

The Boundaries of Transgender Rights: A Case Study Based on the Historical Legislation of the United States

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Abstract: The U.S. started to legally recognize transgender as transexuals in the 1970s, but with the late 1980s' gender queer theory, the U.S. legal system recognizes all transgenders by how they identify themselves. The 2010s see rapid growth in transgender movements and related surgical industries. This paper studies the historical development of transgenders rights in the U.S. and analyzes its legitimacy based on past legislation and ideologies of America. It uses historical analysis and case studies on past lawsuits of the development of transgender. It analyzes how the three aspects of social, economic, and political factors intertwine to form the current legislation regarding transgenders. It divides the post-1980s transgenders into two groups to analyze, each based on a historical analysis of legislative values in the U.S. The current development of transgender rights and the over-protection of which has violated the U.S.'s founding ideologies of liberty. To ensure the basic right to privacy in sex-divided facilities, legal systems should give clear criteria for determining transgender. To protect transgenders, especially adolescents and young adults, legislation needs to outlaw the school-to-clinic pipeline.

Keywords: Transgender, Legislation, Gender-affirmation surgery, Young adults.

1. Introduction

America's opinions on whether or not facilities that have long been legally divided based on sex--from sports teams to restrooms--should be divided based on biological sex or gender identity have been polarized.

In 1972, the United States Congress passed a standard national law requiring all school districts to teach gender identity instead of biological sex. The Metropolitan School District of Martinsville, *Petitioner v. A. C., a Minor Child by His Next Friend, Mother and Legal Guardian, M. C.*, 2023 Supreme Court case overruled the regional decision to grant the pledge for a female self-identified as male to use the male bathroom rather than a transgender bathroom within the school, although opinions vary across contexts and regions [1].

The Supreme Court's recognition of the rights of transgenders who have not biologically transformed their sex makes it possible for situations vice versa--males who claim they want to be identified as females can enter female bathrooms, female prisons, and any facilities. In the case of Isla Bryson, who raped two women in Cornton Vale women's prison, his permission into the female prison before she changed her gender biologically posed a direct threat to women's fundamental right

to bodily integrity and sexual autonomy [2]. The U.S. Case laws' protection of transgender rights has violated female rights, pushing forward the discussion of the boundaries of transgender rights.

2. Analysis on the Legal Basis of Transgender Rights

2.1. Basic Concepts and Definitions

In the U.S, transgender refers to any individual whose gender identity does not match their sex assigned at birth, which covers those identified as non-binary, genderqueer, or in a way that doesn't fall on the male/female spectrum. The New York State Unified Court System notes that less than 25% of all transgender people have had a specific surgical or medical treatment such as hormone intake to change their biological sex [3]. Thus, the legal definition of gender transition only requires a change in gender affirmation psychologically, not necessarily biologically. Under this framework, a transgender woman is a biological male “who understands himself” to be female [4]. In determining whether an individual can be recognized as transgender and protected by law, the U.S. Supreme Court does not mandate a diagnosis of gender dysphoria, in turn allowing anyone to go by the gender they claim they understand themselves to be.

2.2. Analysis of the Historical Background of Transgender Rights in the United States

2.2.1. Pre 1980s

The initial recognition and attention to transgender were brought along with the Gay Liberation Movement from the 1960s to 1970s, catalyzed by the Stonewall Inn Riots of 1969. The 1970s movement was more focused on issues affecting gay and lesbian communities, pushing forward the legal marital rights of transsexuals who have gone through complete gender reassignment surgeries. The earliest case that considered transgender rights in the U.S. was *Matter of Anonymous v. Weiner* case in 1966, concerning a transsexual who tried to modify her name and sexual orientation on her birth certificate after undergoing genital surgeries. In the judgment, the Bureau of Vital Statistics approached the New York Academy of Medicine, which concluded that despite seemingly possessing feminine traits, transgender women were “still chromosomally males” [5]. The New York City and New Jersey Health Code forbade changing one's sex on birth certificates unless it was a mistake occurred at the time of birth. Similar cases in the next decade forbid change of sex on birth certificates even after sex reassignment surgeries [6]. In the 1960s and 1970s, the social and legal belief were founded on the idea that males who were born with male anatomy and were not able to acquire females' sexual organs, and vice versa. Therefore, sex could not be altered through medical or surgical methods.

