
ARRESTING DRESS



CROSS-DRESSING, LAW, AND FASCINATION
IN NINETEENTH-CENTURY SAN FRANCISCO

CLARE SEARS

ARRESTING DRESS

PERVERSE MODERNITIES

A Series Edited by Jack Halberstam and Lisa Lowe

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Cross-Dressing, Law, and Fascination
in Nineteenth-Century San Francisco

CLARE SEARS

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INTRODUCTION

Not Belonging

On May 9, 1866, San Francisco's leading daily newspaper published a front-page story describing a "tremendous sensation" that occurred the previous evening in the downtown district, caused by a woman dressed "in black doe-skin pants, men's boots, riding jacket, hat, etc., full masculine apparel." The woman was "leaning on the arm of what appeared to be a man although it might have been a woman," and her appearance drew "a mob of small boys, some hundreds in number," who shouted insults until restrained by police. The police, however, did not arrest the woman, despite her violation of a local cross-dressing law, prompting the newspaper to comment, "As the police arrest every man caught on the street in women's clothing, we see no reason as to why the rule should not be applied to the other sex as well." The next day San Francisco police dutifully arrested the woman, a feminist dress reformer named Eliza DeWolf, launching a court case and newspaper scandal that gripped the city for months.¹

The following decade, in December 1874, San Francisco police arrested John Roberts for appearing in public in "female attire," or more specifically, in the clothing of a "pretty waiter girl," consisting of "a red striped dress with train *de mud a la Barbary Coast*, a straw hat with a bit of lace and artificial flowers in it, a heavy veil which concealed his face, and a comforter which

he wore around his neck.” During these years Barbary Coast bars, in the heart of the vice district, employed “pretty waiter girls” and some female impersonators to sell liquor and sex on the premises. We do not know whether Roberts worked in these bars or merely dressed in the style of their employees. Passing over such details, court reporters stated that Roberts was drunk at the time, had a “mania” for wearing women’s clothing, and had been recently arrested for the same offense.²

Twenty years later, in 1895, San Francisco police staked out a residential neighborhood to investigate complaints about a “strange woman” who walked the streets every evening. After close surveillance, they arrested Ferdinand Haisch, a middle-aged carpenter who lived in the neighborhood, on charges of “masquerading in female attire.” At the time of her arrest Haisch was wearing the latest women’s fashions: a three-quarter-length melton coat, green silk skirt, red stockings, silver-buckled garters, high-heeled shoes, and stylish hat. Unable or unwilling to provide a reason for this clothing, Haisch simply stated that apart from her carpenter’s outfit, it was the only clothing she had. Reporting on the arrest, newspapers stated that Haisch went to considerable lengths to present as a woman, making her own clothing and feminizing her voice. Following a brief stint in the city prison, Haisch was released by a judge on the condition that she never wear women’s clothing in public again.³

DeWolf, Roberts, and Haisch were just three of the people arrested for cross-dressing in nineteenth-century San Francisco. Specifically they fell afoul of the law that animates this book—a law that made it a crime for a person to appear in public “in a dress not belonging to his or her sex.”⁴ Passed by the San Francisco Board of Supervisors in 1863, this prohibition occurred in the context of a broader indecency law that also criminalized public nudity, indecent exposure, lewd acts, and immoral performances. In the hands of police and judges, the law became a flexible tool for regulating a wide range of cross-dressing practices, facilitating more than one hundred arrests before the century’s end. Those arrested faced public exposure, police harassment, and up to six months in jail; by the turn of the century they also risked psychiatric institutionalization or deportation if not a U.S. citizen.

Arresting Dress examines the emergence, operations, and legacies of San Francisco’s cross-dressing law during the second half of the nineteenth century. At first glance this may seem an obscure topic. After all, the law was passed almost 150 years ago, it targeted an arguably marginal cultural prac-

tice, and it created only a misdemeanor offense. However, if cross-dressing histories teach us anything, it is that first appearances can be deceiving. Far from a marginal practice, cross-dressing was a central component of nineteenth-century urban life. Indeed cross-dressing emerged as peripheral only in the wake of cross-dressing law; consequently this book scrutinizes marginality as one of the law's effects. Moreover cross-dressing laws were not idiosyncratic or archaic regulations but foundational city codes that were central to the project of modern municipal government. Such laws were passed in over forty U.S. cities between the Civil War and World War I, with remarkably long lives, remaining in force until the 1970s. These laws had wide circulation, reaching beyond the legal realm of courtrooms and codebooks into newspaper scandals, freak-show performances, tourist entertainments, and vaudevillian theater. They also had immense effects, producing new definitions of gender normality and abnormality that haunt us today. Finally, cross-dressing laws extended beyond the policing of normative gender to impact the social meanings of city space, race, and citizenship. In particular they crossed paths with federal immigration laws to limit the terms of national belonging and construct a gender-normative nation. Far more than a local government order that created a misdemeanor offense, cross-dressing law represented a specific strategy of government that constructed normative gender, reinforced inequalities, and generated new modes of exclusion from public life.

