

HOUSE BILL 2 AND THE MYTH OF THE BATHROOM PREDATOR: EXPLORING
GENDERED ASSUMPTIONS IN THE CONTEXT OF “LIVABLE LIVES” IN
POLICY MAKING

BY

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Abstract

House Bill 2, a piece of legislation that was passed in March 2016, became a national phenomenon. HB2, or the bathroom predator bill as it was referred to in the media, had four parts. This project focuses on part 1, which mandated that all persons use the bathroom that corresponded with the sex that appears on their birth certificate. This bill was a response to a Charlotte Ordinance that created legal protections for individuals to use the restroom that best matched their internal gender identity, and not their physical anatomy when using public restrooms. The popular argument that circulated as to why the Charlotte Ordinance was a bad idea, both in the House Floor debate and in the media, was that “biological men” would invade women’s restrooms to commit harm to them under the guise of identifying with being a woman, even though they truly didn’t identify that way.

House Bill 2 passed overwhelmingly, with both sides of the aisle agreeing that it was a necessary good. The bill passed with no evidence to say that this ever happened in the states and cities that had passed similar ordinances to Charlotte, and a lot of data that proves that these protections are necessary to trans and non-binary persons using public restrooms. This project seeks to understand how a bill with no evidence to support it passed with so many votes. Using Judith Butler’s frame of “livable lives” which she develops when studying the John/Joan case, this work analyzes the House of Representatives Floor debate in North Carolina and looks at how specific genders are used to define and support some lives as livable, and others as not.

Chapter 1: Introduction

On March 23rd, 2016, North Carolina’s House of Representatives held a special session to debate House Bill 2, “an act to provide for single-sex multiple occupancy bathroom and changing facilities in schools and public agencies to create statewide consistency in regulation of employment and public accommodations.” What was described by Laverne Cox in a tweet as “the most anti-LGTQ legislation in the country,” the bill consisted of four parts, though the first among them was the most controversial.¹ Part one of the House Bill 2, titled “Single-sex multiple occupancy bathroom and changing facilities,” or as it is known in the media “The Bathroom Predator Bill,” made it mandatory for individuals using restrooms or locker rooms in public spaces (for example public schools, government buildings, and community centers) only be permitted to use the restroom that matched their biological sex as it appears on their birth certificate.² The bill was drafted after the city of Charlotte, North Carolina, passed a city ordinance that allowed individuals to use the bathroom that designated the gender with which they most identified, while legally protecting those individuals were they faced with violence in those spaces. House Bill 2 passing meant, in combination with other parts of the bill, that Charlottes ordinance would no longer be in place. After the oral arguments made on the House floor, the bill passed through the House with 82 in favor, 26 against, and 11 excused absences.³

¹ “Laverne Cox Reacts to North Carolina’s Anti-LGBT Legislation.”

² NC General Assembly, *Second Extra Session 2016*, Session Law 2016-3. (Raleigh, North Carolina, 2016).

³ CNN, “North Carolina Governor Signs Controversial LGBT Bill.”

The oral arguments included a popular narrative disseminated by media outlets regarding the bill's necessity in order to prevent potential predators (who are routinely described as men) from entering women's bathrooms under the guise of being trans so that they might have the opportunity assault women. The argument suggests that by restricting individuals to using only the bathroom that matches the sex on their birth certificate, those men who would be predators might be deterred from assaulting women in the women's restroom.

On May 9th the federal government filed a lawsuit against the state of North Carolina claiming that the law violated Title VII of the Civil Rights Act, which prohibits discrimination against workers on the basis of sex, race, color, national origin, and religion. The Justice Department even went so far as to threaten to take away federal funding to the North Carolina Department of Public Safety and the University of North Carolina if the state did not immediately stop enforcing the law. North Carolina pushed back, claiming that this was an overreaching interpretation of Title VII and that the law was for the protection and safety of its citizens. Attorney General Loretta Lynch gave an address in which she responds that Governor Pat McCrory and the North Carolina legislature put the state in "direct opposition to federal laws prohibiting discrimination on the basis of sex and gender identity. More to the point, they created state-sponsored discrimination against transgender individuals who simply seek to engage in the most private of functions in a place of safety and security, a right taken for granted by most of us."⁴

⁴ CNN, "U.S., North Carolina File Lawsuits over Bathroom Bill in Transgender Rights Fight."

After the bill passed, celebrities refused to perform in the state including Bruce Springsteen, Demi Lovato, Nick Jonas, and bands Pearl Jam and Boston, losing millions of dollars for the state in revenue. PayPal and Deutsche Bank both cancelled plans to expand into North Carolina. NCAA refused to have major events in the state, leaving basketball fans furious, and still more money lost. Other states, like California and New York, refused state funding for workers to be able to visit North Carolina, because the workers were not guaranteed protections in government and publicly owned buildings, as well as filed amicus briefs attacking the bill. But even with all this backlash, the state did not back down and responded to the Department of Justice with a counter lawsuit, which was responded to with the state moving forward with their initial lawsuit, that includes claiming that North Carolina violates Title VII, and Title IX, the Education Acts Amendment of 1973 which outlaws gender discrimination in education, and the Violence Against Women Reauthorization Act which outlaws discrimination on the basis of sex. Attorney General Lynch even came out and addressed transgender individuals personally by saying that the Obama administration “will do everything we can to protect you going forward.”⁵

Though there has been a large outcry from LGBT communities and their allies, it is certainly more than just a weird phenomenon that HB2 was passed. Groups like the Family Research Council, an Texas along with other states, also filed amicus briefs asking to halt the federal government’s lawsuit.⁶ And, even with all of this national attention, the fact that North Carolina was able to pass the bill overwhelmingly remains.

⁵ Ibid.

⁶ Press, “Texas, Other States File to Support North Carolina’s HB2 Bathroom Law.”

With so many claims about the possibility of a “bathroom predator,” the assumption is that there have had to have been incidents that have happened before, especially considering laws like the Charlotte ordinance have already been passed in 17 states and 200 cities. Media Matters for America contacted several police departments in cities where similar bathroom protection laws had been passed and every single police department that was contacted came back with the same response—that the “bathroom predator” myth is completely unproven. In all 17 states and 200 cities where laws have been passed that allow people to use the bathroom that matches their gender identities instead of their biological sex, zero incidents have been reported of men dressing up as women to assault women and children in restrooms. Some of the police department responses were “Most ridiculous thing I’ve ever heard” (Baltimore Police Department), “Not even remotely a problem” (Minneapolis Police Department), and “Never heard of any cases” (Austin Police Department).⁷

There is a lot of evidence that suggests that, actually, trans and gender non-conforming people need legislation like the Charlotte ordinance in order to combat violence. In a study conducted by the *Journal of Public Management and Social Policy* in 2013, researchers surveyed 100 trans/non gender conforming people who reported the following: 70% of respondents reported having been denied entrance, verbally, or physically assaulted when trying to gain entry into a restroom that matched their gender identity, 50% developed physical problems such as dehydration or kidney infections

⁷ “15 Experts Debunk Right-Wing Transgender Bathroom Myth.”

because they “held it” to avoid using public restrooms, and 50% reported to avoid leaving their homes in order to avoid confrontation in public spaces.⁸

Rolling Stone wrote an article in March titled “What it’s Like to Use a Public Restroom While Being Trans,” which offered insight into why protective legislations for trans people is especially necessary for trans community members. Lena, a trans woman from Raleigh, North Carolina told *Rolling Stone*:

Early in my transition, it was hard because I didn't blend in well as a female, but I really didn't look like a male either. So I didn't get to use any bathrooms. When I did, I had to sprint into it and wait in a stall until everyone was gone, and then run out as fast as I could... You stand outside the bathroom for maybe a minute or two to make sure no one is coming out or no one is coming in. Then you go inside and if you hear someone, you just look down and hope they don't look at your face.... You run into the stall and you lock the door as fast as you can, and then you do what you have to do. If you hear someone walk in, or you hear someone else in there, you have to wait until they leave. Once you hear that they are gone, you can run out. Washing your hands is a difficult situation because it takes time, so hopefully you brought disinfectant.⁹

Even now after the state of North Carolina repealed the bathroom regulation, the legislature was written in such a way which prevents cities to create legislation like the

⁸ “Gendered Restrooms and Minority Stress.”

⁹ “What It’s Like to Use a Public Bathroom While Trans.”

Charlotte ordinance to pass locally because the ability to pass anti-discrimination legislation is left only to the state government.¹⁰

With studies, testimonies, and no evidence that a man has ever dressed up as a woman to assault women in a women's restroom after a law like the Charlotte ordinance was passed, why is it that North Carolina responded so strongly? In this thesis I explore this question by analyzing the gendered assumptions that are made that make it possible to believe, and how those messages are communicated, overtly and covertly, to make the passing of HB2 possible. In this chapter I will first describe what communication has contributed already to the question of trans identity and perception, describe the critical approach I have selected as a means to explore this topic (Judith Butlers frame of "livable lives"), identify what I think my project could contribute to the field of communication and rhetoric, and conclude with a chapter preview.

Literature Review

Communication and Queer Theory

Though Queer Theory can be considered separate from the field of communication, it also has had a major influence on the field and the way that it is practiced by communication and rhetoric scholars. Queer theory was first identified as an area of study in 1991, as a subsection of Gay and Lesbian Studies, which looks to uncover the ways that normative understandings of sexuality are created and then used in society. Queer Theory expands on this by asking the question of how subjects are formed in terms of the socially created categories that determine normative and "deviant"

¹⁰ CNN, "HB142."

sexualities and sexual engagement. Within the National Communication Association, Queer Theory and Queer Studies is housed under the Gay, Lesbian, Bisexual, Transgendered, and Queer Communication Studies Division.

In 2003, *Queer Theory and Communication: From Disciplining Queers to Queering the Discipline(s)* was published and took the communication field by storm. Gust A. Yep wrote in the introduction, “its preeminent role in the formation and constitution of human subjectivity and experience in modern Western cultures, sexuality has been, until recently, largely a neglected area of inquiry in the communication discipline.”¹¹ He goes on to say that it took 61 years (1915-1976) for one of the largest and most influential journals in the field, *The Quarterly Journal of Speech*, to finally start to publish papers that were on the topic of homosexuality, and then cites a study conducted by Corey, Smith, and Nakayama which revealed that a mere 66 articles were published in communication journals that addressed LGBT issues within the discipline for the next 30 years (1973-2001).

Though *Queer Theory and Communication* did indeed give Queer Theory a more permanent and substantial home within the communication field, what Karma Chavez describes as “systemically brought queer critique to the study of human communication,” she argues that since it was published “no journal of the National Communication Association has previously hosted a special issue or forum dedicated to queer studies.”¹² In 2013, however, Queer Theory is featured again in the communication field in the *Journal of International and Intercultural Communication*, which was edited by Dr.

