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The David Bohnett Foundation, which has been the Journal's long standing supporter and champion of LGBTQ causes across the US. Their help has contributed to the mission of the Journal to promote, disseminate, and foster public policy in the field.

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Finally, thank you to those who support the global cause of LGBTQ rights in ways large and small—not only in speaking out when those rights are threatened and standing up when democrats and autocrats try to marginalize and delegitimize our existence, but also in reaching out and reaching across all ideological lines and having the tough conversations to change hearts and minds that will someday pay invaluable dividends to our collective social, political, and legal progress.

LETTER FROM THE EDITOR

Dear Readers,

Last year, upon the inauguration of the new president, one of my mentors made the prediction that reversal of LGBTQ rights would happen not on the national stage but in state and local contexts. While this has been only partially true, it has become an inspiration for the content of the Journal's eighth volume.

In the 24-hour news cycle, it is a natural tendency to turn to the changes which affect the largest groups of people. But I see it as the mission of the LGBTQ Policy Journal to carve out a space for us to discuss and debate policy issues that affect the community. In fact, with the Journal we are given a unique opportunity as the only such publication in the country. This brings the responsibility to showcase policy lessons, which guide and warrant caution; to illuminate common struggles but question monolithic perceptions of LGBTQ communities; and to inspire inclusive and respectful public policy debate, a mission all publications should espouse.

The eighth volume of the Journal then explores the distinctive meanings and battles LGBTQ rights take on in different contexts.

The Trans Labor Quota Law, unique on a global scale yet rooted in the specific Argentine context, illuminates how trans communities can mobilize and get their message across. Lessons on how legislation may be a double-edged sword are further explored in the analysis of two Indian laws criminalizing homosexuality and granting constitutional rights to transgender individuals respectively. These court cases showcase how introduction of new laws may add momentum to community organizing or provoke backlash, resulting in a curtailment of rights. Further, we observe how legal conceptions of gender identity vary in three countries, discussing the need for gender markers at all.

As we ask ourselves more and more often about the responsibilities of large corporations towards our society, we raise the same questions with regards to the LGBTQ community and employees. Why and how can corporations be good champions, and how does that translate to LGBTQ employees who find themselves covering their sexual orientation or gender identity?

The Journal also takes pride in presenting innovative research design and new intersectional analyses. A prime example is the presented World Bank study, which utilizes a mystery shopping technique to investigate discrimination towards gay and lesbian people in the education and housing sectors in Serbia. Elsewhere, the Journal turns to the much discussed issue of police violence and perceptions, addressing the lack of focus on LGBTQ individuals interactions with and perceptions of police. An intersectional analysis on police perception and mental health of LGBTQ persons remains an understudied area for policymakers.

Finally, in the wake of the trans military ban that reverberated throughout 2017, we turn to the military context. As a result of the military ban, the American public has been exposed to courageous stories of trans soldiers and their service to their country. The Journal, in a piece based on archival research, traces the service of queer women through World War II and highlights the Women's Army Corps' understanding of gender and female sexuality.

As I consider the content for this year's volume, the main goal was to present distinctive contexts where change was made or reversed, creating lessons for all of us as policymakers. It is my hope as well that with this content, the Journal celebrates these change-makers: those who march and chant, and those who speak with their opponents at the same table. Going forward, we will need both.

Ewelina Rudnicka
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Gender Identity Laws: The Legal Status of Global Sex/Gender Identity Recognition

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Abstract

Official identity is a powerful thing. More than just feelings, diagnosis, or behaviors, official identity marks the status by which one can gain, or lose, access to certain social rights, responsibilities, and privileges. It can be predicated on biology or on the “determination” of other social identities. And it can serve as the means by which other identities can be determined. The ability to alter one’s official identity is a key mechanism whereby one can essentially change who they are, and what they can become, in the eyes of the law. This paper will examine three principal types of global gender recognition identity laws—those that require official approval by “experts,” those that provide options for a third gender, and those that allow for self-declaration. Case studies will be examined of laws in the United Kingdom, Nepal, and Argentina respectively to demonstrate the potential benefits and shortcomings of each type of law. The conclusion will consider the potential ramifications of removing gender as an official identity marker entirely, a move now considered by some to be the end result or goal of many of these laws.

Bio

J. Michael Ryan is currently a researcher for the TRANSRIGHTS Project at The University of Lisbon (Portugal) funded by the European Research Council. He received his PhD in Sociology from the University of Maryland (United States). He has previously taught courses at The American University in Cairo (Egypt), Facultad Latinoamericana de Ciencias Sociales (FLACSO) in Quito, Ecuador and the University of Maryland. Before returning to academia, Dr. Ryan worked as a research methodologist at the National Center for Health Statistics in Washington, DC. He is the editor of *Core Concepts in Sociology* (2018) and co-editor of *Gender in the Contemporary Middle East* (with Helen Rizzo, 2018), *Sexualities in the Contemporary Middle East* (with Helen Rizzo, 2018), *The Wiley-Blackwell Encyclopedia of Social Theory* (with Bryan Turner et al. 2018), *The Wiley-Blackwell Encyclopedia of Consumption and Consumer Studies* (with Daniel T. Cook, 2015), and *The Concise Encyclopedia of Sociology* (with George Ritzer, 2011). He has also served as advisory editor on *The Wiley-Blackwell Encyclopedia of Gender and Sexuality Studies*. Dr. Ryan has published on issues related to gender, sexuality, consumer culture, and research methodology.

Official gender identity is a powerful thing. More than just feelings, diagnosis, or behaviors, official identity marks the status by which one can gain, or lose, access to certain social rights, responsibilities, and privileges. It can be predicated on biology or on the “determination” of other social identities. And it can serve as the means by which other identities can be determined. The ability to alter one’s official identity is a key mechanism whereby one can essentially change who they are, and what they can become, in the eyes of the law.

The Yogyakarta Principles, which have become the “standard-setting document” cited by judges, legislators, and government officials around the world on issues related to sexual orientation and gender identity, state that the ability to be legally recognized as one’s preferred gender is a fundamental human right. Principle 3 states that “each person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom” and that “no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation, or hormonal therapy, as a requirement for legal recognition of their gender identity.”² Additionally, The World Professional Association for Transgender Health (WPATH) issued a statement in November 2017 recognizing that,

For optimal physical and mental health, persons must be able to freely express their gender identity, whether or not that identity conforms to the expectations of others. WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety.³

A number of international organizations have also issued official statements regarding the rights of trans people and gender identity. For example, The United Nations Human Rights Committee has urged states to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates,” citing the rights to privacy, equality, and recognition before the law.⁴ Additionally, in 2011 the UN High Commissioner for Human Rights recommended that states “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”⁵ A report by the United Nations Development Programme has also called for action to “build awareness about the importance of the right to legal gender recognition, including its links to other rights.”⁶ And the World Health Organization’s 11th International Classification of Diseases, due out in 2018, will remove all trans-related diagnoses from the mental health chapter. Instead they will be moved to a chapter titled “Conditions Related to Sexual Health” and will include the diagnoses “gender incongruence in adolescence/adulthood” and “gender incongruence in childhood.”⁷

On a regional level, in 2002 The European Court of Human Rights ruled in the case of *Goodwin v. United Kingdom* that Council of Europe member states must provide for the possibility of legal gender recognition based on the “right to private and family life” delineated in Article 8 of the European Convention on Human Rights. And in 2015, the Parliamentary Assembly of the Council of Europe adopted a resolution to “adopt transparent and accessible legal procedure of recognition of gender self-identity without further restrictions” and “to consider the inclusion of the third gender option in gender identity documents for those seeking such a status.”⁸

The ability to be legally recognized by your self-determined gender identity is important for many reasons. As M. Dru Levasseur noted, “Justice for transgender people is linked to the validation of self-identity—you are who you know yourself to be.”⁹ A recent European Union (EU) wide survey found that 73 percent of trans-identified respondents expressed the belief that easier gender recognition procedures would allow them to live more comfortably as transgender people.¹⁰ Indeed, one of the complications faced by many trans¹¹ individuals is the difficulty of having conflicting documentation regarding gender identity. This can be the case when specific documents conflict (for example, being recognized as female on a passport but as male on a birth certificate), or when one’s self-presentation does not match the expected presentation implied by a specific document (for example, presenting as female but having documentation indicating status as male). The right to coherent, legal gender identity recognition, however, is not one that is, as of yet, acknowledged by law in many countries around the world. Just as noteworthy is the fact that, in many places where one can be legally recognized as their self-identified gender, there are often considerable costs for obtaining such recognition (e.g., financial and psychological costs, sterilization, divorce, sworn oaths, medical diagnosis, etc.).

Public opinion in favor of allowing individuals the right to change their legal gender identity is following suit with the law. Even as far back as 2002, the statement of the European Court of Human Rights in its *Goodwin v. UK* decision—that there was “uncontested evidence of a continuing international trend in favour of increased social acceptance” of trans people and legal gender recognition—would become the impetus for the UK’s Gender Recognition Act 2004 (see more below).¹² Further, a 2015 European Commission survey found that 63 percent of respondents in the EU thought trans individuals should be able to change

their official documents to match their gender identity.¹³ And according to a November 2017 survey by Pew Research Center, about 44 percent of Americans believe that “someone can be a man or a woman even if that is different from the sex they were assigned at birth.”¹⁴ As Van den Brink et al. have noted, “the impossibility [of changing] one’s legal sex as such is increasingly regarded as old-fashioned and as being in conflict with human dignity.”¹⁵

Sweden became in 1972 the first country in the world to allow individuals to change their legal gender identity marker. Since then, a growing number of legal mandates, combined with the hard work of activists and increasing public support, has spurred even more countries around the world to enact sex/gender identity recognition laws that allow either a) for the registration of intersex individuals, b) for the recognition of third, or nonbinary, genders, c) for individuals to “alter” their official sex/gender identity from that medically assigned at birth, or d) some combination of the above. The implications of these laws are quite diverse and highly context specific. Perhaps more importantly to the individuals living in these jurisdictions, the requirements to be eligible for these new forms of legal recognition are equally as varied, ranging from self-definition to divorce to de facto forced sterilization.

It can be difficult to measure exactly how many countries currently have what might be considered gender-identity-based laws (due, in part, to the varied provisions that could potentially fall under what might be considered such a law). That said, a growing number of countries have laws on the statute books that would generally be accepted as some form of legal provision for allowing a recognition of, or change in, official sex/gender status (among these are Japan, the United Kingdom, Spain, Uruguay, Argentina, Denmark, Malta, Colombia, Ireland, Vietnam, Ecuador, Bolivia, Norway, France, Canada, and Belgium). In addition, many other countries and jurisdictions are

beginning to make some provision for the recognition of a third gender, or of intersex individuals (for example, Nepal, India, Pakistan, Bangladesh, Australia, Canada, Germany, Austria, New Zealand, Thailand, the United Kingdom, and the states of Oregon and California in the United States). There are also other countries that legally recognize post-operative transsexuals but do not recognize transgender individuals (for example, Egypt and Iran). In addition, there are a number of countries where such acts are currently pending approval (Chile, Luxembourg, Brazil, Costa Rica, Peru, and Sweden), more than a dozen others where they are currently being debated, and others (including the United Kingdom and Portugal) where the existing laws are currently under revision to bring them up to improved international standards.

One noteworthy thing about the laws described above is that, unlike what might be considered similarly “progressive” laws related to the rights of women or sexual minorities, these laws are truly global in scope, existing in countries as diverse as Japan, Bolivia, Norway, and Nepal. They can be found in countries that are still considered to have comparatively less “progressive” laws pertaining to women and sexual minorities; in countries that are predominantly Catholic, Muslim, Buddhist, and Hindu; and in both countries that are considered among the most, and those considered the least, economically developed. Unlike other types of laws that share similarities across national lines, gender identity recognition laws have emerged in many countries that do not share a common cultural, religious, ideological, political, economic, or legal background. In fact, very little seems to unite these countries other than the fact that they all have some form of such laws.

This paper examines three principal types of global gender recognition identity laws—those that require official approval by “experts,” those that provide options for a third gender, and those that allow for self-declaration. Case studies will be drawn

from legislative frameworks in the United Kingdom, Nepal, and Argentina respectively to explore the potential benefits and shortcomings of each type of law. The conclusion considers the potential ramifications of removing gender as an official identity marker entirely, a move now considered by some scholars and activists to be the end result or goal of many of these laws.

This paper will only deal with countries where there is a legal or administrative possibility of correcting/changing¹⁶ gender identity, and to do so with laws that allow one to modify their official sex/gender identity without having to undergo surgical intervention. A number of countries allow an individual to change their official sex only after having undergone some kind of biological alteration (usually some form of a gender reassignment surgery). However, this article focuses only on those countries where official identity can be altered without requiring surgical intervention (although surgery is still often seen as a “helpful” prerequisite for approval in many such jurisdictions). It is unfortunate, in the opinion of the author, that the vast majority of countries in the world still have no form of legal recognition in place, even to the extent that being trans is often regarded as a criminal offense with severe legal punishments. That said, it is beyond the scope of this paper to deal with every country in the world; instead, the goal is to present a picture of current global gender recognition identity laws with the supported assumption that such laws are likely to be more, not less, commonplace in the future.

The More Things Change... : Binary Maintenance and the UK Gender Recognition Act 2004

A growing critique of gender identity recognition laws is that many, while a step forward for some members of the trans community—those who qualify under the purview of such laws’ requirements—they represent a further, and continued, marginalization of other trans people. The ar-

gument is that they do so by continuing to enforce heteronormative ideals of a gender binary. In other words, while the laws serve to allow those trans individuals who feel either as a man or a woman to have their self-stated gender recognized, they restrict the options for gender to either male or female. With this in mind, scholars and activists have argued that these laws have had the negative side effect of further codifying heteronormative binary ideals of gender into the law.

The Gender Recognition Act of 2004 (GRA)¹⁷ in the United Kingdom made it possible for individuals to alter their official birth certificates, and to do so without having to undergo surgical interventions, take prescribed hormones, or to make a public announcement of their transition. The GRA created Gender Recognition Panels composed of medical and legal professionals tasked with determining if applicants merit a Gender Recognition Certificate (GRC), essentially a change in their officially recognized gender which also allows for altering birth records. In order to qualify for such a certificate, applicants have to be over 18 years of age, have been medically diagnosed with some kind of gender identity disorder, present evidence that they have lived in their preferred gender for at least two years, and declare that they intend to live in their preferred gender for the rest of their lives. The GRA also requires spousal consent if the individual is in a marriage or civil partnership. Further, the law contains a provision, meant to protect the rights and privacy of those who obtain a GRC, whereby it is illegal for someone to ask for a GRC to verify sex, meaning that individuals need only produce a corrected birth certificate for legal identification as their preferred sex.

The GRA received royal assent in July of 2004 and went into effect in April 2005. After the ruling, a body of research began to emerge examining the GRA's legal implications, including what it meant for understandings of gender and sex in the UK

legal system.¹⁸ At the time of its enactment, the GRA was widely seen as one of the most progressive trans rights laws in the world, in that it did not require surgical interventions or taking prescribed hormones in order to alter official natal biological identity as registered on a birth certificate. This implied that individuals who did not have the desire or the financial resources to undergo bodily modifications could still seek an alteration in their official identity. Further, by not requiring such bodily modifications, the GRA became the first gender recognition legislation in the world that did not require de facto sterilization (something previously implied where surgical or hormonal interventions were required).¹⁹

Many celebrated the fact that the GRA seemed to break the ties between biological sex and social gender.²⁰ Indeed, the Act itself uses the language of gender rather than sex defining “acquired gender” as “the gender to which the person has changed” or “the gender in which the person is living.”²¹ That said, many have argued that the GRA also serves to further perpetuate the legal notion of a binary gender order.^{22,23} For example, there is no room in the GRA for the recognition of a third gender, or of intersex individuals. In fact, the GRA only allows one to alter their identity from “one” gender to “the other.” Thus, as Hines has argued, those who “transgress” gender—for example, “Married trans people who chose not to divorce and those who construct gender identities outside the gender binary—remain on the margins of citizenship.”²⁴ In this way, the GRA, while allowing for change on an individual level, still maintains the larger rigid social dichotomy of two, and only two, sexes. As Sandland has noted, “The legal act of recognition of transsexualism can be read as a case study demonstrating the truism that any act of inclusion also excludes.”²⁵

The GRA also falls short of full natal/non-natal gender equality in that it still allows for a number of exceptions to full legal recognition. For example, it includes a right

of conscience for Church of England clergy, allowing them to not perform marriages or other church related services for certain individuals. Similarly, the descent of peerages, which determines how noble titles are inherited within families, remains unchanged. The GRA allows single-sex sports institutions and associations to exclude people whose present gender identity differs from the gender assigned at birth if it is deemed necessary to maintain “fair competition or the safety of the competitors.”²⁶ For non-governmental entities—such as universities—the GRA leaves it up to each entity’s discretion as to whether or not it will alter its official records to reflect changes in an individual’s legal gender identity.

Another drawback of the GRA is that it requires individuals to swear an oath that they intend to live as their “newly” acquired gender for the rest of their lives. Thus, while it is progressive in the sense that it allows individuals to alter their legal identity to reflect who they feel they truly are, it does not allow for gender fluidity and further hinders individuals who might experience multiple changes in gender identity across the life course. It is also seen by many as an unfair burden as few other civil rights, including marriage, require a lifelong commitment before they can be obtained, as Emily Grabham has noted:

Government authorities can cope with people changing other intrinsic aspects of their identity fairly often: they respond to people being born and dying, they respond to changes of address, they respond to people ageing and therefore becoming eligible and ineligible for benefits. They also respond to people changing their marital or civil partnership status, their motor vehicle, their employer (for purposes of tax and national insurance), and their name. Gender transition, in purely administrative terms, is no more of a burden than any other of these life events. The

possibility of gender transition happening more than once is not as much of an administrative problem as the Act would make it seem.”²⁷

Perhaps the most important shortcoming of the GRA is that individuals wishing to alter their official gender identity must still submit themselves to an application process, including approval from a number of outside sources. A recent report by Transgender Europe argues that “it is particularly problematic that a person’s self-determination is limited by depending on a third party’s opinion.”²⁸ For example, for those who are married, spousal consent is required on the basis that the other partner agreed to enter into a particular type of legal union—either same-sex or opposite-sex—and so the alteration of official identity by one partner fundamentally alters the “nature” of the union itself. Further, the medical/psychiatric community must still make a diagnosis of gender dysphoria, thereby maintaining the idea that being trans is an illness and continuing the pathologizing of trans individuals. Additionally, in order to obtain recognition, individuals must go before a panel and plead their case before a panel of so-called experts, rarely their peers, thus leaving the decision as to the legal reflection of their own identity firmly in the hands of others.²⁹

Neither/Or: Adding a Third Gender Option in Nepal

One of the leading complaints about many existing gender identity laws is that they fail to account for individuals who fall outside of a typical heteronormative gender binary. In other words, while they extend rights to some individuals—namely those who see themselves as either male or female—they continue to marginalize others—namely those who see themselves as neither male nor female, or both male and female. The rights of nonbinary individuals, however, are beginning to be recognized as countries like Pakistan, Canada, Australia, New Zea-

land, India, Nepal, and others are allowing for legal identification as third gender. As van den Brink et al. have noted, “The perception of gender identity issues seems to be changing rapidly. Especially the idea that gender identity cannot always be squeezed in one of two legal boxes is gaining ground.”³⁰

There are a range of identities used to describe third gender individuals in Nepal including *methi*, *kothi*, and *hijra*, among others.³¹ The consistency across terms is that they are used to describe individuals who either do not feel their current gender matches that which was assigned to them at birth, or those who do not identify as either male or female. Although falling short of proper conceptualization, third gender can be thought of as an umbrella category used to represent those who many in the West might refer to as transgender. Third gender individuals have historically played a visible role in Nepali society. Bochenek and Knight have argued that,

While thorough academic research on Nepal’s third gender category is lacking, among the explanations for its local cultural relevance are: the historical presence and, thus, contemporary cultural acknowledgement of gender-variant people such as hijras; the local religious traditions containing important third gender (nonmale/female gender performing) characters; and the intense media focus on the violence against gender-variant people as the contemporary sexual and gender minority rights movement emerged in Nepal.³²

The Supreme Court of Nepal’s 2007 *Pant v. Nepal* decision has been hailed by some as “the most far-reaching and progressive SOGI [sexual orientation and gender identity] rights decision in South Asia.”³³ Prior to this decision, both same-sex sexual relations in Nepal and cross-dressing were considered crimes, and there was no legal recognition of third genders. The *Pant*

decision, however, created recognition for a third legal gender, outlawed all discrimination against sexual and gender identity minorities, and ordered significant government action to make sure the decision was enforced. The court also ruled that gender was based on “self-feeling” thereby excluding the necessity of medical, psychiatric, or legal intervention or approval to have one’s gender recognized. The court decision read in part:

If any legal provisions exist that restrict the people of third gender from enjoying fundamental rights and other human rights provided by Part III of the Constitution and international conventions relating to the human rights which Nepal has already ratified and applied as national laws, with their own identity, such provisions shall be considered as arbitrary, unreasonable and discriminatory.³⁴

This right has been further enshrined in Nepal’s new constitution, which guarantees individuals the right to choose their own gender identity. Further, the government has enacted a “National Plan of Action on Human Rights” which includes plans such as “guarantee[ing] the right to dignified life of sexual and gender minorities,” “conduct[ing] awareness programs to eliminate myths and misbeliefs against sexual and gender minorities,” and guaranteeing the right to identify as third gender on all official documents.³⁵ In addition, the official federal census of Nepal became the first in the world to include a third gender category in 2011.

Despite this seeming progress, there have been several issues with implementation of the laws. Bochenek and Knight have noted that “Since the court’s decision, the Government of Nepal has implemented the third gender category in piecemeal but progressive moves. However, full implementation as the court mandated remains far from a reality.”³⁶ In fact, it was not until 2013, a full six years after the court’s decision, that the

first identity cards were issued to individuals requesting a third gender identity. Even since then, there have been numerous complaints of individuals being turned away for discriminatory reasons or bureaucratic and technical inabilities to comply. For example, although the full federal census allowed for registration as a third gender, the more limited and in-depth version of the census still only allowed options for male or female. Further, many Nepalese third gender individuals continue to report high levels of discrimination and violence in society in large. As Boyce and Coyle have noted, “There is dissonance in Nepal between a progressive legislative environment in respect of gender and sexual minority issues and everyday sociocultural ambivalence toward such sexual and gender minority persons.”³⁷ Despite these setbacks, however, the legal situation in societies recognizing a third gender has represented significant progress in destabilizing the global hegemony of a gender binary and in allowing individuals outside of that binary to find representation and recognition.

I am Who I say I am: Gender Self-Declaration in Argentina

Arguably the gold standard in gender identity laws are those which rely purely on self-determination and remove the necessity of medical intervention or approval by a medical professional or judge. These self-determination models are often regarded as falling in line with general human rights laws that guarantee bodily integrity and freedom of personal expression.³⁸ As Romeo has noted,

This conception of gender—a self-determination model—has the potential to provide a broader regime of rights for gender-transgressive people that could encompass the right of any person to have their gender identity recognized, to access safe and appropriate sex-segregated spaces, to receive healthcare related to their gender identity, and to be free from discrimination on these grounds.³⁹

Further, Hutton has noted that “Self-determination is at the heart of the third of the Yogyakarta Principles, ‘the Right to Recognition before the Law.’”⁴⁰ Indeed, Principle Three states that

Everyone has the right to recognition everywhere as a person before the law ... each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom ... no status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity.⁴¹

After years of advocacy by the trans community, the “Ley de Genero” was approved on 8 May 2012 by the Argentine Senate in a unanimous vote of 55-0 (with one abstention) and became the first gender recognition law in the world to allow for self-determination.⁴² Kohler and Ehrt argue that on a global level this law represented “no less than a paradigm shift in Legal Gender Recognition Legislation.”⁴³ Indeed, the law has been hailed by a number of international agencies, including the United Nations, as the standard by which to measure gender identity recognition, and has been used as a model for other countries implementing self-determination laws. To date, six other countries (Malta, Ireland, Denmark, Norway, Sweden, and Belgium) have modeled their own gender identity laws on Argentina’s.

The Ley de Genero (henceforth referred to as the Ley) is considered progressive in that it does not require any bodily modifications—neither surgery nor hormones—nor approval by any medical, psychiatric, or legal professional in order for an individual to request a change in their legal gender. In fact, rather than “applicants,” individuals are now seen as autonomous in their ability to have their gender identity recognized. To date, there have been no refusals and no reported cases of fraud. More than 3,000

individuals made use of the law in its first year alone, with more than 10,000 having done so since then. The only requirements are that individuals be over the age of 18 years (although provisions exist for those under 18—see below) and provide the National Bureau of Vital Statistics with details of their new name and picture to ensure consistent amendment of birth certificate, public records, and a new identity card. All existing legal ties, including marriage and adoption, are unaffected, as the individual's national identity number remains the same. Further, it is illegal to include any mention of a change in the new documents so the individual's right to privacy is also protected.

The Ley also includes a number of other benefits regarded as important for bringing greater equality and ease of access—there is no cost to apply, the process takes only a couple of weeks, and the paperwork is relatively simple, reducing bureaucratic burden. It also includes a provision allowing for access to trans-related health care (and not only gender recognition surgeries) to be covered at full cost under the national Mandatory Medical Plan. In 2015, a subsidiary healthcare policy and practical guidelines on trans specific healthcare were also adopted with the goal of facilitating access and quality.

Another element of the Ley that has been applauded by many in the trans community is the consideration for minors to also be able to access a change in their gender identity. Minors under the age of 18 must follow the same procedure as adults with the requirement that minors have a children's lawyer and make requests through a legal representative. The Ley contains further provisions that even if the legal representative of the minor denies approval, the child may still make a claim to be approved by a judge. In 2013, a six-year-old girl named Lulu made headlines when she became the youngest person at that time to legally change their gender.⁴⁴

In addition to becoming the global gold standard for gender recognition identity

laws, perhaps even more importantly, the Ley has had positive effects for the well-being of trans citizens of Argentina. According to a poll conducted by Ipsos with BuzzFeed News and the UCLA Law School's Williams Institute, 48 percent of Argentinians support allowing individuals to change their legal sex without any restrictions, making it the second highest approval rating of those countries surveyed after Spain.⁴⁵ Research has indicated that trans people are generally reporting positive changes, especially in areas of education, healthcare, employment, safety, and civil rights.⁴⁶ It has also been reported that access to voting without discrimination has meant many trans individuals are now able to safely cast their ballots for the first time.⁴⁷

Conclusion: Does Gender Matter? The Future of Gender Identity Recognition

The Yogyakarta Principles have become a global standard by which many governments are reshaping their legal understandings of gender identity recognition. The newly released Yogyakarta Plus 10 includes Principle 31, which states that adherents shall “Ensure that official identity documents only include personal information that is relevant, reasonable, and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses, and as part of their legal personality.”⁴⁸ Along this line, many have argued that the legal recording of gender should become a thing of the past, especially in situations where such information is neither relevant nor necessary.^{49,50} Christopher Hutton has argued that “If legal sex follows self-definition in terms of gender identity and is fully decoupled from marital or parental status, medical intervention, and social pressure to conform, then it is on the verge of disappearing as a legal status.” Gender, it seems, may be on the brink of no longer mattering, at least in terms of official records.

It should be remembered that gender has not always been a marker of official legal identity. As Hutton has also noted,

Legal sex has no explicit foundation in statute or case law. The registration regimes that arose in the nineteenth century for births, marriages and deaths, the introduction of the passport and other forms of state-sponsored identity, erected a scaffold for the creation of legal sex, without explicitly setting out its biomedical, sociopolitical and legal basis.⁵²

AJ Neuman Wipfler has made similar arguments, noting that the categories of data recorded on birth certificates in the United States “have changed no fewer than twelve times since their inception as identification documents in 1900.”⁵³ One argument for the elimination of sex/gender as an officially registered category, therefore, is precisely the fact that it is a relatively recent category of identification. That said, there are also arguments to be made that although a recent practice, the registration of sex *does* matter, as it has come to be a defining characteristic of contemporary life and one on which a number of social rights, responsibilities, and privileges have come to be predicated.

