

# **The Criminal Sex: Criminal Law and Transsexuality within the United States, Japan, and Iran**

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## **Introduction**

The purpose of this paper is to explore the issue of transsexuality within the legal and criminal frameworks of the United States, Japan, and Iran. While the cultural and historical aspects of transsexuality have been broadly scrutinized within academia, a comparative criminal justice perspective has yet to be constructed. This paper is not meant to provide a definitive account on this subject matter, but to rather shed some light on a substantially underdeveloped topic.

I have chosen to look at the United States, Japan, and Iran for two primary reasons. First, each nation has a distinct cultural and historical background. Whereas countries like the United States and Britain largely developed from the same legal tradition, the U.S., Japan, and Iran have fundamentally disparate judicial and social philosophies. Second, all three countries have recently considered the issue of transsexuality, and come to dramatically different conclusions. These conclusions will likely be surprising to anyone who views the United States as overly litigious, Japan as comparatively enlightened, or Iran as purely repressive. This failure to conform to expectations not only highlights the complexity of comparative criminal justice, but also reveals the existence of seemingly contradictory narratives within even a single national discourse.

Although often confused, the phrases transgender and transsexual have two distinct meanings. A transgendered individual is someone whose physical gender (male or female) diverges significantly from his or her 'gender identity' (Ryan and Futterman, 1998). Many transgendered individuals will refuse to look, act, or generally conform to a specific traditional gender, while others will adopt the role of their gender opposite. If acting according to the latter, an individual is generally regarded as a transsexual. Transsexuals literally feel born in the wrong sexual body, and (clinically) are said to suffer from gender dysphoria or Gender Identity Disorder ([www.behavenet.com](http://www.behavenet.com)). Not all transsexuals undergo sexual reassignment surgery<sup>i</sup>, but those who go from male to female I shall abbreviate as MtFs and those from female to male as FtMs. Admittedly, I have oversimplified an extremely complex phenomenon; the terms 'gender' and 'sex' should not be used interchangeably, and debate still exists on whether transsexuality is a genetic or psychological condition (or even a 'condition' at all)<sup>ii</sup>.

Aspects of transsexualism have been observed within nearly every country, and there thus exist a variety of methodological sources. The vast majority of my information was gathered through books, periodical articles, LGBT (Lesbian, Gay, Bisexual, Transgendered) reports, academic studies and criminal statistics. In the course of my research I encountered many documents written in only Japanese or Farsi<sup>iii</sup>, and I can therefore make no claim to have conducted an entirely comprehensive academic review. Transsexuality is truly a global phenomenon, and as we shall see, this has resulted in a great variety of domestic responses.

## **The United States of America**

The United States government has long adopted a marginal stance towards transsexuality. This is likely due to the nation's federalist tradition, granting (partial) state jurisdiction regarding the criminal law. Interestingly, most states have generally taken a hands-off approach as well, valuing medical discretion over legal prohibition. While transsexuals can freely undergo sexual reassignment surgery, such state disregard has ultimately proven a double-edged sword: transsexuals need not fear criminal punishment, but also enjoy little government protection or statistical recognition.

The first case of transsexualism to garner widespread attention within the United States (and indeed much of the world) was that of Christine Jorgensen (Meyerowitz, 2002). In March of 1959 Jorgensen, who had undergone hormonal treatment in order to physically alter her body from female to male, applied for a marriage license<sup>iv</sup> at the New York City Municipal Court Building. While the license was eventually refused, the case almost immediately became a sensation within the nation's tabloids. Recognizing Jorgensen's situation, a number of other males and females began openly asking doctors to alter their sex, and reassignment surgeries found a growing American market.

The matter of transsexuality has traditionally proven a challenge within both American civil and criminal law. Particularly complicated is the United State's federalist structure, and states' ability to formulate their own discrete policies. While post-op transsexuals may legally have their passport and Social Security Records revised by federal agencies, many of the most vital records are principally governed by the states ([www.transgenderlaw.org](http://www.transgenderlaw.org)). Birth certificates have proven a particular challenge;

although nineteen states currently allow sexual revisions, most refuse to grant this pivotal ‘privilege’. A variety of state courts have further reached very different and even contrary rulings, and no larger precedent thus currently exists (Meyerowitz, 2002).

