

## Policy Making and Laws Against Transphobic Crimes: Italy vs. USA

Item Type	Thesis
Authors	Danna, Chiara
Citation	Danna, Chiara. "Policy Making and Laws Against Transphobic Crimes: Italy vs. USA". BA Thesis, John Cabot University, Rome, Italy. 2022.
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Link to Item	<a href="https://hdl.handle.net/20.500.14490/50">https://hdl.handle.net/20.500.14490/50</a>



## **John Cabot University**

Department of Political Science & International Affairs

Bachelor of Arts in Political Science  
Minor in Legal Studies

Policy Making and Laws Against Transphobic Crimes: Italy vs. USA

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Spring 2022

## **Abstract**

This study aims at finding better solutions for the protection of the LGBTQ+ community, more specifically transgender people, from hate crimes they are constantly subjected to, through the usage of inductive research with an interpretivist approach, using qualitative research methodology, analyzing the experiences of the people involved and how it was perceived. To better answer the research question of “how effective are the policy making and laws in deterring transphobic crimes in Italy and USA?”, this thesis will be divided in four sections: historical analysis of the countries’ judicial advancements, definition of specific theories and terms, analysis of specific case studies of transphobic crimes and proposal of potential solutions. Moreover two cases of transphobic murders are going to be analyzed, one for the US and one for Italy, providing also a legislative and judicial outcome and explanation. Lastly, the conclusion will be composed by possible solutions and recommendations for the future.

## **Dedication**

I would like to dedicate this thesis to my parents, who made a great number of sacrifices in order for me to obtain a proper education in the university I have always dreamed of.

## **Acknowledgements**

I would like to express my gratitude to Professor Isabella Clough Marinaro for the continuous support and help received, as well as for her patience and incredible knowledge that She kindly shared with me. I would like to thank also Professor Benjamin Lee Scribner for the encouragement and insightful comments.

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### **List of Abbreviations**

IPV

Intimate Partner Violence

T-IPV

Transgender Intimate Partner Violence

## Introduction

Transphobia-based hate crimes are incredibly still a very prominent issue even in modern times, transgender people suffer a great amount of discrimination and violence. Their struggles with being recognized for their chosen identity have been made of public concern and they are fighting on a day-to-day basis to obtain the rights and respect they deserve. However, before analyzing the topic deeply, it is important to first explain what transphobia really is. The term transphobia refers to the fear or hatred of people whose gender does not align with their biological sex or whose gender identity does not align with traditional gender roles, and this discrimination can take many different forms such as: prejudice against transgender people, an irrational fear, not respecting the person's preferred pronouns, derogatory language and even abuse<sup>1</sup>. All of these different forms of discrimination then may turn into actual segregation as they may be denied jobs due to their identity, they may be denied entrance to the restrooms of the gender they identify as and therefore confined in uncomfortable situations, they may even be denied basic healthcare and housing.

The reason why it is so important to discuss such topic in the present day is because recently the Italian Senate decided not to pass the DDL Zan, a law that had already passed through the House of Representatives and that could have changed the quality of life of the majority, if not all, the LGBTQ+ community, but also women and disabled people's quality of life. This law is going to be presented and analyzed thoroughly in the chapter of the Historical Overview, however it is important to provide a general introduction of what it entails. DDL Zan

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<sup>1</sup> Parenthood, P. (n.d.). *What's transphobia?: Facts about transphobic discrimination*. Planned Parenthood. Retrieved May 9, 2022, from <https://www.plannedparenthood.org/learn/gender-identity/transgender/whats-transphobia>

was supposed to be a law that ensured stricter sanctions and punishment for those who committed hate crimes towards the LGBTQ+ community, women and disabled people, it was supposed to be also instituting a National Day against homophobia, lesbophobia, biphobia and transphobia<sup>2</sup>. The rejection of this law entails serious consequences on the Italian social and judicial scene, it is a significant step back for the Italian government as its citizens do not feel safe expressing their identity freely due to the lack of protection. However, after introducing the rejection of the DDL Zan in Italy, the question that arises is how effective are the policy making and laws in deterring transphobic crimes in Italy and USA?

### **Methodology**

This thesis will follow inductive research with an interpretivist approach, through qualitative research methodology, analyzing the experiences of the people involved and how it was perceived. To better answer the research question, this thesis will be divided in 4 sections, them being an historical analysis of the countries' judicial advancements, definition of specific theories and terms, analysis of specific case studies of transphobic crimes and proposition of potential solutions. When it comes to the countries' judicial advancements, 4 examples will be presented for the US while 3 examples will be presented for Italy, comparing the speed at which both countries progressed, however still taking into consideration the different judicial systems. Moving on to the theories and terms, the two theories that will be presented will be one based on "Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion" by Talia Mae Bettcher and the other based on "Theorizing on the Roots of Transgender Intimate Partner Violence" by Adam Messinger. When it comes to terms used in this thesis, they will be briefly

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<sup>2</sup> *Cos'è il ddl zan e cosa ne pensa la gente delle ... - ipsos.* (n.d.). Retrieved May 9, 2022, from <https://www.ipsos.com/it-it/ddl-zan-opinioni-italiani-discriminazioni-genere>



explained in this section. The term transgender will be used to refer to those individuals whose gender does not align with their biological sex<sup>3</sup>. Gender Identity Disorder may be used to describe a condition in which an individual grows a strong dislike towards one's own gender<sup>4</sup>. The term transitioning refers to the process of changing one's own appearance to match the gender one identifies with<sup>5</sup>. Moving on to the case studies, the thesis will present one case for the US (Brandon Teena) and one case for Italy (Maria Paola Gaglione), analyzing how both countries dealt with the crimes and sentenced the offenders. Lastly, the conclusion will be composed by possible solutions and recommendations for the future.

