

Slipping Through the Cracks: The Fight for (Trans)formative Justice

Introduction

“They ended up harassing me every day, harassing me to tears.”¹ These were the words Eisha Love, a Black trans woman, used to describe her experience after her arrest by the Chicago Police Department in March of 2012. While in custody, male officers misgendered Eisha, made fun of her appearance and made jokes about strip searching her. According to the police report, officers used male pronouns, referred to Love by her dead name and housed her with male arrestees. Eisha found the entire ordeal to be humiliating, degrading and extremely traumatic. Unfortunately, Eisha’s experience is not the exception to the rule. Historically, police interactions with transgender, intersex and gender-nonconforming individuals have been fraught with sexual, emotional and physical violence.

The misgendering and dead naming of Eisha Love by Chicago Police exhibited a lack of sensitivity and training on the department’s part when handling trans arrestees. In Eisha’s case, her appearance and identification documents made her vulnerable to verbal and physical abuse. According to Illinois law, Eisha was meant to be processed as a man, even though she identified as a woman. Without gender-affirming documents, Eisha was handled and treated much differently by Chicago police officers. Eisha’s case is a perfect example of the ways in which trans rights are directly linked to the fight for criminal justice.

¹ Hannah Leone, “Transgender Chicagoans say police encounters can be dehumanizing. A new report says CPD is failing them,” *Chicago Tribune*, May 10 2019, accessed November 26, 2019, <https://www.chicagotribune.com/news/breaking/ct-met-cpd-policies-transgender-people-20190506-story.html>

This project aims to contextualize the fight for gender-affirmed identity documents as not only a social justice issue, but a criminal justice one. By examining the ways in which the current legal system fails to protect trans, intersex and gender non-conforming (TIGN) individuals, we can better understand how obtaining gender-affirming documents for TIGN people contribute to a larger goal of transformative justice/ abolitionism.

Policy & Practice: Processing TIGN Individuals

Since August of 2012, the Chicago Police Department adopted a policy on how to treat transgender, intersex and gender non-conforming individuals. According to the new CPD policy, Chicago police are instructed to address TIGN individuals by the name and pronouns they ask to be addressed by. Additionally, officers are instructed not to use demeaning or derogatory language, specifically relating to an individual's perceived or actual gender expression or sexual orientation.² Per this policy, officers must use two central criteria to determine whether an individual will be processed as male or female: government-issued identification and the arrestee's genitalia.

Current CPD policy states that arrestee's will be classified as it appears on their government ID; an exception to the ID policy is that individuals who are post-operative will be processed according to their operation status (i.e. "male-to-female will be processed as a female")³. However, in the case where a trans person is not post-operative and does not have the proper identification documents, they will be processed based on their genitalia. On the surface, the Chicago Police Department adopted a "progressive" policy in regard to handling TIGN

² Chicago Police Department, *Interactions with Transgender, Intersex, and Gender Non-Conforming (TIGN) Individuals*, August 21, 2012, accessed November 23rd, 2019, <http://tjlp.org/wp-content/uploads/2013/04/CPD-General-Order-on-Interactions-with-Transgender-Intersex-and-Gender-Non-Conforming-Individuals-download.pdf>

³ Ibid, 3

arrestees. But in what ways does this policy still keep trans people, especially poor and or undocumented trans people of color, at risk of police violence?

Systemic Shortcomings

First, the options by which a trans man or woman is eligible to be processed according to their gender identity can only come about in one of two ways. Either they have obtained the proper government identification, or they have obtained gender-affirming surgery. Not only are both these processes unattainable without the proper financial, legal or medical support, but a major barrier exists for trans individuals with a felony record that seek affirming identification documents.

According to Illinois Law, individuals with a felony conviction must wait ten years before they are eligible to alter their gender and name on government-issued identification documents. This means that women like Eisha Love must wait at least a decade to obtain their gender-affirming documents. Such a precedent is extremely concerning, as a Black trans woman, Love is at risk of racial and gendered profiling as well as police harassment while in custody. In fact, one-third of Black transgender women experience harassment by police because they are assumed to be sex workers.⁴ As a Black trans woman with a felony charge, finding employment likely remains difficult for Eisha, and we begin to see how her identity creates more barriers to education, housing, medical care and financial resources.

Not only does this policy exploit Eisha's politically vulnerable position, but the policy adheres to the harmful narrative that biological sex determines gender. As mentioned, economic

⁴ National Center for Transgender Equality, *The 2015 U.S. Transgender Survey Executive Summary*, December, 2016, accessed November 24, 2019, <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>

barriers often prohibit trans people from getting gender-affirming surgery. Additionally, other trans people may not feel the need to have surgery in order to live a gender-affirmed life. In this way, the CPD policy inappropriately centers post-operation, and posits surgery as the “end goal” for TIGN individuals.

