

A PATHWAY TO GENDER-INCLUSIVE HOUSING

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George Fox University is a small, private Quaker university in Newberg, Oregon, just southwest of Portland. In the fall of 2013, a transgender student, referenced as Jaycen to protect his identity, was denied housing consistent with his gender identity as a man. Jaycen had requested to live on campus with a group of male friends and had obtained a male gender marker on his state identification. George Fox University refused, in accordance with their policy on preventing unwed students of different genders from living together and offered Jaycen a choice between a single apartment on campus and living off campus (“Students Identifying as Transgender,” n.d.).

Jaycen and his lawyer entered negotiations with George Fox University and threatened to file a Title IX complaint (Hunt & Pérez-Peña, 2014). Simultaneously, George Fox University consulted with evangelical legal group Alliance Defending Freedom to seek out a religious exemption from Title IX. On May 23rd, 2014, George Fox was among the first universities granted an exemption for policies on transgender students.

The heart of this problem is that the university holds a different conception of gender than Jaycen and the transgender community do. For instance, Jaycen talked about the experience of being on testosterone while living in a women’s dorm, expressing, “I’ve got the libido of a 14-year-old boy, and I’m living with a bunch of young women. It’s not a good recipe for promoting the kind of behavior that a Christian university expects from its students” (Hunt & Pérez-Peña, 2014). Jaycen attributed his gender to these lived experiences, while George Fox prioritized religious and phenotypical dimensions of gender. We see this through the dealings that the university had with Jaycen. It insisted on referring to him as a woman when corresponding with the Department of Education regarding their Title IX status; however, they seem inconsistent in applying this position. The official policy listed on the George Fox housing page as of the writing of this paper calls Jaycen “a transgender student,” and chooses not to use gendered pronouns about him at all (“Students Identifying as Transgender,” n.d.). This disagreement is emblematic of the experience of transgender students in college campuses, wherein the national spotlight forces actions more extreme than administrators might otherwise take. Decisions are made about transgender students in service to a mission over any other consideration. This gridlock can only be broken by intentional work with neutral arbitrators that can break this focus on discourse.

Stemming from the intersection of queer and feminist theory, today’s transgender theory can generally be thought of as challenging the ideas of gender essentialism. It has been described as where “white male medical practice, the rage of radical feminist theories and the chaos of lived gendered experience [meet] on the battlefield of the transsexual body: a hotly contested site of cultural inscription, a meaning machine for the ideal body type” (Stone, 1992, p.162).

Theories attempting to understand transphobia emerged at the same time as those attempting to situate the transgender experience in the modern world. Being transgender is an “implicit challenge to the binary division of gender upon which male cultural and political hegemony depends” (Norton, 1997, p. 139). Because of this challenge, transphobia is highly correlated with “right-wing authoritarianism, religious fundamentalism, and hostile sexism” (Nagoshi et al., 2008, p. 523).

This conversation is also rooted in a current wave of activism that started in the 1990s. The background for these political developments included the AIDS epidemic, resultant political centering of queerness, the end of the Cold War, and the maturation of Generation X (Stryker, n.d., p. 123). Literature, including Leslie Feinberg’s *Transgender Liberation: A Movement Whose Time Has Come* and Sandy Stone’s *The Empire Strikes Back: A Posttranssexual*

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Manifesto, created public consciousness of trans identity and helped solidify language used to talk about transgender rights in politics. Both researchers, but especially Feinberg, identified universal systems of oppression and capitalism as forces that impacted transgender rights. This yielded an anti-assimilationist spirit in trans communities and a combination of political will with sexual minorities (Stryker, n.d., p. 139). This unified community was better able to advocate for their political rights, including the ability to change one's legally designated gender and obtain corresponding services.

Transgender rights also enjoyed expansion under President Obama, especially in the field of education. Through the early 2010s, the Department of Education fielded many complaints from transgender students in public schools, among the most notable being the previously mentioned *Student v. Arcadia Unified School District* ("Case," 2013) as well as a student complaint against Downey Unified School District (Arthur, 2014). The resolution of these cases eventually led to President Obama's administration issuing a "Dear Colleague Letter" in 2016 prohibiting "sex discrimination in educational programs and activities operated by recipients of Federal financial assistance" (Lhamon & Gupta, 2016).

