

**THE TRANSGENDER READER:**

Language, Law, Sport & Reality. A Collection of Essays

By Miroslav Imbrišević



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# Testosterone is not the only Game in Town: The Transgender Woman Athlete

May 9, 2019

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**S**harron Davies, a former

Olympic swimmer, recently said that transgender athletes competing in the female category have a competitive advantage because they were born male. Some in the transgender community condemned these comments as transphobic. Do transgender women athletes have an unfair competitive advantage when competing in female categories? The fear around discussing this topic probably explains why only retired British athletes supported Davies

publicly, while currently active competitors remained silent. (Note that I will focus exclusively on transgender women here, ignoring the subject of intersex athletes.)

Female to male transgender athletes are free to compete without restrictions in the male category according to IOC rules. Nobody gets excited about this because there doesn't appear to be an advantage for someone who was born with a female body and, after declaring a change of gender, wants to compete against males. They would actually be permitted to increase their testosterone levels. A bizarre case is that of high school student Mack Beggs, a transgender boy, who was forced to wrestle in the girls' division in 2017 and 2018 because Texas required athletes to compete according to the stated sex on their birth certificate. Questions of fairness were raised because Mack was transitioning and received low doses of testosterone. Now that he has entered college, the rules are different and he can wrestle for the men's team.

Does the male physiology of transgender women affect the fairness of competition in female categories? When it comes to creating fair conditions of competition between transgender women and natal women, the IOC and the IAAF focus on testosterone levels. This is taken to be the marker for effective advantage in competition. But the prescribed testosterone levels disadvantage natal women. Alison Heather, professor of physiology at the University of Otago, criticised the IOC for allowing weightlifter Laurel Hubbard to compete in the female category. Previously Hubbard competed as a male. Heather stated that a natal woman is unlikely to reach the testosterone level of 10 nanomoles per litre (the maximum allowed under IOC rules). The average level for females is at 2.8 nmoles/L and the average for males is 23-25 nmoles/L. This means that Hubbard, and any other transgender woman, could compete with testosterone levels which are up to three times higher than their female competitors. Note that in 2018 the IAAF reduced the permitted levels to 5 nmoles/L.

## Legacy effects

Apart from testosterone levels, there are other competitive advantages trans women may have over a female. We need to consider the 'legacy effects' of having been born with a male body (larger heart and lungs, higher bone

density and the issue of muscle memory among others). John Brewer, professor of applied sport science at St Mary's University, stated recently: "So, inevitably, when you go into high-performance sport, where the difference between success and failure is quite small, that 'legacy physiology' alongside the muscle growth testosterone creates will give, almost inevitably, transgender athletes/individuals a physiological and indeed a performance advantage."

There is comparatively little research about the performance of transgender athletes. In one study by Gooren & Bunck from 2004 the subjects were not athletes. The study analysed the effects of androgen deprivation (19 M-F subjects) and androgen administration (17 F-M subjects) on muscle mass, haemoglobin (Hb) and insulin-like growth factor-1 (IGF-1). The authors conclude that F-M athletes would probably not have an unfair advantage. But the results for M-F subjects are not conclusive either way. One finding from the study needs highlighting (2004;425): "Androgen deprivation of M-F decreased muscle mass, increasing the overlap with untreated F-M, but mean muscle mass remained significantly higher in M-F than in [untreated] F-M." I conclude that the significantly higher muscle mass would give transgender women athletes an advantage in certain disciplines.

## Physical differences

The first study of trans women athletes is by Joanna Harper (2015). Harper, a trans woman and long-distance runner herself, studied 8 non-elite long-distance runners and found that their performance before hormone suppression more or less matched their performance after HRT, when using age as a measure. For many of the subjects there were long gaps in competing before and after testosterone suppression (the longest being 29 years). This required age grading (Grubb) as a method of comparing the performance of athletes.



*Joanna Harper*

Harper (2015) writes: “It should be noted that these results are only valid for distance running. Transgender women are taller and larger, on average, than 46,XX women (Gooren and Bunck, 2004, 425-429), and these differences probably would result in performance advantages in events in which height and strength are obvious precursors to success – events such as the shot put and the high jump. Conversely, transgender women will probably have a notable disadvantage in sports such as gymnastics, where greater size is an impediment to optimal performance.”

Harper (p. 7) admits: “It is significant to note that none of the eight subjects was a truly elite runner. An optimal study would use world-class runners and the results could be used to justify the presence of transgender women in events such as the Olympic Games.” And she concludes: “As such, the study cannot, unequivocally, state that it is fair to allow to transgender women to compete against 46,XX women in all sports, although the study does make a powerful statement in favour of such a position.”

Harper (p. 7) also comments on the extra muscle mass, noted by Gooren & Buck (2004): “This extra muscle mass might cause increased speed when compared to cisgender women, and hence faster times and higher AGs at shorter distances. Increased muscle mass and heavier bones are not conducive

to long distance running, and would actually be a disadvantage when running distances of a half marathon and higher, causing slower times and lower AGs.”

Oddly, Harper notes that the following trans women athletes were not particularly successful in their disciplines: Renée Richards (tennis); Lana Lawless (golf); Natalie Van Gogh, Michelle Dumaresq, and Kristin Worley (cycling); Fallon Fox (martial arts). But when you look at the stats of these athletes Harper’s assessment appears to understate their successes.

In 2016 Harper *et al.* present a study of 6 elite transgender women athletes, and come to similar conclusions. The subjects were one sprinter, one rower, one cyclist, and three distance runners. The largest time lapse between measured performances was 18 years. Even with age-grading I am concerned about these long time lapses between measurements. After all, we want to know how elite athletes perform immediately after they transition in their prime (once they are eligible for competition). Furthermore, Harper’s data sets in both studies are – understandably – small.

Another study from 2015 examined the preservation of volumetric bone density and geometry in 49 trans women (male-to-female) before and after 1 and 2 years of cross-sex hormonal therapy (CSH). The authors concluded that “their skeletal status is well preserved during CSH treatment, despite of substantial muscle loss.”

The latest study (2018) assesses muscle strength after hormone treatment. The authors conclude: “1 year of cross-sex hormone treatment results in increased muscle strength in transmen. However, transwomen maintain their strength levels throughout the treatment period. We conclude that the altered sex hormone pattern induced by gender-affirming treatment differentially affect muscle strength in transmen vs. transwomen.”

