of schools rather than the wholesale expulsion or incarceration of 'bad' kids, which is less common (though it does happen, as will become clear). Bullying has also made gender and sexuality the privileged identity categories of its cultural narrative, with the figure of the vulnerable gay child, usually a boy, as its avatar, whereas the critics of the criminalization of schools after Columbine have accented race and disability as their privileged identitarian categories. For these reasons, discussions of bullying and the prison to school pipeline have tended to remain oppositional, with critics of the pipeline charging that anti-gay bullying policies are complicit with racialized logics of punishment.

If bullying was seen as a threat after Columbine in so far as it made victimized students more likely to retaliate with guns, its treatment mutated by 2010 into a focus on the victim who needs a vigorous intervention by the state for protection, echoing the eroticized vulnerability of journalistic accounts of gay millenials.¹⁶¹ Bullying is not,

¹⁶⁰ School shootings continue to make national headlines, to be sure, but their narration is no longer connected to the question of bullying as it was in the case of Columbine.

¹⁶¹ As an index of the shift in this national fantasy of threat and violence at schools, after the mass shooting at Newtown, Connecticut in 2012, four civil rights groups published a report urging not to respond with

contrary to Bazelon's assertion, an eternal problem that had yet to be recognized until the 2000s. Rather, it is a specifically coded concern about a shifting definition of violence and juvenile delinquency that demands recognition based on the growing visibility of LGBT students as vulnerable populations after a decade of anti-discrimination litigation and the media coverage of child suicides. This visibility of gay children as the victims of bullying grew, however, with little reference to the already long-standing unevenness of the distribution of life chances by race and class through education in the US. The demand for legislative punishment of bullying that picked up in 2010 was made not only by LGBT advocacy groups already invested in the vulnerability of gay children since the 1990s, such as GLSEN, or new culturally-oriented initiatives like *It Gets Better*. It was also made by groups formed *only* to demand statutory, criminal codification of bullying, like Bully Police USA.¹⁶² Describing itself as "a watch-dog organization" and maintaining a website that gives state anti-bullying laws grades ranging from "F" to "A++," Bully Police USA describes the bully as a "Small scale Terrorist" and publicizes literature on "bullycide," which contends that bullying is a direct cause of child suicide.¹⁶³

increased policing of schools. See Advancement Project, Alliance for Educational Justice, Dignity in Schools Campaign, and NAACP League Defense and Educational Fund, Inc., *Police in Schools are Not the Answer to the Newtown Shooting*, January 2, 2013, <http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf> (accessed February 6, 2014).

¹⁶² The Gay Lesbian Straight Education Network (GLSEN), which has been gathering data on gay children in schools since the 1990s, explicitly advocated the passage of anti-bullying legislation, for example, in California in 2011. See Jens Erik Gould, "Seth's Law: Can a Bullied Boy Leave California a Legal Legacy?" *TIME*, Friday, August 5, 2011, available online, <<http://content.time.com/time/nation/article/0,8599,2086521,00.html>>. Executive director Eliza Byard is quoted as saying "Legislation makes that responsibility very clear and provides critical guidance as to how to make a dent in the problem [of anti-gay bullying]."

¹⁶³ "Homepage," *Bully Police USA*, available online, <www.bullypolice.org>. In a less inflammatory register, see the report by the non-profit group Fight Crimes: Invest in Kids, *Bullying Prevention Is Crime Prevention* (Washington, D.C., 2003).

“Two Wrongs Don’t Make a Right,” a 2012 report commissioned by the GSA Network, is one of the few policy-oriented attempts to map the complicity between zero tolerance policies, the mass policing of schools, and anti-bullying initiatives. The report alleges that anti-bullying policies are inflaming the prison to school pipeline in their punitive measures and that “instead of zero tolerance being a solution to bullying, they are instead both symptoms of the same problem,” an inattention to the deteriorating environment of American education.¹⁶⁴ Interestingly, the report frames zero tolerance itself as a kind of bullying carried out by adults against misunderstood children of color and LGBT students: “Both produce severe psychological, emotional, and academic trauma in their victims. Both create hostile, alienating school environments that affect other students and staff alike. Both have dramatic systemic effects, including worsening academic achievement and decreasing graduating rates.”¹⁶⁵ Like the parent of the student quoted in a civil rights suit against Dallas County School District, who observes in the epigraph to this section that “It’s like the court system and the judges are bullying the kids,” the GSA Network underlines the continuity between the post-Columbine disciplinary regime and the psychological impact of bullying between children.

Still, the report’s allegation that “a massive number of children and youth are at a greater risk of entering the School-to-Prison Pipeline as a result of this [anti-bullying] policymaking trend” also misunderstands the internalization of opposition to punishment in the school system by its twin logic, anti-bullying prevention. The report’s universalizing definition of students also maintains the separateness of the interests of gay students and students of color by opposing anti-bullying initiatives and the victims of

¹⁶⁴ Advancement Project, Alliance for Educational Justice, and Gay Straight Alliance Network, *Two Wrongs Don’t Make a Right: Why Zero Tolerance is Not the Solution to Bullying* (June 2012), 11.

¹⁶⁵ *Ibid.*, 2.

zero tolerance policies, which are in fact not universally distributed across all schools. In reality, most state anti-bullying initiatives rely on distributing their focus between schools already targeted for security and safety initiatives since the 1990s, and a mental health driven narrative for whiter schools with a higher average income, transforming punishment into prevention. Unsurprisingly, this differential practice restages the longstanding racialization of juvenile delinquency that cast white and immigrant children fit for rehabilitation through education beginning in the nineteenth century, while black and brown children were targeted for harsher punishment through the juvenile court system. The ascribed erotic vulnerability of gay children, combined with the school security apparatus of the post-Columbine era, shapes the relationship of punishment to prevention.

The Anti-Bullying Bill of Rights and Bullying Prevention Programs

The American Psychological Association (APA) appointed a task force in the early 2000s to study zero tolerance policies in schools and evaluate whether or not they met their own criteria of success, as well as whether or not they were efficacious according to the APA's model of child development. In its 2006 report the task force concludes that zero tolerance policies have failed across the board to produce safer schools and expresses some of the concerns of the GSA Network that students of color and students with disabilities have been criminalized by the system. In its recommendations, which draw on a massive psychological literature from its membership, the APA suggests that a move from a punishment to a prevention model, or a move from a primarily disciplinary to a primarily medicalized framework of preemptive behavioral management, represents the

cutting edge for the administration of students at school. This new mental health driven approach would operate through a scientific stratification of student bodies into three populations targeted for separate modes of graduated governance: “*bullying prevention*,” a “primary” prevention strategy “targeted at all students”; “*threat assessment*,” a “secondary” strategy that is “targeted at those students who may be at-risk for violence or disruption”; and “*restorative justice*,” the “tertiary” strategy to “target those students who have already engaged in disruptive or violent behavior.”¹⁶⁶ What the APA report accents that the GSA Network report does not is the population-level differentiation of students according to their designated risk for anti-social behavior. In this graduated model that transforms reactionary punishment into prevention and ongoing management, bullying prevention is the only “universal” strategy, while the unmarked racialized technologies of threat assessment and restorative justice are meant for specific populations of students whose behavior is coded as predatory in relation to qualities of vulnerability identified in potential victims, like sexuality.

What neither the partisans of anti-bullying initiatives nor its liberal critics address is this broader supplement of individualized punishment by population level prevention technologies, both of which are contained within a single system of administration. This is also where the contradictions between legislation that addresses itself to a universalized, unmarked “child,” the identitarian injury framework of mainstream LGBT activist, and the unmarked racialization of whole populations of children as “at risk” for forms of anti-social behavior become pronounced. The APA’s employment of the language of “at-risk” children works both to identify potential victimization, as in the

¹⁶⁶ APA, “Are Zero Tolerance Policies Effective in the Schools?” 11, emphasis in original.

case of queer sexuality, and to index potential criminality in the racialization of black and brown children as delinquent.

The current New Jersey anti-bullying law is reflective of the interdependence of punishment and prevention, the result of a contemporaneous, accumulative legislative process extending over a decade. The initial statute, passed in 2002 in the aftermath of both Columbine and local mediatized incidents of bullying, enumerated specific populations identifiable as at risk for bullying and mandated a system for their protection primarily through normalizing school-level anti-bullying policies. In 2007, this act was amended to explicitly introduce provisions pertaining to cyberbullying. Finally, in the wake of the suicide of Tyler Clementi at Rutgers University in 2010 the act was heavily re-written as what came to be called *The Anti-Bullying Bill of Rights*. Its implementation began in the 2012-2013 school year.¹⁶⁷

The anti-bullying law authorizes itself in its legislative preamble as a corrective statute, a rational reaction to an epidemic of bullying whose increasingly pervasive facticity is justified by available social scientific data. Echoing the APA's neoliberal language of effectiveness and scientifically informed policy, it declares that "Fiscal responsibility requires New Jersey to take a smarter, clearer approach to fight school bullying by ensuring that existing resources are better managed and used to make schools safer."¹⁶⁸ The law's primary procedures are standardizing protocols for investigation, reporting, and punishment of bullying; data collection and analysis; bureaucratic reporting and assessment; and pedagogical initiatives for both children and adults.¹⁶⁹ These procedures are intensified, as surfaces of reciprocal contact between bodies and the

¹⁶⁷ *Anti-Bullying Bill of Rights Act* (2010), Public Law 214, A3466, N.J.S.A. 18A.

¹⁶⁸ *Anti-Bullying Bill of Rights Act*, 1, emphasis added.

¹⁶⁹ *Ibid.*, 5.

institutions of the state in public education and law enforcement, by their recursive extension: nearly every aspect of the law's infrastructure is meant to be applied multiple times, first locally in school classrooms, on school property, at school-sponsored events, and then in principals' offices, school district and board meetings, culminating in state-wide institutions, including the legislature itself. The anti-bullying apparatus radiates from and feeds back upon each node as a network, perpetually increasing the sources of information available on bullying and involving the maximum amount of adults and children possible.

The law defines bullying in some of the broadest terms codified to date in the United States:¹⁷⁰

'Harassment, intimidation or bullying' means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by an actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes places on school property, at any school-sponsored function, on a school bus, or off school grounds...that substantially disrupts or interferes with the orderly operation of the school or the rights of other students.¹⁷¹

The expansiveness of this definition incorporates the fault lines of contemporary American anti-bullying laws. This definition's modeling on harassment law is typical of the majority of similar state laws, which, while not explicitly criminal, mimic the logic and language of assault statutes.¹⁷² For that reason, bullying requires a quasi-criminal intention on the part of its perpetrator (a standard that does not apply in zero tolerance

¹⁷⁰ The definitions in state laws of what constitutes bullying vary so widely that it is difficult to treat them in broad strokes; nevertheless, this is one of the longest statutory definitions of bullying. The U.S. Department of Education's *Analysis of State Bullying Law and Policies* report navigates this problem of complexity and variety by establishing 11 categories through which to consider such laws and New Jersey's is one of the few that falls under each of them.

¹⁷¹ *Anti-Bullying Bill of Rights Act*, 7.

¹⁷² U.S. Department of Education, *Analysis of State Bullying Law and Policies*, 15.

disciplinary policies). State-level laws also tend to require a series of repeated incidents to take place to constitute bullying, but New Jersey encompasses both a series and a single incident. In turn, this statute locates its legal authority in the state's long-established jurisdiction over the bodies of students, including bullying that takes place off-campus, which makes it atypical.¹⁷³ These components are all ultimately reliant on the final aspect of bullying's definition, according to which it must substantially disrupt the school's normal order of things, the formula established by the Supreme Court in *Tinker*.

A 2011 Department of Education study ranked New Jersey's law among the top tier of most expansively defined and far reaching statutes, with one of the largest and most explicitly outlined implementation programs.¹⁷⁴ That same report notes that explicit criminalization of bullying is relatively rare and tends to occur instead indirectly through statutes that mandate the reporting of incidences of bullying to law enforcement, who can then choose to pursue them or not through other criminal means. The exception to this consensus is cyberbullying, which is often explicitly criminalized at the state level (as the next chapter explores).¹⁷⁵ According to Brian Sinclair, the Bergen County Prosecution Office's Chief of Computer Crimes Unit, the criminal categories available to pursue

¹⁷³ According to the Department of Education, *Ibid.*, as of 2011 only 13 state laws extend the scope of anti-bullying initiatives off campus (23). The next chapter explores this question in much greater detail through the problematic status of cyberbullying's "location."

¹⁷⁴ The report ranks laws based on a list of variables it extracted from all of the laws it studied, calculating a score, the upper threshold of which is 32 points. The New Jersey law receives a score of 30/32. U.S. Department of Education, *Analysis of State Bullying Law and Policies*, 44. The broad scope of the law is also a reason why it was originally declared in court an unfunded mandate and had to have a \$1 million fund passed by the legislature before it could be implemented. See Jeanette Rundquist, "N.J. will need money to fund new anti-bullying law," *The Star Ledger*, January 27, 2012, available online, <http://www.nj.com/news/index.ssf/2012/01/nj_will_need_money_to_fund_new.html>. And bullypolice.org gives the New Jersey law an "A++", its highest possible grade.

¹⁷⁵ U.S. Department of Education, *Analysis of State Bullying Law and Policies*, 28. As I will explore in the next chapter, this emergent criminalization of cyberbullying remains a contested tendency. In New Hampshire, for example, the state legislature was forced to repeal cyberbullying as a criminal offense after it was found in court to have overstepped the jurisdiction of schools (24).

cases of bullying in New Jersey, cyber and otherwise, are terroristic threats, harassment, invasion of privacy, and stalking.¹⁷⁶ Only one state, Virginia, has considered a bill that would have made “bullying” a separate criminal offense carrying a maximum prison sentence of one year, a \$250 fine, and would have given victims the right to sue their bullies, but it was not adopted.¹⁷⁷

New Jersey’s anti-bullying statute was heavily rewritten after the death of Clementi at Rutgers University. However, had it been in place in its current form in 2010 it would not have provided for a different prosecutorial strategy from the one taken against Ravi, resulting in his indictment in 2012. Rather, Ravi’s case is indicative of how the explicit criminalization of bullying, when it takes place, operates through the adaptation of pre-existing criminal structures like those cited by Sinclair, rather than the use of anti-bullying school policies, which moreover do not extend jurisdiction to institutions of higher education like Rutgers. That the definition of bullying in New Jersey’s law is modeled on a harassment statute is important, but does not unilaterally structure its operation identically to criminal law. The statute has nevertheless been met by criticism since its implementation, with media reports of very young children being suspended or otherwise disciplined for nonviolent incidents, especially name-calling, raising the ire of the parents of children now classifiable as bullies and subject to legislative guidelines instead of the discretion of teachers and school officials.¹⁷⁸

¹⁷⁶ Brian Sinclair, “Prosecuting & Defending an Alleged Cyberbully: The Role of the Criminal Justice System in a Networked Age of Bullying,” *Cyberbullying in America: A Discussion of Liability, Policy and Progress*, Rutgers University Law School, Newark, NJ, April 24, 2013.

¹⁷⁷ *Ibid.*, 28.

¹⁷⁸ See, for example, Jeanette Rundquist, “N.J. Education Commissioner Upholds Decisions to Discipline School Bullies,” *The Star-Ledger*, February 1, 2013, available online, http://www.nj.com/news/index.ssf/2013/02/anti-bullying_law_upheld_by_sc.html.

The incipient sense that the language of the law and the systems it modifies at the school-level are ill-suited to the quotidian circumstances of the children it now seeks out is echoed by the mental health and data driven chorus calling for a departure from punishment and a focus instead on bullying prevention. When social scientists at Washington State University reviewed that state's anti-bullying law in 2008, they argued that it had essentially done nothing according to the terms of its own mandate: the data gathered by the state through student surveys showed no drop in incidences of bullying since the full implementation of the law.¹⁷⁹ Worse, students seemed to be either actively ignoring or willfully rejecting the criteria of bullying as determined by its purported experts. The most common reason high school students in Washington reported being bullied in state-mandated surveys was "Other," sidestepping the range of identitarian categories offered to them as the expected source of injury: disability, religion, race, sexual orientation, and gender.¹⁸⁰

The gap between the procedures of punishment and prevention, and quotidian school environments, is rarely addressed by policy makers or social scientists as a question of racialization, given that bullying prevention is styled, following the APA model, as a universal program that applies to all students. In social scientific and psychological literature on bullying, race is introduced as a vector of potential victimization, without adding the question of how anti-bullying initiatives intervene into the pre-existing racialization of American education and juvenile delinquency.¹⁸¹

¹⁷⁹ Kyra Kester and Candiya Mann, *Bullying in Washington Schools: Update 2008* (Seattle: Washington State University, 2008) 1.

¹⁸⁰ *Ibid.*, 31.

¹⁸¹ Melissa Fleschler Peskin, Susan R. Tortolero, and Christine M. Markham, "Bullying and Victimization Among Black and Hispanic Adolescents," *Adolescence* 41, 163 (Fall 2006): 467-484; Aubrey L. Spriggs, Ronald J. Iannotti, Tonja R. Nansel, and Denise Haynie, "Adolescent Bullying Involvement and Perceived

Opponents of the criminalization of bullying assume that a shift to prevention will both address anti-gay bullying and eliminate complicity with the prison to school pipeline.

Yet, both punishment and prevention fall under a single system of anti-bullying administration, and they are mutually dependent. For instance, Bazelon recounts in *Sticks and Stones* one Maryland middle school's implementation during the 2004-2005 school year of the Positive Behavioral Intervention and Supports (PBIS) program. Created by George Sugai, professor at the University of Oregon, PBIS has been lauded as compiling the best available practices for bullying prevention without harsh punishment. Yet the principal's first act under the new program, which works by establishing a data-benchmark of bullying statistics and uses periodic assessments to track progress, was the mass expulsion of fifty-two students deemed too disruptive, as well as the firing of all teachers that he felt did not support his new policy. Bazelon brushes off the mass firings and expulsions by rationalizing that "Old Middle North had to have a purge of sorts before it could remake itself." Yet the entanglement of a zero tolerance style expulsion tactic within a revered bullying prevention program buttressed by humanist psychological frameworks suggests that Old Middle North, a low-income school in a deindustrialized suburb with a large population of students of color, reflects the containment of punishment and prevention within a single system that works on racialized assumptions about the student body.¹⁸²

Two studies from 2007 unwittingly illustrate more clearly at the population level through their data sets that the racialization of anti-bullying initiatives precisely works so that the liberal opposition to punishment and its replacement with prevention

Family, Peer and School Relations: Commonalities and Differences Across Race/Ethnicity," *Journal of Adolescent Health* 41 (2007): 283-293.

¹⁸² Bazelon, *Sticks and Stones*, 237-238.

accomplishes only a change in tactics, not coordinated effects. Both studies were undertaken to measure the effectiveness of the Olweus Bullying Prevention Program (BPP), derived from the celebrated work of Norwegian educator Dan Olweus, whose program is for sale in the United States, providing a ready-made system for bringing bullying data down.¹⁸³ Olweus became famous in the 1990s for his purported 50% reduction of bullying in test schools in Norway, although subsequent studies failed to yield numbers even half as good.¹⁸⁴ Nevertheless, over 4000 schools in the United States have paid to implement the BPP since the 1990s.¹⁸⁵ In a study run out of the Child Health Institute at the University of Washington, social scientists determined that in Seattle the implementation of the Olweus BPP resulted in a statistical decrease in reporting of incidences of bullying *by white students only*. Black and Asian students, who made up large proportions of the student body, did not report any decrease in bullying, nor that they felt safer at school. The authors of the study appear puzzled by this outcome, noting both that the Olweus program is not designed to focus on racialization, and conceding that their work “raises the question of the overlap between racism and bullying.”¹⁸⁶ Nevertheless, in their minds this overlap has only to do with students of color as potential victims of bullying, but does not ask also whether the Olweus system alienated students of color through the threat assessments built into its prevention protocols, which aim to produce docile students who police one another.

¹⁸³ Bazelon, for one, exalts Olweus in a chapter in *Sticks and Stones* in which she also reviews some of the implementation of his program in the United States, 199-227.

¹⁸⁴ Dan Olweus, “Bully/Victim Problems in School: Knowledge Base and an Effective Intervention Program,” *Irish Journal of Psychology* 18, 2 (1997): 170-190; Dan Olweus, “A Profile of Bullying at School,” *Educational Leadership* 60, 6 (2013): 12.

¹⁸⁵ Bazelon, *Sticks and Stones*, 210.

¹⁸⁶ Nerissa S. Bauer, Paula Lozano, and Frederick P. Rivara, “The Effectiveness of the Olweus Bullying Prevention Program in Public Middle Schools: A Controlled Trial,” *Journal of Adolescent Health* 40 (2007): 266-272.

More dramatic is the second study, first presented at the 2007 National Conference on Safe Schools, which examined the BPP's implementation in 13 "inner city schools" (a term left undefined by the author) in Pennsylvania. Sally Black, the article's author, withholds any specific information on the racialized or class demographics of the schools that participated in the study, other than a cryptic reference to their being made up of a "minority population." Black suggests that the relative ineffectiveness of BPP at these schools was a result of "low fidelity" to the program, but defines low fidelity through the vague language of "high staff turnover" and "competing priorities."¹⁸⁷ An incredible description follows of the one school in which incidences of bullying dramatically decreased—the one school that *abandoned* the BPP midway through the study:

Evaluations in the real world of urban schools rarely provide textbook results. For example, School Six, the school that dropped out of the program had a 69 percent reduction in serious incidents at the end of the project period despite the fact that they no longer offered the BPP. The reason for the reduction was that the subsidized housing development adjacent to the school was demolished and the school's low income, minority population was displaced throughout other areas of the city. New, moderate-income houses were built on the site. The school population changed dramatically between baseline and 2005/06. Many inner city schools suffer from high student, staff, and administrative turnover, inexperienced teachers, and lack of resources. It is difficult to establish school norms of pro-social behavior in transient populations.¹⁸⁸

The biggest reduction in bullying data was accomplished by the razing of public housing and the displacement of a student population of color, replacing them with wealthier, presumably whiter students, the only population that reported benefits from bullying prevention strategies in the study of Seattle schools. What these two studies highlight is

¹⁸⁷ Sally Black, "Evaluation of the Olweus Bullying Prevention Program: How the Program Can Work for Inner City Youth," *Proceedings of Persistently Safe Schools: The 2007 National Conference on Safe Schools* (2007): 25.

¹⁸⁸ *Ibid.*, 33.

that the seemingly universal implementation of anti-bullying prevention as an alternative to zero tolerance style punishment is as complicit as the latter with a population racism programmed into logic of prevention, management, and administration. The continued framing and focus on bullying as anchored in representational forms of injury along discrete axes of identity, effectively keeping sexuality and race separate, overrides the researchers' ability to digest their unintended data.

In the national data gathered annually on school violence, bullying, now associated with gay students, is maintained as a separate category from other forms of violence that are associated with students of color. In fact, "violence" now means anything that is *not* bullying under the rubric of the Center for Disease Control: principally drug and alcohol offenses, theft, fights, gang activity, and weapons offenses. According to the Bureaus of Justice's report on the 2009-10 school year, more than half of the "crime" or "violence" on school campus was simple theft. Bullying was reported by 23% of schools and by 28% of students, roughly consistent with the 1/3 figure given by most social scientific studies.¹⁸⁹

The population level divergences again emerge infrastructurally out of these data sets. First, the Bureau rejects the perception that "urban" schools are somehow more violent overall than suburban or rural schools, concluding that "No measurable differences were observed by urbanicity in 200 in the prevalence of victimization."¹⁹⁰ Nevertheless, "urban" schools did report much higher rates of disciplinary events leading to punishments like out of school suspension.¹⁹¹ At the same time, bullying is reported uniformly across urban, suburban and rural school districts, both in terms of its

¹⁸⁹ Robers, Kemp, and Truman, *Indicators of School Crime and Safety: 2012*, v.

¹⁹⁰ *Ibid.*, 14.

¹⁹¹ *Ibid.*, 32-33.

prevalence and its declared priority to administrative policy. The regional difference turns out to be not the attention given to bullying, but the additional demands of the non-bullying forms of “violence” characteristic of the school to prison pipeline that are present in those schools already targeted by zero tolerance policies and aggressive policing. Bullying prevention and punishment are simply another drain on resources at these discipline-oriented schools. As if predicted by the APA report’s graduated system of primary, secondary, and tertiary strategies, anti-bullying initiatives are relatively universal, but have very different effects when implemented in schools that are not subject to the school to prison pipeline—mostly suburban, majority white schools—compared with those that are subject to criminalizing security systems. The presumed victim of bullying is thereby left implicitly as the white gay child, while students implicated in “violence” are left implicitly students of color. The difference between punishment and prevention is one of organization and arrangement, not kind.

Conclusion: From Subject to Population, From Figuration to Data-Set

Rather than taking place only at the level of the identitarian injury, as the anxiety over anti-gay bullying imagines, the shaping of the gay child through the administration of bullying is also taking place at the population level through the data sets of programs like Olweus’ BPP and Sugai’s PBIS, conjoining punishment and prevention. Rather than race and sexuality remaining separate identitarian experiences in this process, they are entangled in the production of gay childhood as a protectable and valuable category through the ongoing racialization of American education and juvenile delinquency. While bullying prevention is being implemented relatively universally, it is being done so in a

highly uneven situation wherein certain schools and their student bodies are already targeted for disciplinary measures, criminalization, and systemic underfunding. This distribution of life capacities through education is a form of biopolitics in which state racism is internally constitutive of a system of valorization and enhancement of specific of populations children, now including the vulnerable gay child.¹⁹² Sexuality, here defined as a form of vulnerable queerness in childhood, is not extrinsic to this population racism, but rather bolsters its differentiating calculus, the administrative logic that determines which bodies are to be effectively protected and enhanced, and which bodies are to be disciplined and exhausted in order to sustain the education system.

This racialization of sexuality is problematic, moreover, since it perpetuates the extremely reductive idea that gay children are white and victims of bullying, while children of color are straight and aggressive.¹⁹³ The Manichean opposability of the two figures and the reduction of race and sexuality to separate, representational qualities of individual bodies misses the material weight of the arrangement of bullying punishment and prevention in schools, drawing on implicit genealogies that restage tensions from the Progressive Era's preoccupation with the child. Whether anti-gay bullying is presented as an expression of the fantasized exceptional homophobia of children of color, as the

¹⁹² Rey Chow, in *The Protestant Ethnic and the Spirit of Capitalism* (New York: Columbia University Press, 2002) helpfully glosses this understanding of the internality of racism to the valorization of life through practices of enhancement (in which can be grouped education) in reading Michel Foucault's lectures on biopolitics: "If Foucault thereby shows how murder (a negative act) can be legitimated by a valorization of life (a positive idea), his logic may, I think, also be turned around to demonstrate that the valorization of life itself, by the necessity of practice, can give rise to processes of discrimination, hatred, and, in some extreme cases, extermination...How, in other words, is one to account for an environment in which one may be allowed to stay alive, may be told that all is equal, may be given access to many things, only then to realize that an insidious pattern of discrimination continues systematically to reduce one to a marginal position vis-à-vis mainstream society?...The schism in question is not simply a matter of lies versus truths, or false ideology versus lived reality. It is rather, if we follow Foucault's thinking, symptomatic of the generative functioning of biopower itself" (9-10).

¹⁹³ This is interesting insofar as the partisans of anti-bullying initiatives often analogize sexuality to race to justify their narrative of vulnerability; yet there is almost no concomitant discussion of bullying as one form of racism that children of color endure.

partisans of zero tolerance would have it, or America is figured as a bully society because of pathologically violent social norms that require a psychological, humanist prevention model, as its critics charge, the overarching naturalness of governing children is left unexamined. The naturalness of children as governable creatures, in turn, founds a system that functions through racialization and erotic notions of vulnerability and innocence. Whoever is to blame for bullying and whatever its effects on gay children and children of color, the common chorus in the law, the classroom, and in the cultural discourse on bullying is that children's actions must not exceed adult authority. In the case of cyberbullying, the anxiety over the unruliness of the child online has begun to threaten this consensus even more dramatically.