There is a growing movement to completely eliminate, if not downright abolish, gender as a marker of official identity.^{54,55} Reasons for such elimination include that gender is not something that should be regulated, monitored, or controlled by any external authority; that there is often imprecision of such registration in capturing the “truth” of lived daily experiences; that other supposedly “foundational” indicators—such as disability and religion—are rarely recorded on most documents in most countries; and that the registration of such information can lead to continued and further discrimination of individuals who do not fit neatly into the highly limited identification options available on official documentation.

That said, there remain powerful arguments as to why gender should continue to matter. As Scott has noted,

Categories that may have begun as the artificial inventions of cadastral surveyors, census takers, judges, or police officers can end by becoming categories that organize people’s daily experience precisely because they are embedded in state-created institutions that structure that experience.⁵⁶

This embeddedness in daily life means that the category of gender still matters for many and in many ways. Arguments in favor of retaining gender as a marker of official identity include that it is necessary to record discrimination, especially against gender minorities; gender is often a gatekeeper to other rights—such as marriage, adoption, affirmative action, admission to single-sex social groups and institutions, etc.; the vast majority of individuals do still identify as male or female, so taking away this marker is a case of minority rights encroaching on the rights of the majority; and, an argument put forward by many in the trans community itself, many people have fought for a long time to have their change in gender recognized, thus simply removing gender as a marker undermines the decades of hard work that went into their ability to be recognized in the first place.

The future of gender identity recognition laws will be interesting to watch, especially as the world becomes increasingly globalized and questions of inter-state legal compatibility continue to be foregrounded. Additionally, issues related to refugees, migrants, immigrants, tourists, and others who travel and live outside of their home jurisdictions will no doubt continue to raise questions of the inter-state compatibility of global gender recognition. Further, the role of intersex individuals and activists will no doubt also play a role in the future of global gender identity recognition. Finally, the continued push by international

organizations such as the United Nations, World Health Organization, and others will also help to keep questions of legal gender identity recognition on the agendas of many countries for some time to come. As Neuman Wipfler has noted, “Whatever solution the trans rights movement pursues must ultimately address two somewhat conflicting needs: the need for government recognition and substantiation of gender identity and the need to be free from government prescription of gender identity.”⁵⁷ Regardless of how, and when, gender identity recognition laws are implemented, there seems little doubt that the future belongs to an expanded understanding of gender and increased recognition of those who fall outside the imposed heteronormative gender binary.

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End Notes

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as an imperfect shorthand to refer to individuals who fall outside of the hegemonic heteronormative gender binary, including, but limited to, those who identify as transgender, transsexual, genderqueer, third gender, or gender nonbinary, among many other terms.

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Discrimination against Sexual Minorities in Education and Housing: Evidence from Two Field Experiments in Serbia

Dominik Kohler
World Bank
December 2017

Abstract

Discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) people is widespread, and LGBTI exclusion from economic markets, vital services, and political spaces is entrenched. This is not just a personal problem, it is a development challenge, not only because discrimination is inherently unjust, but also because “*there are substantial costs—social, political, and economic—to not addressing the exclusion of entire groups of people.*”¹ Understanding the barriers LGBTI people face in accessing markets, services, and spaces is important for designing more inclusive policies and programs. This study documents, for the first time, discrimination against LGBTI people in access to education and housing in Serbia, using evidence from field experiments. In Serbia, “feminine boys,” widely perceived as being gay, were at least three times more likely to be refused enrollment in primary schools (15 percent) compared to boys not perceived to be feminine (5 percent). Eighteen percent of same-sex couples were refused apartment rentals by private landlords, while no heterosexual couples were. The research contributes to the growing body of evidence on the economic dimensions of LGBTI discrimination.

Bio

This study is part of a large World Bank LGBTI data collection initiative in the Western Balkans led by Dominik Koehler, Georgia Harley, Nicholas Menzies, and Runyararo Gladys Senderayi. IPSOS Strategic Marketing conducted the field experiments under the leadership of Svetlana Logar. This project could not have been possible without the support from Andrew Park and Andrew Flores from the Williams Institute at UCLA, as well as Dragana Todorovic and Amarildo Fecanji from the LGBTI Equal Rights Association for Western Balkans and Turkey.

Background and Study Objectives

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) people are often victims of violence, inequality, and discrimination. Discrimination on the grounds of sexual orientation, gender identity (SOGI), and sex characteristics has wide-ranging effects on LGBTI people and the societies they live in. When access to markets,

services, and spaces becomes more constrained, jobs are harder to find; education and health services are limited; and political and public engagement is riskier. The effects of discrimination push many LGBTI people into poverty, and it is therefore likely that they are overrepresented among the poor.²

Collecting data on the experiences of LGBTI people is challenging, and, as a result, robust data that quantifies and details the effects of discrimination is missing in most countries, including Serbia. This is primarily because many LGBTI people, especially but not only those who live in developing countries or in countries where discrimination is prevalent, choose to stay under the radar. They hide their LGBTI identity out of fear: fear of rejection and exclusion; fear of harassment; fear of discrimination; and fear of physical violence. Therefore, knowledge about the lived experiences of LGBTI people is limited, especially in contexts where discrimination and exclusion are prevalent. In Serbia, like in many other developing countries, reliable and robust data on the social and economic challenges LGBTI people face is not available, making policy interventions difficult. The World Bank is committed to helping to address this evidence gap by undertaking research and collecting rigorous data. Gathering data on the challenges LGBTI people face is an important first step towards developing sustainable solutions that respond to their challenges and needs.

This report is part of a broader World Bank research initiative: “Understanding the Socio-Economic Dimensions of LGBTI Exclusion in the Western Balkans.” In addition to this report, two large-scale surveys (reports forthcoming) were conducted, reaching over 5,500 LGBTI people in the region.

1. The first survey adapts the 2012 European Union Fundamental Rights Agency’s Survey of LGBT people in the EU and Croatia and applies that methodology in Albania, Bosnia & Herzegovina, Croatia, Kosovo, FYR Macedonia, Montenegro, Serbia, and Slovenia. That adaptation enables generalizable comparisons of the experiences of LGBTI people in the EU Member States with those of LGBTI people in the Western Balkans.
2. The second survey adapts Serbia’s

general welfare survey, the Survey on Income and Living Conditions (SILC), to LGBTI people in Serbia. The adaptation enables the income distribution and social inclusion of LGBTI people to be compared to that of the general population in Serbia.

The current report complements the SILC survey by providing additional qualitative data about the challenges LGBTI people face in two key areas of life: education and housing. Cumulatively, these studies form one of the largest LGBTI data sets outside of the OECD countries. The multifaceted nature of the research initiative helps to better understand the development outcomes for LGBTI people as individuals, in the economy, and in society.

Experimental studies have provided important insights into discrimination based on race, sex, ethnicity, and religious affiliation. These studies have covered a wide range of areas such as access to employment,⁴ housing,⁵ and credit and consumer markets.⁶ Experimental studies have also been used to examine discrimination based on sexual orientation, but focusing more narrowly on access to the labor market in developed countries.⁷ Experimental studies offer a simple and effective way of producing reliable data, especially among less conspicuous and hard-to-reach populations such as LGBTI people. The two experiments outlined in this report build on the prior body of work by looking specifically at discrimination based on sexual orientation in accessing compulsory primary school education and the private rental housing market. These two areas were chosen as they represent important steps in the life cycle of exclusion faced by LGBTI people, and in Serbia they were amenable to the experimental methodology. For the first time, these experiments quantify the extent of discrimination LGBTI people face in accessing education and housing in Serbia: to date, data in both areas has been anecdotal only. A better understanding of this discrimination can help to inform policies

and programs that address the issue, such as introducing, or adjusting, laws and regulations, launching public awareness campaigns, and providing systematic training.

From a legal and policy perspective, Serbia has made good progress in ensuring the protection of the rights of LGBTI people, but in practice, discrimination against and exclusion of LGBTI people remain a problem.⁸ The European Commission confirmed in its 2016 Progress Report, that “the legal and institutional framework for the respect of fundamental rights is in place,” but goes on to highlight the need for sustained efforts to improve the situation of these vulnerable populations.⁹ Many LGBTI people in Serbia report experiencing discrimination in public and private services and economic opportunity, as well as not feeling safe in public spaces.¹⁰ However, there is a lack of robust, quantitative data that clearly shows differential treatment between sexual and gender minorities, and straight and cisgender¹¹ citizens.

The two experiments discussed in this report apply experimental methods to collect reliable information that allows comparisons of outcomes among lesbian and gay people and their heterosexual counterparts. This is done in real-life settings by using the mystery shopper technique.¹² The mystery shopper technique involves the same actors playing different roles (in this case, mothers of feminine boys and non-feminine boys, and lesbian, gay, and straight couples) and approaching the same service providers. The differences in the reactions of the service providers (in this case, schools and landlords) are then measured and attributed to the different identities of the actors, thus isolating the discrimination.

Choosing the Research Areas and Methods

The data collection method, the markets, services, and spaces considered, and the scenarios portrayed were guided by the need to address specific challenges in Serbia. Widespread stigma against LGBTI people

in Serbia means that the open declaration of SOGI status is quite unusual.¹¹ This limits the range of experimental scenarios which would allow collection of data in situations that are natural enough to guarantee data validity, whilst securing the safety and anonymity of all participants. This study focuses on gay and lesbian people, as they are identities an average Serbian citizen is more familiar with as compared to transgender or intersex people.¹⁴ Data were collected via telephone interviews to protect the identity and security of the participants and to eliminate the potential influence of face-to-face contact on the research outcome. This significantly limited the scenarios, services, and markets that could be analyzed in this type of study. For example, social welfare centers, financial institutions, and public health institutions generally required face-to-face contact and were therefore not suitable. Replicating the labor market studies used to show gay and lesbian discrimination in other countries was not viable given the small number of formal job announcements in Serbia. Education and housing were selected as they focus on two key areas that impact the welfare of citizens and data collection under natural conditions was possible without putting participants at risk.

1. Access to Primary School Education for Students Perceived to be Gay

Evidence from many countries illustrates that LGBTI students face discrimination and bullying from teachers, school staff, and their peers.¹⁵ A 2014 UNICEF study showed that homophobic bullying has negative impacts on the students’ attendance and can increase the likelihood of alcohol consumption, depression, and even attempted suicide.¹⁶ This in turn leads to lower learning outcomes and higher drop out or expulsion rates. Poor performance in school reduces opportunities for higher education and access to quality employment. Addressing discrimination against LGBTI students is particularly important considering Sustainable Development Goal 4, under

which Serbia (and all countries) has committed to ensuring inclusive and equitable quality education for all. In Serbia, discrimination based on sexual orientation, gender identity, or being intersex in schools has not been systematically researched. This experiment, therefore, fills an important data gap for policymakers, school leaders, and the LGBTI community.

1.1 Methodology

Experimental Scenario

The experimental scenario was designed to assess if the presence of perceived femininity among 14-year-old boys had an impact on their chances to enroll in the seventh (7th) grade of public primary schools in Serbia.¹⁷ In Serbian culture, men and boys who are perceived to be feminine are commonly assumed to be gay. In contrast, masculine girls or women are not always directly perceived to be lesbian. The inclusion of masculine girls, or any other part of the LGBTI population that the Serbian people are less familiar with, would not only have reduced the naturalness of the experimental scenario but also complicated the interpretation of the results. Notably, it is irrelevant in the scenario whether the boy in question is gay—only that he is perceived in the community to be gay, and may therefore be vulnerable to discrimination.

The schools were contacted by six members of the research team acting as mothers looking to enroll their son in a new school because the family was relocating for employment reasons. At the beginning of the interview, before the school administrator has a chance to make any statement about the availability of places, the mother mentions that the boy is “feminine,” and that his femininity is quite obvious, so she wants to draw the school’s attention to the fact. Primary schools are obliged by the law to enroll students. The telephone conversation was designed based on three assumptions:

1. The femininity of the boy is the only obvious characteristic distinguishing

the potential student which could affect the decision about his admission to school;

2. The mother’s statement about the femininity of her son is very clear and supported by a convincing argument as to why she is mentioning it at all;
3. The conversation should gather information that can be transformed into statistically comparable data.¹⁸

The scenario of the telephone conversation for the control group was the same, except that the boy was not characterized as feminine.

Sampling of Schools

The experiment sampled primary schools located in urban areas of municipalities with at least five primary schools.¹⁹ Smaller municipalities and rural areas were excluded because the experimental scenario would become less realistic. Additionally, municipalities with just one or two schools were excluded because the school might have felt pressured to approve the enrollment of the feminine boy, given that primary education is mandatory in Serbia until the completion of eighth grade.

Out of all eligible schools, 184 were selected from 37 municipalities using standard random selection procedures.²⁰ Approximately the same number of schools were selected from the three regions: Belgrade, Vojvodina, and Central Serbia. The schools were randomly assigned to treatment (feminine boy) and control group (non-feminine boy) so that in each municipality there was an equal number of schools contacted on behalf of the feminine boy and non-feminine boy.

Measurement

Since the data was collected through telephone conversations in natural conditions, the transcripts of the conversations were transformed to quantitative measures. To ensure the robustness of the quantitative data, the evaluation of the outcomes was performed by three indepen-

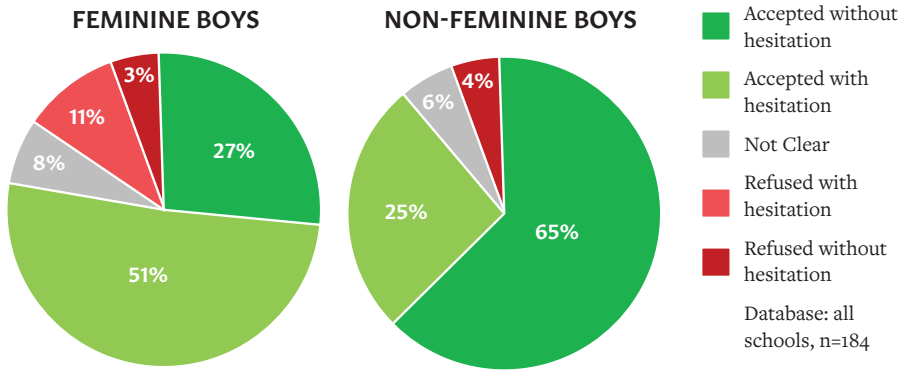


Figure 1: Acceptance and refusal of feminine and non-feminine boys

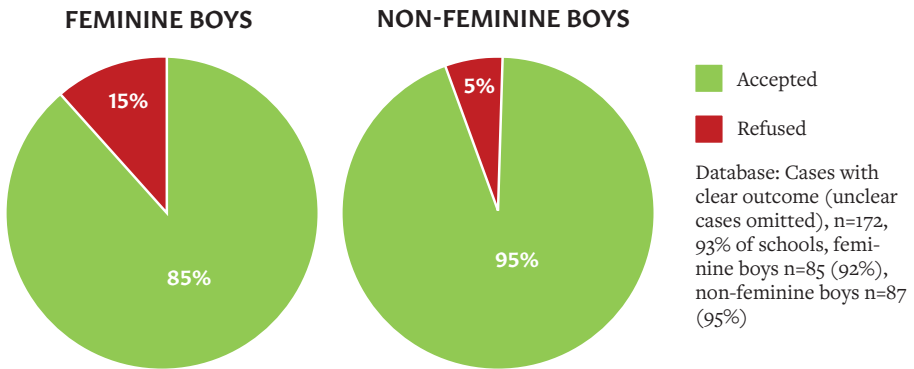


Figure 2: Acceptance and refusal of feminine and non-feminine boys—simplified

dent raters in accordance with the usual standards of evaluations of observations in natural conditions.²¹ Raters were in no way part of the experiment and did not have a position on LGBTI rights that could skew their assessment. Their attitudes towards LGBTI rights were checked in their interviews for the job.

The outcomes were evaluated on a five-point scale:

1. Accepted without hesitation or any additional conditions.
2. Accepted, but with hesitation, or postponement: the decision was made either with hesitation of the contacted person or only after consultation with school staff.
3. Unclear outcome: final decision was

not achieved, i.e., decision is postponed until the mother and her son can go to the school and meet the school authorities face-to-face.

4. Rejected, but with hesitation: the decision was made either with hesitation of the contacted person or only after consultation with school staff.
5. Rejected without hesitation.

1.2 Results

Feminine Boys Have More Limited Access to Primary Schools

Feminine boys were three times more likely (14 percent) to be refused enrollment in public primary schools than non-feminine boys (4 percent). Most feminine boys did not face direct refusal; of the

refusals, 78.6 percent (11 percent of all boys) came after some delay or hesitation on the part of the school. None of the non-feminine boys were confronted with a refusal preceded by hesitation; they were refused without hesitation and for strictly technical reasons (schools at full capacity). Amongst the boys who were accepted, feminine boys faced significantly more hesitation in the decision than the non-feminine boys. Out of the accepted feminine boys, 51 percent were accepted with hesitation compared to only 25 percent of non-feminine boys. Enrollment of non-feminine boys was only met with hesitation when the school perceived the boy's academic performance and discipline to be a potential problem. The difference in the kinds of refusals and acceptances faced by the two different groups of boys reinforces the conclusion that femininity is the reason for discrimination.

Omitting the 7 percent of unclear cases (8 percent for feminine boys and 6 percent for non-feminine boys) and combining all acceptances and all refusals clearly shows the discrimination against feminine boys—their chances of being refused enrollment are three times higher (figure 2).²²

The chances of a non-feminine boy being accepted into a school without hesitation are more than twice as high (72 percent) as the chances for feminine boys (35 percent; figure 3).³³

Reasons for Rejections

Non-feminine boys were only refused enrollment because the schools lacked space for new students. Although the schools used the same argument to refuse the enrollment of feminine boys their responses made it obvious that the reason for the refusal was in fact grounded in the boy's perceived femininity.

Our classes have 25-26 students. I have talked to the class masters and they are not willing to accept new students. There are other schools with a smaller number of students... So, I can't make this possible. And another thing, we have aggressive seventh graders and I'm afraid that this wouldn't be a good environment for your son. You know that they always look for a victim. And the victim is the one slightly different. You will surely do better if you look for a school with a smaller number of students...

School administrators stress the homophobic atmosphere among the students and their inability to protect feminine boys from discrimination. See for example, some quotes below.

Given that the child has such a profile, and the children of that age in our school are cruel, I would kindly

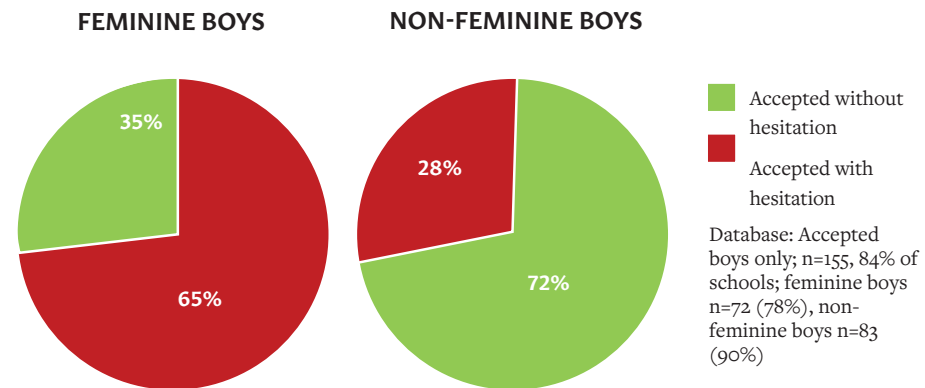


Figure 3: Feminine and non-feminine boys accepted without hesitation

ask you to try with another school. And don't mention that your son is feminine. You will immediately face a strong barrier. That's what I would suggest. I know what our children are like. They tolerate differences with lots of difficulties. They actually can't stand any differences.

We have a lot of seventh graders and they are very problematic ... This characteristic of your boy may be a problem, perhaps children wouldn't react to it properly. We do have lots of problems with seventh graders ... And our capacities are rather full...

Reasons for Hesitation in Enrollment

The study reveals that the boys' perceived femininity is more problematic than low academic performance or behavioral problems. As shown above, considerably more requests for enrollment of feminine boys than non-feminine boys were accepted with hesitation. Analyses of the interview recordings show that hesitation was in general due to the unwillingness of the schools to enroll students perceived as potential problems. But perceptions of the potential problems were strikingly different in the case of feminine and non-feminine boys.

While in the case of non-feminine boys, hesitations were expressed through additional questions about the boys' school achievement and discipline, in the case of feminine boys they were related to the boys' femininity. See for example:

I don't know what to tell you ... well, I'm not saying that it is a problem, the child is as he is ... But before you make the decision about the school, perhaps it would be advisable to consult professionals, to hear what they would say ... I can't tell you anything, you can enroll your child wherever you want, in whichever school, that's your right as a parent. But if I were you, I would first ask around, get informed, check out the classes, how the child would fit in, do you understand me? I had to

say this, but if you want to enroll your child in our school, you are welcome, and that's all.

Even when the enrollment of a feminine boy was accepted, all school administrators stressed that they could not guarantee the boy's safety. See for example:

What you told me is so general ... of course, the child has the right to be enrolled. So, what you have told me about the child being feminine ... If you are asking me for advice ... I don't know how visible this is on your child... we can't protect him from teasing and other similar things... But, of course, you can enroll him here, that's your civil right.

Each school can enroll one more child at least, two per class, but I don't know what to tell you. It is your right to choose where you will enroll your child. I can't refuse any child... But I can't promise that other children won't say anything, you must know how cruel children are, especially at that age, I can't guarantee anything ... the child can be enrolled, of course ... But don't expect the impossible from us, alright? That's what I can say, and you are entitled to enroll your child wherever you want.

2. Access to Housing for Gay and Lesbian Couples

Access to secure and affordable housing is important for all people, but is a particularly pressing issue for LGBTI people. Sexual and gender minorities are often made to feel unwelcome by their families and forced to leave home early, increasing their reliance on the private housing market. In many countries, sexual and gender minorities are overrepresented in homeless populations.²⁴ Understanding LGBTI discrimination in the housing market becomes especially important considering Sustainable Development Goal 11, which requires Serbia (and all nations) to make cities and

human settlements inclusive, safe, resilient, and sustainable. This experiment highlights the extent of discrimination in the private rental housing market and is designed to inform future policies that allow LGBTI people access to adequate, safe, and affordable housing.

Methodology

Experimental scenario

Couples contacted landlords via telephone to inquire about renting an apartment. All couples were 30 to 34 years old, and both partners were employed with a stable income. They were interested in renting apartments of approximately the same size (one-bedroom apartments) and price. Couples only differed by their sexual orientation. Each landlord was contacted twice, once by a same-sex couple (randomly assigned to be a gay or lesbian couple) and once by a heterosexual couple. When a lesbian couple contacted the landlord, the female member of the heterosexual couple made the call as a control for any gender bias. The same applied to the gay couple, where the male member of the heterosexual couple contacted the landlord. The scenario of the telephone conversation has three basic assumptions:

1. Sexual orientation is the only characteristic distinguishing the couples;

2. Statements about the couple's sexual orientation are very clear, but also conveyed in a relaxed/colloquial manner;
3. The conversation should gather information that can be transformed into statistically comparable data.²⁵

Sampling of Landlords

A total of 160 landlords were contacted based on their online advertisement of apartments in four cities (Belgrade, Nis, Novi Sad, and Kragujevac). Since there were two treatment groups (lesbian couple and gay couple) and two corresponding control groups (two heterosexual couples), landlords were randomly assigned to one of the treatment groups and the corresponding control group. Eighty landlords were assigned to the gay couple and the corresponding heterosexual couple, and 80 to the lesbian couple and the corresponding heterosexual couple. Since each landlord was contacted twice, there were a total of 320 observations.

Measurement

Since the data were collected through telephone conversations in natural conditions, the qualitative data were transformed into quantitative outcomes. To ensure the robustness of the quantitative data, evaluation transcripts were done by three independent raters in accordance

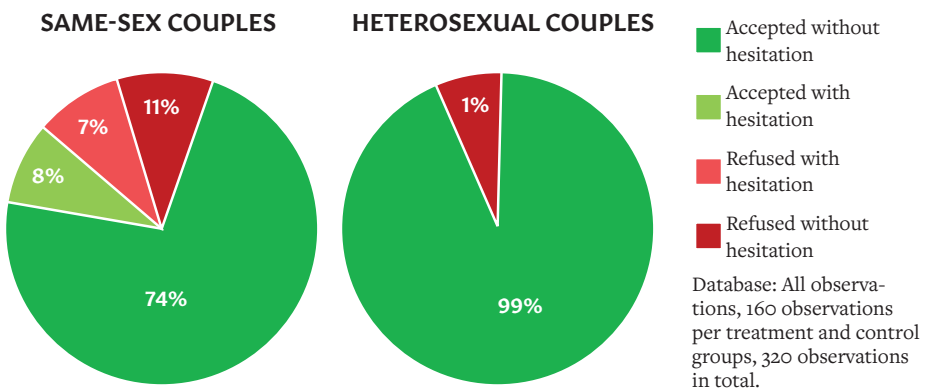


Figure 4: Acceptance and refusal of same-sex and heterosexual couples when seeking rental apartments

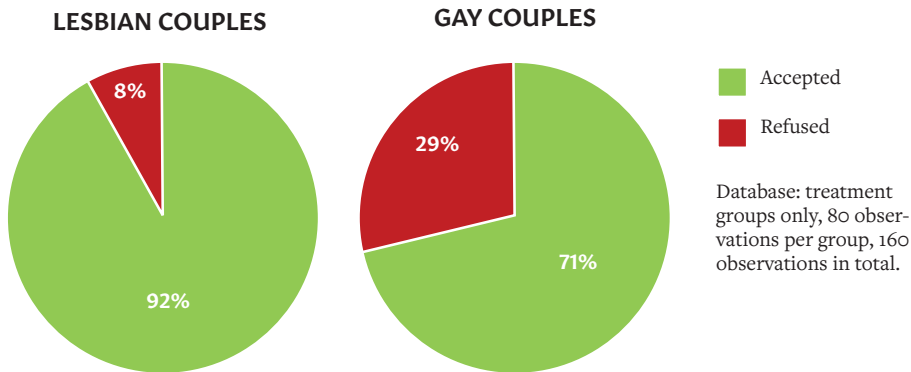


Figure 5: Acceptance and refusal of gay and lesbian couples when seeking rental apartments

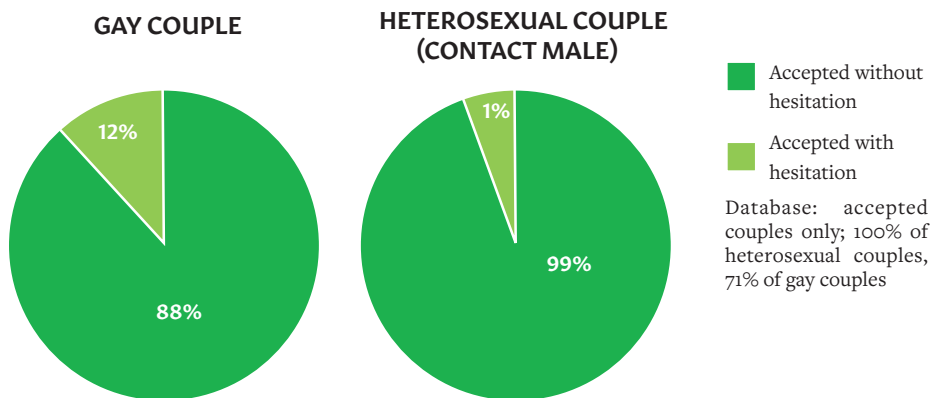


Figure 6: Acceptance with hesitation—gay couples and heterosexual couples

with the usual standards of evaluations of observations in natural conditions.²⁶ The raters did not take part in the study, do not identify as LGBTI, and did not have a position on LGBTI rights that could skew their assessment.

To evaluate the outcomes, a five-level scale was used:

1. Accepted without hesitation or without additional conditions.
2. Accepted, but with hesitation or postponement.
3. Unclear outcome (final decision not clear).
4. Rejected, but with hesitation.
5. Rejected without hesitation.