A Brief Overview of Cross-Dressing Law

Although cross-dressing laws are rarely, if ever, enforced in U.S. cities today, they were a central component of urban life from the mid-nineteenth century to the mid-twentieth. Between 1848 and 1900 thirty-four cities in twenty-one states passed prohibitions against cross-dressing, as did eleven more cities before World War I.⁵ Most of these cities, including San Francisco, passed laws that specifically targeted a person “wearing a dress not belonging to his or her sex” or “wearing the apparel of the other sex” as part of broader prohibitions against public indecency. Other cities, such as Los Angeles and New Orleans, passed laws prohibiting “indecent dress” or wearing “disguises” that did not mention gender or sex but encompassed cross-dressing when they were enforced. Cross-dressing laws were local innovations, passed by municipal governments, and no state or federal legislature passed a law that

directly prohibited cross-dressing practices. However, California and New York did pass state laws that criminalized public “disguise” or “masquerade” for the purpose of avoiding identification.⁶ As with local disguise laws, the state statutes were not specifically aimed at cross-dressing practices but were nonetheless used to arrest people for wearing gender-inappropriate clothes.

Far from being nineteenth-century anachronisms, cross-dressing laws had remarkable longevity and became a key tool for policing lesbian, gay, and transgender communities in the mid-twentieth century. In particular, numerous oral histories and memoirs document their frequent—and frequently brutal—enforcement in working-class bars and neighborhoods during the 1950s and 1960s. For example, in their study of a working-class lesbian community in mid-twentieth-century Buffalo, New York, Elizabeth Kennedy and Madeline Davis interviewed several women who remembered the police arresting butch lesbians for wearing less than three pieces of women’s clothing, in violation of local law. In Nan Alamilla Boyd’s book *Wide Open Town* San Francisco residents describe similar harassment on the West Coast, where the police used cross-dressing law to arrest transgender women and gay men in drag, as well as butch lesbians. Several law review articles provide additional support for what these histories suggest: city police departments across the United States used cross-dressing laws to harass queer and transgender communities in the mid-twentieth century, particularly when they raided bars but were unable to catch customers soliciting or having sex. In San Francisco this police harassment helped spark the 1966 Compton’s Cafeteria riots that mark the birth of U.S. transgender activism. Even the more widely known Stonewall riots in New York in 1969 appear to have been at least partially fueled by cross-dressing laws; according to the social historian Martin Duberman, the crowd in the Stonewall Inn fought back only after the police attempted to arrest a butch lesbian for wearing men’s clothing.⁷

Given the high number of U.S. cities that passed cross-dressing laws and their central role in twentieth-century queer and transgender life, surprisingly little is known about their history, particularly during the nineteenth century, when they were initially passed.⁸ Consequently this book breaks new ground by providing the first in-depth study of U.S. cross-dressing laws in one city, San Francisco, during the second half of the nineteenth century. Of course, San Francisco does not represent all of the U.S. cities that passed cross-dressing laws, but it does provide a particularly rich site

for analyzing the production and policing of normative gender in relation to broader societal trends.⁹

Between 1848 and 1900 San Francisco experienced unprecedented growth, as a series of economic, political, and social upheavals transformed the region from a small, coastal village in recently Mexican territory into an epicenter of U.S. capitalist investment, urban development, and imperial expansion. This rapid development made questions of governance, social order, and urban space particularly pressing, as the burgeoning city struggled to develop a system of government that benefited its white, male, merchant elite. The same half century also encompassed a crucial period in the reformulation of gender and sexual norms, as well as the redrawing and consolidation of racial and national boundaries against a backdrop of U.S. territorial expansion, manifest destiny ideology, changing patterns of immigration, the end of slavery, and the birth of Jim Crow segregation. Once again emergent questions of morality, difference, racialization, and citizenship assumed particular urgency in San Francisco, where city life was profoundly shaped by the multinational gold rush migrations and the aftermath of the Mexican-American War. San Francisco's cross-dressing law thus emerged in an acutely charged political and cultural climate, where broad societal trends were condensed and accentuated. In this context the interplay of multiple boundary formations comes into view—of normative gender, race, and nation and governable city space. Using cross-dressing law as a window onto these formations, *Arresting Dress* uncovers an important component of lesbian, gay, and transgender history that has consistently appeared in the footnotes of twentieth-century studies but has yet to be brought to the fore.

