Arresting Dress: Cross Dressing, Law, and Fascination in Nineteenth-Century San Francisco by Clare Sears

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Crossdressing laws are rarely, if ever, enforced in American cities today. However, between 1848 and World War I, 45 cities in the United States passed laws against crossdressing defined as “wearing the apparel of the other sex” (p. 3). To understand why these laws were conceived, passed, and enforced is not immediately obvious, since the behavior in question harms no one and has no political or economic significance. Why would the government apply itself with such energy and determination to regulate and suppress something that falls so far outside its natural scope?

Clare Sears addresses herself to this question in this well-researched, well-written, succinct little book that is amply illustrated with examples and historical context. 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. (p. 7)

She presents a very stimulating, insightful discussion of the issues. Her presentation documents what was essentially a reactionary suppression of a relatively minor phenomenon. However, the context in which it occurred encompassed profound changes in gender roles in society as well as a weakening and loosening of the institutional structures that governed relations between the sexes.

She points out that:

San Francisco’s cross dressing law did not simply police normative gender by enforcing preexisting standards and beliefs but actively produced it by creating new definitions of normality and abnormality and new restrictions on participating in public life. (p. 13)

This suppression of crossdressing has to be seen as part of a broader anti-vice movement that sought to eliminate the brothel culture as well as the consumption of alcohol in the United States. It was motivated by (Protestant) Christian notions of moral purity and public decency and was fueled by the success of the abolition movement that outlawed slavery. Anti-crossdressing laws formed “one part of a broader matrix that was concerned not only with gender transgressions but also with race, citizenship, and disease” (p. 72). “Rewarded with the good morals and decency laws of 1863, anti-vice movements arose periodically throughout the remainder of the century to protest lax law enforcement, highlight new concerns, and demand further legal controls” (p. 68).

This is not just a religious movement, although its moral outlook was shaped by a negative Christian sexual ideology. As Sears points out, it had to do with a growing insecurity about gender roles in society and gender identity. But she does not seem to ask herself why this was happening now, that is, why did gender become problematic in the middle of the nineteenth century? Anti-crossdressing laws do not have a long history, although I. Bennett Capers (2008) has pointed out that sumptuary laws have a very long history going back to the Middle Ages. However, sumptuary laws were concerned with
affirming and rigidifying social rank and ethnicity through attire rather than gender. So what gave rise to this phenomenon of legal differentiation of gender represented by public dress and why did it persist as long as it did?

With the growth of industrialization and the invention of labor-saving machines that reduced the need for male physical strength, women were drawn away from the traditional agricultural life toward cities and factory work that enabled them to live independently and support themselves. This transformed the traditional family and relations between men and women that were based on that economic model. The backlash to this was a growing anxiety on the part of many (White Anglo) males regarding their social role, and their identity as men, as well as their personal self-esteem.

Cross dressing law was not concerned with clothing per se but with the ability of clothing to mobilize and symbolize specific social threats. These included threats to male dominance posed by dress reform feminists who defied women’s confinement in the private sphere, threats to sexual morality posed by cross-dressing “degenerates” who caroused in bars along the Barbary Coast, and threats to the cultural imperative of gender legibility posed by people with a gender identity that diverged from their legal sex. These dangers were more than figments of lawmakers’ imaginations; they were real disruptions to an unequal power structure that positioned the respectable family as the basis of social order and systematically reserved economic, political, and social resources for White normatively gendered men. (p. 65)

Sears’ analysis appears plausible, but was crossdressing really a disruption “to an unequal power structure that placed the respectable family as the basis of social order …”? People have been crossdressing since the Stone Age. Would males really lose their dominant roles in society if males and females were allowed to crossdress? Sears notes that during the Gold Rush years, many people did openly crossdress, but males did not suffer any diminution in power or status on account of it. Was there really a cultural imperative of “gender legibility”? What did that amount to? Who insisted on it? Only the police and the civil authorities. It wasn’t the “culture.” Crossdressing did not threaten the monogamous heterosexual family. Those families could go on their way unmolested. Crossdressers did not set themselves in outspoken opposition to the family nor did they proselytize. Crossdressing represented an alternative to that prevailing lifestyle, but a rather insignificant one. One the other hand it was associated with other snubs to that lifestyle, namely, the brothel culture, which was a more formidable challenge to monogamy and heterosexual marriage and which the champions of monogamy and marriage who promoted these laws were trying to stamp out. Sears is correct that it came down to the promotion of monogamy and heterosexual marriage that crossdressing people grated against. They represented examples of people who lived and thought differently and held to a different value system than the one deemed desirable by the civil authorities. But were they the ones who were really threatening monogamy and heterosexual marriage? They were scapegoats, for sure. It is certainly true that traditional marriage and monogamy were being undermined in the mid-nineteenth century on a broad scale and people could see it and feel it, and that trend has continued throughout the twentieth century to this day.