## Historical Legislative Overview

This chapter is going to be mainly focused on the Historical Legislative Overview of the US and Italy, going more in depth on the lawmaking process and the social changes surrounding it, until finally arriving to the present day. This historical analysis and comparison of the lawmaking process in both countries will highlight how the social changes and culture affected the Laws and the overall development of the country, however still taking into consideration the

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<sup>3</sup> Talia Mae Bettcher. (2007). Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion. *Hypatia*, 22(3), 43–65. <http://www.jstor.org/stable/4640081>

<sup>4</sup> *Brandon v. county of richardson*. Justia Law. (n.d.). Retrieved May 9, 2022, from <https://law.justia.com/cases/nebraska/supreme-court/2001/022.html>

<sup>5</sup> Parenthood, P. (n.d.). *What do I need to know about the transitioning process?* Planned Parenthood. Retrieved May 9, 2022, from <https://www.plannedparenthood.org/learn/gender-identity/transgender/what-do-i-need-know-about-transitioning>

two different Legislation systems that certainly affected the outcome. US policies are going to be the first ones to be introduced and in chronological order, followed by the Italian ones still following a chronological order, to then conclude with a comparison.

### **Legislation in the US**

The first major advancement in Anti-discrimination policies in the US has been the Civil Rights Acts in 1964. This act was enacted on the 2<sup>nd</sup> of July 1964 and it is a revolutionary step towards the elimination of discrimination based on sex, race and religion, it forbids racial segregation in employment, public accommodations and schools, as well as forbids discriminatory application of voter registration requirements<sup>6</sup>. This legislation had actually been proposed a year earlier (1963) by President John F. Kennedy but it was quickly opposed by filibuster in the Senate, more specifically, by Southern members of Congress. However, after Kennedy's assassination, President Johnson pushed forward this proposal until the House of Representative passed it on the 10<sup>th</sup> of February 1964. The Senate eventually passed it, after a 54-day filibuster and it finally got signed by President Johnson in the White House on the 2<sup>nd</sup> of July 1964<sup>7</sup>. This act was revolutionary in many ways, it broke the workplace barriers as minorities were then able to find a legal way of sustaining themselves and their families, while in the past they were segregated and obliged to result in illegal affairs. Moreover, this act was

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<sup>6</sup> *Legal highlight: The civil rights act of 1964.* United States Department of Labor. (n.d.). Retrieved May 9, 2022, from <http://www.dol.gov/agencies/oasam/civil-rights-center/statutes/civil-rights-act-of-1964#:~:text=The%20Civil%20Rights%20Act%20of%201964%20prohibits%20discrimination%20on%20the,religion%2C%20sex%20or%20national%20origin.&text=The%20Act%20prohibited%20discrimination%20in,and%20the%20desegregation%20of%20schools.>

<sup>7</sup> History.com Editors. (2010, January 4). *Civil Rights Act of 1964*. History.com. Retrieved May 9, 2022, from <http://www.history.com/topics/black-history/civil-rights-act>.

considered as some sort of blueprint that inspired more American minorities to seek equality and fair access to resources. Even though this act was so progressive and revolutionary, society was still very far from equality, as discrimination and exclusion were deeply rooted in the socio-economic system<sup>8</sup>. However, it was a starting point for many social movements that started developing later, such as the National Transsexual Counseling Unit (NTCU).

The National Transsexual Counseling Unit (NTCU) was established in 1966 in San Francisco after the riot taken place at the Compton's Cafeteria. To better understand the reasoning behind the creation of this Unit, it is important to take a deeper look at the events preceding it. The Compton's Cafeteria riot took place in San Francisco in August 1966 and it was a reaction to the continuous police brutality and discrimination that transgender people were suffering from at the time. This riot can be considered one of the first revolutionary LGBTQ+ acts in the United States, preceding the Stonewall riot in New York City in 1969 that is going to be presented in the next paragraph. The Compton's Cafeteria was more a meeting place for transgender people rather than a restaurant, it would stay open all night and that became a place where they would meet after they were done "hustling" (doing sex work, as that was the only type of work they could do at the time, being discriminated everywhere else). However, the owners would often call the police to arrest them and deter them from going there, as "female impersonation" was a crime at the time. The Compton's Cafeteria riot started with a transgender woman resisting arrest while inside the cafeteria and protecting herself from the police officer by throwing a cup of hot coffee at him. This event was then followed by an escalation of police

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<sup>8</sup> *The Civil Rights Act of 1964: A long struggle for freedom exhibition items*. Library of Congress. (2014, September 10). Retrieved May 9, 2022, from <https://www.loc.gov/exhibits/civil-rights-act/exhibit-items.html>

brutality and a consequent violent response from the transgender women inside the cafeteria, so violent that the women started pouring into the street and fighting with the police officers that then called a backup. The women were fighting with all they had, throwing their heavy bags and defending themselves by using their heels as some sort of protection<sup>9</sup>. It was then again another episode of police brutality towards a minority group, however this one incident would then mark LGBTQ+ history and the history of civil rights. After this brutal riot occurred, a network of psychological, social, economic and medical services and aid for transgender people was established, that then turned into the National Transsexual Counseling Unit (NTCU), becoming the first peer-run advocacy and support organization<sup>10</sup>. However, Compton's Cafeteria riot was not the only LGBTQ+ riot that marked history, another important one is the Stonewall riot.