2.2 Results

Same-sex couples face discrimination when renting apartments

Almost one in five (18 percent) same-sex couples were refused rental of an apartment by the landlord; none of the heterosexual couples were. Same-sex couples also faced significantly more hesitation (8 percent) when accepted compared to their heterosexual counterparts (1 percent; figure 4).²⁷

Gay couples face more discrimination than lesbian couples

Gay couples face a much higher likelihood of being refused a rental apart-

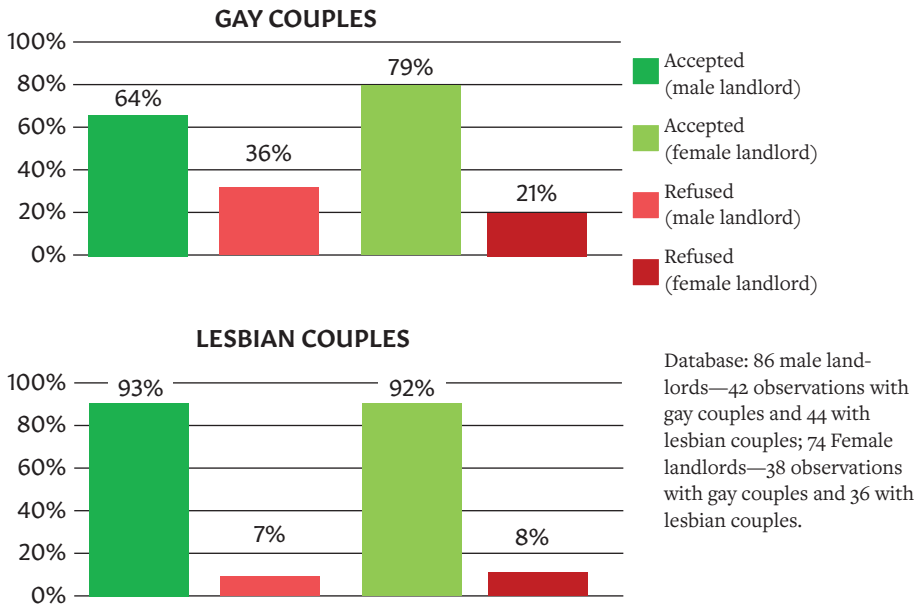


Figure 7: Acceptance and refusal of lesbian and gay couples by female and male landlords

ment (29 percent) compared to their lesbian counterparts (8 percent; figure 5).²⁸

Gay couples also faced more hesitation than heterosexual or lesbian couples. Of the gay couples accepted, 12 percent were accepted with hesitation, while only 1 percent of the corresponding heterosexual couples experienced such hesitation (figure 6).²⁹ The difference in the case of lesbian couples was smaller, and not statistically significant: 7 percent of lesbian couples were accepted with hesitation and 1 percent of the corresponding heterosexual couples.³⁰

Male landlords discriminate more against gay couples than female landlords

Male landlords rejected gay couples significantly more often than lesbian couples. As much as 36 percent of male landlords refused gay couples, while only 7 percent refused lesbian couples.³¹ On the other hand, female landlords rejected gay and lesbian couples to the same extent. Male landlords rejected lesbian couples at similar levels of

female landlords (figure 7).³¹

Homophobia was Openly Expressed by Many Landlords

Analysis of the interview transcripts shows open homophobia by landlords. Once informed that the potential tenants were a gay or a lesbian couple, the landlords reacted in one of two ways.

One group of landlords immediately stated that they were not willing to rent the apartment to a gay or lesbian couple:

Two men, what do you mean a couple, what kind of couple? You mean two men in emotional relationship? Oh no, no! Goodbye.

Ooooooh, well, I have never rented a flat to a male couple, or something like that, they were always a young couple or married couple. I am sorry, but not me, not like that.

Well I don't know, I wouldn't really want to. I have nothing against it, but I don't want to.

What can I say, it is a problem. (Could we see the apartment?) No. Bye.

The other group stressed the negative reactions of other people—either their families or neighbors in the building in which the apartment was located—as a reason for the refusal.

My grandmother wouldn't like it. You know, we have children, so... you understand.

My son-in-law owns that apartment; I must ask him. Call me in half an hour, please. (Second call) Yes, I have asked him, and he doesn't approve. (And what are the reasons, what does he say?) He doesn't want to, as simple as that, he didn't say why that's all.

I don't know what to say, it's not a problem for me, but it may be a problem for the neighbours and other tenants, I can't agree to this.

Well, I don't know, I have to check with my mother and then call you back. (Second call) Well, my mother doesn't really approve. Goodbye.

Well, I am not sure, I must ask my husband and my children. Please call me in the evening, I must talk with them first ... I have no problem with that, but my husband is a bit conservative. (Second call) The flat has been rented, goodbye.

3. Conclusion

Avenues for Further Research

Collecting data on the experiences of LGBTI people can be challenging. This report contributes to closing the LGBTI data gap by using innovative approaches to measure LGBTI discrimination and exclusion. Although mystery shopping experiments are not new, their use in understanding and revealing LGBTI discrimination has been limited. Previous reports indicated that LGBTI people face barriers in accessing education and housing in Serbia, but there was insufficient robust data to support this. This study is at the forefront of obtaining reliable and quantifiable data on the challenges LGBT people face in accessing housing and education. It underlines

the applicability and efficacy of mystery shopping experiments in shining a light on LGBTI discrimination and serves as a pilot for future studies.

However, experimental studies have their limitations, and further research is needed to understand the full extent of LGBTI discrimination and exclusion in Serbia and beyond. The difficulties faced by LGBTI people on a daily basis are pervasive, numerous, and cross-cutting. The World Bank uses a life cycle approach to understand the full extent of discrimination, and in turn, properly address these challenges; additional research that identifies the challenges and their social, economic, and mental effects on LGBTI people is required. Discrimination and exclusion often begins in the family; LGBTI children fear violence by parents, siblings, and extended family members or are even kicked out of their home at an early age. Data on these early experiences of LGBTI children is extremely rare, but in order to fully understand the effects of being LGBTI, more systematic research in this area is needed.

Further, some of the responses by school authorities indicated that barriers in accessing education are not the only ways that LGBTI discrimination manifests in schools. UNICEF has begun to develop methodologies to understand the extent and the consequences of homophobic bullying in schools. Similar research is necessary to understand how LGBTI students can be supported to develop to their full potential in Serbian schools.³³

Following the life cycle approach, finding employment and developing a career is a next critical step that enables the accumulation of income and wealth. Providing policy makers with robust and reliable data on the challenges LGBTI individuals face in finding employment, staying employed, and progressing in their careers will be key to enable LGBTI people to live life to their full potential. Related to this, other research topics should include access to credit and banking facilities, insurance,

holding public office, and the accumulation of assets.

Research on discrimination in a range of other services, markets, and spaces is also necessary. Because of discrimination experienced within the family, many LGBTI people don't have the informal safety net of family ties to rely upon at key stages in the life cycle. Unemployment, illness, and retirement can therefore be particularly challenging for LGBTI people, and more research is needed to ensure they do not fall through the cracks at these stages of life. Data on elderly LGBTI people is essentially nonexistent and highlights just one of the many areas where further research is needed. Other aspects of family life where LGBTI experience institutional and individual discrimination with economic consequences include coverage of family health insurance and health care services, so more robust data in this sphere would be welcome.

Such further research should be developed in close consultation with the LGBTI community. This helps to ensure that the findings are applicable and relevant to these communities. It is also more direct and sustainable because it brings LGBTI people on board in a way that allows policymakers, development partners, donors, and advocates to respond directly to their needs and development challenges. For example, existing research reveals that trans and intersex people are the most vulnerable among LGBTI groups. However, they are often overlooked in research projects, and specific efforts should be made to collect data that distinguishes and quantifies the particular challenges they face.

Policy Considerations

The experiments outlined in this study reveal that more could be done to close the implementation gaps in Serbian anti-discrimination law and policy, and to support the implementation of the “2013-2018 Serbian Anti-Discrimination Strategy.” An antidiscrimination law passed

in 2009 prohibits discrimination on the grounds of sexual orientation and gender identity, and the Anti-Discrimination Strategy makes clear that “the right to education must be effectively enjoyed without discrimination on the grounds of sexual orientation or gender identity.” The strategy also creates an obligation for schools to ensure a safe learning environment. The following actions would be helpful in this regard.

- 1. An effective complaints and reporting mechanism should be put into place to ensure that Serbian antidiscrimination laws are implemented and adhered to.** To this end, it is recommended that the Protector of Citizens, Serbia's Ombudsperson, assesses its reporting mechanisms to identify potential barriers that prevent or discourage LGBTI people from reporting cases of discrimination. Together with the Ombudsperson, the Education Inspectorate in consultation with relevant stakeholders should specifically ensure that reporting mechanisms provide students, parents, and teachers with safe ways to report cases, ensure fair and transparent investigations, and offer meaningful solutions.
- 2. A comprehensive assessment should be conducted to identify and examine gaps in legislation and regulations and their implementation, as well as grievance mechanisms and resources available to LGBTI people when they experience discrimination.** Specifically, a review of the interpretation and application of school regulations is recommended to identify and examine implementation gaps in the education sector.
- 3. School development plans should include specific actions to create a respectful, safe, and supportive school environment for all students, with special attention to LGBTI students.** The Education Inspectorate should be empowered to effectively monitor the implementation of these actions and

provide guidance where needed. Comprehensive training of school authorities, teachers, and students should also be carried out to support the establishment of a safe and conducive school environment for LGBTI students.

- 4. Greater advocacy against homo-, bi-, trans-, and intersex phobia also appears to be necessary.** Discrimination based on sexual orientation is widely accepted in Serbia, as was evidenced by the open homophobia displayed by landlords. Advocacy should include, but not be limited to, raising awareness among the general public of the adverse effects of, and problems associated with, current discrimination against LGBTI people.

Lastly, it is important to leverage existing positive attitudes towards LGBTI people in awareness-raising campaigns and in policy considerations. Although evidence from the study makes it clear that discrimination based on sexual orientation occurs in Serbia, and occurs frequently, the variance in the responses also reveals that there is a degree of acceptance of LGBTI people. For example, 35 percent of the feminine-boys were accepted without hesitation, and 74 percent of same sex couples were also accepted without hesitation. Ideally, there should be no discrimination at all, but the responses suggest that there are those who do not discriminate against LGBTI people. These positive attitudes should be harnessed as an opportunity to influence the attitudes of others. Correctly and consistently implementing policies and laws that forbid discrimination based on sexual orientation can also help to raise awareness and change attitudes.

End Notes

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² Lee Badgett, Laura Durso, and Alyssa Schneebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community," Williams Institute, 2013, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

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⁶ Devah Pager and Hana Shepherd, "The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets," *Annual Review of Sociology* 34 (2008): 181–209, <http://www.annualreviews.org/doi/abs/10.1146/annurev.soc.33.040406.131740>.

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⁸ United Nations Development Programme (UNDP), "Being LGBTI in Eastern Europe: Serbia Country Report," UNDP, 2017, <http://www.eurasia.undp.org/content/dam/rbec/docs/undp-rbec-blee-SERBIA%20.pdf>.

⁹ European Commission, "Serbia 2016 Report," Brussels, 2016, 3, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf.

¹⁰ UNDP, "Being LGBTI in Eastern Europe."

¹¹ Cisgender refers to people whose identity and gender corresponds with their birth sex, i.e., who are not transgender.

¹² Martijn Hesselink and Ton van der Wiele, “Mystery Shopping: In-Depth Measurement of Customer Satisfaction,” 2011, <http://www.mvmgroup.rs/wp-content/uploads/2011/04/Importance-of-mystery-shopping.pdf>.

¹³ For example, in the SILC survey, (World Bank forthcoming), only 17 percent of LGBTI respondents stated that they were open about their sexual orientation at work in the last five years.

¹⁴ For example, qualitative survey focus groups in Belgrade, Nis, and Novi Sad showed that in the acronym LGBT, most of the participants were familiar only with the meaning of the letters L (lesbian) and G (gay). The result was confirmed in the quantitative survey, showing that majority of the people in Serbia relate LGBT population to gay, lesbian, and bisexual people, while the awareness of transgender and intersex people is quite low. National Democratic Institute (NDI), “LGBTI Public Opinion Poll: Western Balkans,” 2015, https://www.ndi.org/LGBTI_Balkans_poll.

¹⁵ UNESCO, “From Insult to Inclusion: Asia-Pacific Report on Bullying, Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity,” Bangkok, 2015, <http://unesdoc.unesco.org/images/0023/002354/235414e.pdf>.

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¹⁷ A detailed description of the methodology can be found in Annex, available upon request.

¹⁸ Telephone conversations included in Annex, available upon request

¹⁹ Based on the definition by the Serbian Government. For further details see Annex, available upon request.

²⁰ The results did not vary systematically depending on geographic region, municipality size (expressed by the number of primary schools), or school location (on the outskirts or in the town center); hence these variables are not reported.

²¹ For example: Kilem Gwet, *Handbook of Inter-Rater Reliability: The Definitive Guide to Measuring the Extent of Agreement Among Multiple Raters*, 4th ed., (Gaithersburg: Advanced Analytics, LLC, 2014), <http://www.agreestat.com/book4/>.

²² Pearson Chi-Square = 5.52, df = 1, p < 0.05.

²³ Pearson Chi-Square = 21.97, df = 1, p < 0.001.

²⁴ Laura Durso and Gary Gates, “Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless,” Los Angeles, The Williams Institute with True Colors Fund and

The Palette Fund, 2012, <https://williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/-serving-our-youth-july-2012/>.

²⁵ See the Annex for a fuller description of the scenario.

²⁶ Kilem Gwet, *Handbook of Inter-Rater Reliability*.

²⁷ Pearson Chi-Square = 41.63, df = 3, p < 0.001.

²⁸ Pearson Chi-Square = 12.172, df = 1, p < 0.001.

²⁹ Gay and corresponding heterosexual group:

Pearson Chi-Square = 7.36, df = 1, p < 0.01.

³⁰ Lesbian and corresponding heterosexual group:

Pearson Chi-Square = 3.11, df = 1, p = 0.08.

³¹ Pearson Chi-Square = 2.36, df = 1, p = 0.001.

³² In spite of the fact that the difference in percentage of refusals of gay and lesbian couples might seem to be different, the statistical test shows that difference is not systematic. Pearson Chi-Square = 10.84, df = 1, p = 0.12.

³³ UNESCO, “From Insult to Inclusion.”

³⁴ The Government of the Republic of Serbia, “Anti-Discrimination Strategy 2013-2018” (unofficial translation), 44, <https://rm.coe.int/16801e8db9>.

³⁵ “Specifically ensure protection of the right of children and youth to education in a safe environment, without violence, harassment, social exclusion or other forms of discriminatory or degrading treatment based on sexual orientation or gender identity.” Government of the Republic of Serbia, “Anti-Discrimination Strategy,” 47.

Generating Real Social Inclusion: Work and Identity Politics in the Trans and Travesti Rights Movement in Argentina

Isabel Cruz

Abstract

Argentina has emerged as a leader among trans rights movements around the globe. Their recent focus on work as an aspect of trans rights is a unique strategy in the context of a global movement centered around health and identity. This paper seeks to explore the motivations behind the movement's campaign for the Trans Labor Quota Law. Using qualitative methods, the article explores the historical construction of the movement and the marginalization of the trans and travesti population in Argentina, upon which the movement has built its rights claims. It draws upon interviews with key stakeholders in the trans rights movement in Buenos Aires, and three months of fieldwork to delve into the motivations and complexities behind the organizing strategies and conflicts that have propelled the campaign for introducing a trans labor quota.

Bio

Isabel Cruz graduated summa cum laude from Yale University with a Bachelor's degree in Sociology and Human Rights. As an activist and aspiring academic, she is passionate about building bridges between studying issues of gender and sexuality and advocating for feminism and LGBTQ rights on the ground. Through her work with various nonprofits and organizations, Isabel has implemented and supported advocacy, education, and community building projects for people who have been marginalized by the heterocispatriarchy. Currently, she is a Community Educator at Girls Inc. of Metro Denver in the high school division.

Introduction

In a world where lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) movements have erupted in many regions, Argentina has received high levels of attention for its trailblazing laws concerning sexual orientation and gender identity—including the first marriage equality law to pass in Latin America in 2010 and the most progressive gender identity law in the world in 2012.^{1,2} In 2015, continuing the strong momentum of the trans and travesti³ rights movement,⁴ “Ley de Cupo Laboral Trans” (Trans Labor Quota Law) was passed in the

Province of Buenos Aires. As established in the first article of the law,

The public sector of the Province of Buenos Aires must hire, in a proportion no less than one percent (1%) of the totality of its personnel, travesti, transsexual, and transgender people that meet the conditions for suitability for the responsibility and establish reserved job positions that must be occupied exclusively by them, with the aim of promoting real equality of opportunity in public employment.⁵

This law has not yet been implemented: there have been no budget allocations or programs designated to take charge of enforcing the law. Campaigns to implement it across the over 130 municipalities of Buenos Aires are underway, and activists are pushing to exert influence on how this implementation will be approached; thus, the scope of the law's impact remains to be seen. Upon its future implementation, however, it has the potential to generate up to 4,500 positions for trans and travesti individuals.⁶

Although some news outlets and organizations, such as the International Labor Organization, have taken notice of the law, it has generally received limited attention despite being unique in the global context of LGBTQI social movements. While every country and region has particular focuses, LGBTQI, and particularly trans organizations, have largely focused on issues and campaigns that center on identity, health, and civil and political rights, such as changing processes for legal gender recognition, HIV/AIDS management and prevention, and more.⁷ There have been some campaigns around the world that promote access to work for LGBTQI populations, but the overlap between labor and LGBTQI movements has been decidedly limited.⁸

Connecting these themes, this article explores the motivations behind the movement's campaign for the Trans Labor Quota Law. How will their strategic choices and challenges shape the trajectory of trans and travesti rights going forward? Through my analysis of nine interviews with key informants within the movement—including activists, academics, lawyers, leaders, and lawmakers—and three months of fieldwork, I will examine this movement and its strategies to shed light on the processes and decisions behind this unique law.

The Evolution of LGBTQI Social Movements in Global Literatures

With the rise of LGBTQI activism around the world has come increased attention to the processes underlying these social

movements in literature across various disciplines. These movements are often framed in social science scholarship as part of the greater trajectory of the rise of identity-based politics as the modality of activism in the late 20th and 21st centuries. Thought to have coalesced through a transition from class-based politics, identity politics have shifted the demands social movements make of the State and governing bodies to focus on civil and political rights claims in the wake of the growth of liberalism.⁹ LGBTQI rights movements, as we now understand them, employ this model of “minority rights” and “civil rights” claims to establish formal recognition for a group of identities that has come to be unified by their deviance from traditional structures of gender and sexuality. Building upon each other, the number of identity categories and the success and visibility of identity-based activism continue to expand worldwide; what started as a gay rights movement (largely traced in the literature to the United States) has continued to expand to encompass lesbian, transgender, intersex, and many other groups who continue to stake new claims.¹⁰

As these movements and the literatures surrounding them have developed, activists and scholars alike have come to question both the framework of identity politics as a mode of organizing activism and academic understandings of its trajectory. First and foremost, this framework reflects a defined focus on the West as the cultural and political center for the development of LGBTQI social movements. A simplified narrative, this process obscures the work of scholars and activists outside of the West who navigate complex power dynamics and globalized flows of information, which have complicated how we conceive of the trajectories and origins of the movements they are part of.

Alternative modes of conceptualizing gender- and sexuality-based movements have been created by scholars and activists around the world. One example of many,

“sexual rights,” has been proposed by leading LGBTQI rights organizations as a strategy that centers on a “common context of struggle”—hegemonic structures of gender and sexuality—rather than the identity constructs themselves:

The sexual rights framework is therefore, by definition, a broad, multi-issue framework that serves to acknowledge the fluidity of identities across space... In addition to addressing emerging tensions of identity politics, the sexual rights framework presents a formal opening for broader coalition building.¹¹

Although this framework strives to promote inclusion, some scholars and activists have insisted that it fails to resolve the continued conflation of rights surrounding gender and sexuality, particularly in regards to trans and intersex populations.¹² Lack of inclusivity is a common critique throughout the movement and in literatures regarding this organizing strategy and the movement more broadly. Many individuals and organizations have pointed out that LGBTQI activism has largely failed to engage with other dimensions of oppression, such as racism, classism, and ableism, among others, and has even reinforced them through its work.¹³

Argentina’s Growing Role in the International Conversation

As leading actors in this panorama, Argentine activists and scholars have been confronting these challenges in ways that both incorporate and depart from international conversations. In the vein of sexual rights analyses, one key framework that has been adapted from international literatures is sexual citizenship. Originally a Western concept applied to Latin American movements through Amuchástegui and Rivas’s 2008 text, sexual citizenship describes the modes in which groups organized around sex and gender organize in nations where the Catholic Church strongly connects to society and govern-

ment. Consistent with wider literatures that highlight the particular relationship between government and social movements in Latin America, this concept describes how movements target the State to simultaneously secure certain rights, establish their political power, and visibilize their voices and issues.¹⁴ Renata Hiller builds on this framework to discuss two forms of influence that “sexual diversity”¹⁵ movements can have: 1) the “democratization” of the State through expanding what constitutes citizenship and social belonging, and 2) the legitimization of the repressive State, as certain improvements in the regulation of sex and gender privilege some while continuing to marginalize others under the guise of progressivism.¹⁶

Visibility is another prevalent concept in Argentine literatures that has been used to examine the sexual diversity movement and its strategies. Drawing from traditional identity and minority politics strategies, visibility has been employed as a goal in itself and as a strategy to claim other rights. Through this lens, visibility politics is an analytical framework that embodies the tensions between individual and collective identity formation processes that arise in identity-based work: “On one hand it’s possible to approach these social processes of visibility through the lived experiences of the involved subjects or turn to the analysis of the representation and stereotypes of different subjects that circulate in distinct cultural environments.”¹⁷ Scholars and activists have debated the ways in which both the movement and academia have navigated reconciling this tension between lived experiences and cultural perceptions in building visibility. For example, connecting her work to larger conversations about respectability politics, the late prominent travesti activist Lohana Berkins questioned whether demanding inclusion and political power for trans and travesti people in traditional spaces, like governments or offices, further marginalizes those who cannot or do not want to take part in those spaces—and even legitimizes oppressive systems the movement opposes.¹⁸ Further, some trans

scholars caution against developing dominant narratives of trans identities through this process of visibility. In his essay, Blas Radi challenges the simplistic politicization of trans identities in academia, cautioning scholars from labeling all trans and travesti people as “activists” by nature of their identities and expanding academic frameworks to reflect the totality and heterogeneity of these identities.¹⁹

The above concepts are a select representation of the growing conversation across Argentine and international literatures surrounding these identities and movements as their visibility and news of their recent victories expand in reach. As the first of the movement’s groundbreaking victories, the Gender Identity Law has been the center of attention. A limited literature is emerging around other issues and campaigns, including access to work and the Trans Labor Quota Law. But there are many avenues that have yet to be explored within this rich and growing field of study, and the literature has not yet closely examined the motivations and challenges underlying the Trans Labor Quota Law and its implications for the trajectory of the movement.

Research Methodology

This article draws from participant observation and interviews collected in Argentina from May to August 2016 and via phone in January 2017.²⁰ In particular, I draw on interviews with different stakeholders in trans and travesti rights organizations and LGBTTTTI communities in Buenos Aires. I limited my scope to leaders, activists, and academics to explore the particular perspective of those that have knowledge of or experience with the issues facing trans and travesti populations, and to the organizational perspective to understand how such perspectives are operationalized for social justice work. Information regarding my participants and their profiles are available upon request. I received verbal consent to use their real names, since their identities as public figures are relevant to the in-

formation they shared with me. All of my interviews were conducted in Spanish and my recruitment and interview procedures were approved by the Yale Institutional Review Board. As a cisgender woman from the United States, I wanted to ensure that the project I designed and the questions I asked reflected the interests and needs of the movement and the people who generously gave me their time.

Using qualitative methodology rooted in grounded theory,²¹ my results and analysis showcase the subjectivities I access through interviewees and immersive fieldwork. With nine interviewees and a short span of ethnographic observation, this project draws from a small but diverse pool of participants and experiences to shed some light on the larger picture of the movement and its history and motivations. As key informants representing several organizations, areas of expertise, modes of involvement in the movement, and life experiences, those interviewed offered perspective from diverse vantage points within the movement; but due to the limited nature of my sample, my results are not generalizable. Rather than attempt to create a comprehensive narrative of the entire movement or trans and travesti populations, my project seeks to open up discussion about this movement in Argentina through the lens of the perspectives I was able to access.

“La Primera Necesidad”: Work as a Fundamental Tenet of Identity Politics

Participants emphasized the unique impact that access to work has on the wellbeing of trans and travesti populations when discussing the strategies behind the campaign to establish a trans labor quota law in the Province of Buenos Aires. First and foremost, eight of nine interviewees cited the material significance of the quota as one of its major contributions to trans and travesti rights. For example, one interviewee stated: “The advantage is that it could in a good moment, when they follow through, we will see that the girls will be able to access

a job, a legal job, have a salary, have medical coverage. This is why it's so important."²² Others listed additional material benefits, including enabling them to "buy clothes, buy theater tickets" and "pay for housing or get credit." Retirement, which five people discussed, was also seen as a major advantage of being employed formally, in conjunction with "obra social," or public health insurance, as one of the state-sponsored benefits that people who work in informal sectors are unable to access.

Beyond the tangible impacts of these resources, five interviewees emphasized the key role that material benefits play in social inclusion and culture: "Today, in a capitalist culture where everything is commercialized and select few can access cultural resources, work enables this access for the trans men and women, where many of us who are privileged to have jobs and never have our gender identity questioned have always had access."²³ For some, this aspect defined the importance of this law and campaign for access to work: "Work because we need to guarantee our day to day. Having a job that allows us access. Work as a human right, to have the ability to develop ourselves in a life where everything is exchanged for money."²⁴

Social Implications of the Law

Building on the material provisions of the law, all of my interviewees identified the importance of identity formation processes in their explanations of the campaign's strategy. They outlined how changes in identity formation on both the individual and collective level would impact the social and economic inclusion of trans and travesti populations.

Individual Level

On the individual level, participants identified the impacts that one's line of work could have on 1) their self-perception and individual identity and 2) how they conceive of their role and ability to contribute to society. The first major theme within discussions of individual life is that work

"orders" and thereby defines the way people organize their time and day-to-day activities: "work has a multiplicative effect in people's lives. Having a job orders someone's life, a job can completely order a subjectivity, a routine. Sometimes yes, and sometimes no."²⁵ Building upon this notion of subjectivity, Thomas Casavieja discussed how a career can impact one's identity and how trans people have historically been denied the right to define this for themselves:

Work is 70 percent of one's life. And for some, it defines you, it defines you as a person, it defines your ideals. But trans people have not had the capacity to do this. We end up getting the jobs that no one else wants, getting the jobs that don't pay well. This is what happens in the majority of the population, most trans and travesti people can't choose.²⁶

All of my interviewees emphasized that the way labor affects trans identities is similar to how it affects all individuals. They expressed, however, that their historical segregation into certain careers, such as sex work/prostitution²⁷—mostly for trans women and travestis—and taxi driving or other informal careers for trans men, differentiated how gaining access to the formal labor market would influence their individual subjectivities:

Work is important because it will change the rhythm of life for some girls. The important thing would be that we would live life during the day, not at night. That would be important because we work in prostitution, which is at night, and brings a lot of things, like drugs, alcohol, sickness too. But to have a legal job, it's like you can move on from all of that.²⁸

Beyond impacting identity through the establishment of routine, work was also connected to individuals' ability to "proyectarse," or aspire towards the future. Interviewees who spoke about the aspirational

value of jobs attested to the power of being able to look forward to a career, to a brighter tomorrow:

It is complicated for trans people to aspire to the future. It's complicated because they don't know if they are going to be alive tomorrow. It's not just that they don't know if they'll have a salary at the end of the month, they do not know if they are going to be alive tomorrow, do you understand? [Work] is having the security to be able to have that relationship with society, to be able to reinsert themselves, to be able to shake the stigma. ... Thus, the impact [of the law] is going to be grand in the collective, I'm telling you.²⁹

In addition to enabling people to “guarantee their day to day,” in the words of Santiago Romero Chirizola, and enabling them to imagine a life longer than the current 35-40 year life expectancy of trans and travesti people in Argentina (a point which six mentioned directly in their interviews), work also shapes their ability to think about what they want out of a longer lifespan and who they want to be.