Sears does not emphasize the industrial revolution as a relevant factor that weighed in on the restriction of crossdressing, but it was the macro forces of industrialization and urbanization that played the predominant role in undermining the traditional superior role of males in society, which, in turn, enabled women to push for greater rights and greater social opportunities that were formerly the exclusive preserve of men. These developments loosened the structured agricultural family, and the newfound economic and sexual freedom of young women in large cities enabled the growth of the brothel culture and obviated the need for young women (and men) to marry. These trends were
creating the anxiety that manifested itself as bigotry against a whole range of people perceived as deviants. Sears does not talk much about these large societal trends that in my view were the real engine of the changes and the anxieties that that hitched up with the religious affirmations of virtue and purity to array against the already weak, marginal crossdresser.

Policing such threats through cross-dressing law was not an irrational quirk of government but reflected a concerted effort to protect and consolidate gender divisions of power. (p. 66)

But why was this concerted effort brought to bear on crossdressing, when it posed no real threat to the “gendered divisions of power”? Sears has not shown what the “threat” is that crossdressing poses. There was difference, yes. But was the antagonism real or imagined?

The anti-crossdressing laws were a displacement, a scapegoat, a misdirection of energy and effort that did nothing to bolster heterosexual marriage or monogamy or the changing roles of men and women in society. It was indeed an “irrational quirk,” just as laws against “child molesters” and laws purporting to protect children from “lewd acts” are an irrational quirk today. Many children have sexual experiences of many kinds, yet very few are harmed by them. Still, the laws against such activity are severe and the punishments are far out of proportion to the imagined threat. The real threat to children today is that American society has evolved in such a way that caring for, raising, and educating children is prohibitively expensive for the vast majority of people. Having a child today means incurring onerous, lifelong debt and working hard past one’s prime. Laws and the structure of our modern economy render children economically unproductive until well into their 20s. This gives rise to great anxiety in parents and necessitates protecting children at all costs from a wide array of threats both real and imagined. Our Christian ideology tends to see sex as the fundamental evil in life, so it becomes a convenient focus, but our laws against excluding children from sex do not protect children any more than the nineteenth-century laws against crossdressing protected the family or “gendered divisions of power.” Anti-crossdressing laws are a paradigmatic example of how sex is blamed and sexual minorities become the targets of legal sanctions in response to a whole host of ills for which they bear only the most minimal, if any, responsibility.

In Chapter 2 Sears describes the political takeover of San Francisco by Protestant vigilantes in the mid-1850s. They were a strongly reactionary group bent on expunging corruption and vice from the public life of the city. They were the ones who passed the crossdressing laws, tried to close the brothels, and sought to exclude and suppress the Chinese in every way that they could. The laws against crossdressing were part of a broad campaign of bigotry against a whole array of minority groups including prostitutes, the Chinese, the disabled, and the poor. They were an attempt to purge public space of anything the white middle-class majority deemed distasteful.

Psychologically, bigotry is an expression of extreme underlying narcissistic vulnerability. What does that mean? It means that a person’s identity, their sense of themselves, their sense of who they are, and their place in the social environment, is very insecurely established; a palpable sense of vulnerability creates a need for constant buttressing through identification with those who mirror the anxieties that dominate their inner experience. This is why bigotry is always learned and socially reinforced. Bigotry does not exist in isolation. It may be marginalized. It may even be relatively invisible within the larger social context, but bigotry is a collective response to profound insecurity. Bigots, having been disenfranchised and alienated from the mainstream of society, desperately want to be part of a group, however small, and they want strong leaders
who make them feel strong. The anxiety empowers rage, which is directed outward and becomes projected onto small, relatively weak groups within the society that can then be justifiably hated and persecuted. This kind of prejudice is not well thought out or well reasoned. It is visceral and primitive. You cannot reason it away. It has to be confronted and suppressed by a larger external power. Bigots understand power, and they respond to displays of strength. The problem is that it is easier to mobilize institutional power to persecute a minority group than it is to protect the rights of everyone. When you have a sizeable group within society who feels alienated and insecure about their place, where large numbers of people feel threatened in the foundations of their social existence, it is prime soil in which bigotry can flourish. This was happening in post–Gold Rush San Francisco.

On page 79 Sears reproduces four photographs of Jenny O. from Magnus Hirschfeld’s *The Transvestites* (1912). She comments:

> At first glance Hirschfeld’s photographs seem to stand in stark contrast with cross-dressing law, spotlighting the problem bodies that the law sought to conceal. On closer examination, however, sexology’s displays and the law’s proscriptions come together as related techniques of marginalization that identified, catalogued, and exposed the cross-dressing criminal. In part this is because Hirschfeld’s photographs had their own normalizing dynamic, graphically illustrating the objectification that cross-dressing subjects endured, even from their sworn supporters. It is also because cross-dressing law operated through comparable strategies of looking and display, amplifying the visibility of cross-dressing bodies as troubling nuisances and fascinating freaks. (p. 80)

I agree with Sears that Hirschfeld’s photographs represent an exercise in morbid fascination that tends to emphasize the freakishness and “otherness” of the crossdresser. The photographs could have been done differently and more sympathetically, but Hirschfeld is trying to be an “objective” medical practitioner devoid of emotional interest. I think Hirschfeld’s photographs do illustrate the fluidity of gender, how the same person can manifest a manifold of gender presentations and create varying public perceptions. They call the “objective truth” of gender into question. They act as a criticism of any attempt to legislate gender into a rigid dichotomy or, alternatively, as an illustration of the perversity that the law seeks to restrict. The judgment one makes on the pictures depends on one’s sympathy for human diversity and one’s tolerance for “otherness.” It is related to the topic she takes up in Chapter 4, which documents the contrast between the intolerance of crossdressing as a lifestyle, or as a personal identity, and the fascination and embrace of crossdressing as freakish entertainment in vaudeville and dime museum venues.