Transsexual voices have proven even more muffled within the American criminal law. As one scholar has noted, the recent past saw ‘nothing less than widespread legislative avoidance’ of this issue (Meyer, 1999). Indeed, this avoidance of transsexual-related criminal law has likely arisen from a number of interrelated factors. First, the ‘small size and closeted existence’ of the transsexual community makes this group invisible to many politicians, the media, and the general public. Second, transsexuals have neither the national solidarity nor the political influence to affect the ‘rational election-seeking behavior’ of legislators. While they have recently aligned with more mainstream gay advocacy groups, transsexuals continue to occupy only a small fraction of the larger LGBT community. They therefore have little voice within state and federal legislatures, and have yet to gain a forceful advocate<sup>v</sup> within higher office.

It is unknown how many sexual reassignment surgeries have actually been performed within the United States, but unlike in Japan and Iran (as we shall see), conducting such procedures has never led to criminal prosecution (Meyerowitz, 2002). Some doctors have nevertheless invoked ‘mayhem statutes’, or an obscure eighteenth century clause legally forbidding male to female operations (p. 121). Such statutes originally arose from English common law, and explicitly banned men from castrating themselves or being aided by others in order to do so. Although originally put into effect to disallow soldiers from escaping army duty, mayhem clauses remain ingrained within federal and many state statutes. Why these statutes have never been legally enforced

remains somewhat of a mystery; while some assert legislators hesitation to anger the medical community, others believe such laws too out-dated to ever survive due process. Indeed, mayhem statutes are more likely invoked by doctors not out of fear of prosecution, but to mask larger ethical and practical issues. Such physicians may react negatively to sexual reassignment surgery for a number of reasons, whether in ‘mutilating’ purely healthy organs, believing transvestites to be mentally ill, or fearing the public scrutiny that sex-change operations could potentially bring to their medical institutions (Bridy, 2004). As the transsexual community has become more and more recognized, however, many doctors have undoubtedly recognized the profit potential in catering towards this particular clientele.

Although doctors have never been prosecuted for the surgery itself, (pre and post) transsexuals have faced a long history of arrest for simply going out in public. Throughout the 1960s cross-dressing laws were widely in effect, and transsexuals could be penalized under vagrancy or obscenity statutes (Bridy, 2004). Such arrests became more rare as the 60s progressed, and many obscenity laws gradually invalidated by the growingly liberal courts. Further, state judges began to become increasingly annoyed by police crowding their courts with alternative unisex stylists, and (for the most part) successfully demanded an end to cross-dressing prosecutions.

The most serious criminal issues affecting transsexuals have resulted more from a lack of government attention than an excess of it. Although continually victimized, transsexuals have remained conspicuously absent from many state and federal hate crime statutes. Even more remarkably, there are no reliable statistics on the actual amount of crimes committed against transsexuals, and they have thus been labeled “hidden victims”

(Meyer, 1999).

The relative obscurity of transsexual victimhood is perhaps best reflected by this group's total absence within the Federal Hate Crime Prevention Act, passed through Congress in 1994 and renewed on a number of subsequent occasions ([www.adl.org](http://www.adl.org)). Although various congressmen have vocally protested this omission, they have also acknowledged too much protest may put the act itself in jeopardy (Lochhead, 2007). Regardless, on May 3, 2007 the Matthew Shepard Act was passed in the House of Representatives, and subsequently pushed through the Senate in September of 2007 (Stout, 2007). Not only does this Act expand upon the initial definition of a hate crime, but also adds a separate provision explicitly including the transgendered (which presumably includes transsexuals). While the Act's congressional passage is groundbreaking, President Bush has promised to veto it if it comes before his desk (Executive Office of the President, 2007).

The states have been only selectively more progressive. Although Minnesota passed the first transgender-inclusive hate crime law as early as 1988, most other states have proven relatively slow to follow ([www.outfront.org](http://www.outfront.org)). Currently, eight states (California, Connecticut, Hawaii, Minnesota, Missouri, New Mexico, Pennsylvania, and Vermont) explicitly include the transgendered within their standing hate crime legislation ([www.hrc.org](http://www.hrc.org)). Maryland and Colorado have recently revised the definition of sexual orientation in order to include the transgendered, and therefore also offer technical protection through this more indirect route. And while a number of other state proposals have been advanced, these have yet to gain enough political support for passage.