## Safety issues

My discussion so far suggests that transgender women may well have an advantage when competing against natal women, but this may differ according to discipline. It follows that raising the issue or questioning the fairness of such competitions is not transphobic *per se*.



There is also the issue of safety of the competitors to be considered, particularly in martial arts, but presumably also in contact sports like Roller Derby. A transgender woman competing in martial arts or boxing events is likely to inflict more damage than a natal woman because of their physiological legacy.

If we look at the difference between male and female world records we notice a 10-11% performance gap in the running disciplines – in favour of the male athletes. In other disciplines the difference in performance is even greater: High Jump (17%), Long Jump (19%), Triple Jump (18%), Pole Vault (21%). Andrew Langford, from Sheffield Hallam University, explains that “within male competition, the world’s best performances by different individuals often fall within 1 percent of each other, sometimes even within 0.1 percent. The same is true of female competition.” Testosterone suppression in transgender women athletes aims to bring their levels down, but it doesn’t mitigate for the effects of their male physiology.

*When it comes to high school athletics, 17 states in the US only require self-ID in order to compete as a female athlete.*

As long as governing bodies focus on testosterone levels as the only relevant performance advantage, transgender athletes (who fall within the permitted testosterone levels) have a right to compete, and claims of cheating are misguided. After all, they are abiding by the rules. When it comes to high school athletics, 17 states in the US only require self-ID in order to compete as a female athlete. In these competitions neither the testosterone levels nor the legacy physiology of transgender athletes matter. This of course disadvantages young female athletes.

We need to ask: is a competitive advantage also an unfair advantage? There is rarely perfect equality between the competitors within the sex categories ‘male’ and ‘female’. The swimmer Michael Phelps has a long and powerful torso that is wholly disproportionate to his height, as well as disproportionately short legs, and he produces less than half of lactic acid than his competitors, etc. There is always some form of inequality in competition that is based on natural ‘endowments’ – and this is something we have always accepted.

Trans athletes/activists point to these variations in competitive advantage within sex categories and argue that, even if there were an advantage by male to female (M-F) trans athletes, in spite of the required testosterone suppression, then we should simply accommodate these athletes, just as we accept Phelps' advantages. The problem with this claim is that traditionally we don't categorise swimmers by height, arm length or feet size; within some disciplines we categorise by weight (boxing, martial arts, weight lifting). But in general, we class competitors by sex (sailing and equestrianism are exceptions – here physical power is not central). The logic of the above defence is faulty: we cannot view the competitive advantages of trans women athletes as merely variations within a sex category. If we did so we would admit an athlete with the biological advantages of one sex to compete in another sex category. We are not simply adding another variation within a sex category, we are effectively admitting a person, who benefits from having been born male-bodied, to compete in the female category.

## Not every right is a human right

If the differences between men and women in elite performance were marginal (say 1% or less, as they presently are within many disciplines), then we could give up the division of competition by sex categories; everyone could compete in one category, including transgender women. But as long as we have significant differences in performance between natal men and women (10% or more), this solution would be unfair to natal women – they would never make it to the podium. It still makes sense to make a distinction between male and female competitors for most disciplines. Whether in elite competition, in college or in high school, transgender women athletes may well have a competitive advantage, which might also be an unfair advantage, depending on the discipline and on the level of prescribed mitigation.

The sports philosopher John W. Devine argues that we need to tailor the eligibility criteria to specific disciplines: “While testosterone level may be one important determinant of performance in strength-based events (FN), it may be relatively unimportant in events that place less emphasis on strength and perhaps more on flexibility or stamina. Consequently, different criteria may be applicable to ensuring fair competition between trans and cis women in

different sports.” Scientists call for more research in this area, so that we get a better idea about legacy physiology and competitive advantage.

Does our aspiration for inclusivity in sport override concerns about having an unfair advantage? Only if we value the good of inclusivity higher than the good of fair competition. Philosopher and cyclist Rachel McKinnon dismisses the unfair advantage issue: “Focusing on performance advantage is largely irrelevant because this is a rights issue. We shouldn’t be worried about trans people taking over the Olympics. We should be worried about their fairness and human rights instead.”



*Rachel McKinnon wins gold in the women’s masters 35-44 ahead of Carolien van Herrikhuyzen and Jennifer Wagner.*

It is noticeable that there is an inflationary use of the term ‘human right’ in public discourse today. Not every right is a ‘human’ right. For a goat shepherd in the Dolomites a right (or lack of a right) to physical activity may be redundant – she gets plenty of that. But a right not to be enslaved is a human right; it is universal and based on human dignity. And this human right (not being violated) will be important and valuable to the goat shepherd.

UNESCO (2015;1.1) declared: “Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis.” The adjective “fundamental” strikes me as hyperbolic – think of our goat shepherd. Note also that trans athletes are not barred from competing any more. However, biological males don’t have an unqualified right to compete in another gender. At present the IOC and IAAF require some form of mitigation for presumed competitive advantages (via testosterone suppression). McKinnon appears to demand an unqualified right to compete in whichever category the trans athlete desires. But absolute rights are rare. The right not to be tortured or enslaved are prime examples – and these are “human” rights.

UNESCO declared that we have a “fundamental” right (rather than a “human” right) to physical activity without being discriminated on the basis of irrelevant criteria – e.g. hair colour or skin colour. Previously women were excluded from track and field events at the Olympics – this was unjust, because being female is not a relevant criterion for exclusion from sporting events. However, it is just to discriminate on the basis of relevant criteria (e.g. testosterone levels); and this is what sports governing bodies are doing.

Do transgender athletes have an unqualified right to compete in the (sex) category that conforms to their gender identity as claimed by McKinnon? Perhaps, but first we would have to dismantle the difference between biological sex (material reality) and gender (socially determined/psychological reality). And some trans women subscribe to both propositions: that their gender is ‘woman’, and their sex is ‘female’. If the latter were true, then trans women could freely compete in the female categories – and testosterone suppression would not be necessary. But this is the point Sharron Davies tried to make: in sport we cannot ignore that there is a difference between biological sex and gender, and if we do, we lose fairness in competition.