The significance of cross-dressing laws, however, extends beyond their historical prevalence to encompass their political effects as strategies of government that produced new definitions of normative gender during a period of rapid social change. In using the term *normative gender* I refer, in part, to the multiple taken-for-granted rules and assumptions that dictate how men and women are supposed to be in a given society, including how they should look, act, feel, and think. In this book, however, I primarily use the term to refer to something more fundamental: the modern Western insistence that all bodies and ways of being can be meaningfully divided into discrete, opposing binary categories of male and female, man and woman, masculine and feminine. These binary gender norms are cultural products, not biological absolutes, and they seem to be everywhere and nowhere at

the same time; they permeate our assumptions, our interactions, and even our language but can be difficult to isolate and pin down. However, despite their seemingly elusive character, there are moments in history when the boundaries of normative gender are thrown into question, disrupting our classification schemes. During these moments social institutions often intervene to define and regulate normative gender, restricting who can lay claim to femininity or masculinity and who is permitted to be a woman or man. Such institutional impositions create new contested terrain, as normative gender boundaries are formed, deployed, policed, negotiated, and resisted with varying degrees of success.

In the second half of the nineteenth century local governments across the United States took up the project of normative gender in a particularly explicit way, through laws that made it a crime for a person to appear in public in “a dress not belonging to his or her sex.” At first glance today these laws seem to focus exclusively on clothing, banning women from wearing pants, for example, and men from wearing dresses. On closer examination, however, cross-dressing laws come into focus as a central mechanism for policing a whole series of “belongings”—not only the items of clothing that “belonged” to a specific sex but also the types of people that “belonged” in public space and the types of bodies that “belonged” in the categories of man and woman.

A Scholarship of “Not Belonging”

Written in opposition to the restrictions on “belonging” that cross-dressing laws incited, this book resists three theoretical or methodological judgments of “not belonging” that can hamper cross-dressing histories. First, it resists the division of cross-dressing phenomena into groups that do and do not “belong” in sexuality and gender studies. It does so through trans-ing analysis, a new interpretive approach that can reinvigorate and open up cross-dressing histories, without embracing every cross-dressing trace as indicative of a lesbian, gay, or transgender past. Second, the book resists the isolation of nonnormative gender as a formation that does not “belong” alongside classifications of race, sex, disability, and citizenship. In doing so it introduces the concept of problem bodies to signal the wide range of bodies that local government targeted for legal regulation in nineteenth-century San Francisco. Finally, it resists the elevation of law as an autonomous domain that does not “belong” in popular culture and the downgrading

of popular culture as an apolitical domain that does not “belong” in studies of law. In doing so it highlights the mutual operations of regulation and fascination in the production of gender marginality.

The book’s analytic innovations primarily speak to queer and transgender studies, even as they draw from and contribute to additional bodies of scholarship, including gender history, urban studies, critical legal studies, and critical race studies. Specifically the book builds upon several historical studies of cross-dressing in the nineteenth-century United States, which developed out of the lesbian and gay studies movement in the late 1970s and 1980s. Much of this work emphasized the political utility of social history and uncovered a wealth of evidence on cross-gender practices in the nineteenth century, particularly material on females who dressed and lived as men.¹⁰ Many of these studies represented the purposeful efforts of queer scholars to reclaim a shared and recognizable past, and they frequently affirmed cross-dressing females as prototypical lesbians, and later as transgender men. Indeed significant debate occurs within this literature concerning the (homo) sexual versus (trans)gender identities of historical cross-dressers.¹¹

