

Transphobia in the U.S. Prison System

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The focus of this paper is transphobia within the U.S. prison system. First, transphobia and the U.S. prison system are defined. Next, the historical genesis of the U.S. prison system is critically examined. Third, the cultural norms and values that sustain the maintenance of the U.S. prison system are analyzed. Further, characteristics of the transgender community are summarized. Finally, an analysis of how clinical psychologists may act as agents of transphobia is provided.

Defining Transphobia and the U.S. Prison System

This section defines transphobia and the U.S. prison system by examining the privileges they protect, the impact of transphobia on transgender and gender nonconforming (TGNC) inmates, and the way transphobia and the prison system are viewed by TGNC inmates and prison administrators.

Privileges Protected by Transphobia

In reviewing the literature, transphobia is consistently defined as the fear or hatred of individuals who do not conform to binary gender roles (Acker, 2017; Aguirre-Sanchez-Beato, 2018; Bettcher, 2014; Morrison et al., 2017). However, to understand how transphobia functions as a structural form of oppression, the term is better understood through the privileges it protects. The most overt privileges that transphobia protects and reinforces include White, male, heterosexual, cisgender privilege (Schuller, 2018). Transphobia functions to protect these privileges through its roots in eugenicist history, as will be discussed in later sections. This history inherently ties transphobia to racism, sexism, and homophobia (Carter, 2007; Schuller, 2018; Spade, 2015; Vitulli, 2018). Thus, transphobia can be better understood as a means of

regulating power and control by classifying transgender and gender nonconforming individuals into a nonnormative group (Carter, 2007; Schuller, 2018; Spade, 2015; Vitulli, 2018). Those classified as belonging to normative groups, such as White, heterosexual, cisgender men and women, are handed privileges as a tool to maintain their loyalty to the Colonialist, White supremacist, socio-economic and governmental structure of the U.S. (Saad, 2020; Zinn, 2005). As a result, nonnormative groups, such as Black, womxn, queer, and trans individuals, are marginalized through harassment, discrimination, violence, and over policing of their communities (Davis, 2003; Saad, 2020; Spade, 2015; Stanley, 2011). Through this lens, the U.S. prison system can be understood as a system that enforces racialized, gendered social norms through its disproportionate punishment and imprisonment of Black and TGNC individuals (Davis, 2003; Spade, 2012).

Target & Agent Viewpoints on Impact of Transphobia on Transgender Inmates

A critical impact of transphobia on transgender and gender nonconforming inmates is the practice of housing inmates according to the sex assigned to them at birth (Szuminski, 2020; Vitulli, 2020). This practice results in severe sexual and physical violence (Szuminski, 2020; Vitulli, 2020). Racialized gender violence has long created tension among prison administrators regarding where to house TGNC inmates (Szuminski, 2020; Vitulli, 2020). Unlike the privilege heterosexual, cisgender, male inmates are granted to be housed according to their gender identity, TGNC inmates ability to obtain safer housing relies on the discretion of prison administrators. Reports from the Bureau of Justice Statistics reveal that transgender inmates are ten times more likely to be sexually assaulted than the general prison population (Beck, 2014; Beck et al., 2013). Under the Prison Rape Elimination Act (PREA), transgender, intersex, and gender

nonconforming inmates must be asked if they feel safest being housed in a women's or men's prison (Szuminski, 2020). Prison administrators assert that advancements in housing assignments have been made under the adoption of PREA that offer alternative classification methods in federal prisons to house inmates based on their gender identity (Szuminski, 2020). PREA also strongly encourages states to adopt similar classification methods (Szuminski, 2020). However, these alternative classification methods require either (a) a diagnosis of gender dysphoria or (b) subject inmates to a committee review to determine if housing them according to their gender identity is in their best interest (Szuminski, 2020). These methods make mental health clinicians and prison staff gatekeepers as to whether to allow an inmate to utilize their own agency over where they feel safest (Spade, 2012).

