

**Bridging the Gap: The Legislation of Gender and Cultural Expression through Beauty  
Following the American Psychological Association's Guidelines**

Karlique Caesar

Department of Business, CUNY New York City College of Technology

BUF 4700: Contemporary Issues in the Fashion Industry

Dr. Denise Sutton

December 21, 2023

### **Abstract**

The purpose of this paper is to explore the disconnect between the legal system that was designed to protect the citizens of America and the selective interpretations that are used to determine who they apply to. In this current state of the world hate is spewed left and right and that is extremely unproductive. It is my wish to simply provide the facts to allow you, the reader, to leave, hopefully, more educated than you arrived. The intricacies of gender identity and the laws that are supposed to protect them, as well as how these laws and sets of morals came to be.

### **Bridging the Gap: The Legislation of Gender and Cultural Expression through Beauty**

Gender is an intricate tool for the development of human beings and their idea of identity. From youth the things that people are interested in or traits that they display are coded by gender. With humanity's lack of a neutral sense and a declaration of gender being provided to all mannerisms, ideals and interests there is no surprise that the gender that one may connect with the most may not reflect that of their birth sex. As these internal factors continue to develop in individuals they will eventually realize themselves as physical manifestations of gender expression (think "crossdressing" or "drag" performances). According to the Lesbian-Gay-Bisexual (LGB) Development model (D'Augelli, 1994), non heterosexual individuals must relearn how to identify themselves in the context of society. In order for non heterosexual individuals to properly develop they must follow the sequential steps: 1) an exit of heterosexual identity, 2) discovering an internal LGB identity, 3) discovering an external LGB identity, 4) identifying as an LGB person, 5) introduction of LGB intimacy, and the final step, 6) adoption into an LGB community. It was under D'Augelli's thought that a LGB person not being allowed to express these states would become stunted and suffer from clinical depression amongst other negative afflictions. According to a survey conducted for the study *Suicidality*

*Among Transgender Youth* an astounding 82% of trans gender people claim to have contemplated suicide and an alarming 52% claimed to have attempted to take their own life (Austin, Craig, D'Souza & McInroy, 2020). An important part to this expression lies in the use of fashion and beauty techniques as they convey gendered messages by design. It would stand to reason that for the sake of preserving the well being of all individuals in society, LGBTQ+ people should have their right of gender expression protected by all laws that sanctify the rights of the general populace. Unfortunately, in the history of the United States of America, LGBTQ+ freedom of expression had been treated as a luxury exclusive to binary gender interpretation. In order to understand the strict stance that the United States took on gender representation it is important to evaluate the conditions that our country has founded itself on.

In discussing discrepancies in gender expression protection historically within the United States of America, many argue that it is simply a sign of unfamiliarity. There is an idea that alternate gender expression is a contemporary issue. This is simply untrue. History has proven time and time again that throughout history there has been evidence of alternative gender expressions. There have been remains of a biologically male caveman buried with their body facing left and heads tilted east, typical of female burials at the time had been discovered with time-appropriate female clothing and paraphernalia surrounding their body (Peralta, 2011). During Edo Period Japan, there was common acceptance of a third gender that had been considered neither male nor female known as the *wakashu*, embodying an androgynous appearance (Chira, 2017). Similar sentiments can be found all across Asia with some examples including the recognition of *Kathoey* in Southeast Asia and *Hijra in South Asia*. The main catalyst for acceptance is the lack of a Bible-centric religion in these areas that specifically lays down rules on gender expression.

The core of American life and principles stem from the foundation of the country. Upon arrival to the Americas, the Spanish conquistadores viewed the indigenous people as savages due to their separate belief systems being removed from that of Christianity. Deeming the indigenous Americans as beneath them, Spanish conquistadores did everything they could to prove that they had some sort of divine superiority over the natives. The result was brutal torture, murder, and punishment for any act that seemed to not support heterosexuality. According to *Queer Injustice*, If native American men were caught wearing clothing that was feminine or if they were caught in any position that had implied sexual relations with another man, they would have the Spaniards' hunting dogs set on them, who would maliciously maul the native men (Ritchie, Mogul, Whitlock, 2011). There was never a trial for these men. Their fate was left in the hands of those who accused them. This heightened sense of "justice" displayed by Spaniard colonizers had derived from a sense of superiority and similar religion-based laws that had been a part of the Spanish legislature. The sentiments that had caused the grand atrocities that had caused a group of people to feel entitled to commit genocide would be passed down to their descendants which would eventually lead to the "crime against nature laws".