¹¹ Yep, *Queer Theory and Communication*.

¹² Chávez, “Pushing Boundaries.”

Chavez, which explored and brought forward the advancements in queer theory within the communication field, including how communication studies could include new sub-genres of queer theory that had been developed in other fields over the past 10 years, into the discipline.

From 2003-2013, Queer Studies developed new ways to understand heteronormativity and its function in society. Karma Chavez brings these advancements to communication studies with her article, *Pushing Boundaries: Queer Intercultural Communication*, where she both explains the advancements in queer theory and why the theory is important to the communication field, as well as creates a space where communication can (and should) continue to contribute and theorize within the realm of queer theory, for her, specifically in interpersonal communication. *Out of Bounds*, the title of the issue of the *Journal of International and Intercultural Communication* and edited by Chavez, that brought back queer theory to communication, introduced the “new” queer studies to the discipline by exploring facets of queer theory, including *queer of color critique* and *trans theories* and how these new tools of theory allow for a questioning of, what Susan Stryker refers to as, “homonormative” parts of queer theory, that privileges white, upper class, cisgender, able-bodied, gay men as the main queer subject that is studied. Gust A. Yep also writes an addition to the volume, that calls for the discipline to return to the physical body “as an important site of knowledge and analysis” by using theories such as queering, kauering, cripin’, and transing to deconstruct how bodies are understood, communicated, and researched within society

and the discipline.¹³ The issue included 5 articles, the 2 from Karma Chavez and Gust A. Yep, as well as C. Riley Snorton, Megan E. Morrissey, but most important to this research was Julia R. Johnson's contribution "Cisgender Privilege, Intersectionality, and the Criminalization of CeCe McDonald: Why Intercultural Communication Needs Transgender Studies."

Johnson utilizes the concepts which, at this point, were almost exclusive to transgender studies (including cissexism, cisgenderism, and cis privilege) as a means to understand and critique the ways in which discourse can construct trans people as "other" by criminalizing their existence and erasing their perspectives and experiences through pervasive violence such as hate speech, misgendering, and rhetorical framing. In her article she writes:

Most gender research published in communication studies assumes a gender and sex binary, even in cases where the authors commit to examining gendered power and oppression... This perpetuates thinking about sex, gender, and sexuality in terms of woman/man, feminine/masculine, and gay/straight. Scholarship that subverts normative gendering, much of which examines questions of heteronormativity or queerness... tends to focus on the activities of persons whose morphological sex aligns with their gender identity.¹⁴

¹³ Yep, "Queering/Quaring/Kauering/Crippin'/Transing 'Other Bodies' in Intercultural Communication."

¹⁴ Johnson, "Cisgender Privilege, Intersectionality, and the Criminalization of CeCe McDonald."

This is a direct call to action from communication scholars to work to understand the body as a site for breaking down the oppressive and rigid barriers that the socially constructed gender/sex binary brings, specifically though, to do so by analyzing and theorizing about how discourses make violence against bodies in between, or outside the binary possible. This special volume of the *Journal of International and Intercultural Communication* brought the communication discipline up to date with the critical work of queer theory that was happening outside of it by giving communication studies new vocabulary to uncover and understand heteronormativity in society, as well as provide methodologies to critique and understand sexuality and gender through communication research.

In 2015, the book *Transgender Communication Studies: Histories, Trends, and Trajectories* was written which responds to the call of needing more research done on the subject of trans subjectivity as it relates to communication. In this book, there are 14 contributions, 4 of which are in the rhetorical tradition. But even in these articles, the focus of the book is talking about the history of trans people and their relationship to the public, but not necessarily what the existence of trans means in terms of gender, probably due to the need for even the most basic understanding of trans in the communication discipline. And though this, along with the history that allowed it to be possible, is a major breakthrough in communication scholarship, due to the fact that queer theory is so new, in general but specifically to communication, there is much left to be desired in terms of research conducted that helps break down the barriers that discourses have on trans and gender non-conforming bodies.

Bathroom Predator Literature

The bathroom predator myth has been around since the first sex segregation legislation was passed in 1887 in Massachusetts, which mandated sex segregated bathrooms were incorporated into the work place due to the belief that women needed a safe haven from men once they were in the work force. The “bathroom predator” has been used as a persuasive tool many times since its modest beginnings, during the Civil Rights Movement it was used as a means to maintain race segregated restrooms by claiming that black men would have the ability to prey on white women in their restrooms. It comes back later during the “Lavender Scare” of the 1950’s and 1960’s, where the myth became that society needed to protect young men from older gay men who were believed to likely be pedophiles and rapists. Re-emerges during the anti-ERA effort, where right-wing activist Phyllis Schlafly proclaimed that the Equal Rights Amendment would lead to an abolition of sex difference, which would in turn erase sex segregated bathrooms, and with that erasure would allow men to prey upon women justifiably in a vulnerable space that is supposed to be marked as safe (this campaign drastically aided the effort to prevent the passage of the ERA, which before this propaganda was already ratified by 33 states). And now it emerges again as is portrayed with the passage of House Bill 2, where the argument has evolved to use the existence of trans identity as a means for cisgendered men to violate women in the restroom under the guise of being trans.¹⁵

“Bathroom Predator” myths have a very clear tie to communication, because in its very nature it is an argument that is disseminated, and found persuasive by the American audience, but there has been no communication effort to write about the pervasive ways

¹⁵ Young, “How the Bathroom Wars Shaped America.”

that this message effects trans people, and what rhetorical strategies makes society believe in them. History, sociology, women and gender studies, and law scholars have asked this question and have come up with theories in their respective fields including: “Bayonets, Brainwashing and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock’s Central High” by Phoebe Godfrey, “Bathroom Battlegrounds and Penis Panics” by Kristen Schilt and Laurel Westbrook, “Cherished Classifications: Bathrooms and the Construction of Gender/Race on the Pennsylvania Railroad during World War II” by Patricia Coper and Ruth Oldenziel, and “Coming Out of the Water Closet: The Case Against Sex Segregated Bathrooms” by Alex More. Though all of these articles do discuss bathroom predators, they are searching more for the repercussions of sex segregated bathrooms, and what possible solutions could be possible to solve those issues, but never really investigated why/what we believe in the “bathroom predator” in the first place, and what that means in terms of our understanding of subjectivity within gender.

Critical Approach

Judith Butler, in her article “Doing Justice to Someone,” discusses the John/Joan case that became popular in the early 1990’s, where after John, a pseudonym for a man who lives in Winnipeg, who at the age of 8 months old went in for a relatively risk-free procedure to rectify phimosis (a condition where the foreskin of a penis thwarts urination) which resulted with the infant having his penis burned and severed. Shortly after this, John’s devastated parents saw John Money, psychologist and sexologist, speak on television about his theory which insisted that if a child underwent surgery and started socialization as a gender different than the one that the child was assigned at birth, he or

she could live happily and comfortably believing that he or she was in fact the opposite gender than what they were born as. John's parents, feeling lost and distressed, wrote to Money asking if he could help their child. Money invited the family to Baltimore where John was seen at Johns Hopkins University, and Money proceeded to recommend John receive sex-reassignment surgery and be raised as a girl. Money was particularly interested in this case because John happened to be an identical twin, so this case would allow Money to actually test his theory because he had a built in control group. After the surgery John, now Joan, grew up as a girl, and would regularly have to receive treatments at Money's Gender Identity Institute to assist in her adaptation into girlhood.

Though a lot of effort and resources were put into Joan feeling comfortable as a girl, it never really happened. She desired toy guns over dolls, preferred to urinate standing up, and when asked if she would like to take estrogen, she refused. After years of torment and questionable psychiatric treatment (including constant questioning whether Joan would like to have children, showing pictures of women giving birth, showing graphic pictures of vaginas, and even having her act out sexual actions with her twin brother), Joan broke down and told psychiatrists at her local hospital that she preferred male activities and had no desire to develop breasts or get a "real vagina." The psychiatrists were able to intervene and convince Joan's parents to stop treatment at the Gender Identity Institute, including endocrinologist, Milton Diamond, a rival to Money due to his opposing theory of gender formation being attached to the hormones in a person, rather than genitals and socialization. Joan was able to switch to live life as a boy at the age of 14, where John received (and desired) a penis, hormone shots, and had his

breasts removed. John continued to live his life as a man, he eventually got married, had children, and worked as a factory worker.

Butler analyzes the story of John/Joan through the writings about the case, including an article co-written by endocrinologist Milton Diamond, the book *As Nature Made Him* by John Colapinto, who was a *Rolling Stone* writer, work by John Money, critical responses by Anne Fausto-Sterling and Suzanne J. Kessler, and a newspaper article by Natalie Angier. With these various perspectives on the John/Joan story, she queerly theorizes society's understanding of gender as one that is coercive, taking from Foucault's description of biopower, and forces people to act in a rigid and predetermined gendered ways in order to be deemed "lovable" to others. Butler writes about John's refusal of hormones:

He positions himself, knowingly, in relation to the norm, but he does not comply with its requirements. He risks a certain "desubjugation": Is he a subject? How will we know? And in this sense John's discourse puts into play the operation of critique itself, critique that, defined by Foucault, is precisely the desubjugation of the subject within the politics of truth. This does not mean that John becomes unintelligible and, therefore, without value to politics; rather, he emerges at the limits of intelligibility, offering a perspective on the variable ways in which norms circumscribe the human.¹⁶

For my research, I use Judith Butler's understanding of subjectivity within the context of gender as the main analytical tool to understand House Bill 2. Butler describes

¹⁶ Butler, "Doing Justice to Someone."

the way that individuals try and conform bodies allows for injustices, specifically in the way that society forces specific gendered meanings onto bodies in terms of dress, performance, and sometimes even surgery. Butler argues that due to the fact that trans lives are often painted as “tragic” and “unlivable,” and therefore “unlovable,” allows complicated lives and traumas, such as Johns, to happen in the first place. Butler then advocates for the retelling of John’s story to not be one of tragedy, but instead to be an example of resistance to gender conformity and to view gender as something that isn’t rigid.

In my research, I apply this theorization of subjectivity through gender as a means to investigate how society polices bodies that are seen as something outside of, or in between, the gender/sex binary. My investigation uses Butler’s lens of “livable lives” to look at how bathroom politics makes trans lives harder, as well as what HB2 exposes about the assumptions made about gender by the populous, and how those meanings further the narrative of trans people living “unlivable lives.” Though Butler conducts her scholarship outside of communication, the themes and questions that she brings up are ones that have very clear ties to discourse and how discourses affect bodies. The only way someone can be determined as “lovable” or “unlovable” is by how society communicates about them (or excludes them from discourses). House Bill 2 is a prevalent text that gives insight into how the public views gender, and how it should be regulated by the government, specifically how the public views the rigidity and importance of gender itself.