Discussions of aspirations pointed to both personal and social phenomena, as being able to dream bigger and longer with the prospect of formal work impacts how the individual perceives of oneself and one's role in society. Karina Nazábal contrasts her experience as a cisgender woman to shed light on what this shift in trans and travesti individuals' thinking about their place in society means:

I never questioned my ability to get a job. Sure, there could be a lack of jobs due to macro-political questions that make it such that one doesn't have a job and cannot access one. But I never thought that I wasn't going to be able to get work because of me, and that is something that has been very internalized. And the benefits of that job, what it will mean for me, for my fam-

ily, and what it has meant for my parents, for my grandparents, and that is very internalized too. It's just as much the benefits as the idea of having the rights that one starts to acquire when they have a job.³⁰

One of my interviewees described her own process of identity in this way across her transition. Alessandra Luna, a trans woman, has recently returned to working for the first time since transitioning and discusses the implications of this process:

I worked for the government for 15 years, that was my experience before I made my transition as a trans person. Since the moment where I transitioned, that is where it got complicated. I saw the issue of how a trans person can never again gain access to formal employment. That was my experience, anyway. It just now that I have returned to work in the state, returned to getting a job, to be able to have a monthly salary, to be able to aspire towards the future.³¹

Overall, the general consensus among my participants was that work was important to how everyone identifies and perceives of their role in society; gaining access to formal labor for trans and travesti people meant gaining the ability to build personal identity in a more intentional and forward-thinking way.³¹

Social and Collective Level

Building on how my participants framed the impacts of labor on individual identity formation processes, many also discussed how the inclusion of trans and travesti people in the formal labor market will shape how society conceives of their identities and role in society. Visibility was a major aspect of this discussion; participants expressed that bringing more attention to trans issues and identities is important, but it was also essential that trans people should exert more control over this visibility. Nadiha Molina discusses how political visibility helps fa-

cilitate social inclusion and shape societal perceptions:

We were able to open up the debate and it opened the perspective of many people who currently see us as Other. Now they have started to interpret it differently, that we are people, beyond our gender identity and expression of gender, we are people and we have those rights and we go after them.³³

Building on the importance of political visibility, interviewees emphasized that insertion into the formal labor market through the quota would also improve their general social visibility:

The law is related to this: we are visible something that has been true for many across their lives and has been historically hidden in our country. Behind the scenes are the travestis, those who work at night, those who don't go out on the streets, those who can't walk hand in hand with their partner on the street. And what is difficult for society is to see them, to let them into the light of day, to see them without prejudice.²⁴

Participants, from a variety of perspectives on sex work/prostitution, framed how they wanted increasing visibility to reshape perspectives on trans and travesti people. There was an overwhelming consensus that people wanted this law to dispel dominant narratives that trans and travesti identities are synonymous with sex work/prostitution:

There is another factor that plays a strong role in the media: the association of the travesti identity with prostitution. It appears as a sad and deplorable, but inevitable part of the social order that if you are travesti, the only way you can survive is through prostitution...Including programs and movies that intend to denounce this situation, that the travesti always appears in prostitution is something that we have to break from.³⁵

Common phrases that accompanied this sentiment, both in interviews and in speeches at marches and public events, were that trans and travesti people are more than, or were "born for" or "serve" a higher purpose than sex work/prostitution:

I want to emphasize that clearly society plays a role and also reflect on that fact that we do not only serve nor do we exist for certain activities. Rather, there is a great capacity that you can find in many us. Our population can make systemic changes and changes that are good for society.³⁶

This sentiment was shared across a spectrum of beliefs on the abolition and regulation of sex work/prostitution. In addition to symbolic changes associated with including trans people in the formal labor market, various individuals also pointed out the benefits of the interactions they would have with the general public:

If they can be inserted into work, that they are visible, and when you go to a pharmacy and the person working is a trans person, when you go to the doctor, the secretary is a trans woman, or when my mom gets in a taxi it is a trans person. Then we can say there's social inclusion ... yes, it definitely seems like work is central to the theme of visibility of identity and of social inclusion.³⁷

"Normalizing" was another way of discussing the role of labor in social inclusion; as Julian Ortega points to above, incorporating trans and travesti into the work force is a tangible way of incorporating them into what Nazábal termed the "social fabric." A few participants discussed the moral implications of discussions surrounding social inclusion and normalization, highlighting the tensions between ideology and practice. For example, Luna mentioned being torn between her perspectives as a political science student and as a radical trans activist: she understood the political value of

“naturalizing” trans identities and reaching the public, but also feared playing into hegemonic social systems:

We really are not interested in getting every coworker in an office with ten people to accept us, we want the position in the office. Today, we recognize that we have to inform people and we have to convince people for the purpose of getting those rights... From the other side, I recognize that society... will have its own process in which we see the naturalization of distinct identities and at the same time a rupture... with that which is this heterosexist, binary system.³⁸

Although reaching the goal of social inclusion was believed to be a difficult and time-intensive “process,” all of my interviewees framed it as a primary goal of the labor quota campaign, and the movement more broadly. Economic inclusion—including this first step of establishing a quota—was understood to be a key, if not the principal, mechanism to achieve this goal of true social inclusion.

Policy: A beginning or a means to an end?

Further describing the strategies behind the campaign for the Trans Labor Quota Law, participants discussed why the movement chose to focus on the State in their efforts. Seven interviewees specifically discussed why this focus was of utmost importance to the project. Nazábal frames her rationale for why this initiative targeted the State from her perspective as an elected representative:

Centrally, [our work is grounded] in an outstanding responsibility and a historical debt that we owe to the trans and travesti population, related to the fact that it is impossible for them to access dignified work in Argentina and in the world ... the State has to accompany them and include them and for this we are hopeful ... the reality is that as the State my role is to guarantee them work, in Argentina that is a constitutional right.³⁹

“Take responsibility” and “accompany” were common phrases across these interviews that discussed participants’ expectations of the State and hopes for the law. Four individuals specifically named the State as the party primarily responsible for providing labor opportunities to its citizens, as Romero Chirizola stated directly: “Since we frame reality through work, we must demand work as a right, and work must be demanded from the State.”⁴⁰ Several individuals further highlighted that the State also bears responsibility over other rights that are inextricably connected to work, such as education, and must follow through on all of their responsibilities to ensure the success of trans and travesti people in the workforce:

It has to be a suitability⁴¹ from the State, where the State takes responsibility to construct a space and atmosphere in the framework of the workplace where it’s possible for the person to access the education that they had to abandon or could never start. And other issues start to unfold from there—I also think about health...⁴²

For these participants, the State was an obvious target for the movement’s efforts given the State’s pre-established responsibility and power to provide public goods that recognize a comprehensive set of rights for all of its citizens.

Beyond the legal benefits of getting the State to take due responsibility for the economic and social inclusion of trans and travesti people, several interviewees discussed the political benefits that a legal campaign can have for a budding movement. Five participants emphasized that the passage of this law showed persistence and political might, which served to further establish their voices and visibilize their movement. Also, many expressed that this approach opened up more doors to work with the State and weigh in on policy:

Primarily, we must occupy space in all of the debates that they have ... Clearly, if the State does not work

with these organizations, with these movements that deeply understand [trans] issues from experience, clearly we will never get to a point where the people who decide and make decisions understand the reality and pure necessity of the populations that we represent.⁴³

Despite their belief that policy was the appropriate avenue to set social and economic inclusion in motion, most participants acknowledged the limitations of politics and recognized the larger “cultural battle” that is necessary for true social and economic inclusion. Although one participant said that society seemed ready, all others expressed the difficulties of garnering truly effective empathy through legal means:

There is a social battle that we have to fight, that cannot be fought with law. Sadly, the more laws we have to amplify our rights, if the fight isn't social ... If someone doesn't look inside themselves, what they want for themselves and for their kids and their grandkids and their family and the people they love, I think change lies there. If it's not there, if we don't look at what happens as if it was happening to us, as if it were our own skin in the game, this battle is not going anywhere.⁴⁴

But the limitations of politics and the State were seen as an inevitable part of the process; most maintained that this campaign and law were necessary starting points to reach the general public. This “social battle” or “cultural battle” was often framed as the next step in pushing the project of inclusion forward.

Implications of Work-Centered Organizing in Context

Overall, the insights shared by my participants help shed light on why the movement pursued this particular policy goal as the new frontier for trans and travesti rights in Buenos Aires. They paint access to work as a critical issue in Argentine society that also

uniquely resonates with the goals and needs of the trans and travesti rights movement. With its direct implications for material and sociopolitical realities, work serves as a junction for a variety of factors that are crucial to the project of inclusion and social change proposed by identity-based activism. The Trans Labor Quota Law and the political activism around it were designed to unify these conflicting aspects of identity, rights, and movement building across social, material, individual, and collective dimensions. Through their framework, this project offers a uniquely comprehensive set of benefits that both serves the most vulnerable of individuals within these populations and builds momentum and visibility for the movement.

These results both reinforce and challenge existing understandings of LGBTQI rights movements in Argentina and beyond. First, linking identity and access to work through this campaign questions the notion that identity politics are a diversion from class struggles; this connection even posits that these politics are mutually dependent. On the other hand, my results are more consistent with “sexual rights” frameworks: the movement framed the labor quota project and campaign through a “common context of struggle,” i.e., trans and travesti exclusion from the labor market and society, that fostered coalition building across various organizations and resonated with an Argentine public familiar with labor insecurity. However, these strategies push the bounds of what comprise “sexual rights,” moving closer to the inclusion of the totality of marginalized people's identities in gender and sexuality activism for which critics have called.

In addition to explaining the motivations underlying the choice to pursue access to work, my participants also allude to why a political and legal strategy was implemented. Their focus on the State through law and through a quota in the public administration is consistent with the literatures that have characterized Latin American social

movements as primarily targeting the State in political activism. Following literatures on sexual citizenship, the State was framed in many participants' testimony as a key locus of responsibility and visibility. The act of passing the law and eventually having trans and travesti people incorporated into jobs in the State serves two purposes. First, it "democratizes" the State through incorporating trans and travesti populations and issues into the law and the workplace. Second, it makes these populations and their needs more visible and helps give activists greater agency over how trans and travesti identities are understood and built in the public sphere. But the terms of this visibilization remain contested; the diverse modes of thinking surrounding sex work/prostitution and the naturalization versus radicalization of trans and travesti identities illustrate that this project hardly resolves questions surrounding respectability politics.

My results present one possible explanation for why the trans and travesti rights movement pursued this unique strategy in Argentina. But my model certainly is limited in capacity to speak to the breadth of the work the movement has pursued and of the diverse actors in the movement who might have different perspectives to contribute. The particularities of my methods, sample, and positionality also impacted the perspective that I was able to access through my interviews and fieldwork. My results do not claim to represent the "trans perspective" on the role of work in identity and quality of life, nor how the Argentine public views this law and trans and travesti issues—neither of which imaginary, monolithic perspectives exists. Rather, I sought out one perspective—the insights of individuals who have an intimate familiarity with the topic at hand and are in a position to connect them to larger social and historical structures—on one particular issue within a heterogeneous population that navigates many complex systems and phenomena. Perhaps a wider range of participants would have added further nuance to my results, but given the per-

spectives I was exposed to in my experience in fieldwork, as well as those represented in journalistic and academic literatures, I doubt they would negate my findings.

It is important to note that my conclusions are specific to the context of Buenos Aires, Argentina. My data does not speak specifically to activists in other regions of the country, many of whom are connected to national organizations in Buenos Aires but might have varied perspectives on how work, identity, and the State interact outside of the central zone of national government involvement and state control. Further, this particular model for how work, identity, and activism intertwine is specific to Argentina. My analysis cannot speak to how this kind of campaign might manifest or function in another context, nor if it would be possible. Although my results can only directly speak to the trans and travesti rights movement in Argentina, they also speak to themes of political strategy that are prevalent in literatures about other contexts. Other movements can gain valuable insights from the successes and challenges of this unique campaign. But, ultimately, my data best speaks to the particularities of the Argentine movement and how they came to achieve this groundbreaking law.

Conclusion

This project has illuminated one take on the motivations and implications of the Trans Labor Quota Law from the perspective of some of the very actors involved in creating and passing it. The campaign's successful fusion of labor rights and identity politics marks an important step in advancing social and economic inclusion for trans and travesti populations in Buenos Aires. In combining social, material, individual, and collective concerns, this victory highlights the true stakes of LGBTQI and other identity-based movements: the survival and comprehensive agency of marginalized populations. Although the fight is far from over, my participants' testimony emphasized that this victory, in a hard-fought battle waged by

many individuals and organizations, must be celebrated as a milestone in this growing movement and for the opportunities it may grant that many activists sacrificed much to obtain. These activists demonstrated that movements can build political momentum by advocating for the needs of the most marginalized and stigmatized members, such as sex workers/prostitutes, instead of leaving them behind.

In sum, this project provides perspective on what the work of the trans and travesti rights activism in Argentina can show us about the dynamics of LGBTQI activism around the globe. Although the scope of this project does not contain direct international comparison, the unique strategies espoused in the Trans Labor Quota Law of 2015 prompt questions for other national and international gender and sexuality movements: how can we incorporate a more comprehensive understanding of identity and existence in identity-based activism and rights claims? What rights are necessary to authentic inclusion and political agency? Further studies should continue to examine the nuanced strategies behind this law, further campaigns in Argentina, and efforts around the world to provide much needed perspective on how trans and broader LGBTQI movements will shape law and society going forward. As researchers across disciplines expand their work to include these movements and an intensified focus on trans populations, academia has an ethical responsibility to center trans voices and needs in how researchers design and conduct their research—taking care to interrogate, rather than perpetuate, dominant narratives of these increasingly visible and vocal populations.

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End Notes

¹ “Ley 26.473 de Identidad de Género” (*Congreso de la Nación Argentina*), or the Gender Identity Law of 2012, was the first law to depathologize gender identity in the eyes of the state and guarantee state coverage of gender-reaffirming healthcare (including reconstructive surgeries and hormone treatments) for trans and travesti people (<http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>). This law is widely recognized as a historic achievement that established the influence of a distinct trans and travesti rights movement in Argentina and around the world, as countries such as Denmark have used the law as a model for their own legislation.

² Emily Schmall, “Transgender Advocates Hail Law Easing Rules in Argentina,” *New York Times*, 24 May 2012, <http://www.nytimes.com/2012/05/25/world/americas/transgender-advocates-hail-argentina-law.html>.

³ Travesti roughly translates to “transvestite.” It is a term that has been reclaimed by people who neither identify as women nor as men, particularly in Latin America. I choose not to translate this term to preserve its political significance as a concept that establishes a distinct gender identity from those coined by Western academics, such as Judith Butler.

⁴ I use “social movement” throughout this paper to refer to the trans and travesti organizations in Argentina that organize and campaign around various issues because such is the language that the literature uses and how my participants identify their work.

⁵ “Ley 14783,” *Gobierno de la Provincia de Buenos Aires*, 2015, <http://www.gob.gba.gov.ar/legislacion/legislacion/l-14783.html>

⁶ Julián Ortega, “Trabajo en los Márgenes: Análisis de la Categoría de Trabajo Informal en Mujeres Trans de la Ciudad de Buenos Aires,” Presented at the 2nd International Conference of LGBT Psychology and Related Fields, Rio de Janeiro, Brazil, 2016.

⁷ Neela Ghoshal and Kyle Knight, “Rights in Transition: Making Legal Recognition for Transgender People a Global Priority,” *Human Rights Watch*, 2016, www.hrw.org/world-report/2016/rights-in-transition.

⁸ International Labour Organization, “Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work: Results of ILO’s PRIDE Project,” 2016, www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_481575.pdf.

⁹ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995): 52–77, https://libcom.org/files/Wendy_Brown_States_of_Injury_Power_and_Freedom_in_

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¹⁰ Sangeeta Budhiraja, Susana T. Fried, and Alexandra Teixeira, "From Alphabet Soup to Sexual Rights and Gender Justice," in *Development, Sexual Rights and Global Governance* (Routledge: Abingdon and New York 2010): 131-144, http://www.isiswomen.org/index.php?option=com_content&view=article&id=279&Itemid=261

¹¹ Budhiraja et al., 141.

¹² Mauro Cabral and Gabriel Benazur, "Cuando Digo Intersex", *cadernos pagu* 24 (2005): 283-304, <http://www.scielo.br/pdf/cpa/n24/n24a13.pdf>.

¹³ Stephen Brown, "'Con Discriminación y Repression no hay Democracia': The Lesbian Gay Movement in Argentina," *Latin American Perspectives* 29, no. 2 (2002): 119-138. <https://www.jstor.org/stable/3185130>

¹⁴ Ana Amuchástegui and Marta Rivas, "Construcción Subjetiva de Ciudadanía Sexual en México: Género, Heteronormatividad, y Ética," in *Sexualidad, Derechos Humanos, y Ciudadanía: Diálogos sobre un Proyecto en Construcción*, eds. Ivonne Szasz and Guadalupe Salas (Mexico, D.F.: El Colegio de México, 2008), https://books.google.com/books?hl=en&lr=&id=k9Zjo_igcaYC&oi=fnd&pg=PA57&dq=amuchaste+gui+y+rivas&ots=iTPRnaphuhD&sig=uuJ0OKs8_opFr1skqr1l7x5u2g#v=onepage&q=amuchastegui%20y%20rivas&f=false.

¹⁵ The umbrella term that organizations and actors within the LGBTTTI movement use in Argentina is "diversidad sexual," i.e. sexual diversity. Activists and academics in Argentina also opt to use LGBTTTI, often omitting the "Q", because "queer" is not usually regarded as a relevant term within their context.

¹⁶ Renata Hiller, "En las Faldas de O'Donnell: Discutiendo los Alcances del 'Matrimonio Igualitario' en Argentina," *Sociedade e Cultura* 15, no. 2 (2012) 359-368, www.redalyc.org/articulo.oa?id=70325252011.

¹⁷ Alma Moreno, "La Invisibilidad como Injusticia: Estrategias del Movimiento de la Diversidad Sexual," in *Todo Sexo es Político: Estudios Sobre Sexualidades en Argentina*, eds. Mario Pecheny et al. (Buenos Aires: Libros del Zorzal, 2008), <https://carlosfigari.files.wordpress.com/2011/02/todo-sexo-es-politico-pecheny-figari-jones-eds.pdf>, author's translation.

¹⁸ Lohana Berkins, "Travestis: Una Identidad Política," in *Pensado Los Feminismos en Bolivia*, ed. Patricia Montes (La Paz: Conexión, 2006), 221-229, http://www.conexion.org.bo/uploads/Pensando_los_Feminismos_en_Bolivia.pdf.

¹⁹ Blas Radi, "Serás Activista Trans o ... Serás Activista Trans: Sobre el Consumo Responsable de Información," *La revista del CCC* 8, no. 22 (2015): 1-6, <http://www.centrocultural.coop/revista/22/seras-activista-trans-o-seras-activista-trans-sobre->

[el-consumo-responsable-de-informacion](http://www.centrocultural.coop/revista/22/seras-activista-trans-o-seras-activista-trans-sobre-el-consumo-responsable-de-informacion).

²⁰ In addition to my interviews, I participated in ethnographic immersion in a variety of events, academic projects, and actions of various organizations. Although I will not formally discuss most of these experiences, they equipped me with a wealth of knowledge that informed my interviews and understanding of the workings of the movement.

²¹ Further information on my methodology is available upon request.

²² Zoe, interviewed by the author, Buenos Aires, Argentina, 4 August 2016.

²³ Emiliano Litardo, interviewed by the author, Buenos Aires, Argentina, 24 June 2016.

²⁴ Santiago Romero Chirizola, interviewed by the author, Buenos Aires, Argentina, 5 July 2016.

²⁵ Iñaki Regueiro, interviewed by the author, Buenos Aires, Argentina, 26 July 2016.

²⁶ Thomas Casavieja, interviewed by the author, Buenos Aires, Argentina, 19 July 2016.

²⁷ I include both terms to honor the diverse perspectives of my interviewees with regards to debates surrounding the significance of sex work/prostitution in trans and travesti communities.

²⁸ Zoe, 2016.

²⁹ Alessandra Luna, telephone interview with author, 31 January 2017.

³⁰ Karina Nazábal, interviewed by the author, Buenos Aires, Argentina, 2 July 2016.

³¹ Luna, 2017.

³² The role of gender in the relationship between work and identity did not emerge as a main theme in my data, although one interviewee, Litardo, discussed the radical potential of changing how we associate gender with certain professions through the incorporation of trans and travesti people into the work force. This discussion is present in this movement, but deeper analysis is outside of the scope of this particular project and should be more thoroughly unpacked going forward.

³³ Molina, 2016.

³⁴ Casavieja, 2016.

³⁵ Nazábal, 2016.

³⁶ Molina, 2016.

³⁷ Julián Ortega, interviewed by the author, Buenos Aires, Argentina, 1 July 2016.

³⁸ Luna, 2016.

³⁹ Nazábal, 2016.

⁴⁰ Romero Chirizola, 2016.

⁴¹ Here, Litardo refers to specific language in the law that stipulates that trans and travesti people hired through the law must be "suitable" for the position. In other words, he asserts that the State should take responsibility for preparing trans and travesti individuals to work in the State, rather than demanding "suitability" from the outset.

⁴² Litardo, 2016.

⁴³ Molina, 2016.

LGBTQ Perceptions of the Police: Implications for Mental Health and Public Policy

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Abstract

The present study utilizes a quantitative methodology to measure the relationship between sexual orientation and gender identity, individuals' perceptions of police, and mental health. The researchers hypothesize that lesbian, gay, bisexual, transgender, and queer (LGBTQ) participants ($N = 41$) will have more negative perceptions of police than their non-LGBTQ (i.e., heterosexual cisgender) counterparts ($N = 47$), and that there will be a negative relationship between individuals' police perceptions and mental health. Comparative t-tests supported that LGBTQ participants report more negative perceptions of police than non-LGBTQ participants, while a correlational analysis indicated a significant negative relationship between mental health and individuals' perceptions of police. The results of the study suggest further inquiry into understanding the roles of sexual orientation and gender identity in determining attitudes toward police, while they also provide preliminary insight into the relationship between individuals' perceptions of police and mental health. The data was drawn through an online survey site and participants were currently residing in the US.

Bios

Sriya Satuluri is a social worker and researcher at Swayam, a feminist organization in India committed toward ending violence against women and girls. She graduated from John Jay College of Criminal Justice, City University of New York with a Master's degree in Forensic Psychology. Currently, she is part of the larger women's rights movement in India and is dedicated to contributing toward building a violence-free and equal world. Her primary interest is in working with individuals who are marginalized based on their gender identity and sexual orientation, so as to ensure that such individuals have access to mental health services.

Dr. Kevin Nadal is a Professor of Psychology at John Jay College and The Graduate Center at City University of New York (CUNY). He is the former Executive Director of CLAGS: The Center for LGBTQ Studies; the past president of the Asian American Psychological Association; a cofounder of the LGBTQ Scholars of Color Network; and a trustee of the Filipino American National Historical Society. He has authored eight books and over 100 publications, including *Filipino American Psychology* and *That's So Gay! Microaggressions and the LGBT Community*. A contributor to *Huffington Post* and *Buzzfeed*, he has been featured on CBS, NBC, PBS, Fox News, The History Channel, and more.

Keywords: perceptions of police, police misconduct, discrimination, sexual orientation, LGBTQ, mental health

Throughout the history of the US, there have been many instances of police misconduct toward the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community.¹ Police brutality against LGBTQ people can be traced back to the early 1900s, when police officers regularly arrested LGBTQ people on sodomy charges, which criminalized oral or anal sex—even when involving consenting adults in the privacy of their homes.² For decades, it was also common for police to raid bars frequented by LGBTQ customers—arresting them for sodomy, or if their gender presentation did not match the gender on their identification cards. During one of these police raids of the Stonewall Inn in New York City in 1969, LGBTQ customers fought back, and the Stonewall Uprising ensued. Many scholars describe this protest as the beginning of the LGBTQ rights movement, as well as the beginning of LGBTQ advocacy against police discrimination and abuse.³

Despite the remarkable progress of the LGBTQ rights movement, there are still many cases of police abuse toward LGBTQ people in present times. Police misconduct against the LGBTQ community may be passive or aggressive and includes profiling LGBTQ individuals as criminal because of their sexual orientation; sexual, physical, and verbal abuse; inappropriate searches and maltreatment in detention centers; dismissing anti-gay hate crimes as being the fault of the victim, etc.⁴ LGBTQ people describe the many ways that factors like gender presentation, masculinity, femininity, and intersectional identities impact the ways that police treat them.⁵ Intersectionality, particularly, has a strong impact since compounded threats of discrimination arise when an individual's identities overlap with multiple minority classes. Transgender and gender nonconforming

people report negative experiences with police, which then impacts their ability to seek help—even when they are targeted by violence.⁶

While there is a body of scholarship on police misconduct toward people of historically marginalized racial groups,^{7,8} there is very little empirical research that describes LGBTQ perspectives of law enforcement. Though there is some literature that examines experiences of LGBTQ police officers themselves,⁹ limited literature explores how LGBTQ people feel about police officers, how they interact with police officers, and how their experiences with law enforcement influence their mental health. The present study explores LGBTQ people's perceptions of police and compares them to perceptions of police held by the general population. The study will also examine if perceptions of police are, in any way, related to mental health outcomes.

Community Perceptions of Police

Although the study of community perceptions of police is somewhat new, there are three aspects of police performance that emerge in a review of previous research on perceptions of the police by the general public: (a) confidence in the police, (b) police fairness, and (c) police use of excessive force.¹⁰ Researchers have described the general belief that the police interact with society in a negative way, which then paves the way for stereotypes and ultimately leads to biases in policing.¹¹ Past research in this field reveals consistent reports that perceptions of police, even in the general population, are negative and police abuse is pervasive.^{12,13}

Perceptions of police have changed over the years and are influenced by a number of different factors. Researchers have found that personal experiences with law enforcement matter much more than having abstract concepts of the same when it comes to views about fairness or biases in police treatment.¹⁴ However, both personal experi-

ence and symbolic attitudes play an important role in influencing opinions about the seriousness of crimes and making assessments about overall police performance.¹⁵ Previous studies have shown how an individual's personal experiences influence their perceptions of police, and that perceptions of police held by the general public are determined by the manner in which the police interact with the public masses.¹⁶ These findings can be further interpreted through procedural justice theory, which suggests that the key factor in shaping perceptions of authority figures is whether an individual believes that they have been treated fairly during personal encounters with agents of authority.¹⁷ Hence, in the context of a procedural justice framework, the focus is on the subjective experience of interaction with an authority figure. Procedural justice may be particularly important to the experience of LGBTQ persons, who, belonging to a stigmatized group, may pay closer attention to how they are treated by law enforcement agents and be more likely to cooperate when treated with dignity and respect.

Sociocultural Determinants for Attitudes toward Police

Previous research has found that perceptions about police also tend to change based on race, ethnicity, religion, and socioeconomic status,¹⁸ and are often attributed to biased police treatment against various minority groups.^{19,20} There is overwhelming research that reveals that Black and Latina/o Americans have much lower faith and confidence in the police than their White counterparts²¹—a difference most commonly attributed to racial profiling and racial disparities in police behavior.²² Studies have shown that Black Americans are much less likely than Whites to report good police behavior²³—further corroborating that continued racial discrimination contributes to attitudes toward police.