Similarly, it places intersex people in a precarious position. If an intersex person does not have the proper identification documents, and identifies as a woman, but has male genitalia outside the body, and female reproductive organs (which cannot be seen), how will Chicago police classify them? Under the current policy, they will be processed as male. Not only does this policy place the intersex individual in danger, but it allows Chicago police to use discretion in determining a person’s gender. Additionally, a policy meant for gender-nonconforming individuals, also leaves them out of the conversation. If a gender non-conforming individual neither identifies as a man nor a woman, they should not be placed in a holding facility based on their genitalia.

State-level and national summaries of the 2015 U.S. Transgender Survey support the claim that even with the adoption of such policies, TIGN individuals still have adverse interactions with police. According to the survey, more than half of respondents in Illinois (69%) reported that interactions with police and law enforcement who knew they were transgender resulted in verbal harassment, misgendering, sexual assault or physical assault.⁵ Though not all Illinois police departments have adopted the TIGN Arrest Policy, it is significant that nearly 70% of trans people in Illinois have had adverse interactions with police, no doubt most of which are with Chicago police.

⁵ National Center for Transgender Equality, *The 2015 U.S. Transgender Survey Illinois State Report*, December, 2016, accessed November 24, 2019, <https://www.transequality.org/sites/default/files/docs/usts/USTSILStateReport%281017%29.pdf>

However, the answer to the Chicago Police Department policy's oversights should not be to create facilities where TIGN individuals can be held, instead, we must focus on the ways jails, prisons and police departments uphold the violence of gender categorization.

Toward a Critical Trans Politics

Legal scholars who study the unique oppression that trans people experience in the criminal justice argue that LGBTQ+ movements—and all resistance movements—must adopt a critical trans politics. Adopting this political framework demands an examination of how administrative systems are the site and production of racism, xenophobia, and transphobia.⁶ In fact, critical trans politics claims that the type of data the government chooses to collect is not apolitical (i.e. race, class, sex, citizenship etc.). Because of the way that trans people struggle with gender (mis)classification, categories in government documents, services and surveys are defined to make trans people especially vulnerable.⁷

The problem with gender misclassification is that gender segregation is used to structure both public and private services. Without the proper gender-affirming documents, trans people are barred from, or harassed for, accessing services such as bathrooms, domestic violence shelters, drug treatment programs, medical aid and stable employment. The ways in which the state and other social services define and interact with a legal definition of gender does not make room for trans, intersex and gender non-conforming folks. In turn, these public systems continue to fuel a deadly cycle of transphobic violence.

⁶ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*, (Durham [North Carolina]: Duke University Press, 2015). 73

⁷ Ibid, 74

Ruth Wilson Gilmore states that, “Racism, specifically, is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”⁸ Although she does not directly reference gender oppression in this definition, her definition is applicable to an understanding of systems that perpetuate gender-based violence.

As detailed, the financial, medical, and legal barriers to gender-affirming identification are directly contributing to the pre-mature death of TIGN people, and especially poor and or undocumented TIGN individuals of color. By framing the issue of accessing gender-affirming documentation as a criminal *and* social justice issue, we can better understand its importance in the long-term goal of prison abolition and transformative justice models.

Transformative Justice in Practice

A key to adopting a critical trans politics is recognizing and critiquing how contemporary LGBTQ justice movements have blindly adopted and centered a legal equality framework.⁹ A legal equality framework sees the Chicago Police Department TIGN Policy document as an end, while a more long-term justice organization views it as a means to an end. Transformative justice (TJ) practitioners do not recognize the police as positive actors in establishing community peace and security, citing a long history of police brutality, racial profiling and transphobic violence. As a result, TJ aims to address and alter the personal and social structures involved in producing harm in the actors’ lives. In transformative justice contexts, harm can be as personal as intimate-partner violence or as structural as environmental racism. However, no matter how personal harm is, it is always understood as being a product of a racist, classist, xenophobic, sexist, and

⁸ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis and Opposition in Globalizing California*, (Berkeley: University of California Press, 2007). 28

⁹ Eric A. Stanley and Dean Spade, “Queering Prison Abolition, Now?”, *American Quarterly*, 64, no. 1 (2012): 115-127.

transphobic social system. Transformative Justice proponents not only want to improve the situation for the victim but recognizes that when the *offender* and community are given the opportunity to heal, we have taken a truly radical approach to justice. As a whole, transformative justice aims to provide restitution and abolish punitive systems. Of course, this is easier said than done, but the first step toward transformative justice is to adopt this philosophy into every aspect of justice work. Since many LGBTQ+ rights organizations claim to fight for *equality* as opposed to transformative justice, they fail to change the material and social conditions of TIGN individuals.