Despite their absence within federal and many state hate crime legislation, a number of horrible acts have been reportedly committed on transgendered and transsexual individuals. Although the most well known of these was the brutal 1993 rape and murder of FtM Brandon Teena<sup>vi</sup>, this was hardly an isolated event. The amount of similar offenses ultimately remains speculative, however; while the FBI keeps statistics of hate crimes committed against homosexual males and females on record, it does not specify any separate category for transgendered and transsexuals (United Crime Report, 2006). Indeed, the gay-rights magazine *The Advocate* was even drawn to label violence against this group a ‘hidden hate epidemic’ (Meyer, 1999). Within non-governmental studies the number of abuses are also hard to determine. Although some have attributed this lack of data to conscious social biases, others have expressed more nuanced rationales. First, police officers may often report such victims as simply gay, and thus unworthy of being grouped within a separate statistical category. Secondly, many relevant individuals may want to remain under the radar, and therefore purposely fail to report their own or a friend’s victimhood.

Throughout the past decade the number of reported offenses has significantly heightened (Witten, 1999). The National Coalition of Anti-Violence Programs reported in 2006 that while the amount of FtM victims remained indeterminable, the percentage of MtF victim reportage had increased by 20 percent (although the reason for this disparity remains unclear) (2006). A 1997 sample of 402 transsexuals further found that over half had experienced ‘some form of harassment’, ‘with a quarter experiencing a violent incident’ (Moran and Sharpe, 2004: 41). The archivist Gwendolyn Ann Smith has also

recently recorded the names of over two hundred transsexuals murdered since the early 1970s, although she does not specify if their deaths were all hate related<sup>vii</sup>.

Transsexual needs have also begun to gain notice in prison. Currently, inmates are segregated based upon genitals alone, and many transsexuals may therefore face particular abuse or harassment (Brooks, 1999). In *Merriwether v. Faulkner* (1987), the 7<sup>th</sup> Circuit Court of Appeals held that transsexual prisoners have a right to ‘some sort’ of medical therapy, but did not specify what this would entail (nor was the issue of special protection explicitly addressed) ([www.transgender.org](http://www.transgender.org)). Although the more recent case of *De’Lonta v. Angelone* (2002) extended this decision, calling the plight of transsexuals in prison a ‘medical necessity’, the effects of this judgment also remain to be practically seen.

Transsexuals therefore encounter minimal government harassment within the United States, but strikingly little state protection either. While the recent advancement of the Matthew Shepard Act has highlighted transsexual rights to an unprecedented degree, it is unlikely to overcome a presidential veto. Further, the records on transsexual assaults remain sketchy at best, and there has been no popular movement to report them more accurately. Although the nation’s current transsexuals rarely face the illusion of mayhem statutes or threats of arrest under vagrancy or obscenity charges, the United State’s criminal justice system has yet to fully meet the needs of this oft-ignored group. The American transsexual ultimately remains a hidden victim, who many would rather ignore entirely than uncomfortably face.



## Japan

Although transsexuals have played a traditionally more open role within Japanese society than that of the United States', Japan's government has proven considerably more repressive. While violence against the estimated 70,000 transgendered is virtually unheard of, sexual reassignment surgery was strictly illegal until the 'discovery' of Gender Identity Disorder in the late 1990s (Larkin, 2007). The largest battles have now switched from criminal to civil law, as Japanese advocates continue to fight for legal and political recognition.

Throughout Japanese history, Kabuki shows thrived on males assuming female roles (Compton, 2003). While many individuals resumed their 'masculine' identity after the show's finale, others publicly refused to ever adopt a fixed sex. Rising to power in the late nineteenth-century, the autocratic Meiji government dramatically and ruthlessly disparaged such 'perverse' individuals<sup>viii</sup>. Intimidating and imprisoning any supposed sexual deviant, state officials aggressively removed transsexual (and transgendered) figures from the public sphere. While restrictions were again loosened in the late 1940s, transsexual individuals became largely limited to bar shows, clubs, and massage parlors (McLelland, 2004). Largely relegated to the entertainment industry, such 'sexual outlaws' thus occupied a relatively circumscribed and limited role within early post-World War II Japanese society.

As sexual reassignment surgery became more known, Japanese transsexuals began to demand their own domestic physicians. This became legally unfeasible, however, as Clause 28 of the 1948 Eugenic Protection Act strictly prohibited the

‘unnecessary’ sterilization of healthy sexual organs (Hiroyuki, 2006). While its motives have been much disputed, the Act is believed to have arisen out of Japanese demoralization following World War II (Mackie, 2001). Hoping to insure a brighter future, Japanese officials sought to create an archetypal citizen and ensure a healthy new generation. Those who hoped to modify or transform their reproductive capabilities thus intrinsically violated the goals of this new national ethos. Along with a strict abortion ban and recommended sterilizations for hereditary bodily diseases, the Eugenic Protection Act ultimately sought to grant considerable state control over the Japanese populations’ manner and ability to reproduce.

Unlike the false threat of U.S. mayhem statutes, Japanese doctors could actually face serious prosecution for performing sexual reassignment surgery (and thereby sterilizing healthy genital organs). In the famous ‘Blue Boy Trial’<sup>ix</sup> of 1965, a Japanese surgeon was arrested and prosecuted for performing a sex change on three male prostitutes (Hiroyuki, 2006). Eventually found guilty of violating Clause 28 of the Eugenic Protection Law, the surgeon’s resulting detention almost universally deterred Japanese doctors from performing further sexual reassignment surgeries. Of course, Japanese transsexuals did not disappear entirely, as they were able to get surgery abroad or undergo a variety of hormonal treatments. Flying to Thailand or the United States was restricted only to the wealthier citizens, however, and black-market hormonal ‘solutions’ were often rife with dangerous side effects (Mackie, 2001).

It took over three decades for clause 28 of the Eugenic Protection Act to be legally overturned. This resulted from a number of gradual but distinct events. Firstly, the *tojisha* (‘the party concerned’) movement began to gain political prominence

throughout much of Japan in the early to mid 1990s (Lunsing, 2005). Founded by the Japan International Lesbian and Gay Association, the *tojisha* hoped to popularize queer normalcy and solicit mainstream acceptance. Within two years a group called *Occur* emerged, which proved especially influential. Containing a number of prominent Japanese figures and wealthy backers from the business world, *Occur* pushed for expanded gay, lesbian, transgender, and transsexual rights. Focusing specifically on the Eugenic Protection Act, this organization was able to muster and maintain considerable mainstream criticism of it. Even more importantly, however, was the popularization of the ‘medical model of transgender’ (Ellis, 2000: 72). In this changing paradigm, transsexual individuals were no longer viewed as deliberate social misfits, but people with a serious and potentially curable medical disorder. Notions of Gender Identity Disorder thus started to permeate the academic literature, and transsexuality was linguistically transformed from a ‘choice’ into a ‘condition’.

Following an upsurge of *tojisha* lobbying and accepting a medicalized discourse on transsexuality, in 1996 four doctors at the Saitama Medical College asked an ethics committee if they could perform sexual reassignment surgery on two (newly-labeled) *GID* patients (Hiroyuki, 2006). Similarly influenced by the growing medical literature and political pressure from *Occur*, the Japanese Society of Psychiatry and Neurology formally allowed the operations to commence. Claiming the patients to have been ‘cured’ of their previous ‘affliction’, a number of medical and *tojisha* activists subsequently lobbied the Japanese diet to fully legalize sexual reassignment surgery. Acknowledging clause 28 to be medically outdated, the diet did so in 1998, but with the stipulation that surgery only be performed on patients diagnosed with *GID* by two

separate physicians. While most advocates have fervently praised the diet's action, others have pointed out the bizarre 'contract of future promises' that pre-ops must sign. Among other things, this contract supposedly contains a pledge not to work in the entertainment industry, a profession in which many transsexual people have traditionally found employment<sup>x</sup> (Lunsing, 2005: 147).

While sexual reassignment surgery can no longer result in criminal prosecution for the doctor or patient, a number of civil issues still remain. In 2003 the diet passed the Exceptional Treatment Act for People with GID, allowing transsexuals to bindingly change their legal (and not just physical) sex. Five strict conditions need to be met, however, in order for an individual to successfully complete this process: (1) the individual must be over twenty years old, (2) not be married (to supposedly avoid coercion), (3) be childless, (4) have no gonad function, and (5) have genitals similar to 'other members of the sex' to which they were reassigned (Hiroyuki, 2006: 4). While the Act was easily passed in the diet, many tojisha groups have derided it as needlessly strict and socially repressive. More recent debates have revolved around employment discrimination towards transgendered and transsexuals, and whether office managers have the right to know this feature of a person's history (Lunsing, 2005).

Unlike in the United States, physical violence against Japan's transsexual community is considerably uncommon. As one author remarked, 'drag queens as well as transvestites live openly and in public places without problems' (Lunsing, 2005). This is likely both a reflection of the nation's comparatively low violent crime rate, and the traditional prevalence of cross-dressers within Japanese society. Of course, no larger empirical studies have been conducted (that I am aware of), and the possibility of a

hidden victimhood therefore undoubtedly remains. There have been no major studies conducted on Japan's transsexual prison population either, and it is thus unknown whether they face similar harassment to that in the United States.

Although generally safe from street-level crime, until recently Japan's transsexuals were legally handcuffed by a demoralized nation's medico-rational ideology. Espousing primitive notions of motherhood and upholding a classic eugenic discourse, the Japanese government sought to actively restrict one's control over his or her body. Transsexuals were thus rarely viewed as inherently obscene (as in the United States), but rather as threats to a larger communal future. Only when the medical narrative was transformed, and this group viewed as sick rather than defiant, could the desired physical alteration be magnanimously granted.

## **Iran**

In a nation generally considered to be among the most repressive on Earth, it is difficult to imagine an open or liberal policy regarding transsexuality. Yet despite communally stoning adulterers and publicly hanging male homosexuals, Iran has been called 'the sex change capital of the world' (Tait, 2005). Blessed by the Grand Ayatollah himself, sexual reassignment surgery is both fully legal and even federally funded. Indeed, similar to the United States, the greatest threat against Iranian transsexuals comes not from the state but from the streets.

Unlike Japan, Persia does not have a long history of transsexual performances or gender subversive literature. While homoerotic tales were relatively common, few

stories (that I could locate) challenge or transform traditional gender roles (www.GLBQT.com). Although historically indeterminable, transsexuality is thus considered a relatively novel phenomenon within Iranian culture. Indeed, during the Shah's regime there was no legal mention of transsexuality at all, and while such procedures were therefore not expressly illicit, it is unclear whether they were allowed; no early Iranian advocates of transsexuality have come forward, and there is no record (at least in English) of pre-1979 transgendered cases.

In 1963 the future founder of the Islamic Iranian nation, Ayatollah Khomeini, wrote a popular book discussing contemporary scientific ethics (Harrison, 2005). Determining that there were no Koranic prohibitions against sexually corrective surgery, Khomeini declared such procedures to be religiously permissible. While this passage has been held up as early proof of Khomeini's tolerance towards sexual reassignment surgery, transsexuality was not actually addressed in his book. Khomeini had exclusively considered the issue of hermaphrodites, and made no specific mention of transsexuality (Tait, 2005). It is unlikely that Khomeini had ever even heard of such a concept at the time, and therefore certainly had little opinion regarding this issue.

Upon coming to power, Khomeini and his Iranian reformers instituted a strict regime of Shar'ia Law. Among the harshest penalties involved so-called Lavat, or sodomy, punishable by heavy flogging or even death (Human Rights Watch, 2005). While it is unknown how many Iranian homosexuals have actually been executed, the number is believed to be relatively low. This may be because of the difficulty in legally proving homosexual activity (four witnesses are required) or, more likely, a popular policy of 'collective denial' (Alizadeh and Poore, 2007). Originally, transsexuality and

homosexuality were grouped together; Iranian transsexuals were simply considered gay, and hence punishable to the same degree as any other practitioner of Lavat (Tait, 2007).

The story of how transsexuality became legalized within Iran is surely romanticized, and its exact accuracy is ultimately unimportant. Regardless, it is confirmed that a (pre-op) MtF named Mayam Katoon Malkara continually lobbied for Ayatollah Khomeini's recognition, and actually burst into his palace dressed as a male (Tait, 2005). Eventually brought to the Supreme Leader by Khomeini's son, Malkara is said to have dramatically revealed her breasts and fervently described her condition as a 'disease'. Convinced that his earlier writings applied not only to hermaphrodites but transsexuals, the Ayatollah consequently issued a fatwa (or religious decree) formally legalizing transsexual operations. While homosexuality and cross-dressing have remained highly illegal, Khomeini himself thus legitimated transsexual operations within Iran.

Similarly to Japan, in Iran transsexuality is principally viewed as a disease (Islamic Thinkers Society, 2006). Unlike the Asian nation's medico-rational discourse, however, Persia's is ultimately steeped in religious overtones. Science may provide a useful supplement, but is always subordinate to the dominant Islamic ethos. Unlike America or Japan, there are no constitutional safeguards or procedural protections if an Ayatollah suddenly decides to reverse past precedent. While Iranian transsexuals likely feel relatively blessed by their situation, the threat of a new fatwa is therefore always possible.

So far, the ruling elite has been reluctant to reverse Khomeini's 'enlightened' decision. The current Ayatollah has publicly supported sexual reassignment surgery, and

the President<sup>xi</sup>, despite his ideologically extreme record, has never overtly addressed this issue. A prominent Iranian scholar has even recently published a dissertation on Iranian transsexualism, attempting to ground it within Persia's prevailing legal framework (Tait, 2005). Matters of particular importance are whether a wife can get surgery without her husband's position, and when the marriage itself is to be considered voided by the state. Issues of civil law are considerably more progressive than in Japan or the United States; Iranian transsexuals are able to get a new driver's license and birth certificate almost immediately, and are legally reassigned gender without much technical hassle.

To legally get a sex change in Iran, an individual must be of consenting age and judged 'mentally ill' due to Sexual Identity Disorder (Islamic Thinkers Society, 2006). Combining religious and legal discourses, it is a clerical judge, and not a doctor, who grants the final permission to proceed. It is unknown how many transsexual operations have actually been performed in Iran, but the number is considered remarkably high. One doctor reported that he had done approximately 300 sexual reassignment surgeries in Iran within the last decade, compared with around 40 in all of Europe (Harrison, 2005).

Despite the government's surprising liberalism, Iranian transsexuals are said to suffer considerable criminal harassment and violence. While the state may bless sexual reassignment surgery, such patients are often still considered homosexuals or perverts by their local community (Eqbali, 2004). Indeed, most violence is likely inter-familial, inflicted on transsexual (and transgendered) individuals by their own parents or siblings. As one news source reported, 'transsexuals in Iran continue to suffer not just ostracism, but physical attacks' (Mangez, 2005). Of course, the number of assaults is impossible to gather, as is the amount of Iranian crime in general. Personal accounts report being burnt



by oil or viciously beaten by family members, but almost always come from desperate exiles. The army is said to be especially dangerous for pre-op transsexuals, who are often reportedly attacked and have even reported being sexually abused/assaulted.

Despite its surgical blessing, the Iranian state is not entirely sympathetic to transsexual individuals. Transsexuals may be arrested and charged as homosexuals in the middle of their hormonal treatment, or even detained for cross-dressing (which remains very much illegal) (Safra Project, 2004). Further, there are reports that some homosexual (but not transsexual) individuals are pressured or coerced into undergoing gender reassignment surgery in order to legalize their sexual orientation. Perhaps most troublingly, many FtMs have undoubtedly switched sexes principally to gain male privileges. As one individual remarked, 'As a man in Iran I have more freedom and choice than as a woman...I did not want to wear a chador. Now I can pray in boxer shorts if I feel like it' (Mangez, 2005).

It is both puzzling and ironic that one of the most religiously repressive nations on Earth has proven a virtual epicenter for transsexual openness. Even more ironic is that such opportunity only arose through absolute tyranny; indeed, there are few more comprehensive or effective policies than those enabled by religious decree. By equating Gender Identity Disorder with an affliction like cancer, Iran's transsexual debate has been supported and legitimized by a larger medico-religious discourse. The sexually 'confused' were granted their freedom, as long as homosexuality itself remained the same old unnamable but ever-perilous specter.

## **Conclusion**

Despite their discrete cultural heritages, the issue of transsexuality has certain parallels within the United States, Japan, and Iran. Of course, due to each nation's unique legal structure, one must always be careful when extrapolating supposed similarities. Regardless, I believe three core themes can be reliably recognized and explored.

First, there has been a fundamental divide between state and street repression within each country. While the United States government has markedly deferred from penalizing sexual reassignment surgery, crimes against transsexuals have proven both disturbingly common and egregiously under-addressed. In stark contrast, the Japanese government has only recently allowed transsexual procedures, but such individuals need rarely fear attack. Finally, while the Ayatollahs have taken a surprisingly liberal stance towards transsexualism, this community still faces a combination of familial threats and communal ostracism in Iran.

