

Through the “bible belt”: LGBT rights in USA.

Abstract

The law system in the United States, being the complex organization that it is, remains a difficult path to general equality for all. Even though rights and perception for LGBQ and transgender people have slowly evolved during the twentieth century, the most remarkable changes started taking place just a few years ago, under Barack Obama’s administration, starting in 2009 and ending in 2017, that presented with the «most significant advances in gay rights in United States history». But when looking at the “borders” of the different states, we can see that, depending on the government in place, the perception of transgender people is completely different from one place to another, and that has implications on the way the individuals are treated. From a political point of view, what future is awaiting the rights of transgender people, especially under Trump’s administration and his conservative agenda? In parallel, an important topic that finds itself being raised among the grounds of the different points of views shaking the LGBT movements is the paradox of categorizations: if the laws promoting equal rights can only be enforced through labelling that brings necessary recognition of each individual, how can one escape the “border” of the heteronormative and binary perception of gender identity? The paper will focus on the constantly-changing laws and perception of the LGBTQ community, looking into a parallel of the social and political status between the states of Oregon and Alabama, taking in account both the progress and setback concerning LGBTQ rights.

1. LGBTQ recognition: not just a left/right issue

In 1868, the Fourteenth Amendment to the U.S. Constitution was ratified and stated in Section 1:

«No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ; nor deny any person within its jurisdiction the equal protection of the law» (US Constitution, 14th amendment).

This section is considered to be the first step toward future ruling regarding equality of individuals throughout the years that followed, in the United States – given that it involves every American citizen, it also implicitly evokes the rights of transgender people.

However, the law system in the United States being the complex organization that it is, remains a difficult path to general equality for all. When it comes to understanding the situation of transgender people in the United States in this day and age, it is first of all important to understand every aspect of the life of a transgender person, depending on every form of discrimination they might face. For years now, intersectional feminism has attempted to shed light on these complex issues by reminding us that to fully understand the situation of any LGBTQ individual in this world, the first step is to take in account every form of discrimination one might encounter, whether it be gender-related discrimination, racism, xenophobia, homophobia, sexism or all of those together.

Regarding those discriminations and the social violence it implies, the LGBTQ community, and pro-LGBTQ associations and activists have fought for many years for a better representation of the community in Society, equal rights in the law, asking for social justice and logical punishments related to discriminating acts, for example, when it comes to discrimination within the workplace or mistreatment as a result of bias against them (Arriola, 2013). Even though rights and perception of LGBQ and transgender people have slowly evolved during the twentieth century, the most remarkable changes started taking place just a few years ago, under Barack Obama’s administration, starting in 2009 and ending in 2017, that presented with the most significant advances in gay rights in United

States history (Gerstein, 2015). More specifically, Obama participated in the enactment of a federal law requiring protection for the LGBT community against hate crimes and discrimination, with a focus on transgender youth (The White House Fact Sheet, 2016). As transgender rights evolve in the United States, a few different problematics see themselves being lifted not only by the officials putting the new laws in place but also by the civil rights activists, the LGBTQ community itself and Society as a whole (Keck, 2009). For example, when looking at different states, we can see that depending on the government in place – more or less conservative – the perception of transgender people is completely different from one place to another, and that has implications on the way these individuals are treated (Stein, 2012). From a political point of view, what future is awaiting the rights of transgender people, especially under Trump's administration and his conservative agenda? In parallel, an important topic that finds itself being raised among the grounds of the different points of views shaking the LGBT movements is the paradox of categorizations: if the laws promoting equal rights can only be enforced through labelling that brings necessary recognition of each individual, how can one escape the heteronormative and binary perception of gender identity? (Montgomery and Stewart, 2012).