By the 1970s, transsexuals' surgeries had given them sexual autonomies with full reproductive functions of the other sex. The genital surgeries one has received allowed his or her inner sense of gender and physical sexuality to correspond legally on birth certificates. In *MT v. JT* case in 1976, The Superior Court of New Jersey recognized transsexuals' postoperative sex for the validity of a marriage between a male and a transsexual female [7].

2.2.2. Post 1980s (The Modern Movement)

The late 1980s introduced the modern definition of transgender with the concept of gender identity and the gender queer theory. According to leading authors like Judith Butler, Gayle Rubin, and Susan Stryker, the gender distinction between male and females was a fake dichotomy which in essence was a societal product designed to enhance the heterosexual white male power structure and marginalize sexual and racial minorities [8]. Transgenderism was created by these authors as a means of

questioning potentially “destroying” this social order. One of the pioneers of the transgender movement, Susan Stryker, contends in one of the most well-known articles on Performing Transgender Rage the idea of a transsexual figure is a technical production that stands for a struggle against the conservative Western society, including the established heterosexual norms, the conventional familial structures and principles, and the patriarchal oppression [9].

The modern transgender movement is therefore more representative of a “politically correct” ideology that aligns with the values of the United States strongly pursued since the 1960s: liberty and equality.

2.2.3. Development and Penetration

The transgender movement develops and penetrates the American society with a combination of socio-political factors.

In 2013, James Nicholas Pritzker declared his gender transition from male to female without a biological transition, changing his name to Jennifer Natalya Pritzker, and was celebrated as the first trans billionaire. In the same year, her philanthropic organization, the Tawani Foundation, issued a significant grant to the Palm Center, a think tank focused on LGBT issues. The donation was distributed to medical facilities for experiments--mostly on black teenagers from poor backgrounds -educational institutions ranging from primary schools to universities, and social movements for promotion. This funding helped launch the Transgender Military Service Initiative, which aims to sponsor research and encourage public discussion on integrating trans individuals into the military. In the meantime, radical gender theory was pushed into the state curriculum by Illinois Governor J.B. Pritzker, James Pritzker's cousin, while state Medicaid funds were directed toward transgender surgery [10,11].

In his written opinion, he expressed himself as a generous Republican but denied any donation to the GOP due to the party’s policies against LGBTQ+ groups [12]. His identity as a Republican and his open rebuke of the Republican Party allowed him to gain support from both political parties, especially the latter in the state of Illinois--a Democratic stronghold and one of the "big three" Democratic states.

In Chicago, at least four public school districts and major hospitals have formed collaborations with Pritzker-funded activists, intaking trans ideology training, resources, and staffs. Children at schools are taught radical gender theories and encouraged to go to hospitals, while Lurie Children's Hospital expose them to breast binders, artificial penis packs, and etc. The Children's Hospital aims to challenge traditional conventions in Western society and encourage vulnerable pupils to seek transgender treatment as a solution, creating a “school-to-clinic pipeline” [13].

Socially, from about 1988, activists in the U.S. began to include “T” after the acronym LGB. The modern movement, known as the “LGBTQ+ Rights Movement”, is inclusive of a wider range of identities, including transgender, non-binary, and genderqueer individuals. With the rise of social media and influencers sponsored by the Pritzker family, the transgender movements on social media after 2010s. With strong political and monetary support, it has been focused on legal recognition and policy change, particularly marriage rights, anti-discrimination laws, and gender identity recognition.

In *Kantaras v. Kantaras* case in 2004, the Florida Second District Court of Appeal ruled that Michael Kantaras, a transgender man who had undergone some, but not all, gender-confirming surgeries, was legally male [14]. The Vermont Court of Appeals recognized that surgery was not a mandatory requirement for a change of gender on legal documents in 2011. The court acknowledged that gender identity could be legally recognized based on a person's psychological identity rather than solely on physical characteristics [15]. Those state cases marked a shift in the legal requirements for gender changes on official documents, moving away from the previous stipulation that surgery was necessary for such changes.