> … the relationship between cross-dressing law and freak-show entertainment was complex. At first glance they appeared to operate through very different logics. The law imprisoned, the freak show displayed, the law administered a fine as punishment, the freak show offered a salary as inducement; the law disapproved and condemned its subject’s deviance, the freak show was fascinated by and exaggerated and increased it. Additionally, unlike the female and male impersonators on the vaudeville stage, the freak-show performer and the cross-dressing criminal were not separated by real or imagined social distance; they were the very same person. (p. 105)

The freak show confirmed the “otherness” and marginalization of the crossdresser as one who might be viewed in a stage performance or an exhibit in a museum of freaks, not someone who might live next door to you unbeknownst. Thus the freak show was legal because it affirmed the “otherness” of the crossdresser. Sears provides examples of crossdressing individuals who were legitimate and accepted as freaks in public display
and arrested on the street for crossdressing in their private life. Despite the fact that the
freak show is an exploitative and degrading presentation of the crossdresser, there is an
admixture of something positive in it in that it does broaden the awareness of the public
and expose them to the existence of minorities of deviants and alternatives to the
dominant norms to which they are accustomed. Raising awareness is good, and the
freak show environment made the crossdresser a benign, harmless, pathetic anomaly—but
not a threat. Removing the perception of threat diminishes the need for legal
persecution. However, it does not lead to sympathetic understanding or acceptance.

The final chapter deals with the entanglement of crossdressing behavior and
U.S. immigration law, particularly regarding Chinese immigration, and the efforts to
limit and exclude Chinese immigrants that began in 1875 and intensified with the
Chinese Exclusion Act of 1882, lasting all the way until its repeal in 1943. Here
crossdressing as an expression of personal psychology and character becomes obscured by its
employment as a disguise and a ruse to facilitate immigration, both legal and illegal. It is
influenced by immigration laws, economic forces in both China and the United States
that made immigration attractive, a general growth in sexual suppression by the United
States government in the late nineteenth and early twentieth centuries, and the presence
and efficacy of organized crime syndicates facilitating illegal immigration. Being psycho-
logically minded, I regard all of these larger social and economic forces as contaminants
that obfuscate the characterological wellsprings of crossdressing. But Sears’ interest is in
how the cultural bias against crossdressing was used as an expression of racial prejudice
and as a way of institutionalizing social exclusions by government agencies. It corre-
sponds to the way the bias against homosexuality was used to exclude people from jobs
and positions in government and, until recently, the military. Biases against sexual
preferences, gender identification, and variant expressions of sexuality are pernicious
because they become tools in the hands of the authorities to discriminate against and
suppress minority groups for social, economic, and political reasons that go far beyond
the sexual behaviors that are the ostensive justification for the persecution. They serve as
an example of governmental power run amok and its unscrupulous application to
political and social agendas far afield of the original object of the anti-sex law.

In the conclusion, Sears points out that there was resistance to the policing of gender
and dress. Many of those arrested for crossdressing protested their detention and
contested the laws that were being used against them at their trials. She does not address
the demise of crossdressing laws and how they came to be repealed or overturned and
fell into disuse. I felt that this was a deficiency in the book. Capers offers a brief summary
in his article:

Of course, official prohibitions against cross dressing have, for the most part, gone the way
of other sumptuary laws. Though in Mayes v. Texas, the Supreme Court refused to hear an
appeal from a decision upholding the constitutionality of a “disguise ordinance,” lower
courts had no such qualms. These courts began to invalidate such statutes relying not
on Mayes, but on cases such as Papachristou v. City of Jacksonville, in which the Court
invalidated an ordinance that criminalized “vagrancy” as unconstitutionally vague. In City of
Columbus v. Rogers, for example, the Ohio Supreme Court found an ordinance prohibiting
“dress not belonging to his or her sex” to be too vague given current dress habits. Similar
challenges resulted in ordinances being struck down in Chicago, Cincinnati, Detroit, Fort
Worth, Miami Beach, St. Louis, and other jurisdictions. (Capers, 2008, p. 10)

The relevance of this study of crossdressing laws to contemporary life is that it
underlines what many scholars have been arguing for some time, namely, that gender
is a cultural and psychological construct rather than a biological absolute, and attempts
to legislate and enforce a particular formulation of gender norm on an entire society will have deleterious effects far beyond the intent of the law. It further serves as an illustration how minorities, whether racial, religious, or sexual, can become the scapegoats for much larger and less tangible social processes that are threatening the fundamental security and way of life of large swaths of the population in a society. *Arresting Dress* makes a solid contribution to that very worthy effort and is an enjoyable, interesting read.

**Reference**


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