While Black and White Americans lie on opposite ends of the spectrum with regard to their perceptions of the police, other ra-

cial groups lie in the middle. Asian Americans tend to have overall positive views of the police (e.g., police demeanor, integrity, and effectiveness), but less positive views of police fairness.²⁴ Latina/o Americans perceptions of police are also found to fall somewhere between their Black and White counterparts—having both positive and negative reactions.²⁵

Among other factors that influence perceptions towards police, studies have revealed that gender may influence one's satisfaction with the police. One meta-analysis found there were no major gender differences in perceptions of police between men and women;²⁶ meanwhile, a more recent study found women are more likely to hold higher satisfaction with the police than men.²⁷ Further, while women survivors of sexual violence or stalking are more likely to seek help than male survivors,²⁸ women with greater fear of victimization are less likely to be satisfied with police.²⁹ Most of these studies, however, take a very binary approach towards gender. Since gender is not only determined by an individual's biological sex, but is also a complex interaction between sex, one's internal gender identity, and one's gender expression, with an aim to be inclusive, the current study takes a more nuanced view of gender. Additionally, the study reiterates the need to examine intersectionality while studying perceptions of police in order to take into account the interplay between gender and other identities, such as race and ethnicity, in determining how an individual will be treated by an authority and consequently perceive that authority. The dearth of literature in this respect brings to light the need for such studies in the future.

LGBTQ people's attitudes toward police may likewise be due to police interactions. A report issued by the National Coalition of Anti-Violence Programs found that almost half (41 percent) of LGBTQ survivors of violence interacted with police after being targeted for violence.³⁰ Of this group, over

one-third of survivors (35 percent) reported that police were indifferent and about one-third (31 percent) reported that police were hostile. Multiple survivors reported that they experienced police misconduct as a result of the interaction—including excessive force, unjustified arrest, entrapment, and raids. Black survivors were 2.8 times more likely to experience excessive force than non-Black survivors. These findings align with previous research that shows that victims of anti-LGBTQ hate crimes do not report crimes because they fear that they will be treated by the police with hostility and abuse.³¹

Further, police misconduct and maltreatment toward LGBTQ individuals has been problematic for decades. According to Comstock, “Police officers refuse to protect lesbian and gay victims, undermining the seriousness of the offence committed against them and in return blame them for the occurrence of the incident.”³² One study cited that police also dismiss crimes against LGBTQ people as being mere pranks, suggesting that homophobic crimes are not taken seriously by police officers or even that homophobic crimes are acceptable to police.³³ Another study revealed that homophobia induces law enforcement officers to respond differently to incidents involving same sex couples than to incidents involving heterosexual couples.³⁴ Given these factors, it can be hypothesized that negative treatment of the LGBTQ community by police personnel may lead to negative perceptions about police in general, and may directly cause psychological distress.

Police profiling may also affect how LGBTQ people, especially LGBTQ people of color, perceive law enforcement. According to an analysis by the New York Civil Liberties Union, Stop, Question, and Frisk (SQF) policies were used to unjustly target innocent New Yorkers³⁵—disproportionately affecting those who were Black or Latina/o. However, many individuals also reported being targeted by SQF as a result

of their gender identity or sexual orientation.³⁶ For example, a disproportionate number of transgender women are singled out by the NYPD³⁷ and are often targeted as being prostitutes or for other sexual crimes.³⁸ In fact, according to the National Coalition report, transgender people of color are seen to experience police violence at a rate that is more than two times greater than the LGBTQ community as a whole.³⁹ The New York police often search gender nonconforming individuals in inappropriate, aggressive ways in order to determine their gender.⁴⁰ Individuals have reported that police officers often disrespect their pronouns or accuse transgender people of carrying fake identification if their gender marker does not match how they present.^{41,42} Transgender women, especially transgender women of color, describe being sexualized by police officers (e.g., touched or frisked inappropriately) or treated as less than human.⁴³ Additionally, cisgender women who appear to be masculine (e.g., butch women) have reportedly been stopped by the NYPD for SQF more often than women who present as more traditionally feminine.⁴⁴

While there are some qualitative studies that examine how experiences with police officers may affect LGBTQ people’s mental health,^{45,46} there is a dearth of quantitative literature that examines this relationship. However, previous studies indicate that individuals’ perceptions of discrimination have a major effect on their mental well-being and psychological health. For instance, one study found that lesbian, gay, and bisexual people reported both lifetime and day-to-day experiences with discrimination more frequently than their heterosexual counterparts, and that perceived discrimination was associated with a lower quality of life and psychiatric morbidity.⁴⁷ Further, one review revealed that LGBTQ people who experience a greater amount of microaggressions are more likely to exhibit an array of mental health issues—including depression, anx-

xiety, and trauma.⁴⁸ Thus, one may wonder if negative experiences with police (e.g., overt discrimination, microaggressions) influence any mental health outcomes in similar ways.

Overview of the Current Study

The purpose of the present study was twofold. The first aim was to investigate the multifaceted experiences and views of police by LGBTQ people as compared to non-LGBTQ people (i.e., heterosexual, cisgender people). The second aim was to explore the relationship between police perceptions and LGBTQ individuals' mental health. While there has been a substantial amount of research on perceptions of police, most of the studies are qualitative in nature, and there is very little quantitative research on police perceptions and LGBTQ populations. Moreover, research in this area also tends to ignore how mental health issues (anxiety, depression, emotional control, life satisfaction, etc.) may be linked to perceptions of police. Thus, the present study aimed to (a) compare LGBTQ and non-LGBTQ participants' perceptions of police and (b) to determine the relationship between perceptions of police with mental health outcomes. There were two hypotheses for the study. *Hypothesis 1:* A significant difference in police perceptions will emerge between the LGBTQ and non-LGBTQ samples—with negative perceptions being more prevalent among the LGBTQ sample. *Hypothesis 2:* Negative perceptions of the police will be more highly correlated with negative mental health, whereas positive perceptions of the police will be more highly correlated with positive mental health.

Method

Research Design

The current study employed a nonequivalent control group design to compare the perceptions towards police of LGBTQ and non-LGBTQ participants and to determine if those perceptions are correlated with

the mental health of the two comparison groups. The nonequivalent control group design was best suited to this study, since the study did not involve randomization in its assignment, and the two comparison groups differed in terms of a fixed, pre-existing characteristic, which is sexual orientation.

Participants

The participants in this study comprised a group of 93 individuals. Participants who self-identified their sexual orientations and gender identities as lesbian, gay, bisexual, transgender, queer, genderqueer, pansexual, or some other non-heterosexual group were categorized by the researchers as "LGBTQ." Participants who identified with as heterosexual and cisgender were grouped as non-LGBTQ. Five individuals with unidentified or missing sexual orientations or gender identities were removed from the study. For the purpose of the study, the participants were divided into two main comparison groups of 47 non-LGBTQ individuals and 41 LGBTQ individuals. The two comparison groups were similar in age, with the age in each of the two groups ranging from 20 to 67 years. The mean age for the whole sample was 30.55 years, while the mean ages for the non-LGBTQ and LGBTQ groups were 30.51 years and 30.62 years respectively. Participants of this study belonged to a wide variety of ethnicities and races, with 47.3 percent who were White, 34 percent who were Asian American, 6 percent who were Black, and 8 percent who belonged to other racial groups. The gender of the participants for the total sample included male (N = 29), female (N = 49), and transgender (N = 15). The gender of participants who identified as transgender could further be broken down into transgender men (N = 4) and non-binary gender identities (N = 11). The two comparison groups were also matched such that the participants in both the groups presently live in the US or have lived in the US for at least one year.

The average number of years spent in the US by the total population was 22.5 years, while the number of years lived in the US by the LGBTQ and non-LGBTQ ranged from 1 to 64 and 2 to 50 respectively.

Procedure

All participants for this study were recruited online by the principal investigator through the online survey site Survey Monkey. The survey packet was prepared by the principal investigator and consisted of the following (in order): an informed consent form, a demographic survey, and two questionnaires: the Perception of Police Survey and the Mental Health Inventory. Following this, the principal investigator posted the survey on several listservs and social networking websites in order to maximize the participant pool. Through the informed consent form, the participants were notified of the purpose of the study and were reassured that their information would be kept completely confidential and all measures would be taken to protect their identities. If the participants chose to sign the in-

formed consent form and participate in the survey, the online survey took them to the questionnaires detailed below. Participants were given the option of discontinuing at any point in the survey. No monetary compensation was given to the participants for completing the survey. All procedures were approved by the researcher’s home Institutional Review Board.

Measures

Perceptions of Police Scale (POPS): The POPS comprises two subscales and measures the general attitudes toward police and the perceptions of police bias.⁵⁰ Subscale 1 measures general attitudes toward police, with sample items including statements such as “Police are friendly” and “Police protect me.” Subscale 2 measures perceptions of police bias, with sample statements including: “Police treat people fairly” and “Police do not discriminate.” The POPS yielded high reliability—with overall reliability of 0.915 in the total scale, and subscales 1 and 2 yielding reliability coefficients of 0.906 and 0.866 respectively.

Sexual orientation/gender identity of the participants		Total score on the Perceptions of Police Scale	Total score on the Mental Health Inventory
Non-LGBTQ (i.e., heterosexual and cisgender)	Mean	25.11	65.71
	N	47	43
	SD	5.873	17.618
LGBTQ	Mean	37.51	61.67
	N	41	36
	SD	9.615	21.777
Unknown/undeclared	Mean	43.75	61.67
	N	4	4
	SD	4.349	2.778
Total	Mean	31.45	63.94
	N	92	83
	SD	10.134	12.123

Table 1: LGBTQ and Non-LGBTQ Participants’ Scores on the Perceptions of Police Scale (POPS) and the Mental Health Inventory (MHI)

Sexual orientation/ gender identity of the participants	Total score for the anxiety subscale	Total score for the depression subscale	Total score for the behavior control subscale	Total score for positive affective subscale
Non-LGBTQ				
Mean	58.14	69.77	76.98	57.91
N	43	43	43	43
SD	23.766	19.547	18.521	18.842
Minimum	0	15	25	25
Maximum	100	100	100	85
LGBTQ				
Mean	54.33	64.03	71.39	57.08
N	36	36	36	36
SD	25.160	22.387	23.622	22.148
Minimum	8	15	25	10
Maximum	92	100	100	85

Table 2: Means of LGBTQ and non-LGBTQ Individuals on the Four Subscales of the MHI

	Mental Health Inventory	Perceptions of Police Scale	General perceptions of police	Perceptions of bias
Mental Health Inventory	1	-.278*	-.266*	-.281**
Perceptions of Police Scale	—	1	.992**	.868**
General perceptions of police	—	—	1	.798**
Perceptions of bias	—	—	—	1

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

Table 3: Correlations between Overall Police Perceptions and the Four Mental Health Inventory Subscales

The POPS has been used with people of various racial groups⁵¹ and transgender and gender nonconforming populations.⁵²

Mental Health Inventory (MHI): In order to measure overall emotional function, the Mental Health Inventory was used. As a part of the National Health Insurance Study, the MHI, developed by Veit and Ware,⁵³ is a measure for evaluating mental health issues such as anxiety, depression, behavioral control, positive affect, and general distress. This instrument helps to measure the overall emotional functioning of an individual. The shorter version of the original 38-item MHI includes 18 items, to which the respondent answers by choosing from a 6-point Likert-type scale. The measure can generally be done without assistance and takes approximately ten minutes. The MHI is easy to administer and provides a quick assessment of both positive and negative facets of mental health, not just psychopathology. The full-length version of the MHI has a Cronbach's alpha that ranges from 0.63 to 0.93 for the subscales, 0.90 to 0.97 for the global scales and 0.93 to 0.97 for the total score.⁵⁴ This indicates that the scale has a good internal consistency. The MHI has been studied extensively in large populations, and comes with considerable evidence for its validity.⁵⁵

Data Analysis

For the first hypothesis, a t-test between the POPS scores of the two groups of participants (LGBTQ and non-LGBTQ) was performed to determine whether the perceptions held by the two groups differ significantly from one another. The second hypothesis was answered by computing measure of correlation between the scores of the POPS and the MHI to determine whether perceptions of police and general mental wellbeing of the participants are in fact significantly correlated with one another. Furthermore, in order to understand whether perceptions of police influence mental health, a regression analysis was done with POPS as an independent variable and mental health as a dependent variable.

Results

Results of the study indicate that there were significant differences between the scores of non-LGBTQ and LGBTQ participants in their overall perceptions of police, $t(64,343) = 7.176$, $p < 0.001$; in general perceptions of police, $t(62,093) = 6.816$, $p < 0.001$; and in perceptions of bias in police treatment, $t(86) = 6.751$, $p < 0.001$. Table 1 reports the mean scores of both groups of participants on both the POPS as well as the MHI, thus providing a summary of how each of the groups fared on the two measures. Lower scores on the POPS indicate positive perceptions of police, while higher scores indicate negative perceptions of police. As indicated in the table, the means of overall police perceptions of the LGBTQ and non-LGBTQ participants are 37.51 and 25.11 respectively, indicating that the perceptions of police among non-LGBTQ participants are more positive than those existing among the LGBTQ participants.

A regression analysis with overall perceptions of police as the independent variable and overall mental health as the dependent variable revealed that perceptions of police significantly predicted overall mental health, $B = -0.53$, $t(82) = -2.625$, $p = 0.01$. Despite this, the model only explained 7.8 percent of the variance in the overall mental health. Thus, there are likely other mediating variables that contribute to the relationship between the two variables.

In a preliminary correlational analysis, there was a statistically significant correlation between overall perceptions of police and overall mental health of the participants, $r(82) = -0.28$, $p = 0.01$ (see table 3). The negative correlation indicated that lower scores on the POPS were significantly correlated with higher scores on the MHI, suggesting that when people have more favorable perceptions of police, they will also report more favorable mental health.

Results further indicate statistically significant correlations between general perceptions of police and overall mental

	Perceptions of Police Scale	MHI anxiety subscale	MHI depression subscale	MHI behavior control subscale	MHI positive affect subscale
Perceptions of Police Scale	1	-.282**	-.270*	-.264*	-.162
MHI anxiety subscale	—	1	.792**	.756**	.724**
MHI depression subscale	—	—	1	.847**	.780**
MHI behavior control subscale	—	—	—	1	.749**
MHI positive affect subscale	—	—	—	—	1

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed)

Table 4: Correlations between Overall Police Perceptions and the Four Mental Health Inventory Subscales

health, $r(82) = -0.27, p = 0.015$; and between perceptions of bias in police treatment and overall mental health, $r(82) = -0.28, p = 0.01$ (see table 3). There were also significant correlations between overall perceptions of police and the four subscales of the Mental Health Inventory. As indicated in table 4, overall police perceptions was significantly correlated with anxiety, $r(82) = -0.28, p < 0.01$; depression, $r(82) = -0.27, p = 0.01$; and behavior control, $r(82) = -0.26, p = 0.01$ of the participants. Perceptions of police were not significantly correlated with positive affect $r(82) = -0.16, p > 0.05$.

Discussion

Per the two hypotheses of the study, it was expected that there would be significant differences in perceptions of police between

LGBTQ and non-LGBTQ people, with LGBTQ people tending towards more negative perceptions. It was also expected that perceptions of police would be correlated with mental health of the participants and that positive perceptions would correlate higher with positive mental health, while negative perceptions would correlate higher with negative mental health. The results obtained from the study confirm both hypotheses.

The two comparison groups (LGBTQ individuals and non-LGBTQ individuals) differed significantly from one another in terms of overall perceptions of police, general perceptions of police, and perceptions of bias in police treatment. Since personal experiences have been known to influence perceptions,⁵⁶ the differences in percep-

tions in the present study can likely be attributed to the vast differences in personal experiences that the two groups of individuals have shared with the police. Perhaps LGBTQ people's less favorable police perceptions are due to the historical trauma of police violence and bias throughout history. Either way, results of the study align with procedural justice theory, which asserts that the manner in which a person is treated by authority figures determines how that person perceives any authority figures in the future.⁵⁷

Even though the mental health of the two comparison groups did not differ significantly, the study revealed significant correlations between perceptions of police and mental health. While mild in effect size, correlations indicate that negative perceptions of police are related to negative mental health, while positive perceptions are related to positive mental health. If LGBTQ people hold negative perceptions of police due to experiences of being discriminated against or abused,⁵⁸ such experiences could have an adverse effect on their mental well-being, especially susceptibility to anxiety and depression. Similarly, non-LGBTQ people have more positive experiences with the police—potentially due to not experiencing discrimination based on their sexual orientation or gender identities. Perhaps they experience a greater sense of safety—which may potentially result in more positive mental health. However, it is important to note that the relationship between perceptions of police and mental health is purely correlational and not causal in nature. Negative perceptions of police held by people adversely impact their mental well-being in varying degrees, but do not cause poor mental health or vice versa.

Implications for Policy, Practice, and Research

The present study has major implications for public policy and practice. First, results highlight the need for more culturally competent services for LGBTQ people in

law enforcement and the criminal justice system. Perhaps police departments (and other institutions such as correctional settings, courthouses, and others) can offer trainings, workshops and information sessions where police officers are made aware of LGBTQ issues. Perhaps they may learn about how their explicit and implicit biases negatively impact the ways that they treat LGBTQ people (as well as people of other historically marginalized identities). Police departments may attempt to use more community policing techniques, where police are integrated into community organizations in organic, interpersonal, and nonthreatening ways, with an emphasis on LGBTQ members of the community. One study has found that when community policing techniques are used, LGBTQ people may actually view police to be favorable.⁵⁹

Second, the results of the study indicate that policies on all levels need to be more LGBTQ-affirming—especially since negative experiences with police may be related to negative mental health. Given the many obstacles LGBTQ people face from law enforcement (and in society in general), the study demonstrates the importance of systems and institutions to be more mindful of how they provide services for LGBTQ people. Perhaps practitioners who work with LGBTQ people (e.g., educators, psychologists, social workers) need to be more aware of resources to offer LGBTQ people when they are targeted by violence or by police misconduct. Perhaps community organizations may create or provide new and safe ways for LGBTQ people to report crimes—as a way of avoiding potential re-traumatization from interactions with police. For example, the National Coalition of Anti-Violence Programs describes how many LGBTQ survivors are more willing to report their crimes to LGBTQ community organizations than they are to police, and that therefore police reports are less representative of violence that LGBTQ people actually face.⁶⁰ Not only can organizations like the National Coalition serve as

safe havens for LGBTQ survivors, they can also provide anonymous data to their local police departments, to increase more accurate reporting of crimes among LGBTQ communities.

Regarding future research, these results highlight the need for more studies on issues related to LGBTQ people's experiences with police and the effects of such experiences on mental health. Although there has been a great deal of research on perceptions of police among the general population, as well as among various racial groups, future studies can aim to utilize larger samples of LGBTQ participants, so that more accurate generalizations can be made about the population in general. Studies can also focus on understanding the influence of intersectionalities (race, gender, social class, etc.) on police perceptions, while also disaggregating the data and examining differences among various sexual orientations and gender identities within the LGBTQ umbrella. Because the LGBTQ community is so diverse, with many sexual orientations (gay, lesbian, bisexual, queer, pansexual, etc.) and gender identities (transgender, cisgender, gender nonconforming, genderqueer, etc.), it is important to disaggregate data. For example, in keeping with the existing literature and the framework of procedural justice theory, a disaggregation of data will probably reveal that trans women or trans women of color specifically are the most at risk for police misconduct, given the high levels of violence they face in society at large. Future research should also focus on other variables that can be measured alongside the POPS—including quality of life, self-efficacy, help-seeking behaviors, and other variables that can affect the ways in which people perceive the police.

Limitations and Conclusion

While the findings of the study were fruitful, there are some limitations to consider. First, due to the small sample size ($N = 93$), as well as the unequal number of participants in the two comparison groups, the

results of study may be less generalizable to the greater LGBTQ population. Further, LGBTQ people (e.g., gay men, lesbians, bisexual people, transgender, and queer people) were all grouped together into a single group for comparison with non-LGBTQ people. Even though individuals of the LGBTQ community may undergo experiences of bias and prejudice in similar ways, and even though they are almost always considered to fall under the same umbrella of sexual orientation, there may be individual differences depending on their specific sexual orientation or gender identity, which should be taken into account while determining their perceptions of police or their overall mental health.

In conclusion, the results from this study indicate that there is still much work to be done regarding LGBTQ interactions with police officers, as well as the impact of those experiences on mental health. Policymakers, researchers, and law enforcement officers themselves must recognize the unique experiences that LGBTQ people have with the police and enact changes accordingly. If police officers are truly committed to ensuring that justice prevails, they must do everything in their power to protect and serve all people, regardless of sexual orientation or gender identity.

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A Tale of Two Judgments: The Afterlives of a Defeat and a Victory for Queer Rights in India

Danish Sheikh

Abstract

Within a period of six months in 2013 and 2014, the Indian Supreme Court delivered two crucial judgments relating to LGBTQI rights. The first, *Suresh Kumar Koushal v. Naz Foundation*, upheld the criminalization of homosexuality in the country and was seen as a deeply regressive move by the Court. The second, *NALSA v. Union of India* was heralded as a landmark in creating a charter of constitutional rights for transgender individuals. The afterlives of both judgments have shown a more complex narrative than the instant reaction received by each accounted for. *Koushal* went on to inspire a range of energetic activism at multiple levels while also resulting in new approaches before the Supreme Court, while *NALSA* has suffered from implementation woes and spawned proposed legislation that threatens to undo the core of the judgment. This paper looks at the twin narratives of these judgments, giving us a window into how social movements have creatively used laws in mobilizing efforts, while also seeing the paralytic nature that a legal victory can have on effective mobilization.

Bio

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Introduction

This essay speaks about two significant instances where members of the LGBTQ community in India made use of the Supreme Court as a forum to further constitutional rights. The cause of action was very different across the two cases. The first, *Suresh Kumar Koushal v. Naz Foundation*¹ (hereinafter *Koushal*) was a constitutional challenge to an anti-sodomy law where the litigation process spanned almost two decades and

remains ongoing. The second, *National Legal Services Authority v. Union of India*² (hereinafter *NALSA*), was a wide-ranging petition about the state of transgender rights in the country, asking the court to enforce the constitutional rights of transgender persons across a range of fora. In this instance, the petition was filed in 2012, with the judgment of the Court delivered not two years later.

From the perspective of the original petitioners in each case, *Koushal* was a loss while NALSA was a win. The *Koushal* Court upheld the constitutional validity of the statutory provision that effectively criminalized intimate relations between LGBTQ persons. The NALSA Court delivered a deeply empathetic judgment that provided a charter of rights for transgender persons in the country including, significantly, a recognition of the right to self-identify one's gender regardless of the gender assigned at birth. The aftermath of both judgments has shown a more complex narrative than the immediate reaction to each decision suggested. *Koushal* has become a rallying cry for the movement that inspired a range of energetic activism on multiple levels, including previously unprecedented legislative intervention. Even the doors of the Supreme Court have not stayed shut to the legal challenge, with a potentially groundbreaking curative petition³ on the same matter holding the potential of transforming the sphere of constitutional rights in the country. Meanwhile, NALSA has suffered from implementation woes from the beginning, and is facing active threats from the very legislation it has purportedly inspired. If the test of the judgment's success is the accessibility of legal gender recognition in the country, it is clear that precious little has been achieved. If there has been a victory here, it is largely at the discursive level, in the realm of how the language of the judgment has been appropriated by civil society actors, even as little has changed at the level of policy.

Over the course of this essay, I will look at the trajectories of these cases, examining the journey from the filing of the petition through the declaration of the judgment, and the ways in which these judgments have played out within the larger space of the LGBTQ movement in the country. I will explore the different ways in which we might define the "success" of a judgment, while exploring the ways in which civil society engages with the law.

The Defeat of *Koushal*

Section 377 and the Story of the Naz Litigation

Section 377 of the Indian Penal Code criminalizes "carnal intercourse against the order of nature." While the words of the statute do not explicitly target the LGBTQ community, the provision has been used largely to persecute community members since its inclusion in the Penal Code in 1860. The word "persecute" is important here: prosecutions, where individuals are specifically arrested or subjected to criminal proceedings under the law, are rare.⁴ Instead, it is a more indirect form of harassment that the law legitimizes, whether in the manner of blackmail, institutional discrimination, or state violence.⁵

The first attempt at challenging the constitutionality of Section 377 was in 1994, when the human rights activist group AIDS Bhedbhav Virodhi Andolan (ABVA) filed a petition before the Delhi High Court.⁶ The petition came in the wake of a 1994 survey that found that two-thirds of the inmates in Tihar Jail, India's largest prison, had participated in homosexual activity. Recommendations on making condoms available in the prison were rejected by the authorities, who felt this would be tantamount to legalizing homosexuality.⁷ ABVA's petition attempted to push for precisely such legalization, arguing against the constitutional validity of Section 377 on a range of grounds and asking for a complete repeal of the section. The petition ultimately languished in the Court for eight years before being silently disposed of⁸

In December 2001, Naz Foundation, an NGO working in the field of HIV/AIDS intervention and prevention and whose mandate included working with gay and MSM⁹ individuals, filed a petition before the Delhi High Court challenging the constitutionality of Section 377.¹⁰ Represented by Lawyers Collective, an organization that provides human rights legal services, the petition made the case that Naz Foun-

dation's HIV/AIDS prevention efforts were impaired by discriminatory attitudes exhibited by state agencies towards sexuality minorities. Unless the self-respect and dignity of sexuality minorities were restored by doing away with discriminatory laws like Section 377, it would not be possible to promote HIV/AIDS prevention in the community.¹¹

In her ethnography of queer activism in India, Naisargi Dave notes how the filing of the petition was met with a sharply divided response by activists and lawyers working on queer rights in the country.¹² One level of opposition was based on the fact that many groups felt they hadn't been consulted about this action that would affect the future of their work. Another critique of the petition was substantive—based on a discomfort with what was considered an elitist positioning in that the petition was asking for sexual acts to be decriminalized in private. This left out the vast number of individuals belonging to vulnerable socio-economic groups who were unable to inhabit a private space of any kind. Women's groups also opposed this focus on privacy, given that a large element of their struggle was to challenge impunity within the private sphere. To go back to the right to privacy in this context would add another layer of privacy, essentially reinforcing the private sphere.

Even as debates raged on within the LGBTQ community, the state's response to the petition came in the form of an affidavit filed before the Delhi High Court by the Ministry of Home Affairs in September 2003.¹³ The affidavit, opposing the petition filed by Naz Foundation, noted that the law reflected the perceptions of society, and that Section 377 was introduced as a response to contemporary Indian values at the time. It noted that society continued to largely disapprove of homosexuality, a disapproval strong enough to justify treating it as a criminal offence, even where adults indulged in it in private. Significantly, it also noted that, for a court to judge the provi-

sion in its judicial capacity, an application to the facts of a specific, pre-existing case would be necessary, and no such case existed to form the basis for the petition.

As Dave argues, the government's chastisement of queer Indian activists for not having a proper movement led in turn to an attempt to forge a temporary solidarity. Through meetings and dialogue, one of the major interventions was the creation of Voices Against 377, a coalition of 12 nongovernmental organizations and progressive groups based in Delhi.¹⁴ The group saw itself as a point of intersection and dialogue between various social movements that the groups represented, articulating a united voice against Section 377.

After some procedural back and forth, the petition went back to the Delhi High Court in 2006 for its perusal.¹⁵ In this next round, another government ministry joined the fray, this time supporting the petition: the Ministry of Health and Family Welfare, through the National Aids Control Organization (NACO), filed an affidavit noting that the enforcement of Section 377 contributed adversely to proliferation of risky sexual practices among MSM individuals. At this moment Voices Against 377 stepped into the fray, filing an intervention petition in the matter. The intervention was significant in that it brought lived experiences into the courtroom: affidavits were submitted from a range of individuals about their specific experiences of marginalization under the law. Meanwhile, two other parties opposed the petition: B.P. Singhal, a former politician of the Bharatiya Janata Party, and the Joint Action Council Kannur, an HIV/AIDS denialist organization.

A two-judge bench of the Delhi High Court, comprising Chief Justice A.P. Shah and Justice S. Muralidhar, heard the final arguments in the case over the month of November 2008. Eight months later, on 2 July 2009, the court delivered the *Naz Foundation v. Government of NCT of Delhi judgment*.¹⁶ Consensual sexual acts between

adults in private, it declared, would be constitutionally protected and stay outside the criminal ambit of Section 377. The court found that to criminalize LGBT individuals for their intimate sexual relations in this manner was violative of the constitutional rights to privacy, equality, non-discrimination, dignity, and health. The 105-page document became an instant landmark, not just in terms of this final decision, but for the ways in which it pushed constitutional doctrine and inaugurated a new discourse for imagining queer identity within the law. This new discourse was one that moved away from the imagining of the homosexual as a perverse individual, as seen in preceding case law, and instead embraced queer individuals with a language of dignity and inclusiveness.