The confluence of theory and legality is still under development in the American system. In many legal contexts of attempting to identify gender, a single attribute is identified as the defining characteristic of gender—chromosomes, genitals, or medically-prescribed hormone therapy being among the most frequently cited in the medical category, and designation of gender on either a birth certificate or other government identification cited in the social dimension. When postsecondary institutions do not feel comfortable letting students self-define their gender for the purposes of housing, they typically resort to one of these metrics. The "medicalization of gender identity" is often criticized as being reductive and cruel and thus should not be used. It ignores "the fact that transgender individuals make choices about their bodies for different personal and economic reasons," and it "reflects the tendency to pathologize transgenderism and ignore the complexities of transgender identity" (Pomerantz, 2010, p. 1225). In addition, medicalizing trans identity continues to perpetuate a binary approach to gender, dismissing modern understanding and legislature. As such, colleges currently have the choice to define how they treat gender and should specify ahead of time what definition they will use. Colleges should provide gender neutral housing to all students, or at minimum allow students to self-identify their gender for housing selection. As of the time of writing, only 4% of universities offer gender neutral housing options (Campaign, n.d.; "Digest of Education Statistics, 2018," n.d.).

Universities often claim college housing presents a unique case of conflicting interests between transgender and non-transgender students, as students have a legitimate and fundamental right to feel comfort in their housing arrangement (Pomerantz, 2010, p. 1217). Legally, this claim should be considered from two perspectives. First, both transgender and non-transgender students have a right to privacy. In general, the guiding principle here is the privacy of the naked body and physical form (Pomerantz, 2010, p. 1230). Medical privacy must be maintained for transgender students, and justifying placement in a single-gender dorm might require the transgender student to divulge medical information. Many students also have concerns of modesty guided by religion. This is likely to matter and continue to matter in the consideration of housing policies set by universities, regardless of the (likely transphobic) origins of the sentiment (Pomerantz, 2010, p. 1234). The second lens to consider is of concerns for safety. Transphobia often manifests in a perceived need to protect the general, often cis female, public from sexual predators. This excuse has been broadly discouraged as a line of

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consideration when constructing policy; guidance from the National Education Association indicates that “there is no evidence that sexual predators use transgender rights to engage in sexual assault” (*Legal Guidance on Transgender Students’ Rights*, 2016, p. 24). Institutions in America have generally not reported a rise in incidents of violence or harassment in bathrooms with trans-friendly policies (Lopez, 2018). This concern is thus weaponized to pass laws that invade the privacy of transgender people, rather than in response to any specific threat.

There is, of course, a baseline consideration for transgender students that is generally agreed upon. This acknowledges the innate humanity of the varied presentations and understandings of gender that various institutions may have. Universities should ensure all housing staff are properly trained on meeting the needs of transgender students particular to that institution and that students can easily access information about their housing status (“Transgender Issues on College Campuses,” 2005, p. 54).

With regards to a formal written policy, historic recommendations typically suggested assessing transgender housing needs on a case-by-case basis. This can be problematic due to concerns of intersectionality. Trans people who belong to other marginalized groups are significantly more likely to face difficulty with obtaining housing consistent with their gender identities. This discrepancy in access to resources is especially stark when comparing rates of impact of housing discrimination against that of bathroom access. College housing access discrimination happens in prolonged interaction with university administrators and therefore is usually moderated by other privileges. It has been found, for instance, that “for every \$10,000 increase in annual household income, the odds of being denied access to housing status of choice due to being transgender or gender-nonconforming decreased by 8%” (Seelman, 2014, p. 15).

Thus, it is critical for institutions to have a formal written policy available to all students. This needs to encompass multiple aspects of the housing experience, starting with intake forms that have sufficient detail to unobtrusively establish gender-based room assignment preferences for transgender students (Seelman, 2014, p. 52). The university should establish detailed practices for understanding each student’s housing needs and collect minimal documentation to establish that. The university must consider both the student’s needs and the safety of the environment that can be provided to the student. Schools must have multiple available options for transgender students, allowing choice and autonomy. These options also must include students who do not fall in the gender binary. Some suggestions adopted include offering gender neutral housing options (“Gender Open Housing,” 2016; “Gender Policies,” 2017), offering single rooms at the same cost as other housing options in the housing system that are not isolated from other students, offering trans students other trans roommates (“Trans at Penn,” n.d.), and establishing specific housing as safe spaces for LGBTQ+ students (“Lavender House,” 2016). Ultimately, the role of the institution is to take on the initiative of establishing housing for all students in a manner that does not actively affect their psyche, rather than putting the burden on the student.