Further, in 2018, the U.S Federal Bureau of Prisons revised the Transgender Offender Manual to include language that the Transgender Executive Council “will use biological sex as the initial determination” in assigning housing for TGNC inmates (U.S. Department of Justice, 2018). These changes undermine the federal requirements under PREA and allow prisons to rollback any protections regarding transgender inmates participating in where they are housed. Based on information obtained through Freedom of Information Act requests, as of 2020, only 15 out of the 4,980 transgender inmates in the U.S. are housed according to their gender identity (NBC News, 2020).

Next, transphobia impacts TGNC inmates through the discretion given to prison administrators to use administrative segregation and isolation that results in significant psychological harm. When TGNC inmates are housed according to their sex assigned at birth, prison administrators routinely use segregation and isolation as a “protective” measure (Peek,

2004; Robinson, 2011; Szuminski, 2020). Prison administrators assert that segregation and isolation are necessary to prevent the high rates of racialized gender violence TGNC inmates face when housed with the general prison population (Spade, 2012; Szuminski, 2020; Vitulli, 2018). However, the use of administrative segregation and solitary confinement has been found to result in long-term psychological harm and trauma (Hresko, 2006; Mendez, E., 2011). The use of “protective custody” can include locking down inmates for 22-24 hours a day (National Center for Transgender Equality, 2018). Depriving inmates of adequate human contact, living space, and physical activity serves to punish them for their status as victims of violence (Pemberton, 2018; Szuminski, 2020; Vitulli, 2020). Under the 8th amendment, this type of confinement is considered illegal as cruel and unusual punishment (Vitulli, 2020). However, in the 1980’s the Supreme Court created a distinction in language between “protective custody” and “disciplinary segregation”, that allows prison administrators to place TGNC inmates under the same conditions they use for disciplinary confinement (*Meriwether v. Faulkner*, 1987; Vitulli, 2020). Despite the legal and administrative efforts to address the safety of TGNC inmates addressed in this section, the ongoing practices of sex-segregated housing and segregation illuminate the ways in which transphobia regulates the U.S. prison system’s power and control over transgender bodies.

Historical Genesis of the U.S. Prison System

This section summarizes the historical genesis of transphobia within the U.S. prison system to understand the mechanisms of transphobia and how transphobia’s history influences the treatment of transgender and gender nonconforming inmates today.

Historical, Social, and Cultural Development of Transphobia in the U.S. Prison System

The historical, social, and cultural development of transphobia in the U.S prison system began when the modern prison system was established in the late nineteenth century (Carter, 2007; Ordoover, 2003; Spade, 2015; Vitulli, 2018). From the beginning, prison administrators were concerned about sex between inmates (Kunzel, 2010). In 1921, the article, “The Fairy and the Lady Lover,” was published by prison psychiatrist and physician Perry Lichtenstein outlining his experience of finding two “men” housed in the women’s prison (Lichtenstein, 1921). The “men” were transferred to a segregated section of the men’s prison, given haircuts, and “male” clothes (Vitulli, 2018).

In the article, Lichtenstein asserts that the inmates were, “freaks of nature who in every way attempt to imitate a woman” (Lichtenstein, 1921, p. 369). Lichtenstein’s detailed account of his treatment of the inmates contributed to the establishment of a national practice of segregating “homosexual-classified prisoners” across the U.S. (Vitulli, 2018, p. 26). At the time, psychiatrists and prison administrators identified gender nonconformity as the key identifier of “homosexually inclined” inmates who “belong to this class of pervert” (Lichtenstein, 1921, p. 371; Vitulli, 2018). The diagnostic classification of gender nonconforming/homosexual inmates as sexual perverts rationalized prison administrators’ concerns of sex occurring between inmates (Kunzel, 2008; Vitulli, 2018).