During the same month, the judgment was challenged through a petition filed before the Supreme Court of India. The first of the many petitioners was Suresh Kumar Koushal, an astrologer, followed in quick succession by religious organizations ranging from the Apostolic Churches Alliance to the All India Muslim Personal Law Board and the Krantikari Manuvadi Morcha. The Delhi Commission for Protection of Child Rights joined a crowded case, which also included every party from the lower court judgment—except, surprisingly, the Ministry of Home Affairs.

These surging numbers were matched by an increase in supporters on the Naz Foundation side. In addition to the Naz Foundation, Voices Against 377, and NACO, a diverse set of voices filed interventions before the court. Parents of LGBT persons from across the country came together for an intervention, as did mental health petitioners, teachers, law academics, and Member of Parliament Shyam Benegal.

In February 2012, final arguments began in this matter before the division bench of Justices G.S. Singhvi and S.J. Mukhopadhyay and continued till the end of March 2012. The Supreme Court pronounced its verdict 21 months after the hearings ended.

Suresh Kumar Koushal: The Supreme Court's Decision

On 11 December 2013, the Supreme Court handed down the *Suresh Kumar Koushal v. Naz Foundation* decision.¹⁷ In a major blow to LGBTQ individuals, the court reversed the Delhi High Court's decision and found that Section 377 did not infringe on fundamental rights guaranteed by the Constitution. To reach this conclusion, the court made a series of egregious errors in legal reasoning.

A large section of the judgment is devoted to parsing appellate court interpretations of Section 377. The court traces the contemporary interpretation of the section to its colonial origins. It is evident from unofficial transcripts that the judges were greatly interested in the question of what constituted “carnal intercourse against the order of nature.” Ultimately, this question remains unanswered, with the judges noting “from these cases no uniform test can be culled out to classify acts as carnal intercourse against the order of nature.” At the most, the court found whether an act fell within the ambit of the section could only be determined with reference to the act itself and the circumstances in which it was executed. One of the guiding principles in this regard could be the fact that most of the cases prosecuted under the section referred to nonconsensual and markedly coercive situations. Given this, the judges said that “we are apprehensive of whether the court would rule similarly in a case of proved consensual intercourse between adults.”¹⁸ However, no effort was made to actually clear the ground on this front; instead, they ultimately noted that Section 377 would apply irrespective of age and consent, and prohibit sexual conduct regardless of gender identity and orientation. In other words, Section 377 could technically be applied to heterosexual couples engaging in “carnal intercourse” as well.

The court offered a truncated analysis of the core constitutional arguments against Section 377 under Articles 14, 15, and 21 of

the Constitution of India, before dismissing each peremptorily. In the process the court also made jarring statements, with this one perhaps the most infamous:

In its anxiety to protect the so-called rights of LGBT persons and to declare that Section 377 IPC violates the right to privacy, autonomy, and dignity, the High Court has extensively relied upon the judgments of other jurisdictions.

After Koushal

The judgment came as a crushing defeat to the movement and LGBTQ individuals at large. The highest appellate court in the country had, in no uncertain terms, seemingly ended a litigation battle that had gone on for more than a decade. Furthermore, after four years of equal citizenship under the law, queer persons were now once again placed within the category of unapprehended felons. This decision would mean that many other debates around the future of queer rights relating to antidiscrimination or relationship recognition would again have to recede into the background as the focus returned to battling criminalization.

At the same time, it is also the case that the backlash to the decision revitalized the movement. First, it pushed more public discourse on the issue than ever before. Second, it allowed for diverse conversations around queer rights and intersectional linkages with different movements to emerge. Finally, even the litigation process did not quite come to a halt, with lawyers forging ahead to invoke different remedies before the court.

Immediate public reaction to the judgment included a massive series of coordinated protests in 17 cities in India and 22 other cities across the world. Termed the Global Day of Rage Against Section 377, the protests featured large gatherings of individuals in each of the cities coming together to condemn the judgment and demand repeal of the section.¹⁹ This energetic, public discourse also put pressure on the government

to respond. Sonia Gandhi, the president of the Indian National Congress (the ruling party in India at the time), made a plea to the Parliament to address the matter. Rahul Gandhi, the vice president of the Indian National Congress, noted that he agreed with the High Court verdict and that the question was one of personal freedom, to be left to individual choice. A number of political parties issued statements condemning the judgment and its effects.²⁰ Additionally, the National Human Rights Commission, which had until then remained silent on the issue, released a statement noting that “all people regardless of their sexual orientation or gender identity should be able to enjoy their human rights.”²¹ Meanwhile, discussion of LGBTQ issues received one of its biggest public platforms when *Satyamev Jayate*, a popular TV show hosted by Bollywood star Aamir Khan, ran an episode focusing on LGBTQ lives.

Even as the central government drags its heels on the issue of decriminalization, advocacy efforts to create state-level amendments to the law are underway. In general, a state amendment to a central law cannot directly contradict the latter—if it does, the amendment is held “repugnant” and must receive presidential assent. However, the manner in which Section 377 was interpreted by the *Koushal* Court allowed states enough freedom to amend it without falling foul of contradicting the central law. The *Koushal* judgment refuses to define what acts constitute “carnal intercourse against the order of nature,” instead holding that such a determination should be made on a case to case basis. In this realm of ambiguity, state governments could append an explanation to the section that removes sexual intercourse between consenting adults from the scope of criminality. Efforts to push legislatures on this point have been ongoing in a number of states and have seen significant advances in at least one instance: in 2017, the Transgender Policy approved by the state of Karnataka highlighted striking down Section 377 as a crucial goal.²²

Momentum has also been created behind reframing the entire debate as a broader antidiscrimination issue. There are practical and strategic reasons for this. On the one hand, LGBTQ activists are dealing with a central government that is unfavorable towards homosexuality. A crucial need is to strengthen alliances with other marginalized groups. Beyond that, there is a stronger understanding about not seeing LGBTQ rights in a silo, instead considering intersections with discrimination on the basis of caste, religion, and disability, among others. Any conversation around a comprehensive antidiscrimination law allows for advocacy for LGBTQ rights in new and varied spaces. Currently, this approach is at a nascent stage. The Delhi State government has expressed particular interest in a comprehensive antidiscrimination bill, while a number of civil society consultations have been held on bringing groups together to discuss the idea.

Even as these alternative strategies came into play, the legal route was not abandoned: soon after the judgment, a review petition against the decision was filed by eight parties, which notably included the Union of India. The case received another blow when a two-judge bench dismissed the petition. The legal battle went on: the final step in this process was the possibility of a curative petition being allowed. The curative petition is a limited remedy through which the court acknowledges that a particular judgment might require reconsideration to set right a miscarriage of justice: “In such case it would not only be proper but also obligatory both legally and morally to rectify the error.”²³ The curative is thus a limited remedy based on the principle that any technicality should not outweigh the course of justice, even if the technicality here constitutes something as significant and final as a legal decision.

On 22 April 2014, the Supreme Court took an important step towards realizing the potential of this principle by agreeing to hear a curative petition filed by seven parties in

the matter—the government did not join the process in this round. On 2 February 2016 another significant step in the life of the case took place, with the three most senior judges of the court essentially agreeing on the constitutional significance of the case, and thus granting the matter leave to be heard before a constitution bench. A constitution bench is a 5-judge bench of the court that hears matters “involving a substantial question of law as to the interpretation of this Constitution.” At this point, the constitution bench would likely have to first decide whether the matter in the Koushal case required reconsideration at all—were this to be the case, it would then ideally listen to constitutional arguments on the matter. Later in the same year, a group of five gay and lesbian Indians filed another petition before the Court, arguing that they were directly affected by the reinstatement of Section 377. The approach of the Navtej Johar petition, as it was named, was subsequently followed by a group of three transgender persons. These individuals in turn claimed a detrimental impact of Section 377 on their lives, despite the existence of the NALSA judgment.

Even as the Court delayed setting up a bench to deal with these matters, it passed a significant ruling that communicated disapproval of the *Koushal* decision. *K.S. Puttaswamy v. Union of India*²⁴ was a decision of the Supreme Court by a nine-judge bench that ruled on the contours of the right to privacy, explicitly noting that *Koushal* was a “discordant note” in the history of the court, and calling it out for its prejudice and its inaccurate application of legal principles.

In January 2018, the Supreme Court passed an order regarding the Navtej Johar petition, in which it held that the decision in *Koushal* case required reconsideration, referring the matter to a constitution bench. What this ruling does is essentially grant the request submitted in the curative petitions for the matter to be re-heard. It now remains to be seen whether the court rectifies a decision it has on its own accord referred to as a misstep.

The Victory of NALSA

Legal Gender Recognition and the Story of the NALSA Litigation

For a long period of time, the only visibility accorded to transgender persons was within the realm of criminal law. As regards criminalization and harassment, transgender persons stood hypervisible before the law, constantly exposed to its violence. Conversely, when it comes to any kind of civil entitlement, there has often been almost complete invisibility. Among the instruments by which the Indian state defines civil personhood, gender identity is a crucial and unavoidable category. Identification documents like a birth certificate, passport, or ration card are required to enter into a variety of relationships in civil and official society—to obtain driver’s licenses, and access legal service, employment opportunities, university admissions, and essential benefits, including health care.

The only gender markers available to individuals were male and female, with no explicit procedure outlining how a transition within the gender binary would be reflected on an identity document. A few state-issued documents such as passports at the national level and ration cards at the state level did allow for identification as “.....” but even here there was no prescribed standard test for identification. As for the question of gender-affirming surgery, it was unclear whether even the post-operation certificate provided by a medical practitioner recognizing change of gender had any legal status.

In 2012, the National Legal Services Authority of India, which was mainly founded to provide free legal aid services to disadvantaged sections of society, filed a writ petition before the Supreme Court, asking the court to issue a range of directions, starting with mandating the government to provide rights to transgender individuals equal to those available to male and female citizens. The petition then asked for more specific remedies, including directing the govern-

ments to include transgender as a third gender category in various identity documents, providing for reserved positions in educational institutions and work places, recognizing the right to marry and adopt, providing for free sexual reassignment surgery and to recognize and grant transgender individuals legal status as a third gender.

It is this last relief that pointed to the core flaw in the petition: the assumption that the entire transgender community would like to identify as a ‘third sex’. The problem with this is apparent when we consider the status of persons who might want to identify within the binary of male or female. An individual might be assigned the male gender at birth but prefer to identify as female or vice versa, instead of claiming “transgender” or “third gender” as an identity category. The petition ran the risk of having a negative impact of actually forcing the entire community to fit into the category of third sex /third gender without recognizing that there will be a section of the community who would prefer to be recognized as male or female. Furthermore, the petition could disentitle transgender persons from basic rights which they could otherwise have been entitled to under existing laws as men and women.

A corrective to this came when other petitioners joined the matter: Poojya Mata Nasib Kaur Ji Women Welfare Society, a registered society and NGO, and Laxmi Narayan Tripathy, a famous Hijra activist. With the subsequent briefs, the scope of the case was broadened to include individuals who wished to transition from male to female and vice versa. The case was heard before a two-judge bench of the Supreme Court, comprised of Justice K.S. Panicker Radhakrishnan, and Justice Arjan Kumar Sikri in 2013.

The NALSA Judgment

On 15 April 2014, the court passed the NALSA judgment, pronouncing, “Moral failure lies in society’s unwillingness to contain or embrace different gender identities and

expressions.”²⁵ With these words in its opening paragraph, the court went on to craft a deeply inclusive document. Greeted with the kind of enthusiasm that *Naz Foundation* received, the judgment was lauded not just for the specific remedies that it crafted for a historically marginalized community, but also for its revitalization of a constitutional promise that the Court seemed to have forgotten with *Koushal*.

The Court defined transgender identity in a broad manner: it noted that it was an umbrella term that could be used to describe a wide range of identities and experiences, “including but not limited to pre-operative, post-operative and non-operative transsexual people” who did not identify with the sex assigned to them at birth. Further, the scope of the judicial definition included identity claims where a person who did not identify with the sex assigned to them at birth could opt for recognition as male, female, or third gender.

The harm of nonrecognition could occur at two distinct levels: First, where a procedure for recognizing gender change did not exist, or said procedure was too cumbersome, and second, where the law simply did not include the “third gender” as a distinct category. As far as the first level is concerned, the question of recognition is largely rooted in procedure—how many medical, psychiatric, and administrative hoops should a person have to jump through in order to be accurately recognized as a legal citizen? The court noted that the test should be psychological: in this case, effectively, the individual’s own gender identity has to be given primacy in determining gender. With regard to the second level, recognition becomes a problem when acknowledgment of a third gender/transgender identity is absent in the law—which, as the court noted, was the case at just about every level. The legal system, the court held, had to acknowledge a third gender category across the board.

In terms of the constitutional doctrine it employed in addressing legal gender recognition, the court noted that nonrecognition

of transgender identity denied transgender persons the equal protection of the law, disproportionately exposing them to harassment, violence, and sexual assault, whether at home, in public spaces, or by the police. Further, the court located recognition of gender identity within Article 21 of the Constitution. The right to life under Article 21 encompasses the right to dignity. The legal recognition of gender identity then lies at the heart of the right to dignity, given that gender constitutes the core of one’s sense of self along with being an integral part of a person’s identity. The court further reiterated that the right to personal liberty guaranteed under Article 21 encompassed individual personal autonomy. Such personal autonomy includes the positive right of individuals to make decisions about their lives and to express themselves. This would then place self-determination of gender as an integral part of personal autonomy, and thus squarely within the realm of personal liberty under Article 21.

In its operative section, the court listed an expansive set of directions for central and state governments to comply with. The first two specifically related to gender recognition: that a “third gender” category be recognized within the constitutional as well as in the broader legal system, and that the government grant legal recognition based on individual self-identification whether it be male, female, or third gender. The other directions correspond roughly to the spheres of public health and sanitation; socioeconomic rights; and stigma and public awareness. Under the first category, the government was directed to take measures to provide adequate medical care, separate dedicated HIV/serosurveillance measures, and separate dedicated public toilets to transgender people. Under the area of socioeconomic rights, the government was asked to provide the transgender community various social welfare schemes and to treat it as a socially and economically backward class. In furtherance of this, the government was asked to provide

affirmative action for transgender persons in educational institutions and public appointments. Finally, with respect to stigma and public awareness, the court also asked the government to take steps to create public awareness with regard to transgender persons; to take measures to restore their respect and place in society; and to seriously address community problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, and social stigma.

The court's significant, final move was an implicit recognition of its institutional limitations to craft actual policy decisions regarding the transgender community. Thus, instead of trying to mandate its own recommendations for operationalizing legal recognition, it deferred to an executive body. In 2013, the Ministry of Social Justice and Empowerment constituted an expert committee to provide an in-depth study of the problems faced by the transgender community and suggest governmental measures. The committee report provided a detailed set of recommendations for addressing transgender discrimination on various levels.²⁶ The *NALSA* court held that the recommendations in this report were to be examined in light of the legal declarations it made and implemented within six months of the decision.

After *NALSA*

The immediate reaction to *NALSA* was widespread jubilation from civil society, tempered with a degree of skepticism, notably from a segment of transgender activists and individuals.²⁷ The enthusiasm around the judgment was attributed to two factors: the immense possibilities that this decision seemed to herald, and the relief of receiving a decision of this nature from the same institution that delivered the *Koushal* verdict only four months prior. With *NALSA*, the court had seemingly laid down a charter of transgender rights that promised sweeping reform. Would the state take up the gauntlet?

For all its promises, the *NALSA* judgment has remained far from being implemented, particularly if we are to look at its core promise of legal gender recognition. Part of this goes back to the fact that the judgment itself is not actually very clear about the self-identification principle. For one, the text of the judgment clearly recognizes what the judges call a psychological test for determining gender identity. While certainly moving away from a surgical model, it still doesn't quite provide for complete autonomy over one's legal gender identity in the way that a self-identification model would entail. Second, as I will detail below, the self-identification principle stands contradicted on a more foundational level.

The judgment, as noted earlier, mandated that its directions should be carried out in accordance with the Ministry of Social Justice and Empowerment's Expert Committee Report on Transgender Persons. The committee was constituted in 2013, with the report releasing in January 2014, three months before *NALSA*.

The report contradicts itself on its articulation of the principle of self-identification. On the one hand, it asserts the self-identification principle to the extent that the right to identification should stand independent of any surgery or hormonal intake. On the other, when it comes to actual certification of identity, the report chooses to recommend a more complex bureaucratic apparatus than might be necessary. It suggests that a certificate of transgender identity should be issued by a state-level authority, on the recommendation of a district-level screening committee headed by the collector/district magistrate and comprising a district social welfare officer, psychologist, psychiatrist, social worker, and two representatives of the transgender community. This certificate could then be used as a basis for changing gender across different identity documents. The issue with a process like this is how it whittles down the self-identification principle—

ideally represented by the kind of process followed in Argentina, where an affidavit or self-endorsed of gender identity submitted via a proper channel would suffice.

Meanwhile, the Government of India attempted a stalling tactic to keep from implementing the judgment. It filed a clarification petition relating to the judgment before the Supreme Court in October 2014. Besides noting that the six-month period for implementing the judgment was inadequate, the petition also addressed how the judgment seemed to encompass gay, lesbian, and bisexual identities as well, besides how it placed transgender individuals within the reservation scheme for Other Backward Classes. This petition was dismissed in June 2016 by the Supreme Court—more than two years after the *NALSA* decision.

Over those two years, some states in the country drafted comprehensive state-level transgender policies, though only the Kerala State Transgender Policy actually saw the light of day as legislation. Even in these instances, however, it was clear that there was no specific procedure that was provided to transition within the existing, binary gender system or claim recognition as a transgender person. The account below from a UNDP report gives us an indication of the discrepancy between principle and reality:

Early in 2016, a 24-year-old transwoman approached the *Gazette of India*. It had been two years since the Supreme Court passed the *NALSA v. Union of India* judgment that guaranteed transgender persons the right to their chosen gender identity as a constitutional right. In this case, the transwoman wanted her given name officially changed to her preferred name, Jackie Lynn, along with a change in her gender markers to female. She approached the *Gazette* with an affidavit and newspaper advertisement relaying her change, only to have the official refuse to make the requisite notification as mandated. The reason that was given: she had

not supported her documents with a doctor's certificate attesting to her having had gender affirming surgery. Her lawyer who had accompanied her challenged this through mentioning the Supreme Court's guidelines in *NALSA*. When the officer's stance remained unchanged, they asked him to simply change the name without notifying a change of gender—which the officer again refused to do, insisting that Jackie was a woman's name.²⁸

The *NALSA* mandate is clear on the principle of self-identification. In that respect, asking for proof of a surgery, or any kind of medical intervention, constitutes a distinct violation of the law. And yet, this remains part of the process not just at the level of implementation, as it is in the case presented above, but even at times at the level of official policy itself. The passport authority, for instance, allows individuals to choose their gender identity from across three categories: male, female, and transgender. At the same time, to support a request for a change in sex, the office requires a certification from the hospital where the person underwent "sex change operation." The UNDP report which features this account also details a disparity across different identity documents which have divergent gender markers and procedures to change the documented gender—in the instances where such a procedure exists at all, that is.

Even more troubling has been the trajectory that has been followed by subsequent legislative interventions. In April 2015, the Rajya Sabha, the upper house of Parliament, unanimously passed the "Rights of Transgender Persons Bill, 2014," a private member's bill introduced by MP Tiruchi Siva. The bill articulated a range of rights for the community. What it did not do was specifically provide a procedure to solve the identification issues.

In December 2015, the Ministry of Social Justice and Empowerment made available another draft of a union bill on the

same subject matter on its website.²⁹ This particular bill relied largely on the framework of the earlier bill, with some crucial amendments. Significantly, it put in place a structure for legal gender identity recognition, along with a broad definition of transgender identity. The definition noted that a transgender person should have the option to choose either man, woman, or transgender when it came to their legal gender identity, and also clearly mentioned that the right to choose any of these options stood independent of surgery or hormones. The procedure for effecting such a change echoed the process recommended in the ministry's 2014 report, however, including reliance on a psychologist or psychiatrist as a certifying officer.

The government asked for comments on this draft of the bill, if just for a limited period. Civil society groups responded by sending in extended comments critiquing the bill following wide-ranging community consultation. In July 2016, a significantly altered version of the bill was approved by the Cabinet. The "Transgender Persons (Protection of Rights) Bill, 2016" was a startling setback on many counts. Amongst the most shocking modifications made in the draft was its deeply reductive definitions of transgender identity and persons:

(A) neither wholly female nor wholly male; or (B) a combination of female or male; or (C) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

Besides conflating intersex identity with transgender identity, this definition effectively removes the option of individuals to identify as either male or female. Moreover, contrary to the previously proposed bill, it fails to clarify that medical intervention is not a necessity in claiming recognition. As for the process of certification of identity, it once again adopts a version of the some-

what flawed Ministry of Social Justice and Empowerment mechanism.

Since its introduction, the 2016 bill has been met with sustained criticism from transgender persons in particular, and members of civil society more broadly. A Parliamentary Standing Committee was subsequently set up to solicit comments and study the effects of the bill in detail. The report of the committee, released in July 2017, proved to be a confused, contradictory document that recounted all the critiques of the bill but then dismissed many of the same, often in a few lines.³⁰ The report did, however, make a few useful recommendations. Sadly, the government proclaimed that it would reject the entire Report and proceed with passing the bill.

At this point, faced with ostensibly rights-affirming legislation that would, in practice, push the movement backwards by several years, civil society activists came together in large numbers. In one of the biggest displays of mobilization observed relating to the NALSA judgment and its aftermath, protests were led in different cities against the introduction of the Transgender Bill in Parliament.³¹

The protests finally attracted the attention of the government, although to a limited extent. In a statement released following the gatherings, the government noted, amongst other points, that the words "neither wholly male nor female" to describe transgender persons would be removed. This does not, however, do anything about the actual screening committee process that still does not honor the self-identification principle.³²

Conclusion

Why have the stories of *Koushal* and NALSA departed from their original trajectories in such ways?

As I noted from the outset of this essay, they are certainly very different cases. *Koushal* is a petition filed on a very specific point, asking for a limited remedy: the removal of LGBTQ persons from the ambit

of criminalization under Section 377, as far as consensual sex in private is concerned. *NALSA* on the other hand is vastly broader. Indeed, the breadth of the judgment means that it would have been nearly impossible to truly actualize many of its aspirations.³³

Another point to note is the respective stories of how the litigation actually progressed. As one compares the narratives of these two cases, it appears that the longer duration of the *Koushal* litigation allowed for civil society mobilization at different levels. This was a story that began with divided responses from the community, before these different groups came together to battle the government. Along the way, opinion on the issue was consolidated and, increasingly, larger alliances forged. A larger movement built up around the case as it made its way from the High Court to the Supreme Court. This was a movement that grew to involve extensive consultation amongst a range of civil society actors who eventually took a stand on the issue and placed their voices before the court.

With *NALSA*, the time line was brief. The initial petition filed by the Legal Services Authority was extremely limited in its understanding of gender and had come from a space of inadequate community consultation. Even when the case expanded to include more parties, there was little by way of community mobilization or consultation around the matter, and within two years of the initial petition, a judgment had been delivered.

This lack of community organization and consultation relating to the litigation itself is particularly important because the central issue at the heart of the case remains contested amongst members of the transgender community. Not all transgender persons believe that self-identification should be completely outside the domain of a bureaucratized procedure, and there are prominent leaders who see no particular issue with the screening committees that the bill proposes. Further, it's also clear that the *NALSA* judgment itself is not as co-

herent on the question of self-identification as the laudatory reception the judgment received made it appear. The ambiguity in parts of the judgment has even confused other appellate courts: the *Jackuline Mary v. State of TN* decision of the Madras High Court, for instance, argues that the *NALSA* judgment does not recognize the rights of female to male transgender persons.

If there is a victory to be seen in *NALSA*, it is largely at the discursive level. The judgment has certainly entered the lexicon of activists and lawyers, invoked at every juncture possible in an attempt to secure rights for transgender persons. Meanwhile, *Koushal* continues to cast a shadow over advocacy efforts even as it has re-energized and broadened them. Looking at the twin narratives of these judgments gives us a window into how the LGBTQ movement in India has engaged with the law in mobilizing efforts, while also helping us understand a bit more about law's connection with social change. It now remains to be seen what the ultimate impact of these judgments will be on the legal framework: whether transgender law takes the ultimate shape of the Transgender Bill, or the final decision in the Section 377 litigation.

End Notes

¹ Suresh Kumar Koushal v. Naz Foundation, 1 SCC 1 (2014).

² National Legal Services Authority (NALSA) v. Union of India, 5 SCC 438 (2014).

³ Supreme Court Order in the matter of Curative Petition (C) Nos. 88-102 of 2014, 2 February 2016, accessed 16 February 2018, http://orinam.net/377/wp-content/uploads/2013/12/SUPREME_COURT_Curative_Order_Feb2_2016.pdf.

⁴ See Alok Gupta, "Section 377 and the Dignity of Indian Homosexuals," *Economic and Political Weekly* 41 (2006): 4815-4817.

⁵ Gupta, "Section 377."

⁶ Arvind Narrain, *Queer: Law, Despised Sexuality, and Social Change*, (Bangalore: Books for Change, 2004).

⁷ See Suparna Bhaskaran, *Made in India: Decolonizations, Queer Sexualities, Trans/National Projects* (New York: Palgrave Macmillan, 2004), 72.

⁸ Narrain, *Queer*.

⁹ Men Having Sex with Men, see, e.g., "LGBT Section 377," Lawyers Collective, 23 November 2010, accessed 16 February 2018, <http://www.lawyerscollective.org/vulnerable-communities/lgbt/section-377>.

¹⁰ Writ Petition at 7-27, Naz Foundation v. NCT of Delhi, 160 DLT 277 (2009), <https://www.scribd.com/document/24710240/Naz-Foundation-v-Government-of-NCT-of-Delhi-Et-Ors>.

¹¹ The specific question of HIV/AIDS prevention supplied the grounds with which Naz Foundation approached the Delhi High Court, represented in the petition by the argument that Section 377 was violative of the right to life, given that it drove homosexual activity underground, thus jeopardizing HIV/AIDS prevention efforts. However, the petition also argued against the constitutionality of Section 377 on a number of other grounds. It made a case that the prohibition of certain private consensual sexual relations violated the right to privacy guaranteed within the ambit of the right to liberty under Article 21; that the criminalization of nonprocreative sexual relations was unreasonable and arbitrary and therefore violative of Article 14; that it further violated the prohibition of sex discrimination under Article 15; and finally, that the criminalization of predominantly homosexual conduct curtailed the enjoyment of liberties guaranteed under Article 19.

¹² Naisargi Dave, *Queer Activism in India: A Story in the Anthropology of Ethics* (Duke: Duke University Press, 2012).

¹³ "LGBT Section 377," Lawyers Collective, 14 July 2017, <http://www.lawyerscollective.org/>

our-initiatives/law-and-sexuality.

¹⁴ Voices Against 377, accessed 17 February 2018, <http://www.voicesagainst377.org/>.

¹⁵ A review petition against this order met the same fate later in 2004, following which a special leave petition was filed in the Supreme Court. In February 2006, the Supreme Court passed an order holding that the matter did indeed require consideration and could not be summarily dismissed as such.

¹⁶ Naz Foundation v. Govt. of NCT of Delhi.

¹⁷ Koushal v. Naz Foundation.

¹⁸ Koushal v. Naz Foundation, paragraph 38.

¹⁹ See Coalition for Sex Workers and Sexuality Minority Rights, "Dignity First," 2014, accessed 17 February 2018, <http://altlawforum.org/campaigns/dignity-first-one-year-of-resistance-to-re-criminalisation-of-lgbt-lives/>.

²⁰ The issue of decriminalization even made its way into the manifestos of the Aam Aadmi Party and the Communist Party of India (Marxist). Notably, the Bharatiya Janata Party, which is now the party in power in the country, was silent on the matter.

²¹ "National Human Rights Commission Wants Section 377 Modified," *DNA India*, 13 December 2013, <http://www.dnaindia.com/india/report-national-human-rights-commission-wants-section-377-modified-1934603>.