In many cases, the process of constructing these policies is further influenced by forces outside of the university. One of the most well-known of these in the right wing is the Alliance Defending Freedom (ADF). Launched in 1994, ADF funds court cases and trains lawyers in an effort to protect what they define as religious freedom (“Who We Are,” n.d.). Their purpose with regards to the LGBTQ+ community is that the ADF supports the recriminalization of homosexuality, defends state-sanctioned sterilization of trans people, and links homosexuality to pedophilia (“Alliance Defending Freedom,” n.d.). As a result of these activities attempting to erode the separation between church and state, ADF has been designated as an anti-LGBTQ hate

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group by the Southern Poverty Law Center. They have been involved in many of the lawsuits mentioned in this paper. The ADF employs a toolkit specifically designed to stifle conversation and inflame sentiments in the transgender community, such as referring to trans men as “biologically female” and trans women as “biologically men” (“Case Details—R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission,” n.d.). This is done to the extent that the Third Circuit of the U.S. Court of Appeals deemed the arguments of the ADF prejudiced in 2018 (Ford, 2018), and have been found to increase violence posed to transgender individuals (Miller, n.d.).

However, the rhetoric touted by organizations such as these is out of step with mainstream American sentiments today. Self-reported tolerance for transgender people has greatly risen in America, even within organized religion—for example, 70% of Catholics have reported becoming more tolerant of transgender rights in the last five years (Jones, Jackson, Najle, Oyindamola, & Greenberg, 2019). This shift in beliefs is especially notable in younger people; Gallup reports that over 60% of surveyed Americans under the age of 30 support access to bathrooms consistent with gender identity (McCarthy, 2019). The thrust of this fight broadly comes from a population that does not actually attend colleges themselves.

George Fox University—as a private, evangelical Quaker institution—neither desires nor is required to adopt these recommendations. On the other hand, there is a general unwillingness to outright ban students like Jaycen from attending the university. There also seems to be a general desire to meet the needs of transgender students in a manner befitting their community needs. Their most recent policy states that “with approval and consistent with housing policy, this may include living in a room in a shared house (or appropriate apartment) on campus with a student's legally-recognized gender, provided housemates/apartment mates have agreed to such an arrangement” (“Students Identifying as Transgender,” n.d.). In essence, this would have allowed Jaycen to do what he wanted. It seems to render the exception George Fox obtained from the Department of Education pertinent solely to discourse rather than any matter of practice.

The influence of groups like the Alliance Defending Freedom in discourse is considerable, as it links being transgender to a moral deficiency. Similar tactics could be seen in the discourse surrounding homosexuality, specifically wherein religious groups spuriously link homosexuality to pedophilia. In fact, in their appeal to the Department of Education, George Fox University wrote, “The University believes that human beings, fashioned by God in His own image, are created male and female (Genesis 1:27). In the New Testament, Jesus confirms the heterosexual creation of human beings: God made them male and female (Matthew 19:4). Like the rest of God’s creation, the sexual differences between man and woman are pronounced ‘very good’ (Genesis 1:31)” (Baker, n.d.). This rhetoric is dehumanizing to trans people and thus is designed to cease productive conversation that could change the current order.

There is little political will in these universities to preemptively research and adopt policies for transgender students, but there is a growing movement creating space for LGBTQ+ people in religious environments. This is where the neutral bodies, as mentioned in this introduction, must step in. These groups could be governmental, but in situations of lost faith in public institutions these could also be at a lower level of governance, or through a non-partisan enterprise. This body must create an environment for collaboration between university stakeholders and transgender housing experts. This environment must necessarily be secluded and supported by the opportunity for meaningful fellowship and conversation. Doing so with the engagement of involved communities will cut through the charged rhetoric surrounding the issue, yielding concrete and lasting solutions that protect key interests of both groups. This will help both sides

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establish where the space for transgender students exists on college campuses, preempting the confusion that complicated Jaycen's college experience.

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