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## The Limits of Being Transgendered

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# The Limits of Being Transgendered

## **Abstract**

Society's construction of what is acceptable and what is the norm excludes those struggling with the issue of gender identity. Stigmatization of the trans-community has led to a number of issues that have ostracized this group of individuals and created a divide within society. Judgments, misconduct, and assumptions about transgendered and transsexual individuals come as a result of a lack of awareness and knowledge regarding this misrepresented group of people. The unfortunate truth of the matter is that there is no quick fix to the issue at hand. Educating society, changes in policy and the practicing of social acceptance is a slow, yet necessary beginning in the process towards equality and justice for all.

## **Keywords**

transgender, gender identity

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### **Abstract**

Society's construction of what is acceptable and what is the norm excludes those struggling with the issue of gender identity. Stigmatization of the trans-community has led to a number of issues that have ostracized this group of individuals and created a divide within society. Judgments, misconduct, and assumptions about transgendered and transsexual individuals come as a result of a lack of awareness and knowledge regarding this misrepresented group of people. The unfortunate truth of the matter is that there is no quick fix to the issue at hand. Educating society, changes in policy and the practicing of social acceptance is a slow, yet necessary beginning in the process towards equality and justice for all.

### **The Limits of Being Transgendered**

Transgender people have experienced widespread criticism and have been deemed the most visible minority group in regards to individuals practicing same-sex sexual interactions. Only in recent years have sexual orientation and gender identity been regarded as categories separate from one another. A plethora of examples of the overlap of these two groups is offered throughout history beginning in the mid-19th century with a man named Ulrichs. He formed the hypothesis that some men were welcomed into this world biologically male but with the spirit of

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a woman trapped within them. It was his belief that these individuals constituted a third sex, which he proceeded to call urnings. Though historians with backgrounds in the study of homosexuality routinely refer to Ulrichs's findings, they regard these people as homosexual men. However, 20th century theories on gender identity bear a closer relation to urnings than homosexuals. Additionally, Ulrichs's findings reinforce longstanding gender beliefs and strict culturally defined ideas about the characteristics of males and females (Drescher, 2010).

Homosexual- and transgender-based scrutiny began as early as the 19th century. Sigmund Freud, the father of psychoanalysis, helped shape the minds of the 20th century. In Freud's Three Essays on the Theory of Sexuality, he presents the normalcy of heterosexuality and a rigid idea of the social/sexual organization and who fits the description of "normal" (Lloyd, 2005). It was not until the 1920s that the distinction between homosexuality and transsexualism was made (Drescher, 2010). The 1920s were a major turning point for transgendered individuals. By this time, European physicians had started experimenting with sex reassignment surgery. The surgical construction of gender seized the attention of the public when, in 1952, George Jorgensen traveled to Denmark and returned to the United States as Christine Jorgensen, a trans-female. The media coverage associated with Jorgensen's surgery led to widespread public, as well as medical, and psychiatric awareness of the scientific concept that would later be known as gender identity (Drescher, 2010). Jorgensen's story and gender transformation made a huge impact on society, and she became a role model for individuals of different gender variances. If not for Christine Jorgensen, the emergence of transgender and transsexual individuals may have been significantly delayed causing many

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people a great deal of agony by masking their identity. Unfortunately, the publicity of gender transformation was not joined by public acceptance of transgender and transsexuals, and the issues associated with gender-variant individuals continue to devour the lives of many.

### **Literature Review**

Gender identity refers to an individual's self-expression of masculinity or femininity (White & Goldberg, 2006). While an individual may feel as though he or she identifies with a certain gender, this identification may be contradictory to their physiological or sexual features. Every human being has the right to express him or herself and to have their gender identities publicly recognized and respected; however, this is not always the case. Though Americans put emphasis on the right to free speech granted by the First Amendment, society fails to uphold an individual's right to exercise free speech through his or her gender identification by discriminating and ostracizing those who do (White & Goldberg, 2006). By presenting cases in which individuals have been ostracized due to their gender identity and how social inequality gravely impacts the transsexual community, the importance of this critical issue regarding prejudice against trans-individuals will be brought to light. Changes in policies providing protection and security for the transsexual community need to be implemented in order to ensure the safety of those caught in a controversial web of inequality.

Society has constructed gender norms that are considered to be either biological or natural and applied them to all people regardless of circumstances (White & Goldberg, 2006). From early childhood, children are expected to differentiate between

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male and female behavior and exhibit socially acceptable gendered interests, primarily in child's play (Marksamer, 2008). For example, parents find it socially fit for their sons to play with trucks and action figures, while girls play with dolls. When a child crosses the invisible gender barrier, parents often react by becoming ashamed, concerned, or upset and may attempt to shape their child's ways of expression. In some cases, parents react violently by physically abusing their children, kicking their child out, or seeking therapeutic resolutions (Marksamer, 2008). As a result of abusive and neglectful peers, parental figures, and communities, transgendered youth run away and become homeless. Due to the lack of understanding of transgendered individuals, homeless shelters are inadequately equipped to provide assistance. Homeless shelters are often gender segregated and are neither welcoming nor safe for transgender youth. Like many impoverished persons, transgendered homeless youth are at a heightened risk for arrest due to criminal activity. Lacking income, they turn to drug dealing, theft, and sexual exploitation to get by. Police officers often contribute to the problem by targeting these specific people because of their unfavorable status (Marksamer, 2008).