CHAPTER TWO

The Unruliness of the Cyberbully: Governing the Sexual Child Online

[T]he child's sexual body serves as the unit, so to speak, of exchange [between the family and the state]. Parents are told: There is something in the child's body that belongs imprescriptibly to you and that you will never have to give up because it will never abandon you: their sexuality. The child's sexual body belongs, and will always belong, to the family space, and no one else will ever have any power over or claim on this body. However, when we create for you this field of power so total and complete, we ask you to give us in return your children's bodies, or, if you prefer, their abilities.

—Michel Foucault, *Abnormal*

Vermont's Bullying Prevention Law, adopted in 2004, was understood by its proponents as a commemorative piece of legislation. Nicknamed "Ryan's law," it codified a series of standard anti-bullying structures into the administration of Vermont's public education system in the name of Ryan Patrick Halligan, a thirteen year old who completed suicide one year earlier. Ryan's father, John Halligan, was the public face of the bill's expedited passage through the legislature. In a narrative crafted for a contemporaneous public speaking junket, John recounts how Ryan had been bullied from a young age, first after he was placed in a special education class in elementary school. Although by the seventh grade Ryan had been reassigned from special education his bullies persisted, eventually focusing on gay rumors that became pernicious enough that Ryan asked his parents to be home-schooled, a request they refused. Not long after, Ryan completed suicide in his bedroom at home.¹⁹⁴

Cyberbullying, as is often the case in such adult detective narratives, comes out through a retrospective, dramatic revelation. John explains that in the aftermath of Ryan's death, as he forensically combed his son's bedroom, he logged onto Ryan's

¹⁹⁴ John Halligan, "Laws," *Ryan's Story*, <http://www.ryanpatrickhalligan.org/laws/laws.htm> (accessed February 1, 2014). There are multiple version of this narrative in the media as related by Halligan, who has undertaken a national circuit of public speaking on Ryan's suicide since 2003. My reading of the narrative in this section is take from Kevin O'Connor, "In Grief, a Father Goes Hunting for Answers," *Rutland Herald*, April 5, 2010, <http://www.rutlandherald.com/article/20100405/NEWS/100409979/0/NEWS01> (accessed February 1, 2014).

computer with the password that, as part of the family's established Internet rules, was shared between them. Signing into Ryan's Instant Messaging account to chat with his school friends, John tells us that he there discovered what he considered the truth of his son's death: that the gay rumors had been escalating for months, prompting messages from peers that were "too graphic to repeat." At the same time, John tells us that Ryan had been chatting online with a girl on whom he had a crush, but who had rejected his confession of feelings the day before his suicide, telling him she thought he was a "loser" that she had been "just joking" in their online flirtation. According to the police, Ryan had said to another classmate the same day, "It's girls like you who make me want to kill myself."¹⁹⁵

Ryan's law expanded the definition of "harassment" between students to include "an act conducted by electronic means," making Vermont's the first anti-cyberbullying law in the country.¹⁹⁶ The law's prompt by John's lobbying over Ryan's death, revolving in turn around the vulnerability of his sexuality within the network, raises a larger question about the ostensible unruliness of children online. The panic over cyberbullying, which, much like Ryan's case, is often in part a sexual panic, combines a technological and sexual anxiety through the common breakdown in the normal pedagogical relationship between adults and children. For John, Ryan's death is the product of two interrelated lacks of knowledge: his lack of technical knowledge of children's digital

¹⁹⁵ *Ibid.*

¹⁹⁶ Vermont General Assembly, *No. 117 An Act Relating to Bullying Prevention Policies*, May 18, 2004, <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2004/acts/ACT117.HTM> (accessed February 1, 2014). Vermont General Assembly, "Title 16: Education, Chapter 1: Administration Generally, Sub-Chapter 1: General Provisions," *The Vermont Statutes Online*, <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=16&Chapter=001&Section=00011> (accessed February 1, 2014), emphasis added. By "first," I mean that the Vermont law specifically focused on bullying that takes place through the Internet, digital and social media, rather than other statutes (such as invasion of privacy, harassment, or defamation) that have been invoked by proxy to try to address cyberbullying. These differences are taken up in detail in this chapter.

social world and his lack of sexual knowledge about the gay rumors surrounding his son. In both cases, the normal pedagogical relation in which the adult assumes the knowing position and transmits knowledge to the child is damaged or even inverted, with the child suffering harm or even death by knowing more than the adult.¹⁹⁷ In part, Ryan's law aims to repair and restore a normal pedagogical relationship between children and adults by making children criminally responsible to adults for cyberbullying.

If Ryan's law takes on a discourse of the sexual child in order to regain a sense of control over children's digital lives, this move also plays out a much longer standing tension between the state and the family over the sexually agentic and unruly bodies of children. Because the digital has made the distinction between public and private so meaningless, children's sexuality feels less contained by the domestic sphere of the family. In enlisting the law and, as we shall see, the school, to supplement the authority of parents, anti-cyberbullying initiatives aim to return children to the teachable space of adult guardianship.

Not surprisingly, by sexualizing children's online lives through narratives of erotic innocence and predatory bullying, the ostensibly exceptional danger of the Internet to the distinction between public and private space is domesticated, for children can be rescued from their own sexuality and aggression. John Halligan makes such a claim in defining the transformation of bullying into *cyberbullying* on the version of "Ryan's Story" posted on his online memorial page:

Now certainly my son was not the first boy in history to be bullied and have his heart crushed by a pretty girl's rejection. But when I discovered a folder filled with IM exchanges throughout the summer and further interviewed his classmates, I realized that technology was being utilized as weapons far more effective and

¹⁹⁷ This broader question is taken up well by Bernard Stiegler in *Taking Care of Youth and the Generations* (Stanford: Stanford University Press, 2010).

reaching then [*sic*] the simple ones we had as kids. Passing handwritten notes or a “slam” book has since been replaced with on-line tools such as IM, Blogs, cell phones, etc. The list keeps growing with the invention of each new hi-tech communication gadget...I believe my son would have survived these incidents of bullying and humiliation if they took place before computers and the internet...I believe bullying through technology has the effect of accelerating and amplifying the hurt to levels that will probably result in a rise in teen suicide rates.¹⁹⁸

Halligan’s theory of technological extension from “mere” bullying to cyber-bullying also crucially heterosexualizes Ryan’s tragic victimhood, justifying the call to action. More sophisticated government of the girl who rejected Ryan’s ostensible heterosexuality, in conjunction with more sophisticated government of the boys who bullied him for his ostensible gayness, are the implied pedagogical remedy, at once technological and sexual. They are also the means by which to confirm Ryan’s tragically heterosexual narrative, to deliver the child’s sexuality back to the family unit where his father is certain it was meant to reside.

The appeal to the public school to supplement the role of the parent by containing and delivering the unruly cyberbully or innocent victim back to the private family inaugurates a difficulty for the law, which normally relies on clear-cut distinctions between public and private, but finds the child’s body, especially online, contaminating them from their incorporation. In the larger context of anti-cyberbullying projects, then, *Vermont’s Bullying Prevention Law*, as the juridical incorporation of Halligan’s paranoid recuperation of his son’s heterosexuality, sits at the fulcrum of an ascending system of control and governmentality whose aim is to produce docile digital and sexual subjects out of children by restoring the pedagogical role in technology and sexuality to adults by whatever means necessary. The Vermont law represents the first of a series of promises

¹⁹⁸ John Halligan, “Home,” *Ryan’s Story*, <http://www.ryanpatrickhalligan.org/index.htm> (February 1, 2014).

to deliver the absent knowledge of children's mysterious online lives into the hands of the right adults. If parents or schools are unable to restore the normal pedagogical order on their own, then it may fall to the network to exploit the vulnerability it produces by converting it into surveillance, either from social media companies or private spyware.

The Invention of the Cyberbully

The amalgamation of "cyber-" and "bully" took place in fits and starts in the mid to late 1990s.¹⁹⁹ The first appearances of the neologism was not associated with children; rather, as in a 1995 *New York Times* exposé on the perils of "Internet addiction," a passing reference to the "cyberbully" is made regarding the dangers of Internet anonymity when new *adult* users are preyed upon by tech savvy peers.²⁰⁰ In 1998 several contemporaneous news stories in Australia suggested that "School bullies have commandeered cyberspace" and added that a new study suggested "cyber bullying is growing."²⁰¹ The word "cyberbully" as codified by the *Oxford English Dictionary* in 2010 nevertheless maintains fidelity to its first meaning: "an experienced user of

¹⁹⁹ The invention and first appearance of the word in print or online are not agreed upon and I am not able to definitively settle the exact date. The invention of the word "cyberbully" is often attributed to Bill Belsey, a Canadian teacher and creator of www.bullying.org in 2000, whose www.cyberbullying.org was apparently the first website on the subject ever created, in 2003, but he himself does not claim to have invented it. See "Bill Belsey Bio," *Cyberbulling.ca*, http://www.cyberbullying.ca/pdf/Bill_Belsey_Bullying.org_bio.pdf The *Oxford English Dictionary* gave the date of the first use of the term "cyberbully" as 1998 when it first included it in 2010, but this was overturned by the *New York Times* article from 1995 cited below; see Sheri Bauman, "Why it Matters," in Sheri Bauman, Donna Cross and Jenny L. Walker, eds., *Principles of Cyberbullying Research: Definitions, Measures, and Methodology* (New York: Routledge, 2013, 23). The *OED* online entry for "cyberbully" has since been updated (which Bauman does not acknowledge) and now includes an even earlier news story in the *San Diego Tribune* from September 27, 1994, Section 16, Page 1, making reference to "cyber-bullies" as digitally savvy users who might take advantage of new Internet users, in a review of Tina Rathbone, *Modems for Dummies*, 1st Edition (Indianapolis: For Dummies, 1994). My research into the appearance of the word concurs with 1994 as the earliest available usage. Importantly, though, as I argue, in this decade the term had no definitive link to children or schoolyard bullying. The first use of the term in this context that I could find occurred in the 1998 article from the *Canberra Times* cited below.

²⁰⁰ The article cites, in the same vein, a version of Nicholas Negroponte's popular maxim that "on the Internet, no one knows you are a dog." *Being Digital* (New York: Vintage, 1996, 193).

²⁰¹ Carolyn Jones, "New-age bullies use cyberspace to harass peers," *The Age*, June 10, 1998, A3.

computers who intimidates new users,” installing a power imbalance of technical knowledge at its core, analogous to the adult-child relation.²⁰² During the 1990s “cyber-” was appended to words in a variety of contexts to designate novel, online versions that seemed to require distinction from their offline equivalents: “cybering,” for instance, was the first neologism for online sex, and was specifically attributed to gay children who were portrayed as especially digitally savvy by necessity in order to find partners online who might not be accessible because of geography or parental control offline.²⁰³ The term cyberbully became associated more specifically with children by the mid to late 2000s, as cases like Ryan Halligan’s made headlines. Although “cyberbully” is not included in the original narrative crafted in the aftermath of Ryan’s suicide, by 2007 John Halligan was featured in a local news story for taking part in a political campaign in Rhode Island to pass “a broader law to punish *cyberbullying*,” which added that he “wants every other state to enact laws expressly prohibiting it.”²⁰⁴

Part of the difference between the mid 1990s and the mid to late 2000s that accounts for the narrowing of cyberbullying to children is media specific: technological capacities for real-time communication greatly expanded with the advent of ubiquitous mobile phones, as well as the sophistication of bandwidth in data sharing made possible by social media platforms, high speed Internet, and WiFi networks. These rapid changes in hardware and software incurred pervasive anxieties over the intergenerational economy of technical knowledge as children, now dubbed “digital natives,” seemed to be the only

²⁰² “cyber-, comb. form,” *OED Online*, September 2013, Oxford University Press, <http://www.oed.com.proxy.libraries.rutgers.edu/view/Entry/250879?redirectedFrom=cyberbully> (accessed November 15, 2013).

²⁰³ The *OED* adds that the prefix cyber- is most frequently joined to existing words to form “temporary and nonce-words.”

²⁰⁴ Justin M. Norton, “Online Bullying Compels States to Act,” *NBC News*, February 21, 2007, <http://www.nbcnews.com/id/17265901/#.Uu0nHWSwI72> (accessed February 1, 2014), emphasis added.

ones capable of staying abreast of technological change—not a new cultural narrative, to be sure, but one that reached a uniquely fevered pitch.²⁰⁵ The figure of the imperiled new user of the 1990s, a naïve and uninitiated adult, was generalized to all adults in the face of children’s seemingly superior computer and cellular skills, now trained from infancy. In other words, the digital became, between the 1990s and late 2000s, the province of children. In the twenty first century, not only might adult “Internet rules” like those in the Halligan household be circumvented by skilled children, but more ominously, adults might not even know what technologies or online activities their children participate in to begin with, running afoul of their pedagogical role altogether.

Unsurprisingly, then, the ABC Family made for television movie *Cyberbully* (2011) appeals to adult feelings of inferiority through a representation of children as technically savvy but morally unaware of and vulnerable to the impossibly fast-paced changes of ubiquitous social media and mobile phones. *Cyberbully* centers on the household of a well intentioned, suburban, white single mother who works long hours as a lawyer and employs strict rules about her teenaged daughter Taylor’s social media use. At the beginning of the film Taylor is not allowed to use a computer unsupervised, nor is she allowed a smartphone that would have data network and Internet access, something about which her best friends tease her for its retrograde, 1990s connotations. Taylor already has a longtime nemesis at school, a more popular girl named Lindsay, but the tension between them is under control offline until Taylor is given a laptop by her mother for her birthday, the latter feeling embarrassed for being so far behind the times. Finally

²⁰⁵ On the problematic anthropological and colonial significations of the phrase “digital natives,” see Lisa Nakamura and Peter A. Chow-White, “Introduction—Race and Digital Technology: Code, the Color Line, and the Information Society,” in *Race After the Internet*, Lisa Nakamura and Peter A. Chow-White eds. (New York: Routledge, 2012), 1.

able to join a popular social networking site, Cliquester, Taylor is immediately (on her *first day* online unsupervised) subjected to the amplification of bullying and suffering that is attributed to the digital: after starting a friendly flirtation with a “hot guy” from another school, Taylor is repeatedly humiliated by Lindsay at school after her younger brother hacks her account and posts slutty status updates. Even her new crush, after initially being sympathetic to the cruelty of her brother, rejects Taylor after a school wide and online slut-shaming campaign is kick started by someone again hacking her account a few days later and posting statuses bragging about sexual exploits.²⁰⁶

Soon, Taylor’s life falls apart under the accumulated stress of cyberbullying and she posts a video online in which she says she no longer wants to live. After one of her best friends, Samantha, finds her trying to commit suicide by overdosing on pills, Taylor is hospitalized and her mother begins lobbying for the passage of an anti-cyberbullying law. Meanwhile, Samantha confesses that it was she who had created the hot guy’s account and had impersonated him. The final catharsis comes when Taylor is released from the hospital and discovers that one of her classmates, Caleb, was also being cyberbullied because he is gay, and a newfound solidarity emerges in a cyberbullying support group they co-found. At the same time, a new anti-cyberbullying law is passed and the film ends. *Cyberbully*’s excruciating plot suggests that it is in fact a film made for adults, not children, one that restages and promises to resolve the anxiety of adjusting to the passage from the World Wide Web of the 1990s to a generation whose embeddedness in Web 2.0 effaces any distinction between “online” and “offline.” The promise of the law and the alliance between an unpopular white girl and a white gay boy help to illustrate the restoration of adult technical and sexual pedagogy: with the passage

²⁰⁶ *Cyberbully*, directed by Charles Binamé, ABC Family, 2011.

of an anti-cyberbullying law and the compliance of children, parents and school officials will finally be able to govern *Cyberbully*'s children again. Not only will they be protected at school, but parents will also understand how social media works, finally able to deliver a proper sexual and social pedagogy at home. The film fantasizes a resolution that averts the ending of narratives like Ryan's story.

The narrative that diagnoses cyberbullying as exceptionally dangerous, then, ultimately moves, quite conservatively, to recoup adult pedagogy and annul the perceived shift from the Internet of the 1990s to Web 2.0 by returning children's sexuality to the jurisdiction of parents at home and school officials in public. In the same vein, in *Sticks and Stones* Emily Bazelon conjures an image that could have been taken from a scene in *Cyberbully*: "Sitting at the keyboard instead of talking face-to-face, often shrouded in anonymity, teenagers (and adults) sometimes strike a pose and write in a kind of text-speak that's harsher than what they would dare say out loud."²⁰⁷ Something about the digital, in other words, is eroding the internalization of social norms that children (or infantilized adults) are otherwise conditioned to respect, resulting in a dangerous and technological facility of cyberbullying. In her next breath, however, Bazelon backtracks, reassuring that "In reality, the way kids treat each other on the Internet *is merely an extension of the way they treat each other in person*. The depersonalized features of technology can exacerbate the cruelty, but its roots are in the real world."²⁰⁸ These two moves are intelligible because children's bad behavior is always understood as amenable to pedagogy. This strategy of exception and its leverage into containment at hand in the

²⁰⁷ Emily Bazelon, *Sticks and Stones*, 9.

²⁰⁸ *Ibid.*, 11, emphasis added.

film and in Bazelon's book is translated into the language of law with great difficulty, however.

The Cyberbully Under the Law: Modes of Punishment

The confrontation of cyberbullying and the law has been preoccupied by an epistemological problem analogous to the digital generation gap: the recalcitrance of the digital lives of children to yield anything intelligible under juridical categories like responsibility, intentionality, liability, and protected speech. New media law remains an emergent field and the language of discovery and self-conscious precedentality characteristic of Halligan's narration of Ryan's suicide is also present in jurisprudence.²⁰⁹ Unsurprisingly, then, the law has presented itself as rescuing children from their vulnerability online by producing the truth of their sexual and aggressive digital lives in terms that try to reconstitute a divide between their public lives at school and their private lives at home.

Though there was a police investigation, no criminal charges followed the death of Ryan Patrick Halligan in 2003 because there was no charge or liability for his suicide. The first cyberbullying case involving suicide that led to a criminal trial took place in 2006 in Missouri, when a thirteen-year-old, Megan Meier, was friended by a sixteen-year-old boy on MySpace named "Josh Evans." (It seems that *Cyberbully*'s plot, incidentally, is a literal amalgamation of Meier and Halligan's stories.) According to an interview in a St. Louis newspaper, Megan's mother Tina asked her "Do you know who he is?" to which she replied "No, but look at him! He's hot! Please, please, can I add

²⁰⁹ For an introduction, see Wayne Overbeck and Genelle Belmas, eds., *Major Principles of Media Law*, 2014 Edition (Boston: Wadsworth, 2014).

him?” Though neither Megan nor Tina was aware of it, “Josh Evans” was the creation of an *adult*: the mother of one of Megan’s former friends, with whom she had recently had a falling out. The former friend’s mother created the fake account with the help of a younger co-worker and from there began an online relationship with Megan posing as a hot boy.

After “Josh” and Megan became close, in October of 2006 she received a message from him on MySpace that read: “I don’t know if I want to be friends with you anymore because I’ve heard that you are not very nice to your friends.” The next day “Josh” continued to send her similar messages and also began sharing Megan’s private messages to him with other friends. The group then created a MySpace “bulletin” survey about Megan, which produced publicly viewable conclusions such as “Megan Meier is a slut” and “Megan Meier is fat.” According to Megan’s father Ron, after she was found dead later that day in her bedroom he logged on to her MySpace account. (The Meiers had all of Megan’s passwords as part of their family Internet rules, like the Halligans. In fact, Tina’s acquiescence to Megan friending someone she did not already know offline was technically a violation of those rules.) Ron claims to have read the last message Megan received before her suicide, which was from Josh: “Everybody in O’Fallon [Missouri] knows how you are. You are a bad person and everybody hates you. Have a shitty rest of your life. The world would be a better place without you.” The FBI investigation of Megan’s death never recovered this message, leading to speculation that it was subsequently deleted by “Josh” (or Ron made it up).²¹⁰

²¹⁰ Steve Pokin, “‘My Space’ Hoax Ends with Suicide of Dardenne Prairie Teen,” *St. Louis Post-Dispatch*, November 11, 2007, http://www.stltoday.com/suburban-journals/stcharles/news/stevepokin/my-space-hoax-ends-with-suicide-of-dardenne-prairie-teen/article_0304c09a-ab32-5931-9bb3-210a5d5dbd58.html (accessed February 1, 2014).

The retrospective narrative of Megan's path to suicide, searching for etiologies of suicide prior to the cyberbullying in order to deflate the responsibility of Megan's parents, is populated with references to her Attention Deficit Disorder diagnosis, a long-time struggle with weight and body image, episodes of clinical depression, and possible suicidal thoughts in the third grade. The quasi-causality of cyberbullying in relation to Megan's suicide implicit in the St Louis paper's version of the events is framed in language that foreshadows subsequent legal battles over assigning criminal responsibility in the case: Ron is quoted at the end saying "Ultimately, it was Megan's choice to do what she did...But it was like someone handed her a loaded gun."²¹¹

The "Josh Evans" account was deleted from MySpace after Megan's death. Six weeks later a neighbor discretely informed the Meiers that "Josh Evans" was the creation of another adult living on their block and with whom they were well acquainted, the mother of Megan's former friend, Lori Drew. A local police investigation followed. According to the police report, Drew argued for her non-culpability in the suicide by staging her own vulnerability at the hands of savvy children online: "'somehow' other 'my space' users were able to access the fake male profile and Megan found out she had been duped...(She [Drew]) felt this incident contributed to Megan's suicide, but she did not feel 'as guilty' because at the funeral she found out 'Megan had tried to commit suicide before.'" Tina disputes that Megan knew "Josh" was fake, or that Megan had tried to commit suicide in the third grade. Regardless, no charges were filed as a result of the local investigation. As Lt. Craig McGuire from the sheriff's department explained,

²¹¹ *Ibid.*

“We did not have a charge to fit it.” The FBI, in turn, did not find enough evidence from searching Megan’s computers to file any criminal charges.²¹²

Eventually, the passage of “Megan’s Law” in 2008 amended a Missouri harassment statute to include incidents in which someone “knowingly makes repeated unwanted communication to another person” (but the law was partially invalidated by the state supreme court in 2012 for being “unconstitutionally broad”).²¹³ The explicit criminal codification of cyberbullying through “Megan’s Law” was only pursued, however, after a failed attempt at criminal prosecution of Drew under the federal Computer Fraud and Abuse Act (CFAA). The case made by the prosecution hinged upon Drew’s violations of MySpace’s terms of service, which prohibited posting photos of someone without their consent (the fake “Josh” profile picture), as well as related aspects of impersonation. These repeated violations of MySpace’s terms of service, the prosecution wagered, could be considered “intentionally access[ing] a computer used in interstate commerce without (and/or in excess of) authorization,” a felony under the CFAA.²¹⁴ At trial the jury rejected the felony charge, but under a unique clause of the CFAA instead found Drew guilty of the same crime as a misdemeanor. Drew was tried in California under the argument that jurisdiction properly fell to the state where MySpace’s server was physically housed.²¹⁵

When the case reached the federal level on appeal the court threw out the misdemeanor charge. It also explicitly rejected the implication that it was being asked to set a precedent for the criminalization of cyberbullying because the concept has no

²¹² *Ibid.*

²¹³ Joe Daues, “MO Supreme Court Strikes Down Part of ‘Megan’s Law’,” *KSPR News*, May 29, 2012, http://articles.kspr.com/2012-05-29/mo-supreme-court_31891231 (accessed February 1, 2014).

²¹⁴ Signing up for and using a web site service is considered interstate commerce.

²¹⁵ *US v Drew*, 259 F.R.D 449 (2009), 3-4.

statutory viability. “While this case has been characterized as a prosecution based upon purported ‘cyberbullying,’” writes Justice Wu in his decision, “there is *nothing* in the legislative history of the CFAA which suggests that Congress ever envisioned such an application of the statute.”²¹⁶ The court’s dismissal of the conviction relied on the “void-for-vagueness doctrine,” agreeing with the defense that violating the terms of service of a website would not be considered by “individuals of ‘common intelligence’” a crime.²¹⁷ The court emphatically rejected that standard of responsibility for MySpace users, whether children or adults, as unrealistic. In his review of the trial, Justice Wu emphasizes the practical impossibility of effectively governing users on social media sites like MySpace, at least through existing categories of legal responsibility and reason. Although Jae Sung, Vice President of Customer Care at MySpace, emphasized the site’s “Safety Tips” section and its “Report Abuse” button in his testimony at trial, Wu quotes him in his decision to make the point that “‘Generally speaking,’ MySpace would not monitor new accounts to determine if they complied with the terms of service except on a limited basis, mostly in regards to photographic content...Sung testified that *there is no way* to determine how many of the 400 million existing MySpace accounts [this seems to be a considerable and telling error by Wu; the Justice likely means 400 million *pages* of content, for MySpace never had anywhere near that many users²¹⁸] were created in a way that violated” its own rules.²¹⁹

²¹⁶ *Ibid.*, 2 f.n. 2, emphasis added.

²¹⁷ *Ibid.*, 25.

²¹⁸ It is telling that Wu’s misunderstanding of MySpace could make it into the final published decision, but it is also telling that the precedential federal cases dealing with cyberbullying almost all involve MySpace, a sort of social network bridge between the 1990s web and Web 2.0 for children. MySpace famously collapsed in the face of new sites like Facebook, YouTube and then Twitter, and so its preponderant weight in this incipient legal matrix is already out of date in 2010s. See Robert W. Gehl, “Real (Software) Abstractions: On The Rise of Facebook and the Fall of MySpace,” *Social Text* 30, 2 (2012): 99-119.

²¹⁹ *Ibid.*, 8, emphasis added.

The court did not make any findings on the legitimacy of trying Drew in California, the physical location of MySpace's headquarters, for acts that she committed in Missouri, dismissing the question by citing the consensus produced by the Supreme Court in 1997 that the Internet use is *de facto* interstate commerce because of the geographic mobility of data-packets.²²⁰ As the legal pursuit of cyberbullying and the governance of children's use of the Internet migrated to cases involving schools, however, the question of location has been heavily contested, manifesting as the impossibility of controlling the scale of data trafficked by children through social media that Justice Wu conjures through the problem of determining what counts as public and private speech.

Unlike the vast majority of state anti-bullying laws, which, as the previous chapter detailed, do not directly criminalize bullying, cyberbullying *is* a stand-alone crime in twelve states. In 37 other states, the word "cyberbullying" or some variant on bullying "by electronic means" has been added to existing statutes without criminal sanctions. In states that do treat cyberbullying as a misdemeanor, punishments range from fining parents and/or children \$100 in Hawaii, to possible suspension from school in Idaho, to potential imprisonment for up to six months and/or a fine of \$500 in Louisiana. Given that most of these laws were passed during or since 2011, there is not yet a clearly available record of children being successfully charged.²²¹ Two teenaged girls in Florida were convicted of felonies in 2011 for posting fake nude photos of a classmate on

²²⁰ *Ibid.*, 13.

²²¹ Sameer Hinduja and Justin W. Patching, "State Cyberbullying Laws," July 2013, *Cyberbullying Research Center*, http://www.cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf (accessed February 1, 2014).

Facebook, but under a state stalking statute (and the convictions were later overturned).²²² In the United Kingdom, an eighteen-year-old woman was sentenced in 2009 to three months jailtime in what was hailed in the media as the first conviction for cyberbullying in that country, although the charge was actually harassment.²²³ And when a judge in Philadelphia sentenced a 20 year old to 45 days in prison in 2011 to explicitly make the point that “cyberbullying is a crime,” he did so in a state that does *not* have a criminal cyberbullying statute—in fact, Pennsylvania’s noncriminal state bullying law does not even explicitly include cyberbullying. The case was prosecuted instead under a child pornography statute, as the “cyberbullying” in question consisted of posting sexts of a teenaged girl online to humiliate her.²²⁴ There is, similarly, no federal statute addressing cyberbullying in the wake of the failed prosecution of Lori Drew, although HR1966, the “Megan Meier Cyberbullying Prevention Act,” first proposed in 2009, would create if ever passed a criminal punishment of imprisonment up to two years and/or a fine, making it by far the severest of any legislation.²²⁵

The variety of avenues for criminalizing cyberbullying are therefore not unified and tend to resolve into cases where other criminal offenses are easily identifiable, like possession of child pornography, harassment, or stalking. The invention of the cyberbully in legal discourse has in actuality taken place more as an administrative and disciplinary

²²² Nina Mandel, “Florida Girls in Trouble with Police After Creating Lewd Fake Facebook Profile for Classmate,” *New York Daily News*, January 14, 2011, <http://www.nydailynews.com/news/national/florida-girls-trouble-police-creating-lewd-fake-facebook-profile-classmate-article-1.149061> (accessed February 1, 2014); Barbara Liston, “Charges Dropped Against Girls in Florida Cyberbullying Case,” *Reuters*, November 20, 2013, <http://www.reuters.com/article/2013/11/21/us-usa-florida-cyberbullying-idUSBRE9AK05C20131121> (accessed February 1, 2014).