The article further legitimized the development of the prison system’s social and cultural beliefs that sex between inmates was a result of mixing abnormal, pathological inmates with normal, healthy inmates (Kunzel, 2008; Vitulli, 2018). For example, during this time the Prison Association of New York published their annual report encouraging the segregation of “confirmed perverts” to make “contact impossible between them and the uncontaminated”

(Prison Progress, 1917, p. 120). The promulgation of homosexuality and gender nonconformity as contaminated and dangerous within the prison system reflected the broader logic of the growing eugenics movement in the U.S. at the time (Kunzel, 2008; Vitulli 2018). Sexologists, psychiatrists, and penologists described homosexuality and sexual perversions as being the result of constitutional degeneracy (Vitulli, 2018). The theory of constitutional degeneracy advocated that, “certain socially disadvantaged classes of people were intellectually inferior by nature” including individuals who were gay, gender nonconforming, Black, people of color, poor, women, and “feeble-minded” (Terry, 1995, p. 131). Eugenicists utilized the establishment of these groups to distinguish what was considered nonnormative in direct opposition to the norms of affluent, heterosexual, cisgender, male, Whiteness (Carter, 2007).

During this time, scientific racism asserted that physical attributes were the cause of inequality (Ordover, 2003). Skull size and facial features were established as “legitimate indicators of criminal tendencies including homosexual leanings” (Ordover, 2003, p. 94). By the 1930’s, prison psychiatrists identified homosexuality and gender nonconformity as a “menace to the race” (Wilson & Pascor, 1939, p. 199). Psychiatrists asserted that if homosexual practice became widespread that “race suicide would be the inevitable result” (Wilson & Pascor, 1939, p. 199). This medical view of race, homosexuality, and gender nonconformity led to the lobotomizing and castrating of thousands of inmates within the U.S. prison system (Ordover, 2003). Further, it normalized the racialized, gender violence TGNC inmates experienced at the hands of prison staff and other inmates (Carter, 2007; Ordover, 2003; Vitulli, 2020). Finally, the eugenicist medical logic ingrained the practice of segregating and isolating inmates in the prison system long after the eugenics movement lost popularity (Vitulli, 2018).

Explication of the Mechanisms and Historical Results of Transphobia

As discussed above, the eugenicist movement served to socially and culturally construct gender nonconformity as criminal, contagious, and dangerous both outside and within the U.S. prison system (Kunzel, 2008; Vitulli, 2018). The historical results of the medical, psychological, and penal field's branding of gender nonconformity as contaminated and dangerous has led to the disparate treatment of inmates as a fundamental organizing feature of the U.S. prison system today (Kunzel, 2008; Vitulli, 2020).

The use of eugenicist logic from the time of the prison system's inception created a systemic mechanism of violence through the social, cultural, and administrative dehumanization of trans and gender nonconforming inmates. The prison system's practice of removing TGNC inmates in anticipation of sexual and physical violence reinforces socio-cultural gender norms that heterosexual, cisgender men are hypermasculine and will inevitably sexually assault inmates that appear feminine (Kunzel, 2008).

The administrative dehumanization of TGNC inmates can be seen through the ongoing practice of segregating and isolating inmates in the name of "protection," the failure to implement laws such as PREA to acknowledge an inmate's own humanity and agency to choose where they will be most safely housed, and the failure to address the disproportionate rate at which TGNC inmates experience ongoing sexual and physical violence at the hands of prison staff and other inmates (Spade, 2012; Szuminski, 2020; Vitulli, 2020). The social, cultural, and administrative treatment of TGNC inmates reinforces the eugenicist logic that nonnormative bodies are inferior and disposable as a mechanism to maintaining Colonialist, White Supremacy (Spade, 2015; Stanley & Smith, 2011; Vitulli, 2018).

Cultural Norms and Values that Maintain Transphobia in the U.S. Prison System

This section examines the cultural norms and values that maintain transphobia in the U.S. prison system. The current debate on the cultural norms and values of the system is summarized in light of the barriers transgender and gender nonconforming inmates face to gaining privilege and the social-historical myths that serve to justify ongoing transphobia in the prison system.