Stonewall riots were a series of rebellions started by the LGBTQ+ community in response to a police raid that happened at Stonewall Inn New York City in 1969. During the 1950's and 1960's, very few restaurants and bars welcomed the LGBTQ+ community and the few that did, were very often controlled by the mafia and organized criminal groups. As a matter of fact, Stonewall Inn was a gay bar owned by the mafia and it was often raided by the police, however on June 28<sup>th</sup> 1969 the police lost control over this particular one. On that Saturday morning, the police raided the Stonewall Inn and arrested the employees for providing alcohol with no license, then arrested the owners and anyone that was not wearing at least 3 items of clothing belonging to that individual's gender (according to a New York criminal statute that

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<sup>9</sup> *Screaming queens: The riot at Compton's cafeteria.* (n.d.).

<sup>10</sup> Pride, R. of. (2018, December 28). *National Transsexual Counseling Unit.* The River of Pride Flag. Retrieved May 9, 2022, from <http://www.theriverofpride.com/national-transsexual-counseling-unit/>.

authorized said reasoning for arrest). In the next few days, a number of protests took place and within a week the citizens started forming activist groups requesting equal rights and to live in tranquility with their sexual orientation, without fearing to be arrested<sup>11</sup>. After this series of events, newspaper started advocating for the LGBTQ+ community and requesting rights for them. The 1960's were not easy years for the LGBTQ+ plus community as they were just the beginning for many protests and battles for their rights, however real changes started to be seen towards the end of the 1990's and the beginning of early 2000's.

Legislative speaking, a very important change and progress happened in 2003 with the *Lawrence v. Texas* Supreme Court Decision. It can be considered a landmark case<sup>12</sup> as it banned the sodomy law all over the United States, legalizing same-sex sexual activity; the court in this case made it clear that consensual intimate sexual conduct is a right that must be protected and it is a liberty protected by a due process under the Fourteenth Amendment. Before this law, sodomy was punished through life in prison and fines, while in the 19<sup>th</sup>-20<sup>th</sup> century there were laws against anyone considered a “sexual pervert”<sup>13</sup>. The events that led to this case being so revolutionary happened while sodomy (no matter the sex of those involved) was still illegal in most of the States. On September 1998, John Geddes Lawrence Jr. was hosting two of his

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<sup>11</sup> Encyclopædia Britannica, inc. (n.d.). *Stonewall riots*. Encyclopædia Britannica. Retrieved May 9, 2022, from <https://www.britannica.com/event/Stonewall-riots>

<sup>12</sup> Legal Information Institute. (n.d.). *Lawrence v. Texas*. Legal Information Institute. Retrieved May 9, 2022, from [http://www.law.cornell.edu/wex/lawrence\\_v.\\_texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory.](http://www.law.cornell.edu/wex/lawrence_v._texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory.)

<sup>13</sup> Legal Information Institute. (n.d.). *Lawrence v. Texas*. Legal Information Institute. Retrieved May 9, 2022, from [http://www.law.cornell.edu/wex/lawrence\\_v.\\_texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory.](http://www.law.cornell.edu/wex/lawrence_v._texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory.)

homosexual friends, Tyron Garner and Robert Eubanks, at his house in Texas. Lawrence and Eubanks had been friends for years while Garner and Eubanks had an unstable relationship; after drinking too much, Eubanks had a jealousy outburst and left. On the way of leaving Lawrence's apartment, he called the police and claimed to have seen a black man acting aggressively with a gun at his friend's apartment, 4 deputies arrived and they claimed to have caught Lawrence and Garner in a sexual act. They were then arrested and charged with homosexual conduct but they pleaded not guilty, while Eubanks spent 30 days in jail for filing a false police report.

Subsequently, they pleaded no contest to the charges and asked for a trial, they then were found guilty and fined 100\$ plus the court cost of 41.25\$. This decision was a substantial change in LGBTQ+ history, as it struck down the anti-sodomy law as unconstitutional. The judge in the case then went on to say that the Constitution protects "personal decisions relating to marriage, procreation, contraception, family relationships, [and] child rearing" and that homosexuals "may seek autonomy for these purposes". Moreover, "the Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual", supporting the idea that the anti-sodomy law is unconstitutional and a breach of the Fourteenth Amendment. He then specified that "the present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter"<sup>14</sup>.

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<sup>14</sup> Legal Information Institute. (n.d.). *Lawrence v. Texas*. Legal Information Institute. Retrieved May 9, 2022, from [http://www.law.cornell.edu/wex/lawrence\\_v.\\_texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory](http://www.law.cornell.edu/wex/lawrence_v._texas#:~:text=Overview-.Lawrence%20v.,State%20and%20United%20States%20territory).

## Legislation in Italy

When it comes to Italian legislation, the first major advancement in Anti-discrimination policies happened with the introduction of law n.164 under Spadolini in 1982, that allowed transgender people to legally change their sex. Transsexuality was never really accepted in Italy, until the late 50's and early 60's when it started gaining visibility, however it still was illegal to engage into "transvestitism" (practice of dressing as the opposite gender is traditionally perceived)<sup>15</sup>. During the late 60's and 70's, transsexuality started becoming a political issue and gaining even more visibility, until 1982 when law n. 164 was implemented. This law was named "De Cataldo law" and it regulates the changes in sexual and personal identity on identification documents, making Italy the third country in the world to achieve that (after Switzerland and Germany)<sup>16</sup>. An issue with this law was that it did not allow the marriage to continue once one of the two spouses changed their sex, however a ruling by the Court of Cassation in 2015 made it possible for the automatic annulment of the marriage to be removed. The creation of this law was a turning point when it comes to social and political life, it signified some sort of victory by the Italian LGBTQ+ community<sup>17</sup>.