## The law, and legal fiction

For various reasons the law sometimes relies on legal fictions. In company law, for example, we treat a corporation (in some respects) as if it were a natural person. Transgender legislation in the UK has also created a legal

fiction to help people suffering from gender dysphoria, so that their lives may go better. The UK Gender Recognition Act 2004 states: “Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).” The claim that a transgender woman’s (biological) sex is female is such a legal fiction.

Unfortunately, this can have detrimental consequences for natal women, which has been recognised in later legislation. Trans women can be excluded from female-only spaces. Here is an example from the Explanatory Notes to the UK Equality Act 2010 (p. 157): “A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.”

This example illustrates that there can be good reasons to exclude transgender women from female-only spaces. In sports, permitting unqualified eligibility for transgender women in female events would result in trans athletes dominating sports and displacing natal women from podium places. The experience of being pushed aside by male(-bodied) persons is all too common for natal women – this is why we have created female-only spaces (and sex categories in sport). The aim of preventing such a displacement of natal women in sport, because it is based on unfair competitive advantages, would be a good reason to exclude transgender women or to qualify their eligibility in female events.

I have two answers to my original question. Either we mitigate for the advantages of transgender athletes (including their legacy physiology), and tailor the mitigation to the respective disciplines (after thorough research), or we create separate categories of competition for transgender athletes. In this way we could maintain fairness in competition for natal women.

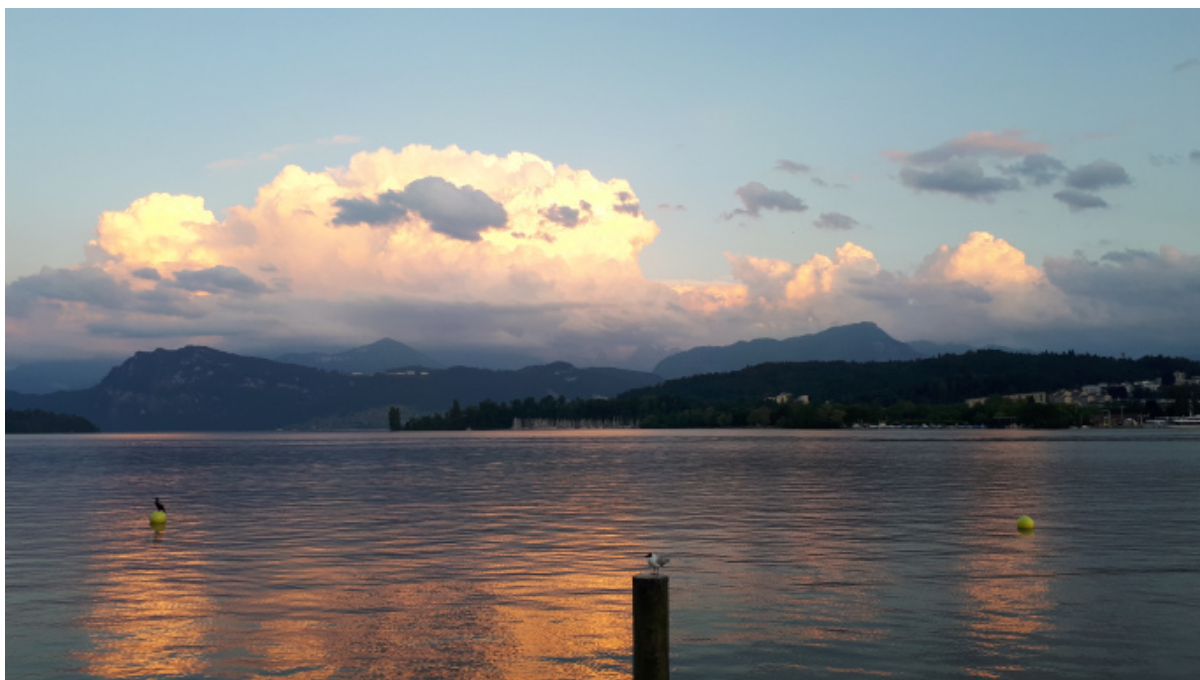
Let me finish with a remark about the tone of the debate. Philosophers are trained to examine the argument rather than attacking the person who put

forward the argument. This principle should guide the debate and would stop things from turning toxic when discussing transgender issues.

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# Queer Language Lessons: The Confusion over ‘My Pronouns’

Oct 28, 2019, by Miroslav Imbrišević



by Miroslav Imbrišević

Can you own pronouns? Members of the trans community say: ‘yes’. When they meet new people they tell them: ‘these are my pronouns’. Some trans people are happy with the pronouns which are currently in use (she/her, he/him), but others invent new pronouns. Can anyone replace the current pronouns with new ones and expect others to use them? And are the made-up pronouns a useful addition to our language? Let’s have a look.

A pronoun is a little word that takes the place of another (usually bigger) word: a noun. When I use the noun ‘mother’ I can vary my language by substituting ‘she’ for the noun. This increases efficiency (‘she’ is shorter than

‘mother’) and makes language less boring: ‘Mother got up. Mother got dressed. Mother had her breakfast...’ This would be a tedious use of language.

So a pronoun can stand for any noun. Often that noun is a person and we call the pronoun replacing the person a ‘personal pronoun’. ‘She’ is a useful little word, because it can stand for any feminine noun referring to a person\*: sister, aunt, nun, etc. – but it doesn’t belong to anyone. In a natural language the only word that might belong to you is your name (Katherine, Talia, John, Fritz) – but even these names you share with others. Only if your name were unique in your language, then you could claim to own it, to claim that it is yours.

There are other types of pronouns and they are called ‘possessive pronouns’. These express a relation of possession (or closeness) to a noun; this is usually a person or an object: ‘my husband’, ‘his bag’, ‘her car’. Possessive pronouns sometimes overlap with personal pronouns. For example: ‘her’ can be used as a personal pronoun (‘I saw *her* yesterday’) or as a possessive pronoun (‘This is *her* book.’). Possessive pronouns – in spite of their name – don’t belong to the speaker. They are part of a natural language and can be used by anyone, but they cannot be owned.

Another variation of pronouns are called ‘reflexive’. Here the subject is not doing something to an object (‘I wash the car.’) but to themselves: ‘I wash myself.’ Whenever you are doing something to yourself, you would use a reflexive pronoun: myself, herself, himself, yourself, themselves.

Language develops gradually and this makes it easier to learn new terms. Nobody can change the meaning of words just by declaration (but tyrants and other repressive regimes do try just that). There are a few people who have always had the prerogative to invent new words: scientists, scholars, writers and poets. They could be said to ‘own’ their invention. But grammatical changes are never made by fiat – they take a long time. The ‘my pronoun-movement’ imposes new words as well as new grammatical features on the language community. Here is a small taste of what’s in store:



## GENDER-NEUTRAL PRONOUNS

	<b>Nominative (subject)</b>	<b>Accusative (object)</b>	<b>Possessive adjective</b>	<b>Possessive pronoun</b>	<b>Reflexive pronoun</b>
<u>ae</u>	<u>ae</u> laughed	I kissed <u>ae</u>	<u>ae</u> 's head hurts	that is <u>ae</u> 's	<u>ae</u> feeds <u>aeself</u>
<u>e, em, eir(s)</u>	<u>e</u> laughed	I kissed <u>em</u>	<u>eir</u> head hurts	that is <u>eirs</u>	<u>e</u> feeds <u>emself</u>
<u>e, em, eir(s)</u>	<u>e</u> laughed	I kissed <u>het</u>	<u>het</u> head hurts	that is <u>hets</u>	<u>e</u> feeds <u>hetself</u>
<u>en, en, ens</u>	<u>en</u> laughed	I kissed <u>en</u>	<u>ens</u> head hurts	that is <u>ens</u>	<u>en</u> feeds <u>enself</u>
<u>vey</u>	<u>vey</u> laughed	I kissed <u>ve</u>	<u>vy</u> head hurts	that is <u>vyn</u>	<u>vey</u> feeds <u>vyself</u>

[[https://en.wiktionary.org/wiki/Appendix:List\\_of\\_protologisms/t hird\\_person\\_singular\\_gender\\_neutral\\_pronouns](https://en.wiktionary.org/wiki/Appendix:List_of_protologisms/t hird_person_singular_gender_neutral_pronouns)]

What is striking in this selection from a list of 46 different pronouns (and the list is open-ended) is the arbitrariness of the grammar. Sometimes the subject and object case are distinct, sometimes they are not. Sometimes there is an apostrophe in the possessive pronoun, sometimes there isn't. Sometimes the reflexive pronoun is formed by the subject case, sometimes by the object case. Sometimes there is an 's' in the possessive pronoun, sometimes there isn't.

In all natural languages irregular forms do exist, but they have an ancient pedigree. Language relies on regularity, on a grammar which doesn't permit too many exceptions. This helps learning the language and aids communication. In the above examples there is little evidence of consideration for language learners. Instead it looks like some people feel entitled to invent language – and to demand that others comply.

One could concede that each inventor owns their made-up pronouns, but what use is the invention to them if nobody wants to 'buy' the product – because it is inferior to what we have. The new pronouns just don't work as well as they could.

It would be unreasonable to ask a professor to learn not just the 50-100 names of the new students in her class but also the made-up pronouns and their derivations for the growing number of students who are trans (including gender-fluid, gender queer, non-binary, etc.). If there were 5 such students in the class, all with different pronouns, the professor would have to learn at least 25 new words. This is not as easy as learning a new name like ‘Erin’ or ‘James’, because we are familiar with names. You would have to remember made-up words like ‘eir’ (sounds Icelandic – but how many people speak Icelandic outside of Iceland?) as well as their grammatical use. The latter is not easy. The difficulties of learning new grammatical features (here: cases, possessives, reflexives) might be familiar to people who have experience with learning a foreign language. Those among us who are monoglots might have real difficulties with this.

If the professor gets it wrong, all hell might break loose. She could be branded a ‘transphobe’. The solution is obviously for the students to wear clearly visible badges which state: ‘I use the pronouns: XYZ.’ But such badges don’t help with the grammatical usage – there wouldn’t be enough space to put it all down. Alternatively, the professor could just keep using the students’ names instead of using pronouns. But she would have to avoid using reflexive verbs altogether, because this could lead to confusion. Try replacing ‘Talia washed herself.’ With ‘Talia washed Talia’ – there could be two Talias in the class.

So the lesson is that nobody ‘owns’ pronouns. And if you want to be inclusive, then you might be happy with learning all these new words and how to use them. But the wider issue is this: why do some people think that their need for self-expression entitles them to impose (language) burdens on others? Why should I have to remember phrases like ‘hann feeds *hannself*’? This puts a considerable burden on other language users because they would potentially have to learn 100+ variations of newly made-up pronouns (and there is no end in sight) and how to use them correctly.

If you don't want to use any feminine or masculine pronouns, there is no need to invent new words, there is actually something in place already: the neuter pronoun 'it'. In German some words referring to people are neuter. They are neither feminine nor masculine: 'the child' (das Kind) is neuter and so is 'the girl' (das Mädchen). If you don't like the neuter pronoun 'it', then let's agree on something else – emphasis on *agree* – but please, not 100 different variations.

A language is something which is shared by all. Changes to the language must be acceptable to all users. The proliferation of made-up pronouns is a one-sided affair. It imposes language burdens on all other language users, but most importantly, it hampers communication (through arbitrariness and lack of systematicity) rather than aiding it. It isn't obvious how useful these new words are to other language users. Imposing a plethora of new pronouns sends the following message to other language users: my need for self-expression and my demand for validation through language trumps any consideration for other language users – and for the functioning of language itself.

#### **NOTES:**

\* *In English 'she' can also be used for countries, cities, ships or the sun.*

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## LEGAL FICTIONS: CHANGING SEX BY CHANGING GENDER

October 14, 2019

by Miroslav Imbrišević

A couple of years ago the question ‘What is a woman?’ entered the public imagination. [Germaine Greer](#) said in 2015 that transgender women are not women, and the novelist [Chimamanda Ngozi Adichie](#) said in 2017: “A trans woman is a trans woman”. But the controversy about who falls under the category ‘woman’ doesn’t just originate with trans activists and feminist theorists – the law (in the UK) must also take some of the blame.

It may come as a shock to people to find out that the law sometimes relies on falsehoods – legal fictions – in order to promote justice. This is reflected in the legal maxim: *fictio legis neminem laedit* – a legal fiction doesn’t injure

anyone. This means in practice that the law (or a court) allows statements to be made which are strictly false, and everyone involved knows this. This differs from outright lying, where someone is being deliberately deceived.

In company law, for example, we treat a corporation (in some respects) as if it were a natural person (a human being). This makes it possible for people to enter into contracts with a corporation or to take the corporation – a legal person – to court. A corporation has rights and duties, just like a natural person.<sup>[1]</sup>

We find legal fictions in Roman law, in the common law, but also in continental legal systems. There is broad agreement about their usefulness, but there also is the odd dissenting voice. Jeremy Bentham calls them: ‘the most pernicious and basest sort of lying’.

Novel circumstances or societal change may lead to pressure to fit new phenomena into a pre-existing framework, because it is presumed that this will result in some social benefit and it would accord with the purposes of the law. The law then treats somebody or something ‘as if’ it were something else (or the opposite). An early example can be found in the *Lex Cornelia* (81 BCE) in Roman law. Roman citizens who died in captivity lost their status as free citizens – they were slaves. This meant that they did not have the capacity to make a will. According to the Cornelian Law such citizens should be treated as if they had died free men; in this way their will would be valid.

In 2004 the UK government introduced new legislation (the [Gender Recognition Act](#), GRA) to help people suffering from gender dysphoria, so that their lives may go better. This legislation allowed people to change their gender legally and to obtain a [Gender Recognition Certificate](#) (GRC). But the Gender Recognition Act relies on a legal fiction:

Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes [2] the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).

There is a little bit of confusion in the above quote, because we normally use 'male' and 'female' to refer to sex ([biology](#)) and 'man' and 'woman' refer to the gender role (social presentation). By 'acquired gender' the law makers mean the gender role of 'man' or 'woman' (which is usually associated with 'male' or 'female' sex). One of the requirements before applying for a GRC is to have lived 'in your acquired gender' for two years, meaning that the lawmakers expected you to have adopted another gender presentation and changed your first name to accord with that gender during this time.

Although someone was born as a boy, having male sex markers and registered as such, they can apply for a new birth certificate (once they get a GRC) which will state their sex to be 'female' (and vice versa for people who transition to be recognised as a man). This is a legal fiction. The law treats a transwoman for all intents and purposes 'as if' she belonged to the female sex. But the transperson's sex at birth hasn't changed, neither has it been assigned wrongly. The midwife ascertains male or female sex markers, rather than a gender identity. The latter wouldn't have been formed at the time of birth anyway, and if it were innate, as some claim, it couldn't be detected in a newborn.

Why create this legal fiction? We associate a particular sex (female) with a particular gender (woman). If the law permitted a change of gender (woman), but insisted that the sex of birth (male) could not be altered, this would perpetuate the pain of people who suffer from gender dysphoria, or rather, body dysphoria. [3]

The legislation gives transpeople the option to change their gender, to be recognised and treated as a woman (or man) in society. But the legislation cannot change the biological facts – irrespective of any gender re-affirming surgery the transperson may have. Though some people claim that it isn't just the gender role which is a social construct, it is also your [biological sex](#). Consequently, some transwomen claim to be literally (i.e. biologically) women. A variation of this view is that one's 'gender identity' determines one's sex. But then the notion of 'sex' as biology (and distinct from 'gender' as the social role) becomes meaningless. Gender and sex appear to be the same thing.

But the law in the UK still makes a distinction between women (born female) and transwomen (born male). And by doing so the law acknowledges the legal fiction contained in the GRA from 2004. A transwoman (with a GRC) acquires a similar (but not identical) set of legal rights and duties as a woman. For example, transwomen are not subject to abortion legislation, because they cannot give birth[\[4\]](#) – but transmen are.

Subsequent legislation confirms that the 2004 GRA created a legal fiction. The rights of transwomen are constrained by the UK 2010 Equality Act. At present the 'exemption clause' in the Equality Act protects sex-based rights: it permits female-only spaces. This means that 'discrimination' (i.e. drawing a distinction) can be lawful when it has a legitimate aim – here, to protect someone on the grounds of their sex. For example, it would be lawful to exclude a transwoman from a group counselling session for female victims of sexual assault ([Explanatory Notes](#) to the Equality Act 2010: 157). This illustrates that the makers of the Equality Act acknowledge (implicitly) that the GRA relies on a legal fiction. If transwomen were literally (i.e. biologically) women, if there were no difference between them, then the exemption clause wouldn't make any sense.

Such an exemption also holds for sports which use male and female categories. Transpeople may be [excluded](#) from competing in their newly acquired gender

in order to insure ‘fair competition’ or to guarantee ‘the safety of competitors’. This again is an acknowledgement of the legal fiction created in the GRA.

This doesn’t mean that all transwomen are really men. It means that those who socially and/or medically transition, and thus acquire some markers of being a woman, are transwomen. They have changed their gender, but not their sex at birth.<sup>[5]</sup>

Some trans activists and [organisations](#) in the UK are now demanding the removal of the exemption clauses from the Equality Act. If this were to happen, it would turn fiction into reality. Then all sex-based protections and female-only spaces would have to be open to transwomen. Transwomen athletes could compete in the female category. Female prisons would have to accommodate all transwomen prisoners, etc.

Rather than promoting the legal fiction that transwomen are literally women, we should try to create a third category for transwomen (or transmen) in those areas of public life, where their demands would disadvantage women and clash with the hard fought-for rights of women. Keeping the sex-based exemptions envisioned in the Equality Act is important because it reminds us that the 2004 GRA relies on a legal fiction. You can change your gender (presentation), but you cannot change your biological sex.

## Notes

<sup>[1]</sup> But in US law a corporation does not have the right against self-incrimination.

<sup>[2]</sup> The phrase ‘for all purposes’ is short for ‘to/for all intents and purposes’, going back to English law in the 16<sup>th</sup> century. It means: ‘in every practical sense’.



[3] Many, but not all, US states permit a change in sex designation on your birth certificate.

[4] Advances in medical science may soon allow transwomen to give birth though – by creating a ‘birth sack’ or some such.

[5] There are transpeople who present as men (which is in accord with their sex at birth), but claim that their gender identity is ‘woman’. They don’t appear to experience gender or body dysphoria. It isn’t clear in what sense they are ‘trans’ (-itioning).

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## MORE THAN A FEELING: ROCK STARS, HEROINES AND TRANSWOMEN

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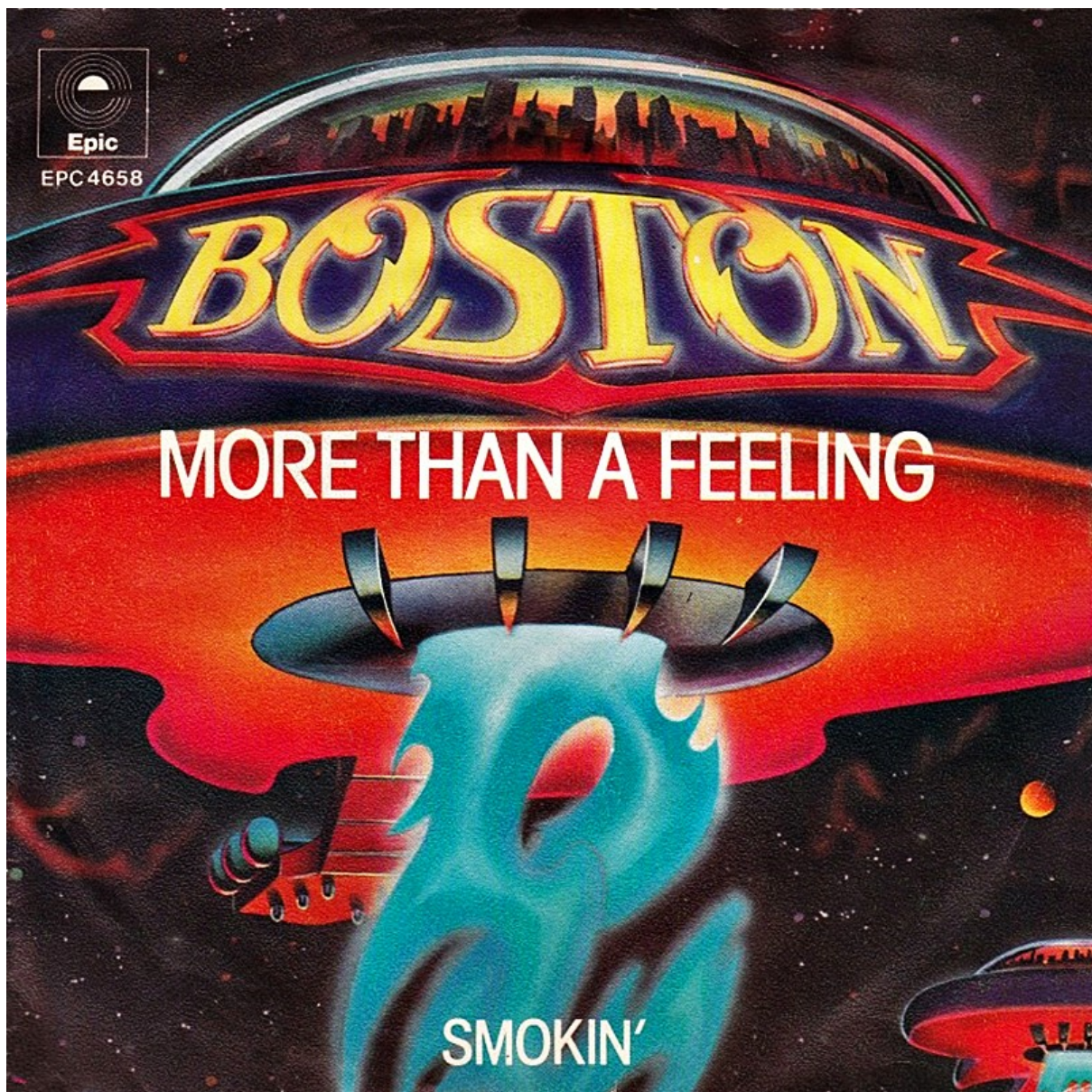
by Miroslav Imbrišević

If you want to be a rock star, playing Guitar Hero (a video game) with your friends will not do the trick. Although it might sow some seeds. You need to do **rock star things**: play a real instrument or sing, write good songs, have long hair, do some head banging, smash your guitar on stage, trash hotel rooms and throw wild parties.

If you want to be a hero or heroine, you need to do heroic deeds, like rescuing grannies from burning buildings or holding off a horde of Nazis single-handedly, while you wait for reinforcements to arrive. Re-creating the battles of Waterloo and Trafalgar in your bedroom will not count as heroic.

Note that merely ‘feeling like a rock’ star, or ‘feeling like a heroine’ will not make you into a rock star or a heroine either. Though such feelings may (or may not) arise once you are a member of **The Pretenders** or when you get a medal for bravery.

If you want to be a (trans)woman... let’s see.



There is a war over words being waged within academia, in the political sphere, but also on the internet. The bone of contention is the word ‘woman’, and how a particular interpretation might affect the rights of women and transwomen. Before I proceed I need to state that I write from the perspective of a male philosopher, but with a little help from my female friends.

If you were born with a male body, is there anything you could do (like aspiring rock stars or future heroines) which would make you a woman? The law ([Gender Recognition Act 2004](#)) in the UK suggests, yes, there is. One of the requirements for changing your gender is that you prove that you have

lived fully in your acquired gender for the last two years (by producing documentary evidence showing change of name and gender, such as a passport, rent book, wages slip or benefits documentation). From this we can deduce that gender presentation and changing your first name to a traditional female name would be some of things the law makers in 2004 expected people to do as part of “living in your acquired gender.” We could go further and say that the lawmakers expected you to not keep presenting as a man.

Transwomen were supposed to conform – outwardly – to the gender roles associated with women.

There are other things transwomen do willingly in order to affirm their idea of womanhood and/or to be read as a woman: use make-up, have gender-affirming surgery, wear a wig, have feminizing facial surgery and voice training, use electrolysis, take hormones, etc. In this respect they are *doing* things traditionally associated with being a woman or things which might have a feminizing effect. By doing these things they are just like rock stars or heroines.

A lot of the things transwomen do may seem [gender-stereotypical](#). Resisting gender-stereotypes would be counterproductive for those transwomen who wish to be read as women, because it would make it less likely that they would pass as women. Doing some of these feminizing things helps in adapting to the gender role associated with women.