2. Laws as safe space builders

When looking at transgender rights, we must first look into gay and lesbian rights. Indeed, when it comes to the LGBTQ community, the first form of homophobia recognized as such is the blind denial of the sole existence of gay and lesbian individuals (Trappolin, Gasparini and Wintemute, 2012). The refusal to admit the existence of homosexuality can be done in many different ways – it doesn't have to be an official denial, but it comes in forms that some people consciously or unconsciously perpetuate. A common example of homosexuality denial is the way homosexual women are generally perceived in society. In a patriarchal heteronormative system, there is no place for homosexual women unless in an oversexualized atmosphere pornography for example. However, acquiring basic human rights helps to lift the gay community to equal grounds with the rest of society, putting light on their existence in itself, forcing the law and society to refocus their perception of the « norms » they abide by (Trappolin, Gasparini and Wintemute, 2012).

The change of focus on gay rights throughout the years has had a direct impact on the perception we have of transgender people. This is why, in 2011, when the *Defense of Marriage Act* was deemed unconstitutional not only by president Obama but also by the Supreme Court, the tables started to slowly turn for the entire LGBTQ community (Roberts and Siddiqui, 2015). Indeed, that act, signed by president Bill Clinton in 1996 constituted a barrier for same-sex marriage on the basis of marriage-related morals (Savage and Stolberg, 2011).

When same-sex marriage became legal on account of federal-level law, the space given to gays and lesbians became a little safer. And this change of focus led to the possibility of a larger understanding of gender issues in general, opening the way to the implementation of anti-discrimination laws and the promotion of equality among all American citizens, including non-binary gender and gender fluid identified, transgender and queer individuals.

As open-mindedness grows concerning sexual orientation differences, the take on transgender issues slowly follows those steps. But when it comes to the situation of transgender people, the first step is to be recognized as, first of all, existing beings, so that they can claim their rights – the second step

is to have their peers recognize and respect the gender by which they identify, and moreover have it be respected in every different aspect of their life. Nevertheless, the situation for transgender people is still very complicated, from a legal and social point of view, especially in a country such as the United States, that has developed its system on conservative morals and values that reflect the Christian foundations on which it was built (Graham, Haidt and Nosek, 2009).

3. Alabama and the *Title IX*

Out of the fifty states in the United States, only 14 states officially provide positive laws (anti-discriminatory laws or laws that promote equality) when it comes to transgender equality. We find a majority, with 23 states, that represent a widespread negative gender identity policy tally, implying that those states either don't make any effort to enforce federal law or actually put in place different laws and rulings that go against gender and transgender equality-related laws even though they were instated by the Supreme Court (Report, 2015).

A good example here is the reinterpretation and guidance to *Title IX*, portion of the United States Education Amendments (Overview of Title IX, 2015) going against gender discrimination in schools, that was first put in place to enforce gender equality between girls and boys and offer equal opportunities to girls. But its reinterpretation, in 2016 by Obama's administration, was simple yet game-changing: because it is not specified in the act, the guidance underlines the fact that *Title IX* involves just as well cis-gender (that identify to the gender they were assigned to at birth) and transgender individuals (Kriegbaum, 2017). Therefore, under this act, protection of gender equality involves every human being that might be a victim of gender-related discrimination, urging schools and workplaces to follow the guidance to *Title IX* as a way to create a safe space for transgender people and include them in society while taking in account the way they identify or their non-binary gender. However, after the issuing of this guidance by Obama's administration, a certain number of states chose to ignore it or go against it. Indeed, whether it is a simple guidance or a federal law that the whole nation must abide by, some conservative states often find ways to avoid having to respect it. In website like *lgbtmap.org* it is possible to find different and daily updated mappings of LGBT rights and equality throughout US giving specific details about the laws depending on the different states. So, for a better understanding of the differences that can separate one state from another in the US, it is useful to take a comparative look at the maps of the two states, Alabama and Oregon, that each represent an American landmark for two very different perspectives on gender-related matters. Alabama is known to be one of the most conservative states of the country, with a republican government in place counting Kay Ivey as the governor, and two senators Richard Shelby and Luther Strange. Richard Shelby represents the general political atmosphere in Alabama through his ultra-conservative and religious values that led him to actively participate in the trials against Obama's rulings, with the idea to go against specific laws as in same-sex marriage and anti-discrimination laws (Terkel, 2015).