Justification

With House Bill 2 gaining national attention, losing North Carolina millions of dollars in revenue, and potentially tax money from the federal government, while also perhaps being chosen to be seen in front of the Supreme Court, HB2 has become an issue that will define North Carolina, and perhaps the United States, for generations to come. Applying communication and rhetorical scholarship to the arguments made on the floor of the North Carolina House can offer an insight into the assumptions that allow laws that are based on assumptions about gender to be passed without supporting evidence, as well as what those assumptions are, and how society can move forward to be more critically inclusive of gender identities.

This project exposes an aspect of what it means to be trans at this time in America, specifically the South, and how governmental agencies seek to conform or erase those bodies that are deemed different (or unlovable) through legislation and other messaging.

My project uses the frame of “livable lives” from Judith Butler as a means to understand and criticize discourses about gender, and more specifically trans life. Communication scholarship has the ability to explore how discourse creates, reflects, and regulates gender in order to come up with combative strategies and framing to aid in the effort to stop oppression. My project is one more tool to offer in that effort.

Chapter Preview

For my thesis, I use the transcript of the oral arguments made for and against House Bill 2, made on the House floor of North Carolina as my text. With this text I

analyze the gendered assumptions that are made for and against the bill about men, women, and trans people, and how those assumptions add and shape the discourse of trans lives being tragic and “unlivable.” This project will work to apply Butler’s theorization to the field of communication and rhetoric as a means to understand and queer discursive formations.

Chapter two digs deeply into the assumptions about men that are perpetuated by the bathroom predator myth, as manifested in House Bill 2. The myth frames men as the predator, the ones that need legal restriction to prevent violent actions. My goal within this chapter is to uncover what it means to be a man within the context of HB2, and within that framework, why regulations (and what regulations) are needed as it relates to manhood and bathroom politics.

Chapter three focuses on the role of woman in the myth, always placed as the body which has the most at risk in terms of violence being placed upon it. Women are often described within the context of bathroom politics to be fragile and in need of government intervention to protect them from other genders (mostly men, but also trans women). Their bodies are placed as the most precious, often described in the context of daughters, wives, and mothers, which justifies constant regulations in order to preserve them. House Bill 2 offers what is portrayed as a means to protect women in vulnerable spaces, this project would look at how women are framed against trans people, and understood in the realm of public bathrooms.

Chapter four focuses on trans and non-gender conforming individuals and the assumptions that surround their being about who they are as put forth by House Bill 2.

Juxtaposed against the meanings of man and woman, my thesis will seek to understand how transness is often pushed aside as unimportant or non-existent in bathroom politics, as well as how HB2 frames trans within the broader context of Butler's critique of being "unlovable" and having "unlivable lives."

My fifth and final chapter discusses gender in the "livable lives" context, and describe how "livable" each gender is, and how that shapes the difficulty of being openly trans. In this chapter, I delve deeper into the theorization of Butler and HB2 and how it can be applied to other texts for future queer communication scholarship.

Within all of these themes and categories, my project will lend itself to the arbitrariness of gender and the tangible, and often damning, repercussions that it leaves on those that live within the binary, and outside and in between it. This project seeks to further communications ability to critique and queer texts, so that the field in general can have another puzzle piece to understand gender, its meaning and manifestation, as a whole. Though this project is just one small aspect of gender, I am hopeful that my theorization can be applied to other projects in a meaningful way, and that I will be able to discover a part of what allowed House Bill 2 to pass in the first place.

Chapter 2: HB2 and the Debate Discourse about Men

I had my mind locked in on living up to my morals and values that men have no place in a women's restroom, no matter if that man alleges he identifies himself as a woman psychologically.¹⁷

-Representative Howard Hunter III, Democrat, District 3

In 1887, the first bathroom regulation was passed in Massachusetts after public restrooms were starting to be included in public spaces.¹⁸ The bathroom regulation (“An Act to secure proper sanitary provisions in factories and workshops”) was written as a sanitation regulation, which included a mandate for sex-segregated restrooms: one for men, and one for women. The necessity for regulation derived from the belief that women needed a space that was safe and secure when they were outside the comfort of their own homes. Passage of this law created historical precedent for government intervention in standards determining restroom access through regulation. Now, 130 years after the original sex-segregated bathroom bill was passed, laws are still being passed to ensure the sex-binary in bathrooms, such as House Bill 2.

These regulations are heavily dependent on an essentialist understanding of gender as it relates to the sex of a person. In this project, when I use “man/men,” I am talking about the reductionist and limiting understanding with which the House of Representatives in North Carolina of what a man is, which is a person that performs their gender in a masculine manner and possesses a penis and testis. This limiting understanding of what a man is or can be already sets up the House to have a gender

¹⁷ “Eleven Dems Voted for House Bill 2. We Called to Ask Why. | Triangulator | Indy Week.”

¹⁸ Young, “How the Bathroom Wars Shaped America.”

politic that is exclusive and hierarchical, which sets the stage for the logic of HB2 as the debate unfolds.

Through discourses over centuries, men are understood to have particular roles to play in society (husband, father, worker, etc.), and these roles are to be played very specifically. In the instance of bathroom regulations, specifically in the discourse around House Bill 2, there are a few underlying assumptions about men that make legislators view the regulations as necessary. To pass regulations based on the discourse that women need a “safe space” assumes that men possess the natural prowess and instinct to conquer public spaces, while women are in need of shelter to protect themselves from the cruel and uncivil world—in particular, men.

In North Carolina’s House of Representatives during the floor debate about HB2, those who advocated for its passage made arguments on the premise that men would abuse the ordinance set out by Charlotte. Before an analysis on what was actually argued on the House Floor, some background of what was going on politically while this law was being debated. Firstly, this bill was debated on March 23rd, 2016, which meant that members within the House of North Carolina were trying to make moves to become viable candidates for national congress in the upcoming election. This becomes a theme within the debate, usually as a reason why to reject a representative’s argument, because the ulterior motive of wanting to run for higher public office might encourage a representative to want to pass laws, not because they are good, but because they are trigger issues that will be voted on by the public. Mostly why this is important is because this issue is seen as one that is one that would determine congressional votes in the

public, meaning that this is an issue that is valued by more than just the representatives that voted for it, but also to the larger populous of North Carolina citizens.

The second big influence on how this debate unfolded was with the process in which the bill was introduced to the House. The bill was debated, and eventually passed, in a special session, which meant that right after the special session was approved on the 22nd, all members would come to debate and vote on the bill the next day. Most representatives that opposed the bill mention the fact that they didn't have that much time to read over the bill, which then prevented them from truly engaging in the debate. Representatives also claimed that this proves that there are ulterior motives to the bill, because if they truly thought the bill was good, there would be a longer vetting process. With such a short time frame, it made robust debate about the issue nearly impossible before its passage, which means a lot of representatives were relying on their own understandings of the world, rather than potential experts that could have questioned their preconceived notions about the issue. With all of this in mind, the debate around House Bill 2, specifically part 1 of the bill, relies heavily on essentialist and generalist understandings of gender (in terms of physicality and performance) from both the proposition and the opposition of HB2.

House Bill 2 in North Carolina follows the logic derived from the history of bathroom regulations. The Massachusetts local ordinance set the standard for sex segregated restrooms as essential for public life, and was eventually adopted as normal by the entire country. This can be seen in public discussions following the initial ordinance as well, such as within the anti-ERA movements, where activist Phyllis Schlafly claimed that the passage of the Equal Rights Amendment would mean that all restrooms would

become unisex, and thus jeopardize the safety of women because men would have access to women's private space.¹⁹ The Lavender Scare of the 1960's had the public trying to protect themselves from gay men who were described as desiring to pray on young men in public restrooms.²⁰ Each time this argumentation was used to try and "restore" the heteronormativity and sanctity of a restroom, the same dark character was described: a cisgendered male with the intent to harm women and children. After Charlotte passed the ordinance that gave protections to people that identify with the sex other than the one assigned to them at birth, the "male predator" came back into the public view, this time with a new vehicle to assault women.²¹

The commonly invoked scenario involved predatory men, post ordinance, that would be able to dress as women and enter the women's restroom to potentially harass and/or assault women. The act of entering the restroom, HB2 proponents argued, would be justified under the law. This narrative supposes that men are by nature predators—a presumption that undergirded the regulations that were enforced before HB2—and are always looking for loopholes that justify sexually assaulting women and children, such as same sex restrooms, or perhaps wearing stereotypically women's clothing. This narrative suggests that trans people's needs are not as important as the potentiality of bills that protect them to allow predatory men to gain access to private spaces and be justified doing so. This continues the perception that men are predisposed to violence and want to invade women's spaces, but won't until they have a legal mechanism to do so. This can be demonstrated by the statements made by Representative Dean Arp (Republican from

¹⁹ "Gendered Restrooms and Minority Stress."

²⁰ Young, "How the Bathroom Wars Shaped America."

²¹ CNN, "North Carolina Governor Signs Controversial LGBT Bill."

District 69) when he is responding during the floor debate to an argument made against the bill, he responds:

Summer's coming. Spring is here, summer's coming. Emily and Ashante, 7 year old girls, are so excited to go to the pool. Their mother's taking them to the pool. They go into the locker rooms. They're bouncing off the walls with excitement. They have been good all winter long and now their mother is taking them to the community pool to go swimming. 'All right, girls. Calm down. Go ahead and take off your clothes and get on your bathing suits and we will go to the pool.' As they begin to do so, in walks in a biological male. Sits down on the wooden bench in front of the lockers right beside them and begins to disrobe. What just happened? Emily, Ashante, and her mother just lost their privacy. Some municipalities have mandated through their ordinance that this very situation will occur over and over again. This bill is necessary to stop that from happening. Just common sense. Biological men should not be in women's bathrooms, showers, or locker rooms. All North Carolina citizens expect bodily privacy in showers, locker rooms, and bathrooms. Make no mistake, this bill ensures all North Carolina citizens the privacy, protections they in fact have.²²

Representative Arp also goes on to describe how prisoners have more privacy than citizens would without this bill, and then finishes with the importance of the right to privacy. This statement is significant not only because of what was said, but also what is left to the audience's imagination. Representative Arp goes into great detail about the

²² Transcript of the Proceedings Floor Session, Debate on House Bill 2, 82.

main characters in the story, the mother and her two daughters. They are excited, they are ready for the pool, until suddenly...a biological male appears. This phrasing implies that biological males are distinctly and definitively different than women and girls. The way the story is cut off with the “biological male” undressing implies that what makes them the most different is their anatomy. The statement never questions what kind of privacy the “biological male” would need in the locker room, especially if the “biological male” was actually a trans woman.