Another event that clearly marked the progress of Italian legislation when it comes to Transgender people's rights is the law on civil unions approved by the Senate, in 2016. Law n.

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<sup>15</sup> Encyclopædia Britannica, inc. (n.d.). *Transvestism*. Encyclopædia Britannica. Retrieved May 9, 2022, from <https://www.britannica.com/topic/transvestism>

<sup>16</sup> Prearo, M. (2020, June 30). *Italy's LGBT movement and interest groups*. Oxford Research Encyclopedia of Politics. Retrieved May 9, 2022, from <https://doi.org/10.1093/acrefore/9780190228637.013.1351>

<sup>17</sup> Voli, S. (2018, April 23). *(trans)gender citizenship in Italy: A contradiction in terms? from the parliamentary debate about law 164/1982 to the present: Modern Italy*. Cambridge Core. Retrieved May 9, 2022, from <https://www.cambridge.org/core/journals/modern-italy/article/transgender-citizenship-in-italy-a-contradiction-in-terms-from-the-parliamentary-debate-about-law-1641982-to-the-present/F0468420A92E75E9BEFA84841B1FDD31>

76, also called “legge Cirinnà”, introduced civil unions between two individuals of the same sex into the Italian legal system<sup>18</sup>. Civil unions are social formations declared in front of a civic registrar with the assistance of two witnesses, by two individuals of the same sex permanently tied by emotional and material support that characterize a couple<sup>19</sup>. However, differently from spouses, the obligation of fidelity does not categorize as a duty in the union<sup>20</sup>. Other benefits that this law provides when it comes to civil unions are that for instance, the partner can now be chosen as a support administrator for the other, visit them when hospitalized and have a decisional power when it comes to healthcare and health treatments of the significant other, as well as seek compensation if the other partner has passed away due to an external party<sup>21</sup>.

On that note, another law that could have permanently changed the LGBTQ+ community if passed through the Senate, is the DDL Zan. Before going more in depth on why this law did not pass, it is important to provide first a general explanation on what it truly is. DDL Zan tales

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<sup>18</sup> Giulia Gava Ciao, & Ciao. (2020, September 14). *Legge Cirinnà e successive conseguenze* - *dirittoconsenso.it*. DirittoConsenso. Retrieved May 9, 2022, from [https://www-dirittoconsenso-it.translate.google.com/2020/04/15/legge-cirinna-e-successive-conseguenze/?x\\_tr\\_sl=it&x\\_tr\\_tl=en&x\\_tr\\_hl=en&x\\_tr\\_pto=sc](https://www-dirittoconsenso-it.translate.google.com/2020/04/15/legge-cirinna-e-successive-conseguenze/?x_tr_sl=it&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc)

<sup>19</sup> Alessandra, di C., Canestrino, di M. A., & A.D.R., C. C. T. dell'omonimo studio. (2020, January 16). *Il Nuovo Concetto Legale di famiglia dopo l'approvazione della Legge N. 76 del 20 maggio 2016*. Diritto.it. Retrieved May 9, 2022, from <https://www.diritto.it/il-nuovo-concetto-legale-di-famiglia-dopo-l-approvazione-della-legge-n-76-del-20-maggio-2016/>

<sup>20</sup> *Altri Diritti*. La Voce del Diritto. (n.d.). Retrieved March 28, 2022, from <https://www.lavocedeldiritto.it/index.php/altri-diritti?start=135>

<sup>21</sup> DirittoConsenso. *Legge Cirinnà e successive conseguenze*. DirittoConsenso. Retrieved May 9, 2022, from <https://www.dirittoconsenso.it/2020/04/15/legge-cirinna-e-successive-conseguenze/>



its name from its creator, PD deputy Alessandro Zan and it involves a rise in strictness when it comes to punishing crimes related to homosexuals, transsexuals, women and disabled individuals. According to this law, these kinds of crimes would be equvalated to those in the article 604 bis of the penal code that involves racism and religious hate crimes, punishable with a reclusion of 4 years. Moreover, the DDL Zan would also institute a National Day against homophobia, lesbophobia, biphobia and transphobia<sup>22</sup>. However, this law was approved by the House of Representatives but not by the Senate. The reason why it was worth mentioning even though it is not an applicable law, it is because it could have drastically changed the Italian judicial system and its very conservative views, as a matter of fact, Italy in one of the countries with the highest index of discrimination (19%) according to FRA (European Union Agency for Fundamental Rights). The percentages show how 38% of the Italian LGBTQ+ community is scared to be holding hands with their partner in public due to a fear of aggression, while 92% feels like Italy is not doing nearly enough to protect its LGBTQ+ citizens and their rights<sup>23</sup>.

To sum up the main points of this chapter, both the US and Italy saw a clear progress when it comes to legislation, however, it is obvious that Italy is not quite so advanced yet. The government is obviously still very conservative and it reflects on the judicial system, as well as on the minorities groups and their rights. There is still a great amount of work to be done legislatively speaking but it seems like the new and younger political parties are putting an effort

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<sup>22</sup> *Cos'è il ddl zan e cosa ne pensa la gente delle ... - ipsos.* (n.d.). Retrieved May 9, 2022, from <https://www.ipsos.com/it-it/ddl-zan-opinioni-italiani-discriminazioni-genere>

<sup>23</sup> Foderi, A. (2020, June 23). *Perché l'Italia ha bisogno di una legge sull'omotransfobia.* Wired Italia. Retrieved May 9, 2022, from <https://www.wired.it/attualita/politica/2020/06/23/omofobia-italia-legge-zan/>

in proposing new motions and laws against ongoing discrimination. The Italian LGBTQ+ community does not seem so hopeful, as surveys show they feel like their governments is not doing enough to protect their rights, however the new generations may be the ones to be making equality finally possible.

