From Categories to Inclusivity: How Public Institutions Are Positioned to Serve the Transgender Community

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Abstract
The current climate and public debate on civil rights and people who are transgender require a macro analysis of the history, values, norms, and public policies that have influenced discriminatory practices over the past 100 years. Challenging oppression is not new to the government, or to our culture. Public institutions are grounded in values of efficiency, effectiveness, and equity. From federal-level guidance to front-line work practices, public administration is positioned to meet the needs of the transgender community through inclusive policies and practices that move services and programs, including academic access, beyond categories. Public policy and administration scholars have a long history of observing and understanding what makes government work best, for whom, and under which conditions. Therefore, this article provides a brief overview of the literature on public administration as it relates to equity. A discussion of theoretical frameworks, including participation of marginalized community members and networks, is offered to help identify new directions in addressing the needs of citizens who do not fit prescribed classifications.
Introduction
Effective research and practice in public administration at all levels and from all perspectives is integral to address complex social conditions (Guy and Rubin, 2015). Emerging issues such as the globalization of the world economy, rapid advances in technology, and civil rights for increasingly diverse communities require responsive and deliberative governance. The elements that make public administration uniquely suited to addressing distinct challenges are grounded in values of effectiveness, efficiency, and equity (Frederickson, 1990 and Gooden, 2014). “Better administration means better government” (Guy and Rubin, 2015, xiv) for everyone, including people who are transgender. This article offers an ethical inquiry into discrimination in public services, from safety to restrooms. A discussion of cultural norms and values that shape the lens of administrators at federal and local levels will follow, as well as discussion of how these narratives, texts, discourses, and symbols may impact public policy and service provision. Strategies for engagement, understanding, and dialogue to identify and eliminate transphobia will be offered. A final goal of this analysis is to expand the political and social boundaries of an evolving public administration so that it can design and deliver inclusive policies and services for the transgender community.

Discrimination: An Ethical Inquiry
Public policy and transgender status intersect in many legal and administrative areas, including crime — notably hate crime — employment, and marriage. However, public policies to address concerns of the transgender community lack coherence and an understanding of the population’s needs. At the same time, it is also important to recognize that intra-group variation exists (Taylor, 2007). Although awareness of transgender issues has increased over the past decade, targeted violence and discrimination continue to affect the community (Minter and Daley, 2003). Christopher Leman (2002) argued that one of the central tools of government includes policing to increase safety and security through the use of legitimate force. However, the limited research available reveals low reporting rates to law enforcement in the transgender community, although members of this community experience high rates of sexual assault due to marginalization and transphobia, or fear of people who do not identify with their biological sex. Troublingly, a 2004 national survey on sexual violence within the transgender and SOFFA (Significant Others, Friends, Family, and Allies) community, found that 5 percent of respondents pointed to assaults committed by police (Forge-forward, 2004). Looking at employment and marriage public policies, workplace protections have been inconsistently applied across states, although people who are transgender commonly face employment discrimination. Nevertheless, discrimination claims can be made in cases of gender non-conformity or not subscribing to traditional gender stereotypes, as in Price Waterhouse v. Hopkins, 490 U.S. 228, 250-51 (Koch and Bales, 2008). Finally, although scholars (Sharpe, 2012) have argued that such laws are discriminatory and a breach of privacy, people who are transgender are required to disclose their “gender history” prior to marriage under Section 12 of the Matrimonial Causes Act 1973 as amended by the Gender Recognition Act of 2004. If this information is not disclosed, the marriage can be dissolved (Sharpe, 2012).