Further, Representative Arp assumes that the “biological male” in this situation, if they happened to be a trans person, would be openly undressing in the middle of a locker room. Studies have found that trans persons have avoided public spaces where they might be vulnerable due to harassment and violence that has been historically targeted at them, which I described in Chapter 1. So what about a “biological male” having access to the locker room that matches their identity as a woman infringes on the privacy of the ciswomen that are already there? The place where the story ends suggests that the “biological man” might have done this on purpose, exposed themselves for some sort of gratification, to sexually intrude on women and children for their own gain. This harkens back to the bathroom predator myth, that cismen would use this law as a way to intrude on others for their own pleasure. And, furthermore, suggests that legislation like House Bill 2 would keep these incidents from happening. This narrative is continued during the debate when Representative Susan Martin (Republican from District 6) makes this statement defending the bill during the debate:

...as a mother of two teenage daughters who've been in the schools recently—and that, as it often happens around our family, we talk about what's going on...And

we talked about this issue, and that—just the appall that they had at the idea of it being wide open for anyone to come into the restrooms at school. And I understand there were certain intentions that perhaps they were trying to do locally, but the result was just wide open ability, without any discrimination at all, for *anyone* to walk into either restroom at any time. So I would just like to say thank you for this legislation, and the common sense approach to protecting everyone’s privacy, and I think this is important²³.

Representative Martin is clearly describing fear, to allow people into the restroom that have different genitals than you would, as she infers, put women and girls at risk. Both of these statements assume that those that have a penis that would enter into the women’s restroom do so as an offensive move. What I mean by this is that the assumption is that those with a penis are entering without consideration of the comfort of those using the restroom or the locker room, but instead are entering only because they are able to, that entering the “woman only” space would just be another extension of their power which they are able to use however they wish in public spaces, which could include violence. Representative Pat McElraft (Republican from District 13) also weighs in, putting her subjectivity as a woman the center for why she supports the bill:

...as a mother and a grandmother of a fourteen year old grandchild, this is about common sense. This is about protecting, not from a transgender, necessarily, but

²³ Ibid., 94.

from a predator, who had the authority then, as a man, to go in a young woman's dressing room in high school, or a—women's bathroom²⁴.

Representative McElraft even acknowledges that transgender people might not be the subject that would do this violence that is assumed to be inevitable under this bill. She is telling a story of heterosexual cismen deciding to use trans protections as a vehicle to assault women and be justified in doing so. This assumption also points out her, and those that agreed with her in voting for the bill, beliefs about assault on women in general. Representative McElraft's argument is that any precaution that we can take that would limit men's ability to commit assault is a path that governments are obligated to take. This is taking into account that it is already the case that assault in general is illegal. For example, assault inflicting serious bodily injury, or strangulation in North Carolina is a Class F felony,²⁵ which means that if someone was found guilty, they would get 10-41 months in prison.²⁶ First degree sexual assault is a Class B1 felony, which means that if found guilty, a person would spend 144 months-life without parole in prison in North Carolina.²⁷ With laws that prohibit the kinds of violence that Representative McElraft is referring to, why would there need to be additional legislation that prohibited "biological male" bodies from entering specific spaces?

This lends itself to the fact that in the United States, women are less likely to report violence done to them by men, and when the violence is reported, it is unlikely that male perpetrators get prosecuted. According to the Department of Justice, out of 1000

²⁴ Ibid., 114.

²⁵ "Chapter 14 - Article 8."

²⁶ "A Guide to North Carolina Felony Charges."

²⁷ Ibid.

rapes in the United States, only 310 are reported to police, only 57 of those will lead to arrest, with only 11 of those getting referred to prosecutors, 7 of those lead to felony conviction, and 6 of those will be sentenced to incarceration.²⁸ That means for 1000 rapes that happen in the United States, 994 perpetrators walk free. With this as the precedent and the lived reality of women in the United States, the narrative and fear of the bathroom predator becomes, not excusable, but more understandable. Without strict regulations on spaces that can be “women only” leads to the potential of spaces being coopted by men who, when they do perpetrate violence on women, are unlikely to be held accountable for it.

Of course, this narrative doesn’t work when all of the evidence points out that men wouldn’t use this as a means to assault women. Of all of the cities that have passed legislation that would allow protections for trans people using the restroom that matches their internal gender identity, as I mentioned in Chapter 1, exactly zero incidents have been reported.²⁹ This could be because men also see this as a sacred space for women, but mostly, I think, it’s because the very nature of being in a “public” space (locker room, bathroom, etc.) would go against every statistic about how rape occurs, and where it occurs. According to RAINN (Rape Abuse Incest National Network) 7 out of 10 rapes are committed by someone that the victim knows.³⁰ If it is someone the victim knows, there is no need to invade a public restroom when it is likely you share private space together. And though there are many structural problems in United States culture about not enough enforcement on rape and assault laws, public restroom sex segregation

²⁸ “The Criminal Justice System: Statistics | RAINN.”

²⁹ “15 Experts Debunk Right-Wing Transgender Bathroom Myth.”

³⁰ “Perpetrators of Sexual Violence: Statistics | RAINN.”

regulations is not high on the list of risky decisions that could lead to more violence upon women. What these arguments made on the North Carolina House Floor do reveal is that House Bill 2 isn't about regulating trans people at all, *it's purpose is to regulate cismen.*

House Bill 2 takes what was a dialogue about trans rights and needs, and refocuses the conversation about men's abilities (though evil, in this case) and continues, intentionally or not, the belief that men are the ideal subjects that laws should be built around- to give rights to, and to regulate. HB2 perpetuates the stereotypes about men that they are not in need of refuge from the civilized world, they are designed for public life and are able to navigate it without safe spaces. That men are naturally predators and use the law to justify violent actions and pursuits, specifically against women. HB2 also maintains a heteronormative assumption, where male predator's only desire ciswomen to violate, which further discounts trans bodies as sites of violence which the evidence supports. HB2 also supports the belief that women do not have the potentiality to commit violence upon other women. As long as the men are out of the women's restroom, it is safe. This "need to keep the fox out of the henhouse" mentality makes it nearly impossible to have inclusive bathroom politics. Because when men are able to have access to a publicly accepted safe space for women, but specifically ciswomen, there is the potential that they can commit violence, and can get away with it.

Within the frame of "livable lives," discourses around bathrooms in relation to men, the gendered experience of being a man very livable. Butler describes gender as a means to discern certain bodies to understand them based on their physical sexual anatomy. To be intelligible as "man," within bathroom politics around HB2, is to be strong, capable, and worthy of personhood. Bathrooms are not a space that should be

feared by men, but can be approached like the rest of the world: confidently. Discourse within actual laws, and around laws, presume men are strong and built to handle spaces outside of their homes. To be a cisgendered man is to be prepared for the world, there is no need for extra regulation in vulnerable spaces. There is only a need to stop men from taking advantage of other people's, specifically women's, spaces, which can then be mitigated by creating laws that separate them. Bathroom regulation discourses, specifically in the debate discourse around HB2, contribute to understandings of manhood as a desirable position, and that being a man makes life very livable. Men are the focus of legislation because their citizenship and personhood is recognized by the state as a viable and valuable subject position. They are easily recognizable, and because of that recognizability categories are made about men that both maintain the static gender binary, and make all other people with separate physical sexual anatomy "other than man." To specify "men" within discourses as a discernable body with specific characteristics within bathroom legislation means that other bodies are something different—not as strong, not as capable, not as suited for the outside world.

According to Butler:

Justice is not only or exclusively a matter of how persons are treated or how societies are constituted. It also concerns consequential decisions about what a person is, and what social norms must be honored and expressed for "personhood" to become allocated, how we do or do not recognize animate others as persons depending on whether or not we recognize a certain norm manifested in and by the body of that other. The very criterion by which we judge a person to be a gendered being, a criterion that posits coherent gender as a presumption of

humanness, is not only one which, justly or unjustly, governs the recognizability of the human, but one that informs the ways we do or do not recognize ourselves at the level of feeling, desire, and the body, at the moments before the mirror, in the moments before the window, in the times that one turns to psychologists, to psychiatrists, to medical and legal professionals, to negotiate what may well feel like the unrecognizability of one's gender and, hence, the unrecognizability of one's personhood.³¹

Butler's analysis within the context of House Bill 2 begs the question- what is a man? And what social norms are expressed and honored to allow "personhood" to be allocated and respected by the rest of society? According to the debate that happens on the North Carolina House Floor, a person that uses the men's restroom and has a penis and testis. This is recognized by society within bathroom legislation and discourse, at least, by the recognition that one is not a "woman" and does not fit the criterion to use the women's restroom. Men's personhood is further recognized by being the center of the conversation- what should men be allowed to do? How do we ensure they can't do violence onto others? These questions frame men as actors that are capable of movement and agency, and push out any other conversation as it adheres to personhood of others and their needs of recognizability and intelligibility.

All of these gendered beliefs are cemented even more with the phrase "common sense," or even to go so far as label House Bill 2 as a "common sense bill." Four representatives use the phrase "common sense" to support the claim that the desire to

³¹ Butler, "Doing Justice to Someone," 2.

prevent men from entering the women's restroom is reasonable (Representative Stam³², Representative Lucas³³, Representative Martin³⁴, and Representative McElcraft³⁵). This framing of "common sense" makes it seem as though their point of view is obvious—shouldn't a society desire the safety of women and children? Don't you know what would happen if MEN had the ability to pretend that they are women and enter restrooms? It leaves out the possibility that their assumptions and ideas about the implications of House Bill 2 could be wrong, and also assumes that all others who oppose them are clearly not thinking clearly. The phrase "common sense" assumes that everyone should already know this information without being told anything different. This rhetorical strategy makes it so that those who oppose have to now go against what is already "accepted" by society.

The phrase becomes the sort of slogan for the bill when talked about to the public, ex-Governor Pat McCrory even tweeted the phrase after he signed the bill saying about Charlotte's ordinance: "Ordinance defied *common sense*, allowing men to use women's bathroom/locker room for instance. That's why I signed bipartisan bill to stop it."³⁶ Labeling the assumption that men are inherently violent and that women should be fearful of them if they are allowed in "safe spaces" as "common sense" only allows the public to then excuse violence by men as inevitable, instead of questioning why men are excused of violent acts, and then brainstorming ways to prevent those actions in the future. This attitude of men's violence as a reality that we must all live with gives way to

³² Transcript of the Proceedings Floor Session, Debate on House Bill 2, 3.

³³ *Ibid.*, 82.

³⁴ *Ibid.*, 85.

³⁵ *Ibid.*, 114.

³⁶ CNN, "North Carolina Governor Signs Controversial LGBT Bill."

rape culture, victim blaming, and the throwing away of good laws that help people live their lives. Though men's lives are certainly framed as livable, the livability of their lives pushes out the potentiality of the livability of lives that are different than men.