Transsexual rights was officially extended to cover transgender rights by the Supreme Court in 2020. In *Bostock v. Clayton County* case in 2020, Aimee Stephens was fired by R. G. & G. R. Harris Funeral Homes in *Bostock v. Clayton County*. Aimee Stephens had been employed as a man but fired by G. & G. R. Harris Funeral Homes for expressing the intention to "work ... as a woman." The Supreme Court ruled that discrimination based on gender identity violates Title VII of the Civil Rights Act of 1964 by interpreting the term "because of...sex" to include any "but-for" occasions related to all gender identities, including transgenders [16]. Employees who identify as female and use feminine pronouns but were assigned male at birth cannot be fired by their employers due to their gender identification. Accordingly, it is unlawful for establishments to offer services, benefits, or privileges to individuals because of their gender--rather than their sexual orientation--including transgender individuals.

While Aimee Stephens was diagnosed with gender dysphoria in this case, though having not gone through any genital surgeries, the diagnosis might be completely removed by Western countries in the future as Denmark emerged as the first to take out gender-nonconformity from the classification of mental illness in 2017, separating them from terms like "problem," "disorder," or "dysphoria" [17]. This move was intended to destigmatize transgender individuals and represents a shift in the understanding of being transgender. The focus on gender identity and expression rather than on a medical diagnosis will further blur the boundary in the standard of determining transgenders legally.

3. Background of Legislation

3.1. Analysis of the Historical Background of the Civil Rights Act of 1964

The monumental *Bostock v. Clayton County* decision was based upon a violation of Title VII of the Civil Rights Act of 1964, which makes it "unlawful... for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual because of such individual's race, color, religion, sex, or national origin" [18]. The Act was a result of the Civil Rights Movement in the 1950s and early 1960s. Although the primary focus of the Act was to address racial discrimination, the addition of sex under Title VII of the Act became crucial in the fight for gender equality.

The word "sex" in 1964 means the biological division between males and females [16]. The inclusion of "sex" in this document was to address sex-based discrimination which was mainly toward women, considering the context of this amendment when legal restrictions and societal norms entrenched gender inequality against women for a century. In *Goesaert v. Cleary* case in 1948, the Supreme Court affirmed a Michigan law that prohibited women from holding bartending positions unless their father or spouse owned the business [19]. The United States had not made significant progress in its constitutional interpretation of the Equal Protection Clause (14th Amendment) since 1875, when Wisconsin's Lavinia Goodell was turned away from her state's bar for being female. Wisconsin's Chief Justice wrote: "It would be revolting to all female sense of innocence . . . that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice"[20]. A key justification for this workplace discrimination was women's biological potential for pregnancy. From this ability stems the public's "separate spheres" assumption, that men, by nature, should be the financial providers for their families while women, also by nature, were responsible solely for childbirth, child-rearing, and home management [21]. Because females might take time off for pregnancy and child-rearing, employers often viewed women as less reliable or less committed to their careers, denying females employment opportunities and paying lower wages.

The principle of laws is that people should not be held responsible or penalized for innate aspects of their identity that they cannot change. The items in the Civil Rights Act of 1964--sex, race, color,

and national origin--all fall in this category. The Act's purpose was therefore to ensure that individuals were judged on their abilities, qualifications, and contributions, which are not parts of biological determinism.

After the passage of the Civil Rights Act of 1964, the broader women's liberation movement from the 1960s to 70s started to use both the Act and the Equal Protection Clause to overrun previous discriminatory case laws.

In *Phillips v. Martin Marietta Corp.* case in 1971, the Supreme Court held that the company's policy of hiring men with young children but excluding similar females violated Title VII of the Civil Rights Act [22]. In *Reed v. Reed* case in 1971, the Supreme Court held unanimously that a state provision requiring men to be given preference over women in estate administration impairs women's right to equal protection, marking the first case that discrimination against females is unconstitutional under the Fourteenth Amendment [23].

The U.S. Supreme Court successfully continued the conversation with the political arms of government over gender discrimination lawsuits in the 1970s. According to Ruth B. Ginsburg's main contention, the Court helped legislation and rules "catch up with a changed world" through promoting and supporting the congress's and government's reexamination of sex-based categorizations [20].

3.2. Current Background

The reason transgender rights should be re-examined after the 1980s is that both the societal and legal criteria of gender identity have changed. In the past, individuals who required genital surgeries experienced gender dysphoria--a psychological disease in which the discrepancies between a person's biological sex and gender identity has caused them significant emotional disorders [24]. Gender dysphoria, as a mental disease, falls inside the category of what one cannot change and should be protected. However, unlike most other things considered in the Civil Rights Act of 1964, gender identity in the 2000s century has become something that can be completely self-determined. A person can be identified as another gender without any genital surgery or hormone intake, and without a medical diagnosis of gender dysphoria. Without any testament, individuals have the freedom to claim their inner psychological feel of gender to their benefit, meaning that one has full autonomy over their gender identity. The lack of a unified standard for gender and the exploitation of related legal grounds to make all society respect transgender rights have furthered this right to the extent of violating women's rights, thus going against the original main purpose of including "sex" into the Civil Rights Act of 1964 -- protecting the rights of biological females [25].