## Theories

In this chapter, the theories behind transphobia-based crimes are going to be explored more in depth, presenting two well-known scholars and their take on the matter: Bettcher and Dr. Krusi's theories. Transphobia based crimes are a product of years and years of systematical racism and sexism, fueled by a system of violence and oppression and the theories of these two scholars are going to be supporting exactly this hypothesis. The first article that is going to be presented is "Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion" by Talia Mae Bettcher, however before going more in depth on the article it is important to provide a background on Bettcher and her work.

### **Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion**

Talia Mae Bettcher is a philosopher and professor of philosophy at California State University, Los Angeles. Her experience in the field of transgender people's rights come, first of all, from her own experience of being a transgender woman herself, but also from being involved in the transgender community and grass-root organizing in Los Angeles for the past 15 years<sup>24</sup>.

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<sup>24</sup> *Talia Mae Bettcher, professor and chair*. Cal State LA. (2018, February 12). Retrieved May 9, 2022, from <https://www.calstatela.edu/faculty/talia-mae-bettcher-professor-and-chair>

In her research article by Bettcher titled “Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion”, she examined in depth the stereotype very often used for transgender people of being "deceivers", as well as its role in promoting and “justifying” transphobic violence. Professor Bettcher then further explained how this stereotype derives from a contrast between gender presentation and sexed body, and how people who "misalign" the two are viewed as deceivers. Moreover, Bettcher says that rage due to being “deceived” may play a particularly key role in some transphobic aggressions, mixed of course with homophobic and possibly sexist attitudes. In addition to “contributing” to these aggressions, the stereotype plays a significant role in blame-shifting, meaning that the blame for the aggression shifts on the victim. Another factor that may be involved in transphobic violence is genital exposure as sex verification. As a matter of fact, in both of the most known murders of Gwen Araujo and Brandon Teena (mentioned and analyzed thoroughly in the next chapter) involved forced genital exposure as a method of sex verification, followed by actions of extreme violence culminating in murder. The main point here is that the reason transphobic representations of trans people as deceivers even exist is due to an appearance vs. reality contrast between the gender presented and sexed body. Along with this appearance vs. reality contrast is the view that genitalia are the only determinant factor of sex. While this view is essentially naïve and simplistic, the importance of genitalia in determining someone’s real sex, remains a central view dominating cultural and social mainstream views and concepts regarding gender in the United States. However, the argument that sex is the real factor in determining gender is quite hypocritical as even transgender people who have undergone genital reassignment surgery have still been categorized as deceivers. This “natural attitude” sees genitals as essential in determining sex and believes that sex itself is invariant, meaning that genital reassignment surgery entails the rejection of

either genital importance or the invariance of sex. However, those who believe in the “natural attitude” either believe that such surgery then constitutes a sex change (meaning that they reject their view that sex is invariant) or otherwise view gender identity as self-determining and therefore determinant of sex (meaning that they reject genital essentiality), either way it entails that a surgically transformed transgender person cannot be seen as a deceiver. Basic to the natural attitude is the tendency to ignore and shy away from counterexamples, judging them as "exceptional" and "abnormal." As a matter of fact, the two main topics of invariance of sex and the essentiality of genitals that are so important in relation to this argument, can be maintained by simply categorizing surgically assigned genitals as "artificial" and highlighting the truthfulness of birth genitals as the real determinators of sex. It is exactly because of that, that the application of the term "deceiver" to transgender people who have gotten genital reassignment surgery must also be seen and comprehended in terms of “a contrast between gender presentation (appearance) and genital status (reality)”. This contrast when met with the possibility of being or avoiding being visibly transgender, hide a very much dangerous double blind. This double blind unfortunately affects involuntarily the mentality of transgender people, as they are constantly told they are “constructed”. These stereotypes, if engrained in people’s minds, have an effect on how people behave and speak, leading to serious consequences, being: first, having one's life seen and constructed as fictitious and not real, second, failing to have one's own identification respected and accepted, and lastly but most importantly, being the subject of violence and even murder<sup>25</sup>.

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<sup>25</sup> Talia Mae Bettcher. (2007). Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion. *Hypatia*, 22(3), 43–65. <http://www.jstor.org/stable/4640081>

## **Theorizing on the Roots of Transgender Intimate Partner Violence**

Moving on to the next article relevant to this topic, “Theorizing on the Roots of Transgender Intimate Partner Violence” by Adam Messinger is more relevant towards a specific issue rather than proving a socio-cultural background to the phenomenon. However, before going more in depth with the topic, it is important to provide a background also on Professor Messinger. Adam Messinger is an associate professor of Justice Studies and Gender Studies at Northeastern Illinois University, there he researches and teaches IPV (Intimate Partner Violence) in LGBTQ+ couples<sup>26</sup>. As a matter of fact, in his book Messinger discusses the main successful efforts to prevent, intervene and address the negative effects of intimate partner violence (IPV). To achieve that however, he supports the idea that it is necessary to have a complete understanding of not only what IPV truly is, but also (and most importantly) on why it happens. Intimate partner violence (IPV) is “psychological, physical or sexual abuse in romantic and sexual relationships”, however, transgender people experience IPV in distinct way contrary to CIS people (people whose biological sex matches their gender identity). Cisnormativity (the expectation that all people are cisgender) and transphobia are the reasons behind many of the abuses that transgender people go through when it comes to romantic partners, mostly when it comes to controlling and shaming the victim, but they are also the reasons behind transgender people not wanting to come forward to report such abuse. Not only that, cisnormativity and transphobia also limit avenues of escape for transgender people and awareness of T-IPV, as a matter of fact 27% transgender people who experience IPV do not even label such experience as abusive, which limits the chance of receiving help. This phenomenon can be considered a public health threat and it is

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<sup>26</sup> *Adam M. Messinger*. NYU Press. (2019, February 21). Retrieved May 9, 2022, from <https://nyupress.org/author/adam-m-messinger/>

alarmingly prevalent, in fact in the US around 54% of transgender adults have experienced instances of IPV in their lifetime. It is clear that discrimination is at the core of IPV, whether resulting in enabling abusers to perform their control techniques or interfering with a possible escape. Even though IPV and T-IPV tend to produce different experiences when it comes to their victims, the negative effects that come from those experiences are fairly similar, such as the economic aspect. Many transgender people are unable to go to work due to the abuse, since they are forced to miss it or underperform and therefore resulting in losing the job and the economic independence with it. In addition to that, survivors start showing symptoms of depression due to the constant physical and psychological injuries. However, as mentioned before there are some differences between IPV and T-IPV, first ones being the causes, but also the abuse tactics and ways to escape. All of those are fueled by discriminatory abusers of course, but also discriminatory judicial systems, law enforcement and policies. However, discriminatory attitudes are not inevitable traits inherited biologically, rather systemic bias against transgender people arises when societies allow, justify and even encourage discrimination, often protected by laws designed to restrict the basic human rights of transgender people. Surely ending transphobia may not end T-IPV, but this prominence of discrimination certainly increases the vulnerability of transgender people to such abusive experiences and decreases their chances of escape<sup>27</sup>.

In conclusion, to reiterate the main points, at the basis of these two theories there is an obvious common denominator which is discrimination against transgender people. With these two authors it is clear how transgender people are constantly victims of violence, whether it is psychological (through being accused of being deceivers) or physical (through T-IPV), it is a

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<sup>27</sup> Transgender Intimate Partner Violence: A Comprehensive Introduction. (2020). United States: NYU Press.

generational systemic transphobia, engrained deeply in people's minds, that prevents transgenders from seeking the help they need and live their life according to the gender they prefer. Society is strictly based on cisnormativity and transphobic beliefs, making it already difficult to begin with for trans people to feel represented and safe.

## **Case studies**

As previously stated in the last chapters, this kind of actions derive from a rooted sexist and racist system based on violence and oppression, as the discrimination itself comes from ignorance-based stereotypes deriving from the contrast between gender presentation and sexed body that characterizes transgender people. In this chapter I will present two case studies, one from the US and one from Italy, this will allow me to compare how the two countries handled such hate crimes and how effective the legislation was. Taking into consideration that the countries have two different penal codes and legislation systems, I will compare, in the parameters that allow me to, the law enforcement response, the medical aid received and the juridical application. It is necessary, first of all, to introduce the facts of each case, starting with the *Brandon v. County of Richardson* one.

### **Brandon v. County of Richardson**

Brandon Teena, was born in December 12, 1972 in Lincoln (Nebraska), he was a trans man that was murdered by two of his former friends after discovering his biological sex<sup>28</sup>. The reason why this case is so important is because it shines a light on the struggles of the LGBTQ+

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<sup>28</sup> Encyclopædia Britannica, inc. (n.d.). *Brandon Teena*. Encyclopædia Britannica. Retrieved May 9, 2022, from <https://www.britannica.com/biography/Brandon-Teena>

community and more specifically, on the struggles that transgender people go through in order to live a normal life. Brandon Teena lived a very tough life, he was raised by his single mother and he had been sexually abused as a child by his uncle, later on in his life he then developed gender identity disorder and he decided that the gender that represented him the most was the male one, starting the process of transitioning<sup>29</sup>. Gender Identity Disorder is a condition in which an individual generates a strong dislike towards their own gender and instead adopts the behavioral and emotional characteristics of another gender<sup>30</sup>. Brandon had a group of friends that he trusted very much, however it is two of the people belonging to this group of friends that ended his life: Lotter and Nissen. Brandon had always used male aliases therefore all the people around him thought he was a man, however there was one instance in which Brandon was arrested and his old name and biological sex had been exposed on the newspaper. When Lotter and Nissen found out that he had not always been a male, the situation escalated quickly. In order to prove that Brandon was a female instead, Lotter and Nissen physically assaulted him, they drove him to a remote location, and proceeded to sexually assault him. Brandon eventually escaped, he was transported to the local hospital where he reported all that it has been done to him, including being physically and sexually assaulted, and he was provided a rape kit that was later lost. A few hours later that same day, Brandon provided a written statement to the Falls City

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<sup>29</sup> Encyclopædia Britannica, inc. (n.d.). *Brandon Teena*. Encyclopædia Britannica. Retrieved May 9, 2022, from <https://www.britannica.com/biography/Brandon-Teena>

<sup>30</sup> *Brandon v. county of richardson*. Justia Law. (n.d.). Retrieved May 9, 2022, from <https://law.justia.com/cases/nebraska/supreme-court/2001/022.html>