Note that the direction of fit, for the three groups I have discussed so far, is always from the individual to the concept (rock star, heroine, woman – understood as the gender role). You make yourself fit the concept by *doing* certain things; you move from *doing* to *being*.

Does this also hold for natal<sup>[1]</sup> women? Do they need to do something in order to be a woman (understood as ‘adult female human being’<sup>[2]</sup>)? No. They could resist gender stereotypes from early on (tomboy) and continue to do so – think



of gender non-conforming lesbians – and still be classed as women. Similarly, many male rock stars of the 70s and 80s were gender non-conforming by incorporating stereotypical feminine traits into their [hyper-masculinity](#)[3]: long hair, poodle perms, strutting, writhing, tight trousers, make-up, high heels, etc. So what is it that makes you a woman – understood as being of the female sex?

Society starts taking its cue from the [biological reality](#) of natal women (XX chromosomes, sexual organs, etc.), beginning from birth. And on the way to adulthood a girl will be – to a higher or lesser degree – [socialized](#) into the (gender) roles associated with women. Their female sex is a brute fact, no different from the color of your eyes or the shape of your nose. [4] The brute fact of being born female (or male) precedes or underlies anything you may do to conform to or resist the gender concept ‘woman’ (or ‘man’). There are no brute facts that underlie being a rock star or a heroine – hence the need to *do* certain things. The midwife doesn’t say: “Look! It’s a rock star.” Instead, she says: “Look! It’s a girl.” [5]

For transwomen, the brute fact of being born female (a girl) is missing; they are faced with the brute fact of being born male. Thus, all that could qualify them for being a woman – in the traditional, gender-role sense of the word – would be to do those things that outwardly mark you as a woman. But these markers are selections and oftentimes, reflect male fantasies and projections. [6]

Some trans activists are suggesting that there is something else that could take the place of the missing brute fact of being born female and living in a female body: “feeling” like a woman – an inner sense of self that reveals your gender identity. These trans activists (and their philosophical supporters in feminist theory) claim that there is no need to do or change anything about yourself in order to be (legally) classed as a woman; to fall under the concept ‘woman’. All that is required to make you a woman is to feel like a woman, to self-identify

as a woman. And this feeling allegedly comes with its own epistemic warrant. It is claimed to be *self-validating* (also [here](#)), the idea being that another person cannot judge these kinds of claims or prove them wrong. Claims about gender identity are “*not up for debate*”, as they are held to be sacrosanct. [4] But philosophers have always discussed and probed sacrosanct notions; the name ‘Socrates’ comes to mind.

If identifying as a woman is sufficient to make you a woman, then there is no need to continue to adapt to the gender role ‘woman’. Your gender identity appears to be independent of any gender role.

At first glance, the obvious advantage of claiming to feel like a woman is that feelings are difficult to scrutinize and to refute. But the first person account of gender identity is not immune to criticism. You could easily be mistaken: how could you know that what you feel or identify with is womanhood, rather than a *projection* of womanhood? You could be the unreliable narrator of your own story.

If there is indeed some specific feeling of gender (many deny this), how could it come about? I suspect there is some interplay between your biological sex (body) and the respective gender role. Recall that transpeople often claim that they were born into the wrong body. This suggests that they wish their gender identity would align with their biology. The medical profession calls this misalignment “gender dysphoria,” or “body dysphoria.”

[Moira Gatens](#) argued that gender norms affect how we see and use our bodies. I internalise gender norms not just through my mind but also through my body. For example, boys and girls learn to walk, gesture or sit in a particular way. Outwardly this might be replicated by transpeople (walking like a woman), but do they have the same sense of a sexed body? Gatens writes (1996: 10): “The ‘feminine male’ may have experiences that are socially coded as ‘feminine’, but these experiences must be *qualitatively* different from

female experience of the feminine.” The gendered experience does not arise from a neutral body, but from a sexed – and lived – body. This means that a transwoman’s idea – (feeling) and experience – of being a woman is fundamentally different from that of a natal woman, because of the differences between their sexed bodies. Transgirls start off with a male body and with being socialized into the male gender role – even if they reject that socialization process early on and try to resist it as much as possible.

Sexed embodiment is part of what it means to be a woman ([Stoljar\[7\]](#): 284): ‘having menstrual cramps and female sexual experience, and the “lived experience” of child-birth, breast-feeding’, or at least the potential to have such lived experience’. Not every woman will give birth, of course, but the majority of women experience most, if not all, of the sensations associated with having a female body. None of these are open to transwomen, but note that some transwomen claim that they ‘menstruate’ (as I will discuss shortly).

We could add, for example, that the experience of the male gaze from an early age, which is directed at the female body, has an effect on your sense of body. [\[8\]](#) It can cause eating disorders and self-harm in teenage girls. Of course we should get rid of the male gaze, but, as things stand, it is part of the lived experience for women. The routine objectification of the female body (it is there for male enjoyment) results in a distortion of how females experience their bodies and how society as a whole views their bodies.

So whatever transwomen mean by avowals about their gender (*I am a woman!*) or by claiming to feel like a woman, it is likely to be off the mark. The female experience is fundamentally different.

Let’s assume that there is this mysterious gender feeling of being a woman. Transwomen could never be sure that what they feel is what natal women feel, because the former were born male and their socialization fundamentally differs from that of girls/women. Not even those natal women who claim to

have a specific gender feeling could be sure that what they feel is identical to what another woman feels. It could also be that what (some) women feel about their gender is specifically female, linked to their sexed body, and what (some) transwomen feel is something completely different.

The philosopher [Talia Mae Bettcher](#) tries to circumvent the epistemic weaknesses of first-person avowals. For her, First Person Authority about gender is an ethical notion rather than an epistemic notion. If you deny – in the wider community – what people claim about themselves (within trans communities) you wrong them, and you allegedly erase them.

I am not sure that first person claims (*I am a woman!*) which are accepted within a particular community need be accepted by the wider community. I also doubt that this necessarily would mean that we are wronging them. If someone is accepted and treated as a woman within their own community, why must the wider community accede to such claims, particularly if ‘man’ and ‘woman’ mean something else in these [communities](#), as Bettcher admits? [9] Why should the norms within a subculture trump the norms within the dominant culture? Why is making a distinction between transwomen and women in the wider community an affront to transwomen? After all – if we follow Bettcher – transwomen are treated as women (whatever that means) within the trans community. So we can agree that they are transwomen, but the claim that they also *are* women would need more philosophical argument.