²² DH News Services, "State's Transgender Policy Favours Repealing Section 377," *Deccan Herald*, 27 October 2017, accessed 17 February 2018, <http://www.deccanherald.com/content/639578/states-transgender-policy-favours-repealing.html>.

²³ Rupa Ashok Hurra v. Ashok Kumar Hurra, 4 SCC 388 : AIR 2002 SC 1771 (2002).

²⁴ K.S. Puttaswamy v. Union of India, Writ Petition (Civil) No. 494 of 2012 (Supreme Court of India, 24 August 2017).

²⁵ NALSA v. Union of India, paragraph 1.

²⁶ Report of the Expert Committee on the Issues relating to Transgender Persons, Ministry of Social Justice and Empowerment (MSJE), Government of India, 27 January 2014, accessed 14 March 2018, <http://socialjustice.nic.in/writereaddata/UploadFile/Binder2.pdf>.

²⁷ See, for instance, Gee Imaan Semmalar, "Gender Outlawed: TG Supreme Court Judgment on Third Gender and its Implications," Roundtable India, 19 April 2014, https://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377.

See also Tarunabh Khaitan, "NALSA v Union of India: What Courts Say, What Courts Do," Law and Other Things, 1 May 2014, <http://lawandotherthings.blogspot.ca/2014/05/nalsa-v-union-of-india-what-courts-say.html>, which acknowledges that the judgment may not be implemented adequately, but that it still has value.

²⁸ Danish Sheikh, Venkatesh Chakrapani and Arvind Narrain, “UNDP Report Legal Gender Recognition in India,” forthcoming March 2018.

See also Kaushik Gupta, “More on Gender Change Legalities,” *Varta*, 20 January 2015, accessed 16 February 2018, <http://varta2013.blogspot.in/2015/01/more-on-gender-change-legalities.html>.

²⁹ The Rights of Transgender Persons Bill, 2015, Parliament of India, <http://www.prsindia.org/uploads/media/draft/Draft%20Rights%20of%20Transgender%20Persons%20Bill%202015.pdf>.

³⁰ Forty-Third Report, Standing Committee on Social Justice and Empowerment (2017-2017), MSJE, Government of India, 2017, accessed 16 February 2018, <http://www.prsindia.org/uploads/media/Transgender/SCR%20Transgender%20Persons%20Bill%202016.pdf>.

³¹ See Monideepa Banerjee, “LGBTQ Communities to Protest in Front of Parliament Today against Bill,” NDTV, last modified 17 December 2017, accessed 16 February 2018, <https://www.ndtv.com/india-news/lgbtq-communities-to-protest-in-front-of-parliament-today-against-bill-1788717>.

“LGBTQI People Take to Streets against Proposed Bill,” *The Hindu*, 18 December 2017, accessed 16 February 2018, <http://www.thehindu.com/news/cities/Thiruvananthapuram/lgbtqi-people-take-to-streets-against-proposed-bill/article21830377.ece>.

³² Eram Agha, “Government Accepts Standing Committee Recommendations on Transgender Persons, Amends Definition,” *News 18*, 14 December 2017, accessed 16 February 2018, <https://www.news18.com/news/india/government-accepts-standing-committee-recommendations-on-transgender-persons-amends-definition-1604835.html>.

³³ Indeed, even those who have celebrated the judgment have taken note of this point. See Khaitan, “*NALSA v. Union of India*.”

Building Bridges, Not Walls: Intersectional Analysis and the Next Frontier in the Corporate Equality Movement

Nii-Quartelai Quartey, Lani Fraizer, Gabby Miramontes

Abstract

In recent years, we have seen a backlash to what had become a more LGBTQ-affirming America. The current national climate includes heightened support for laws that essentially give government and private businesses a license to discriminate based on sexual orientation; repeal of healthcare and employment nondiscrimination protections; and increase in hate crimes, including the then-largest mass shooting in US history at an LGBTQ nightclub in Orlando, Florida.¹ Each of these issues has inherent effects on employee recruitment, retention, and performance and on individual and collective efforts to create an organizational culture where all employees can thrive without fear of retaliation, retribution, or being unaffirmed in the workplace. While “executive culture” has traditionally focused on returns for stockholders at the expense of their broader stakeholders, complicating social responsibility efforts, corporate America’s LGBTQ engagement has helped to create a paradigm shift² through company-supported LGBTQ employee resource groups, business resource groups, volunteerism, philanthropy, and public policy advocacy efforts, that together have helped to make corporate America a critical ally in the movement for LGBTQ equality. The social unrest in the United States on issues related to race, ethnicity, age, gender, sexual orientation, and immigration status are challenging corporate leaders to demonstrate solidarity and be a lifeline to traditionally marginalized communities. At the same time, corporate activism on LGBTQ rights is being elevated as a civil rights issue among others all at once, causing a demand for increased competencies in intersectional analysis.

Bios

As a trusted strategic partner and community advocate, Nii-Quartelai Quartey brings leaders together to build powerful networks of inclusion committed to a more fair and just society for all. As the current Senior Advisor and National LGBT Liaison at AARP, he serves as a strategic advisor to the Senior Vice President of Multicultural Leadership, in addition to serving in a consultative enterprise-wide role charged with building national awareness and deepening community engagement to advance AARP’s social impact agenda through an intersectional approach. As a social entrepreneur, LGBTQ affairs subject matter expert, and corporate social responsibility professional, Dr. Quartey continues to advance his scholarship and research dedicated to examining and advancing the influence of corporate executives on LGBTQ rights.

Lani Fraizer’s work focuses on examining underpinnings of human capacity building as values, philosophy of life, and beliefs about the nature of learning in developing talent from

perspectives of makers in social change. As an Associate Professor and Chair of International Learning Global Partnerships at Pepperdine GSEP, she teaches at the cross-section of leadership, social innovation, and technology and serves as Director of International Learning for APAC and EMEA-based Country Delegations. Dr. Fraizer serves as Scholar-in-Residence at the Yunus Center in Pathumthani, Thailand—a collaboration between Nobel Laureate Muhammad Yunus and the Asian Institute of Technology advancing a vision to harness the power of social business to create a poverty-free world.

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Introduction

The Human Rights Campaign, the largest LGBTQ civil rights organization in the United States, recently announced that a record 609 of the largest US companies scored a perfect 100 percent on their annual Corporate Equality Index (CEI) workplace equality survey,³ up by nearly 20 percent compared to the year before.⁴ Since its launch in 2002, the CEI has become a cross-industry assessment of LGBTQ inclusive standards, policies, and best practices in LGBTQ-affirming corporate leadership of US Fortune 1000 companies. Given the continued struggle for LGBTQ legal protections throughout the United States and around the world, the latest CEI report highlights a great achievement and should be celebrated as nothing short of significant. A recent report, for instance, by NPR, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health, indicated that

One-third of LGBTQ people say the biggest problems they face are discrimination based in laws and government policies, while 43% say discrimination based on individual-level prejudice is the biggest problem. Another 23% say that both forms of discrimination are equally a problem.⁵

These notions suggest that executive champions of LGBTQ equality must work

harder and smarter to change laws, hearts, and minds in order to truly be perceived as LGBTQ affirming brands, industry leaders, and welcoming places for diverse talent to contribute and grow.

With the rise of increasingly multicultural communities and intergenerational workplaces, and with growing awareness of pervasive sexual violence across industries, it's unclear how the work being led by corporate equality champions is reaching the traditionally marginalized within LGBTQ communities and grappling with the effects of what's known as "compound discrimination." LGBTQ rights do not exist in a vacuum and are but one element of a more pervasive social construct. As such, compound discrimination takes into account race, class, gender, age, and immigration status, thus creating a more complex view of corporate social responsibility. Imagine what it might have felt like to participate in the 1960 sit-in protest⁶ at a segregated lunch counter at Woolworth store in Greensboro, North Carolina as protest spread across the South during the civil rights movement. Woolworth's company policy was to "abide by local custom," which meant keeping Black and White patrons separated. Critical press over time negatively impacted their business until the manager of the Greensboro store quietly changed policy and integrated the lunch counter. Imagine

if the brave activist challenging the status quo at the segregated lunch counter were Black, gay, and undocumented. In this scenario, they would be a triple minority and a compelling example of the compound discrimination still faced by many LGBTQ people across America and around the world. When corporate awareness, engagement, and philanthropic efforts are consciously or unconsciously racially biased, gendered, heteronormative, homophobic, or xenophobic, companies abdicate the social responsibility their executives claim to champion.

Corporate America and History of LGBTQ Activism

Howard R. Bowen, celebrated by academics as the originator of the study of corporate social responsibility (CSR), proposed an analytical framework for CSR over 60 years ago in his still-relevant book *Social Responsibilities for the Businessman* (SRB), related to the proper role of businesses in the American economy. At this point, America was shifting from a largely agrarian society to a more industrial society. Organizational performance and efficiency were becoming more valuable in this emerging economy. Modern corporate activism on LGBTQ issues dates back to 1975, when AT&T became the first Fortune 500 company to adopt a nondiscrimination policy for employees based on sexual orientation. In 1987, AT&T launched LEAGUE, the oldest LGBTQ employee resource group in the nation.⁷ Almost ten years later, in 1996, Disney went public with its early support for gay rights by promoting safe and welcoming theme parks in what they called “gay day.” In response, a number of groups, including the largest American Protestant denomination, the Southern Baptist Church, launched an ultimately unsuccessful eight-year boycott to pressure Disney to change this policy.⁸

Over the last 60 years, the LGBTQ rights movement in the United States has grown into a beacon of hope for a more safe, welcoming, and legal existence in all

aspects of society. Highly polarized, politically charged cultural discourse around issues including same-sex marriage, serving openly in the military, and discrimination in healthcare, among others, have served as divisive social issues, preventing the development of standards, practices, and policies that affirmatively protect LGBTQ people from discrimination. But from 2008 to 2016, the US LGBTQ movement secured a string of hard-won local, state, and federal legal protections, on the coattails of the cautious but LGBTQ-affirming Obama presidency and landmark Supreme Court cases like *Obergefell v. Hodges*, *United States v. Windsor*, and *Pavan v. Smith*. Well-organized grassroots and donor activism played an outsized role in these achievements, as did a growing number of LGBTQ-affirming champions and allies in corporate America—such as private and publicly-traded Fortune 1000 companies.

The election of Donald Trump as president of the United States, the institution of a fully Republican-controlled legislative branch, the effective reinstatement of a conservative bent to the US Supreme Court following the death of Antonin Scalia, and the crystallized gains of Republicans in a majority of state legislatures and governorships have effectively given socially conservative officials and leaders many more paths to advance an anti-LGBTQ agenda across the country and around the world.⁹ Anti-LGBTQ social agendas across the US are characterized by their support for a variety of anti-LGBTQ policies: gay conversion therapy; the elimination of LGBTQ nondiscrimination protections; rolling back healthcare protections for patients with pre-existing conditions, including HIV; and rolling back of fair housing protections that prevent discrimination based on sexual orientation, among others. Transparent and vocal conservative support of LGBTQ injustice has energized LGBTQ communities and their allies, while testing the espoused values of corporate leaders on LGBTQ issues. As a result, this conservative resur-

gence has exposed the inherent politics of corporate activism on LGBTQ issues in an increasingly intergenerational and multicultural workforce and consumer marketplace.

Addressing America's national leadership vacuum on issues related to anti-discrimination has increasingly become a business imperative for industry leaders of the future. Excerpts from an internal General Electric memo, which was subsequently published by *Politico*, quoted then-CEO Jeff Immelt saying, "Companies must be resilient and learn to adjust to political volatility all over the world. Companies must have their own foreign policy and create technology and solutions that address local needs for our customers and society."¹⁰ Given his level of prominence, the intended and unintended consequences of such a proposition should give both scholars and practitioners great pause. Note the mention of customers, then society. Companies do not exist to purely help society; they exist to make profits from as many customers as possible. This creates a great risk for the misuse of LGBTQ human rights discourse to advance purely profit-driven motives—at the expense of LGBTQ-affirming social change—through standards, practices, and policies including, but not limited to, public policy. In addition, statements like Immelt's can be interpreted broadly as a call to action for more, not less, applications of business models that define success based on people, environmental, and profit indicators.

Adding an intersectional analysis—meaning an examination of the compound insights and social identities held by individuals that belong to more than one traditionally marginalized community¹¹—would be a helpful layer of analysis to this proposed business model. Doing so would be an important next step for executive champions' efforts to remain cognizant of the trade-offs between LGBTQ rights and the rights of other disenfranchised groups. Race, ethnicity, gender, age, class, sexual orientation, and ability are omnipresent. To pretend otherwise undermines the integrity

of the movement for social and economic justice. This is why executive champions and emerging corporate leaders, particularly those representing traditionally marginalized communities, might play an essential role in efforts to mitigate the effects of compounded discrimination, by influencing their companies to develop an intersectional analysis of employee engagement, philanthropy, and public support for social issues.

Making the Case for Intersectional Analysis

While issues of racial and economic justice, gender justice, immigrant justice, elder justice, and LGBTQ justice are not in fact mutually exclusive, some findings¹² suggest that many of the companies that scored a perfect 100 on the CEI are governing their companies and responding to external challenges as if these justice issues are mutually exclusive. In order to better support traditionally marginalized communities whose legal and voluntary protections are currently at risk of rollback, and indeed to cast the widest possible net of support around vulnerable stakeholders during these turbulent times, corporate equality champions would be wise to perform an intersectional analysis of their work. In addition, because the LGBTQ community itself spans a variety of social issues and identities, it offers executive champions a unique opportunity to support multi-issue justice movements. Realizing this opportunity requires executive champions to deliver on the need for more dynamic executive leadership in the form of a fully integrated cross-cultural and individual segment approach, aligned under one overarching strategy, propelled by an intersectional analysis that is intent on co-creating more socially responsive organizations. The marketing industry commonly refers to this as a total market approach.¹³

Affirmative corporate activism includes positive and proactive standards, practices, and policies that recognize and support LGBTQ stakeholders in corporate Amer-

ica publicly and holistically. This includes consumers in the communities where they do business. The notion of affirming consumers' whole selves includes embracing more than one social identity in response to any given challenge or opportunity their communities might be facing. Affirming the whole self should account for the intersection of the various social identities and constructs. The following four tenets of intersectionality offer a helpful theoretical framework. They provide a framework in which executive champions can begin grounding their analysis when considering how they might develop their engagement on LGBTQ issues: (1) centering the experiences of people of color; (2) complicating identity; (3) unveiling power; and (4) promoting social justice and change.¹⁴

Historically, the first tenet links back to the origins of intersectional scholarship—drawing largely upon the experiences of African American women—and involves shifting the center of analysis to those on the margins.

The intersectionality perspective further reveals that the individual's social identities profoundly influence one's beliefs about and experience of gender. As a result, feminist researchers have come to understand that the individual's social location as reflected in intersecting identities must be at the forefront in any investigation of gender.¹⁵

Intersectional feminism was born out of the persistent oppression and limited opportunities compounded by the race, class, and gender, among other identities, of African American women. *Complicating identity* is about recognizing the diversity within a particular group and entangled oppressions such as racism, sexism, classism, or heterosexism. *Unveiling power* refers to how structures of inequality come together to form a larger structure, and that understanding how these structures act in combination can reveal how power operates on individ-

ual and institutional level. The final tenet calls for the promotion of social justice and social change as an ethical imperative. As emphasized by Carbado, Crenshaw, Mays, and Tomlinson, "What is most important is understanding intersectionality as a work in progress... animated by the imperative for social change which involves focusing less on what intersectionality is but more on what intersectionality does."¹⁶ Applying an intersectional analysis to our work should be a means to a socially just end, not purely a theoretical exercise, that improves the lives of the traditionally marginalized within and across traditionally marginalized groups.

In recent years, a critical mass of executive champions in corporate America have taken on a more affirming role in the LGBTQ movement.¹⁷ However, being that identity is the sum of many parts, including gender, sexuality, lived experience, and socio-economic status, many of these champions stop short of solving the challenges experienced by their LGBTQ stakeholders who belong to multiple traditionally marginalized groups. For example, African American LGBTQ individuals are more highly concentrated in the 29 states without LGBTQ employment protections (18 percent) than in the 21 states with legal protections (12 percent). This leaves nearly 900,000 African American LGBTQ workers with limited legal options to address experiences of discrimination based on sexual orientation and gender identity in the workplace.¹⁸ A recent data brief on race and jobs at high risk of automation also found that 27 percent of African American service workers are concentrated in the 30 occupations at highest risk for worker displacement through workplace automation.¹⁹ If one were an African American LGBTQ service worker in one of the 29 states without LGBTQ employment protections, for instance, one may be more vulnerable to being fired and to scarcity of work because of one's actual or perceived sexual orientation. Unions with a heteronormative, homophobic, or xenophobic organizational culture may not accept individuals because

of their race, sexual orientation, or gender identity. Employee resource groups may not be organized to be a resource to employees with more than one social identity. The multiple challenges of navigating an unwelcoming work environment, LGBTQ-unfriendly community, competition for scarce work, and skills training one may not have access to illustrate how and why an intersectional analysis can help executive champions be more socially responsive in an increasingly multicultural workforce.

Methodology

How does one affirmatively apply intersectional theory in the struggle for LGBTQ justice from a position of power, influence, and authority in corporate America? How does one lead employees and consumers navigating LGBTQ issues at the intersection of so many other injustices²⁰—such as racism, sexism, ageism, and xenophobia? To begin to distill initial answers—and develop new hypotheses—identifying leadership practices that advance affirmative corporate activism on LGBTQ issues is paramount.

The central actors this qualitative research study focuses on are LGBTQ employee resource group leaders who have managed to navigate organizational challenges and advance LGBTQ-affirming activism through the power and influence of corporations. This study explored the strategies and practices of these leaders by examining “perceptions of the world in which they live in and what it means to them”²¹ through semistructured interviews. The sharing of these lived experiences “enable[s] professionals to learn about the importance of their stories and the interperative nature of their work. This empowers professionals to see how the personal and professional are connected in stories of practice that are shared.”²² The following characteristics were identified as criteria for identifying qualified study participants:

- Be a male, female, or gender nonconforming person between the ages of 30 and 75.

- Be LGBTQ or be an ally—someone who does not identify as LGBTQ but instead identifies as a supporter or champion of LGBTQ interest and issues. Because this study sought to identify leadership best practices of LGBTQ employee resource group leaders in championing LGBTQ issues in a corporate setting, it identified LGBTQ employee resource group leaders at US Fortune 1000 companies. This selection included, but was not limited to, senior managers and executives with internal or external responsibilities related to LGBTQ engagement. Thus, the population selected for this study comprised LGBTQ employee resource group leaders under the age of 75 who work for US Fortune 1000 companies that scored a perfect 100 percent score on the Human Rights Campaign 2016 Corporate Equality Index and serve as a formal or informal LGBTQ employee resource group leader.

- Possess a bachelor’s degree at minimum.
- Provide direct leadership to a publicly-traded corporation in roles such as community relations, government affairs, supplier diversity, communications, human resources, or executive. This included those who directly lead or manage others with such responsibilities, such as those in matrix organizations where one may be consulted on projects but may not be fiscally responsible or accountable for executing the work.

Criteria for exclusion were also considered; which are the factors that did not meet qualifications for inclusion mentioned above. If there was no evidence of a relationship to the company’s LGBTQ employee resource group on the company’s website or LinkedIn, for instance, the individual was excluded from the study.

To ensure that a variety of corporate executives and senior managers were represented in the study, a method called pur-

positive (or purposeful) sampling²³ was also implemented. This approach is designed to intentionally ensure a mix of subjects with diverse experiences to inform the research. It also allowed the gathering of in-depth knowledge and information from a small yet knowledgeable sample.²⁴ To further ensure a diverse sample, maximum variation,²⁵ a method used for developing criteria in advance to further increase the extensive variety of participations (e.g., from a wide range of work settings and geographies) was implemented. For instance, in this study, participants were selected from employees at the top 20 Fortune-ranked companies—as rated by Human Rights Campaign’s Corporate Equality Index in 2016²⁶ and from across geographies in the United States—who served in a role or had capacity to influence a role that demonstrates public commitment efforts to the LGBTQ community.

Thirty participants meeting these criteria were selected for the initial subject pool. Of these, 25 research subjects were asked to participate in the study, but only 13—nine males and four females—accepted the request to be interviewed. All participants requested to remain anonymous. Five participants came from the financial services industry, two from the telecommunications industry, two from the tech industry, one from the food and beverage industry, one from the public utilities industry, one from the auto industry, and one from the management consulting industry. Five participants held a leadership role in their company employee resource group (ERG) or business resource group (BRG), while eight participants consider themselves executive champions of LGBTQ issues. All of the participants were current employees of largely publicly traded US Fortune 1000 companies.

Limitations

Although this study was limited to LGBTQ champions in a leadership role in corporate settings, this study acknowledges that in order to best examine best practices in

US corporate activism on LGBTQ rights, it is critical to understand the influence of LGBTQ employees. Although a limitation, the results provide better understanding of LGBTQ employee resource group leaders and their “relationship to things, people, events, and situations”²⁷ within the corporate environments they operate in and thus provides a springboard for those in positional power to lead on LGBTQ issues.

The following additional factors and assumptions were also considered.

1. It was assumed that this study’s participants would respond to all interview questions with openness, candor, and minimum bias.
2. It was assumed that those questioned were organizational leaders wielding influence and authority on the topic of LGBTQ corporate activism. The respondents selected ideally held positions of leverage and impact during the development and growth of their public posture and policies related to LGBTQ protections.
3. The study is presumed to have created all questions with an objective mind and free of prior hypothesis bias.²⁸
4. The appropriateness of a qualitative study was also considered, specifically phenomenological methodology using semistructured interviews. This approach worked best for this study because it ensured that the findings of the data would more likely describe participants’ experiences and not an interpretation from the researcher’s perspective.
5. The selected methodology provided the researcher the tools needed to set aside his or her own experiences in order to provide a new perspective to the phenomenon being studied.²⁷
6. Sample size was considered, specifically as it relates to those appropriate for the research methodology selected. In this phenomenological research study, literature served as a guide to determine sample size, which suggested a

variety of options, from a range of 3 to 10 participants,³⁰ to 6 participants,³⁰ to as many as 25 participants.³¹ For the purposes of this study, a sample of 13 carefully selected participants served as the source of data for this study, well within the criteria posited by guiding literature.

7. Reported challenges²⁷ in qualitative approaches were also investigated, such as those pertaining to the need for broad philosophical assumptions and careful selection of participants. These challenges were addressed by (1) clearly defining the population and carefully selecting the sample who would participate in the study; (2) ensuring that researcher experiences and biases were clearly identified prior to the start of the study using bracketing,²⁷ a process of setting aside one’s beliefs, feelings, and perceptions, such as through a private journal, and (3) outlining the interpretive and theoretical frameworks that guide the study—for instance, seeking

to understand and gain understanding of LGBTQ employee resource group leaders within the corporate environments they operate in.

Results

The focal point of this article and this study involved the following research question: “What common strategies and practices do LGBTQ Employee Resource Group Directors employ to advance affirmative corporate activism on LGBTQ issues?” This qualitative study collected essential data using semistructured interviews on the experience of each research participant related to influencing corporate activism on LGBTQ issues. Each interview was transcribed, and each transcript was then reviewed several times in an effort to identify themes, workplace standards, and recommended best practices with potential relationship to identified literature.

These study’s findings were then coded according to a predefined three-step inter-rater reliability data analysis process which included the transcribing, reading,

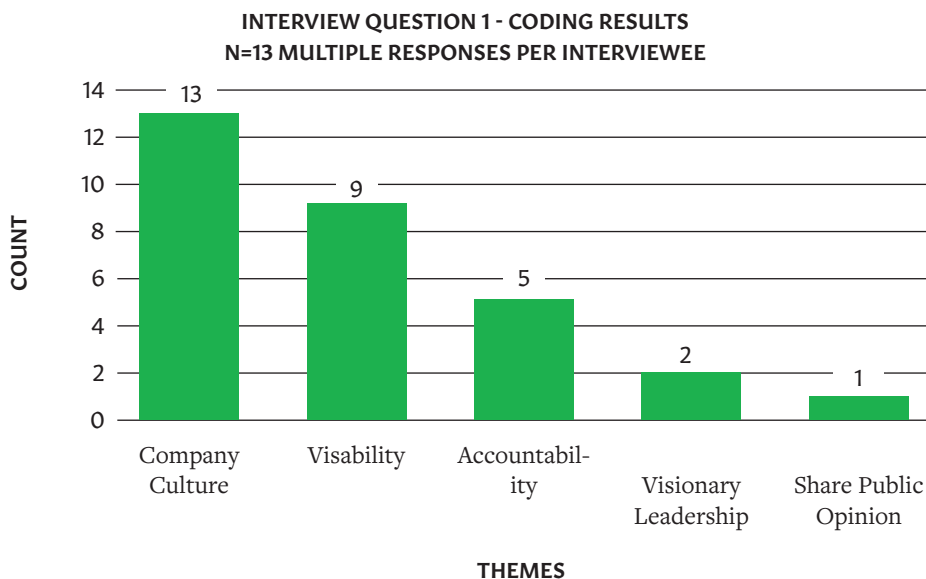


Figure 1: Themes related to unique opportunities or challenges

memoing, and coding of data collected from semistructured interviews. Responses were not mutually exclusive. The interviewees could mention one, two, or all five themes identified. As data was analyzed, the following five themes or workplace best standards and practices emerged: (a) company culture, (b) visibility, (c) accountability, (d) visionary leadership, and (e) shape public opinion (see figure 1).

By “company culture,” research respondents commonly meant the opportunity or challenge in having intentional culture change efforts led by a group of committed employees or highly influential company leaders. By “visibility,” research respondents commonly meant the opportunity or challenge in having tangible evidence of espoused and affirming support of LGBTQ issues. By “accountability,” research respondents commonly meant the opportunity or challenge in having a designated group or defined process to hold the organization accountable for progress on LGBTQ issues. By “visionary leadership,” research respondents commonly meant the opportunity or

challenge in articulating how their company aspires for LGBTQ inclusion to show up in their work as a company. By “shape public opinion,” research respondents commonly meant the opportunity or challenge in sharing LGBTQ-affirming actions openly and publicly.

Among participants, company culture and company priorities were a top priority in LGBTQ corporative activism efforts. These findings are consistent with literature by organizational change scholars and theories asserting that organizational culture is a critical factor for developing common strategies and practices.³² When asked about what standards and practices govern their organization in terms of advancing affirmative corporate activism for LGBTQ issues, for instance, the majority of research participants spoke about company priorities and executive leadership creating a cascading effect in the workplace environment that shape the standards, practices, and norms that govern their organization. Additional insights also surfaced which informs recommended workplace standards

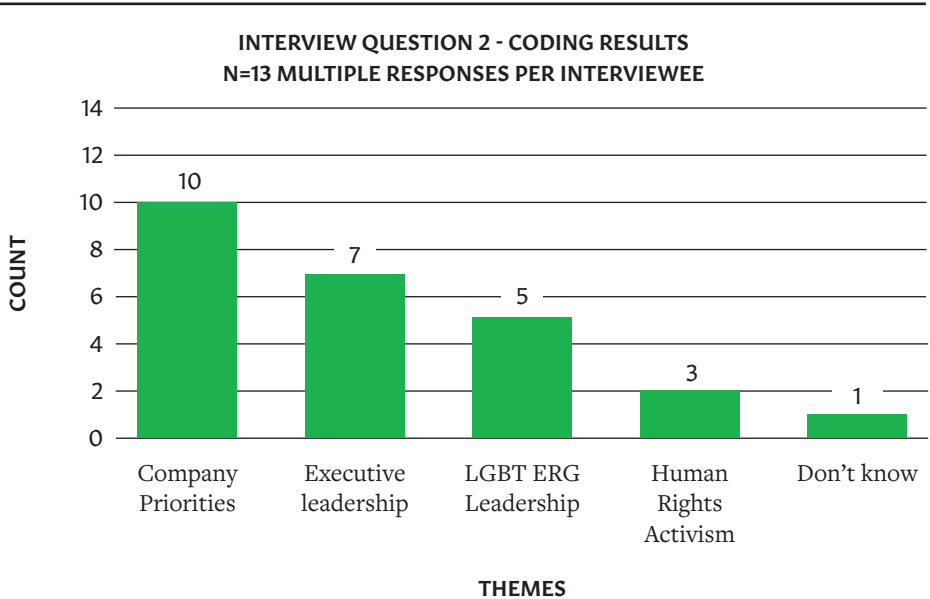


Figure 2: Themes related to standards and practices.

and practices: (a) company priorities, (b) executive leadership, (c) LGBTQ ERG leadership, and (d) human rights activism (see figure 2).