Current Debate on the Cultural Norms and Values of the U.S. Prison System

The current debate on the cultural norms and values that maintain transphobia in the U.S. prison system surrounds how to address the system's socio-cultural reinforcement of binary gender norms (Kunzel, 2008; Robinson, 2011; Spade, 2012). As a sex-segregated institution, the U.S. prison system contributes to the social and cultural construction of gender and heteronormativity by forcefully segregating all inmates into male or female housing on the premise of heterosexual orientation (Jeness & Gerlinger, 2020). When faced with individuals that do not conform to rigid gender norms, the prison system maintains its power and control over TGNC inmates by forcing gendered norms onto them (Robinson, 2011). For example, Jeness and Gerlinger (2020) argue that the housing of transgender women in men's prisons is part of a "deliberate defeminizing" process that serves to maintain control over trans women by forcing them to be "men." As previously discussed, the enforcement of these norms leads to profound physical, sexual, and psychological violence against transgender, intersex, and gender non-conforming inmates (Hresko, 2006; Spade, 2012; Szuminski, 2020; Vitulli, 2018).

Current debates surrounding the cultural norms and values of the prison system that maintain transphobia focus on how to resolve the violence that occurs as a result of the enforcement of the norms (Szuminski, 2020; Spade, 2012; Robinson, 2011). Attempted solutions

to mitigate the violence toward TGNC inmates have included the creation of special units to house vulnerable inmates together (Robinson, 2011).

Robinson (2011) argues the screening policies to get into these units pose barriers to inmates gaining privilege within the prison system because the process is conducted by White, heterosexual prison staff who screen inmates based on the socio-historical myths that queer and trans norms are associated with affluent, White, gay, male culture. He asserts this process fails to screen for the majority of low-income, queer and trans people of color who are incarcerated. As a result, the screening policies serve to reinforce racialized gender norms by restricting access to safer housing for inmates who embody affluent, male, Whiteness.

Robinson argues that reform of the screening process for entry into specialized units is necessary to resolve the racialized, gender violence being inflicted on queer and trans inmates of color. He proposes that prisons: (1) adopt methods that expand the definition of vulnerable inmates beyond White, male, gay culture; (2) remove sexual orientation as a primary factor in determining vulnerable inmates as it excludes TGNC inmates who are not gay; and (3) establish policies that address the physical and sexual violence occurring against all vulnerable populations including inmates of “youth, slight stature, perceived effeminacy, serving for the first time in prison, doing time for nonviolent offenses, inexperience in personal combat, and having a disability” (Robinson, 2011, p. 1402).

To address these barriers to gaining privilege, Robinson recommends that: (a) inmates are screened in private instead of in front of other inmates, (potentially outing them before sending them into general prison population); (b) the screening process use open-ended questions regarding safety rather than sexual orientation; (c) address the social-cultural norm of physical

and sexual violence in the general prison population; and (d) the prison system implement a zero-tolerance policy regarding the cultural norm of discrimination against queer, TGNC inmates.

Spade (2012) argues that reform of the U.S. prison system will fail to address the barriers queer, TGNC inmates face to gaining privilege. He asserts that reform will not work because the prison system's functioning relies on the reinforcement of its cultural values of racialized gender norms to maintain power and control over low-income, queer, TGNC people of color. Spade states that expansion of prisons, such as the creation of special units or the building of trans only prisons, inevitably fail to "meaningfully alleviate" violence against TGNC inmates (Spade, 2012, p. 191). He argues that new prisons will continue to enforce racialized, gender norms that, "will inevitably operate to the detriment of people of color, poor people, people with disabilities, and immigrants" because the prison system's existence is a mechanism of state violence that serves to "secure and protect White supremacy and patriarchy" (Spade, 2012, p. 192). Spade goes on to assert, "It is not a design flaw that these systems and institutions are sites of transphobic and homophobic violence. They are working perfectly" (Spade, 2012, p. 192).