²²³ Luke Salkeld, “Facebook Bully Jailed: Death Threat Girl, 18, is First Person Put Behind Bars for Vicious Internet Campaign,” *Mail Online*, August 21, 2009, <http://www.dailymail.co.uk/news/article-1208147/First-cyberbully-jailed-Facebook-death-threats.html> (accessed February 1, 2014).

²²⁴ Maryclaire Dale, “NJ Cyberbully Forwarded Lewd Photos, Gets 45 Days,” *Bloomberg Business Week*, January 18, 2011, <http://www.businessweek.com/ap/financialnews/D9KR33UG0.htm> (accessed February 1, 2014).

²²⁵ Hinduja and Patchin, “State Cyberbullying Laws,” 17.

matter, a distinct subset of general anti-bullying initiatives at the school level. Media-specific, these school-based incidents of cyberbullying tend to be adjudicated as a form of speech, either protected expression under the First Amendment or punishable for being defamatory. For this reason, the anxiety over the mobility of digital information, images, data and text haunts the jurisprudence that has attempted, with a high degree of undecidability, to adapt a 1960s Supreme Court decision on student First Amendment rights to the digital age.

As the preceding chapter briefly mentioned, the First Amendment rights of students at school are much more easily curtailed than those of adults according to the formula laid out by the Supreme Court in *Tinker v. Des Moines* (1969). Although students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” the threshold of their protected speech is much higher for reason of the “special characteristics of the school environment,” whose priority in orderly governance and civic normalization has long been affirmed as a foundational state interest.²²⁶ According to *Tinker*, which revolved around peaceful protest of the Vietnam War by students wearing black armbands to school in 1965, the First Amendment rights of students on campus can be curtailed to the extent that school officials reasonably forecast that their speech will “materially and substantially disrupt the work and discipline of the school,” or demonstrably “collid[e] with the rights of others.”²²⁷ In this way, the court recognizes children’s right to expression at school only contingently to their naturalness as especially governable subjects.

²²⁶ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), 2.

²²⁷ *Ibid.*, 3.

Tinker has remained the standard reference case for the First Amendment rights of students, but it has also been undermined by three subsequent decisions. In *Fraser v. Bethel* (1985) the court carved out an exception for vulgar, lewd or “patently offensive” speech, regardless of its intended meaning. Although identical speech, even by children, *would* be protected by the First Amendment anywhere else, the court decided that “The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct.”²²⁸ Later, in *Hazlewood v. Kuhlmeier* (1988), a second exception was added for schools to exercise censorial control over student speech in “school-sponsored expressive activities.” In that decision the court also reaffirmed that “the First Amendment rights of students in public schools are not automatically coextensive with the rights of adults in other settings,” implying that instead they are more likely presumed overridden.²²⁹ Finally, in *Morse v. Frederick* (2007), a third exception was established prohibiting any speech by students at a school-sponsored event that promotes illegal drug use.²³⁰ Anything not falling under these three specific types of cases reverts to the formula of reasonably forecasted disruption established by *Tinker*.

None of the Supreme Court cases that deal with the First Amendment rights of students have directly taken up the Internet or social media. At the district court level, judges have had to attempt to decide whether or not school discipline and punishment for cyberbullying falls under the category of unprotected, actionable student speech, an assumption made by state anti-bullying laws, but that has been repeatedly challenged by disciplined students. This body of jurisprudence continues to lack cohesion, including

²²⁸ Quoted in *Layshock v. Hermitage School District*, 593 F. 3rd D 205 (2011), 6.

²²⁹ *Hazlewood v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988), 273, 266.

²³⁰ *Morse v. Frederick*, 551 U.S. 393, 127 S. Ct. 2618 (2007).

between different districts of the federal court system, in part because *Tinker* has been guttered piecemeal over the decades. In Justice Clarence Thomas' concurring opinion to *Morse*, he worries that "we continue to distance ourselves from *Tinker*, but neither overrule it nor offer an explanation of when it operates and when it does not. I am afraid that our jurisprudence now says that students have a right to speak in schools except when they don't—a standard continuously developed through litigation against local schools and their administrators."²³¹ Although *Tinker* has been weakened, none of the three subsequent decisions apply to cyberbullying because the court has either explicitly stated or *de facto* implied that *Fraser*, *Hazlewood*, and *Morse* do not apply "off-campus," the ambiguous location of cyberbullying given that online space circumvents *Tinker*'s image of the "schoolgate."²³² Federal courts have therefore been forced to take up the Internet and cyberbullying in terms of whether or not school officials can punish students for speech that originates "off-campus" under *Tinker*.²³³

²³¹ *Ibid.*, 2364.

²³² It is worth noting that these federal cases are usually summary judgments and rarely go to trial. In *Barr v Lafon* 538 F.3d 554 (2009), Justice Boggs, dissenting, worries that these summary judgments are resulting in the de facto suppression of student First Amendment rights because of their mode of adjudication. He speculates that if these cases were to go to trial, it is far less likely that a jury would so consistently find in favor of school officials.

²³³ This section focuses in detail on the most relevant federal court cases, but to give an idea of how much disagreement there is in application of *Tinker*, consider the following cluster of cyberbullying cases spanning the past decade: in *J.S. v Bethlehem Area School District* 757 A.2d 412 (2002), the expulsion of a student for creating a website criticizing his algebra teacher was upheld; in *Wisniewski v The Board of Education of the Weedsport Central School District* 494 F. 3d 34 (2007), a summary judgment was upheld to punish a student for writing a "death threat" about a teacher in an Instant Messaging conversation with a student from a home computer; in *Requa v Kent School District* 492 F. Supp 2d 1272 (2007), the suspension of a student over a defamatory sexual *YouTube* video about a teacher was upheld because the actual filming took place in the classroom, dismissing the question of the location of *YouTube*; in *Beussnik v Woodland R-IV School District* 30F. Supp. 2d 1175 (2009), the suspension of a student who had created a website critical of his school was dismissed because the student created it at home; and in *J.C. v Beverly Hills Unified School District* 711 Fd. Supp. 2d 1094 (2009), the punishment of a student found guilty of cyberbullying by creating a *YouTube* video of a classmate who subsequently complained to school officials was overturned under the First Amendment. This degree of indecision, I am arguing is in excess of the indecision intrinsic to the law as a performative discourse in which any decision is made only through the exercise of a foundational force or violence.

A first cluster of cases in the 1990s seemed to confirm that *Tinker* could apply to off-campus speech so long as that speech subsequently migrated on-campus in an obvious way, there causing foreseeable disruption. For example, in *Boucher v. Greenfield* (1998) a high school junior in Wisconsin was suspended and then expelled for authoring a how-to article on hacking the school's computer systems for an underground newspaper that was distributed on campus. The district court dismissed the problem of locating the speech because the physical, paper copies of the newspaper were distributed on campus after production at home; for that reason, the digital location of hacking could be excluded from the decision to uphold the school's expulsion of the student under *Tinker*.²³⁴ Likewise, a set of concurrent cases managed the same problem by concluding the "speech" at hand materialized in a physically discrete object that, at some point, obviously moved from off-campus to on-campus.²³⁵

The ubiquity of social media and mobile phones, however, has caused subsequent indecision over what constitutes public versus private space, on-campus versus off-campus space, and what intentions students are required by law to demonstrate when they cyberbully (conspicuously, for the purposes of the First Amendment the intention of speech is usually irrelevant). Two decisions from the Third Circuit in Pennsylvania, both handed down on the same day in 2011, illustrate the legal unruliness of the cyberbully under *Tinker*. In *J.S. v. Blue Mountain School District*, a middle school student created a fake MySpace profile about her principal from her home computer that ridiculed him, calling him a "sex addict" and a "dick," and accusing him of having sex with an administrative assistant. The first district ruling in the case neglected to use *Tinker* to

²³⁴ *Boucher v. School Board of Greenfield*, 134 F. 3d 821 (1998).

²³⁵ These cases are reviewed in the concurring opinion to *J.S. v. Blue Mountain School District*, 650 F. 3d 915 (2011), 924-925.

either uphold or dismiss her suspension by the school because it did not find any disruption of school activities as a result of the profile. Instead, it employed *Fraser*, arguing that *J.S.* had produced punishable vulgar speech. On appeal, this use of *Fraser* was dismissed because it cannot be applied to off-campus speech. Under *Tinker*, the court still found in favor of *J.S.*, agreeing that there was no disruption at the school as a result of the MySpace page. In so doing, the court noted that “Neither the Supreme Court nor this Court has ever allowed schools to punish students for off-campus speech that is not school-sponsored or at a school-sponsored event and that caused no substantial disruption at school.” Nevertheless, in a somewhat forced qualification of its argument, it added *Tinker could* be in general applied to off-campus speech like social media—in this case, a MySpace page created at home—but that the facts of this case did not require that finding (because no disturbance was caused at school).

The court’s conclusion that *Tinker* might apply off-campus was contested from its inception. In a concurring opinion, Judge Smith, writing on behalf of four other judges, maintains that *Tinker* does *not* apply to off-campus speech. Smith first reviews some of the cases from the 1990s mentioned above, where it was simple enough to note that off-campus speech in the form of a physical object like a newspaper, poem, or drawing, made its way onto campus and then caused disruption. Interestingly, his counterexample for why *Tinker* should not apply off-campus then switches to an example involving gays and the Internet:

Suppose a high school student, while at home after school hours, were to write a blog entry defending gay marriage. Suppose further that several of the student’s classmates got wind of the entry, took issue with it, and caused a significant disturbance at school. While the school could clearly punish the students who acted disruptively, if *Tinker* were held to apply to off-campus speech, the school

could also punish the student whose blog entry brought about the disruption. That cannot be, nor is it, the law.²³⁶

Smith characterizes “half the battle” of applying *Tinker* as consisting of “how can one tell whether speech takes place on or off campus?” In his view, “Answering this question will not always be easy,” because considering speech’s location based on where it was uttered, recorded, or written “would fail to accommodate *the somewhat-everywhere at once nature of the internet*.” For this reason Smith concludes that “I would have no difficulty applying *Tinker* to a case where a student sent a disruptive email to school faculty from his home computer,” but he is not willing to extend that rationale of transmission and location to *all* content uploaded by students online.²³⁷

J.S. v. Blue Mountain also triggered a dissenting opinion, written by Judge Fisher on behalf of four other judges. Fisher agrees with the circuit court’s reading of *Tinker*, particularly that it applies off-campus, but disagrees with the majority’s interpretation of the facts of the case and concludes the school officials acted “reasonably” to prevent disruption from the MySpace page mocking the principal. Fisher also argues that this case is *directly* addressing and setting an explicit precedent for the punishment of cyberbullying. In a footnote, he cites a host of social scientific studies on cyberbullying. “It is worth noting,” suggests Fisher in his review of these materials, “that these forms of online personal attacks by students occur with some degree of frequency. They are often directed at other students and have been called ‘cyberbullying’.”²³⁸

How Fisher imagines the location of cyberbullying through social media sites like MySpace is not clear. In another footnote clarifying that he *agrees* with the court’s

²³⁶ *Ibid.*, 939.

²³⁷ *Ibid.*, 940, emphasis added.

²³⁸ *Ibid.*, 941, 952 f.n. 3.

overall interpretation of *Tinker*, he seems to conclude that off-campus speech is covered simply because “it can have a very real impact on the classroom environment,” not necessarily departing from the precedents of physical objects like newspapers entering campus and causing disruption. Later in the dissent, however, he seems to take Smith’s contention from the concurring opinion that the Internet is “somewhat-everywhere at once” as a reason *for* punishing *J.S.*, who he argues should have known “It was only a matter of time before the subject of her attack [the principal] found out” about the MySpace page.²³⁹ In the final paragraphs of the dissent, he again mirrors the language of the concurring opinion but comes to the opposite conclusion:

The line between “on-campus” and “off-campus” speech is not as clear as it once was. Today, students commonly carry cell phones with internet [*sic*] capabilities onto school grounds... The majority [court decision] embraces a notion that student hostile and offensive speech directed at school officials will not reach the school. But with near-constant student access to social networking sites on and off campus, when offensive and malicious speech is directed at school officials and disseminated online to the student body, it is reasonable to anticipate an impact on the classroom environment. I fear that our Court has adopted a rule that will prove untenable.²⁴⁰

Where the concurring opinion felt the total ubiquity of social media and Internet use by students made it a breach of their First Amendment rights to be punished for cyberbullying, then, the dissenting opinion arrives at the opposite conclusion out of the same logic of anxiety about circulation. As the dissent points out, however, *J.S. v. Blue Mountain* does not decide the issue through *Tinker* because it assumes that social media and online content still respects an on-campus, off-campus distinction. Hence, the problem of governing cyberbullying in schools remains undecided (if not particularly undecidable) by its framing through a reference case written in the 1960s.

²³⁹ *Ibid.*, 952 f.n. 4., 949.

²⁴⁰ *Ibid.*, 951.

The simultaneous decision issued by the same bench on the same day, *Layschock v. Hermitage* (2011), found that a school *could not* regulate or punish a student for his social media use because it took place off campus, seemingly in direct contradiction to *J.S. v. Blue Mountain* (a contradiction the court, for its part, rejects because of the supposed differences in the facts in the two cases structuring its application of *Tinker*).²⁴¹ During trial, the school district argued that the defendant, Justin, could be punished for his defamatory MySpace page about a teacher at the school because he had “entered” the school district’s website to steal a photo of that teacher, an argument that the court found “unpersuasive at best.”²⁴² Ultimately, the court dismissed the case against Justin not in affirmation of *his* First Amendment rights, but rather the Fourteenth Amendment rights of his parents, who, the justices felt, should maintain their *a priori* legal right to punish Justin as they saw fit, rather than leaving that task to the school administrators. More telling is the concurring opinion, in which Justice Jordan raises concerns about the status of *Tinker* in light of *Layschock* and seeks to backtrack somewhat and clarify that the decision is not a carte blanche to children to deploy social media to outwit school officials, which he assumes they are likely to do:

We cannot sidestep the central tension between good order and expressive rights by leaning on property lines. With the tools of modern technology, a student could, with malice aforethought, engineer egregiously disruptive events and, if the trouble-maker were savvy enough to tweet the organizing communications from his or her cellphone while standing one foot outside school property, the school administrators might succeed in heading off the actual disruption in the building but would be left powerless to discipline the student. Perhaps all of us participating in these en banc decisions would agree on that being problematic. It is, after all, a given that “[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic” [...] Modern communications technology, for all its positive applications, can be a potent tool for distracting and fomenting disruption. *Tinker* allows school officials to

²⁴¹ *Layschock v. Hermitage*, 1, f.n.1.

²⁴² *Ibid.*, 7.

discipline students based on a reasonable forecast of substantial disruption, without waiting for the chaos to actually hit the hallways.²⁴³

The difficulty in adapting events of cyberbullying to fit the spatial, temporal and intentional standards of the law set by *Tinker* is compensated for by the naturalness of the governance of children in the majority opinion. Justin's use of social media in *Layshock* may have outwitted the framework in place to punish him in public at school, but the court therefore merely reassigned responsibility for that punishment to his parents in the private sphere, returning him to an adult pedagogy. By being children, the court assumes and ensures that they can be subject to proper government by adults no matter "where" they are when they are online.

The Third Circuit was careful to emphasize in these two rulings that it did not feel itself to have produced a contradiction with the Second Circuit, which has generally found *Tinker* to apply off campus.²⁴⁴ Regardless, however, the unruliness of the cyberbully has been little resolved by federal courts and school officials. Unsurprisingly, then, the most effective punishment for cyberbullying comes not from these routes, but from criminal charges that fall under the umbrella concept of cyberbullying. In California, home of the Second District court that has found *Tinker* to apply off-campus, for instance, a fourteen year old boy was cited in January 2013 for battery, making harassing phone calls, and disturbing the peace after he sent text messages and posted Facebook messages that the Morgan Hill Police Department called "cyberbullying."²⁴⁵ In bringing traditional criminal charges in this case, the host of legal questions schools have

²⁴³ *Ibid.*, 12-13.

²⁴⁴ *J.S. v. Blue Mountain*, 20, f.n. 20.

²⁴⁵ Hollister Gilroy, "Morgan Hill Boy, 14, Cited for Cyberbullying," *KSBW News*, January 25, 2013, <http://www.ksbw.com/news/central-california/hollister-gilroy/Morgan-Hill-boy-14-cited-for-cyber-bullying/-/5738758/18271586/-/7iqksx/-/index.html> (accessed February 5, 2014).

been unable to decide in court through *Tinker* are bypassed. More effective still are deployments of the network itself to watch children, mine their data, and spy on their sexual and social lives.

Facebook is a Mall: Spying on Children Online

Facebook occupies a central position in the cultural imaginary of so-called “digital natives.” Privacy concerns have constituted the bedrock of the controversy over grasping Facebook from the position of a user within as a massively distributed social network whose scope materially, as well as psychically, exceeds totalizing explanation. With the admission that the National Security Agency has spied on American and non-American citizens thousands of times over the past several years, often through the collection and digestion of meta-data from email and social media accounts, Facebook’s complicity with a state apparatus of pervasive surveillance and data collection has further eroded the sense of any proprietary sphere that would belong to its millions of users.²⁴⁶ Yet one area in which surveillance is considered normal and even desirable, however, is when it comes to children.

To a certain extent, Facebook replicates the fantasy of a participatory public sphere, particularly in that its *Statement of Rights and Responsibilities* to which users are expected to adhere in order to maintain their accounts imitates a classic liberal social contract. Section 3 of the *Statement*, “Safety,” outlines a host of explicitly prohibited actions, including the injunction that “You will not bully, intimidate, or harass any user,” and a later section adds that Facebook reserves the right to remove any content it deems

²⁴⁶ David Simpson and Pamela Brown, “NSA Mines Facebook for Connections, Including Americans’ Profiles,” *CNN*, September 30, 2013, <http://www.cnn.com/2013/09/30/us/nsa-social-networks/> (accessed February 5, 2014).

to have violated the *Statement*, as well as to sanction or delete accounts.²⁴⁷ Bazelon, whose *Sticks and Stones* includes a chapter based on the unique access granted to her by Facebook to visit its headquarters and anti-bullying wing, puts it well when she suggests that Facebook is actually more like a mall than a public space.²⁴⁸ That is to say, Facebook is an eminently neoliberal privatized public space, such that the sense of freedom for assembly and expression it simulates through its interface is nevertheless fully saturated by the surveillance protocols and a logic of value creation that transgress the parameters of its social contract or the simulated “freedom” of each individual user.²⁴⁹ This is hardly a secret, either, for if while on Facebook a user glances at the right-hand side of the screen, she will see constantly refreshing “customized” ads, the result of ongoing data mining of her account and their sale to third parties.

Under pressure from journalists like Bazelon, parents, advocacy groups, and some state and local governments, Facebook has produced several new iterations of anti-cyberbullying initiatives that rely on the labor of users over the past few years. In July of 2013 the company debuted a redesigned report button tailored to bullying, which asks child users “Why would you like this post removed?” and includes “Someone is bothering or bullying me” as a possible answer. This function was introduced after Facebook hired a child psychologist from Yale University, Mark Brackett, to design a feature that would reflect what he terms the “emotional intelligence” of children 13-16

²⁴⁷ “Statement of Rights and Responsibilities,” *Facebook*, <https://www.facebook.com/legal/terms> (accessed February 6, 2014).

²⁴⁸ Bazelon, *Sticks and Stones*, 259.

²⁴⁹ The simulation of the interface as a form of receding governance is a point made by many new media scholars. See Alexander Galloway, *The Interface Effect* (New York: Polity, 2013).

years old.²⁵⁰ A pilot project between Facebook and the state of Maryland is also creating an “Educator Escalation Channel” on the site for use by school administrators. Coordinated through the Attorney General’s Office, each school system in the state will designate a specific person to serve as a direct liaison with Facebook and who can “escalate” incidents of cyberbullying that are judged unresolved by the existing reporting systems.²⁵¹ And in September of 2013 an entirely new stand-alone Facebook site, *Stop Bullying*, went live, networking an extensive set of advocacy group websites and detailed guides to defining, identifying, and reporting cyberbullying on Facebook tailored separately for adults and children.²⁵²

Bazon’s visit to Facebook in *Sticks and Stones* ends with a refrain about adults needing to govern children better by educating themselves on what kids do online, as well as Facebook needing to model good behavior to children by being more active in its pursuit of cyberbullying, perhaps in some sense acting *in loco parentis*.²⁵³ Given that Facebook has been reticent to release data and information on its internal operations, Bazon’s access is also worth mining on its own. For instance, she provides access to the following internally generated statistics from Facebook on bullying: at the time of her visit (in the early 2010s), 2 million “abuse reports” per week were being received by headquarters, a number encompassing both those filed by adults and children. Given the volume of abuse reports and the related quantitative task of managing hundreds of million users posting over a billion items of content each day, the apparatus Facebook

²⁵⁰ Robin Young and Jeremy Hobson, “Facebook Debuts News Anti-Bullying Features,” *Here and Now 90.9 WBUR*, July 23, 2013, <http://hereandnow.wbur.org/2013/07/23/facebook-bullying-messages> (accessed February 6, 2014).

²⁵¹ Allie Bidwell, “Facebook Launches Program to Expedite Reports of Cyberbullying,” *US News*, October 4, 2013, <http://www.usnews.com/news/articles/2013/10/04/facebook-launches-program-to-expedite-reports-of-cyberbullying> (accessed February 6, 2014).

²⁵² “Stop Bullying,” *Facebook*, <https://www.facebook.com/safety/bullying> (accessed February 6, 2014).

²⁵³ Bazon, *Sticks and Stones*, 288-289.

maintains for governing its users has little in common with the liberal contractual language of its *Statement of Rights and Responsibilities*. Its two-pronged strategy first turns itself back upon its own users as a source of massively distributed labor for surveillance and mediation, as the examples of *Stop Bullying*, the report button, and the Maryland pilot project reflect. As Arturo Bejar, Facebook's director of engineering, puts it to Bazelon, "Facebook shouldn't be in the business of dictating and enforcing community norms. People should enforce their own norms," so that children would ideally approach an adult they trust within Facebook to adjudicate cyberbullying.²⁵⁴ Users are also encouraged to block their bullies in order to ostensibly escape their reach.²⁵⁵

The more complex, complementary strategy to self-reporting and offline resolution is an incipient form of big-data mining and machine reading. At the moment, Facebook's optimal processing time for an abuse report is one half of a second; however, this involves humans reviewing pages or posts that have been reported as abusive and determining whether or not to delete them. The invention of algorithms that can search through the entirety of Facebook and extract content that violates its rules has become the central goal of ongoing research and development, in part because the volume is already too high for humans to process without devoting massive amount of resources to reviewing content. In the case of images, existing technologies employed by law enforcement to identify child pornography are already being used to comb through users' visual data. Cyberbullying, however, has proven to be an incredibly difficult challenge, for none of the algorithms Facebook has developed so far have been able to analyze

²⁵⁴ *Ibid.*, 259-260.

²⁵⁵ "Facebook Help Center: Bullying," *Facebook*, <https://www.facebook.com/help/420576171311103/> (accessed February 6, 2014).

speech and writing effectively. The inseparability of text from context has made this mode of machine reading embarrassingly futile.²⁵⁶ Nevertheless, Facebook's goal remains to sidestep human labor altogether by producing a nonhuman algorithmic apparatus that would be able to conduct the governance of cyberbullying autonomously. The deployment of digital technology as impersonal surveillance entails the strongest promise of making docile subjects out of cyberbullies and children online, for it does not rely on their cooperation to enable punishment, merely their performative 'consent' when signing up for an account.

The juridical and administrative unruliness of the cyberbully and the sexual child also produces other technological responses in the form of a public and private system of spying on children's online and mobile phone use. Glendale Unified School District in California came under scrutiny in 2013 for a \$40,500 contract awarded to Geo Listening, which describes itself as a "social network monitoring device." The company, which markets its services uniquely to schools, uses both human and computer labor to data mine the social media posts on Facebook, Twitter, Instagram and elsewhere of the 14,000 middle and high school students in Glendale's schools, sending reports to school officials on posts that are flagged under pre-determined guidelines. According to Geo Listening, the categories it employs to evaluate posts are "bullying, cyber bullying, despair, hate, harm, crime, vandalism, substance abuse, and truancy." The company confidently asserts, in stark contrast to the prevarication of the federal courts, that "It's a fact. Your

²⁵⁶ Bazelon, *Sticks and Stones*, 266-267. As N. Kathryn Hayles explains in *How We Think: Digital Media and Contemporary Technogenesis* (Chicago: University of Chicago Press, 2012, 70-71), machine reading technology in general is only in its infancy, with even the most advanced programs, which can learn to read better the longer they are at work, tend to produce an unhelpfully high rate of errors, certainly too high to be adapted to monitoring the online idioms of children.

students are posting to social networks right from your campus” and Geo Listening is able to make school administrators “more efficient in processing this information.”²⁵⁷

In an *LA Times* article documenting the program, a junior at Hoover High School in the Glendale district remarks that “They have a good purpose for what they’re trying to do—stopping cyberbullying,” and the district itself claims the contracting of Geo Listening was made after several suicides amongst its student body. Other than a critique of the price of the services and a line about “privacy concerns,” though, the same student adds that “Nobody really understands what it is about or what the main objectives are of the program,” and the founder and CEO of Geo Listening chimes in to reassure that “To my knowledge, no student has been disciplined following a social media post found by Geo Listening,” as if the data gathered had no value for punitive ends. Nevertheless, the CEO expects to be hired to spy on students in “about 3,000 schools worldwide by the end of the year.”²⁵⁸

In addition to firms like Geo Listening, a host of private spy technologies and software are being marketed to parents, promising total access to (and therefore total knowledge of) their children’s online and mobile phone use, to govern both cyberbullying and other anti-social behavior, especially when sexual. Several different versions of these software packages are marketed to parents exclusively, while others also recommend themselves to employers looking to spy on use of company technology.²⁵⁹ My Mobile Watchdog, for instance, advertises that its software is

²⁵⁷ “Schools,” *Geo Listening*, <http://geolistening.com/schools/> (accessed February 6, 2014).

²⁵⁸ Stephen Ceasar, “Glendale District Says Social Media Monitoring is For Student Safety,” *LA Times*, September 14, 2013, <http://articles.latimes.com/2013/sep/14/local/la-me-glendale-social-media-20130915> (accessed February 6, 2014).

²⁵⁹ See, for example, *Mobicip*, <http://www.mobicip.com/> (accessed February 6, 2014); *eBlaster Mobile*, <http://www.eblaster.com/eblaster-mobile.html> (accessed February 6, 2014).

modeled on that used by the FBI and Homeland Security, while Mobile Spy employs the language of spy thriller novels and films in promising unique features that let parents “Take Instant Spy Photos” or record real-time sound and video on their children’s phones remotely.²⁶⁰ Most of the spyware software packages offer an identical set of core services, which can be customized by adults to send email reports or real-time copies of all texts message conversations, photos and videos sent and received, as well as use of apps and browser history on children’s phones, without the latter’s knowledge or consent. Several of the companies also emphasize the capacity for real-time GPS location tracking of children, as well as the ability to see the current screen display of the mobile phone from the parents’ computer.