Due to ongoing bias and transphobia, supported in part by gender role assumptions in U.S. culture, government has a critical role in ensuring equitable access to needed services. In 1968, George Frederickson forwarded social equity as the “third pillar” to the tenets of government effectiveness and efficiency that “comprehends an array of value preferences, organizational design preferences, and management style preferences,” and noted that “social equity emphasizes responsiveness to the needs of citizens rather than the needs of public organizations” (Frederickson, 1990, p. 228). Susan Gooden (2014) described social equity as fairness applied to all citizens, not just to select groups or populations. Concurrently, the organizational value of public justice supports the equitable delivery of public goods and services. This value may be seen in such efforts as the Justice Department’s Civil Rights Division, which recently issued a notice to North Carolina instructing it to not comply with a law that prohibits transgender people from using bathrooms that do not match the sex listed on their birth certificates (Reilly, 2016). The serious impacts of limiting access were shown in a recent study (Seelman, 2016), which demonstrated that college students were at a higher risk of suicide when denied the right to public facilities consistent with their gender versus biological sex. Issues of bathroom use, privacy, differential treatment, and public policy are not new. First, bathrooms were segregated by sex to ensure separation between men and women in the 1800s, a time of heightened privacy concerns for women in public spaces. Also, Jim Crow laws famously segregated public restrooms until overturned in 1954, although discrimination continued. Public bathrooms were not required
by law to be large enough for wheelchairs until 1990 (“It’s not the first time…” CNN, 2016).

As Frederickson first postulated in 1968, public services are “Well managed for whom? Efficient for whom? Economical for whom? We have generally assumed in public administration a convenient oneness with the public” (Frederickson, 1990, p. 228). This oneness suggests implicitly defined categories, with citizens expected to fit into pre-conceived cultural norms and values. “It is of great convenience, both theoretically and practically, to assume that citizen A is the same as citizen B and that they both receive public services in equal measure” (p. 228). Inter- and intra-group variability exists across all populations, and policies must be comprehensive and adaptive to community needs. Likewise, Birkland (2001) maintained that political scientists have long realized that government is neither monolithic nor neutral in understanding, creating, and implementing its policies. Gender roles, similar to other categorizations, are distinct and rigidly guarded through ideology, narratives, language, symbols, discourses, and texts. Public policies are shaped by these forces, and ultimately define and deliver values through goods and services (Schneider and Ingram, 1993). Additionally, sex categories are employed to convey legal rights established through federal and state regulations and court decisions (Taylor, 2007).

With public services historically, socially, and symbolically dependent on gendered categories, the government sector can serve as an innovator in converting how goods and services are made available to the transgender community. As a core value of governance, civil rights must be afforded to all, no matter where citizens lie on the gender continuum (Taylor, 2007). Furthermore, there must be recognition that discrimination is antithetical to the values of equity and justice. Leman (2002) also offered that centralized governance works most effectively in implementing redistributive policies based upon equity. Since public administration cannot be disengaged from political processes (Sayre, 1958) or cultural influences, leaders must uncover and understand the unique challenges faced by their community. At a minimum, policy implementation and agency-level procedures should be inclusive of the needs of all citizens. What are some of the barriers to resources that administrators can identify and remove, from public bathrooms to public safety, and from employment to healthcare? Do services themselves need to be altered to fit the psycho-social and physical needs of people who have transitioned their gender? Effective changes to administrative practice to address these concerns will ultimately need to be both structural/institutional and practical, incorporating the day-to-day lived experiences of people. For example, managing trepidation or perceived threats to defined gender roles among public servants is critical to ensure equity in service delivery. Expanding the boundaries of language and discourse, gender identity is measured by scholars (Eyler and Wright, 1997) as a continuum between male and female. By applying Gooden’s (2014) model of race discussion to active and intentional dialogue on the gender continuum, the intensity of transphobia may be reduced. In turn, this shift in organizational culture could mitigate discriminatory practices in resource distribution and service delivery.