The "crime against nature" laws were a set of laws that forbade certain "unnatural acts" from being committed in the United States. While not all bad, the "crime against nature" laws had set the stage for some prohibitions that would directly go against the sentiment of the United States Constitution. These laws had specifically dictated that sex should only be conducted for the purpose of procreation and should not be conducted outside of the union of husband and wife. While these laws rightfully forbade acts of sexual assault, public indecency, bestiality, incest, and pedophilia, the list had also considered masturbation, interracial coupling, and homosexual couplings to constitute grounds for a "crime against nature" charge (Smith,2011).

These laws have severely stigmatized non-binary people in terms of developing their relationships. While still punishable by law, Crime against nature laws now are almost exclusively used as additional charges for some type of bigger offense. In their heyday, “crime against nature” laws were used to discourage gender expression through the use of beauty products or dress due to implications of “deviancy” and “sexual gratification”.

The application of gender to dress has a very interesting history. Up until the early 1900s children’s clothing had been presented as unisex. Both male and female children would wear white dresses and both would have a similar length of hair. This was because both woman and child had played a similar role in household dynamics. Male children would have to earn their right to wear men’s fashion as a coming-of-age ritual known as breeching. Breeching consists of a male child receiving his first haircut and changing the content of his wardrobe to more closely reflect the appearance of his adult counterpart. With breeching being a part of the development cycle of a male child, one may wonder why the long hair and dress phase even existed. This practice is directly connected to how superfluous our understanding of gendered items and articles is. The simple reason? Before the invention of sonograms and ultrasound readings, gender was an unknown quantity up until childbirth. In preparation for a child’s birth, it would make sense to stock up on clothing that would work no matter what the result is. The decision was made to provide dresses as they were easier to make and you would sooner trust that your boy could make the transition to manhood once they reached the breeching age of 6 to 8 than you would believe that your daughter would relinquish a more masculine presentation to follow in the steps of her mother. And the colors that we associate with masculine and feminine? That information all comes from strong marketing. Before successful campaigns switched it up, pink had been the original masculine color as “the color is powerful and stands out” while blue

displayed femininity because “the color is calm and uniquely graceful”(Maglaty, 2011). Throw in an ad campaign that dared to reverse those colors, which is normal for fashion, at the same time as the ultrasound technology had reached the point of early gender detection and the rest is history. Stores were lined with color-coded baby accessories and now not many people still alive remember anything else.

Gender is a marketing and merchandising tool. We have crafted all of these rules and regulations on how gender can be expressed. A majority of our feelings on gender have been sold to us through clever advertising and the manipulation of brand recognition. It is for that reason we come to conclusions such as “My son can’t play with barbies. That’s too feminine.” or “My son played sports and loved cars growing up. I just can’t understand how now all of a sudden he thinks he’s a girl.” We draw arbitrary lines when the answer is simple. We are all just human. And as humans, we have a right to having our civil liberties protected by our governing state. So how has the United States assisted in the efforts to bridge the gap between our constitutional rights and the security of our LGBTQ+ populace?

Change began to take off in terms of the legal protection of LGBTQ+ individuals during the mid-1900s. In 1950 Christine Jorgensen would become the first male-to-female transgender to undergo sexual reassignment surgery in the US (New York Historical Society, 2023). She would become an overnight sensation and spread awareness to the plight of gender dysphoria. In 1969, we would experience the Stonewall Riots take place in retaliation to the police harassment of the LGBTQ+ community through biased laws such as the “three article rule” which states that an individual can wear no more than 3 articles of clothing that the officers deemed to be of the opposite gender (Ryan, 2023). Stonewall would of course be the inciting event for creation of the Gay Liberation Front and Gay Activist Alliance, organizations dedicated to rallying and