Chapter 3: HB2 and the Debate Discourse about Women

This is so absurd it's almost comical, I genuinely look forward to the NCAA merging all men's and women's teams together as singular, unified, unisex teams. Under the NCAA's logic, colleges should make cheerleaders and football players share bathrooms, showers and hotel rooms. This decision is an assault to female athletes across the nation. If you are unwilling to have women's bathrooms and locker rooms, how do you have a women's team?³⁷

- Kami Mueller, North Carolina Spokesperson for the Republican Party

During the House Bill 2 floor debate, women's protection in public is the reason why the bill should be passed. The message is that women need protections to not risk violation from men in spaces that have been historically men-free. A lot of this analysis is in Chapter 2, where I discuss men as being affirmed as predators and the law seen as a tool to mitigate predatory behavior, in particular as it is enacted on women. This chapter will discuss how that framing shapes the meaning and value of womanhood as it relates to bathroom regulations, and how that meaning of womanhood determines the "livability" of a life as a woman.

In this context, when I say woman/women I am referring to the limiting and harmful definition that is the common understanding within the HB2 floor debate, which is a feminine person that possesses vagina, ovaries, and breasts. In the bathroom predator narrative, women are discussed as people that should fear for themselves and their bodily

³⁷ "North Carolina GOP's Statement on the NCAA Is Blistering -- and Doesn't Make Any Sense."

autonomy, as well as the added burden of being responsible for their children. This is not only seen in arguments made for the bill, such as Representative McElcraft and Representative Martin's comments that are quoted in Chapter 1, but also in arguments against the bill. Representative Tricia Cotham (Democrat, District 100) also speaks from her position as woman, but instead to determine the bill is a bad idea:

But I want to talk about a part that's a bit more personal to come of you in this Chamber and maybe many listening. As many of you know, I've had two babies while serving here. They are young. They are not of school age, and if any mother or father, but I'll talk about myself, have to use the bathroom, this bill says if I need to use the bathroom because I have to go, not to accompany or help my child, but because mommy has to go, my five year old and two year old cannot come into the bathroom with me.³⁸

This is the first argument that is made against the bill, she goes on to say that the money that the state is losing is also bad, and is due to things like the fact that mothers can't bring their children into the restroom with them. Within the quote above, Representative Cotham does mention fathers would also have a problem with taking their children into the restroom, but that theme is not mentioned for the rest of the debate. This is an issue that is only brought up by women throughout the debate. As the debate goes on, and it becomes clearer that HB2 is going to pass, an amendment is proposed to accommodate parents who would need to bring their children into the restroom with them which Representative Cotham speaks on:

³⁸ Transcript of the Proceedings Floor Session, Debate on House Bill 2, 25.

You may recall I talked about if you are a mother and have a very young child, could be an infant, could be a three year old, and you need that child to go to the restroom with you. Now, this—these children are not going to help you as a parent, but for safety, you need them in there with you, because what are you going to do with a three year old or a five year old? This simply clarifies this, so that if you are a parent, and you have a child up to the age of seven, that he or she can accompany a parent or anyone who is caring for that child—could be a grandmother, could be an aunt—but I’m sure many of us who are parents, we have been in this situation. So I ask for your support.³⁹

This is the next and last time Representative Cotham speaks, the amendment does get the votes to pass. What is important about this is that even though HB2 passes that prevents trans people from using the restroom that matches their gender identity, ensuring that women can continue to do their motherly duties becomes an issue that must, and is, accommodated, even when that includes “biological males” entering a women’s restroom. Here the hierarchy of whose needs count becomes clear- is your “need” good to maintain heteropatriarchy or not? So far, from the perspective of gender, the needs that are considered are only the ones that adhere to the heteropatriarchal structure, where there are 2 sexes (male and female), each with a specific gender identity, and specific roles to go with them. Men have the role of provider, which gives way to allow them privileges such as mobility and power. Women have the role of caregiver, and motherhood, thus any hindrance on the ability to mother must be remedied in order to allow the system of heteropatriarchy to function. Changes were only made to the bill, not to adjust to

³⁹ Ibid., 125.

accommodate genders other than man/woman, but to ensure the man/woman binary remained clearly defined.

There was no debate about the amendment, and with no opposing votes, but the discussion focuses on not all parents, only parental roles that are played by women. Representative Cotham, in her oral defense of the amendment that she proposes, gives the example of mothers, aunts, and grandmothers as potential care givers that would need this amendment to be good caregivers. The description of a father needing to take his daughter into the restroom with him doesn't become an argument within the debate. Of course, this potential could pose the same threat as to why House Bill 2 is needed. Young girls in the men's restroom could leave them to be scarred from their lack of privacy, or have to face the dangers of men in their own terrane. This belief that men are predatory by nature, makes fatherhood extremely different as a practice than motherhood. The division of labor maintains the sexes as separate, as beings that cannot be comparable. Because of the very specific and rigid distinctions between them, there is no space left for those that are different than cismen and ciswomen. And because women are separated from men by their "more loving and nurturing disposition," they are left with, within this debates discourse at least, the responsibility of childcare.

The discussion never centers on the fact that men who have children, more specifically in this case daughters, might encounter the same problems when out in public. In 2012, the Pew Research Center did a study that showed that 16% of stay at home parents were fathers.⁴⁰ Of course, the amendment itself only specifies "parent,"

⁴⁰ Livingston, "Growing Number of Dads Home with the Kids."

which could be a male parent. However, the examples that are given about who that parent is distinguishes women as the main care givers, even though the number of stay at home dads has doubled since 1989 to 2.2 million fathers. The House Bill 2 debate determines that women are distinctly burdened with the duty of care giver and parent. Men don't even talk about the issue at all in the debate, it is never something that is brought up by men, or apparently during the writing process where the bill was sponsored by all men (Representatives Bishop, Stam, Howard, and Steinburg). All of this culminates in the accepted norm of motherhood being central to womanhood, and that safety and wellbeing of children rests on women- in public spaces like public restrooms and locker rooms, and during the actual legislative process.

Another central assumption about womanhood is the need for legislature to protect them from dangers in public spaces. All arguments for why the law is needed in the first place centers around how the law could lead to the potential of a man violating the privacy of, or doing harm to, women in what is believed to be a "safe space." The belief that women only rooms are "safe spaces" ignores the fact that women too have the capacity, and do, commit violence onto each other and men. According to the National Intimate Partner Violence survey, 1 in 71 men have been raped, and 46% of men have been victims of stalking.⁴¹ This means that it is more than just women who are victims of abuse (though statistically more likely to have it happen to women). But then where is the concern for men's wellbeing if sex segregation is so crucial to safety? Why doesn't the debate take into account that "women could wear pants and go into the men's restroom?" There is no dialog about women being able to go into restrooms and attack men, only the

⁴¹ "Statistics."

reverse. Women are then framed as helpless, harmless, and dependent on laws to be able to face the public sphere.

This logic leads to practices like chivalry, where men need to treat women well in order to be good men. But what seems like good or kind actions, only leaves women to be seen as unable to take care of themselves, which leaves them without agency or mobility. It also is not good for men to live in a society where women are not seen as incapable of harm. This leads to societal practices like not believing men when they come forward with stories of violence from their women partners, or prevents them from coming forward in the first place because “a true man wouldn’t let that happen.” A study that took place in Canada in 2014 actually showed that men than women suffered from spousal abuse in equal proportion in the last 5 years before participants took the survey.⁴² While still enacted in private spaces, like at home, this study shows that women are capable of violence enacted on men. To only make legislation based on arbitrary gendered beliefs allows dangerous ideologies about what men and women are capable of, and precludes a conversations about the reality of relationships and violence based on what is presumed about men and women already.

The debate about HB2 reveals that the representatives of North Carolina (and the public that supported the bill) believe in a fundamental difference between the sexes and their ability to enact violence. Women are only talked about within this debate as fragile people that need the law and sex segregated bathrooms to ensure their safety, especially from men. On their own, they’re defenseless, but with the law behind them they can have

⁴² Government of Canada, “Section 1.”

a place to escape the terror of the public sphere. Creating legislation based off of particular understandings of gender is damaging to women because it creates an environment where women are not seen as the agents in their own lives. This makes the belief that women are weaker, and less capable, more permanent when laws are based off of these assumptions. But even worse, women are put in the position of being the only ones that are in need of protecting, which puts those that are seen as anything other than women (including cismen) to be at a larger disadvantage because their need for protections become second to the protections of the intelligible woman.

The debate also emphasizes the role of the government to regulate *public* spaces, not private ones. This places the value of women in public to be much higher than what is demonstrated in private. For example, the conversation about women being potentially hurt centers around the idea that there are “private” spaces in public, which can be regulated by laws, to keep them safe from public harm. This emphasis on public space reifies the logic that the private is not a space for intervention, which allows for sexual violence in private spaces to remain invisible. Not only does House Bill 2 fail to prevent assault from happening, but the rhetorical focus on the public women’s restroom as a site of violence distracts and disguises the fact that the majority of violence happens in spaces that are supposed to be safe, such as one’s own home. HB2 discourse further separates the public from the private, one space is able to be regulated, and one is not. This leads to further silencing of people who are victims of intimate violence because the stories of violence that are circulated are ones of random men assaulting women publicly, and not of the reality of the situation which often includes acquaintances enacting violence on people they know.

As far as lives being “livable,” women have a harder case than men—but certainly have the *potential* to lead livable lives with the aid of laws that protect the purity of woman-only spaces. They have intelligible bodies that make them “knowable”—recognizable to those that see them. Their physical attributes allow them to fill a specific gendered space, where they are defined as opposite of men. If men are strong and capable, then women are weak and in need of aid. Gender categories that are described during the debate enforces assumptions that bodily attributes are deterministic in who a person is, and how they act in public. This category is enforced through bathroom regulations.

Rhetorically, the floor debate of House Bill 2 describes sex-segregated bathrooms as a way for women to live more freely in a world that has violent men in it. Even though women are at higher risk, (due to both the strength of men and the fragility that comes with womanhood), with regulations women are able to survive in public spaces, and protect their children from danger, as long as they have a sex segregated bathroom to escape to. Bathroom regulation discourses describe women as a secondary character in society, where men are able to play the lead role, women are just a supporting role dependent on the lead man to lead them to the end of the play. Though women do have the privilege of having a very clearly recognizable category that they fit into, allowing them access to basic rights like consideration when legislating, they are not seen as able to navigate the world alone. Women’s lives are certainly livable, but that livability is dependent on a man, either providing safety, or making life unlivable by taking it away. Bathroom regulation rhetoric emphasizes that women are in need of assistance, and that without that assistance they would be subject to violence.