Federal laws have yet to provide adequate protection for transgendered individuals, leaving them at risk of becoming victims of hate crimes. The Hate Crime Statistics Act of 1990 is the system that the United States uses to track all reported hate-based violence. Although there is a system in place, crimes specifically targeting transgendered and transsexual individuals are not included in those that are protected federally (Stotzer, 2008). Knowledge regarding the extent of cruelty against transgendered people is minimal. The use of usual reporting sources, such as police and emergency medical services, are not

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widely trusted amongst the transgendered community due to the history of violence. A large number of transgendered survivors were previously acquainted with the perpetrator, unlike other hate crimes where the assailant is usually a stranger. Hate-based violence targeting gender identity tends to have specific transphobic elements, such as the mutilation of genitalia, the chest, or hair. Despite the circumstances, many transgendered people are reluctant to seek help due to the traumatic historical background and discrimination by health and service providers. Those who do seek help face numerous hurdles in the process (White & Goldberg, 2006). Because hate crimes against transgendered people are significantly under reported, society is unaware of the damages done to the victims. In order to deter cruelty against the transgendered community, every state should enact laws to protect people of all gender identities. Unfortunately, only ten states, including California and Washington D.C., have gender identity-based protection laws (Stotzer, 2008).

The story of Brandon Teena presents a tragic example of how transgender individuals are treated in the justice system. Teena was a female-to-male transgendered person who was raped and murdered in 1993 in Falls City, Nebraska because of the gender with which Teena identified. When it was discovered that Teena was biologically female, John Lotter and Marvin Nissen, her male acquaintances, began harassing her. The men asserted male dominance by forcible exposing her true gender identity and by carving the words “lying bitch” into her body. The discriminatory actions committed against Teena exemplify a typical, but not un-heard of, hate crime. On December 24, 1993, Lotter and Nissen raped and brutally assaulted Teena in a parking lot. After the rape, the two men continued to physically

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abuse Teena and threatened to kill Teena if she were ever to disclose the incident (Eileraas, 2002).

The following morning, Teena presented a three-page written document to authorities describing the incident. Charles Laux, one of the deputies, proceeded to verbally harass Teena by asking lewd and unnecessary questions regarding her sexuality. As a result of his discriminatory treatment, Teena cancelled all further follow-up appointments with law enforcement officials (Eileraas, 2002). The justice system's negative response to Teena's cry for help demonstrates the main cause behind the poor transgendered hate crime report rates. Responses similar to these further discourage victims from reporting potentially life-threatening incidents.

On December 31, 1993, Latter and Nissem followed through with their promise of permanently silencing Teena. Sheriff Laux, though thoroughly informed of the threats to Teena, did nothing to prevent further criminal acts from occurring (Eileraas, 2002). Although this murder was the result of a series of hate crimes, Sheriff Laux and both of the perpetrators had a disabling lack of understanding for the stereotypical presumption that gender identity is a mental disorder that can be fixed.

Introducing the topic of gender identity early in schools and educating students would help increase awareness and understanding of an issue that has been hidden behind closed doors. Over the course of the last decade, acceptance of gay, lesbian, and bisexual individuals has increased. Transgendered and transsexual individuals have been categorized in the gay and lesbian group. However, there is a lack of understanding of the differences between the two minority groups. In addition to informing people, implementing federal policies and state laws in all 50 states would provide the transgender community with

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social justice and legal protection. If laws were put in place in 1993, when Brandon Teena presented her case to authorities, her life may have been spared. Spreading awareness about the outcome of the Brandon Teena case and educating individuals about the critical importance of how harshly transgendered people are being treated will help change the discriminatory perceptions of the trans-community.

### **Policy Changes/Future Research Needs**

Over the past decade, issues regarding gender identity have become increasingly more visible in both daily life and public affairs. However, despite the increase in the visibility of transgendered individuals, discrimination and hate-based violence directly related to the transgender community continues to be a major problem. Governmental policies remain unable to protect these people adequately against social inequality and the disproportionate amounts of violence aimed towards transgender communities (Taylor, 2007). In an effort to reconstruct the public view of transgendered people and drastically increase public acceptance, policies must be transformed. However, this begins with the perception and understanding of what defines a person as transgendered.

Lack of education is the primary cause of discrimination and social inequality associated with minority groups. At birth, infants are identified as either male or female depending on their sexual organs. Additionally, secondary sexual characteristics help define one's sex. However, gender identity is individually defined from the inside out. Laws and the public fail to acknowledge that transgendered individuals do not simply choose to identify as the opposite sex; they believe that their mind and their body do not match up (Taylor, 2007). Once

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people understand the difference between sexual orientation and gender identity, the confusion associated with transgendered individuals will likely begin to diminish.

Increased awareness and public knowledge of transgender identity is just a part of the problem. Public policy, laws, and governmental action and reaction to transgender communities are also in need of widespread changes. Marriage law is one of the many laws that discriminate against transgendered individuals. As of 2006, with the exception of Massachusetts, the only legal marriages permitted were those between individuals of the opposite sex. Preoperative male-to-female transsexuals are not legally able to marry a man. However, many of the laws prohibiting transsexuals to wed falls under the forbiddance of same-sex marriages and how the law defines a person's sex. To a post-operative male-to-female transsexual and a pre-operative male-to-female transgender, both are physically and mentally female. Legally forbidding them to wed their loved one is socially unjust and violates one's human rights. Marriage law, however, presents transsexuals with far more scrutiny and obstacles, which vary from state to state (Taylor, 2007).

In addition to marriage laws, transgendered and transsexual individuals face numerous forms of discrimination in regards to health care policies, employment, and police and medical services (Taylor, 2007). Health care policies need to be reformed to be inclusive of transsexuals. These policies have to reflect that unconventional gender identity is a physical disability rather than a mental one. Changing this policy will dramatically affect transgendered and pre-operative transsexual individuals. Significant reduction in the cost of sex-change operations and enabling health insurance providers to provide financial assistance to transgendered men and women would alleviate the

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majority of the problems that this group experiences. In regards to employment anti-discrimination policy changes, the Employment Non-Discrimination Act (“ENDA”) needs to be reformed to include transgender individuals adequately. Reforming this act would entail dismantling the binary beliefs of sex and gender and providing substantial employment protection to transgender and transsexual individuals. Providing trans-inclusion in the ENDA would help provide a sense of financial and job security to transgendered communities, as well as assist in reducing the social inequalities associated with gender identity in the work place (Gilden, 2008).

Lastly, enacting anti-discriminatory policies and providing education to police officers and emergency medical staff about gender identity will help reduce hate crimes and provide protection for those experiencing hate-based violence. It would also provide a sense of security and trust when reaching out to officials for assistance, increasing the amount of incidents reported by victims of gender identity and hate-based violence. The understanding, acceptance, and willingness to be of service by authorities and medical staff could be the quintessential cornerstone of the reduction of hate crimes related to the transgender community. Not only would it increase awareness, but it would also help deter perpetrators.

### **Conclusion**

There is no overnight solution to create equality and acceptance of transgender and transsexual men and women. Social inequality and discrimination towards these individuals has been a recurring issue for many years. Brandon Teena’s story should further the cause for equality of transgendered individuals, but society refuses to see what hides beneath one’s

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skin. Further research regarding policy changes and other reforms needs to occur to begin this process for it to be a widespread success. With these reformations, the awareness and acceptance of transgendered individuals will increase. In an era of acceptance, where gays and lesbians have been received generally positively, the transsexual and transgender community remains hindered by society's rampant discrimination, and no particular group experiences more discrimination in modern America than the transgender community.

### **References**

Drescher. (2006). Queer diagnoses: Parallels and contrasts in the history of homosexuality, gender variance, and the Diagnostic and Statistical Manual. *Archives of Sexual Behavior*, 39(2), 427-460.

Eileraas, K. (2002). The Brandon Teena story: Re-thinking the body, gender identity, and violence. *Gender Watch*, 16.

Gilden. (2008). Toward a more transformative approach. The limits of transgender formal equality. *Berkeley Journal of Gender, Law & Justice*.

Lloyd, A. (2005). Defining the human: Are transgender people strangers to the law? *Berkeley Journal of Gender, Law & Justice*, 20, 150-195.

Marksamer, J. (2008). And by the way, do you know he thinks he's a girl: The failures of law, policy and legal representation for transgender youth in juvenile delinquency courts. *Sexuality Research & Social Policy*, 5(1), 72-92.

Stotzer, R. (2008). Gender identity and hate crimes: Violence against transgender people in Los Angeles County. *Sexuality Research & Social Policy*, 5(1), 43-52.

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Taylor. (2007). Transgender identities and public policy in the United States: The relevance for public administration. *Administration & Society* 39(7), 833-856.

Vitulli, E. (2010). A defining moment in civil rights history: The employment non discrimination act, trans-inclusion, and homonormativity. *Sexuality Research & Social Policy*, 7(3), 155–167.

White, C., & Goldberg, J. (2006). Expanding our understanding of gendered violence: Violence against trans people and their loved ones. *Gender Watch*, 25.

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