Mobile Spy crafts perhaps the most sexualized narrative of discovery and technologically mediated knowledge about children made available through private spyware. “What are they secretly texting about?” its website asks potential adult customers, “Smoking? Drugs or Sexting? Are they where they are supposed to be?...You have the right to know.” A customer testimonial adds, “Mobile Spy helped me find *the truth* about my child. *I didn’t even know my daughter until I got Mobile Spy.*”²⁶¹ Like Geo Listening, these spyware platforms offer to do the difficult work of digital forensics for unknowing adults and, in so doing, produce as a commodity “the truth” about children’s potential cyberbullying and sexuality online, in exchange making children more governable to parents and thereby reducing the technological estrangement of the digital generation gap.

²⁶⁰ *My Mobile Watchdog*, <http://www.mymobilewatchdog.com/> (accessed February 6, 2014).

²⁶¹ *Mobile Spy*, <http://www.mobile-spy.com/> (accessed February 6, 2014), emphasis added.

Conclusion: Transactions of the Child's Body

The unruliness of the cyberbully represents the quotidian crisis (for adults) in technically mediated knowledge about children. This crisis in knowledge informs the modes of punishment and pedagogy produced by adults in response to the digital elusiveness of children, who might be sexting, harassing peers, or suffering silently in the idealized private space of the family home, all without parents having any clue.²⁶² Even though the anxiety over cyberbullying recognizes that something about digital technology is reconfiguring the fundamental experience of sociality and the everyday for both children and adults, it then anxiously moves to dismiss that question in order to recuperate the child for adult governance, whether by staging an erotic innocence or the new moralizing mission of parents to make their children responsible. The result is an ascending system of control to produce docile digital subjects out of children, beginning in schools through the attempt to apply *Tinker* to cyberbullying, to states that apply explicitly criminal sanctions to cyberbullying, and finally the private surveillance and spying protocols internal to social networking sites like Facebook, as well as the packaged versions available to schools and parents through Geo Listening or My Mobile Watchdog. As the case of Facebook demonstrates, these strategies of punishment and pedagogy tend to overlap, as when Facebook aims to both autonomously machine read its users' content

²⁶² This is not to endorse the tired truism that "the end of childhood" is being "caused" by digital technology, as so many technophobic alarmists would have it; the normative pedagogical arrangement between adult and child can be deconstructed along innumerable other axes that predate or have nothing to do with new media, including, of course, sexuality, which queer theory has done with great success (see Kathryn Bond Stockton, *The Queer Child, Or Growing Sideways in the Twentieth Century*, Durham: Duke University Press, 2009). However, there is a technological specificity to the configuration and intensity over this possible rupture in that normative relation, one that the discourse on cyberbullying is constitutively unable to address because of its need to contain and return the child's body to its proper public and private spaces.

and yet also partners with the Maryland Attorney General to incorporate school officials into resolving cyberbullying incidents interpersonally.

As a result, though, any knowledge about cyberbullying that might be produced from an engagement with children is deferred by the fantasized restoration of the adult child relation in its normal pedagogical form. The structuring of this economy of technically and sexually mediated knowledge about children makes it exceedingly difficult to draw any conclusions about “what is really going on” online and in the social media lives of children. This is the case, moreover, precisely because of the sustained interest and desire of adults to play detective and reconstruct children’s sexual and digital lives, much like John Halligan and Tina Meier. The eroticized narrative of innocence and aggression produced by these adults is indicative of how the discourse of cyberbullying participates in the much broader transactional function of the child’s body for the state and the family. The discourse on technology at hand in cyberbullying has been analogized to a discourse on children’s sexuality precisely because the latter facilitates the modern negotiation of the productive and consumptive body across the public and private spheres. As Foucault sketches it in the epigraph opening this chapter, the sexuality of the child’s body serves to portion it between the family home, where oedipal narratives, for instance, will always return it to the orbit of parents; at the same time, the state demands the bodies of children in school and as future workers knowing that having given sexuality back to the family, it can make such demands.

To this modern cleavage as detailed by Foucault for the eighteenth and nineteenth centuries could be added the more recent American history of children as consumers, to whom some limited recognition of semi-autonomy or agency has been based in a

gendered and sexualized understanding of the agency of a consumer demographic. Over the span of the twentieth century, children accrued a limited sense of autonomy to the extent that they could carve out their own social world as consumers, in part by affirming their sexual bodies as consumer objects. In the era of the Internet, the tensions between that history and the discourse on children's sexuality have become quite visible: children try to leverage their minimally implicit agency by making their bodies the grounding of a social world on- and offline. Parents and schools, in turn, try to contain and return those bodies to the proper pedagogical spaces negotiated long before the Internet, the school and the family home. The result is a persistent unruliness that can only be neutralized to the extent that the actual social worlds of children are covered over by adult fantasies of what they look like.

CHAPTER THREE

Assembling the Transgender Child Since the Nineteenth Century:

Sex, Eugenics and The Endocrine Body

Introduction: To Relate Two Cases

When the Maine Supreme Judicial Court ruled in January 2014 that an elementary school had discriminated against a transgender fifth grader by requiring her to use a unisex staff bathroom instead of the girls' communal restroom, it did so with an audibly precedential voice. Not only was it the Court's first decision involving the 2004 Maine Human Rights Act, which had incorporated "sexual orientation" as a protected class (and read into it "gender identity"). The decision was also repeatedly hailed as the first of its kind in the United States, poised to shape an apparently sudden new field of school administration: transgender students.²⁶³ One member of the bench, in a concurring opinion, described the "uncharted territory" into which the school had entered.²⁶⁴ Such transgender children, added several journalists covering of the case, were a "difficult issue" with which schools were now "grappling."²⁶⁵ Aidan Key, founder of Gender Diversity Education and Support Services, likewise emphasized the sheer novelty of transgender students from his perspective as an adult. "This is a new step for our society," he suggests. "They're

²⁶³ *John Doe et al. v. Regional School Unit 26*, 2014 ME 11, 1: "We are called upon for the first time to interpret the MHRA, and particularly several amendments enacted by the Maine Legislature in 2005, as it applies to transgender students in schools."

²⁶⁴ *Ibid.*, 14.

²⁶⁵ "Maine's Highest Court Rules in Favor of Transgender Student," *Al Jazeera America*, February 2, 2014, <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/12/31/how-are-schools-supportingtheneedsoftransgenderstudents.html>

starting at a significantly younger age and they're not going to travel nearly the same path as me.”²⁶⁶

Whether articulated as a generation gap or as a suddenly pressing administrative problem, the transgender child is invested with a newness and presentism to which the Maine Court and its interlocutors are given. Although the court adopts the language of “transgender” confidently, with little comment or even definition, it also declares that “Particularly when young children are involved, it can be challenging for a school to strike the appropriate balance between maintaining order and ensuring that a transgender student’s individual rights are respected and protected.”²⁶⁷ With the recent passage of legislation in California that extends similar rights as Maine’s to transgender students, the child has come to occupy center stage in the rising visibility of transgender bodies in the United States, dramatized recently by *TIME* magazine as the “transgender tipping point.”²⁶⁸ For *TIME*, the visibility of transgender bodies is a result of the ostensible settling of same-sex marriage by the US Supreme Court in *US v. Windsor* (2013), a linear measure of liberal tolerance and civil rights, making transgender the new, the now, and the next of American identity politics. The transgender child, potentiated by the allure of futurity already granted to children in Western culture, reads as perhaps the newest of the new bodies to which political and cultural value is accruing.

In the Maine decision the Court relied on the production of a visible field of knowledge around the body of the transgender child. The findings of fact in the opinion

²⁶⁶ Tanya Mosley, “How Are Schools Supporting the Needs of Transgender Students,” The Flagship Blog, *Al Jazeera America*, December 31, 2013, <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/12/31/how-are-schools-supportingtheneedsoftransgenderstudents.html>.

²⁶⁷ *John Doe et al. v Regional School Unit 26*, 6.

²⁶⁸ “CA Governor Brown Signs Historic Transgender Students Bill into Law,” *Transgender Law Center*, August 12, 2013, <http://transgenderlawcenter.org/archives/8756>; Katy Steinmetz, “The Transgender Tipping Point,” *TIME Magazine*, May 29, 2014, <http://time.com/135480/transgender-tipping-point/>.

begin with “Susan Doe is a transgender girl” and from there meticulously detail her medical diagnosis of gender dysphoria, her early childhood and coming-out, the history of her gender presentation at school, and the specifics of her special education “504 plan,” formed under the aegis of a disability statute to govern her attendance at school.²⁶⁹ In short, the Court relies on the availability of the transgender child as a “case,” a field of knowledge with a visible history and an archive of expert discourses, in order to act in her name. The decision is thereby carefully calibrated to apply to legible transgender students *only*, rather than allowing for all students in Maine to elect to use the bathroom of their choice or according to their avowed gender preferences. “The determination that discrimination is demonstrated in this case rests heavily,” impresses the written opinion, “on Susan’s gender identity and gender dysphoria diagnosis, both of which were acknowledged and accepted by the school.”²⁷⁰ The court relies on the force of the language of medicine in order to justify the apparently sudden appearance of Susan Doe in its juridical field without further comment.

Yet the aura of newness, of now-ness, and of futurity accruing to the transgender child in the contemporary is problematized by its juxtaposition with a second case in which a court also relied on the truth-telling force of medicine for authority. In January 1965 a judge in the Criminal Court of Baltimore City signed a court order following an indictment for burglary. The order was short, a one-sentence plea deal providing an alternative to incarceration:

This case, having come for a hearing and testimony having been taken, it is this 22 day of January, 1965, by the Criminal Court of Baltimore City with the desires of the Defendant and at the request of the Defendant’s mother and guardian

²⁶⁹ *John Doe et al. v Regional School Unit 26*, 2-3.

²⁷⁰ *Ibid.*, 13.

ORDERED that Dr. Howard Jones, at a time and place to be selected by him, perform a surgical sex repair on the Defendant, [G.L.].²⁷¹

The language of “surgical sex repair” was the Criminal Court’s way of rendering “sex reassignment surgery,” a procedure that had not yet officially been performed in the United States. Dr. Howard Jones, of the Johns Hopkins Hospital in Baltimore, was in fact part of the committee that would later that year quietly begin performing sex reassignment, announcing the decision to the public only after the fact in a press conference in November 1966.²⁷² As of yet, though, Hopkins had yet to undertake a single sex reassignment surgery for transsexual patients.²⁷³ The court order was to certify the first transsexual surgery in the country, for a male to female (MTF) patient.

The surprising characteristic about this patient, some 49 years before the Maine decision, is their²⁷⁴ age: 17 years old. The first sex reassignment surgery in the United States would have been performed on a teenager and was so ordered by a criminal court. It *would have* been the first because in fact the surgery was never carried out. After the indictment and court order were pronounced, the defendant, “G.L.,” awaited probation officer Larry Kloze in the Baltimore city jail. Kloze had served, during G.L.’s multiple encounters with the law since age 13, as something of an intermediary between the

²⁷¹ *State of Maryland v. [G.L.]*, Indictment #1531 Y, January 5, 1965.

²⁷² The John Hopkins University, Office of Public Relations, “Statement of the Establishment of A Clinic for Transsexuals at the John Hopkins Medical Institutions,” November 21, 1966. John Money Collection Folder 3, ACMA. Jones, along with John Money from Johns Hopkins, is also listed on the bail receipt for G.L. Criminal Court of Baltimore City, Part 4, Bail #1511, no date.

²⁷³ As I will attend to in detail below, however, Hopkins had performed many sex reassignments for “hermaphroditic” infants and children since at least the 1930s.

²⁷⁴ To avoid the appearance of adjudicating the truth of the individual’s sex or gender, which would be a distraction from the argument of this chapter, I have ignored available singular pronouns in the archive, employed only the initials already available in the publications on this case by Money and other doctors, and intentionally use plural pronouns instead of singular, sexed pronouns. I have also erased the full name of “G.L.” from my citations in order to preserve some level of privacy; even if the documents consulted for this dissertation are all technically available in the public record through the archives of the now defunct Criminal Court of Baltimore City, there is no point to printing the individual’s full name other than producing an ethically questionable record of someone’s life when it is both unnecessary and somewhat antagonistic of the spirit of a genealogical method of reading.

doctors at Hopkins and the presiding judge. He had his girlfriend pick out some of her clothes and they then drove down to the jail, dressed G.L. as a girl, and delivered G.L. to the psychiatric unit at Hopkins. There, G.L. was to live as a girl and await immanent sex reassignment surgery. Pressure behind the scenes from uncomfortable members of the faculty of psychiatry at the university hospital, meanwhile, succeeded in repeatedly delaying the surgery date. Before the surgery ever took place, G.L. fled the psychiatric unit with another patient, never to return.²⁷⁵ Jones, and his principle colleague managing the case, John Money, who undoubtedly had invested much professional desire in the case, were frustrated and published only sparingly (and perhaps bitterly) about G.L. during their career.²⁷⁶

These two events are separated by nearly 50 years, both producing out of the body of the transgender child a case, a body of medical and juridical knowledge. Except, G.L. does not figure in the discourse on the transgender child today, or in the history of transgender medicine and social movements in the United States; indeed, other than Money's cloaked reference to the case, G.L. has never been discussed outside of the Baltimore courtroom and the Hopkins psychiatric ward.²⁷⁷ The overwhelming demand to see the transgender child as a breathtakingly new body in the twenty-first century, perhaps, has effected an astonishing forgetting of its genealogy, both in the medical

²⁷⁵ Laura Wexler, phone conversation, June 13, 2014. Wexler's source is an interview with G.L. conducted in 2007.

²⁷⁶ See John Money, "Public Opinion and Social Issues in Transsexualism: A Case Study in Medical Sociology," in John Money and Richard Green, eds., *Transsexualism and Sex Reassignment* (Baltimore: The Johns Hopkins Press, 1969): 243-253. I will come back to G.L. and Money in greater detail in the next chapter.

²⁷⁷ The referential historical monograph of US transgender history, Joanne Meyerowitz's *How Sex Changed: A History of Transsexuality in the United States* (Durham: Duke University Press, 2004), contains no reference to this case, nor any reference to transsexual children, although the next chapter will elaborate not only on G.L. but other cases, from the 1960s, involving children understood as transsexual by doctors and therapists.

field,²⁷⁸ but also in the courtroom, the school, and the social sciences and humanities.

Not that there is much literature on the transgender child in its entirety; even in transgender studies only a few, extremely recent essays have been published. The inaugural issue of *Transgender Studies Quarterly*, made up of a collection of short entries or “keywords” for the field, includes among them “Child.” In it, Tey Meadow repeats the chronology assumed by the Maine case, but overturned by G.L.’s: “A relatively new social form, we see no references to transgender children prior to the mid-1990s.”²⁷⁹

If any historicized narrative already exists, it follows, in rough outline, David Valentine’s speculative hypothesis in *Imagining Transgender*: that in 1973, when the American Psychiatric Association (APA) removed “homosexuality” from the *Diagnostic and Statistical Manual (DSM)*, under pressure from gay activists, it created an epistemological vacuum. If homosexuality had been birthed in the late nineteenth century through the trope of “inversion,” a “hermaphroditism of the soul” enmeshing sexual object choice with an abnormally sexed psychosomatic condition, the APA’s capitulation to a social movement founded on sexual object choice alone (and *not* sex) left a reserve of discursive energy available to isolate “gender” as a medical object of knowledge and intervention. In the next edition of the *DSM* in 1980 appears, therefore, “Gender Identity Disorder” (GID), the predecessor of the gender dysphoria on which the

²⁷⁸ In the single major interdisciplinary neuroendocrinological and clinical monograph on the transgender child there is no historical reference point given but rather a scattered narrative of a *sui generis* transgender child arriving in the clinic, with some brief anthropological ruminations given on the matter. This is even more noteworthy since the two authors pioneered many of the approaches to puberty suppression therapy that dominate the clinical emergence of transition in childhood today. Peggy T. Cohen-Kettenis and Friedmann Pfafflin, *Transgenderism and Intersexuality in Childhood and Adolescence: Making Choices* (Thousand Oaks, CA: Sage, 2003), 21: “In contrast to the plenitude of historical and cultural research on adult transgender experience, there is a total lack of such data as regards GID [Gender Identity Disorder] in childhood and adolescence [...] GID in childhood and adolescence are rather recent phenomena even in Western countries.”

²⁷⁹ Tey Meadow, “Child,” *TSQ: Transgender Studies Quarterly* 1-2 (2014): 57-59.

Maine court leans in 2014. This new diagnostic category is used primarily to treat effeminate boys who are feared by parents and therapists to be proto-gay. In other words, GID treats sexual object choice by proxy via sex and gender, that is, through gender identity as the historical residue of inversion. A decade or so later, as that therapeutic practice grows increasingly politically controversial under the overwhelming demand to diagnostically and socially separate sex, gender and sexuality, the discourse refines itself again and focuses on gender identity in children in isolation, abandoning all relation to sexual object choice, enabling the emergence of a properly “transgender” child in the 1990s, particularly in the Netherlands, where clinics first experimented with suppressing puberty and effecting gender transition *during* childhood.²⁸⁰

Valentine’s brief history, which is recapitulated by Meadow’s entry on the transgender child for *TSQ*, is undone by G.L.²⁸¹ The latter should not be read as a point of origin for the transgender child, however. As a counterpoint in a genealogy, the case rather indicates that a certain arrangement of knowledge and institutional practice was already in place in the mid twentieth century to produce out of the child’s body an intelligible sense of transgender (specifically, *transsexualism*, in the language of the

²⁸⁰ David Valentine, *Imagining Transgender: An Ethnography of a Category* (Durham: Duke University Press, 2007): 53-57.

²⁸¹ This is not to single out Valentine for exceptional criticism; genealogy is hardly his trade—*Imagining Transgender* is an ethnography located in the space and time of New York City in the 1990s. Rather, his work stands as practically the only account in the humanities of the history of the transgender child that runs longer than a couple of sentences and reflects on its categorical production out of a history of sex, gender and sexuality. The narrative that he gives as a provisional suggestion necessarily stands in for a certain way of understanding the emergence of the transgender child in the past decade, perhaps the only one given, so far as the research for this dissertation has been able to determine. Even in the archives of the doctors and patients that will be discussed in the next chapter, little or no meta-reflection is given to the implications of treating children as transsexuals, except to recommend against it. Most discourses on the transgender child employ a brazenly *sui generis* narrative that offers no historical context or conceptual genealogy. For more on this, see the Introduction to this dissertation.

1960s).²⁸² What this juxtaposition suggests is that both the Maine decision and the court order in Baltimore need to be read in a much more comprehensive genealogy of the transgender child than available to date. This chapter and the next attend to that project, examining how children were treated as transsexual from the 1960s onward. Rather than beginning with the epistemological archaeology of psychological diagnosis in the 1970s, and remaining inside the teleological narrative of American sexual identity politics, the genealogy of the transgender child involves a wide array of techniques for producing a particular kind of plastic body assumed by both G.L. and Susan Doe, one whose political value has more to do with eugenics than gender identity. The modern body of endocrinology, inherited by Jones and Money at Hopkins in the 1950s, produced “gender” as a hormonal and technologically supplied field of intervention into the human organism, one with self-consciously political implications for the body politic in a postwar consumer society. The endocrine body prioritized in its incorporation the racial cultivation of sex and, later, gender. Reframed in this genealogy, the distinct *value* of the transgender child’s body to the state and the law in Maine, its incorporation into a much wider political ontology of the body in America, becomes evident. Rather than starting in 1973, however, this genealogy must reach back to the foundations of the endocrine body in the nineteenth century, if not earlier.

Biology and Hormones: Life’s Bisexuality in the Nineteenth Century

²⁸² In this dissertation I employ the term “transgender child” even though it is historically inaccurate when discussing the mid twentieth century in the sense that the term had not yet been coined. However, following the practice of transgender studies, my use of the term is meant to invoke a broader combination of both a historical figuration of bodies and a categorically unstable concept (transgender) whose critical force is useful in mapping stakes of the genealogy being mapped in this chapter and the next. I use the terms “transsexual” or “transsexualism” when referring to the historical medical discourse that produced those words. Since the phrase “transgender child” is so rooted in presentism, moreover, I find it useful to deploy it somewhat anachronistically to emphasize the historical transformations this project examines.

The biological discourse on sex proliferated in nineteenth century Europe and its colonies along with the massive general extension of the natural sciences. Between about 1850-1950, anatomical description and the experimental method incarnated by Wilhelm Roux in the laboratory and Claude Bernard in the clinic had the dispersed effect of fundamentally undermining the fixity of sexual dimorphism in animals, including in humans.²⁸³ Incrementally and without coordination or unity of purpose, various branches of biology, particularly physiology, anatomy, developmental evolution, embryology, and eventually endocrinology, came to understand life as exhibiting a primary bisexual tendency. In the human organism, this tendency was understood to take shape even in the embryo, and to be governed by the developmental effects of what were called at first “internal secretions” and later “hormones.” By the 1920s, the endocrine system had incorporated a distinctly “modern” sexed and racialized body, one both medical and political, whose developmental plasticity promised calculable improvement for individuals and for the wider body politic. This endocrine body was inherited in the mid twentieth century, in an entirely different context, by the patients and clinicians that founded transgender medicine in the United States. What is perhaps less evident on the surface of this endocrine body’s genealogy is that its trenchant developmentalism is a discourse on the child and childhood, although it does not necessarily present itself as such. The rationally governed endocrine development of the human organism’s sex made rearing children and their hygienic care under the rubric of normal development of the utmost importance, a concern inherited in the mid twentieth century.

²⁸³ Jane Maienschein, “The Origins of *Entwicklungsmechanik*,” in Scott F. Gilbert, ed., *A Conceptual History of Modern Embryology* (Baltimore: The Johns Hopkins University Press, 1994), 48-51; Roy O. Greep, “Gonadotropins,” in S. M. McCann, ed., *Endocrinology: People and Ideas* (Bethesda, Maryland: American Physiological Society, 1988), 63-64.

Prior to the nineteenth century, the European scientific and moral consensus that male and female were irreducible, hierarchical forms with no clear resemblance or interchangeability moved slowly. In 1668 Regnier de Graaf described the “female testis” as an egg akin to those found in birds, and two years later Anton van Leeuwenhoek isolated and described spermatozoa.²⁸⁴ Karl Ernst von Baer’s detailed discussion of the human ovum appeared in 1827.²⁸⁵ In the wake of von Baer’s early embryological studies, a biological interest in the mechanism of sexual differentiation took root in earnest. Most of this work extrapolated conclusions concerning humans from experiments in animals. Arnold Adolph Berthold’s experiments on chickens conducted in Germany in 1848 and 1849 were disseminated at the end of the century and retrospectively given the title of the first work to demonstrate the existence of a separate endocrine mechanism, though that term had yet to cohere. Berthold was in fact replicating experiments undertaken by the English physician John Hunter in the late eighteenth century, in which the testes of cocks were successfully removed and transplanted. At that time Hunter was not motivated by any proto-endocrine concept; a reigning nervous conception of the body understood the gonads to relate by “sympathy” to the other organs of the body. Sex was, hence, a question of nervous intensity and

²⁸⁴ See H.D. Jocelyn and B.P. Setchell, “Regnier de Graaf on the Human Reproductive Organs. An Annotated Translation of *Tractatus de Virorum Organis Generationi Inservientibus* (1668) and *De Mulierum Organis Generationi Inservientibus Tractatus Novus*,” *Journal of Reproductive Fertility, Supplement* (1972): 1-222; M. Karamanou, E. Poulajou-Rebelakou, M. Tzetis, G. Androutsos, “Anton van Leeuwenhoek (1632-1723): Father of Micromorphology and Discoverer of Spermatozoa,” *Revista Argentina de Microbiologia* 42 (2010): 311-314.

²⁸⁵ Chandak Sengoopta, *The Most Secret Quintessence of Life: Sex, Glands, and Hormones, 1850-1950* (Chicago: University of Chicago Press, 2006), 14.

distribution. Nevertheless, after transplanting the testis of a cock into the belly of the hen, Hunter noted its subsequent masculinization.²⁸⁶

Berthold recreated these experiments with the expressed goal of proving that the gonads did not affect sexual differentiation through the nervous system but by some other mechanism. He both “caponized” cocks by castrating them, noting their subsequent feminization, and also transplanted several of the testes back into the birds, but in their stomachs. If indeed the gonads were nervous organs the severing of any nerves in transplant to the belly would render them useless. However, the male animals “exhibited the normal behavior of uncastrated fowls” following transplant; “they crowed lustily, often engaged in battle with each other and with other cockerels, and showed the usual reaction to hens.” “From the fact that the testis may attach itself to a remote body part, namely the intestine, and continue to develop and actually produce semen,” concluded Berthold, “it follows that no specific spermatic nerves exist.” Instead, he wagered that “it follows that the results in question are determined by the productive function of the testes (*productive Verhältniss der Hoden*), i.e., by their action on the blood stream, and then by corresponding reaction of the blood upon the entire organism.”²⁸⁷ The nascent biology of “internal secretions,” as these blood-based messengers were henceforth known, was further shaped through the new concept of the body’s “ductless glands” (which included the gonads) described by Bernard in France and in North America by Charles-Édouard Brown-Séquard, both citing Berthold as precedent.²⁸⁸

²⁸⁶ C. Barker Jørgensen, *John Hunter, A.A. Berthold, and the Origins of Endocrinology* (Odense, Denmark: Odense University Press, 1971), 15-16.

²⁸⁷ Arnold Adolph Berthold, “The Transplantation of the Testes,” translated by D.P. Quiring, *Bulletin of the History of Medicine* 16 (1944): 400-401.

²⁸⁸ See Sengoopta, *The Most Secret Quintessence of Life*, 35-36.

The extrapolation from birds was not incidental to the biological redefinition of sex. Not only did animals serve as experimental objects for procedures that could not be carried out on humans, as well as having furnished centuries of vernacular knowledge through livestock breeding and husbandry, but the study of animals and plants was also given a new urgency of relation to the human as Charles Darwin's theory of evolution gained popularity. Biologists and early endocrinologists frequently cited Darwin as providing an explanation of the natural plasticity of sex furnished by nature. In *The Variation of Plants and Animals under Domestication* (1896), Darwin suggests succinctly, "In every female all the secondary male characters, and in every male all the secondary female characters, apparently exist in a latent state, ready to be evolved under certain conditions." In discussing birds in particular, Darwin goes on to reference the early gonad transplantation experiments, adding, "as Hunter has remarked, we see something of an analogous nature in the human species."²⁸⁹

The first psychiatry of sexuality and early sexology, not to mention later Freud, read widely in this evolutionary and biological literature on the bisexual tendency of life. In 1849 Claude-François Michéa described men attracted to other men as exhibiting a hypothesized "masculine uterus," while in 1852 Johann Ludwig Casper described the same condition as "hermaphroditism of the soul." By 1864, Karl Heinrich Ulrichs described "urnings" as men with some as of yet unexplained feminine aspect, resulting secondarily in their attraction to men, either as abnormal men or as a kind of women.²⁹⁰ Richard von Krafft-Ebing's *Psychopathia Sexualis*, first appearing in 1886, took on

²⁸⁹ Charles Darwin, *The Variation of Plants and Animals Under Domestication* (London: John Murray, 1905 [1896]): 26.

²⁹⁰ Harry Oosterhuis, *Stepchildren of Nature: Krafft-Ebing, Psychiatry, and the Making of Sexual Identity* (Chicago: University of Chicago Press, 2000), 39.

Ulrichs' and other literature on "contrary sexual feeling" to specify it as a hybrid psychosomatic condition, "psychical hermaphroditism."²⁹¹ Ebing, like his contemporary Freud, read widely in developmental biology and embryology, hoping to link his psychiatric work with inverts to a clear etiology in the development of the innately bisexual human embryo and, later, its genetic makeup.²⁹²

Nevertheless, the emerging scientific research and clinical application of internal secretions quickly defined itself strongly *against* the rising tide of geneticism in biology and its hardline emphasis on Darwin's notion of natural selection over his theories of sexual and artificial selection. The dissemination of the "rediscovered" laws of Mendelian genetics at the turn of the twentieth century, contemporaneous with the isolation of sex chromosomes by Clarence Erwin McClung in 1902, enabled a reactionary, de facto preformationist account of sex differentiation in humans and other animals, neglecting even the division of sex into "primary" and "secondary" characteristics in circulation at the time.²⁹³ Endocrinology, particularly after the coining of the "hormone" in 1905, extended itself against the inflexible body of developmental evolution and genetic biology. In its place, it advanced the endocrine body as developmentally open to hormonal intervention, rational improvement, and the

²⁹¹ Richard von Krafft-Ebing, *Psychopathia Sexualis: A Medico-Forensic Study*, translated by Harry E. Wedeck (New York: G.P. Putnam's Sons, 1965), 298-299.