The Relevance for Public Administration

Bureaucrats and administrators exercise both value choice and discretion in policy-making and implementation (Sayre, 1958). Agency-level policies and procedures outline and constrain implementation. Additionally, bureaucratic discretion impacts service delivery to people who are transgender, as with other populations. Michael Lipsky (1980) delineated the process by which street-level bureaucrats apply and distribute resources based on structural demands, such as how a population is defined. With high caseloads and limited resources, citizens who are not easily placed into known populations may be ignored, or worse, made the targets of discrimination as front-line workers “perform as agents of social control over society’s marginalized classes” (Goodsell, 2015 p. 23). Even when blatant transphobia is not recognized among public employees, administrative evil may operate to impact public employees’ treatment of the transgender community. In this phenomenon, individuals engage in or contribute to evil actions without realizing they are doing anything wrong. Believing their actions to be “just following the rules” further complicates awareness of malicious intent. Hubris could also be at play, whereby people exhibit an inflated sense of pride, thinking that how they treat others outside the norm spectrum is moral or righteous. For some, people who are transgender may be viewed as being less than human. To counteract administrative evil, it must be brought to light and confronted with accountability measures designed to effectively eliminate it from organizations (Adams and Balfour, 2014).
More positive views of bureaucracy as it relates to services delivery were generated by James Perry and Lois Wise (1990). These scholars designed a survey used in more than 150 studies (Goodsell, 2015) of public service motivation among public workers. Survey results showed a positive correlation between scores on numerous rational, norm-based, and affective factors and the desire to work for the government. Of relevance to resolving discrimination are the variables of commitment to civic duty, personal compassion, and willingness to sacrifice self-interest. Even more compelling is their statement that, “Public service motivation is most commonly associated with particular normative orientations — a desire to serve the public interest, loyalty to duty and to the government as a whole, and social equity” (emphasis added, Perry and Wise, 1990, p. 369). Public administrators who internalize these characteristics and values may demonstrate greater openness and flexibility to policy changes designed to reduce marginalization and discrimination in the transgender community.

Heightened litigation against the public sector is challenging the current climate of exclusion and marginalization across government services, and at the same time seeking to redress claims of inequity. As a result, administrators should institute “environmental scanning on transgender-related policy” (Taylor, 2007, p. 834) and heed lessons learned from other federal, state, and local sectors. R. Douglas Arnold (1990) might recommend that policy-makers join forces with coalitions, integrating experts in transgender research and practice to inform their decisions in weighing policy alternatives. Policy-makers could also apply rational decision-making, favored by Harold Lasswell, in understanding how politics determine “who gets what, when, how (1950).” An analysis of the costs and benefits of selected options should be completed based on feedback and information provided by members of the transgender community. Lasswell’s stages model included collecting information on the problem, formulating solutions, prescribing preferred alternatives and invocations, implementation, appraisal, and revision or termination. However, information or access to the population’s concerns may be limited due to marginalization or fears of participating in policy discussions or research. In this case, an incremental approach may be more prudent. This method would use successive, limited comparisons, based on prior experience with other populations facing barriers, thereafter comparing and evaluating new proposals (Lindblom, 1959). Alternatively, a mixed method of scanning the environment from a narrow lens and broader sweeping analysis could be applied, as with Ezioni’s approach (1967). Multiple projects could be attempted and compared across a list of goals ideally generated from within the transgender community.

With proposals at the ready, a triggering device (Cobb and Elder, 1982) may permit the issue of marginalization to rise and become part of the systematic policy agenda. For example, the recent North Carolina law on bathrooms assigned by sex has heightened public debate on whether the legislation amounts to discrimination (Berman, 2016). Transition of a societal condition into political awareness of a problem is an important step in public policy agenda setting. If the problem is not on the agenda, alternatives to address the issues will not be developed or implemented. The public must also view the condition as being within the government’s scope to resolve. Recently, a Texas judge issued an injunction to block the Obama Administration’s guidance on transgender students (de Vogue, 2016). Thus, some view this issue as one that would be best handled by individual states and local policy rather than federal intervention. As with other social and political issues, many proposals are and will be based on a spectrum of personal interests and values that could be offered by groups on both sides of the debate (Kingdon, 2011).