As a matter of fact, at a close look to those LGBT maps, it is possible to notice that Alabama shows consistency when it comes to «negative laws», which represent either the lack of anti-discrimination laws, or worse, the presence of discriminating laws. In this case, the reason why Alabama is one of the least safe place for LGBT individuals is because of the conservative values directly linked to religion, the state itself being geographically positioned in the middle of the «Bible belt» (Rosenberg, 2017), showing a very strong presence of protestant and catholic faith among the population. Indeed,

the difference between a law ruled by the Supreme Court, supposedly applicable nationwide, and the actual enforcement of this law state-by-state represents specifically the issue that individuals face when demanding justice, depending on their personal situation and the political values promoted by the government in place in the State they live in.

If the Supreme Court makes same-sex marriage legal nationwide, then by federal laws, every State must hold up to it. However, in order to avoid having to enforce such a law that goes against their values, the political figures in charge in Alabama can block the process of the implementation of the law by joining the counter-trial (which they did), which will result in slowing it down until the new ruling. Unofficially, however, on the grounds of the State, among the citizens themselves, we can see that they find multiple different ways to counter gender-equality and gay and lesbian rights.

Let's look at the guidance to *Title IX*, that wasn't a new law in itself but simply a reinterpretation of the text, asking government officials, schools, employers to understand the difficulties met by transgender people and find ways to make these spaces safer for them. For example, by following this new guidance, a certain number of schools in the United States saw themselves allowing transgender teenagers and children to use the bathrooms reserved to the gender they identify as, and not the one they were assigned to at birth (Overview of Title IX, 2015). If the federal law dictates that discrimination is unconstitutional, *Title IX* could seem to be stating the obvious: making anyone unsafe because of their gender, gender identification or sexual orientation should be punishable by law.

However, in a republican and conservative state such as Alabama, there are ways to go around these laws, that they defend with arguments such as freedom of religion – and therefore the moral rules that go with it – or safety issues, stating that letting transgender people use any bathroom they want is dangerous for the rest of the population. From a social point of view, what lies beneath this last argument is directly linked to the sexist perception of gender differences and sexuality. Indeed, when it comes to safety for the rest of the population, the most commonly used example is that transgender women using the same bathroom as young girls puts these young girls in danger of sexual assault (Doyle, Rees and Titus 2015).

In 2016 a man from Alabama was arrested for filming a woman in a bathroom (Sims, 2016) and what the comments to the episode suggested was the idea that transgender women are actually *men disguised as women* and there is a sort of “fear” of these “men” entering the bathrooms and sexually assaulting women. This fear can be explained by the social construct we all have been brought up in and the extreme perceptions of genders that define us unconsciously: we see men as sexual predators that cannot control their sexual urges, and women as everlasting victims of those predators (Golkowski, 2016). Even though this can be explained by the rape-culture environment that marks the foundations of our Society, and therefore could give good reason to these fears, by labelling women and young girls as obvious victims, we also participate in locking them up in that one box.

According to the studies of Mogul, Ritchie and Withlock (2011), what happens is that in this way we lock men up in that one box of “predators”, as if they couldn't help it, this way justifying the actions of rapists and actual sexual predators by the sole fact that they dispose of a penis. It also implements in our minds that if a man and a woman find themselves in the same bathroom, there will necessarily be sexual tension and/or assault, and this is why separation is nearly obligatory. The notion of safety is already in place – we separate men and women's bathrooms, assuming that it is unsafe for both genders to share the same room for private matters, which is already problematic by itself. Adding to this, the issue here is that this fear comes from the misinterpretation of what being transgender is.