In terms of what does or does not make their organizations an ideal workplace environment, findings indicated participants attributed this to company priorities and executive leadership. These findings are also consistent with tensions between critics of social responsiveness and the espoused social contract between the business community and society.³³ This means that, in order to attain a minimum standard of social responsibility, organizations have to enact policies, practices, and procedures to keep discrimination from being inflicted on LGBTQ people. However, the standard is not just about keeping bad things from happening. It's also about prioritizing the progress leaders aim to make.

Conclusion and Recommendations

How can executive champions of LGBTQ corporate activism better understand how to embrace intersectional analysis in order to develop competencies that strengthen their leadership ability to cocreate organizations that are more socially responsive? Neither culture nor leadership can be understood by themselves.

On the one hand, cultural norms define how a given nation or organization will define leadership—who will get promoted, who will get the attention of followers. On the other hand, it can be argued that the only real thing of importance that leaders do is create and manage culture; that the unique talent of leaders is their ability to understand and work with culture; and that it is an ultimate act of leadership to destroy culture when it's viewed as dysfunctional.³⁴

The demand for affirmative corporate activism on LGBTQ justice, gender justice, racial justice, immigrant justice, and elder justice issues may overwhelm executive

champions. Their organizational cultures may resist, and support for an intersectional analysis may be at times inadequate.

According to organizational culture scholar Edgar H. Schein, there are three dimensions of organizational culture: underneath the surface there are basic assumptions of shared values and norms, at the surface level there are espoused values that are typically shared through formal statements and organization-wide communications. The outermost dimension consists of behaviors and artifacts that are tangible manifestations of the organizational culture. The intersectional analysis being proposed in this article should be as multidimensional as Schein's organizational culture model. In an effort to achieve this, one such approach to consider is a modified version of AARP's Multicultural Leadership Model³⁵ whereby executive champions organize their work into five bold moves: (1) connecting to community, (2) driving awareness, (3) strengthening organizational readiness, (4) enhancing the stakeholder experience, and (5) thought leadership. AARP, the largest nonprofit organization in the world with 38 million members, represents the interest of Americans over 50 years old. This year, AARP will celebrate its 60th anniversary in ways that recognize that the face of Americans over the age of 50 is increasingly transforming. To this end, AARP recognizes the need to align its business and engagement model to serve multicultural Americans over the age of 50, even though the majority of its current membership is not multicultural.

In AARP's Multicultural Leadership Model, connecting to community refers to creating a sustained presence in multicultural communities, with a focus on health security issues, financial security issues, and opportunities for personal fulfillment. Driving awareness refers to increasing awareness about your organization's social responsiveness to multicultural audiences, thought leaders, and the public. This could mean developing an annual multicultural

research agenda, building an ongoing integrated national campaign customizable for local affiliates, or incorporating multicultural populations into policy research, analysis, and evaluation. Strengthening organizational readiness refers to using individual cultural insights and multicultural insights to purposefully incorporate the lived experience of traditionally marginalized communities into the design, execution, and communications of everything your organization does. This means forecasting, tracking, and analyzing multicultural performance against goals to enhance enterprise performance. Enhancing the stakeholder experience is inclusive of but not limited to consumers. This means, for example, developing staff competencies to effectively communicate to multicultural audiences in-language and in-culture. It is a deliberate effort to develop value proposition by increasing the relevancy of an organization's programs, advocacy, information, products, and services to traditionally marginalized communities. Thought leadership refers to increasing collaboration outside of an organization's echo chamber by advancing ideas and perspectives to promote efforts to become more socially responsive to the opportunities and unmet needs of traditionally marginalized communities.

While AARP matures in its intersectional analysis of such a large constituency, other industry leaders would be wise to revisit their business and engagement model. Fluid stakeholder engagement, strategic communication, external giving, and the development of mutually beneficial joint initiatives alongside national partners with a strong community presence are all strategies that can and must be employed in order to attain a minimal level of social responsibility in this political moment. In the current national political context, the practice of thinking globally and acting locally will challenge corporate America to be consistent in their response to attacks on the rights of the LGBTQ workers and consumers, and to recognize that many of

these same workers and consumers find themselves vulnerable to additional harm related to other identities. These real-time challenges create a demand for best practices in intersectional leadership, a form of leadership that should exist to publicly demonstrate and solve systemic social and economic inequality within organizations that espouse values of diversity, inclusion, belonging, and interdependence.

Based on research findings, the following should also be considered as recommended workplace standards and practices: (1) cocreate, (2) be visible, and (3) be accountable. Cocreating a dynamic and supportive workplace culture that acts locally but thinks globally is an enormous opportunity in current workplace environments. Other participants referenced a real-time culture shift within their companies with optimism where although "a cultural transformation [is] taking place... [the old boy network is alive but it's being shaken up at different levels of hierarchy in the company."³⁶ However, to varying degrees, most of the study's respondents indicated some tension in their workplace environment related to social hierarchy and homogenous racial, ethnic, and gendered opportunities as a challenge, especially in the context of "building a diverse talent pool."³⁷ These insights underscore the challenge of multicultural leadership. "Leadership as a distributed function is gaining ground, which leads to the possibility that anyone who facilitates progress toward desired outcome is displaying leadership."³⁸ This means a critical mass of employee resource group leaders, business unit leaders, executive leaders, and trusted external partners outside of an organizational echo chamber play an outsized role in cocreating a dynamic and supportive workplace environment that positions an organization to lead the future.

From an opportunities perspective, visibility in the workplace seems to offer employees permission to bring all of themselves to work. Nine participants saw visi-

bility as a unique opportunity or challenge in their workplace. For instance, P5 states:

I grew up in the South, and it's still sad for me to hear about folks that can't be open in their workplace because they don't have protection. For me, being out was a decision I made ... I had a woman manager that was out and that gave me the courage to be out in my career, in part because I didn't see any repercussions for her being out at work.³⁹

P1 also articulated the following visibility challenge: "It's always hard to quantify the value add of LGBTQ inclusion. We're a more invisible constituency and we're more difficult to count compared to Hispanics, women, and African Americans."⁴⁰ Participants also saw multiculturalism as an opportunity to drive accountability to the highest levels of leadership in their companies, as in some organizations it "is only found in the lower half of the corporate pyramid."³⁸ Thusly, findings suggest that sustaining a company culture that is accountable and attentive to needs as individual parts and the sum of all parts⁴¹ is important for investments in strengthening organizational readiness.

Overall, these workplace standards, recommended best practices, and aforementioned efforts intended to contextualize the need for a paradigm shift toward a more intersectional analysis. Such an approach can fundamentally strengthen corporate leaders' ability to cocreate organizations that are more socially responsive. Performing such an analysis is both a moral and business imperative, as nearly 100 million millennials, who make up the most diverse and LGBTQ-affirming generation in American history, take to the helm as leaders and consumers. "They are more accepting of gender equality, gay rights, racial blending, and immigration than any other generation."⁴² Embracing this multicultural shift requires executive champions of LGBTQ rights to adopt an awareness, engagement, and de-

cision-making framework, before they miss the pivotal opportunity to make a positive lasting impression on their future leaders and consumers.

Acknowledgement

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LGBTQ Servicewomen in the Women's Army Corps during the Second World War

Mary Claire Phillips

"It was a good battalion"

Abstract

This article seeks to uncover the ways in which the Women's Army Corps fostered an LGBTQ community during the Second World War. This paper offers an analysis of how the military changed its response to female queer personnel in light of changing wartime needs and how those changes served as a foundation for treating future LGBTQ servicemen and women. The evidence offered in this article relies heavily on archived Military disciplinary files and first hand accounts from LGBTQ WAC Service Women.

Bio

Mary Claire Phillips will graduate with a Bachelor of Arts in Government and History this May at the University of Texas at Austin. She is in the Liberal Arts Honors Program and will continue her research on LGBTQ Women's History in the 1940s into a Honors Thesis. During her time as an undergraduate, she participated in the Archer Fellowship in Washington DC and the Frank Denius Normandy Scholar Program on WWII. She interned at the State Offices of Rep. Chris Turner and Sen. Wendy Davis, as well as the History & Public Policy Program at the Wilson Center.

Introduction

The United States military upholds principles of respect and fair treatment to its service members and in turn, service members are honored in American society. An unintended consequence of these noble principles is that the military became a safe space for people in marginalized communities to exist, and even flourish. This was described in 2017 by a transgender veteran of the United States Air Force, Landon Marchant, in response to the announcement of the United States government's transgender military ban. Marchant wrote that the values of "integrity first, service before self, and excellence in all we do" demand respect, and explain why transgender people

are drawn to military service at twice the rate of cisgender people.¹

The military as a safe harbor for those who serve is not a new phenomenon. Throughout American history, the armed forces have been a social equalizer, where a farm boy with no education could advance over a Harvard-educated man. One war in particular had a tremendous equalizing impact, especially for women; the Second World War saw women's independence grow in tandem with job opportunities in the military.²

A lesser-told story about the impact of the Second World War on women concerns how women's entrance into the armed

forces pushed conventional understandings of gender and sexuality.

A particularly illustrative example can be found in a women's branch of the United States military known as the Women's Army Auxiliary Corps, turned Women's Army Corps (WAC), which was established in the 1940s. The WAC provides a fascinating case study of how the US military's attitude towards queer women evolved over the course of the war.

This paper uses primary source material obtained from government archival records to track this evolution: from the liberal attitude employed by the military in 1943, to the stricter policies introduced as the war years drew to a close.

The WAC case study demonstrates that the transgender service members affected by the Trump administration's proposed ban are only a recent chapter in a story dating back decades. The military has long grappled with how to handle gender- and sexuality-diverse service members. The archives paint a quintessential American story that is not so different from the stories painted by US military propaganda at the time: a story of women fighting for their country and finding a community they never thought possible. At this crucial moment for gender equality in the US, is there something that current policy makers can learn from the past?

Research Methodology

The analysis in this paper is based on the limited primary documents that directly refer to lesbian or queer women in the United States military in the Second World War, and specifically in the WAC. While firsthand accounts of lesbian, gay, bisexual, trans, and queer (LGBTQ) women are rare, this paper draws on firsthand accounts from queer voices, rather than solely relying on documents written with a heteronormative lens. Official military records are also sparse, probably because penalties for homosexuality were often informal or disguised.

The primary documents that do exist can be divided into two categories: those acknowledging LGBTQ presence, and those written by LGBTQ authors themselves.

Documents in the first category were obtained from military literature at the San Francisco LGBTQ Archives and the National Archives at College Park, Maryland. These documents outline protocol concerning sexual hygiene and penalties, so provide some insight into the existence of LGBTQ women from an official point of view.

Documents in the second category were mainly found at the Library of Congress's Veterans Voices Project, which contains a collection of oral histories from living veterans. While there are no accounts from self-identifying LGBTQ Women's Army Corps veterans (hereafter referred to as WACs), there are several testimonies about the presence of lesbians in the WAC (including their punishments). Although not as prevalent as the accounts of heterosexual WAC veterans, there are some primary accounts from LGBTQ service women in both the LGBTQ and National Archives.³

In addition, several documentaries from the 1970s and 80s collected and recorded interviews for the benefit of future generations, including *Word is Out* (1979) and *Before Stonewall* (1984).

It should be noted that these sources, while providing rich anecdotes as to queer female culture in the WAC cannot be used for estimating the population of queer woman in the US military—such figures do not exist.

Finally, the term “queer” is used in this paper as an inclusive term referring to all non-straight actors, including those who may have participated in non-straight relationships but never self-identified as homosexual.

“Freedom from Fear”: Beginning of Queer Female Culture

The WAC was an organization ripe for queer cultures to blossom. Much like the newly formed “gayborhoods” of the era, army

bases were far away from the prying eyes of disapproving family and often brought WACs near the city centers where gay clubs thrived.⁴ While on the homefront economic opportunities, such as factory jobs, had opened up for women, the WAC promised adventure and a hands-on experience to advance the war effort. This appealed to women of all backgrounds, but had a particular appeal to some LGBTQ women, like WAC veteran Pat Bond. Desperate for a new life far from home, she writes about her decision to enlist: “I was twenty and I was a lesbian and I was alone... [Going to the WAC] would mean I could love someone, I could have a special person for me. It would be all right.”⁵

For others, the WAC offered an opportunity to come to grips with feelings that had been only an abstract concept. When Charlotte Coleman entered the army base and found herself propositioned by an older female officer, she “had never heard of the word ‘gay’ before,” much less identified her own feelings.⁶ Nonconformity had always explained her preference for masculine fashion and hobbies.

What many queer women today would recognize as common lesbian cultural tropes were just taking root in the WAC. “Butch” gender presentation—clothing and fashion choices associated with traditional male garb—was understood and accepted as an expression of queer sexuality. On the opposite side of the gender presentation spectrum were “fems,” queer women who presented in traditional feminine garb. Butch/fem couples emerged in society during WWII as women were more welcome in public spaces, where a passerby might mistake a butch and her fem girlfriend for a young man taking a lady out on a date. Under the guise of heteronormativity, lesbianism was introduced to public spaces like bars.⁷

As on the homefront, LGBTQ service-women congregated at service clubs where they could drink, bond, and seek out new romantic prospects.⁸ New cultural norms

and jargon emerged; words such as “dyke” and “queer” became terms of endearment and identity, and gatherings were referred to, ironically, as a “gay time.”⁹ As a show of solidarity, queer women would whistle the tune of the “Hawaiian War Chant,” which included lyrics about a “gay gathering.”¹⁰ Queer women learned a new secret language known as “double talk,” a way of referencing their identity without completely exposing themselves to a potential foe. At Fort Hayes in Columbus, Ohio, Officer Julie Farrell used this double talk to a superior by asking if she had ever “spent time in San Francisco.”¹¹ By remaining covert, LGBTQ women could bond with other members of their community while hedging against possible backlash from the authorities.

Call to Open Arms: Initial Military Response to Queer Women

This community probably would not have flourished had the United States military not shown such initial ambivalence towards homosexuals in the WAC. The displeasure of the WAC authorities towards gay women was more akin to “Don’t Ask, Don’t Tell”—a contrast to the inquisition that it would later become.¹² WAC’s earlier, ambivalent outlook on queer sexuality is illustrated in a pamphlet on sex hygiene released by the War Department on 27 May 1943 outlined the WAC approach to homosexuality in the ranks.¹³ The pamphlet explains lesbians are “exactly as you and I” with the only difference being “sexual gratification with members of their own sex.”¹⁴ The pamphlet confounds gender and sexuality, saying that everyone “is born with a bisexual nature, that is, every woman possesses some traits that are usually regarded as masculine.”¹⁵

In the same pamphlet, the War Department argued that this inherent gender duality is responsible for making women butch. “Butchness” was “not to be regarded as a sign that [WACs] participate in homosexual practices.” The only way to prove an officer was gay was through “actual proof she had relations of a sexual nature involving an-

other person of their own sex.”¹⁶ With these liberal rules established, queer women could court and commune with one another under old Uncle Sam’s nose, as long as they were not caught in the act.

The pamphlet also proposed a sort of rehabilitation for suspected lesbians. Similar to the Kinsey Scale developed in the postwar period (which describes sexuality as on a scale), the War Department defined three types of lesbians. First were the women who practiced homosexuality at home and entered the WAC aware of their identity. These openly queer women could be easily filtered out by the simple health questionnaire presented to all military recruits. Second and third were the straight women participating in homosexuality for two reasons—missing men back home or boredom.¹⁷ The War Department suggested combating homosexuality in these last two categories of women by increasing interactions with male officers, increasing workloads to detract from boredom, and limiting private places.

If an officer was under suspicion of homosexuality, authorities suggested that it was actually admiration rather than lust.¹⁸ Queer WAC Officers were encouraged to replace their romantic feelings with “hero worship,” which meant admiring women in a platonic manner for their accomplishments.¹⁹ Presiding officers could then help make sure homosexual tendencies “could be guided into normal fields of expression, making her a valued member of the WAC.”²⁰

Available sources indicate that male recruits were aware of LGBTQ women in the WAC. A cartoon series by Milton Caniff, “Male Call,” was published in an Army newsletter in 1944. One still, titled “Know Which Arm You’re In,” depicted the popular character Miss Lace, waking up in shock to the sound of a female voice coming from the person lying next to her in bed.²¹ Miss Lace quickly blames the masculine WAC uniform for misleading her into thinking last night’s lover was a man. One can-

not help but note that, if Miss Lace truly wanted to be with a man, she would have noticed the absence of certain equipment well before she woke up in her lady lover’s bed. Military authorities quickly removed the cartoon.²²

Reverse Course: The Beginning of the Lesbian Witch Hunts, post-1943

In 1943, the Women’s Auxiliary Army Corps transitioned into the Women’s Army Corps (collectively referred to as WAC). Around the same time, the WAC launched a feminization campaign. A public opinion poll taken in 1943 revealed most respondents considered WAC uniforms to be the most “unfeminine” and “unattractive” of all-female military units.²³ WAC Director Oveta Culp Hobby reached out to various fashion designers to redesign the WAC uniforms in an effort to revamp the Corps’ mannish image.²⁴ The new uniforms ranged from mandatory combat skirts, to colorful battle accessories, to off-duty dresses.²⁵ Toby Newman, a straight WAC officer, recalls that this stylistic transition extended to undergarments:

Our underwear and bras were khaki, by the time they switched it from the Auxiliary to the regular Women’s Army Corps they let us wear our own underwear. The military was learning to deal with us women.²⁶

Then as now, a strong preference of butch gender presentation was opting for short hair. Across the WAC, women were encouraged to grow out their “mannish” bobbed hair and coil their locks into Elizabeth Arden-endorsed styles.²⁷ The disapproval of mannish haircuts even found its way into WAC Newsletters via comedy. A cartoon circulated in 1943 depicted short haircuts in a manner that seems to mock those who preferred that fashion.²⁸

Across the WAC, a new notion was starting to take hold—controlling gender presentation controls queerness.

Yet even a feminization campaign could



not eliminate the elephant in the bedroom. The WAC still required that accusations of homosexuality needed to be proven with evidence. It encouraged authorities to be “generous in outlook” when handling such allegations.²⁹ All accused women were presumed to be innocent until “definitely proven otherwise.”³⁰ Gossip and hearsay was not considered sufficient, in an attempt to dissuade servicewomen from making allegations rooted in suspicion.³¹

However, those caught in the act were in immediate danger of losing their jobs. A firsthand account by a heterosexual WAC veteran, Ellenor Rennell, describes what happened when she walked in on a fellow WAC in bed with a woman who worked on the hangar cantina:

Someone was shaking me “wake up!” It was a military police [sic] “I want to see you down in the room”... He said “what’s the deal with those two women?” so I told him. Then he said “you’ve got to be kidding” and I said no. He said “You will see Colonel Johnson o’eight hundred tomorrow, you know the commanding officer... He says I understand there were two girls sleeping together in the bunk... He said “Did you ever hear of queer people?” I said well, to me queer is someone who has to go to the state hospital or has a problem. So then he had to tell me about girls and the men...So the girls were discharged, honorable discharge...³²

Prosecution was difficult due to the court’s narrow definition of sex. Fondling, kissing, and hugging failed to qualify as intercourse under military law.³³ WAC veteran Pat Bond alludes to the subtleties of sex between women in her semi-autobiographical play, “Murder in the WAC,” when her naive younger self asks for sexual guidance from an older friend, who crudely clarifies: “You gotta make love to ‘em with your tongue!”³⁴ this was a concept no military court in the 1940s was willing to entertain.

“I Have Seen War, I Hate War”: The Lesbian Purge Begins

As the war neared an end, the WAC was under pressure to downsize their organization.³⁵ A convenient means of shrinking the force was purging lesbians, a process that began in earnest in 1944.³⁶ Psychiatrist Albert Preston introduced to the WAC the idea that queerness was a mental illness among women in the service (a standard that had been used against homosexual men since the onset of the war).³⁷ The most overtly anti-LGBTQ aspect of WAC policy lay in its Recruiting Stations’ neuropsychiatric examination. This involved a set of questions designed to identify queerness in candidates, exposing any desire “to indulge her sexual perversity.”³⁸ In lieu of self-disclosure, recruiters received explicit instructions to screen women based on gender presentations. These qualities were listed off in a WAC newsletter for servicewomen to peruse. Traits such as low voices, stocky and shapeless physiques, and “rough or coarse manners” were indicators of butchness and, therefore, of homosexuality.³⁹

Though there are no official records of the number of queer women in the WAC, it appears that Army officials underestimated the size of WAC’s queer population. Officer Johnnie Phelps, who claimed 97 percent of her battalion was queer, recounts conveying to her commanding general, Dwight D. Eisenhower, how large an impact purging the WAC of lesbians would have:

One day I got called into the commanding general’s office, and it happened to be Eisenhower at the time. “It’s come to my attention that there may be some lesbians in the W.A.C battalion. I’m giving you the order to ferret those lesbians out and we’re going to get rid of them.” And then I looked at him, and I looked at his secretary, who was standing next to me, and I said “Well sir, if the General pleases. I’ll be happy to do this investigation for you, but you have to know



I'm the first name on your list will be mine [sic]. And he was kind of taken aback a bit. And then this woman standing next to me says "Sir, if the general pleases, you must be aware that Sgt. Phelps may be second, but mine will be first." And then I looked at him, and I said "Sir, you are right there are lesbians in the WAC battalion. And if the general is willing to replace all the file clerks, all the section commanders, all the drivers, every woman in the WAC detachment (there were about 980 something of us) then I'll be happy to make that list. But I think the general should be aware that among those women are the most highly decorated women in this war. There have been no cases of illegal pregnancies. There have been no cases of AWOL. There have been no cases of misconduct. And as a matter of fact, every six months since

we've been here sir, the general has awarded us a commendation for meritorious service." And he said "Forget the order." It was a good battalion to be in.⁴⁰

While there is no official record of this exchange, Phelps's testimony highlights just how difficult a lesbian purge would be to implement. The military presented an ideal environment for queer women, and in order to pluck out queer women from the service, officials needed to set down criteria by which potentially queer servicewomen could be identified.

In a departure from the 1943 Sexual Hygiene pamphlet guidelines, butch gender presentation became the main qualification for discharge. The tactic served a practical purpose. By using the visibility of butch women as the primary criterion for being gay, authorities could easily identify those they regarded as lesbians. At the same time,

it masked the scope of the community by excluding the fem population. Fems who could pass as straight and did not have to fear persecution. Butches lived with the fear of dishonorable discharge. More insidious was the depiction of butch women as sexual predators, and fems as innocent prey.⁴¹

CASTING butch women cast as villains was ironic, because there was a bigger predator on the loose: male recruits.⁴² Milton Caniff's famous cartoon depicts a WAC fighting off drunk and sober recruits, ending with her saying "Say—is there some sort of campaign ribbon for a gal who has fought against the U.S. Army?"

Formal trials for female homosexuality did occur. These trials were rare, in part because of the WAC's tendency to deal with these cases unofficially and under the guise of general misconduct. The only known federal investigation of female homosexuality originated when a mother discovered her daughter's love letters from a female WAC cadet. The mother went straight to the court-martial⁴³ and lamented about the affair in a letter dated 12 May 1944:

It is no wonder women are afraid to enlist. It is full of homosexuals and sex maniacs... and [her daughter's older WAC lover] has ruined other girls and will continue to spell other girls who joined the WAC.⁴⁴

"Is This Tomorrow?": The Witch Hunt Continues

V-Day, the day the Nazis surrendered unconditionally to the Allied powers, did not stem the momentum of the WAC's lesbian witch hunt. For Officer Pat Bond, newly stationed in postwar occupied Japan, the crack-down on homosexuality was a continuing and imminent threat. Between the end of the war and her deployment to Japan, she married Paul Bond, a gay male friend, as mutual proof of heterosexuality. On her Tokyo base in 1947, the witch hunt raged; lesbians testified against each other in hopes of saving their jobs and honor. Her faux marriage saved Bond from the fate of 500 women on

the Tokyo base: dishonorable discharge for homosexuality.⁴⁵ Instead, Bond received an honorable discharge on 3 July 1947 at Camp Stoneman, California.⁴⁶

Postwar, Bond launched a theatre career as both an actress and playwright. Her play *Murder in the Women's Army Corps* reflects her time as a WAC officer in Tokyo. She recreates the anxiety surrounding the purges in a scene where queer characters lament their predicament; if the character they suspect of being a spy disappears soon, the military will "send in another one."⁴⁷ Bond's writing reflects the hurt resulting both from the condemnation of a country who benefitted from her service and from betrayal by those she once called family. The WAC could not purge itself of queer women without the knowledge of queer women themselves, who were trusted enough to be privy to such information. What was once a safe haven for the LGBTQ community became the opposite, where every woman was for herself and falling in love could be your ticket back home.

Of the few unlucky women who ended up in court, most lost their cases. The military forced queer women to return home with nothing but happy memories of the service and a dishonorable discharge to color their reputations for the rest of their lives.

Years after atomic bombs were dropped on Japan and the Paris Peace Treaties were signed, the military reevaluated its approach to the homosexuals in their midst. In 1949, the Military Personnel Board commenced a review of homosexuals in the military and established a standard protocol dealing with their presence, better known as Project M-46.⁴⁸ The protocol almost entirely focuses on male homosexuality, even proposing providing servicemen with alternative sexual outlets similar to "comfort women."⁴⁹ Despite the prevalence of queerness in the WAC, M-46 hardly mentions lesbianism.⁵⁰ The only reference to the Women's Army Corp is the requirement that in "cases involving female personnel, a female officer should be a member of all [disciplinary and investigative] boards."⁵¹ Other than a typo calling homosex-

uals “homosexuals” (a mistake future generations of queer women may laugh at for its cultural accuracy) the extensive legacy of queer WACs is ignored.

The military’s attitude to queerness had hardened by October 1949,⁵² when a memorandum was issued to the Secretaries of the Army, Navy, and Air Force:

Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces is mandatory.⁵³

The procedural grey area which once fostered a rich LGBTQ subculture for women was gone.

Conclusion

The end of World War II brought an eagerly anticipated homecoming for soldiers abroad, but for the thousands of LGBTQ women who found freedom in the military, it was the beginning of a new era of queerness for years to come. The foundation of our modern-day queer community took shape as a result of the social changes, gender empowerment, and new sense of individuality brought on by World War II. Much like their WAC predecessors, 150,000 trans servicepeople and veterans of the US armed forces today have to contend with domestic American politics just as much as the geopolitics of their place of station.⁵⁴ It would be a tragedy for their community to be taken from them as it was taken from the queer WACs.

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- ⁴⁹ "Subcommittee on the Discharge of Homosexuals from the Armed Services," 1949, Subcommittee Studies 1940-1951, Record Group 330, Entry Number NM-12 124, NARA. 6 December 2017.
- ⁵⁰ "The Homosexuality Problem," memorandum from Colonel Mary Hallaren to Major General G.E. Byer, 1950, box 86, Background Papers, Women's Army Corps 1945-1976, Records of the Army Chief of Staff, RG 319, NARA. 6 December 2017.
- ⁵¹ "A Study to Revise Regulations for the Handling of Homosexuals in the Military," 1949, Subcommittee Studies 1940-1951, Record Group 330, Entry Number NM-12 124, NARA. 6 December 2017.
- ⁵² Lillian Faderman, *The Gay Revolution: The Story of the Struggle* (New York: Simon & Schuster, 2015), 32.
- ⁵³ Memorandum: Department of Defense to Secretaries of the Army, Navy, and Air Force, 11 October 1949, in "Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures, and Directives Dealing with Homosexuals," 15 March 1957.
- ⁵⁴ Gary J. Gates and Jody L. Herman, "Transgender Military Service in the United States," Williams Institute, UCLA School of Law, 2014, williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf.