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Beyond the Binary: Analyzing Transgender Legislation in Spain and Its Implications for Equality and Rights

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**Beyond the Binary: Analyzing Transgender Legislation in Spain and Its Implications for
Equality and Rights**

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April 10, 2024

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Acknowledgements

There are so many people to thank for helping me in this process. I shall first start with thanking my host mom, Clara. Muchas gracias por abrir su hogar y apoyarme durante el proceso de mi ensayo/proyecto. Muchas gracias, le agradezco mucho. Second, I would like to thank my advisor Gorka Urrutia Asua for providing me assistance throughout the drafting of this paper. Lastly, a thank you to everyone who provided me support through this program, thank you!

Abstract

Spain is considered one of the leading countries in LGBT+ acceptance and rights with their progressive laws, gaining a name for itself as a haven for those within the community. In this research paper, I investigate the evolution of transgender legislation in Spain into the current day and how it impacts the public perception and gender affirmative care available to trans people. Focusing primarily on the passage of Trans Ley 4/2023 and the windows it opened in Trans rights. Looking into the improvements made in Trans laws, from Ley 3/2007 to current day. Additionally, this paper will look into attempted blockages of trans legislation, as was the case in 2023, when Partido Popular (right-leaning political party) in Madrid rolled back on rights obtained in the Trans Ley 4/2023. The rise of far-right political parties in Europe has had a detrimental effect on preserving and obtaining fundamental rights for trans people, especially trans youth who usually do not have the proper resources to undergo gender reassignment surgery or receive gender-affirming care. Overall, I focus on the social and legal reactions to legislative victories and losses in LGBT+ rights and the impacts they have on trans people in Spain.

Introduction

Spain is seen as one of the most accepting and safe countries for anyone in the LGBT+ to reside in. Plenty of articles list Spain as one of the top 3 European countries with the best gender affirmative care and legal provisions to help their transgender citizens. In 2005, Spain made history by being one of the first countries to legalize same-sex marriage and over the years they have continued this thread of progressiveness. A complete change from their laws nearly 60 years ago under the oppressive dictator Francisco Franco. Being trans/queer was not decriminalized until the 1970s when dictator Franco passed away, and a progressive government took place. During Francoist Spain, trans people had to hide their identities because if caught they faced the possibility of being imprisoned, tortured, or killed. The goal of this paper is to analyze the evolution of transgender legislation in Spain and how it has made gender-affirmative care accessible or provided barriers for trans people. I break down the process of accessing gender-affirming care in Spain and the resources available to the trans community. Beginning by exploring the history of transgender expression and rights in Spain. Especially investigating if there are problems that the trans community is facing in Spain and what has been done by the government to confront those issues. Public perception is an important aspect of transgender rights, as the public can influence the bills passed to the Spanish Congress. This paper investigates the question, “How has the passage of transgender right’s legislation impacted the care and social perception received by trans individuals in Spain?”

I will first introduce and break down important trans legislation and laws that help the trans community. One important law is the Trans Ley 4/2023¹ which facilitates the change of

¹ BOE-A-2023-5366 Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI. (n.d.). Retrieved April 11, 2024, from <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5366>

gender/name on documents (passports, driver's licenses) by removing the previous requirement of having to go through hormone treatment or have a medical diagnosis of gender dysphoria.

Furthermore, the second portion of this paper uses academic papers, news articles on movements, and testimony from an LGBT+ center in Spain to gather information about the difficulties trans people confront when transitioning or encapsulating their identities. Tackling the narrative that there are no hardships for trans individuals in "accepting" societies.

Background

To ensure trans protection in different regions of Spain, the autonomous regions passed their trans laws to ensure the success of the bill in government. Trans legislation is essential to protecting trans people as in recent years, there has been a rapid rise of hate crimes against LGBT+ individuals in Europe. Additionally, adding laws to protect trans people helps move away from the idea that being trans is an illness, as was commonly thought in the 1900s, or something that can be cured. During the dictatorship of Francisco Franco, individuals were prosecuted if they were found out to be transgender, were sent to jail, or at worse, killed. When Franco died in 1975, a Spanish democracy was quickly established and the government worked hard to reverse the damage Franco had inflicted on various communities in Spain.

The first “trans” law passed in Spain was Ley 03/2007, which gave Spaniards the ability to change their gender identity on documents (birth certificate, ID, driver’s license), only if they provided a gender dysphoria diagnosis and/or proof of having received 2 years of medical treatment (be it medical or surgical affirmation). The law was met with criticism from various groups and organizations, as the law’s requirements were exclusionary and not accessible to people from all backgrounds. Additionally, the medical diagnosis of “gender dysphoria” classifies being Trans as a mental disorder, which is something that Trans activists and allies have tried moving away from for years. After years of feedback and criticism from LGBT+ and feminist organizations in 2023, the socialist wing of the Spanish parliament introduced and passed Trans Ley 04/2023. The most important aspect of this law is that it guarantees an individual (over the age of 16) the right to self-identify their gender identity on documents without the previous requirement of proof. A large part of this paper is centered around the

change this law brought and the social perception of transgender people before and after the passage.

Another important detail to go over is terms, as reviewing terminology is important when talking or learning about a topic where words are important. Transgender is the appropriate term to use when referring to someone who does not identify as the gender they were assigned at birth. Another term that might seem similar is transsexual, someone who undergoes gender-affirmative surgery/procedures. It is not to be confused with transgender, as not all trans people undergo gender affirmation surgery. The American Psychiatric Association defines gender dysmorphia as, "...psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity" (American Psychiatric Association²). It is important not to view gender dysphoria as a disorder or an illness, a common misconception that should not be made. Moreover, being Trans is not Additionally, it is important to note that not all transgender people have gender dysmorphia. Lastly, some transgender people do not identify as binary (male or female) genders, be that Non-Binary, Gender Non-Conforming, Two-Spirit, or other gender identities.

² What is Gender Dysphoria? (n.d.). Retrieved April 15, 2024, from <https://www.psychiatry.org:443/patients-families/gender-dysphoria/what-is-gender-dysphoria>

Literature Review

Legislation

Transgender legislation is important for establishing protection for transgender individuals and building foundations for future laws to pass on protecting marginalized communities. The goal of this review is to analyze how the revisions of trans laws over the years have impacted the rights and protections of the trans community. This article was released in 2019, years before the passage of Law 4/2023, but the author raises great points in the ways that the campaigning and drafting of Law 3/2007, affected the amount of rights gained for trans people. In Raquel Platero's article, "The Narratives of Transgender Rights Mobilization in Spain³," the focus of the paper is on trends within the trans movement, both political and cultural, and their impacts on the expansion of trans rights. Platero begins by giving a timeline of the trans movement, starting off under the umbrella of the LGBT+ movement in the 1970s, and then gaining their own momentum with the help of feminist activist organizations. They explain that before the passage of Law 3/2007, Transgender people had to visit the court to ask for permission to change their sex on official documents, which was dealt with in a case-by-case manner. One important issue that was brought up with the passage of Law 3/2007, was Trans people and organizations requesting the government to fund gender affirmative procedures. As context, the most common gender affirmative procedure is HRT (Hormone Replacement Therapy), and according to Ms. Magazine that can end up costing someone \$800 for blood tests and an additional \$40-400 a month for the recurring prescription of Oestrogen and Progestogen.⁴ Platero argues that there were many issues such as protections against transphobia in the workplace, harassment, and funding for gender affirmation surgery were overlooked in the

³ Platero, R. (2011). The narratives of transgender rights mobilization in Spain. *Sexualities*, 14(5), 597-614. <https://doi.org/10.1177/1363460711415336>

⁴ How Much Does it Cost to Medically Transition? - Ms. Magazine. (n.d.). Retrieved April 16, 2024, from <https://msmagazine.com/2023/08/04/trans-gender-affirming-care-surgery-cost/>

crafting of the bill. Despite these major setbacks, the trans movement gained support from political parties, Izquierda Unida⁵, PSOE, Esquerra Republicana de Catalunya⁶, and other left-wing political parties. At the same time right-wing party, Partido Popular began to deny the validity of gender dysphoria and referred to it as an “after-birth problem”. Platero claims that the large opposition left-wing parties received from Partido Popular and conservative organizations, led to PSOE and other left wing parties requesting a medical diagnosis of “being” transgender in order to be able to access the rights in Law 3/2007. In order to gain traction and support for the law, Platero explains that left-wing parties had to take on medical diagnosis as a way of validating the identity of trans people. Even though the addition of ‘medical diagnosis’ seemed like the solution to gain credibility for a trans law, it still impacted the number of trans people who could change their gender on documents as not all people have the time and resources to obtain a medical diagnosis. This does not even include minors who might not have the support from family or transportation to get to a medical authority in order to gain a diagnosis. Overall, Platero makes great points about the process and decisions political parties and organizations had to make in order to pass Law 3/2007 and how that determined the rights trans people could access after the passing.

Healthcare

Healthcare is an important member of the Transgender experience as many Trans people undergo gender affirmative procedures and before Law 4/2023, it was a requirement when attempting to change one’s sex on IDs (passport, driver’s license). In the research article, “A qualitative study of the healthcare experiences of transgender people in Barcelona” published in

⁵ United Left

⁶ Republican Left of Catalonia

2022 by a group of researchers, they explore the different encounters Trans people have had with medical professionals. Interestingly, this article was published in 2022, a year before the passage of Trans Ley 4/2023, and another big problem in the Trans community was the requirements to change one's name, again highlighting the major issues that Law 3/2007 created. This article provides anonymous testimony from Trans folk across Spain and their poor experiences with medical professionals, spanning from feeling judged for their identity to receiving hateful and ignorant comments. Many who recount their stories in the interview admit to avoiding medical treatment because of previous bad experiences in clinics and hospitals. Perspectives from Trans people and medical professionals were collected in this article, offering the point of view of hospital workers and the experiences they have had interacting with trans people. In many interviews, medical personnel address that there is a lack of knowledge about the trans experience from their [doctor/nurses] point of view and that this leads to ignorant behavior. A Trans interviewee says that it feels like they [Trans people] are forced to learn to withstand ignorance/harassment, and continue to expect no accountability or learning from the medical providers side. Throughout the material I read for this topic, none touched on the hurdles that Trans people go through at locations that are supposed to offer them help. An issue that I will go more in-depth on later in this essay, is the long wait times for gender-affirmative procedures surgeries,⁷ and psychological services. The writers bring up that there are long wait lists for medical and psychological services that are offered to the Trans community, forcing people to travel outside of the country/continent to receive this help elsewhere quickly and affordably. There is no mention of the long wait times for these services that are constantly advertised to Trans folk, revealing yet another problem between fake advertising of help and reality. In summary, this essay does an amazing job of conveying hindrances for Trans folk and using Trans

⁷ Later in this essay, I present statistics for average waiting times

voices, instead of public officials, to talk about their problems firsthand without someone else talking for them.

Methodology & Organization

This research paper has a mixture of Quantitative and Qualitative research methods, as I investigated Trans legislation through official Spanish documents, gathered information on Trans social perceptions through news articles and peer-reviewed papers, and read through medical papers/journals about trans medical care. For the qualitative area of research, I read through journals and papers written from a trans perspective and I spoke to experts in the area of LGBT+ legislation by interviewing a local LGBT+ organization in Spain. That allowed me to get personal anecdotes from an expert in LGBT+ laws and obtain more information about issues trans people face that are not written or talked about as frequently as other issues.

I began this investigative journey by first scouring for news articles and Trans legislation, such as Trans Ley 03/2007, to form a template of the laws and sentiment around Trans identities in Spain. Then, I proceeded by setting up a timeline of Trans legislation reading on the journey of Trans activism from the 20th century to the current day, and reading about the hatred and discrimination faced by trans people during Franco's regime. A major part of this project's creation was spent reading and analyzing the transformation of Trans activism and legislation in the past 50 years. In the qualitative section of my research, I interviewed an attorney at an LGBT+ organization in Spain. Through the help of my faculty advisor, Gorka Urrutia Asua, I was able to get in contact with a nearby LGBT+ organization and ask questions about Trans legislation and public opinion about Trans people. The ethical component of this project; I obtained informed consent from all participants in this research, explicitly stating that I would use their testimony in my research paper and giving the option of anonymity or going under an alias. Additionally, the option to withdraw from participating in the interview was always an

option at any step of the process. For the interview, I prepared questions before, with some being written in Spanish and others in English. I translated all the questions and I will include the following questions below...

Questions for Interview:

- 1) *How have you seen the impact of transgender rights legislation (specifically Law 4/2023) on the lives of trans individuals?*
- 2) *Have you observed any specific changes in the healthcare services available to transgender individuals since the passage of relevant legislation?*
- 3) *In what ways has transgender rights legislation influenced societal attitudes and perceptions towards transgender people in Spain?*
- 4) *Are there any gaps or shortcomings in the current legislation that you believe need to be addressed today or in potential future Trans laws to better support transgender individuals?*
- 5) *Can you provide examples of any successful initiatives or programs that have been implemented as a result of transgender rights legislation?*
- 6) *Do you know of any problems Trans people have had when attempting to access gender affirmative care?*
- 7) *What are the biggest issues that Trans people face in Spain today?*

Results

After speaking with a member of an LGBT+ organization in Basque Country, I was able to learn a great deal about the difference between Law 4/2023 and past Trans laws in autonomous regions. To explain more about autonomous regions, there are seventeen

autonomous communities in Spain, each having broad political and administrative freedoms, allowing them to create laws for their regions. Fourteen of the seventeen autonomous communities passed out Transgender laws to mitigate the discrepancies and problems in Law 3/2007, effectively pushing out protections for their Trans residents. Autonomous communities like Euskadi (Basque Country) had an obligation to assist their Trans community through their Organic Law 3/1979, where government officials and authorities had an obligation to assist if any discrepancies in the legal system impacted the fundamental rights of their citizens. The interviewee explained that even though there were setbacks with Law 3/2007, most autonomous communities ruled out Trans protection laws and even created more rights, such as free access to medical care for Trans people, to better assist the community. She mentioned the recent passage of Ley 4/2024 in February, which included anti-harassment/discrimination clauses and healthcare provisions to put Trans people on equal footing as other citizens. The interviewee clarified that any Trans person in Basque Country, regardless of immigration status, or social background was entitled to free gender-affirmative surgical and medical care, including therapy services.

Limitations

The limitations I had throughout the research of this topic were finding Trans folk to interview as there was a one-month time limit for this project and the fearsome individuals had of being interviewed anonymously. Furthermore, the LGBT+ organization I interviewed is located in Northern Spain, which differentiates greatly from other regions of Spain. The experiences of Trans folk in the North may differ considerably from someone in another region, such as Andalucia (Southern Spain). Another limitation I wanted to add was my experiences as a Trans non-binary person from the United States are so different from those here in Spain, so

comparison of the American Transgender legislation system and experience cannot in any way be compared to those of Spain. For the duration of my research, I had to constantly rewire my thinking and knowledge to that of Spain. In response to the question, “What are the biggest issues that Trans people face in Spain today”, she responded that she believes that discrimination and harassment against Trans people was on a low because of how it is commonly accepted across Spain, but that there were problems for Trans immigrants changing their name and gender on official documents if their country of origin does not allow it. She explained that Law 4/2023, in article 50 says that immigrants can change their gender and name on passports in Spain, but it does not give any guidance on how to do that, and in the current day, there is no clarification on how to do that. To summarize, the interviewee stated that Law 4/2023, “Es bastante completa”, and that in the crafting stages of the law, there was a lot of dialogue between Trans and LGBT+ organizations with legislators and lawmakers to make sure that everything essential was included.

Body

Spain has made significant progress with their Transgender laws in recent years and it has impacted the lives of Trans folk not only through acknowledging their existence, but also protecting them as individuals. Throughout the readings, we have been able to catch prominent issues for Trans folk caused by Trans Law 3/2007 and how Law 4/2023 was able to correct many of those problems. The passing of these bills has not only created protections for Trans individuals, but also exposed Spaniards to acceptance of Trans people. In spite of these protective laws, there has been a global rise in Transphobia and Transphobic lobbying, even in Spain and especially in autonomous communities with a conservative majority. The passing of Law 4/2023, has pushed many conservative and Transphobic organizations/groups to try to revoke the bill. When finding reading material about Law 4/2023, I found many blatantly Transphobic articles that created fake scenarios where men would change their sex in order to win a custody battle or that men would start identifying as a woman to enter women's restrooms with malicious intent. All made up scenarios that have zero backing behind them, and honestly exhibit misogyny and transphobia. Numerous of those imaginary scenarios came from men posting online that they would change their gender for better opportunities since it was "so easy", however there is no evidence that they ever did so. Right wing parties leaned into those "concerns", and far right wing party, Vox⁸ latched onto these scenarios and blew them out of proportion to fearmonger voters into opposition of the law. Conservative parties gained much support amongst each other to put a stop to law 4/2023 and in Madrid, government majority Partido Popular voted and passed the partial repeal of Law 4/2023 with support from other conservative parties in Madrid's government. This occurred when Madrid's regional assembly

⁸ Vox is an infamous right wing party in Spain known for their traditional values and harassment of women and the LGBT+ community

passed a proposal, in December, 2023, which gave Partido Popular the power to revoke protections from Law 4/2023 in Madrid. The exact components that were revoked are decriminalizing the harassment of people based on their sexual orientation or gender identity and not making it a punishable offense to beat someone without causing injury based on their sexual orientation or gender identity. When asking my interviewee about Madrid's repeal of Law 4/2023, she responded by saying that it is an illegal move to partially revoke rights from a national law and that organizations are tackling this by questioning the legality behind it. The public reaction to the partial removal of Law 4/2023 was confusion as to the legality of Madrid's conservative parties, the same sentiment as what my interviewee expressed. Más Madrid, a progressive political party in Madrid, has passed this legal grievance onto the Spanish Constitutional Court, in order to reverse this illegal action taken by Madrid's conservative parties. Despite these attempts by conservative parties to undermine Trans rights, there has not been an increase in hate crimes or harassment against Trans people, in fact, Spain has one of the lowest rates in the European Union according to a European Commission study on LGBT+ equality in the EU. Even so, to get to that point, Spain has worked hard to introduce anti-harassment laws to protect their Trans citizens.