Cohen, March, and Olson (1972) generated the “Garbage Can Model” to provide a theoretical framework for understanding how policy preferences are influenced by fluid and complex problems, solutions, participants, and choice opportunities. Problems may seek out solutions and vice versa; decisions could be made once an issue becomes part of an open discourse. Additionally, decision-makers may search for a problem, solution, or the opportunity to simply be part of the process. Once a tipping point or diffusion of ideas is reached, a policy window may open so that streams of problems (discrimination and inequity), policies, and politics merge to allow a policy proposal to reach the agenda and potentially enable lasting impacts. This coupling is more likely to occur when the timing and political conditions are favorable to the policy issue. In addition, having a skillful entrepreneur who effectively communicates the issues and solutions is critical to secure a place on the agenda. Groups also have varying access to key decision-makers and may leverage this access to increase the visibility of issues about which they care. With systems and resourc-
In addition to empowering the Polis to initiate change, governmental leaders and agency-level administrators are well positioned to steer service providers away from a place of “nervousness” (Gooden, 2014) to an appreciation of the multicultural mosaic inclusive of a continuum of gender identities. Within organizations, cultural audits can be conducted to diagnose current viewpoints and concerns; to explain the need to alter the way services are delivered; and to espouse the values desired by the leadership (Gooden, 2014). These values should include equity, efficiency, welfare, liberty, and security. Persuasion is made through enlightenment, or by helping people understand the impacts of marginalization; and through indoctrination via training and programming. People tend to react more readily to previously held beliefs, such as fear or misunderstanding of the transgender community (Stone, 2012). As a result, managing and revising rigid beliefs necessitates a long-term leadership strategy.

While cultural change requires energy, time, and commitment, addressing matters of civil rights is certainly not a novel challenge for public administrators. For example, President Johnson’s “Great Society” programs of the 1960s sought to expand social and economic inclusiveness. Although the civil service was slow to acclimate, shifts occurred through increased training and networking. Likewise, the judiciary affects public service inclusion through its decisions, such as opening or closing the doors to people of all sexual orientations (Newland, 2015). Although lessons may be learned from the experiences of policy entrepreneurs who have successfully advocated for change within the gay, lesbian, and bisexual communities, policy-makers should not necessarily conflate issues of LGB and transgender communities. Challenges and policy preferences for both communities are diverse and not necessarily congruent (Taylor, 2007). With a decades-long history of institutionalizing rights and privileges for diverse communities, the public sector has the power and the means, through policy and administration, to effect change.

To supplement the provision of services designed to meet essential needs, non-profits may be relied upon, as they could offset resource disparity until redistributive policies are developed at the federal, state, and agency levels. A beneficial feature of non-profit organizations is the demonstration of clear mission attachment. To encourage commitment in the public-service sector, agency leadership must emphasize the importance of bureaucratic
contributions to delivering inclusive resources to all citizens. This communication should foster a sense of efficacy among public employees. Internal dissent within the bureaucracy, such as debate on how to best serve the transgender community, could also lead to innovation (Goodsell, 2015). The federal government currently collaborates with thousands of non-profits across many sectors to meet national goals. Forge-Forward receives federal funding through the U.S. Department of Justice to assist members of the transgender community, their families and allies (SOFPA), and service providers. The organization also receives funding to conduct research, where many gaps remain.

Conclusion
Through active dialogue and the confrontation of underlying assumptions, stereotypes, and the experiences of people who are transgender, more citizens will have access to justice, security, freedom, and equality. These are core values of the public administration's institutional framework. Moving from categorization to inclusivity requires an understanding of the external environment, including the political, legal, economic, and moral triggers that lead to policy change. At an organizational level, administrators must be both direct and indirect in communicating values, defining acceptable boundaries, and demonstrating intolerance for discrimination and exclusion (Gooden, 2014). The Polis, or community, must be empowered to advance its concerns and fears, material and immaterial needs, and desired policy solutions (Stone, 2012). Advocates and community leaders who have experience in addressing the needs of people who are transgender require resources, including federal and state funding and access to policy decision-makers, to advance the interests of people who are transgender. Finally, public administrators should work in collaboration with these experts to remove barriers and promote inclusive service delivery for all citizens, regardless of where they fall on the gender continuum.

References