²⁹² Granted unprecedented access to Krafft-Ebing's papers at his estate, historian Harry Oosterhuis reports that he found a single unpublished case history of a patient that, in the mid twentieth century, might have been described by John Money as a "pseudohermaphrodite": someone whose normatively indeterminate genitals did not correspond to gonadal sex (*Stepchildren of Nature*, 48-49). This was the only case in Krafft-Ebing's archive that presages transgender medicine in such a legible way. This should not be surprising since in this period the separation of biological sex, psychological gender, and erotic sexuality would have made no sense and Krafft-Ebing's nosology is as ambiguous as it is contradictory from the perspective of twentieth and twenty-first century medicine. It would be unhelpful, then, to retrospectively project that separation backwards from the mid twentieth century, as if this work was leading to it. It was not.

²⁹³ V.C. Medvei, *The History of Clinical Endocrinology*, Second Revised Edition (Nashville: Parthenon Publishing), 387.

cultivation of racial stock through sex. In so doing, the endocrine body served as a counterpoint, though ultimately very unsuccessfully so, to the hegemonic form of twentieth century eugenics.

The Political Body and Body Politic of Endocrinology

In 1889 Brown-Séquard had been embarrassed at a meeting of the Société de Biologie in Paris when his report of having undergone a “rejuvenation” after injecting himself with a liquid preparation of sperm, testis tissue and blood from a dog and guinea pig was met with chilled ridicule, the audience convinced only of his senility at age 72.²⁹⁴ However, such rejuvenation through hormone therapy soon became one of the central pursuits of endocrinology, particularly in its rapid growth in the first four decades of the twentieth century, where clinical work and experimental research were more or less indistinguishable. It was during this period, by reinvesting the nineteenth century concept of the bisexuality of life, and particularly the latency of secondary sex characteristics in every human body, that endocrinology sought to socially and somatically improve the individual body and the body politic with hormones.

Reflecting in 1923 on his coining of the term “hormone” eighteen years earlier, Ernest Starling explains the endocrine body as a subtle and responsive informational system that integrates the body and regulates its development. As “chemical messengers,” each hormone “is manufactured by a group of cells and turned into the blood, in which it travels to all parts of the body, but excites definite reactions in one or a limited number of distant organs.” “It seems almost a fairy tale,” Starling concedes, “that such widespread results, affecting every aspect of a man’s life, should be conditioned by

²⁹⁴ Jørgensen, *John Hunter, A.A. Berthold, and the Origins of Endocrinology*, 38.

the presence or absence in the body of infinitesimal quantities of a substance which by its formula does not seem to stand out from the thousands of other substances with which organic chemistry has made us familiar.” Nevertheless, his confidence in the force of the endocrine system leads him to add that “the reproductive organs are possibly even more marvellous [*sic*]” than the other ductless glands, perhaps the apogee of the endocrine body’s promise. Summing up the consensus of the 1920s, Starling explains that “The whole differentiation of sex, and the formation of secondary sexual characteristics, are determined by the circulation in the blood produced either in the germ cells themselves or, as seems more probable, in the interstitial cells... Thus, it is possible by operating at an early age to transfer male into female and *vice versa*.”²⁹⁵ This developmental understanding of sexual differentiation, according to which hormones acting on the embryo in utero govern primary sex differentiation (the expression of genes and the formation of gonads) and then later, over the course of childhood and puberty, the secondary sexual characteristics (genital and somatic morphology), was immediately exciting for its hygienic applications. Sexual differentiation, now that the mechanism of its natural governance had been isolated, could be modified and changed by medicine.²⁹⁶

Starling saw in clinical endocrinology a supple and perfectible mode of positive eugenics: “These are not merely interesting facts which form a pretty story, but they are pregnant of possibilities for our control of the processes of the body and therewith for our mastery of disease.” Confident that the synthesis of hormones would soon allow for such a level of control, Starling offers as his example “The conversion of a stunted, pot-

²⁹⁵ Ernest Starling, “Hormones,” *Nature* 112 (1923): 795.

²⁹⁶ There is certainly much more to say about the metaphor of government employed in the conceptual definition of the endocrine system as the body’s integrating mechanism; however, for the purposes of this chapter, in which the political qualities of the endocrine body that are most pressing are its eugenic properties, that aspect of the question will be put on hold.

bellied, slaving cretin [a thyroid deficiency] into a pretty, attractive child by the administration of thyroid.”²⁹⁷ Not only could endocrinology cure abnormalities by restoring the proper course of development to the child, it might extend and improve upon the body’s overall course of health to the very end of life, rejuvenating the human body and making it available for economic and social ends that presently had to be sacrificed. “The sorrow of the world is not the eternal sleep that comes to every one at the end of his allotted span of years, when man rests from his labours,” Starling impresses at the end of his essay. “It is the pain, mental and physical, associated with sickness and disability, or the cutting off of man by disease in the prime of his life, *when he should have had many more years of work before him.*”²⁹⁸ In 1923 Starling reflects the emergent endocrinological critique of social Darwinism, the latter increasingly emphasizing the sterilization or execution of inferior bodies for political, economic, and moral reasons. Hormones promised instead to restore and enhance all bodies, and to make them more useful, through a racial cultivation of sex.

The opposition of endocrinology to geneticist biology and to social Darwinism was strongly anchored in interwar Vienna, where a proliferating volume of research and clinical experimentation with transplants, organotherapy, and early hormone administration took sex, in Eugen Steinach’s words, as “an integrating component of the life concept.”²⁹⁹ Steinach’s work made him famous enough to reach the popular press around the world, mostly for his endocrine surgical procedures to “rejuvenate” or “reactivate” the body in old age. (One of his most ardent partisans was Harry Benjamin,

²⁹⁷ *Ibid.*, 796.

²⁹⁸ *Ibid.*, 798, emphasis added.

²⁹⁹ Eugen Steinach, *Sex and Life: Forty Years of Biological and Medical Experiments*, translated by Josef Loebel (New York: The Viking Press, 1940), 1.

the endocrinologist, sexologist and German emigré who would later fund and direct much of the founding of transgender medicine in the postwar United States.) Before developing the rejuvenation procedure, Steinach began his career by recreating Hunter and Berthold's experiments. Steinach's favorite lab animals were rats and guinea pigs and he castrated and transplanted both testes and ovaries in them to arrive at a mammalian demonstration that the gonads were the source of the internal secretions governing sex and somatic development.³⁰⁰ Indeed, the two became linked in the course of his research: the development of the organism as a whole was a question of sex, for sex was the developmental principle of life incarnate. Subsequently Steinach conducted more specific experiments with the masculinization and feminization of castrated animals through a version of cross-sex hormone therapy. In papers published in 1912-1913 he reported, matter-of-factly, "the implantation of the gonad of the opposite sex" in guinea pigs "transformed the original sex of the animal."³⁰¹

From this work and other experiments demonstrating that the gonads functioned through a set of feedback loops with the pituitary gland in the brain, Steinach specified the endocrine definition of the bisexual body for the early twentieth century: "Absolute masculinity or absolute femininity in any individual represents an imaginary ideal. A one hundred percent man is as non-existent as a one hundred percent woman."³⁰² Instead, Steinach described a developmental course through which sexual differentiation took place over a sensitive temporal arc. "Long before puberty, at the dawn of their individual existence, male and female human beings show no sharp differentiation of form, apart from their organs of generation." Rather, "Differentiation appears later, and is at first

³⁰⁰ *Ibid.*, 27-28.

³⁰¹ *Ibid.*, 66.

³⁰² *Ibid.*, 7.

gradual,” until puberty, when it is consolidated and then ultimately declines with age. Steinach often referred to the gonads, in this schema, as “the puberty gland.” Not that this physiological, materialist explanation of sex excluded the psyche. On the contrary, Steinach wagered that the “instability” of human sexual form “reveals itself even more distinctly in mental and psychological aspects. We know how,” he offered by way of example, “in the cubhood of young boys and the difficult ‘teens’ of girls, self-consciousness is peculiarly paired with an increased irritability and fatigability and with a mind full of dark and disturbing emotions.” This period of “crisis,” as he termed puberty, particularly in its psychological expression, was “a case of external manifestation of extensive workings under the surface, a secret and fateful activity of internally functioning glands.”³⁰³

Among Steinach’s peers in Vienna was Paul Kammerer, a biologist with whom he authored a 1920 paper, “Climate and Puberty” (*Klima und Mannbarkeit*). Kammerer was a major proponent of a Lamarckian theory of inheritance, according to which environmental information could affect genes and be inherited by future generations.³⁰⁴ In “Climate and Puberty” he and Steinach aimed to demonstrate *how* acquired characteristics were inherited: they posited sex, governed by the endocrine system, as the mediator between organism and environment. The essay, in two halves, joins analysis of heat experiments on rats to a sweeping review of European colonial anthropology. In the heat experiments, Steinach and Kammerer found that rats raised under warmer temperatures developed more quickly and had more pronounced secondary sexual

³⁰³ *Ibid.*, 45-46.

³⁰⁴ Although Kammerer was discredited by the scientific community and eventually committed suicide in a context in which it was read as the ultimate proof of his failure as a scientist, his work is uncannily recapitulated, albeit via somewhat more complicated means, by contemporary epigenetics.

characteristics than those in cooler conditions. Furthermore, the morphologies seemed to be heritable, for when rats raised under a hot climate for several generations were subsequently moved to a more temperate environment, their offspring continued to develop with similar virility. In the long adjoining anthropological half of the paper they correlated these findings in rats to human populations by speculating that warm climate led to a hypersexualization of non-European populations (they also argued that European colonizers suffered from hypersexualism and nervous breakdown or neurasthenia for these same reasons as they adjusted to new environments). Tropical climate's effect on the body was extrapolated as an example of "somatic induction," the incorporation of environmental information into the germ plasm through the endocrine system, resulting in differences in the sexed and raced body of present and future generations. With this colonial alibi, Steinach and Kammerer were convinced that through the individual body's racialized sex the overall body politic could be intentionally modified. This would entail a racial hygiene of hormones that could pass on useful developmental characteristics to future generations.³⁰⁵

In Kammerer's solo work he summed up this potential for so-called "positive eugenics" as an intervention into "the inherited memory of the race (*mneme*)."³⁰⁶ If Steinach had elaborated a theory of hormonal rejuvenation, then Kammerer imagined a "hereditary rejuvenation" according to which any deficiency or developmental impairment of the body could eventually be corrected and then enhanced until it realized its peak potential. Again, this sexual cultivation of racial stock was articulated against

³⁰⁵ *Ibid.*, 112-113. See also Cheryl A. Logan, *Hormones, Heredity, and Race: Spectacular Failure in Interwar Failure* (New Brunswick: Rutgers University Press, 2013), 65-73. "Somatic induction" is quoted from Logan. The essay itself, unfortunately, has yet to be translated into English.

³⁰⁶ Paul Kammerer, *The Inheritance of Acquired Characteristics*, Translated by A. Paul Maeker-Brandon (New York: Koni and Liveright, 1924), epub version, 553, 499.

the rising tide of negative eugenics in interwar Europe, although it was nonetheless fully complicit with the discourse and practice of eugenics.³⁰⁷ “If we consider the chromosomes as the *vehicles* of heredity,” Kammerer explained in 1924, “the ductless glands have to be looked upon as the *executives* of heredity.”³⁰⁸ This was far from an abstract question for Kammerer and if it had bearing upon the overall racial health of the population for future generations, it did so by being at the same time a discourse on the laboring body in a utopian Austrian Marxist project of uplifting the working classes.

“The chromosomes may be compared to a savings bank,” he explains in this vein, “where inherited money is deposited to bear interest. The ductless glands may be compared to the clients of this savings bank, which put their savings into circulation and eventually enlarge them. Applied to ‘organic’ capital [i.e., the living body of the worker], this would amount to newly acquired characteristics.”³⁰⁹ Endocrinology fully realized would serve no less a purpose than making an ever better body, if not *the best* body.

“*Theoretically, as well as practically,*” Kammerer asserted, “*the changeability of living beings is unlimited.*”³¹⁰

³⁰⁷ *Ibid.*, 514.

³⁰⁸ *Ibid.*, 517, emphasis in original.

³⁰⁹ *Ibid.*, 518. “Organic capital” is borrowed by Kammerer and other contemporaneous work from his colleague, the sociologist and economist Rudolf Goldscheid. See Gudrun Exner, “Rudolf Goldscheid (1870-1931) and the Economy of Human Beings,” *Vienna Yearbook of Population Research* (2004): 283-301. With “organic capital,” Goldscheid introduced economy into the living body of human beings, both at the individual and social scales. His “Economy of Human Beings” understood bodies and minds as living resources in which investment could yield not only more productive labor-output, but the improvement of living conditions that would benefit workers. Goldscheid proposed organic capital, in particular, as a counterpoint to the rising eugenic and Malthusian anxiety over the declining birth rate in Germany and Austria in the early twentieth century. Rather than viewing a decline in overall births as a medical, political and economic problem, he felt it was an opportunity to rethink the value of investment accorded to each child that was born. In this qualitative rather than quantitative model, investment in the organic capital of children could both yield returns in excess of what would be achieved by a mere increase in overall births by focusing on raising the quality of each child that was born, while at the same time raising the standard of living of those children. The theory of organic capital is an interesting precedent of the neoliberal theory of “human capital” developed mostly in the United States beginning in the 1950s.

³¹⁰ Kammerer, *The Inheritance of Acquired Characteristics*, 399, emphasis in original.

Kammerer and Steinach's contemporaries at the helm of the interwar state undertook attempts at such hormonal social change in Austria. Their political and social acquaintance Julius Tandler, for instance, in addition to working as a physician keeping abreast of developments in endocrinology, was also a career politician and bureaucrat. After socialists briefly formed a republic in Austria in the aftermath of World War I, Tandler was appointed undersecretary of public health in the Ministry of Labor. When the socialist regime soon thereafter collapsed and its partisans retreated to Vienna, which they governed at the municipal level until fascist Germany's annexation of Austria in 1938, Tandler continued his biologically and endocrinologically directed work as the municipal councilor for welfare and social administration in the capital.³¹¹ During this period he oversaw the establishment of a massive municipal state apparatus of positive eugenics aimed at uplifting and improving the bodies and minds of the working classes. His political and medical projects were inseparable constituents of what he explicitly termed a "population politics" (*Bevölkerungspolitik*): the scientifically directed reform of the body politic through hospitals, schools, the family, and public health.³¹² The sexual

³¹¹ Logan, *Hormones, Heredity, and Race*, 148.

³¹² *Ibid.*, 150. The word *Bevölkerungspolitik* here cannot fail to name this project as the primogeniture of the eugenic treatment of life through medicine and sexuality that frames Foucault's genealogical introduction of biopolitics in the final lectures of *Society Must Be Defended: Lectures at the Collège de France, 1976-1976*, translated by David Macey (New York: Picador, 2003), 252: "This is the theory of degeneracy: given that it is the source of individual diseases and that it is the nucleus of degeneracy, sexuality represents the precise point where the disciplinary and the regulatory, the body and the population, are articulated. Given these conditions, you can understand how and why a technical knowledge such as medicine, or rather the combination of medicine and hygiene, is in the nineteenth century, if not the most important element, an element of considerable importance because of the link it establishes between scientific knowledge of both biological and organic processes (or in other words, the population and the body), and because, at the same time, medicine becomes a political intervention-technique with specific power-effects." As direct inheritors of the theory of degeneracy, though they precisely opposed themselves to it in their defense of positive eugenics, Tandler and his medico-political peers lean mostly towards the "hygiene" side of the conjunction that Foucault identifies as the statist incorporation of sexuality as the liaison between individual body and population. The specific technologies developed by Tandler are disciplinary forms of care for the health of the working classes that individualize in their exercise, but simultaneously understand their object or target as an aggregation, a population, that needs to be regulated according to a vital optimum.

governance of the working classes formed an important part of Red Vienna's population politics, and within it figured a prominent racial hygiene of children. In Tandler's words, "The goal and duty of demography is the management of organic capital, which is represented through living humanity bound in a commonwealth (*Gemeinwesen*).” In this endeavor, however, “Qualitative improvement must begin with the population, with children.”³¹³ To that end, Tandler oversaw, for example, the institution of kindergartens across Vienna. Guiding this project of population politics was Kammerer's theory of somatic induction and the inheritance of acquired characteristics. Tandler understood quite explicitly in his political work that hormones were the “media” of somatic induction: “In the deep shadows of resignation, we cannot leave the fate of our children to the combinatorial elements of chromosomes alone,” he counseled.³¹⁴ State social welfare was needed to execute Steinach and Kammerer's clinical and experimental work at the population level.

In sum, within the ambit of a rising international tide of “negative selectionist” eugenics, as historian Cheryl Logan puts it,³¹⁵ endocrinology served in the early twentieth century to incorporate a different form of eugenic body and body politic of developmental flexibility and enhanceability, where the organic form of sex served as the vehicle of racial cultivation. Social Darwinist eugenics remembered under the names of Charles Davenport in the United States or the Nazis in Europe were fundamentalist adherents to evolutionary biologist August Weismann's purely genetic concept of heredity, according to which only that material in the germ plasm of the gametes (and

³¹³ Cited in Logan, *Hormones, Heredity, and Race*, 155.

³¹⁴ Cited in *Ibid.*, 166.

³¹⁵ *Ibid.*, 93.

none of the cells of the rest of the body) can be inherited by future generations.³¹⁶

Eugenics, in their wake, became hence a project of ensuring that the purest racial bodies reproduced (its “positive” version), while the weakest were left to die, were sterilized, or were deliberately killed (its “negative” version) in the name of the health of the population. This version of race hygiene relied on a version of Darwin made famous by Francis Galton, who had coined the term “eugenics” in 1883 by emphasizing the chapter of *The Origin of Species* on breeding. According to Galton’s understanding of the relation of the social to the biological, natural selection on its own left only random chance and variation as the process of human evolution, a far too slow and dangerous wager for the future of the species and the struggle of the races.³¹⁷ As the project of negative selectionist eugenics was elaborated across the Atlantic, it reached an equal or sometimes further extension than its European counterparts, notably in the massive, state-sponsored forced sterilizations upheld by the US Supreme Court in *Buck v Bell* (1927) in the name of enlightened human breeding as a social-natural hybrid practice of medicine and politics, of sex and race bound to one another.³¹⁸

Against this reading of Darwin and against its Malthusian anxieties of population decline and degeneration that reached a crescendo in the aftermath of the first World War, interwar endocrinologists attempted to reorient eugenics by binding sex to race in what they considered “positive” scientific and socialist terms.³¹⁹ Endocrinology was incorporated as a medical science of perfectible human sexual development, which was

³¹⁶ August Weismann, *The Germ Plasm: A Theory of Heredity*, translated by W. Newton Parker and Harreit Ronnfeldt (New York: Charles Scribener’s Sons, 1893); Charles B. Davenport, *Eugenics: The Science of Human Improvement By Better Breeding* (New York: Henry Holt, 1910).

³¹⁷ The coining of the term eugenics by Galton clarifies its sense of the *cultivation* of the stock of living organisms, that is, their race.

³¹⁸ *Buck v. Bell*, 274 U.S. 200 (1927).

³¹⁹ See Thomas Malthus, *An Essay on the Principle of Population* (London: J. Johnson, 1798).

understood to comprehend race, evolution, and social practices of education and child rearing. The bisexual tendency of the human organism, governed by a system of hormonal secretion, was to its proponents poised to simultaneously perfect the body politic by perfecting the individual body, going well beyond the curing of disease. Not only normal sexual development, but indeed *exceptionally* enhanced and optimized sexual development, became a medical and social goal by the 1920s. As such, endocrinology understood its mode of eugenics to consist of the *cultivation* of racial stock through the qualitative enhancement of organic forms that, like sex, organized both the individual and the entirety of society. However, while “positive” eugenics aimed to distinguish itself from “negative” eugenics, their ideological opposition obscures their fundamental historical continuity; indeed, positive eugenics precisely avoided association with the Nazis in order to legitimate the persistence of eugenic techniques in medicine well beyond the 1930s and 1940s. In Galton’s original work, moreover, he is quite clear that eugenics is defined as “the cultivation of race.” Indeed in looking to name “the science of improving stock,” he had also considered the word “viriculture” before settling on eugenics.³²⁰

The history of positive eugenic sciences like endocrinology are relevant in underlining how little eugenics as a whole was diminished by the end of World War II.

³²⁰ Francis Galton, *Inquiries into Human Faculty and its Development* (London: Macmillan and Company, 1883), 24, emphasis added: “I do not propose to enter further into the anthropometric differences of race, for the subject is a very large one, and this book does not profess to go into detail. Its intention is to touch on various topics more or less connected with that of *the cultivation of race*, or, as we might call it, with ‘eugenic’ questions.” In the footnote to the word “eugenic,” he continues, emphasis added except for the words from Greek: “That is, with questions bearing on what is termed in Greek, *eugenes*, namely, good in stock, hereditarily endowed with nobles qualities. This, and all the allied words, *eugenia*, etc., are *equally applicable to men, brutes and plants*. We greatly want a brief word to express *the science of improving stock*, which is by no means confined to questions of judicious mating...The word *eugenics* would sufficiently express the idea; it is at least a neater word and a more generalized one than *viriculture*, which I once ventured to use.”

This persistence of eugenics traveled especially discretely under the auspices of the scientific cultivation of life. As Logan puts it, assessing Kammerer's work historically:

For Kammerer, life was malleable at its core; external influence offered a level for change—a way to become the craftsmen of a more just world. The changes he imagined did not just apply biology to society; they went further to leverage the productive power inherent in life and harness it to craft a biologically more ethical humanity. That power was the power of development.³²¹

The timing of Kammerer's developmental work, which coincided with the invention of modern childhood and adolescence, is also not incidental. Kammerer, like Steinach, made sure to employ G. Stanley Hall's phrase "storm and stress" to describe the critical period of psychosomatic development in the human organism understood as childhood and adolescence.³²² Childhood was assigned a developmental function by endocrinology, and was conceptually recapitulated in related fields like embryology, so that the very biological and political value of the child's body became its assumed plasticity, its openness to development. This plasticity was understood in both somatic and psychological terms, to be sure, but hormones presented themselves as affecting mind and body, a holistic and encompassing actionable field that could transcend both pediatric medicine or education as restricted endeavors. While Jewish socialists like Kammerer, Steinach and Tandler were targeted by the Nazis as radicals, the endocrine body and body politic they envisioned for the biology of sex informed overlapping developments in the United States. There, the utopian political commitments of the Austrian Marxists were shed from endocrinology, as well as the explicit use of the language of race,³²³ but the

³²¹ Logan, *Hormones, Heredity, and Race*, 81.

³²² Steinach, *Sex and Life*, 45-46; Kammerer, *The Inheritance of Acquired Characteristics*, 503.

³²³ Which is *not* to say that race hygiene was no longer part of endocrinology. On the contrary, the discursive silence is precisely why this chapter links work in the United States to explicitly eugenic projects in Europe, so that their historical kinship is more apparent.

plasticity of the child's body was refined, underwriting the emergence of sex reassignment of infants and children as a matter of developmental correction.

The Foundation of Clinical Pediatric Endocrinology in the United States

The Pediatric Endocrinology unit of the Harriet Lane Home at the Johns Hopkins Hospital opened its doors in Baltimore in 1936. Headed by Lawson Wilkins, it was formed self-consciously as the first research oriented clinic to focus on endocrine problems in children, housed in what had opened in 1912 as the first children's hospital attached to a medical school in the United States. Wilkins was already in 1936 regarded as a major figure in the founding generation of endocrinology in the US, but apparently expressed some reservations about whether or not the field was coherent and recognized enough to merit its own pediatric ward; nevertheless, its location at Hopkins was far from incidental in that goal.³²⁴

Before Wilkins opened his unit, Hugh Hampton Young, head of Urology at Hopkins, had spent several decades involved in experimental clinical cases involving children, endocrine abnormalities, and sex. His massive 1937 clinical textbook, *Genital Abnormalities, Hermaphroditism, and Related Adrenal Diseases*, both outlined the leading edge in endocrine therapy and genital plastic surgery, and synthesized the voluminous accumulation of research and clinical work resulting in the somatic (and not so much psychological) medicalization of sex in the US.³²⁵ The advent of World War II

³²⁴ Robert M. Blizzard, "Lawson Wilkins (1894-1963)," *Journal of Pediatric Endocrinology* 133, 4 (1998): 577-580.

³²⁵ The previous section of this chapter detailed how psyche and soma were both comprehended by endocrinology's reach in Europe. In the United States, however, the relation between mind and body in endocrine therapy proceeded somewhat differently. The body, with very little interest in sexual psychology, was the central focus until the 1950s, when, as the next chapter will detail, John Money coined the term "gender role" to describe the psychological dimensions of sex. In the United States, the subfield

would close most of the communication between physicians and researchers in the US and those in Europe, but by 1937 Young already reflected the digestion stateside of the interwar European obsession with hormones and sexual development. Within this context “hermaphroditism,” an increasingly central clinical problem to a variety of medical specialists struggling to define developmental human biology and medicine, was laid out by Young following the Austrian model, but with an added genetic hypothesis: “Fundamentally, these disturbances of development must rest on the original chromosome formula... The expression of this would show itself early in the functioning of the endocrine glands,” which would in turn lead to “faulty expression in the development of the secondary sex characteristics.”³²⁶ The location of the original abnormality of sexual development at the chromosomal level was a hypothetical assumption on Young’s part. Chromosomes had been isolated in 1902, but their exact function in relation to sexual differentiation was largely unknown.³²⁷ When, as Young put it in his 1940 autobiography, “many intersexes have come for treatment” at the Brady Urological Institute at Hopkins, “often uncertain what their real sex was,” he specified that he limited his surgical interventions to the endocrine system’s partially mapped glands, including in operations on children.³²⁸ Chromosome defects, if actually present, were admittedly well beyond the reach of his medical practice.

Patients, ranging from infants, to pubescent teens, to adults, were referred to Young from all over the United States. At Hopkins he developed a series of endocrine

of neuroendocrinology was the site of the rapprochement of soma and psyche through hormones as the postwar era progressed. Today, endocrinology is almost all de facto neuroendocrinology, for the brain has assumed a central role in endocrine therapy and transgender medicine.

³²⁶ Hugh Hampton Young, *Genital Abnormalities, Hermaphroditism, and Related Adrenal Diseases* (Baltimore: The Williams and Wilkins Company, 1937), 3.

³²⁷ Medvei, *The History of Clinical Endocrinology*, 387.

³²⁸ Hugh Hampton Young, *A Surgeon’s Autobiography* (New York: Harcourt, Brace and Company, 1940), 203, 209.

surgeries that formed the initial basis for “sex reassignment,” though that was not the term he employed. Notably, Young specialized in the treatment of adreno-genital syndromes, wherein the exaggerated enlargement of the adrenal glands produced near total masculinization of bodies deemed otherwise female according to the presence of ovaries and a uterus. While it was speculated that some unknown chromosomal error induced the enlargement of the adrenals, or in some cases a form of cancer was responsible, treatment had been for several decades extremely dangerous because operating on both adrenal glands frequently led to the death of the patient during convalescence. With a specially designed operating table and device for holding open the body cavity through the back to expose both adrenal glands simultaneously, Young was able by the early 1930s to develop a technique for excising large portions of each.³²⁹ Following excision, he built upon existing methods of plastic surgery greatly refined during and since the First World War to make the genitals correspond to a normatively appearing and functioning vagina.³³⁰ Combined, the two surgeries had the effect of changing patients who originally appeared to doctors externally as males or boys into recognizable females or girls. Rather than a sexual transition, this was considered a straightforward correction of a developmental abnormality, and Young also developed forms of reconstructive surgery for male genitals.³³¹

³²⁹ Young, *Genital Abnormalities*, 207-210.

³³⁰ This is outlined in detail in *Ibid.*, 248-260.