The lack of information concerning transgender people has a direct impact on the way we perceive them socially: transgender women are hereby not considered to be women, but as the previously mentioned episode of the bathroom told, they are *men in disguise*. It's important to remember that the social perception of transgender individuals is directly linked to the government in place and the efforts that are made to inform people – if no such efforts are made, the cycle takes place: the political decisions are backed up by the state's population, and the population's perception is confirmed by the actions taken by the government. What is considered to be a “negative equality state”, comes from a list that covers different aspects: if transgender individuals are not protected from bullying and discrimination in schools; cannot access medically-necessary healthcare; cannot change the name and gender marker on their identification; can be unfairly fired, evicted or kicked out of public places. Alabama ticks all these boxes one way or another (LGBT Rights in Alabama, 2017). Indeed, the most important part to focus on is the topic of protection and the state of Alabama actively goes against this by implementing laws promoting religious freedom, giving different religious-based centers, as in adoption, family and health centers, the right to discriminate based on their own religious beliefs (Johnson 2017). Given the heavy and damaging consequences that can be brought by every kind of discrimination, being protected is the first step towards equality. Indeed, multiple civil rights activist groups for LGBT people were first of all founded with the goal to give protection and make the world safer for these individuals, which comes down to basic human rights (Mogul et alii, 2011; Thoreson, 2016a).

As we research transgender rights in general in different states, we can see that every group and association has an important reminder : transgender people as a minority already find themselves in a complicated psychological and physical situation from the start, given that they are non-conforming to the « norms » dictated by Society – discriminating actions are particularly damaging in this sense that they add on to the potential suffering of an individual by creating isolation which can lead to living in secrecy, eventually to self-hatred, self-harm and deep emotional issues (Thoreson, 2016b) So the first burden carried by protection laws comes down to teaching transgender people that they should be allowed to express themselves and be respected for who they are and how they identify – however for transgender youth, growing up in a generally religious and conservative area, it can be very difficult to first of all understand what they are going through and love themselves, and have their relatives understand it and support them.

The hypocrisy one come across in states like Alabama, is that if federal law is existent, it is not necessarily enforced in practice – other laws are put in place in order to block the ones that don't fit the government's values. For example, even though same-sex marriage is legal from a national point of view and the State has to respect it, giving the right to discriminate based on religious beliefs helps block that law and perpetuates homophobia within the State (Johnson, 2017).

On the same level, Alabama doesn't provide any kind of protection for LGBT individuals, which means that in the eye of the law, if a transgender person finds himself or herself discriminated on the basis of his or her gender identification or appearance, the person discriminating will not be punished on those grounds but only on the potential act of violence, whether it be physical or verbal (Keck, 2009). The violence against transgender people doesn't therefore need to be an official form of discrimination but finds its roots in the sole absence of anti-discrimination laws that could stop said violence from taking place. For example, in Alabama, there are no non-discrimination laws when it comes to the different aspects of a person's life, the following are simply inexistent non-discrimination laws on employment, housing, public accommodations, credit and lending, policies for state employees making it very difficult for LGBT people to have their rights respected and be

treated the same way as non-LGBT individuals when it comes to basic and practical living matters (Keck 2009). Adding to this list the negative laws that are implemented, participating in discrimination: State Religious Exemptions Laws (RFRAs), that exempt different religious organizations from respecting federal law.

4. Oregon: the State of Kate Brown and the Trump's effects

In Oregon, the different associations that have been fighting for LGBT rights and representation have been met with a progressive political agenda through a mainly democratic government presided by Kate Brown, governor of Oregon (Phillips, 2016) – who happens to be the very first openly bisexual political figure and therefore LGBT person elected in the United States with that information known previously to the election. With a relatively high gender identity policy tally, Oregon is one of the most progressive states in the country when it comes to transgender rights. Indeed, where Alabama pushes against protection of transgender individuals, Oregon leads the path to a full length list of protection laws granting transgender people safety and equal legal rights. Oregon is considered a State in which the basic needs are almost all met, in the sense of basic human rights, however as long as the list is not complete, LGBT members still don't see themselves being treated as equal to non-LGBT individuals (Report, 2015). Nevertheless, if we look at the progress in Oregon, before, during and after Obama, we can see positive results that remain rare in the country (Wilson, 2016). In 2007, the Oregon Equality Act was signed into law, banning discrimination in employment, housing, and public accommodations based on both sexual orientation and gender identity. In 2014, state officials announced that Oregon Medicaid would shortly begin covering hormone therapy and other treatments related to gender reassignment, providing health care and a more secure system for transgender individuals going through transition (Tims, 2014) and in 2015 Oregon became the third state in the country to ban conversion therapy (Report, 2015). These are some of the rulings signed into law over the past years in Oregon that were not only following the paths toward gender equality and LGBT rights but also enforcing them in practice, making sure that through anti-discrimination laws, these same rulings would truly take effect in the day-to-day life of the LGBT community (Therriault, 2015). However, if Oregon is one of the first states to go so far in LGBT rights, it is since 2016 the first and only state to this day that has passed into law the right for a resident to legally change their gender to 'non-binary' (Parks, 2016). This step represents a very strong and revolutionary move when it comes to equality among all citizens within the State. Indeed, putting aside the importance of gender assignment when it comes to official paperwork and recognition among Society, can have a long-term impact of great importance on the perception we have of gender today.