The lesbian and gay studies movement carved out critical space in academia for the study of cross-dressing histories. It also provided me with invaluable leads toward some of the archival sources that I use in this book. However, while these studies are based on rich historical evidence and a laudable political desire to reclaim and validate past experiences, they have important analytic limitations.¹² In particular the imposition of contemporary gender and sexual identities onto past cross-dressing practices rests on the assumption that past experiences can be accurately understood in terms of present-day categories and concepts. This, however, is not the case. As numerous historians have documented, the ways that Western societies organize gender and sexuality today are quite different from the ways they did so in the past. In particular the concepts of transvestite, transsexual, and transgender did not exist for most of the nineteenth century, nor did the concepts of lesbian, homosexual, and heterosexual. This, of course, does not mean that people did not dress, live, and identify as the “opposite” sex or have sex with others of the same sex. It does mean, however, that the social and subjective meanings of these practices cannot be assumed but need to be carefully investigated, both to shed light on the past and to gain insight into the ways that contemporary understandings of gender normativity and difference emerged.¹³

In sharp contrast to the cross-dresser as prototype trope found in early lesbian and gay studies, 1990s queer theory presented the cross-dressing figure as a metaphor for the instability and fluidity of gender and sexual identities. Most notably Judith Butler used the cross-dressing, cross-gender figure to deconstruct the binary of authentic versus imitative gender. Butler highlighted butch/femme and drag performances as sites of gender contestation, arguing that the contradiction between sex and gender contained in these performances exposes the construction of all gender performances. Marjorie Garber extended Butler's insights by analyzing the possibilities of transvestite representations to signify the artifice of gender binaries. Garber argued that the persistent popular appeal of transvestism stems from its extraordinary power to indicate "category crises," or moments of turmoil when the naturalness of binary classifications is called into question. Moreover these category crises are not limited to sex, gender, and sexuality but can include race, class, and national classifications, as accompanying cultural anxieties are displaced onto the transvestite as "a figure that already inhabits, indeed incarnates, the margin."¹⁴

While Butler's and Garber's work is invaluable for troubling the ostensibly natural relationships between binary sex, gender, and sexuality, their theoretical insights can appear disconnected from specific sociohistorical contexts in which "gender trouble" and "category crises" emerge. As a result some scholars argue that Butler's and Garber's metaphoric use of drag erases transgender subjectivities, celebrating the "gender trouble" caused by transgender representation while neglecting the "gender trouble" experienced in transgender lives. While acknowledging that these criticisms are part of a broader, ongoing dialogue between queer theory and transgender studies, this book shows that both forms of "gender trouble" can be usefully brought together through close attention to the specific ways that normative gender boundaries are produced, policed, negotiated, resisted, and deployed.¹⁵

Trans-ing Analysis

This book presents a new critical approach for studying cross-dressing histories that I term *trans-ing analysis*. This approach incorporates insights from the burgeoning field of transgender studies, as well as from scholarship that seeks to queer history, either by focusing on nonnormative sexual practices (without reducing them to lesbian or gay identities) or

by excavating the sexual meanings and dynamics of phenomena that are not transparently sexual (as in scholarship that seeks to queer the state).¹⁶ Trans-ing analysis follows a similar logic but with specific focus on the historical production and subsequent operations of the boundary between normative and nonnormative gender. As such it brings together a range of cross-gender phenomena that are rarely considered alongside one other—not only people and practices that are marked as nonnormative but also cross-gender practices that do not provoke censure and cross-gender discourses that represent men as feminine, women as masculine, and gender difference as impossible to read. Trans-ing analysis thus expands the framework for examining the political significance of attempts to produce and police normative gender boundaries through cross-dressing laws.¹⁷

In this book I use trans-ing analysis to shift attention—at least provisionally—away from the recognizable cross-dressing *figure* to multiple forms of cross-dressing *practices*. In doing so I carve out analytic space for practices that do not always or easily attach to recognizable cultural figures—the cross-dressing practices of men who donned women's clothing at gold rush dances, for example, or of white women who wore men's clothing to visit Chinese prostitutes. This shift also facilitates expanded analysis of the variety of cultural figures that cross-dressing practices did sometimes coalesce around, incorporating not only the familiar figures of sexuality studies, such as the “passing woman” or the “fairie,” but also the feminist dress reformer, the female stowaway who lived as a man aboard ship, the male gender illusionist who performed as a woman on the respectable vaudevillian stage, and the female prostitute who wore men's clothing to advertise her sexual services. By bringing together a wide range of cross-gender practices, trans-ing analysis provides space to highlight their potentially disparate cultural meanings and contradictory effects.