³³¹ Young developed plastic and endocrine surgery procedures for normalizing hypospadiac penises, straightening and lengthening them, while also descending testicles and normalizing the appearance of the scrotum (*Ibid.*, 52-59). In short, his work in the 1920s and 1930s reflects the establishment of the basic protocols of what would be taken up in the mid twentieth century as sex reassignment surgery. Although transsexual surgeries were apparently already being performed in Europe in the 1930s and perhaps earlier, they were not performed in the United States until much later, at least the 1960s. See Meyerowitz, *How Sex Changed*, 19-21.

Although Young's procedure for adreno-genital hyperplasia was based on an endocrine diagnosis—that the enlarged adrenals pumped too much virilizing hormone into an ostensibly female body from the embryonic stage onward, leading to the development of “masculine” sex characteristics when they “should” have developed as “feminine”—his surgery did not employ hormone therapy, but rather tried to reduce the production of the overabundant male hormone by excising part of the gland. By the mid 1930s, however, much of endocrinology came to focus on hormone therapy as well. The decade saw the advent of a consensus that both male and female hormones were present in and secreted by all human bodies, a point with great bearing on the work of physicians like Young.³³² This fully hormonal bisexuality, present even in supposedly perfect male and female bodies, led to a series of hormone therapy experiments on sex and sexuality to redraw the lines between normal and abnormal. Rapid tests to determine the hormone content in urine allowed for a new metrics of monitoring and evaluating the individual endocrine body. Data from urine tests were employed to hypothesize, for instance, that homosexuality might be a result of “too many” female hormones in relation to male hormones in men and the inverse in women.³³³ The bisexuality of life was respecified through the interplay of newly coined “androgens” and “estrogens,” so that the existence of bodies that did not seem to correspond entirely to male or female, as well as sexual inversion, had to be rejustified.³³⁴ Researchers in the 1930s were disappointed, though, that studies of the urine of children at various ages yielded no obvious explanation of the

³³² Sengoopta, *The Most Secret Quintessence of Life*, 119.

³³³ Saul Rosenzweig and R.G. Hoskins, “A Note on the Ineffectualness of Sex-Hormone Medication in a Case of Pronounced Homosexuality,” *Psychosomatic Medicine*, 3, 1 (1941): 87-89.

³³⁴ Abraham Myerson and Rudolf Neustadt, “The Bisexuality of Man,” *Journal of the Mount Sinai Hospital New York*, 9 (1942): 668: “An original hermaphroditic nature in man has become lost in the shuffle of evolution, but there still remains a bisexuality which is the most important of all the sexual phenomena that can be separated from essential reproduction itself.”

advent of sexuality at puberty, nor whether sexuality would take on a homosexual (or even heterosexual) disposition.³³⁵ The isolation and clinical preparation of hormones did not seem to live up to Ernest Starling's prophetic expectations when he had coined the term several decades earlier.

Once again, studies on animals intervened in the ongoing medicalization of sex. In 1917 American embryologist and zoologist Frank Lillie had undertaken a widely hailed study of the freemartin, a form of abnormal cow long known to farmers and ever so often commented upon by endocrinologists since the experiments of John Hunter. A freemartin is the abnormal of a pair of twin calves, one male and one female; born with female gonads and genetic markers, the freemartin is to greater or lesser degrees masculinized and always infertile, rendering it useless to farmers. In utero, reported Lillie, the male hormones from the male twin calf migrated through the blood system of the umbilical cord connecting it to the female calf from the embryonic stage onward, resulting in a masculinized or "hermaphroditic" female.³³⁶ The freemartin research had a profound influence on clinicians like Young and Wilkins, who increasingly looked to the effect of hormones on development in utero, in infancy and in childhood, for etiologies of sexual and developmental abnormalities. Young's work with adreno-genital conditions, notably, operated almost by analogy to the freemartin's hormonal hypothesis.

Experiments with horse urine also redrew the lines of the endocrine body and opened up a large array of possibilities for hormone therapy in humans.³³⁷ When

³³⁵ Abraham Myerson and Rudolf Neustadt, "Sex Hormones in the Urine of the Child," *Transactions of the American Neurological Association*, 66th Meeting, 1940, 115-120.

³³⁶ Diana Long Hall, "Biology, Sex Hormones, and Sexism in the 1920s," *Philosophical Forum* 5 (1973): 86-87.

³³⁷ Horse urine is familiar today as a major source of hormone replacement therapy for transgender individuals. See Toby Beauchamp, "The Substance of Borders: Transgender Politics, Mobility, and US State Regulation of Testosterone," *GLQ* 19 (2013): 57-78.

Bernhard Zondek, of the University of Stockholm, undertook a hormonal analysis of the urine of stallions in the early 1930s, he was confused to find that it contained a massive amount of estrogen, far in excess of the present androgens. This presented a conceptual problem in and of itself: if such an apparently “masculine” animal secreted mostly “feminine” hormones, how did the latter affect its secondary sex characteristics and its sexual development? According to the rubric inherited from the likes of Steinach, who saw male and female hormones as antagonistic, if a stallion was naturally subject to large doses of estrogens it should be feminized; and yet, massive amounts of estrogen seemed to be the *normal* condition of virile stallions. Zondek confirmed the logical quandary when, having isolated the estrogen from stallion urine, he administered it to male guinea pigs and watched it result in the induction of lactation. Reflecting on his findings for the periodical *Nature* in 1934, Zondek attempted to make sense of this hormonal riddle through a somewhat admitted sleight of hand: he speculated that “It is possible that in the testes of the stallion—as compared with other organisms—a very great production of male hormone is immediately destroyed by converting it into female hormone and then rapidly excreting the latter.” There was no specific evidence for this explanation, but, he added, “The fact that a not inconsiderable amount of male hormone is to be found in female animals, including [human] women...is also in harmony with this hypothesis.”³³⁸

As pediatric endocrinology emerged, it therefore did so in a medical and social field charged by the promise of hormones, whose isolation, synthesis and refinement were specifying sexual development and differentiation at finer and finer grades, adding to the endocrine surgeon’s repertoire. In the clinic, the admission of abnormal children became the primary preoccupation of practitioners like Young and Wilkins. As they

³³⁸ Bernhard Zondek, “Oestrogenic Hormone in the Urine of the Stallion,” *Nature*, March 31, 1934, 494.

elaborated their approach to corrective therapies that amounted to sex reassignment, they did so, regardless of whether or not they would have considered it in that way, in the shadow of the discourse of eugenics. Although American endocrinologists dropped the eugenic language of their European counterparts, the techniques of cultivating the sexual government of life in the human organism share the same genealogy.

Conclusion: The Racial Memory of Sex

When Wilkins presided over the opening of the Pediatric Endocrinology unit at Hopkins in 1936, he did so in a moment during which the clinical treatment of sex and endocrinology focused less on disease in the classical sense than on abnormalities in development: deviations from the norm that could be corrected both hormonally and surgically. The plasticity of the endocrine body, its eugenic capacity for cultivation and perfection, is what enabled this course. Although there is no obvious historical continuity between the work of the interwar Europeans like Steinach, Kammerer, or Tandler, and Young and Wilkins in the United States, the genealogical line of descent points to a broader *incorporation*, the consolidation of a medical body that was at the same time a political body, a racial cultivation of sex through the treatment of abnormality common to them all. This mode of medicine in the United States hardly identified itself with the dominant mode of negative eugenics popular during the 1930s. Some European endocrinologists and biologists, including Kammerer, visited the eugenic laboratory at Cold Springs Harbor in Long Island, NY, in the 1920s, but these infrequent crossovers had little or nothing to do with the medical field being established in the Northeast US at

major centers like Hopkins and several hospitals in Massachusetts.³³⁹ Doctors like Young and Wilkins also eschewed party politics rather obviously in comparison with the socialists in the scientific circles of Vienna.

Nevertheless, one of Wilkins' major professional achievements at the Harriet Lane Home underscores his genealogical connection to medicine's eugenic endocrine body and the centrality of sex as a matter of racial cultivation as the twentieth century unfolded. Wilkins was flooded with patients in the 1930s diagnosed with forms of adrenal hyperplasia that caused assumed female bodies to fully masculinize in their secondary sex characteristics.³⁴⁰ While Young had already developed the surgical method of excising portions of the enlarged adrenals, this procedure was still far from proven as a durable cure; in many cases the glands would simply grow enlarged again with time and the condition would return, masculinizing patients who identified as women. In other cases, the surgery would have lasting negative consequences on overall health and even put the life of the patient at risk. Wilkins worked for over a decade on finding a suppler, hormonal solution to adrenal hyperplasia, certain that if excess androgen steroids secreted by the adrenals caused the sexual effects of the condition, then a hormonal antidote would need to work to inhibit that abnormal functioning at its source.

In what was considered by observers and colleagues a kind of clinical and experimental race to find a hormonal cure for such cases of congenital adrenal

³³⁹ Logan, *Hormones, Heredity, and Race*, 106.

³⁴⁰ Lawson Wilkins, *The Diagnosis and Treatment of Endocrine Disorders in Childhood and Adolescence*, Second Edition (Springfield, Illinois: Charles C. Thomas Publisher, 1957), 7, 9: according to Wilkins, between 1936 and 1956 the clinic saw over 2000 patients, of whom only 41 were cases of "non-adrenal hermaphroditism," suggesting that the remaining 1959 were diagnosed with some variation on CAH. Part of the reason for this number may be attributed to the effects of a hormone administered to pregnant women in the preceding decades that was later found to cause virilization of the fetus.

hyperplasia (CAH), Wilkins and a doctor in a Massachusetts hospital both synthesized, at nearly exactly the same moment in 1948, a preparation named “cortisol” or “cortisone.” Wilkins and his peer found that CAH was most precisely an abnormality in the body’s production of the hormone steroid cortisol, which would normally regulate the adrenals and prevent their exaggerated growth. When Wilkins began experimental treatment with cortisol in 1948 he was able to effect an astonishing total reversal of CAH in patients ranging from infancy to adulthood; the “correction” of the masculinization amounted to a near total reversal of sexual morphology—almost like a sex change. Beards and masculine muscles disappeared, while female secondary sexual characteristics asserted themselves, including rapid growth of the breasts. The genitals changed somewhat in morphology too, making them more receptive to plastic surgery than they had been for Young’s patients.³⁴¹

Wilkins’ cortisol therapy for CAH was, then, though he undoubtedly did not think of it that way, a realization of the medical and political language of positive eugenics attached to endocrinology in interwar Vienna. The body’s developmental plasticity, housed in its bipotential sexual differentiation, was open to radical transformation and normalization through increasingly precise cultivation of the body’s hormone secretions. Before a “sex change” was understood as a way of making a psychological gender identity match with a somatic sex, it was understood as the effect of a hormonal technology for making an abnormal body develop in line with the normative course of the human organism, a decidedly eugenic logic in its subordination to a teleological concept of development. By making sex an integrating concept of the body, one that could be cultivated by medicine and science, the idea of psychosomatic development had been

³⁴¹ *Ibid.*, 342-347.

generalized as the dynamic principle of the human organism's stock or race. Wilkins treated both infants and adults with cortisol—development was a matter of the entire life course of the organism, not restricted to the temporality of disease.

The endocrine body built in the early twentieth century nevertheless gave priority to the child, the infant, the fetus, and the embryo, as it aimed to fulfill an epistemological will to find an origin in both abnormal and normal sexual development. Yet this literal intensification of knowledge about the body of the child and the neonate is only one aspect of the way that the developmental discourse of sex across the lifespan was always a global discourse on the child and childhood. In effect, the medical body of endocrinology was also a political body in that it prescribed a specific purpose for childhood: it served as the *critical* period of development of the human organism, one that demanded the exceptional social intervention of medicine to encourage normal outcomes for the collective benefit of society. Endocrinology helped to consolidate a developmental principle in the biological sciences that had been maturing since the mid nineteenth century: recapitulation. Made famous by the German biologist and early embryologist Ernst Haeckel in his massive 1866 volume, *Generelle Morphologie der Organismen*, the principle of recapitulation held that, famously, “The ontogeny of every organism repeats in brief...its phylogeny.”³⁴² The theory of developmental recapitulation, as it came to be known, advanced that the growth of each individual replays the sum total of the phylogenetic history of its species or race. Haeckel's was a

³⁴² The full volume has not been translated into English, but the following section is available: “The Gastraea-Theory, the Phylogenetic Classification of the Animal Kingdom and the Homology of the Germ-Lamelle,” translated by E. Perceval Wright, *Journal of Microscopic Science* 14 (1847): 141-165; continued at 223-247.

particularly racist reading of Darwin's recently published *Origin of Species* (1864), arguing that life was always both teleological and recursive.

Within the recapitulationist paradigm, childhood took on the role of what Haeckel had first termed "ontogenesis" (*ontogenie*), the linear unfolding of life's mode of production into its ultimate and ideal form, which was not only an adult body, but also a sexually mature racial stock. By the time Young and Wilkins were seeing patients in their clinics at Hopkins, childhood as ontogenesis was firmly entrenched in almost every branch of the established child sciences and emerging psychological sciences: Jean Piaget argued that the development of thought in children parallels the evolution of human consciousness over the timescale of evolution;³⁴³ G. Stanley Hall treated adolescent development as recapitulative of the history of "the race" in his psychobiological elaboration of "storm and stress"; John Dewey both promoted and later recanted recapitulation in his writings on education; and no less than the work of Freud, Carl Jung and Sandor Ferenczi were all inflected by a distinct strain of recapitulation through their common developmental, ontogenetic function assigned to childhood. Beyond these fields, as historian Stephen Jay Gould details, the idea that ontogeny recapitulates phylogeny left almost no region of the human, animal and natural sciences untouched by the twentieth century. By the mid century, Dr. Spock would advise American parents to see in their infant's "clamber[ing] to his feet" nothing less than his "celebrating that period of millions of years ago when man's ancestors got up off all fours."³⁴⁴

³⁴³ This is despite the fact that Piaget explicitly refuted Haeckel's work; this illuminates to what extent the theory of recapitulation and the principle of childhood as ontogenesis generalized itself. See Stephen Jay Gould, *Ontogeny and Phylogeny* (Cambridge: Harvard University Press, 1977) 6.

³⁴⁴ *Ibid.*, 229, 124-129; "the theory of recapitulation played a fundamental role in a host of diverse disciplines; I suspect that its influence as an import from evolutionary theory into other fields was exceeded only by natural selection itself during the nineteenth century" (115).

That endocrinology refined the function of childhood as ontogenesis is important because it reframes the medical and political relation of sex to race through the body of the child. One reason that, in the contemporary moment, the transgender child seems like such a novelty is that its appearance as a body and subjectivity assumes that “child” is simply a new addition to “transgender.” In the past, transgender individuals were always adults, and now they are suddenly children. However, sex (and later, as the next chapter will detail, gender) has always been a question of the ontogenesis of human form, which makes childhood and juvenile forms in general the most important temporal and morphological site for the course of normal development and the management of its abnormalities. The child’s body, then, is *intrinsic* to the genealogy of sex and race as bound by endocrinology, even if the children being treated by endocrinologists did not begin to be labeled as transsexual, like G.L., until the 1960s. The neglect of the developmental function of childhood and the child’s body to some extent explain the facile forgetting of the genealogy of the transgender child suggested by the introduction to this chapter. It also accounts for the apparent exogenous quality of race to transgender studies and the transgender child, where, if broached at all, race is merely a matter of minority identity and its intersection with sex and gender.

The relocation of childhood and the child’s body as a matter of the developmental ontogenesis of the human reframes race and sex as mutually constitutive of the modern endocrine body. By invoking the “racial memory of sex,” then, this chapter aims to both emphasize Kammerer’s phrase (“the inherited memory of the race”) as a description of the incorporation of the endocrine body through the racial cultivation of sex that he, in part, established. It also aims to address the memory of sex as an analytic object in

transgender studies, where race has been understood extraneously, as a potential addition or intersection through which to reexamine sex and gender, but not an intrinsic part of the transgender body and its history. If this genealogy of the transgender child has deferred consideration of actual transgender children in favor of a long account of the development of endocrinology and the medicalization of sexual development in Europe and the United States, it has been precisely in order to place race, as a eugenic cultivation of the organic form sex, at the center of that project of making and improving upon valuable bodies. It remains, now, to follow the trajectory of the racialized sex of the endocrine body and its ontogenetic child-form into the mid twentieth century, when the medical invention of “gender” as a hormonal matter inaugurated the previously ignored treatment of children as transsexual.

CHAPTER FOUR

The Technical Invention of Gender and the Postwar Transgender Child

When the landscape of the medicalization of sex began to shift in the 1950s with the introduction of the concept of “gender,” it was hardly at the insistence of feminists, or sociologists of sex. Gender was coined by John Money, by then director of the Psychohormonal Research Unit at the Johns Hopkins Hospital. Lawson Wilkins, who founded the unit, had hired Money out of his doctoral work in psychology at Harvard University, where he was completing a dissertation reviewing the history and nosography of “hermaphroditism.”³⁴⁵ Money’s dissertation assembled a comprehensive literature review of hermaphroditism and intersex conditions from Anglo-American medical sources dating back several hundred years, but it was also based on extensive time spent in various clinics in Massachusetts and the Northeast United States that saw patients diagnosed with ambiguous sexual conditions. Through this work Money met Wilkins, who had recently developed a much celebrated hormone replacement treatment for Congenital Adrenal Hyperplasia (CAH), a major shift in endocrine therapy that seemed to indicate the promise of hormones for the postwar era to effect dramatic changes in the sexed body. Feeling that the time was right to open a full clinic at Hopkins to deal with sexual and endocrine pathologies, Wilkins recruited Money for the task.

Shortly after beginning his tenure at Hopkins, Money co-wrote a short article with two colleagues in which they employed the term “gender” for the first time outside of its

³⁴⁵ John Money, *Hermaphroditism; An Inquiry into the Nature of a Human Paradox*, Dissertation. Doctor of Philosophy in Social Relations, (Harvard University: 1951-52).

archaic grammatical referents³⁴⁶ in the English language: “By the term gender role, we mean all those things that a person says or does to disclose himself or herself as having the status of boy or man, girl or woman, respectively. It includes, but is not restricted to sexuality in the sense of eroticism.”³⁴⁷ While this definition limned the social and psychological dimensions of the sexed subject, Money stressed the non-dualist relation with biological, genetic, and endocrine factors that he meant for gender to name. Rather than a purely phenomenological category to indicate the subjective or psychological experience of “having a sex” in an imagined isolation from “the body,” Money attached gender to an ontogenetic narrative in his clinical practice that would become the acquisition of core gender identity, a psychosomatic process reliant on the ascribed plastic temporality of childhood.

In the 1950s and 1960s, the growing fields of psycho- and neuro-endocrinology took up the early twentieth century narrative of sexual development outlined in the previous chapter. Reviewing experiments on amphibians and fish, for instance, Money laid out the broadest theory to date of the changeability of sex and gender in terms that more or less recapitulate Paul Kammerer’s epigenetic understanding of evolution and endocrine therapy, writing that “it is actually possible *environmentally* to manipulate heredity so as to change the program of the genotype as expressed in the phenotype. The morphology of the organism can be changed, and its behavior as well. Sexually, the extent of change may constitute a complete reversal of sexual dimorphism of morphology

³⁴⁶ For instance, Money uses the word “gender” once in his dissertation, but only to signify its grammatical meaning. *Ibid.*, 36.

³⁴⁷ John Money, Joan G. Hampson, and John L. Hampson, “Hermaphroditism: Recommendations Concerning Assignment of Sex, Change of Sex, and Psychologic Management,” *Bulletin of the Johns Hopkins Hospital* 97, 4 (October 1955): 285.

and behavior.”³⁴⁸ Rather than the animal experiments that had formed the core of interwar research in Austria and Germany, however, the elaboration of gender into a theory of core gender identity acquisition was primarily anchored in the clinical treatment of “hermaphroditism” in infants and children in the 1950s.

This chapter follows the course of the transgender child of the postwar era out of the broader medical and technical invention of gender as an ontogenetic artifact of childhood’s medical and social governance. It reads the invention of gender in the 1950s as an effective sociobiological ontologization of childhood that, in making infancy and childhood the “critical” periods of sex and gender development, provides the necessary context for the subsequent diagnosis and treatment of children as transsexual at both Johns Hopkins and the University of California, Los Angeles, in the 1960s. The broader genealogy of the modern endocrine and gendered body makes the appearance of a transgender child in the mid twentieth century far less surprising than it would be according to the cultural narrative from the twenty-first century that assumes the transgender child did not exist until the advent of puberty suppression therapy in the 1990s.

Hermaphroditism and the Acquisition of Core Gender Identity

The invention of gender as a psychological or phenomenologically interested concept did not supplant so much as re-specify the function of hormones in a wider relational,

³⁴⁸ John Money, “Sexually Dimorphic Behavior, Normal and Abnormal,” in *Environmental Influences on Genetic Expression: Biological and Behavioral Aspects of Sexual Differentiation*. Fogarty International Center Proceedings No. 2 (N. Kretchmer and D.N. Walcher, eds.), U.S. Government Printing Office, Washington, D.C., 1971, 201, emphasis added.

psychosomatic theory of sexual development and its abnormalities.³⁴⁹ The introduction of the new category allowed Money to order incongruities between the biological dimensions of sex as they were framed in the 1950s and patients' own sense of their selves, frequently at odds with the former. While in the interwar period endocrinology had been actively anti-geneticist, by the end of the 1940s genetics, albeit carefully distanced from the medical research of the Nazis, were regaining their centrality to the field. In 1954, two researchers at the University of Western Ontario developed an accurate chromosome skin test, hoping to settle once and for all the genetic determination of sex with a single procedure.³⁵⁰ To their disappointment, patients with intersex or hermaphroditic conditions, as they were labeled at the time, continued to be admitted to clinics like the Hopkins Psychohormonal Unit in excess of a chromosomal division of the sexes into male and female. A much wider variety of combinations of X- and Y-chromosomes were found than had been previously speculated, and neither the gonads, the external genital morphology, nor a sense of gender role followed any predictable or reliable coordination in these patients.³⁵¹ A unidirectional, pseudo-preformationist account of sexual differentiation, in which chromosomes ordered development from genes to fully formed adulthood along a clean axis of male or female, became less and less plausible as the number of conceptual dimensions of sex and gender multiplied.

³⁴⁹ "To say that hormone functioning is not a direct, automatic determinant of either maleness or femaleness of gender role is not to underestimate the linkage between hormonal functioning and gender role." John Money, "Hermaphroditism, Gender and Precocity in Hyperadrenocorticism: Psychologic Findings," *Bulletin of the Johns Hopkins Hospital* 96, 6 (June 1955): 257.

³⁵⁰ John Money, Joan G. Hampson and John L. Hampson, "An Examination of Some Basic Sexual Concepts: The Evidence of Human Hermaphroditism," *Bulletin of the Johns Hopkins Hospital* 97, 4 (October 1955): 301-319.

³⁵¹ See John Money, *Venuses Penuses: Sexology, Sexosophy, and Exigency Theory* (Buffalo, NY: Prometheus Books, 1986), 73-84.

Money's clinical interest in intersex patients began in graduate school when, as part of a seminar in psychology, he was taken to meet a teenaged³⁵² patient at the Judge Baker Clinic at Harvard University Hospital. Looking back several decades later, Money suggests that the patient, who had been raised as a boy after the parents were, according to him, "professionally misguided" by a doctor at birth, was exemplary of "the part played by the encounters and experiences of postnatal social life." The patient, Money suspected in retrospect, experienced androgen insensitivity syndrome, in which a chromosomally XY ("male") infant is constitutionally unable to process masculinizing hormones and so develops an entirely feminine external bodily morphology from birth. "Independently of this hormonally feminized body," however, Money felt that "her [*sic*] mind had masculinized" by being raised as a boy from birth. This contradiction of body and mind, produced out of a contradiction between socialization and hormones, was what Money felt had to be resolved by pediatric psychoendocrinology, so as to bring them into alignment. Even if according to the new chromosome test (which was not available at the time, in 1948) the patient might have been categorized as "male," because their body was normatively (that is to say, visually) "female" Money felt the patient should have been raised as a girl from birth. The mistake was to have "masculinized" the child's mind by raising them as a boy, encouraging a socialized gender in conflict with the normative external look of the body. Money's wager, as he began to amass clinical work in the 1950s, was that a technical intervention into gender from infancy could bypass the morass of genetics and achieve a normative outcome through the collusion of hormones

³⁵² In Money's accounts the patient is variously recounted as either 15 years old or 17 years old. See John Money, *Gendermaps: Social Constructionism, Feminism, and Sexosophical History* (New York: Continuum, 1995), 19; John Money, *Biographies of Gender and Hermaphroditism in Paired Comparison* (New York: Elsevier, 1991), 1.

and socialization alone. In this way, the relation of the normal to the pathological was as invested in the technical capabilities of the practice of medicine as it was in conceptual theories of development.

The power granted to the process of socializing gender, more precisely, was underwritten by an ethological analogy. Money borrowed a concept of “behavioral imprinting” from 1950s animal ethologists like Konrad Lorenz, whose popular *King Solomon’s Ring*, translated into English in 1952, suggested that intelligent animals, especially mammals and primates, were biologically “primed” to receive critical input from their environment and the fellows in their social groups in infancy. This input would shape their fundamental personalities and the maturation of their psychosomatic capacities, “wiring” them for the rest of their lives.³⁵³ The critical information, which was not genetically preprogrammed, but without which animals would not develop past a relatively helpless infancy, made socialization important precisely in its supplementary relation to the genetic and biological body. If intelligent animals were born radically dependent, plastic but as of yet unformed, it was so that they could become highly developed and specialized to suit their postnatal environment and the interpersonal matrix of their social groups—something that a linear genetic code could not achieve on its own. The implicit consequence of this theory was that the normal course of infancy became of the highest importance. As Money put it, “one of the prime features of imprinting is that there is a critical or sensitive period in development... The timetable is phylogenetically

³⁵³ Konrad Lorenz, *King Solomon’s Ring* (New York: Routledge Classics, 2002).

programmed...*Once it has taken place, there is no backtracking, not even to correct an error.*”³⁵⁴

In a more specific case of imprinting, Money also preferred to explain the social assumption of gender role through analogy to the acquisition of a first language. In the same 1955 article in the *Bulletin of the Johns Hopkins Hospital* in which he outlined his new meaning for the term “gender” he added that, “In brief, a gender role is established much in the same way as a native language.”³⁵⁵ Although a child is not born knowing a language, the juvenile brain’s receptivity to learning language is a plastic, biological capacity that must be cultivated within a certain window after which the mastery of language skills is much more difficult, if not impossible. In an interview late in his career, Money summarized the analogy: “You don’t choose your native language, even though you are born without it. You assimilate it into a brain prenatally prepared to receive a language. Once assimilated, a native language becomes locked in—just as if it were preprogrammed genetically by hormonal influences or brain chemistry.”³⁵⁶

The emergent argument that socialization had especially powerful effects during a critical period of biological development, childhood, was in turn buttressed by a series of analogies from the life sciences, once again narrating childhood’s temporality through a recapitulative likeness to embryogenesis. With an increasing interest in chromosomes, which as of 1957 could be counted in detail in the individual, researchers began to suspect that the human embryo’s original state is “female”; moreover, they felt that an embryo remains by default female if not for the intervention of a masculinizing hormone

³⁵⁴ John Money, *Gendermaps*, 23, emphasis added. This book is on the whole a fairly crude argument against “postmodern” feminists, particularly Judith Butler’s argument for gender’s performativity.

³⁵⁵ Money, Hampson, and Hampson, “Hermaphroditism,” 285.