Spade identifies the blatant disregard of legal protections and policies for vulnerable inmates by prison administrators as evidence of the prison system's reinforcement of violence against nonnormative groups. He asserts that appealing to the U.S. prison system to end its disproportionate violence and punishment against trans, queer people of color is asking the perpetrator to become the protector; the two are fundamentally at odds with each other. Instead, he argues that prison abolition needs to organize efforts aimed at ending the ongoing state violence of transphobia in the U.S. prison system.

Prison abolition centers on the premise that the prison system serves to exacerbate and reinforce violence against the most marginalized communities as a mechanism to maintain affluent, White, male, heterosexual power and control within the U.S. (Spade, 2015). Spade (2012) asserts that debunking the socio-historical myth that prisons function to protect people is premised on understanding that: (a) prisons are not full of dangerous people, they are full of poor, people of color; (b) most violence occurs in people's homes, not in the streets between strangers; (c) the most violent people exist outside of prisons including those in power in the government, justice system, and healthcare system, who determine "who lives, for how long, and under what conditions"; (d) that prisons are social-cultural sites of rape and violence; and (e) that expanding prisons does nothing to make communities safer, it instead expands the already disproportionate surveillance and violence of marginalized communities. Spade (2015) instead argues that communities must come together to meet the needs of each other, focusing on the creation of communities of accountability and mutual aid to address the impact that interconnected systems of violence perpetrate against them in all aspects of life.

Characteristics of Transgender Inmates

This section discusses the characteristics of transgender and gender nonconforming inmates through the lens of how transphobia limits them and the general viewpoint of inmates and prison administrators.

Impact of Transphobia on Transgender Inmates

As previously discussed, TGNC inmates experience disproportionate psychological, physical, and sexual violence as a result of transphobia within the U.S. prison system (Szuminski, 2020; Spade, 2012; Vitulli, 2018; Hresko, 2006). Further, transphobia, as a means of

regulating power and control over nonnormative bodies, intersects with other aspects of U.S. society and culture to funnel TGNC individuals in and out of the prison system (Carter, 2007; Schuller, 2018; Spade, 2015). Transgender individuals face disproportionate rates of incarceration than the general population (National Center for Transgender Equality, 2018). One out of two Black transgender people will be incarcerated in their lifetime (Lambda Legal, 2012). One out of every five transgender people will face incarceration in their lifetime (Lambda Legal, 2012). Disproportionate contact with the criminal justice system contributes to the high rates of incarceration faced by transgender individuals (National Center for Transgender Equality, 2018).

The intersection of race, class, and gender identity lead to routine over policing of Black, low income, queer and TGNC communities (Crenshaw, 1991; Spade, 2015). A survey of 28,000 transgender individuals revealed patterns of “frequent harassment, profiling, and abuse by police officers” (National Center for Transgender Equality, 2018, p. 5). Furthermore, the high rates of discrimination experienced by transgender and gender nonconforming people in schools, healthcare, and the workplace contribute to police involvement and contact with the criminal justice system (National Center for Transgender Equality, 2018).

Viewpoints of Transgender Inmates and Prison Administrators

In addition to safer housing and an end to physical and sexual violence, TGNC inmates and prison administrators remain at odds surrounding inmates’ rights to greater privacy and access to necessary medical care (Hresko, 2006; National Center for Transgender Equality, 2018; Spade, 2012; Szuminski, 2020).

Privacy issues arise in searches, disclosing confidential information such as HIV status, gender identity and sexual orientation (National Center for Transgender Equality, 2018). Prison

administrators argue that searches must be conducted for legitimate reasons and not solely for observing TGNC inmates' genitals (Prison Rape Elimination Act, 2012). However, searches can be traumatic forms of harassment by prison staff who have broad discretion to search an inmate for weapons or contraband (National Center for Transgender Equality, 2018). Similar to policies surrounding searches, prison administrators must have a legitimate reason to disclose personal information, such as gender identity or HIV status, to other inmates and third parties (National Center for Transgender Equality, 2018). Protection of this information can be paramount to inmates' safety (National Center for Transgender Equality, 2018). However, prison staff have been found to have disclosed personal information as a form of harassment of TGNC inmates (National Center for Transgender Equality, 2018).