The Declaration of Independence, as well as the United States Constitution, says "We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness [26]." The three items of alienable rights are listed in decreasing importance and priority-- one's pursuit of happiness should not violate another's liberty, and one's liberty should not interfere with another person's life. The definition of liberty, given in The Declaration of the Rights of Man and of the Citizen of 1789, reads: "Liberty consists in the freedom to do everything which injures no one else [27]." Although French, the document holds a universal principal of liberty which were also seen in writings of James Wilson: "Without law, liberty also loses its nature and its name, and becomes licentiousness [28]." Constitutionally, each person is free to live their lives independently, in any way they choose, so long as they do not violate the rights of others. When it does so, Amendment 14 ensures "equal protection" to all citizens, in this case, females.

In this case, transgender's rights is the "liberty" to identify themselves as whichever gender they prefer. However, this liberty directly injures the right to life of females. According to the Pew Research Center, 46% of American adults believe transgender persons should be obliged to use bathrooms that correspond to the biological gender they received at birth [29]. Nine women filed a

lawsuit in *McGee v. House* case in 2021 against Poverello House, one of the largest homeless service providers in the Fresno area, claiming that the nonprofit's women's shelter permitted a transgender resident to harass them sexually while they resided there [25]. The transgender was “a male who identifies as female,” but was allowed to enter female public areas for shower and rest. The presence of a transgender woman with male anatomy in a space traditionally reserved for females can be seen as an intrusion into a private area, violating females’ innate right to privacy, to control who sees and has access to their bodies, and protection from being exposed to the bodies of others, particularly those of the opposite biological sex, in intimate spaces. The biological differences between the sexes are the reason why these spaces were segregated in the first place. When the liberty of transgenders interferes with the normal lives and natural rights of females, this liberty should be compromised.

It is important to consider whether the current “transgender rights” falls in the definition of “natural rights”. If not, their rights should not be protected at all. By saying “all men are created equal,” the constitution means that all men, when created, or born, are equal. This implies that the state protects anything that someone is born with and cannot determine, such as race, sex, national origin, and etc. For this reason, the American Law Institute even provides protection from legal responsibilities for criminal conduct if at the time such conduct is a result of mental disease or defect [30]. Gender dysphoria is recognized as a protected disability under federal disability rights laws, but considering transgenders who are not diagnosed with the mental disease of gender dysphoria, they do not face a necessity to identify as transgender. Gender identity is not a natural right, but rather a choice that one should be responsible for.

The distinction between privileges and rights is that the former suggest a specific right to immunity bestowed upon a limited group by the government or another authority. What the current laws and policies are giving transgenders is no longer a right, but a privilege. It exceeds the natural rights of a human. Through alternating between male and female, one gains immunity to the restriction of unisex to enter facilities exclusive to the other sex and the privileges of the other sex without carrying the related duties. The legal definition of “privilege” is that one has the freedom to perform by how they prefer, but their freedom is unprotected [31]. Therefore, when enjoying the privileges brought by their identity as transgender, transgenders should take full responsibility for their actions.

One should only take responsibility for things for which he or she has the cognitive ability and knowledge to make an informed decision. Otherwise, it shall be the institute that provides the service without fully acknowledging the risks to be legally responsible, while transgenders should be identified as the victims of such promotion. Patient autonomy is one of the main principles of medical legal ethics [32]. Most transgender adolescents do not have this autonomy due to the immature mindset of this age group. The self-reporting among younger generations does not reflect a real increase in awareness and acceptance, but rather an actual increase in prevalence and a shift to make transgender part of the 21st century’s social norm.

Compared to roughly 0.5 percent of all adults, 1.4 percent of 13 to 17-year-olds and 1.3 percent of 18 to 24-year-olds identified as transgender. About 18% of transgender-identified people in the United States are young people aged 13 to 17, an increase from 10% in a prior investigation conducted in 2016-2017 [33]. The APA has identified the rising trend to identify as transgender among young adults, especially teenagers, in the U.S. under the psychology of “social contagion.”[34]. Through social media, young individuals were able to locate transgender networks and obtain the scant information on gender identity transitions in an echo chamber.