³⁵⁶ Meredith F. Small, “The Gay Debate,” *American Health*, March 1993, no page number. JHU Bio Files Box, Folder 2.

in utero. Money called this “the Adam principle”: that “nature’s own wisdom is always to prefer Eve,” while “a small segment of the short arm of the Y chromosome” is what “contains the fragment of the genetic code that, very early in embryonic life, activates the precursor cells of the gonads into developing as testes instead of ovaries.”³⁵⁷ Although the actual details of the masculinizing process were not isolated until well into the 1980s, already in the 1950s the sense that the embryo underwent its own “critical” periods of sexual differentiation, after which certain changes were irreversible, added to the analogical evidence that while sex and gender were not genetically predetermined, they were highly sensitive temporal events in the ontogenesis of individuals. The comparably pure “biopotentiality” that had characterized the embryo and fetus in nineteenth century biology and embryology was refined as “time-limited” and “eventually com[ing] to a close.”³⁵⁸

In the first decade of clinical research at the Psychohormonal Unit, Money built an increasingly complex, multivariate theory of sexual differentiation and the acquisition of core gender identity. In a 1956 paper first given with his colleagues at the Eighth Annual International Congress of Pediatrics in Copenhagen, Money suggested that “sex” was the product of the interrelations of five variables: “(1) chromosomal sex, (2) gonadal sex, (3) hormonal sex and pubertal feminization or virilization, (4) the internal accessory reproductive structures, and (5) external genital morphology.”³⁵⁹ Through the interplay of all of these factors, in turn, a sense of gender would be established in early infancy and childhood, though not according to any linear model of causality—indeed, the question of

³⁵⁷ John Money, *The Adam Principle: Genes, Genitals, Hormones, and Gender: Selected Readings in Sexology* (Buffalo, NY: Prometheus), 41-42.

³⁵⁸ *Ibid.*

³⁵⁹ John Money, Joan G. Hampson, and John L. Hampson, “Imprinting and the Establishment of Gender Role,” *A.M.A. Archives of Neurology and Psychiatry* 77 (1957): 333.

causality was left conspicuously open. Anticipating and aiming to obviate any implication of a causal competition between “nature” and “nurture,” Money added that “The salient variable in the establishment of a person’s gender role and orientation is neither hereditary nor environmental, in any purist sense of those terms, but is his own decipherment and interpretation of a plurality of signs, some of which may be considered hereditary or constitutional, others environmental.” The sense that gender is “acquired,” is tempered with the admonition that once so acquired, it “becomes ineradicable.” Money gives an analogy this time from the abnormal development of bones in the case of disease: if a child has rickets, after the bones are set their damage is ineradicable for life, even though it was acquired, not genetic.³⁶⁰

The rickets analogy opens onto the wider context in which Money’s theory of normal sex and gender development was derived from clinical research into pathology. Hermaphroditic and intersex infants and children sent to Hopkins because of ambiguity over sex at birth, or because of later confusion, especially at the onset of puberty, formed the core of his clinical data and experience. While the genealogy of “hermaphroditism” spans hundreds of years, in the mid twentieth century the referential medical authority remained the Swiss-German pathologist Edwin Klebs. In his nosology, developed during the 1870s, hermaphroditism was divided into three categories: “true hermaphroditism” (a patient with one male and one female gonad), “male psuedohermaphroditism” (a patient with testes and a feminine bodily morphology), and “female pseudohermaphroditism” (a patient with ovaries and a masculine bodily morphology).³⁶¹ This model privileged the endocrine science of the gonads ascendant in the late nineteenth century, but by the time

³⁶⁰ *Ibid.*, 335.

³⁶¹ Money, *Hermaphroditism*, 30.

the psychohormonal unit was established at Hopkins endocrinologists tended to see the tripartite definition as clumsy and mostly useless in clinical practice. The isolation and synthesis of individual hormones, the mapping of their involvement with the brain through the pituitary gland, and the development of techniques for counting chromosomes had all complicated the factors that went into a diagnosis of hermaphroditism. Judging from the volume of patients seen at Hopkins and other clinics in the Northeast United States, the treatment of adrenal hyperplasia, for instance, which could be resolved through cortisol treatment alone, had broken away as a major focus of endocrine therapy for an ostensibly intersexed condition that did not fit into any of the three nineteenth century categories.³⁶²

In place of Klebs' formula, Money and his colleagues in psychiatry, plastic surgery, and endocrinology worked to develop a technical rubric for reassigning the sex of infants and children admitted to the psychohormonal unit, wagering that they could encourage a patient's gender identity to develop in a desired direction based on the tools and information at hand. In so doing, during the 1950s the medical and psychological process of sex reassignment developed into the basic protocols that would inaugurate transgender medicine on a major scale in the United States in the 1960s. The sex reassignment of newborn infants and young children, in effect, consolidated at one and the same time the theory of core gender identity acquisition and the procedures of transgender Sex Reassignment Surgery (SRS). Working against the gonadocentrism that

³⁶² Lawson Wilkins counts 80 patients with some form of "virilizing hyperplasia," compared to 41 cases of "non-adrenal hermaphroditism" (the latter which would fit into Klebs' nosology better), between 1936 and 1956 at the endocrine clinic of the pediatric department of the Harriet Lane Home at Hopkins. *The Diagnosis and Treatment of Endocrine Disorders in Childhood and Adolescence*, second edition (Springfield, Ill: Charles C. Thomas, 1957), 7. In his dissertation, Money notes that cases of what Klebs called "true hermaphroditism" were almost null in reality; the category was a conceptual idealization of nosology. *Hermaphroditism*, 77-80.

was a legacy of Klebs, the psychohormonal unit's employment of Money's multivariate definition of sex and gender conceded a lack of certainty about what, exactly, directs sexual differentiation, but precisely in order to capitalize on hormone therapy and plastic surgery to normalize intersex children as quickly and definitively as possible—a *technical* strategy for cultivating as best as possible a teleological direction for the patient's gender role.

The first several years of the clinic's work convinced Money that "the sex of assignment [at birth] and rearing is consistently and conspicuously a more reliable prognosticator of a hermaphrodite's gender role and orientation than is the chromosomal sex, the gonadal sex, the hormonal sex, the accessory internal reproductive morphology, or the ambiguous morphology of the external genitalia."³⁶³ Since most of his theory of sex and gender development was based on sociobiological analogies, Money prefaced his clinical recommendations to other doctors by noting the impossibility of finding "a fixed age at which gender awareness becomes established: as in other matters pertaining to development and maturation, it is not the same age for all infants." If the precise causal relations among all of the constituents of sex and gender remained far from obvious, "It should be the aim of the obstetrician and pediatrician to settle the sex of an hermaphroditic baby, once and for all, within the first few weeks of life, before establishment of gender role gets far advanced."³⁶⁴ To "settle the sex" of the baby, however, was a pragmatic and technical concern, rather than a nosological one.

The strategy of surgical and hormonal sex reassignment as early as possible was *normative* in the sense in which "biological normativity" in medicine names the

³⁶³ Money, Hampson, and Hampson, "Imprinting and the Establishment of Gender Role," 333.

³⁶⁴ *Ibid.*, 289.

attribution of value to a vital state thereby constituted as the referential, ideal of health.³⁶⁵ As experimental medicine, physiology and pathology in the nineteenth century began to understand the normal and the pathological not as heterogeneous states of being, but rather as quantitative differences in degree, such that abnormality was an aberration in intensity of normal functions, therapeutic intervention was reorganized towards the technical problem of restoring the norm. If pathology meant to name normal physiology gone awry, the doctor's role since the nineteenth century became the practice of medicine as a technique of restoration that manipulated the quantitative variables of disease or abnormality back to their ascribed vital arrangement.³⁶⁶ In the case of sex reassignment, visual abnormalities in sexed morphology, regardless of their exact etiology, were to be technically manipulated so as to approach as closely as possible idealized masculinity or femininity, depending on which one was more achievable to clinicians. To this end, Money reported in the mid 1950s that "we have found it definitely advantageous for a child to have been reared so that a gender role was clearly defined and consistently maintained from the beginning" (285).³⁶⁷ The restoration of a normative outward appearance at the critical moment in development would have, he expected, the psychological effect of inducing a congruent gender.

In counseling parents of children born with an indeterminate sex, Money suggested crucially that doctors describe the newborn not as "intersexed," which might connote an older sense of the hermaphrodite as a monstrous mix of male and female, or a

³⁶⁵ Georges Canguilhem, *The Normal and the Pathological* (New York: Zone Books, 1991), 126-127.

³⁶⁶ See *Ibid.*, 39-113. As Canguilhem adds, this attempt at resolution through recourse to quantitative difference never satisfactorily solved the problem of qualitative differences between the value assigned to disease and abnormality versus health. This irreducible tension is reflected in the many critiques of Money's work with intersex children from other medical researchers, not to mention intersex activists who critique the value assigned to assigning all newborns a legible, binary sex at birth.

³⁶⁷ Money, Hampson, and Hampson, "Hermaphroditism: Recommendations Concerning Assignment of Sex, Change of Sex, and Psychologic Management," 285.

“third” sex altogether. Instead, he suggested that doctors explain that such children were simply *unfinished* in their normal course of development, merely necessitating the supplement of medicine to complete differentiation and the ultimate acquisition of gender during the critical period of development that characterized infancy or early childhood.³⁶⁸ If the bipotentiality of the fetus and newborn was understood as entirely normal, then its disappearance in development was equally and vitally normal, so that intersex conditions became a version of retarded sexual development, not a monstrous deviation in kind. Again, sex and gender served as developmental quotients in a recapitulative function for infancy and childhood, where ontogenesis was meant to recapitulate sexually dimorphic phylogenesis to constitute the human form.

Consistent with Money’s retrospective recommendation for the patient he first met as a graduate student, the psychohormonal unit practiced sex reassignment surgery and hormone replacement forms of corrective therapy that ignored those dimensions of sex that were not technically actionable in the 1950s. Chromosomes, for instance, were not taken into account in deciding what sex to assign to a newborn or a child approaching puberty; the external appearance of the genitals and secondary sex characteristics were given the most attention, primarily because they could be modified and were most visible. Given that plastic surgery to produce a vagina was incomparably safer and more successful than any attempt to date at constructing a penis, assignment as a girl was almost always chosen if a doctor did not judge a penis present. These clinical choices could have bearing, for instance, on a hypothetical patient with XY chromosomes (normally considered “male”), with testes lodged in the abdomen, no uterus or ovaries,

³⁶⁸ *Ibid.*, 291: “The parents of a hermaphrodite should be disabused of this conception [that the child is half male, half female] immediately. They should be given, instead, the concept that their child is a boy or a girl, one or the other, whose sex organs did not get completely differentiated or finished.”

but with genitalia judged too small to be a penis, declared instead an enlarged clitoris. Such a patient would have been reared as a girl on the Psychohormonal Unit's advice, given plastic surgery that removed most of the clitoris and constructed a "functional" vagina (where "functional" signified capable of being penetrated). Money was later embroiled in scandal after a child in Canada subject to similar surgery by doctors after a botched circumcision went public with their unhappiness at the sex reassignment, eventually committing suicide.³⁶⁹

A decade or more of practicing the sex reassignment of infants and children produced the procedures and protocols that, in the 1960s, Money would agitate to make available for transgender patients who had been demanding more than psychotherapy for some time, or else travelling to Europe to find more sympathetic doctors.³⁷⁰ However, two elements of this historical moment have not been appreciated in the history of transgender medicine and feminist theories of gender. First, the invention of gender was as much a technical matter involving the agency of the flesh of the body as it was a psychological concept. Second, the very concept of sex reassignment as the normalization of the abnormal relied on a recapitulative deployment of childhood, a category or scientific metaphor that in this context collapses further into infancy and even neonatal embryogenesis. In this context, it is less surprising that children were included in the first official clinical diagnoses and treatment of transsexual patients in the United States in the 1960s, for the body of the child continued to incorporate the political desire

³⁶⁹ John Colapinto, "The True Story of John/Joan," *Rolling Stone*, Dec 11, 1997, 54-73; John Colapinto, *As Nature Made Him: The Boy Who Was Raised As A Girl* (New York: Harper Collins, 2001). Judith Butler critically reflects on the complexity raised by this case for feminist and trans politics in "Doing Justice to Someone: Sex Reassignment and Allegories of Transsexuality," in *Undoing Gender* (New York: Routledge, 2004), 57-75.

³⁷⁰ See Joanne Meyerowitz, *How Sex Changed: A History of Transsexuality in the United States* (Cambridge: Harvard University Press, 2004), 5.

for the perfectibility of human form through sex and gender. As Money and other doctors across the country began to participate in the new field of transgender medicine in the 1960s, they made the treatment of children a central dimension of their clinical research and practice.

Treating Children as Transsexual in the 1960s

In 1964 “G.L.”³⁷¹ was a seventeen year old living in a white working class enclave of Baltimore. Assigned as a boy at birth, G.L. had dropped out of school after the seventh grade and by age fourteen was making a living working in Maryland nightclubs and beachside cabarets as a waitress, singer, dancer, and “female impersonator,” as well as perhaps an occasional sex worker, going by the names Renee Roberts and Candy Jean. Although the archival record is not clear, at some point in both 1960 and 1961 G.L. spent time in a psychiatric out patient clinic at the Johns Hopkins University, likely first encountering Money and the other eventual founders of the Gender Identity Clinic that officially began performing sex reassignment surgery for transgender patients in 1965. In 1962 G.L. was arrested and spent two months in jail for violating the terms of probation from a previous arrest. The juvenile court at that time decided to commit the then fifteen-year-old G.L. to Springfield State Hospital for eight months.³⁷²

³⁷¹ “G.L.” are the initials used by John Money in his published discussion of the case. I have maintained the initials and redacted the individual’s names from all citations. In order to avoid the impression of suggesting G.L.’s gender identity in any way conformed in 1964 or thereafter to a prescribed category, I use plural pronouns (they, them). This practice is maintained for the other transgender children discussed in this chapter. The doctors whose cases notes and publications provide the only archival access to these children quite emphatically employed gendered pronouns used without consulting their patients—usually electing the pronoun that they wished the patient would adopt; I have maintained their original choices in all quotations.

³⁷² Dennis T. Jones, Psychiatric Evaluation of [G.L.], Criminal Court of Baltimore City, June 4, 1964, typed manuscript, MSA, 1.

Late on an April night in 1964, G.L. was leaving some friends and met an older man on the side of the road while he was driving by. That particular evening, G.L. recounted having “had on a lace blouse and a green laminated suit, a white trench coat with a pull belt, back shoes and a black bag and my hair was teased all up high, and white gloves, [and] gold earrings.” After having a few drinks with the stranger, G.L. explained to officers in his arrest report, “I got him to drive me down to his house so I got a brick out of his back alley and put it under my coat.” They drove next to a wig shop where G.L. got out of the car, and threw the brick through the window. G.L. explained to detectives that he *intended* to be arrested and sent to jail, where a friend was currently serving time for robbing the same shop; GL reasoned that that committing the identical crime would result in being reunited in jail with the friend. After throwing the brick, at first G.L. was “scared” and returned to the car to drive around Baltimore with the man for a while. The two later returned and G.L. went in and stole almost \$4000 worth of wigs. When they drove back around again and police were now investigating the crime scene, G.L. tried to surrender to them, but the man driving the car refused and drove to G.L.’s home around 5:00AM. The next morning, after waking up and showering, the police showed up at the door of the family home and G.L. was arrested.³⁷³

Indicted on six felonies, including breaking and entering, being a “rogue and vagabond,” and larceny, G.L. was submitted to a court ordered psychiatric evaluation before trial.³⁷⁴ Having interviewed G.L. and reviewed summary materials from the Hopkins and Springfield commitments, psychiatrist Dennis Jones described with cold confidence in his report to the court “a clear-cut pattern of sexual deviation beginning

³⁷³ City of Baltimore Police Department, Southeastern District, Report: Statement of [G.L.], April 11, 1964, typed manuscript, MSA.

³⁷⁴ State of Maryland, City of Baltimore, Indictment of [G.L.], April 11, 1964, MSA.

early in life and continuing into the present time. Though various diagnostic labels have been used in this case, in essence the problem is that [G.L.] has a compulsion to see himself and be seen by others as a woman. He has patterned his life in such a manner and generally works as a female.” Although Jones found G.L. to be “not psychotic at this time,” he still recommended “mental hospitalization” in lieu of incarceration.³⁷⁵ In a supplementary evaluation, another psychiatrist added that G.L. “is a well developed and adequately nourished youth who is wearing cosmetics and long hair, giving him the appearance of a young girl. He has long nails that are manicured and his clothing is a sweater and slacks. His speech is affected, and his attitude is quite coquettish and seductive. He is definitely feminine in his attitude, and his speech has a certain infantile quality.” Agreeing that no “organic brain disease,” psychosis, or delusions were present, the evaluator went on to remark:

One interesting response during the examination was his attitude toward the suggestion of the genecologist [*sic*] that he have an operation that would make him appear more like a woman that he now does. He was quite ambivalent about this and actually rejected the entire idea, saying there was no point to this since he would not enjoy sex if his genitals were removed. It would seem then that there is still an adherence to his male identity in spite of his obvious denial of it³⁷⁶

There is no reason to endorse this psychiatrist’s evaluation as more accurate than any other expert in the case; the point is rather that G.L.’s body, in its confrontation with medicine and law, was becoming a dense node for competing truthful discourses about sex, gender, and sexuality. The medical experts invited by the court to intervene during trial successfully preempted imprisonment after interested doctors from Hopkins took an interest in their former patient. Money appeared as a witness at trial, as well as his

³⁷⁵ Jones, psychiatric evaluation, 1-2.

³⁷⁶ Author name not given, Case of [G.L.], Age 17, Case No. 6876, May 19, 1964, typed manuscript, MSA, 2, 3.

colleague in gynecology, Howard Jones. Perhaps sensing an opportunity to set a precedent with a judge who had a reputation for being progressive, they worked through the intermediary of G.L.'s probation officer, Lawrence Kloze, to produce an extremely unusual court order.³⁷⁷ On January 22, 1965, Judge Cullen, with the ostensible written consent of G.L., their mother and father, ordered "that Dr. Howard Jones, at a time and place to be selected by him, perform a surgical sex repair on the Defendant."³⁷⁸

G.L.'s is one of a series of cases from the 1960s in which children were diagnosed and treated as transsexual, although G.L. seems to be the only one for whom full sex reassignment surgery was made available; the prevailing norm for clinics offering sex reassignment surgery once they were officially organized in the late 1960s and early 1970s was not to admit patients under 21. The foundation of transgender medicine in the United States is nevertheless consistently marked by the presence of children as patients, children who occupied a central role in the clinical research of psychiatrists, psychotherapists, psychoanalysts, endocrinologists, plastic surgeons, and physicians in the mid twentieth century. Had Money and his colleagues not delayed the surgery due to political in-fighting at Hopkins, during which G.L. ran away from the clinic, the first sanctioned sex reassignment for a transgender patient in the United States would have been performed on a minor. Yet, by 1964 on the West Coast children much younger had been diagnosed as transsexual for several years already.

At the University of California, Los Angeles, the Department of Psychiatry sponsored the creation of a Gender Identity Research Clinic in 1962 that ran in various forms with several hundred thousand dollars in funding from the National Institute of

³⁷⁷ Laura Wexler, phone interview with author, June 13, 2014.

³⁷⁸ *State of Maryland v. [G.L.]*, Criminal Court of Baltimore City, ORDER, January 5, 1965, MSA.

Mental Health into the 1970s.³⁷⁹ The Department initially announced the clinic's purpose as "to study and provide treatment for intersexed patients," leaning on what was by then a slightly dated concept because of its generative ambiguity. Though an internal memo added "We are not at this time offering diagnostic treatment services for anatomically and endocrinologically normal homosexuals, transvestites, or other sexually perverse patients," the members of the clinic from across the University continued to precisely see a wide range of patients in the 1960s and 1970s, lumping them together under the category of hypothetically "intersexed" conditions.³⁸⁰ The notable distinction from Money's Psychohormonal Unit at Hopkins, however, was that UCLA never offered sex reassignment surgery. The decidedly more psychologically interested interdisciplinary group, at its founding, was comprised of psychiatrists, psychoanalysts, and psychologists, many of whom were both very familiar with and deeply skeptical of hormonal and surgical procedures, and who felt that Money's concept of gender identity could be better addressed through an approach grounded in psychotherapy. If the life sciences and endocrinology had been unable to resolve the definition of sex, then these psychiatrists felt that the psyche's gendered plasticity instead offered the greatest hope for a gender-normative therapeutic program. However, they did not depart from the effectively technical approach to gender that underpinned its clinical deployment in the postwar era.

Robert Stoller, a psychiatrist with a dual training in psychoanalysis, directed the clinic for much of its existence in conjunction with Richard Green, who had studied medicine at Hopkins and entered into the circles of transgender medicine through Money. At UCLA they oversaw a diffuse field of research that on the whole amounted to a

³⁷⁹ Patrick Healy and Geoff Quinn, "Gender program rapped," *UCLA Daily Bruin*, Friday, February 7, 1975, no page number, ULCA Box 8.

³⁸⁰ Department of Psychiatry, UCLA, Undated typed memo, no date (c. 1963), UCLA Box 16.

critique of Money's vision of gender identity and sex reassignment, while nevertheless working within the new diagnostic category of "transsexualism." More than professional rivalry, though, the UCLA working group reflects the broader matrix in which concerns over gender and sexuality moved between long entangled discourses on homosexuality, inversion, and transsexualism in the mid twentieth century, rarely with any resolution. Though as the 1960s progressed Money came to increasingly distinguish transsexualism from homosexuality, Stoller especially resisted the hermeneutic and nosological separation of sex and gender identity from sexuality. Part of Money and his colleagues' justification for officially providing sex reassignment surgery at Hopkins in 1965 was an admission that psychotherapies had failed to make transgender patients accept their birth assigned sex, or to even improve their basic sense of well being with a transgender identification not reflected in the flesh of the body. Money capitalized on the strategic value of arguing for transgender medicine as the mere correction of incongruous gender identity and anatomy—a reductionist, dualist conception of endocrinology and surgery that was able to gain enough traction in the 1960s to sanction SRS at Hopkins.³⁸¹ Stoller, and to a lesser extent the other members of the UCLA clinic, rejected the premise that psychotherapies had been proven useless and felt that endocrine and surgical treatments were too cavalier of an approach to pursue alone. Since children were generally not eligible for such surgeries anyways, they were ideal patients for the new clinic.

During his doctoral work in psychology at Harvard, Money had first attempted to understand the relation of sex to gender by trying to rewrite Freud's *Three Essays on the*

³⁸¹ See, for instance, the transgender philanthropist Reed Erickson's by then commonplace explanation of "Transsexualism, in which gender identity and anatomy are incongruous," in the foreword to the landmark volume *Transsexualism and Sex Reassignment*, Richard Green and John Money, eds. (Baltimore: Johns Hopkins Press, 1969), xv. This definition is also widely accepted today.

Theory of Sexuality in a seminar paper.³⁸² Stoller, much more ambitiously, saw much of his career's work as a rewriting of Freud's account of infantile sexual development, linking the acquisition of gender identity and the question of transsexuality to abnormal family dynamics that might be actionable in analysis or some other form of psychotherapy, if medical professionals were able to intervene at the developmentally sensitive moment. His two-volume work, *Sex and Gender*, published in the mid 1970s and based on his experience at UCLA, devoted its second half to what Stoller derisively termed in its subtitle *The Transsexual Experiment*. By that time, he explained: "I see male transsexualism [he had much less to say about 'female transsexualism'] as an identity *per se*, not primarily as the surface manifestation of a never-ending unconscious struggle to preserve identity. To me, transsexualism is the expression of the subject's 'true self' (Winnicott's term)."³⁸³ Once the transgender self was firmly established, Stoller saw no way to do anything about it, reluctantly leaving the route of medical sex reassignment to his colleagues like Money. However, if a patient were to be seen young enough, Stoller imagined the actual potential of gender therapy to be largely untapped. "It seems impossible to treat the adult transsexual successfully," he argued in *The Transsexual Experiment* (and by 'treat' he meant erase non-normative gender identity), adding: "Even at age 6 or 7, our work is formidable."³⁸⁴ Still, childhood came to offer a horizon for expanding gender therapy much farther than could be accomplished with adult transgender patients.

³⁸² Money, *Venuses Penuses*, 6.

³⁸³ Robert Stoller, *Sex and Gender, Volume II: The Transsexual Experiment* (New York: Jason Aronson, 1975), 2.

³⁸⁴ *Ibid.*, 81.

By his own recollection, it was the referral of potentially transgender or very butch lesbians to his psychiatric practice in the 1950s that propelled Stoller into gender identity research. Their “normalness,” by which he means their outward normative appearance, combined with his inability to explain their gender presentation through pre-existing psychoanalytic concepts and processes, led him to seek to put together a narrative etiology for “transsexualism.”³⁸⁵ Stoller’s metapsychological theory grounded itself in a revision of Freud’s conception of primary bisexuality, de-biologizing it in favor of a problematization of the infant-mother relation:

What Freud thought was an elemental quality, ‘masculine protest’ or ‘repudiation of femininity’ in men, rather than reflection a biological force, is a quite non-biological defensive maneuver against an earlier stage: closeness and *primitive identification with the mother*. Comparably in females earlier than penis envy in little girls is a stage of *primary femininity*. The biological lies deeper still.³⁸⁶

The theory of “too much mother,” as it came to be known colloquially, made normative core gender identity the responsibility of the mother to avoid imprinting too much femininity on a boy (Stoller’s theory for FTM children is a clumsy attempt at inverting this arrangement). Further, it cemented the temporality of childhood as developmentally culpable for gender identity, after which therapy was felt to be utterly ineffective. In addition to a rigid pathologization of the mother and femininity, then, the darker conclusion of Stoller’s theory was its re-instrumentalization of the child in the service of the future-anterior, the adult it *might* grow up to be. As Stoller put it bluntly: “Treatment of the transsexual boy may be the only way to prevent adult transsexualism.”³⁸⁷

³⁸⁵ Robert Stoller, *Presentations of Gender* (New Haven: Yale University Press, 1985), 4.

³⁸⁶ Stoller, *Sex and Gender, Volume II*, 11.

³⁸⁷ *Ibid.*, 107.

The pathogenic theory of too much mother, in sum, argued that the bipotentiality of sex was not meaningfully biological after birth, but that gender identity was highly influenced by the infant's first "primitive" form of identification with the mother through physical closeness, feeding, and other ostensibly normal modes of intimacy.³⁸⁸ If the mother did not teach the child at the right time to hate femininity, rejecting it sufficiently by the onset of the castration complex, then that 'boy' would have no fear of castration, identifying freely with femininity. Rather than a transgender identity being the manifestation of a deeper conflict, then, Stoller recast it as the pathological *absence* of a conflict rooted in the natural antagonism of masculinity and femininity: the femininity of MTF subjects was fully consolidated extremely early and locked in for life; it covered over nothing, least of all biology. Unsurprisingly, then, theoretically the treatment of young transgender children would consist of inducing an Oedipal complex.³⁸⁹

Yet despite Stoller's argument that clinical practice should aim to destroy transgender identifications in children, his theoretical orientation was not very well reflected in the actual work of the Gender Identity Research Clinic at UCLA. While many children described as "effeminate boys" were brought in by anxious parents for some variation on the gender psychotherapy Stoller imagined, others were diagnosed as "transsexual" and even supported in their gender transition during childhood and adolescence. What united these two approaches, however, was the psychoanalytically intensified questioning of childhood for the origin of gender identity. This was not only accomplished retrospectively, either. Richard Green's transcript from an intake interview

³⁸⁸ Here is a strong reflection of Money's theory: "we may suspect that important aspects of character structure are permanently fixed very early in life, not by innate factors but by the impingements of the care-taking human environment." *Ibid.*, 11.

³⁸⁹ *Ibid.*, 101.

in 1969 gives a sense of the structure of the line of questioning the clinic pursued, as well as its mirroring by anxious parents increasingly concerned in the postwar era that sex and gender were fragile and vital aspects of their children's development:

Dr. G.: How did you hear about my work here? Were you referred?

Mr.: We read it in the L.A. times. She [the mother] had asked our own family doctor about some of these mannerisms of his and suggested that we wait until 5 years of age.

Mrs.: He said at this time it's hard to tell whether its [*sic*] pathological.

Dr. G.: Tell me this now. How far, how long ago did you first have these concerns that there was something effeminate about him?

Mrs.: I'd say in the past year we were beginning to become concerned about it.