Police Department regarding the rape<sup>31</sup>. Later that day, Charles B. Laux, the Richardson County Sheriff and Deputy Sheriff Tom Olberding, conducted an interview that was being tape-recorded with Brandon, in which Laux asked very inappropriate questions and made inappropriate remarks as well. When Brandon reported the events, Laux was fully aware that Lotter and Nissen had criminal records, as he was also aware that Lotter and Nissen had threatened to seriously harm Brandon if he ended up reporting the rapes. Six days after Brandon reported what happened, he was found murdered along with his two other friends. Brandon's mother sued the local government for negligence, wrongful death and IIED (Intentional Infliction of Emotional Distress)<sup>32</sup>. What this case represents is police discrimination and taunting, lack of protection, and lastly the police's indirect responsibility for the murder. Despite the incriminating evidence, Sheriff Laux did not intervene in the week between Brandon's rape and eventual murder, breaching his official duty to protect Brandon<sup>33</sup>. In a first ruling, in 1997, Judge Richard Kopf on behalf of the Nebraska District Court, found Sheriff Laux not guilty. He stated that the Sheriff had no duty to protect Brandon Teena as he did not believe the rape was motivated by a transphobic belief and that there was no sign it would lead to a murder. However, in April 2001,

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<sup>31</sup> Encyclopædia Britannica, inc. (n.d.). *Brandon Teena*. Encyclopædia Britannica. Retrieved May 9, 2022, from <https://www.britannica.com/biography/Brandon-Teena>

<sup>32</sup> *Brandon v. county of richardson*. Casebriefs Brandon v County of Richardson Comments. (n.d.). Retrieved December 16, 2021, from <https://www.casebriefs.com/blog/law/torts/torts-keyed-to-vetri/intentional-infliction-of-emotional-distress/brandon-v-county-of-richardson/>

<sup>33</sup> Eileraas, K. (n.d.). *The Brandon Teena Story: Rethinking the Body, Gender Identity, and Violence Against Women*. Michigan Feminist Studies: Welcome. Retrieved December 16, 2021, from <https://quod.lib.umich.edu/cgi/t/text/text-idx?cc=mfsfront%3Bc>

the Nebraska Supreme Court overruled the previous court's decision<sup>34</sup>. Chief Justice John Hendry stated that "based upon the undisputed facts in this case, we determine that Laux's conduct was extreme and outrageous, beyond all possible bounds of decency, and is to be regarded as atrocious and utterly intolerable in a civilized community"<sup>35</sup>. The judge then sent back the case to the district court to assess the damages. Even in this case, the media blames this murder on the 'deceitful' nature of Brandon and his ambiguous gender identity, with titles like "Death of a Deceiver" and "Deadly Deception: Teena Brandon's Double Life May Have Led to a Triple Murder"<sup>36</sup>. This is just one of the many cases of hate crime that ends up being blamed on the victims and their 'deceiving' nature instead of the actual perpetrator by the media. This case was probably one on the most famous ones in US history, however, another case worth mentioning in order to make a good comparison is the one that happened in the south of Italy, in the province of Naples, regarding an assault with a result in voluntary murder.

### **Maria Paola Gaglione v. Michele Antonio Gaglione**

The case I am going to present is an Italian one regarding a hate crime towards a transgender person and his partner which is the Maria Paola Gaglione v. Michele Antonio Gaglione. First of all, it is important to provide a factual background of this case, which is going to be presented followingly. Maria Paola Gaglione was a 22 year-old young woman from Caivano and she was dating a transgender man, Ciro Migliore. Unfortunately, Maria Paola's

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<sup>34</sup> *Brandon v. county of richardson*. Justia Law. (n.d.). Retrieved May 9, 2022, from <https://law.justia.com/cases/nebraska/supreme-court/2001/022.html>

<sup>35</sup> Jo Ann Brandon v. The County of Richardson, Nebraska, et al. (261 Neb. 636).

<sup>36</sup> Eileraas, K. (n.d.). *The Brandon Teena Story: Rethinking the Body, Gender Identity, and Violence Against Women*. Michigan Feminist Studies: Welcome. Retrieved December 16, 2021, from <https://quod.lib.umich.edu/cgi/t/text/text-idx?cc=mfsfront%3Bc>

family did not approve of this relationship, as a matter of fact the brother Michele Antonio Gaglione has always tried to separate them. This behavior had a peak when her Antonio Gaglione one night started following the vehicle on which Maria Paola and Ciro were, causing an accident that killed Maria Paola and injured Ciro. While the couple was travelling from Caivano to Acerra on board of a scooter, Maria Paola's brother followed them and tried kicking them off the scooter, when the couple reached a curve, the scooter lost the grip on the pavement, Maria Paola fell and hit an irrigation hose dying instantly while Ciro fell without hitting any obstacles, but still resulting injured. While lying on the ground, Ciro was beaten by the brother that kept accusing him of having manipulated and brainwashed Maria Paola. Ciro was immediately taken to a local clinic and treated<sup>37</sup>. Michele Antonio Gaglione is accused of intentional murder of his sister, with the aggravating circumstance of futile reasons and homophobia<sup>38</sup>. The prosecutor asked for 22 years of incarceration with the accuse of voluntary manslaughter, however, the Corte d'Assise di Napoli accused the man of simply manslaughter (meaning not voluntarily caused, just a consequence of another behavior), recognizing general

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<sup>37</sup> Q., F. (2020, September 13). *Maria Paola Gaglione, speronata e uccisa in scooter dal fratello che non accettava la storia con un trans. Famiglia Lo Difende: "Incidente"*. Il Fatto Quotidiano. Retrieved May 9, 2022, from <https://www-ilfattoquotidiano-it.translate.goog/2020/09/13/maria-paola-gaglione-speronata-e-uccisa-in-scooter-dal-fratello-che-non-accettava-la-storia-con-un-trans-famiglia-lo-difende-incidente/5929753/? x tr sl=it& x tr tl=en& x tr hl=en& x tr pto=sc>

<sup>38</sup> Q., F. (2020, September 14). *Maria Paola Gaglione, il fratello si difende: "l'ho inseguita, Ma Non l'ho UCCISA"*. Il Gip convalida l'arresto. Il Fatto Quotidiano. Retrieved May 9, 2022, from <https://www-ilfattoquotidiano-it.translate.goog/2020/09/14/maria-paola-gaglione-il-fratello-si-difende-lho-inseguita-ma-non-lho-uccisa-il-gip-convalida-larresto/5931114/? x tr sl=it& x tr tl=en& x tr hl=en& x tr pto=sc>

extenuating circumstances in his favor<sup>39</sup>. Michele then was put on to house arrest due to good conduct in prison, due to the fact he did not have any prior record of criminal activity and also because the court thought there would be no risk of repetition of the offense<sup>40</sup>.