77 individuals out of 27 studies expressed regret about undergoing gender-affirming surgery (GAS). Based on the Kuiper and Cohen-Kettenis categorization, the majority clearly regretted their actions [35]. Compared to general population control groups, patients who have had GAS are linked with 12.12 times higher risk of suicide attempts and self harm, and 7.76 times higher risk of PTSD [36].

U.S.'s foundational idea of democratic living was ensured through education and open information, with presidents and founding fathers' centuries of efforts in giving all citizens the right to make a fully informed decision [37]. Allowing anyone to make an irreversible change and likely destruction to their body should be on the basis that they can make an informed decision. Otherwise, it is not democracy or freedom, but rather a violation of it. With transgenderism, society cannot trust a young adult who has not received unbiased education about transgender or gone through careful consideration of long-term consequences to make a clear decision. With no acknowledgment of the harms of transexual medicare such as puberty blockers, they are encouraged to do so under social media, peer influence, and the subsidized school-to-clinic pipeline, where they have been receiving not education, but promotions, from hospitals and schools to take transgender surgeries.

4. The Development Direction of Transgender Rights Laws and Policies

The trend of transgender holds an inherent resemblance to drug abuse and alcoholism among Americans, especially young adults, with the leading reasons for drugs being peer influence, influence on social media, and lack of knowledge. Thus, it might follow a similar process to be stopped, with the first step being a scientific recognition of the harms of transgender Medicare.

However, the development of transgender rights would still see a rise in the future. In most recent cases, two rulings have included gender-affirming surgeries and care in state-run health insurance programs. In April 2024, the Fourth Circuit Court of Appeals in Richmond, Virginia ruled that state health insurance plans must cover gender-affirming care in North Carolina and West Virginia. A month later, The Eleventh Circuit Court of Appeals, which previously stood against gender-nonconforming groups, ruled that transgender people are entitled to certain federal non-discrimination rights in the context of group health plans [38].

The lack of legal restrictions to conduct the surgeries and the reputation of formal institutes that conduct them further the impression of the safety of such transitions among potential young adults. Social media as the largest influencer and source of information for most citizens gives exposure and limited information to the public on pro-transgender content, but little exposure on the actual health problem or the profit chains behind it.

As a democratic nation, any political and legal change should be based upon a consensus among the public. Society's lack of knowledge toward transgenderism is due to the time that transgender enter society has not been long enough to expose its harms. Currently, only 1% of patients who have gone through GAS express regret, but many of them have just finished their surgery in recent decades, with all studies' mean follow-up years below ten years. Science needs time to see and collect the real effects of transgender surgeries on a person's physical and mental health and conduct further research into related fields.

The total revenue for transgender medications and operations in the American "medicine" market has exceeded \$4.4 billion by 2023. This amount is predicted to approach \$7.8 billion by 2030 [39]. Unless the profit chain behind the system is fully exposed and stopped, the government cannot and would not restrict the growth of transgender industries in the U.S.

5. Conclusion

The pre-1980s gave legal recognition to those born with abnormal hormone levels, medically diagnosed with gender dysphoria, and having gone through genital surgeries to make themselves transsexual. The current case law fails to keep up with the changes in the post-1980s era's interpretation of transgender as gender identity rather than biological differences, which needs to be re-examined based on two types of transgenders and the legal definition of "liberty". Those who claim themselves transgender without any medical procedures exploit the justice system to gain privileges

while violating the other sex's right to live with privacy. For this group, legal systems need to limit their rights by marking clear criteria for transgender and making them responsible for the "privileges".

Why transgender rights are currently protected and respected is no longer out of a necessity that transgenders have, but out of a combination of social, economic, and political factors. With financial and political support that opens a school-to-clinic pipeline, profit-driven hospitals, schools, and social media influencers normalize and promote transgenderism to young Americans without medical knowledge or autonomy to decide their gender. For this group of young adults, the law needs to protect their liberty on the right to make an informed and deliberate decision. This development direction for laws needs society's approval as a pre-requisite, which needs scientific studies on the long-term effects of such surgeries and enough exposure to gain public awareness.

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