Oregon has opened the door to the possibility of limiting gender-related bias and transgender discrimination by accepting the non-binary identification or the simple fact of not having to mention one's gender on an official legal level. By doing so Oregon definitely distances itself from Alabama, when one State is trying to push forward, using the law to provide equal treatment to all the 'non-conforming' citizens, and the other is trying to pull backwards and is using the law in every way possible to limit the rights of the LGBT community and insist on the standard norms of being and living that are well-known to the conservative parties.

Moreover, when political figures inside the government of Alabama are still fighting against the different rulings brought by the administration under Obama's presidency that ended in January 2017 a lot has already changed for the transgender community. Indeed, under Trump's presidency, in just

a few months, the progress that had been made has given its place to setback on a lot of different important issues regarding the LGBT community (Sherer and Savage, 2017). Even though president Trump officially shows as supportive, his actions and their impact say otherwise. On the website of *transequality.org*, it is possible to find an important list of the different actions taken by Trump's administration since he was elected. Not only the official actions, in regards to the law, but also the different political figures he appointed within his government that have had homophobic and transphobic speeches.

5. The changing forms of discrimination

The website *basicrights.org*, that deploys among different American states, is a civil rights activist group that shares information on (among other topics) national transgender rights in the United States, with the idea of spreading information about every aspect of a transgender person's life: health, work, family, school and the difficulties they might face in every kind of situation. The work done by the different civil rights activist organizations is a way not only to promote equality for all but also simply to provide information on the lives of LGBTQ individuals. They also remind us that discrimination never comes in just one form, transgender people are not necessarily targeted only for their gender identification, but depending on each individual they can also be targeted for the various aspects of their identity. For example, a member of the LGBTQ community, as well as being discriminated on the basis of their non-conformity to gender binary perception or their sexual orientation, they can also be discriminated on the color of their skin, their religious beliefs, their appearance if not conform to regular beauty standards (looks, weight, height), origins, age, etc.

In other words, a senior transgender person will encounter different forms of discrimination than a young black transgender person. In the same way that a Muslim transgender woman will suffer of different forms of discrimination that of a Christian transgender man (Peoples, 2017).

These issues are precisely what Trump's administration sheds light on by activating all sorts of forms of discrimination through the hate-speeches and actions shown by the president himself. Indeed, between February and May 2017, multiple decisions were made that have and will continue to have a considerable negative impact on the situations of transgender people in the United States. For example, the Department of Justice took back quite a few rulings that were going towards equal healthcare for transgender people and cancelled the guidance to *Title IX* that was promoting equality and protection for transgender students in school. Soon after, numerous departments such as the Department of Health and Human Services, the Department of Housing and Urban Development, the Justice and Labor Departments, etc (Sherer and Savage, 2017). All came to cancel, retract or abandon different rulings, surveys, research programs on LGBT youth, homeless LGBT individuals, senior LGBT citizens, anti-discrimination laws, protection of transgender individuals in their workplaces etc. not only taking a step back in the legal help that is much needed for these communities but also showing the country that the change of administration truly can have a direct impact on the life of American transgender and LGB citizens throughout the country (Cooper, 2017).