As Butler asks “By what norms am I constrained as I begin to ask what I may become?⁴³” The norms that women are constrained are within the House Bill 2 debate are the beliefs that they need protections and incapable of performing those protections themselves. That they are expected to be the primary caregiver of children, and it is their responsibility to ensure their safety in public. Men are also constrained by the expectation to be strong and capable, which precludes them from any sort of access to aid in violent situations that happen in private settings. Both genders that are recognized and institutionalized by House Bill 2 are made to be exactly opposite of each other, and because laws work within a gender binary to give rights to people, it leaves out those that are outside of it without protections or consideration.

⁴³ Butler, “Doing Justice to Someone,” 2.

Chapter 4: HB2 and the Debate Discourse about Trans

Uhhhh ... well ... uhhhh ... HB 2 ... uhhhh I voted in favor of that, uh, HB2, because I was concerned about the safety of our citizens in, um, restrooms. Um, I think it, um, certainly opened the door of opportunity for individuals to, uh, of, uh, of the ordinance, um ... and, meaning that, you know, predators, and ... folks that had, uh ... uhmmm ... other intentions would have been allowed to take advantage of that ordinance and certainly wanted to, take care of the, my number one concern was taking care of the safety of our children, ummm, and our citizens in, in, in, in ... in public restrooms or private, uh, for that matter. Uhhhm. Well ... in this case, public. Um. I wanted to, uh ... I felt that the constituents that I represent would want me to vote that way, and of course, uhhhh, I'm, uh, um ... you know, a representative of the people of Robeson County, and, umm, I certainly had a lot of, um, folks who encouraged me to not support, support that ordinance, because it would, could have had statewide implications. Of course ... uh... that's why, um, I voted the way I did.⁴⁴

- Representative Charles Graham, Democrat from District 16

Though House Bill 2 is predicated off of the Charlotte ordinance that centers trans rights as necessary and important, on the floor debate the word “transgender” can only be found 18 times in the transcript, which is a total of 135 pages.⁴⁵ I’m using Susan Stryker’s definition of transgender from her book *Transgender History* when discussing

⁴⁴ “Eleven Dems Voted for House Bill 2. We Called to Ask Why. | Triangulator | Indy Week.”

⁴⁵ Transcript of the Proceedings Floor Session, Debate on House Bill 2.

who transgender people are: “people who move away from the gender they were assigned at birth, people who cross over the boundaries constructed by their culture to define and contain that gender.”⁴⁶ Within the debate, trans persons are very vaguely defined, sometimes as hoax men who would go so far as surgery to gain access, or a gender non comforting person who requires access to a restroom that is different from the sex designated on their birth certificate. Those that voted for the bill seemed to view trans people as not real, and those that voted against express the need to have an inclusive gender politic. In a world of sex-segregated bathrooms, trans people are actually the ones that are at the most risk of discrimination, as discussed in Chapter 1, where 70% of correspondents to the study done by the *Journal of Public Management and Social Policy* had difficulty using a public restroom by either being denied entry, or being physically, verbally, or sexually assaulted when they did enter.

House Bill 2 presents many assumptions about who trans people are and what their relationship to public space is. First, their identity is solely based on their genitalia, i.e.: if a person is trans their main objective is to change their physical anatomy to fit into the gender that they identify with. However, a gender identity is totally separate from physical anatomy. A person can identify with being a woman while having a penis. The legislation, however, finds it sufficient to include trans people by saying if they go through sex reassignment surgery, they will be able to change their sex on their birth certificate and state ID and thus would count as the sex that matches the restroom they wish to use, preventing any problems in public spaces.⁴⁷ This does a few things, mostly it

⁴⁶ Stryker, *Transgender History*.

⁴⁷ Transcript of the Proceedings Floor Session, Debate on House Bill 2, 8.

maintains that biological sex determines gender and vice versa, that you are only man/woman if you possess the appropriate anatomy to be that sex/gender. This is violent because it doesn't allow persons to make choices about their sex and gender to best fit their identity, and it also excludes bodies that may contain a mixture of testies, penis, vagina, ovaries, etc. Also this logic ignores the fact that there are structural barriers that prevent individuals from getting surgery in the first place, such as financial barriers, or if their local doctors and physiatrists don't approve their desire for surgery.

Even with these statistics about the experiences of trans people trying to use public restrooms, the first 2 arguments made against the bill are about children of the opposite sex of the parent that is caring for them being unable to use the restroom with their parent (Representative Cotham, discussed in Chapter 3) or the fact that it is such a financial burden to pass this law, which is the most popular argument against the bill in the debate. In the debate where the main reason for the bill is to go against an ordinance that centers around trans persons rights, trans people are hardly the center of discussion. When trans people are brought up, it becomes clear that without any person elected to the House of Representatives in North Carolina who is an openly trans person, the experience of being trans isn't ever clearly articulated during the debate. Representative Verla Insko (Democrat, District 56) does her best when debating against the bill:

Thank you, Mr. Speaker. Ladies and gentlemen of the House, this is wrong. This is bad wrong. We're sent up here to solve problems, not create them. This bill is supposed to protect girls and women. This bill doesn't protect transgender women. Transgender girls, now, who will be forced to go into the male locker room. Are they going to be treated well? The only thing that I can think of that's

good about this, is that we're finally talking about it in public. That means our consciousnesses are being raised. There was a time when we didn't know someone who was gay; now we all know someone who is gay, and have gay friends. There was a time when we didn't know anyone who was transgender. Someday, that will be—we'll be all familiar with that issue, and tolerant of it. But for now, we're really struggling, and I think this is a—the debate, I hope, will make us think about who we really are trying to protect.⁴⁸

Representative Isko doesn't go into detail about the kind of violence that happens to trans persons when using the restroom, unlike the descriptions of what would happen to women if the city ordinance remained that I discussed in previous chapters. And though she at least acknowledges the injustices that are being done to trans people in status quo, she doesn't argue to her colleagues in the House what happens now to trans folks who try and use public restrooms, and why legislation like the Charlotte ordinance is crucial to trans life. Instead we get a vague plea about trans women and girls being able to be protected when using the restroom. And even in the case where the public is finally talking about trans rights, as the representative points out, there isn't any in depth discussion actually happening where the legislation is being made and being voted on. Representative Kelly Alexander (Democrat, District 107), even comes in and cites other cities that have had no recorded problems of men dressing up and violating women in public restrooms:

⁴⁸ Ibid., 86.

...all of those in a little town called Orlando that has the same kind of ordinance that Charlotte has adopted. And I don't think any of you had any problems when you went to the toilets down there. Or any of your constituents have reported predators lurking around Shamu's pool. You know, it just hasn't been an issue.⁴⁹

But even with these mentions, no actual mention of the violence that happens at a very high rate in public restrooms to trans people. Even in the case where trans issues are being discussed in the broader public, it isn't reaching the people who make the decisions, so trans lives are still left unprotected by law. To be protected by law requires one to be discernable by those that are legislating. Looking back to Chapter 1, the trans woman Lena told *Rolling Stone* what it was like to be in public as a trans person, where she avoiding restrooms because she feared people being unable to understand and respect her internal identity as a woman because of her more masculine body.

Lena's testimony reveals several assumptions about what society believes is true when it comes to people that do not identify with the gender they were assigned at birth. What Lena describes is what it is like to have a body that is unintelligible within the binary. Lena knows who she is, she is a woman, but she, at the time she is describing, doesn't fit neatly into that box. Butler describes this well when she is talking about Joan when she determines, for herself, that she is not a girl due to her appearance to her psychologists:

Of Joan, who was subjected to such scrutiny and, most important, repeatedly subjected to a norm, a normalizing ideal conveyed through a plurality of gazes, a

⁴⁹ Ibid., 69.

norm applied to the body, a question was continually posed: Is a person feminine enough? Has this person made it to femininity? Is femininity properly embodied here? Is the embodiment working? Is it? Is it? How do we know? What evidence can we marshal in order to know? And surely we must have knowledge here. We must be able to say that we know, and communicate that in the professional journals, and justify our decision, our act. In effect, the question posed...has to do with whether the gender norm that establishes coherent personhood has been successfully accomplished...not only as the violent attempt to implement the norm but as the institutionalization of that power of implementation.⁵⁰

In the same way that John/Joan was policed by medical professionals, House Bill 2 is just another avenue that controls bodies and their readability. These regulations insist that there are only two kinds of bodies that are allowed to exist, and they come with specific expectations that must be followed in order to control for acts of violence. “Biological males” are always supposed to use the men’s restroom. If something is unexpected, how can it be regulated? Being an unreadable person in the gender binary justifies violence done to correct for it (seen in the study earlier) or insists on medicine being able to correct it (like in the case of John/Joan). With these corrective measures in place, there is no need to include trans protections in legislations because society has mechanisms to correct for their existence.

⁵⁰ Butler, “Doing Justice to Someone,” 629.

The closest we get in the debate to a testimony that is close to a trans perspective is from Representative Carla Cunningham (Democrat, District 106) when she talks about her trans brother:

I understand what transgender is about, because I have a brother that is fully transgender, but he does not live in the State of North Carolina. He lives in New York. They have unisex bathrooms, so only one person can go in at a time. But here in North Carolina, that's where we are, North Carolina, the great North Carolina...When I make a major decision, I first ask myself—am I doing any harm? Because if we look at, right now, what's going on on the national level, Trump is loose....So are we exercising good judgement or are we inciting more violence and discrimination and prejudice? I cannot support the bill, but I ask you—are we doing more harm?

Even in this statement, there is no discussion about the trials that come along with navigating public life as a trans person who is unable to use the restroom because their government doesn't afford them the protections necessary in a gender binary world.

After the bill was passed, Representative Bishop received backlash from the public about his sponsorship of the bill. He said in his fundraising emails: “They’ve called my home,” he said. “Threatened my business. And, of course, threatened my election. ... they want to make us into a national example – SO THAT NO ONE WILL EVER STAND UP to the radical transgender agenda again.”⁵¹ Bishop manages to criminalize trans people, with no evidence to support his claims, with the charge of using

⁵¹ “Rep. Dan Bishop.”

the law to try and enact violence onto others, specifically onto him with their responses to him personally.

The story of House Bill 2 says that what kind of space individuals who use restrooms occupy in society is predetermined, and since it is specific and universal in the sense that everyone who is man is assumed to have similar struggles, and the same for everyone that is woman, laws need to aid them in their specific needs. Within these strict boundaries of gender and the law, people who are outside of, or in between the strict structure of the gender binary are not counted because gender is a main facet to understand humanity: if I don't understand your gender, how do I interact with you? This allows for an erasure of trans-ness not only from the actual physical legislation of bathroom regulations, but also from public memory in general. Because bodies are labeled as "knowable" and "unknowable" from birth and on, bodies that are unknowable are not included in regulations because they do not fit into the clean categories of gendered bodies. This means that their lives have barriers that others do not, such as being able to use a public restroom, which is just one more hurdle that makes trans life seem "unlivable." That label encourages parents, and trans individuals themselves, to try and fit into the rigid genders that are recognizable in order to gain social access. This constant correction to trans life to encourage them to live more "livable lives" means that they are excluded from discourses and memory because they are seen as too "other" to the system that is in place and determined unnatural or impractical in the greater context of what defines a knowable human.