A big issue for the Trans community was harassment in work environments and unfair firing, to which LGBT+ organizations and allies championed to get criminalized. Through the interview I mentioned earlier, I was able to learn about the passage of Anti-Discrimination Law 15/2022⁹, that included a clause for gender/gender identity. To be more specific, it criminalizes unfair employment practices into the law, limiting employers from dismissing/firing someone

⁹ Spain: The new comprehensive Law for equal treatment and nondiscrimination also applies to employment. (2022, July 15). Garrigues. https://www.garrigues.com/en_GB/new/spain-new-comprehensive-law-equal-treatment-and-nondiscrimination-also-applies-employment

because of their gender/gender identity/sexuality/health condition. Adding more protections for the Trans community and creating a safer work environment for Trans folk with the fear of retribution for discrimination. Legislation is the best protection the government can afford for any marginalized groups, along with enacting the laws and upholding them. Spain, despite the problems with Madrid's government, has introduced many protection bills for the LGBT+ community, that even those not covered by the national government, were passed by autonomous communities. Leaving no stone untouched in harassment and essential rights departments.

As far as medical care for Trans individuals, Law 4/2023 included requirements for health & medical facilities to make their services accessible to Trans people. That addresses the problems Trans folk have had with medical providers as written about in the research article in the literature review. Additionally, the medical affirmation requirement removal for ID sex change gives Trans people the option if they want to undergo medical or surgical affirmation. In speaking with my interviewee, autonomous communities like Basque Country have their own regulations on medical care/psychological therapy for Trans people. In the past, if a Spanish citizen could not access care in their region of Spain, they could go to an autonomous community that had those rights and receive care there. With the passage of Law 4/2023, it has criminalized discrimination in medical centers against Trans people. Providing another layer of protections for Trans people.

Conclusion

Researching Transgender legislation in Spain has opened my eyes to accessibility and discrimination problems in the European Union in comparison to the United States. It has also helped me gain awareness about the ways that laws can protect and create safety and security for marginalized communities. To answer my research question, “How has the passage of transgender right’s legislation impacted the care and social perception received by trans individuals in Spain,” Transgender laws have done a lot to push for greater social acceptance in Spain’s public and broken down previous medical barriers to Trans folk. Their laws have ensured the safety of Trans people in the country and created opportunities for growth in Spain. In collaboration with the laws, Spain has moved towards more acceptance in public places for Transgender people to fully ensure their safety/equality. In speaking to a member of an LGBT+ organization in Spain, I was able to learn about the past struggles that Spanish Trans people faced and the ways that the Spanish government and autonomous communities have tackled the deficiencies in their laws. Not all has been easy for Transgender Spaniards and when Spain passed Law 3/2007, it took great advocacy by Trans people and LGBT+ organizations to correct the mistakes of Law 3/2007 and to later introduce one of the best Transgender laws in Europe, Law 4/2023. Though, Spain is a great example for nations to follow in the steps of, for bettering the lives of their LGBT+ citizens and providing them necessary protections.

Spain still has problems that need to be addressed, such as creating a way for Transgender immigrants from countries that are not accepting of the LGBT+ community, to change their gender and name on official documents. Another serious issue is Madrid’s conservative government attempting to override the national government and deny the rights

granted in Law 4/2023. These are big thorns in the Transgender movement in Spain, however as previously seen with the construction and passage of Law 4/2023, there is a lot of promise in the government addressing these problems and finding ways to tackle and solve them. The passage of Law 4/2023 was a marvelous feat for the Trans community of Spain and worldwide, creating a template for other countries to follow and a safe country that Transgender folk can flee to that will accept their identity. Previously, Spain was seen as a greatly conservative country due to the Franco regime, and in the past century, Spain has created a new name and legacy for itself. Spain is truly a unique case with their LGBT+ protections and I hope it continues to uphold a positive light by protecting the LGBT+ community and marginalized communities across the country. This topic is important to address because we should be setting an example for future generations, the young should not be fearful of coming out and being who they are. It is also important for the older generations who were not afforded these rights, to give them a second opportunity to be supported and protected by the government and society. Trans rights are human rights.

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