Despite a constitutional right to adequate medical care, transgender and gender nonconforming inmates continue to be denied medical care for gender reaffirming treatment (*Estelle v. Gamble*, 1976; Lambda Legal, 2012). Prison administrators have tried to ban medical care for gender dysphoria asserting that the medical care was cosmetic or that it would result in greater violence toward the inmate (National Center for Transgender Equality, 2018). Certain courts have upheld that prison administrators can ban access to medical care in the interest of prison security (*Battista v. Clarke*, 2011). Further, although a complete ban on gender affirming medical care is impermissible, courts have asserted that inmates do not have a constitutional right to the best treatment available or for a specific treatment they are seeking (*Meriwether v. Faulkner*, 1987). As a result, transgender and gender nonconforming inmates continue to struggle to get necessary medical care while incarcerated.

Analysis of Clinical Psychologists as Agents of Oppression

This section discusses how clinical psychologists can act as agents of transphobia as individuals living in a society that are impacted by systemic forces.

As discussed in the first section, transphobia can be defined as a means of regulating power and control over trans and gender nonconforming people by classifying them as a nonnormative group (Carter, 2007; Schuller, 2018; Spade, 2015; Vitulli, 2018). This definition helps to understand how transphobia is not concentrated in a single system but instead circulates through interconnected systems and institutions within U.S. society (Spade, 2015). Transphobia, (as a form of power and control), is decentralized through systems including schools, healthcare, social services, courts, and workspaces (Spade, 2015). These systems give meaning to gender by creating binary gender norms that individuals must fit into in order to access the privileges these systems hand out (Spade, 2015).

All individuals, including psychologists, are taught what it means to be a boy or girl and a man or woman. These norms impact how we understand ourselves, our bodies, and our relationships within U.S. culture (Spade, 2015). However, similar to racism, the permeation of binary gender norms in all contexts of our lives makes them invisible to those least impacted by them. The social-historical context of the U.S. has inundated us with binary gender norms that reinforce what is “normal” and “healthy” and what is viewed as “abnormal” and “pathological” (Spade, 2015; Vitulli, 2018). Clinical psychologists can act as agents of oppression as these norms manifest as prejudice in their work (Powell & Cochran, 2020).

When diagnoses are viewed through a binary gender lens, (thus reinforcing transphobia), treatment may hinge on whether they perceive the transgender or gender nonconforming individual’s ultimate goal as seeking to pass as non-trans/non gender nonconforming (Spade,

2015; National Center for Transgender Equality, 2018). Further, the field's ongoing understanding of transgender and gender nonconforming identities through a "disease" framework, (namely having Gender Dysphoria and Transvestic Disorder in the DSM V), reinforces transphobia's classification of TGNC people as pathological and in need of "curing" (American Psychiatric Association, 2013; National LGBTQ Task Force, n.d.).

Engaging in meaningful anti-oppression work is critical to dismantling the harm that psychologists can cause in their positions of power and privilege (Davis, 2003; Spade, 2015). When working with transgender and gender nonconforming inmates, clinical psychologists can be gatekeepers to whether inmates access safer housing, avoid segregation and solitary confinement, prevent physical and sexual violence, and receive critical medical care (National Center for Transgender Equality, 2018). Psychologists must strive to understand the impact of working in the field of psychology is not neutral but is part of interwoven systems and institutions that circulate and carry out knowledge, norms, and practices that "distribute vulnerability and security" (Spade, 2015, p. 4). Through this lens, clinical psychologists can work to dismantle the ways they carry out transphobia in their work and use their knowledge and skills to strategically use their position of power and privilege to ensure the trans and gender nonconforming individuals they work with face less harm within the systems of violence that punish them for their very existence.

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