Even in the case where trans bodies are included in regulations, such as the Charlotte ordinance, there has been huge backlash discussions about what bathroom

regulations should do, and who they should work for. Even with information like the studies mentioned above, trans persons are not the centerpiece in the discussion of whether to have gender inclusive bathroom policies. After the Charlotte ordinance, for example, the media was bombarded with terrifying stories of how the laws to make bathrooms safer for trans people, would allow for men to dress up as women to go into the women's restroom and allow them to enact violence on women, and children. This narrative also suggests that trans people in general just act as if they are another gender in order to achieve certain social gains, that it is a question of convenience instead of identity. The whole description of "man in a dress" in general supposes a person, regardless of gender performance (e.g. wearing a dress instead of pants), is still a man if they have a penis only further erases the possibility of trans existence. In the case where a "biological male" is in a dress, they are only using it as a tool for enacting violence onto others, and therefore should be regulated.

The rhetoric around why House Bill 2 was a necessary good was that by setting the precedent that people could determine their own gender identity, which could indeed be separate from their biological sex, that men who would want to do harm to women could be justified into going into spaces that are seen as "safe" and "vulnerable." This narrative being so persuasive that it literally convinced legislators to support and pass a bill that outlawed ordinances which allowed gendered subjects to use the restroom that best fits their gender identity makes obvious the fact that society at large simply prefers the protection of certain bodies over others. Representative Martin even goes to say that House Bill 2 "protects the privacy for *every* citizen in this state."⁵² Even with the large

⁵² Transcript of the Proceedings Floor Session, Debate on House Bill 2, 85.

amount of evidence that concludes that violence in restrooms is typically enacted onto those bodies that do not fit cleanly into the binary, it's those that do fit that need explicit regulation, either to prevent from enacting violence, or for protection from it.⁵³

Bathrooms are a necessary space that people have to interact with. Everybody uses them. When it is necessary to interact with restrooms outside of one's home—like most people do by nature of living in a society that requires most people to leave their house for work, school, and basic needs—bathrooms should be a space for everybody. Bathroom regulations and discourses around them is one more brush stroke that society paints to make trans lives seem impossible to live. This barrier, along with other barriers, makes possible things like intersex surgeries when you are born with genitalia that is neither completely male or female, corrective therapy that attempts to get those people with vaginas to act like women and those with penises to act like men.

As a consequence of these justifications, the media over-focuses on the millions of tragic stories about trans life, especially the heart-breaking narratives of trans people who take their own lives following extensive social otherization. After the passing of House Bill 2, there was a proliferation of stories, in media and activism, of the implications of House Bill 2. Like the *Rolling Stone* article which asked trans people about their relationship to the bathroom. Even though these stories are essential to understanding the implications of the policy, there are also negative implications about this exposure. Butler argues that by only seeing trans and non-gender conforming bodies as something to be pitied or as always tragic helps justify excluding those bodies from

⁵³ Schilt and Westbrook, “Bathroom Battlegrounds and Penis Panics.”

politics, and justifies “corrective” practices. The Charlotte ordinance allowed for the simple act of using a public restroom to be one that wasn’t traumatic, which left room for trans and gender non-conforming people to be able to be more open about their lives and experiences, and also allow others to realize that trans people are people they interact with. House Bill 2 discourse only allows a focus on negative parts of what it is like to be trans, which is important, but when trans people don’t get a lot of exposure within the media as it is, it then becomes harder to see trans as anything other than tragic when the national news, and the legislative body a trans person relies on, is only focusing on their exclusion and the negative implications on their exclusion.

Acts of violence in bathrooms that are done to trans bodies is just another reason to try and “correct” for trans-ness early in life before they are rejected by society. The way that bathroom regulation rhetoric makes being trans inconvenient allows for the erasure of trans people and continuation of being able to ignore the systemic violence that happens to trans people. This also allows for the justification of the gender binary as a means to alleviate violence, because only binary-conforming bodies that are regulated under law.

Andrea Zekas, a trans woman from Portland, Oregon puts it best:

Some people just take bathrooms for granted, but over history, the bathroom has been a place where rights are fought. It's something that touches me deeply because of being a transgender woman.... I live in this country the United States and I wonder where my protections begin and end. I think it's important to state that these issues build a culture of violence. Transgender people are often

misunderstood... We need to talk about our stories and they need to be able to get to know us. When they get to know us, this is going to go away, but it's going to be awhile before that happens... We pay taxes and we live our lives and we work and we have families like everyone else. I want people to see us for who we are. We're Americans; we're living an American story.

Exposing the myth of essentialist gender and expanding the notion of livable lives in this instance allows a fuller picture of gendered meanings. The way that we describe lives (for example, in bathroom regulations and discourses) is important when making choices about how to interact with others, how to accept people, and how to raise children. Bathroom regulations are just one more reason to not have to “believe in” trans persons, or to actively work to shape their lives into ones that are more recognizable, and would fit easily into a bathroom stall category. Exposing House Bill 2 and the assumptions the legislation makes about gender is a step to better understand United States culture and how it is able to force the gender binary. Categorizing House Bill 2 as a tool of heteronormative structures to be reinforced is important when attempting to recognize how policy and public discourse shapes our understanding of gendered reality, and to find moments where we can resist that heteronormative state. House Bill 2 is just one space where gender understandings are exposed, which is a good place to start when creating ways to resist, and to reframe trans lives as livable.

Chapter 5: Conclusion

House Bill 2 is an example of legislation that both reveals and institutionalizes binary gender within the United States, specifically North Carolina. The most basic human function- the need to use the toilet when out in public- is designated as a site for determining what bodies are acceptable and integrated into public life, and which bodies are not. What seems like a normal and meaningless practice to cisgendered people, such as sex segregated restrooms, is actually a reflection of the value system that we live in: some bodies belong, and some bodies don't. Studying sites of specific gender designations is important to understand not only the arbitrariness and absurdity of gender, but then how those norms and rules of gender become a means to measure how "human" one is by the closeness they are to either the category of "man" or "woman," and then how those designations make life livable.

This project sought to uncover what it meant to be "man," "woman," and "trans" within the debate over part 1 of House Bill 2. Of course, just these categorizations alone show that the North Carolina legislature has a narrow and harmful view of what the gender categories are and how they function when placed on people. But, as Butler says, it is the "condition of the human as it speaks itself at the limits of what we think we know."⁵⁴ Truthfully, the major reason why legislators had such a difficult time with attempting to empathize is because they are limited by the language that they know, and the ways they have been taught to read bodies as intelligible. Sex segregated bathrooms have been around since the 1800's, and normalized fairly quickly after the first law was passed, and the gender binary is centuries older than that, and so if that is all you know

⁵⁴ Butler, "Doing Justice to Someone."

about the world- that there are 2 genders that use 2 separate bathrooms- it becomes very difficult to move past that view. And societal structures, like sex segregated public restrooms, makes it even more difficult to conceive of other genders or sexes because the language to do so is not used in public life. In no way am I arguing that House Bill 2 was a reasonable law, the passage of it hurt many and denied basic human rights to people. What I do think, however, that with the norms that are set in place it is *understandable* how North Carolinian Representatives, who didn't have much time to look over or think about the bill before the debate occurred, who are not transgendered individuals (as far as we know), passed the bill believing they were making the ethical and moral decision.

It is obvious that representatives should know about their constituents, especially those that are designated to the margins of society and are in need of more legislative help than others. As a public we should absolutely criticize and hold representatives to a higher standard than those that do not make large decisions, such as legislative ones. But the fact remains: the gender/sex binary is often hard to see if you don't know to look for it. Butler's theorization of how institutions designate lives as "livable" is an important way to make visible the arbitrariness and harmfulness of the gender binary, and it expands past the example of John/Joan. Her argument in *Doing Justice to Someone* is that it wasn't "John" (or David, as that was his real name) who didn't know what his gender was. It was instead the way that his gender was determined for him by the way his physical body was read, and later manipulated, which was justified in a world where there are strict definitions for what bodies ought to be and how they should perform. So the question that queer scholars need to ask is: what makes the conditions of the gender/sex binary necessary within society? Because answering that question makes

finding the parts of the system that makes life unlivable for particularly bodies easier to identify and challenge.

Sex segregated bathrooms are one of those sites of determining lives livable. The basic necessity of going to the restroom is limited to those that have an identity that matches cisman or ciswoman. In fact, within the debate it became clear that it is the expectation that if you do not perfectly match with one of those identities, both in body and internal feeling of who you are, that you should and/or will receive the appropriate surgeries to blend in with the sex/gender binary and fit into the system. You are expected to fit into the system, the system is not expected to fit you in. But if you are someone that doesn't fit into the small categories of man/woman, and you don't want to receive surgery, or can't because of barriers such as financial, then how can you be expected to live a livable life where you aren't able to access the bare minimum of even a public restroom?

Those that are outside of the binary now have to choose between safety and comfort, only guaranteed in private spaces where you share ally ship with people. Or going out into public where when the time comes where you have to go relieve yourself, and it inevitably does, that you have to feel discomfort or be harmed (emotionally and/or physically) with no protections, and a mandate that doesn't let you choose where you would be most comfortable. This choice having to exist in the first place makes it really hard to participate in the public because of the high risk of being rejected. And what guardian, friend, lover, would want that kind of life for someone they loved? All of this adds up to social pressure to conform by either ignoring your internal identity (which results in psychological trauma), or changing your physical body- by choice or by force.

Systematic actions that enforce the gender/sex binary do not come without ramifications, Butler writes about David postscript of *Undoing Gender*:

As this book was going to press in June of 2004, I was saddened to learn that David Reimer took his life at the age of 38. The New York Times obituary (5/12/04) mentions that his brother dies 2 years earlier and that he was separated from his wife. It is difficult to know what, in the end, made his life unlivable or what made this life one he felt was time to end. It seems clear, however, that there was always a question posed for him, and by him, whether life in his gender would be survivable. It is unclear whether it was his gender that was the problem, or the “treatment” that brought about an enduring suffering for him. The norms governing what is to be a worthy, recognizable, and sustainable human life clearly did not support his life in any continuous or solid way. Life for him was always a wager and a risk, a courageous and fragile accomplishment.⁵⁵

House Bill 2 is just another example of a reason why life for bodies like David’s are always a “wager and a risk.” And to make matters worse, in the house floor debate of House Bill 2, once a trans issue comes up, in this case with a solution to a problem that can be highly threatening to individuals, trans persons are hardly even spoken about when deciding the value of a bill that would put all of them at risk in North Carolina. Even just within this project where I chose this topic to talk about discourse around gender and sex of non-conforming people, my findings were that the legislators of North Carolina were only talking about MEN. So not only does House Bill 2 reinstate the sex gender binary, and create legislative exclusion for those that aren’t cisman/ciswoman, but also maintains

⁵⁵ “WFU | Full Text Options,” 74.

a gender hierarchy with men at the top, women after men, and all others at the bottom of consideration for law making.