influencing legal protections for LGBTQ+ individuals. This would directly lead to the yearly pride parade celebration, a day in which members of the LGBTQ+ community can be surrounded by like minded individuals, no longer feeling misunderstood on the anniversary of the Stonewall Riots. In 1973, Gay rights activists successfully petitioned to have homosexuality removed from the APA list of mental health disorders. 1993 saw the instatement of the “Don’t Ask, Don’t Tell” law which enabled LGBTQ+ individuals to enlist in governmental and military roles without disclosing their sexuality. This allowed for better conditions in workplace relations for LGBTQ+ individuals. 2003 saw the legalization of consensual same sex sexual activity stating that the law was unconstitutional to LGBTQ individuals’ 14th amendment rights (Lawrence v. Texas, 2003). 2008 saw the legalization of LGBTQ+ marriage (Proposition 8, 2008). There has been leaps and bounds within the protection of LGBTQ+ civil liberties and right to present however they may wish but not everything is peaches and cream. There are still civil liberties not offered to LGBTQ+ individuals in certain states in America. According to a study conducted at UCLA, of the 8.1 million LGBTQ+ individuals estimate to live in the United States, 3.9 million live in states where their civil liberties are not protected (Conron and Goldberg, 2020)

The right to feel comfortable in your own skin is not a luxury. Yet to many people in the United States it is not worth it to ensure all of our statesmen can feel comfortable. There are layers to self-expression and I understand that not everything someone feels should be protected but we have a right to present ourselves how we authentically. Gender expression is as much us as our names are. How we are able to express ourselves through dress and beauty products acts as an unspoken language. It allows us to declare to the world, “I am here. This is me. Take me as I am.” The law should serve to protect that feeling. Nobody else should ever feel like their body



is a prison. If there is one thing that I would like a reader to leave with today, it would be to have compassion. Love more. Hate less. And bit by bit, we can bridge that gap.

## REFERENCES

- Austin, A., Craig, S. L., D'Souza, S., & McInroy, L. B. (2022). Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors. *Journal of interpersonal violence*, 37(5-6), NP2696–NP2718. <https://doi.org/10.1177/0886260520915554>
- Boomer, L. (2022, July 9). *Life Story: Christine Jorgensen - Women & the American Story*. Women & the American Story. <https://wams.nyhistory.org/growth-and-turmoil/cold-war-beginnings/christine-jorgensen/>
- Chira, S. (2017, March 10). *When Japan Had a Third Gender*. WWW.NYTIMES.COM. Retrieved December 20, 2023, from <https://www.nytimes.com/2017/03/10/arts/design/when-japan-had-a-third-gender.html>
- Maglaty, J. (2013, November 15). When did girls start wearing pink? *Smithsonian Magazine*. <https://www.smithsonianmag.com/arts-culture/when-did-girls-start-wearing-pink-1370097/>
- Peralta, E. (2011, April 7). Researchers dig up “Homosexual or transsexual” caveman near Prague. *NPR*. <https://www.npr.org/sections/thetwo-way/2011/04/08/135212785/researchers-dig-up-homosexual-or-transsexual-caveman-near-prague>
- Ryan, H. (2023, September 14). *How dressing in drag was labeled a crime in the 20th century*. HISTORY. <https://www.history.com/news/stonewall-riots-lgbtq-drag-three-article-rule>
- Smith, J. (2011, July 26). *Crime against nature*. North Carolina Criminal Law. <https://nccriminallaw.sog.unc.edu/crime-against-nature/>

Teaching LGBTQ History. (2020, October 29). *LGBTQ Rights Timeline in American History* »  
*Teaching LGBTQ History*.

<https://lgbtqhistory.org/lgbt-rights-timeline-in-american-history/>

The Williams Institute at UCLA School of Law. (2022, May 23). *LGBT people in the US not protected by State Non-Discrimination Statutes - Williams Institute*. Williams Institute.

<https://williamsinstitute.law.ucla.edu/publications/lgbt-nondiscrimination-statutes/>

Whitlock, K. (2011). Queer (in)justice: the criminalization of LGBT people in the United States.

*Choice Reviews Online*, 49(02), 49–1149. <https://doi.org/10.5860/choice.49-1149>