Mr.: We read an article in Newsweek Magazine where it talked about homosexuality. One thing it sort of summarized was that one thing they noticed about all of them and that was that boys are quite a bit criers and that got us to thinking because boy, we've got a crier on our hands"³⁹⁰

While these parents were pulled into the discursive matrix of gender identity through the fear of future homosexuality, the question of developmental timing, both in the family doctor's office and at the Gender Identity Research Clinic, reflected the actual matter of diagnostic and therapeutic concern. Whether effeminacy was interpreted as a sign of future homosexuality or transgender identification continued yielded an inconsistent field of answers from researchers throughout the 1960s and 1970s.³⁹¹ Regardless of the answer in each case, however, the narration of childhood's ontogenetic function in gender identity comprised the core effort of psychiatrists and parents.

³⁹⁰ Richard Green, "Sissy Boy [name redacted for confidentiality]," April 29, 1969, typed interview transcript, UCLA Box 8.

³⁹¹ For several examples suggesting the range of answers to this question, see the following: E.M. Litin, M.E. Giffin, and A.E. Johnson, "Parental Influence in Unusual Sexual Behavior in Children," *Psychoanalytic Quarterly* 25 (1956): 37-55; R. Eugene Holemon and George Winokur, "Effeminate Homosexuality: A Disease of Childhood," *American Journal of Orthopsychiatry* 35 (1965): 48-56; Bernard Zuger, "The Role of Familial Factors in Persistent Effeminate Behavior in Boys," *American Journal of Psychiatry* 126: 8 (Feb 1970): 151-154; Richard Green and John Money, "Stage-Acting, Role-Taking and Effeminate Impersonation During Boyhood," *Archives of General Psychiatry* 15 (Nov 1966): 535-538; George A. Rekers, O. Ivar Lovaas, and Benson Low, "The Behavioral Treatment of a 'Transsexual' Preadolescent Boy," *Journal of Abnormal Child Psychology* 2, 2 (June 1974): 99-116.

At UCLA, the clinic's rationale for deciding on diagnosis was far from consistent. When the psychiatrist Alan Rutenberg started receiving referrals through the clinic in 1964, he felt that the transgender child constituted a clear categorical difference from ostensibly effeminate or proto-homosexual patients. As he reported it in a conference paper several years later:

What is especially fascinating is that the psychiatric literature is almost devoid of any description of the particular entity, if I may call it such, of which this patient is an example. I want to make it clear that I am not referring to the well-elucidated category of effeminate little boys or boys with transient cross-gender identifications, familiar to child psychiatrists. What I wish to describe is a little boy whose feminine identification was so strong, secure, and consistent as to justify the use of the term transsexual to describe him.³⁹²

In discussing a single case, a five year old he diagnosed as transsexual, Rutenberg noted that parents had nevertheless sought out medical attention because of a fear that their child would grow up to be "a full-blown homosexual." In the ensuing year of psychotherapy, Rutenberg followed Stoller's broad approach and tried to separate the child from the mother by inducing castration anxiety.³⁹³

Lawrence Newman, another psychiatrist who participated in the clinic, attempted to synthesize the approaches of Hopkins and UCLA in his casework, in so doing reflecting the basic structure of the treatment of transgender children for the postwar period. "Money and his co-workers have demonstrated, through their studies of hermaphroditic children," he noted, "that the way a child is reared during his first two to three years of life will determine *thereafter* whether he feels himself to be a male or a female" (emphasis in original). "Following this discovery," as Newman saw it, "Stoller has demonstrated a specific combination of family circumstances which lead to the

³⁹² Alan S. Rutenberg, "A Case Study of a Five-year-old Transsexual Boy," conference paper, location of presentation not given, February 21, 1967, typed manuscript, UCLA Box 8, 1.

³⁹³ *Ibid.*, 2, 12.

development of profound femininity in boys.”³⁹⁴ The refinement of the developmental temporality of gender identity presaged the narrative that would reemerge in the late 1990s as the eventual justification for hormone therapy in transgender children: “For the transsexual, adolescence is a time of crisis.”³⁹⁵ Going through puberty in ‘the wrong body,’ for a fifteen year old patient of Newman’s, he concedes, had led to a suicide attempt.³⁹⁶ Although the crisis of puberty for the transgender child was a biological problem, Newman, clearly influenced by Stoller, writes into the problem that transgender medicine was creating for itself in its increasing segregation of soma and psyche:

If we define a successful treatment of transsexualism as one which would make the transsexual give up his cross-gender orientation and become comfortable with his physical sex, a treatment, for example, which would replace the male transsexual’s femininity with masculinity, *we must acknowledge that nothing approaching this exists*. If profound cross-gender orientation is detected early in life, no later than by age five or six and intensive individual therapy for the child and counseling for the family instituted on a regular basis, reversal of gender orientation is possible. With feminine boys the treatment is based upon interfering with the child’s feminine fantasies, reassuring him that he is a boy and will not grow up to be a girl, while at the same time, helping him to see that being a male has many rewards.³⁹⁷

Newman’s argument, here, at first analogizes Money’s transphobic and conservative justification for sex reassignment of adults at Hopkins: the failure of psychotherapy to erase transgender subjectivity after the establishment of gender identity holds open the door for more affirmative hormonal and surgical therapy. At the same time, though, by redefining childhood as psychically plastic, the focus of this transphobic and misogynist (“helping him to see that being a male has many rewards”) strain of therapy becomes to preempt transgender identification and identity in the first place. When hormone therapy

³⁹⁴ Lawrence E. Newman, “Transsexualism in Adolescence: Problems in Evaluation and Treatment,” typed manuscript, no date, UCLA Box 9, 3.

³⁹⁵ *Ibid.*, 5.

³⁹⁶ *Ibid.*, 7-8.

³⁹⁷ *Ibid.*, 12-13, emphasis added.

and puberty suppression were approved in children in the Netherlands in the 1990s, it was only after this hegemonic argument for the psychic plasticity of children's gender was overturned by a new confidence in genetics and the neurological dimensions of gender. Arguing that the child's *brain* is hardwired as either masculine or feminine from a young age worked to discredit the emphasis on the malleability of the family matrix cultivated in the 1960s that Newman's work reflects.³⁹⁸

Newman saw a range of children actively expressing male and female transgender identities during the 1960s and 1970s.³⁹⁹ Although he aped Stoller's language in arguing that "The ideal treatment of transsexualism would appear to depend upon prevention—diagnosing and treating gender identity aberrations in childhood," he nevertheless also oversaw gender transition in adolescents in his capacity as a psychiatrist.⁴⁰⁰ Since he agreed with Stoller that by the teenaged years gender identity was immune to therapy, Newman worked with such patients to start endocrine therapies and live full time as their desired gender.⁴⁰¹ One MTF patient from this period, "Georgina," began to live full time as a girl at age fifteen under Newman's guidance. She was able, with the cooperation of parents and school officials, to move to a new school in the Los Angeles area, legally change her name, and attend high school as a girl, undergoing estrogen therapy. "Much

³⁹⁸ See Sahar Sadjadi, "The Endocrinologists Office—Puberty Suppression: Saving Children from a Natural Disaster?" *Journal of Medical Humanities* 34, 2 (2013): 255-260.

³⁹⁹ For instance: "One profoundly masculine little girl treated at UCLA, who prayed she would grow up to be a man, received psychoanalytic treatment from a male therapist without improvement." Newman, "Transsexualism in Adolescence," (13).

⁴⁰⁰ *Ibid.*, 14.

⁴⁰¹ Interestingly, Newman seemed to even hold open the door to imagining a sex reassignment surgery for teenagers, writing it is my feeling that such surgery [SRS] should not even be contemplated for the transsexual adolescent until he has lived successfully and uninterruptedly in the gender role of the opposite sex for at least one year," *Ibid.*, (17). Many of his patients would have qualified under that rubric; however, the point was merely hypothetical, since ULCA precisely did not offer sex reassignment to anyone.

later,” Newman recalls, Georgina underwent full SRS.⁴⁰² In spite of the hostile and transphobic impulses at the basis of diagnostic protocols and theories of gender acquisition, then, transgender children and their families were able to successfully negotiate the UCLA clinic and pursue different forms of transition under the supervision of psychiatrists like Newman.

“Georgina” was by no means alone. The memoranda of the weekly “Saturday Clinic Conferences” that served as the regular meeting structure through which the members of the clinic could share and troubleshoot their research are filled with references to patients diagnosed as transsexual during childhood, many of whom were also brought before the group on Saturday mornings (and presented highly objectified for the curiosity of researchers, if the manner in which the doctors described them in their memoranda are any indication). Some of the earliest memoranda from 1963 mention “a five-year-old transvestite” and “a 15-year-old transvestite-transsexual,” while those from the latter years of the clinic, in 1969-1970, refer to “an adolescent female-to-male transsexual who insists on androgen treatment and completing high school as a boy,” “a 13 year old female-to-male transsexual,” “a 12-year-old ‘pre-transsexual’ boy,” and “a nine-year-old girl with transsexual tendencies.”⁴⁰³ The exact number of children diagnosed as transsexual, as well as the number treated, whether by psychotherapy, hormone therapy, or sanctioned forms of gender transition, is as unclear as the roaming nomenclature used in the memoranda. In one dated June 29, 1970, Richard Green mentions that in the scheduled discussion of the “progress on the feminine boy project”

⁴⁰² *Ibid.*, 16-19.

⁴⁰³ Robert Stoller, Memorandum RE: Research Meeting, November 12, 1963; Robert Stoller, Memorandum, March 31, 1964; Richard Green, Memorandum, May 25, 1970; Richard Green, Memorandum, March 20, 1970; Richard Green, Memorandum, October 8, 1969; Richard Green, Memorandum, April 1, 1969, UCLA Box 16.

that “We are currently evaluating, or have evaluated, 22 boys.”⁴⁰⁴ The ambiguity in the phrase “feminine boy project,” in addition to leaving out FTM children, could suggest either children sometimes diagnosed as transsexual, or equally the “effeminate boys” that parents anxiously brought in to UCLA out of fear of latent homosexuality.

The lack of diagnostic, nosological, and therapeutic consensus on what constituted a transgender child in the 1960s and 1970s is further reflected in the case notes of the individual psychiatrists. Often extremely colloquial and intensely personal in their subjective assessments of children’s gender normativity, the notes underline both how central childhood had become to the emergent field of transgender medicine, while nevertheless remaining very far from amounting to a clear-cut typology of the transgender child. The child’s body, rather, continued to serve the recognizably ambiguous purpose of an intense node relating overlapping but uncoordinated discourses aimed at influencing the ontogenetic growth of the human form. Richard Green’s handwritten notes from an initial consultation with a five-year-old child, for instance, focus on description and lack any conclusion:

My Impressions of our 5yr old patient

I was most impressed with this child’s brightness, his precocity. He seemed to possess an excellent vocabulary and reacted with interest and imagination to the questions he was asked.

He didn’t seem at all feminine to me. He had no feminine gestures. He was active, not passive.

I think he knows damn well why he is at UCLA. He studiously avoided mention of enjoying dressing-up, of an interest in girl’s games and roles, or girl friends. He seemed guarded.

His stature seemed small for his age, and hair is cut too long (which I believe reflects mostly on his mother). But doesn’t appear feminine or frail. He sure impressed me with his intelligence, his eagerness, his interest and his ability to cope with 5 probing adults.⁴⁰⁵

⁴⁰⁴ Richard Green, Memorandum, June 29, 1970, UCLA Box 16.

⁴⁰⁵ Richard Green, handwritten case notes, no date (c. mid 1960s), UCLA Box 16, (emphasis in original).

There was little in the way of a clear route to diagnosis in these first meetings other than outright normative judgment of external appearance and mannerism (the references to the mother and long hair do evoke Stoller's basic theory). With the hope for a clear-cut chromosomal, gonadal, or hormonal difference to distinguish transgender children from other children extinguished by this decade, even the revised Freudian account of development offered relatively little in practice to psychiatrists at UCLA. Green's colleague Ralph Greenson at one point resorted to examining the eyeballs of effeminate boys during consultation, expecting that they would be "larger."⁴⁰⁶ Stoller, in his intake notes for another five year old seen in 1963, ended his remarks with a crude punctuation typical of the clinic: "I would not want him for my son."⁴⁰⁷

While UCLA followed a range of diagnostic and therapeutic models that lacked anything near the theoretical unity of Stoller's published volumes, elsewhere in the country psychiatrists followed no recognizable narrative, though they nonetheless understood themselves to be participating in a nascent field of transgender medicine. In a 1968 article, "The Childhood of a Transsexual," three psychiatrists from the Children's Psychiatric Hospital at University of Michigan Medical Center and Ypsilanti State Hospital, Michigan, considered "the extensive records accumulated by a child guidance clinic and two psychiatric hospitals on a transsexual patient under their care between the ages 10 and 19."⁴⁰⁸ The psychiatrists also interviewed the patient, now 19, who they named "Steven," although they also note that "Steven" corrected them and asked to be addressed as "Mary." At age ten and a half Mary was sent to a child guidance clinic for

⁴⁰⁶ Dick Greenson, typed manuscript, no date, UCLA Box 16.

⁴⁰⁷ Robert Stoller, typed manuscript, November 19, 1963, UCLA Box 16.

⁴⁰⁸ Saul I. Harrison, Albert C. Cain, and Elissa Bendeck, "The Childhood of a Transsexual," *Archives of General Psychiatry* 19 (July 1968): 28.

“neurotic” outbursts at school. After six months of therapy at the clinic, Mary was committed by their mother to the psychiatric ward where they spent the following eight years, with an unclear diagnosis. The psychiatrists are careful to reconstruct the recent childhood of Mary, but find little conclusion to draw from the materials. Nor do they drawn on Money, Stoller, or any other theory of gender identity and childhood development for comparison or explanation; instead, they ramble in a general psychiatric and psychoanalytic idiom about Mary’s ego, superego, and castration anxiety, without any specific sense of what “The Childhood of a Transsexual” is meant to illuminate.⁴⁰⁹

Nevertheless, the lack of diagnostic coherence and range of institutional settings in which Mary was forced to live shed some light on how children were treated explicitly as transsexual in the mid century outside of the major research poles of Johns Hopkins and UCLA. Even if children like Mary were simply committed without much interest on the part of psychiatrists in concrete “treatment,” the wider drive to assemble a field of knowledge around the transgender body made the tabulation of children’s case histories of wide interest. The transgender child was not confined to the research-intensive locations of Baltimore or Los Angeles. During the same period in Florida, George Rekers drew on the larger conversation about the transgender child to justify his growing practice of aversion therapy for effeminate boys, while similar procedures, including electric shock therapy, were carried out on children explicitly diagnosed as “transsexual [*sic*]” at the University of Mississippi Medical Center.⁴¹⁰

⁴⁰⁹ *Ibid.*, 31-32.

⁴¹⁰ See, for instance, Shashta L. Mead and George A. Rekers, “Role of the Father in Normal Psychosexual Development,” *Psychological Reports* 45 (1979): 923-931. Rekers moved to Kansas State University in 1980. David H. Barlow, E. Joyce Reynolds and W. Stewart Agras, “Gender Identity Change in a Transsexual [*sic*],” University of Mississippi Medical Center, Department of Psychiatry, no date. UCLA Box 9.

Conclusion: Reframing Puberty Suppression Therapy

The transgender child is making headlines in the twenty-first century in the context of an approach to endocrine therapy that allows for a major gender transition during childhood, particularly before age thirteen. Puberty suppression therapy, as it is usually termed, involves the regular administration of a gonadotropin-releasing hormone (GnRH) analog to effect a cessation in the pituitary gland's release of the hormones that would otherwise in turn trigger the release of sex hormones in the gonads. With regular treatment, this therapy essentially prevents or arrests puberty, depending on the age at which it begins. In conjunction with a diagnose of Gender Identity Disorder (GID), children up to around age thirteen can halt or prevent puberty in order to avoid the immense stress of the development of secondary sex characteristics at odds with their gender identity. Puberty suppression therapy, in effect, buys several years of time for psychotherapy and living in one's gender identity before pursuing other forms of transition. If a transgender child decides to undergo cross-sex hormone therapy and sex reassignment surgery at or after age eighteen, puberty suppression therapy's prevention of the development of secondary sex characteristics has the effect of making that eventual transition far more normatively 'successful.' The original suppression of puberty allows subsequent cross-sex hormone therapy to induce a puberty congruent with gender identity. Height can be adjusted hormonally, as well as the prevention of the development of breasts, the Adam's apple, or voice change, as the case may be.⁴¹¹ Endocrinologists offering puberty suppression

⁴¹¹ Bethany Gibson and Anita J. Catlin, "Care of the Child with the Desire to Change Gender—Part 1," *Pediatric Nursing* 36, 1 (2010): 53-59.

therapy in the United States have underlined the previously unimaginable potential for “realness” now available to transgender children.⁴¹²

Puberty suppression therapy was developed in a Dutch clinic in the 1990s before migrating to other parts of Europe, Canada, and the United States. Part of why it has raised so much interest in the public discussion of the transgender child is that it opens onto a broader dualist paradox of timing in the child’s fall into knowledge and selfhood: skeptical adults have asked how, precisely, children under thirteen are able to “know” their gender identity with such certainty. Since children are not recognized as autonomous or self-possessed medical subjects, moreover, the diagnostic and clinical protocols for GID and puberty suppression therapy have been forced into finding ways of justifying hormone therapy that, beyond parental consent, figure the child as the recipient of medically necessary treatment. One strategy has been to argue that puberty suppression therapy is an effective mode of preventing suicide in pubescent transgender youth, whose rates of suicidal ideation are dramatically higher than all other peer groups. Since the therapy is more or less reversible, endocrinologists and psychiatrists have argued it is worth buying children time to explore their gender identity in psychotherapy without the psychological crisis precipitated by the biological and endocrine temporality of puberty.⁴¹³ More broadly, a resurgent interest in genetics and the brain have accompanied the normalization of puberty suppression therapy. By arguing that the brain is fundamentally gendered in early infancy, neurologically hardwired in transgender children as in cisgender children, puberty suppression therapy becomes medically

⁴¹² Simona Giordano, “Lives in a Chiaroscuro: Should We Suspend the Puberty of Children with Gender Identity Disorder?” *Journal of Medical Ethics* 34, 8 (2008): 580-584.

⁴¹³ Peggy Cohen-Kettenis and S.H.M. van Goozen, “Puberty Delay as an Aid in Diagnosis and Treatment of a Transsexual Adolescent,” *European and Adolescent Psychiatry* 7, 4 (1998): 246-248.

necessary regardless of any child's degree of self-knowledge.⁴¹⁴ The structure of the argument is evocative of the one made by Money in the 1960s, albeit with a neurological bent: the sexed body's morphology must be brought into accord with the gendered brain. Since the child's body remains so open to cultivation before puberty, the technical potential for manipulating gendered form is much higher than it is in adults.

The Dutch researchers who crafted puberty suppression therapy take their clinical work as year zero for the transgender child, placing it in the early to mid 1990s.⁴¹⁵ This assumption has been adopted widely by journalists, activists, and by interested sociologists and other scholars in transgender studies.⁴¹⁶ Yet the clinical history from the 1960s and 1970s recounted in this chapter contradicts that historical narrative, demonstrating that children as young as four or five were diagnosed as "transsexual" thirty years earlier, with some undergoing forms of hormone therapy and gender transition in adolescence. The assumption that no children fell under the category transgender because of a lack of obvious therapeutic route for gender transition seems to be instead a product of aura of futurity accruing to some transgender children in the present, where they are located in a teleological narrative of American identity politics in which transgender is meant to follow mainstream gay civil rights as a new issue. Rather than the hitherto ignored history presented in this chapter serving as a counter-narrative or empirical correction of transgender historiography, it is helpful to note the continuity between these two moments. What would it entail, for instance, to understand puberty

⁴¹⁴ See Sahar Sadjadi, "Suppressing Puberty: The Child, the Brain, and the Underwear," paper presented at Mattering: Feminism, Science and Materialism, February 14, 2013, CUNY Graduate Center, New York City.

⁴¹⁵ See Peggy T. Cohen-Kettenis and Friedemann Pfafflin, *Transgenderism and Intersexuality in Childhood and Adolescence: Making Choices* (London: Sage, 2003).

⁴¹⁶ Tey Meadow, "Child," *TSQ: Transgender Studies Quarterly* 1-2 (2014): 57.

suppression therapy not as a futuristic achievement of the millennium, but as one effect of a longer genealogy of “gender” as a technical artifact of the medicalization of the body? The child’s body might emerge more clearly as the very material that connects the mid twentieth century to the present, but that also returns to the invention of the modern endocrine body in the late nineteenth century, as the previous chapter examined.

If gender is a technical matter as much as a psychic ideation, it is not surprising that child’s growing body been cast as the most hospitable human form to technical cultivation. As each of the chapters of this dissertation have argued in different ways, the child’s categorically ascribed plasticity is instrumentalized as the means through which value is cultivated through the natural and social development of the human. Moreover, as this genealogy of the gay and transgender child suggest, gender and sexuality have been since the invention of the modern category of childhood vital dimensions of the calculation and cultivation of that value. In the 1960s, for psychiatrists like Stoller, Ruttenberg, or Newman, the gendered plasticity of children was alluring for their transphobic project of preventing the assumption of a transgender self by adulthood; by the start of the next century, the plastic body of the transgender child carries an inverted allure, now promising the most realistic and gender normative transitions ever possible through the suppression of puberty. In both instances, however, medicine relies on the valued porousness of the child and childhood’s developmental temporality for its project of technical intervention. The vital norm of sex and gender itself, thereby, in some ways changes very little over the second half of the twentieth century. In 1960s as in the present, the gender binary of masculinity and femininity is prized by medicine above all else as the normal terminus of childhood development. The shift from diagnoses of

childhood transsexualism to GID have not widened the medically and legally sanctioned categories of gender available to children, but represent instead a shift in the technical procedures used to produce masculine and feminine bodies out of those children.

CONCLUSION:

About That Kid Stuff

In proposing a historicized or genealogical reading of the child's gendered, sexual, and racialized body, rather than treating the child as a mostly symbolic figure, this dissertation has aimed to depart from, rather than reactively oppose or simply critique, the version of the child figure that has been produced out of Lee Edelman's *No Future* and its reception in queer theory. At the same time, in suggesting in its title that queer theory is "kid stuff," it makes an epistemological wager about the persistent desire for the child to do something for a field of knowledge that needs some elaboration, if not justification.

This project has taken it as axiomatic that the concept of "the child" is an epistemological problem bound at the crossroads of knowledge and power that will not finally resolve itself on its own terms. In that vein, the child as a figure certainly does ideological work for the adults that continually invest in its image for political ends, whether those of reproductive futurism or anti-social ethics. Yet, this version of the child figure also works very persistently to prevent adults from having any non-pedagogical relation to children, limiting the intergenerational transmission of knowledge to a hierarchical, uniform mode in which children are consigned to the passive position. Because the child is so often also a retrospective narrative of the adult subject, the desire to produce more knowledge about children and childhood, and the desire to know something truthful about actual children, are more often than not impossible to disentangle from the narcissistic projections of adults. These constitutive challenges

reach perhaps their greatest complexity in the case of sexuality, where the pursuit of knowledge becomes a kind of eroticized epistemophilia that seems structured similarly to the idealized adult-child pedagogical relation in Western culture.⁴¹⁷ While this dissertation has made critically empirical claims about the historicity of the gay and transgender child, it has aimed to do so not in the register of new truth claims, but to account for how gay and transgender childhood have come to seem possible or truthful in the present. In diagnosing queer theory's sexual pedagogy of children, this project admittedly risks recuperating an analogous pedagogical relation with the children whose genealogies it examines under the banner of historicity. That risk, however, which approaches the generative impossibility of the adult-child relation, is also why studying the child and childhood is so rewarding and important.⁴¹⁸ By making children unfinished humans, both utterly unlike adults and yet always imagined as in the process of becoming adults, Western culture has created a generatively unbridgeable gulf of knowledge.

In risking the speculative claim that "queer theory is kid stuff," then, this project has two specific motivations. First, it means to displace the naturalized instrumentalization of the child by queer theory through retrospective or futuristic narratives that only address adult desires for social and political formations. Queer theory is kid stuff, in a second sense, because children might already be busy theorists of their worlds, were we only able to notice them—it is adults, historically confined by their investment in and constitution by a particular regime of pedagogy, that are unable to

⁴¹⁷ This is taken up in much greater depth in the introduction.

⁴¹⁸ Of the many ways of mapping the impossibility of this relation, psychoanalysis remains incomparable, though it has not appeared much in this dissertation, particularly in the theoretical framework, because of its historical centrality to discourses of development and retrospective diagnoses of abnormality. In the field of children's literature and childhood studies, Jacqueline Rose's foundational *The Case of Peter Pan, Or the Impossibility of Children's Literature* (Philadelphia: University of Pennsylvania Press, 1998) makes an interesting case for the material and cultural effects of this psychoanalytic proposition that this conclusion means to echo.

engage with children on any other terms. In refusing that queer theory is kid stuff for so long, the field cannot do much with the hegemonic figurations of children examined in each chapter of this dissertation: bullies are irrational predators, while gay children are always vulnerable; cyberbullies are malicious criminals, while sexual children are threatening and threatened until contained; and transgender children are assumed not to even exist until the 1990s. This dissertation has not unearthed the reality of those children's lives or experiences, or still less, made any claims to their self-understanding and awareness of their participation in categories of race, gender, and sexuality. It has underlined how the value of children's gendered and sexual bodies, always made to cohere through a racialized logic of cultivating human life, are part of much longer material histories that contextualize any claim to knowledge about children. In examining those histories, this project hopes for their utility in cultivating a different relation to the child in queer theory and, as it continues to greatly expand, transgender studies: a relation without a presumed sexual pedagogy. One in which queer theory is affirmatively kid stuff, whatever that might come to mean, since it would involve *not* deciding what kids are, for once.

A "kid," which for centuries referred to young goats or similar juvenile livestock, did not come to refer to children in popular parlance until the nineteenth century, the same period during which the modern categories of the child and childhood congealed. "Kid stuff" is more recent and a decidedly American colloquialism, first appearing in print in the 1930s. The phrase was from the beginning derisive, appearing in many children's magazines and books in the ensuing several decades when children meant to

dismiss something as too childish for their level of maturity.⁴¹⁹ Edelman's introduction to *No Future*, "The Future is Kid Stuff," cites the phrase in that sense, with a political accent on it being "something suitable for children," as the *OED* puts it. Were kid stuff to signify in the alternative mode imagined here, such that what is simplistic or childish takes on an affirmative autonomy from adult dismissal and pedagogical overdetermination, perhaps the future might take on a different valence and value, one at least more complex than what feels possible in the present moment. While the gay child continues to be cultivated as a protectable body under the law and in popular culture, it is to the extent that it is coded as white, willing to involve the punitive arms of the education and juvenile court system, and reinforce the historically disproportionate violence to which black and brown children are subject in the United States to produce innocence for white children.⁴²⁰ The transgender child, meanwhile, continues to be greeted with awe and confusion as a body of the future, when in fact there is a long medical and political history being ignored that might have great bearing on the vital problems of uneven access to mostly hostile health care, the violent epistemic parameters of diagnostic categories, the eugenic logic of its techniques, and the incomparably high suicide rate faced by trans children. Whatever kid stuff is also going on in each of these cases is opaque to the adults involved.

Gender and sexuality have long functioned as anchors for calculations of value imposed on and produced out of children's bodies as unfinished human forms. More than that, since at least the nineteenth century the very concept of the child has had a eugenic

⁴¹⁹ "kid, n.1," *OED Online*, June 2014, Oxford University Press, <http://www.oed.com.proxy.libraries.rutgers.edu/view/Entry/103286?rskey=iT03G1&result=1#eid>, accessed September 8, 2014.

⁴²⁰ Robin Bernstein's valuable work in *Racial Innocence* insists here again.

connotation, supporting a racial formation that takes gender and sexuality as its formal dimensions. This dissertation has not brought us any closer to knowing the gay and transgender children whose lives are embedded in these histories; on the contrary, it has tried to problematize our willingness to assume access to children by emphasizing how they have been instrumentalized by the law and medicine examined across its four chapters. In historicizing the emergence of a self-identified gay and transgender child in the broader recalculation of children's value to the nation, it can make no claim to knowing what kid stuff they might be involved in. The persistence of that problem, however, is precisely what makes it a good starting point for queer theory and transgender studies.

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