Second, each nation's legal framework has been highly influenced by the medical discourse in place. Many early American doctors were reluctant to perform sexual reassignment surgery, but the nation's long held reverence for entrepreneurship and individual autonomy likely helped such procedures to flourish. Japan's post-World War II nationalism had predicated itself around a previous medical paradigm (the Eugenic Protection Act), which was eventually replaced through the legitimization of Gender Identity Disorder. And even Iran's religious supremacy proved compatible with medical principles, as transsexuals became sick people in need of a cure.

Third, each nation has considerable holes in the relevant data. While the United States undoubtedly has the most comprehensive information, the FBI's reluctance to record offenses against transsexuals and the transgendered obscures the extent of their victimhood (and virtually denies their very existence). Further, since transsexuality has only recently been legalized in Japan, there has been little time (or incentive) to gather meaningful statistics. And finding general criminal data in Iran is hard enough, never mind for specific offenses against sexual minorities. Of course, other organizations have recorded the prevalence of offenses against American transsexuals, and it has been reliably documented that Japanese transsexuals can walk the streets openly and safely. Iranian abuses have almost exclusively arisen from first-hand accounts, which provide a powerful but ultimately limited picture.

The legal situation facing transsexuals in the United States, Japan and Iran is ultimately daunting but hopeful. Sexual reassignment surgery is legal in all three countries, but the danger of being a transsexual (with the possible exception of Japan) remains a day-to-day reality. As mentioned earlier, it is somewhat problematic to even compare such unique entities; U.S. federalism, for example, has little parallel with Iranian autocracy. The possibility of educative tolerance also varies significantly from country to country. Japan's long held tradition of ambivalent gender roles bends to larger communal interests, and the law can likely do little to change this. As one commentator remarked, 'Japan, unlike the United States, is not a very litigious society...Much more important than legal developments are developments in the social field', including the advance of written sources, Internet forums and the increasing prevalence of queer youth culture(Lunsing, 2005: 148). Change in Iran would seemingly have to come from the

top down, but even this has proven problematic; despite Ayatollah Khomeini's liberal attitude towards transsexuality, such individuals are still often considered freaks or (even worse) homosexuals. The United State's federalist system offers perhaps the greatest hope; states may have the authority to differ, and are therefore left unrestrained by a single policy. This has complications all its own, however, since tolerance may diverge significantly from jurisdiction to jurisdiction. Whatever the country, transsexuality is becoming a growingly recognizable issue, and one that the criminal law ignores at this sexual minority's peril.

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## EndNotes

<sup>i</sup> Since the allowance of sexual reassignment surgery is such an obvious and important indicator of a country's stance towards transsexuality, the legal status of this procedure will be prominently detailed within each nation reviewed.

<sup>ii</sup> For the purposes of this paper, however, such larger complexities will have to be temporarily (and regrettably) ignored.

<sup>iii</sup> Which accounts for the significantly lengthier section on the United States.

<sup>iv</sup> In order to marry a female

<sup>v</sup> Certain U.S. Representatives, such as Barney Frank, have expressed some support for the transgendered and transsexual community, but usually only in tangent with larger LGBT causes (Lochhead, 2007).

<sup>vi</sup> Later detailed in the 1999 independent film *Boys Don't Cry*

<sup>vii</sup> Although there have been no comprehensive empirical studies performed on offenders' purposes for attacking transsexuals, their motivations are usually considered an alternative form of homophobia known as 'transphobia' ([www.transgenderlaw.org](http://www.transgenderlaw.org)).

<sup>viii</sup> It is unclear whether the Western emulating Meijis sought to superficially adopt Occidental sex codes or merely to crack down on all marginal, seemingly deviant behaviors.

<sup>ix</sup> So-called because transsexual individuals were popularly known as 'Blue Boys' (the phrase itself was taken from a Parisian transvestite show popular in Japan).

<sup>x</sup> I unfortunately could not locate any document (in English) explaining the logic of this pledge and therefore do not have enough knowledge to speculate on its deeper origins.

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<sup>xi</sup> Who ultimately serves as a mouthpiece for the Ayatollah

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