At the time of this writing, House Bill 2 has been repealed, which was one of new governor, Roy Cooper's, main campaign promises when he was running for office. However, the repeal of House Bill 2 was selective about the parts that are gone, and the parts that are not. Even though the mandate for all individuals to use the restroom that matches the sex that is listed on their birth certificate is repealed, the part of House Bill 2 (which was not the focus of this work) that bans the ability for localities to pass nondiscrimination legislation is still in place, which would still not allow the Charlotte Ordinance. This means that though people won't be arrested for using the restroom they feel most comfortable in, that localities can't pass protections for individuals either if harm is to come to them, leaving it up to the state legislature to pass protections for persons that are discriminated against. The House Bill 2 floor debate did not leave me feeling optimistic about a potential state wide passage of protections. It also didn't leave California or New York feeling confident in North Carolina, and so their travel bans are still active, as well as the boycotts of various artists and organizations, even if slightly less than before.⁵⁶

What this all reveals is the resilience of the system of binary sex/gender. The notion of "one step forward, two steps back" is certainly applicable here. Where Charlotte made a law that would, empirically, make mobility and access much easier for persons that don't fit into the sex/gender binary, those legislators that believe in only man/woman (by choice or by ignorance) made it so that the invisibility of transness was

⁵⁶ Fausset, "Bathroom Law Repeal Leaves Few Pleased in North Carolina."

forced back into invisibility, or else. This was also a partisan bill, where republicans and democrats alike voted for the need to maintain sex segregated bathrooms. Representative Ken Goodman (Democrat, District 66) was asked why he voted for the bill, he responded:

I have a sincerely held belief that bathrooms should be private and that they shouldn't be shared by people of the opposite sex; that was the only part of the bill I was interested in, and I believe the constituents in my district feel the same way...I didn't get to write the bill, so you don't get exactly what you want all the time. The only part of the bill I was interested in was the transgender bathroom issue. ... I think section three-point-two will need another look, which is the right to sue in state court. That eliminates the state remedy for workers being fired for wrongful termination. I would prefer that not be in the bill...I have gotten a lot of assumptions made that the vote was bigoted, and I certainly don't want to discriminate against anybody. ... I understand how people feel hurt on the bill, but people have sincere beliefs, and that was my reason for voting.⁵⁷

Representative Goodman statement is very similar to many other responses from democrats (and even some republicans) as to why they voted for the bill. They genuinely believe that sex segregated restrooms protect citizens, and they are willing to vote on it even if they don't agree with the totality of the bill! This means that this isn't an obvious issue as a lot of progressive media would have you believe. The issue of gender inclusivity is one that demands a lot more attention.

⁵⁷ "Eleven Dems Voted for House Bill 2. We Called to Ask Why. | Triangulator | Indy Week."

Now it's only a cycle, society tells us that sex determines your gender, which determines how you are to act and participate in society. These differences then necessitate sex segregated public restrooms due to the specific needs of each sex which is predetermined. Then when a "threat" comes around, where those that may have different body parts than what the label of the bathroom door designates appropriate, have access to what are traditionally seen as "x sex only" spaces, society falls back onto the initial assumptions about what certain body parts mean, and then reregulate to maintain the order that has been in place and feels comfortable and intuitive when those assumptions haven't been questioned before.

This is what makes the use of Butler's frame of "livable lives" uniquely important. Butler compels us to identify the systems that make real the deep held belief of the gender binary. What makes the gender binary possible? How do we systematically sort bodies? What happens to those that are impossible to sort? The sorting itself determines the livability of a life, do they have access to the necessary places? Are they included in society? Are they recognized by society? And then, how do we make those bodies legible to a binary system? These questions are central to identifying the norms that allow some bodies the privileges of recognizability over others. Using Butler's theorization asks us to take 2 steps: 1. to be able to identify traits that allow people "humanness" and 2. Locate how that "human" identification creates hierarchies and privileges that label some lives as "livable" and other lives as not.

Moving forward in the collaboration of rhetorical studies and queer theory and application, my application of Butler's "livability" frame is an important and useful tool to uncover heteropatriarchal structures and how they function. What is unique about this

frame is that it emphasizes the lived experience of people and the structures they face, which is able to complicate and illustrate the meaning of gender and how it is applied to the body, both by the individuals themselves and society around them. This theorization seeks to look at the implications of a structure that relies on a sex/gender binary, and how states use tools (much like biopower) to maintain those systems. This means that certain bodies are framed as unnatural in order to maintain the system and illusion of a sex/gender binary, where a spectrum of bodies in both sex and gender that do exist are intentionally excluded, one regulation at a time.

There is of course a blaring tension in my argument: how do scholars and activists both tell people when laws are unjust and have terrible repercussions on people and their ability to live and thrive in society AND also make sure that the framing of tragic doesn't continue injustices to happen that perpetuates problematic practices like discouraging people from being their true selves because their lives seem too difficult not within the gender binary. There is no easy answer to this question, but the only way to discover strategies to discover an answer necessitates more research on discourses about trans issues to figure out ways we can be an inclusive society which shares both the hardships of living in a gender binary society, and discourses of joy about trans life in the broader public sphere. Using the framing that I have put forth in this project expanding to discourses that advocate for trans life, including trans joy, would be a way we could start to expand understandings of trans life and discover strategies that are working in making society more inclusive.

Future rhetoricians that use this framing can look at a variety of artifacts, the reason why the sex/binary is so hard to point out and challenge is because so many

aspects of life are complicit within the structure that it starts to make the binary itself seem as though it is essential for social life. Using Butler to understand the everyday challenges that make it difficult to live outside or in between the gender binary help to isolate places where there are inconsistencies and holes within the logic of the binary which can be used as sites of understanding and resistance. “Livability” as a frame allows a more complicated narrative of what it is life in a society that is strictly and rigidly gendered which is necessary to make a society where more lives are “livable.”

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SAMANTHA J. RIPPETOE

Curriculum Vitae

EDUCATION

University of Georgia, Athens Georgia

Beginning August 2017

PhD Candidate in Communication

Wake Forest University, Winston-Salem NC

May 2017

Master of Arts in Communication

GPA: 4.0, Thesis: *House Bill 2 and the Bathroom Predator Myth: Exploring Gendered Assumptions in the Context of “Livable Lives” in Policy Making*

Humboldt State University, Arcata CA

May 2014

Bachelor of Arts in Communication, Minor in Social Advocacy

GPA: 3.4

SCHOLARSHIP

Research Interests:

Trans Rhetoric, Rhetorical Criticism, Historical Analysis, Queer Theory, Place and Space, Public Memory, Social Justice, Feminist Rhetoric, Social Movement Rhetoric, Argumentation, Public Address

Future Publications:

Co-editor and Co-author, Transgender History: Teaching Gender in High School

To be published by Library Partners Press in January, 2017

This book includes lesson plans that are attached to common core standards in high school. The purpose of this book was to make transgender history accessible to high school teachers in North Carolina in the wake of House Bill 2.

Contributed an essay in Critical Media Studies: Student Essays on Contemporary Sitcoms

To be published by Library Partners Press in January, 2017

Work Contributed: “*Unbreakable Kimmy Schmidt: Survivorship and Positive Depictions of Healing*”

Conferences:

Presentation: *Stereotype Threat in Relation to Dialogue about Difference in the Classroom* May 2015

Reviewer for National Communication Association, American Society for the History of Rhetoric 2017, 2016

Projects:

“Beyoncé’s “Formation” Video: Exposing White Supremacy through Over-Imitation”

A rhetorical criticism paper where I analyzed Beyoncé’s formation video in relation to mimesis and expectations and limitations of black imitation throughout history, and how that portrayed a black privilege fantasy which exposed the absurdity of white supremacy.

“The Conspiracy of the Salem Witch Trials: A Story of Politics and Nature”

A rhetorical paper that analyzed transcripts kept from the Salem Witch Trials and what arguments were being made to prove that individuals were witches. I argue that the political climate that the trials took place in lent itself to discourses that were reliant on old tropes, such as witches being “too close with nature,” to persecute those that broke away from Samuel Paris’s church.

TEACHING ASSISTANT

Debate and Advocacy, Wake Forest University, (COMM 109)

Fall 2015-Present

Lecture on topics such as delivery, arrangement, argumentation, and organization

Grade major and minor projects and provided students feedback

Help students develop arguments, as well as organize their ideas into cohesive presentations

Critical Thinking and Listening, Humboldt State University, (COMM 103)

Fall 2013

Assist students on class concepts including logic, and argument structure

Lecture on the use of abstract principles to analyze arguments

Assisting in grading papers

Public Speaking, Humboldt State University, (COMM 100)

Spring 2013

Assist Students in outline writing, anxiety management, and delivery

Lecture on basic speech topics such as pathos and ethos

Critique students speeches

DEBATE

Assistant Coach, Wake Forest University
2015-Present

August

Attend weekly squad and coaches meetings, judge and provide feedback to students for practice debates and speeches, assist students in completing research assignments, prepare students for tournaments, travel to regional and national tournaments, drive students to tournaments (including in a 15 passenger van), use an issued purchasing card from Wake Forest University to buy meals, gas, and supplies for students when traveling to tournaments, and assist hosting three annual tournaments held on campus.

Debate Camp Resident Coordinator and Lab Leader, RKS Debate Camp, Wake Forest University

Supervised a staff of 6 undergraduate resident advisors to create a safe and healthy environment for over 60 high school debaters over the course of 5 weeks, created duty schedules, mediated conflicts between students, gave lectures on debate topics such as gender and argumentation, and cross examination strategies, judged debates, critiqued students, helped students improve delivery and argumentation skills

Recipient of the Lafayette Debate Study Tour in Paris, France

2016

Competed in a debate tournament around the resolution “Democracies should respond to the threat of a terrorist attack by substantially increasing domestic surveillance” that was held at George Washington University, and the French Embassy in Washington D.C., was 1 of 8 winners that received the prize of a study trip to France which focused on themes of government and their relationship to surveillance, was ranked the 10th speaker, and the top woman ranked

AWARDS AND APPOINTMENTS

National Communication Association member- Lambda Pi Eta

Graduate Student Department Representative

August 2016-Present

Nomination for “Outstanding Student Award” for excellence in an organization for my contribution to the HSU Debate Team

2014