Unlike other legal justice non-profits in Chicago, the Transformative Justice Law Project (TJLP) actively centers trans and gender-nonconforming individuals and is fully committed to abolishing violent systems of oppression. TJLP staff believe in a right to gender self-determination and provide free and holistic legal services for transgender people in Illinois. One of TJLP's justice initiatives is a monthly name-change clinic for TIGN individuals at the Daley Center. As highlighted, proper identification documents hold immense power over the type of experience that a TIGN individual might have while in police custody. The U.S. Transgender Survey reports that about 11% of TIGN people in Illinois have their correct gender identity and name on all government identification, while 68% report that none of their IDs have their correct gender identity and name.¹⁰

Carolyn Wahlskog is an LGBTQ housing rights advocate and volunteer coordinator at the Transformative Justice Law Project. Not only has her work with TJLP directly helped trans people across Illinois, but she has also found a loving community through her work. As Carolyn shared with me, "This all started eleven or twelve years ago when our founder recognized that

¹⁰ Ibid,7

there was a gap in legal access for trans and non-binary folks. All of these systems were created without trans people in mind, making them inherently transphobic.” The logic that Carolyn uses is similar to that of other critical trans studies scholars, that the legal system’s obsession with gender categorization inherently excludes trans people.

For Carolyn and her team, their work is a labor of love, “So far, we’ve changed 2,500 names and we’re just a scrappy group of people. We’re invested in getting people gender affirming identity documents.” On a very technical level, Carolyn and other volunteers help people fill out paperwork, obtain fee waivers and provide legal advice—all free of charge. Once the paperwork has been filed, staff member Alexis Martinez personally escorts each client to their court hearing. Although the work they do might appear simple, the name-change process can be very emotionally taxing, and having such support makes the process that much more manageable. TJLP even has lawyers on staff that can speak directly to the needs of minors and undocumented individuals seeking a name-change, whose process can be even more harrowing. Often times, TJLP gets volunteers that have gone through the name-change process and simply want to give back.

Adam Davies, a Northwestern University student who received help with his name change by another organization, decided to help others going through the name-change process. Since he began volunteering, the name change mobilizations have empowered Adam in ways he didn’t expect. Adam shared the following, “Personally, I’m really interested in legal policy for trans-gender nonconforming individuals, so this was perfect. But I think what’s great is that if someone came up to me and was like, ‘Adam I want my name changed how do I do that?’ I could help them.”

However, both Adam and Carolyn recognize that the work they do with name-changes is not a solution to the problem, it is a form of harm reduction. According to Northwestern University (NU) policy, unless an individual has legally changed their name, all official documents and medical records continue to read name trans students. In this way, gender misclassification threatens the safety of a TIGN individual's educational environment. After being repeatedly mis-gendered and dead named by NU admin and faculty, Adam's gender-affirming identification significantly improved this portion of his life. Adam shared the following, "the system is always never created for me. But in the interim while we work on fixing the whole system, we need to interact with the system and meet immediate needs. There are so many parts of your life that need your ID, this is a band aid that helps you get through the day."

As rewarding as it is to help people obtain gender-affirming documents, Carolyn views the name-change work in a similar way, "Name changes allows me to navigate these systems for good when you can't just burn it all down. I always have to ask myself, when is and isn't the right time to work with police or organizations that aren't directly aligned with our mission? It's all part of the work." In this way, Carolyn's role requires a delicate balance of working with and pushing against the current legal system, all in an effort to mitigate administrative violence toward TIGN people.

As an organization, TJLP has dedicated itself to transformative justice, and as Carolyn highlights, "Our goal is that we try not to mimic harmful systems. We are a collective, not hierarchical and that means things take more time. Everyone at the Transformative Justice Law Project has equal power and equal leadership. Working at TJLP means that I'm always learning

and recognizing that we are steeped into these punitive systems. We do our best to work through the transformative justice model and avoid discarding people.”

Conclusion

As it stands, trans, intersex and gender non-conforming individuals are at risk of multiple forms of violence, whether from police, citizens or administrative processes. As examined, policies generated by government institutions, no matter how well-intentioned, are often poised to continue harming poor and or undocumented TIGN individuals of color. However, by contextualizing the fight for gender-affirming identification documents as a criminal justice issue, we can better recognize the ways in which the criminal justice system perpetuates racism, xenophobia, classism *and* transphobia. Current legal frameworks and policies allow for trans people to slip through the cracks, but adopting a critical trans politics, coupled with advocacy within the aforementioned frameworks, we can move toward a transformative future.