In addition to encompassing multiple cross-gender *practices*, I use trans-ing analysis to bring cross-gender *representations* into the framework of study, focusing on popular and expert discourses that depict hyperfeminine men, hypermasculine women, and illegible gender. Such discourses proliferated in nineteenth-century San Francisco, as newspapers and political tracts published texts and images that were not specifically about cross-dressing but nonetheless used cross-dressing as a rhetorical device to comment on social and political issues of the day. Most notably, popular and political discourses used cross-gender imagery to represent Chinese

men as hyperfeminine in an effort to mobilize support for exclusionary immigration laws. Placing cross-dressing imagery alongside practices and prohibitions, trans-ing analysis facilitates a richer exploration of the production and circulation of normative gender.

Problem Bodies

Just as this book proposes trans-ing analysis to assemble a wide range of cross-dressing practices and representations, it introduces the concept of “problem bodies” to collectively refer to the multiple sets of bodies that local government officials defined as social problems and targeted for intervention. In nineteenth-century San Francisco these included bodies that were marked as a social threat because of their performance of cheap labor (the Chinese laborer) or participation in marginal street economies (the disabled beggar, the city prostitute), as well as bodies that were marked as a threat due to their departure from emerging gender norms (the “degenerate” female impersonator, the feminist dress reformer, the “bogus man”). Placing problem bodies alongside one another, this book shows that cross-dressing laws were not an isolated or idiosyncratic act of government but one part of a broader legal matrix that was centrally concerned with the boundaries of sex, race, citizenship, and city space.

Laws that targeted problem bodies appeared in the “Offensive Trades and Nuisances” chapter of the municipal codebook. This body of law defined the atypical human body as an unsightly public nuisance, akin to sewage, trash, and slaughterhouses that operated within city limits. As such it positioned problem bodies on the margins of humanness—not as some *body* whose actions created public disorder but as some *thing* whose existence constituted urban blight. At the same time, nuisance law acknowledged the everyday character of the bodies and objects it regulated; it insisted not on their complete eradication but on their relocation to a different space where they could be concealed or confined. Under the proscriptions of nuisance law, problem bodies existed at the vexing intersection of commonplace and contemptible—an “everyday other” to be socially and spatially contained.

The “problem bodies” concept has clear parallels with Jennifer Terry and Jacqueline Urla’s term *deviant bodies*.¹⁸ In their formulation, the term critically interrogates the scientific and popular belief that deviance is locatable within the body—a belief that gained particular currency in the United

States during the nineteenth century as social conflicts were displaced onto the individual aberrant body. The concept of problem bodies performs comparable analytic work but with a specific focus on the practices of local government. In particular it spotlights a distinct process, observable in nineteenth-century cities such as San Francisco, whereby disparate sets of bodies were framed as undermining the municipal project of administering urban life. Certainly some problem bodies, at some times, were subjected to scientific scrutiny and viewed through the lens of embodied abnormality. Many others, however, were marked by a nuisance law framework as an annoying but ordinary presence in city space. The problem bodies concept is particularly useful for cross-dressing history, as it facilitates analysis of the overlapping ways that cross-dressing bodies were constructed and policed—not only as indecent bodies that threatened public morals but also as nuisance bodies that threatened public order and as illegible bodies that threatened the cultural imperative of verifiable identity in an anonymous city. Foregrounding the role of municipal government over science, I use problem bodies to spotlight a distinct terrain in the production of marginality: the local management and policing of city space.

I primarily developed the problem bodies concept to make sense of the persistent coappearance of these bodies in archived texts. Within nineteenth-century municipal codebooks, for example, cross-dressing, prostitute, and disabled bodies appeared alongside one another as (il)legal equivalents in public space, through general orders that banned the public appearance of a person wearing “a dress not belonging to his or her sex,” in “a state of nudity,” or “deformed so as to be an unsightly or disgusting object.” Problem bodies were also brought together in the local police court, as cross-dressing offenders shared the holding cells and court benches with Chinese laborers who violated the city’s lodging house laws and city prostitutes who engaged in “indecent” displays. Freak-show amusements similarly brought these bodies together, as cross-dressing performers shared the spotlight with the racialized “Missing Link” and “What-Is-It?” characters and multiple performances of disease and “deformity.” In city newspapers reports of cross-dressing arrests appeared alongside stories of Chinese immigrants who “sneaked” into the country in cross-gender disguise. It would take considerable effort to “unsee” such connections, when legal and popular practices persistently grouped these bodies as sharing a common existence on the margins of urban citizenship. The problem bodies concept