Trump's presidency has only just started and the setback to federal laws and nationwide help for transgender children, teenagers and adults has already shown in various and important ways. The impact of these political changes lead to a social backdrop reminding us that depending on the administration in place, the level of discrimination and hate crimes will necessarily follow within society and among individuals.

This proves to be very true when we take a look at the hate-crime rate in the United States against transgender people. In fact, the 2015 US Transgender survey, led by the NCTE (National Center for Transgender Equality) shows that 1 out of 10 transgender people had been physically attacked based on their gender identity (Report, 2015). Within the victims, as it is important to take in account nationality and skin color, we can see that it is more specifically black transgender women who are the most targeted victims of abuse, physical violence, rape and murder – showing that bias against transgender people is also intertwined with racism. The HRC (human rights campaign) is considered to be the largest national LGBT civil rights and gives out a list of transgender victims of hate crime every year (Collins, 2016). In 2016, in the United States, 22 transgender individuals were killed and were recognized as hate crime victims targeted for their gender identity. Since January 2017, 13 transgender people found death in the same circumstances. Civil rights organizations such as HRC explain that as much as they will continue fighting and can see slow progress, the bias against non-binary individuals is still very present and violent. Since Trump was invested president, the way he has led his administration and the politicians he appointed in his government for the first few months of his presidency that took effect in January 2017, theirs has been a very important showcase of anti-LGBT speeches and actions – as we have seen earlier, with the withdrawal of numerous laws put in place to protect LGBT individuals. The issue is that in a context where intolerance, homophobia, and sexism are already the cause for a great number of acts of violence and killings, if the administration in place takes no action against – or worse, enforces – discriminations, the hatred among citizens grows as well. Indeed, since January 2017, the civil rights group Basic Rights shows on their website that there has been a skyrocketing rate of anti-Muslimism violence, anti-black violence, anti-LGBT violence. Among the victims, there is a majority of colored women and transgender women (Basic Rights Oregon, 2017).

Xenophobia and sexism play a big role in the kind of discrimination and violence that takes place for each and every individual that is targeted. That is why labelling can help in these situations, given that if we are talking about transgender rights, it helps for recognition and visibility to consider all transgender as a community. However, this labelling, as important as it might be to promote equal rights and be heard in Society, it is also eventually damaging because we tend to consider a person through just one aspect of their identity when every person is always more than that, and the complexity of who they are must be taken in account in every form of violence they might face. Under Obama, the LGBT community had more visibility than under any other presidential administration to this day, from 2009 to 2017 LGBT rights truly progressed from a national point of view and that progress shows in federal law. The simple fact that the Supreme Court took action in this stance goes to show that the country is slowly growing towards a less conservative perception of gender and sexual orientation.

However, it is still extremely fragile – and given the constant fight between right-wing, religious, conservatives and the different civil rights organizations pleading for equality, every state is always at risk of going backwards instead of forward, by playing with the complexities of the law.

Looking at the situation today in the United States for transgender people, it goes to show that the progress found under Obama is constantly at risk of being diminished and cancelled by Trump's administration. Not only that, but the sole atmosphere of his campaign, and the values that are promoted by the president himself and political entourage represent a dangerous trigger for violence and hate crimes, justifying by their speeches the anti-LGBT hatred spread through the country and giving reason to violent behavior. Nevertheless, an important fact happened in these days of dark: in May 2017, the first ever transgender hate crime prosecution took place in the United States,

sentencing Joshua Vallum, from Mobile (Alabama) to 49 years in prison for the murder of 17-year old Mercedes Williamson, killed for being a transgender woman. Vallum confessed her crime happened in 2015, saying that he was motivated by the fear of how he would have be judged by a gang members for having a relationship with a trans woman (Quinn, 2016). This case, representative of the very real violence encountered by transgender people on a daily basis, is also a historical and key moment in the United States law, with the recognition of transgender hate crimes on a federal level, by the Department of Justice. So, even under a dangerously conservative regime such as Trump's, it is important to keep an eye on the progress in the law, that remains the most influential system on the path to equality.

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