It is evident a transphobic motive behind both cases, however there are many differences that distinguish them. In the first case, the law enforcement response was not adequate as it constituted a second form of psychological violence (with the inappropriate tape-recorded interview), leading to a lack of protection both mentally and consequentially, physically. The law enforcement breached the duty to protect the victim of a crime, more importantly knowing the threat was still ongoing and present. Subsequently, the position of the law enforcement was worsened as the officers voluntarily kept misgendering and making sexual and inappropriate remarks of the victim even during the trial. Moreover, there was also a breach of duty when it came to the medical aid as the rape kit that was performed was later lost and therefore could not help the investigation and could not be used as evidence. When it comes to the judicial application, the first case was handled in common law based judicial system, therefore it is based on a previous case parameter. This case was finally closed with the conviction of the perpetrators for both the rape and the three murders<sup>41</sup>. In the second case the law enforcement response was

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<sup>39</sup> *Maria Paola Gaglione, il fratello condannato a 9 anni e mezzo: L'accusa NE chiedeva 22.* Vesuvio Live. (2022, May 5). Retrieved May 9, 2022, from <https://www.vesuviolive.it/ultime-notizie/429069-maria-paola-gaglione-fratello-condanna/>

<sup>40</sup> *Maria Paola Gaglione Uccisa Dal Fratello , l'assassino Esce Dal Carcere: Andrà Ai Domiciliari.* <https://www.ilmattino.it>. Retrieved May 9, 2022, from [https://www.ilmattino.it/napoli/cronaca/maria-paola-gaglione-killer-esce-dal-carcere-ultimissime-6601509.html?refresh\\_ce](https://www.ilmattino.it/napoli/cronaca/maria-paola-gaglione-killer-esce-dal-carcere-ultimissime-6601509.html?refresh_ce)

<sup>41</sup> *State v. Lotter*, 255 Neb. \*615 456, 586 N.W.2d 591 (1998) and *State v. Nissen*, 252 Neb. 51, 560 N.W.2d 157 (1997)

sufficient and effective, the investigation started immediately and the offender was quickly accused of manslaughter and brought to trial, he has been under arrest ever since<sup>42</sup>. The medical aid has been effective as the private clinic in which Ciro was admitted in, quickly started the rehabilitation while on the matter of Maria Paola, there was nothing more to do as she died on the spot in the accident. When it comes to the judicial application of this case, it is based on a civil law judicial system, therefore based on a legislation parameter. The offender is on trial for intentional murder, aggravated by futile reasons and homophobia, however he is currently under arrest until the final trial. Both of these cases represent a significant lack in civil education, they are moved by hatred for diversity, and a sense of ownership over women's bodies. It highlights how at the roots of this kind of hate crime, there is always a patriarchal system, and a sexist one.

## Conclusions

To conclude this thesis it is important to give a clear answer to the research question that was observed: how effective are the policy making and laws in deterring transphobic crimes in Italy and USA?. As observed, both the US and Italy have a long way to go when it comes to protecting the LGBTQ+ community's rights, more particularly, transgender people's rights. In the case studies observed, it is obvious how the judicial system is not ready yet to define specifically a certain type of crime for what it is: a transphobic hate crime. The judicial system tends to define those type of crimes as simple murders or assaults, when in reality, there are

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<sup>42</sup> ANSA, R. (2021, January 29). *Ragazza morta, il fratello ora accusato di omicidio volontario - campania*. Agenzia ANSA. Retrieved May 9, 2022, from [https://www.ansa.it/campania/notizie/2021/01/29/ragazza-morta-il-fratello-ora-accusato-di-omicidio-volontario\\_b548a95a-f36c-4c7b-a047-3434decaec74.html](https://www.ansa.it/campania/notizie/2021/01/29/ragazza-morta-il-fratello-ora-accusato-di-omicidio-volontario_b548a95a-f36c-4c7b-a047-3434decaec74.html)

specific discriminatory ideologies behind those motives and it is extremely important to recognize them in order to dismantle them from the roots. There is a systemic generational culture of transphobia, sexism and homophobia that motives abusers into committing such acts, this never-ending cycle, more often than not, goes unnoticed and perpetuates discriminatory behaviors. In the chapter of the Historical Legislation Overview, it is clear how Italy is not yet ready for true change as the DDL Zan (probably one of the most inclusive laws ever proposed) has been rejected by the Senate. The Italian LGBTQ+ community does not feel safe in their own country and they put their trust in the future generations, in hope that they can better represent and protect minorities' rights and dismantle a system based on cisnormativity, transphobia, sexism and homophobia.

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<sup>23</sup> Foderi, A. (2020, June 23). *Perché l'Italia ha bisogno di una legge sull'omotransfobia*. Wired Italia. Retrieved May 9, 2022, from <https://www.wired.it/attualita/politica/2020/06/23/omofobia-italia-legge-zan/>

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