If someone claims and is recognised as *the* King within a subculture, this does not mean that this person is or should be treated as the King of England. I am sure that our monarch, Queen Elizabeth II, would be seriously displeased about such claims to her throne, just as women are whenever they are confronted with people who look like ordinary men, but claim to be women. They are neither female nor adapting to the gender roles associated with women.



Bettcher comes up with a novel solution to the epistemic problems which beset the idea of “feeling like a woman” – by side-stepping them. Bettcher’s improved account banks on the reluctance of people to transgress ethical norms. The default position for most people is that we do not wish to wrong others. If somebody claims something about themselves, then we need to respect their ‘First Person Authority’. But her line of argument suffers from serious weaknesses. Not everything people claim about themselves might be true or might apply in a different context/community. [10]

This new understanding of the word ‘woman’ among some trans activists suggests that one may look like a man, but feel like and be a woman inside. Or that you could sport a Karl-Marx-type beard and at the same time your cleavage reveals your recently acquired breasts (queering?). The word ‘woman’ doesn’t mean “adult human female” anymore. Similarly, a penis may be called (reclassified as) a ‘lady dick’ or ‘girl dick’.[11]

Some transwomen claim that they have periods. They insist that their symptoms are what a period is, but “without the bleeding.” The biological facts don’t need to fit the definition in order to count as menstruation, for the definition of ‘period’ has been changed to fit the trans experience; to affirm their narrative and confirm them as women. Thus, periods no longer require shedding the lining of one’s uterus, but occur as a result of “getting moody and eating chocolate,” as one transwoman claimed. Many women find this offensive, given the discomfort, distress and pain periods can cause.[12] The traditional markers of womanhood don’t apply any more.

Something similar is claimed for the term ‘lesbian’, which used to mean: same sex attracted woman. According to the revised view, a lesbian who has penile penetrative sex (with a transwoman) would still count as a lesbian. Consequently, gay women who don’t feel attracted to transwomen may be called transphobic (or lesbophobic?).

In this new understanding of the word ‘woman’ there is nothing in your biology, your behavior, your actions, your socialization, your sexed embodiment or your appearance that makes you a woman. All that is required is to feel like a woman, to self-identify as a woman; and this, combined with altering the meaning of the word ‘woman’ (as well as other terms), will make you a woman.

This approach differs from that of rock stars, heroes and heroines, and transwomen (who wish to pass) in that it changes the direction of fit. Previously, individuals who exhibited certain qualities (usually by doing certain things) would fall under a particular concept. Now the definition of ‘woman’ is being changed so that the word will fit the trans narrative.

But let’s not forget the implications for [transsexuals](#) and for transwomen who simply want to be read as women. They want to fit into the category of woman rather than reinterpret the concept completely and make the rest of society adapt to their narrative.[\[13\]](#)

In the standard view there are four main elements to being a woman: the brute fact of biology (being born as a girl) which is with you all your life, the socializing pressures from society, the specifically female experience (objectification, subordination, sexual and domestic violence, etc.), and the performance aspect (to whatever degree) of the gender role.

Rock stars are different, in that they don’t start out as rock stars. It is a phase in their life, and for some, quite a long one (Mick Jagger). There is a performance aspect to their role (dress, behavior, etc.) but there is also a substantial element to being a rock star: they write great songs, enthrall their audiences, inspire admiration, etc. What it says on the package is actually inside the package. They don’t just play the role associated with rock stars, they *are* rock stars. I doubt that many have a “rock star identity,” instead, they

most likely identify with being the singer/guitarist/drummer/bass player in the band.

Heroes and heroines don't come in packages; they don't play a role. It is usually one-off events that turn them into heroes or heroines. And most heroes and heroines refuse to apply the label to themselves. Others call them heroes and heroines, based on their actions. They don't "identify" as heroes or heroines.

A transwoman who puts on a wig and make-up for the first time is like a rock star in training; she is focused on the performance aspect of the gender role. Those who pass well will get some idea of female oppression in society. But if a transwoman really wants to know about the female experience she would need to talk to women, and to listen to women's stories, for a long time.

It is also hard to see how those who rely on a mere feeling can claim to be transwomen. In what sense are they trans? What are they transitioning to or from? Claiming that you are X (a rock star, a hero/heroine, British, or black), based merely on a feeling, doesn't normally make you into that X. [14] More is required. Why should this be different for women?

It is possible that there is no such thing as a specific gender identity. To me, this seems plausible. Let me talk about my own experience. I know I am a man (earlier: a boy), because others told me so all my life and treated me in a particular way. But I don't know whether I feel like a man or even what it might mean to feel like one. I say this because I have no reference point, nothing to compare it to. All I know is how men act, but I don't have access to their psychological states. What they feel (about their gender) might be completely different from what I feel – if I do feel anything "gendery" at all; I'm not sure I do. So if there are no specific gender feelings which we share within our respective groups (woman, man, gender-fluid, etc.), then the feeling-account of gender implodes.

But even if we accepted the new feeling-account of what it is to be a woman, it looks like an impoverished or very thin notion of what it means to be a woman – and, strangely, these individuals appear to be indistinguishable from ordinary men. This leads to a practical problem: how are others in wider society supposed to identify you as a woman and treat you as such, when there are no external markers to help them? Everywhere you go, you'd have to run around with a t-shirt or badge stating: "I am a woman," as well as telling every new person you meet that you are a woman and inviting them to use particular pronouns.

Being a woman surely is more than a feeling – at least, this is what my female friends tell me.

### Notes

[1] Women who were born as girls and who haven't transitioned to another gender status later on.

[2] This is the dictionary definition from the SOED.

[3] Using guitars and microphone stands as penis extensions.

[4] Of course what you are given at birth, by 'nature', is tied to the biological make-up of your parents.

[5] Some people deny that 'biological sex' is real – it's a social construct: <https://www.autostraddle.com/its-time-for-people-to-stop-using-the-social-construct-of-biological-sex-to-defend-their-transmisogyny-240284/>

[6] This is in tension with progressive feminist ideas: (most) gender norms are harmful and they are not what makes you into a woman. There is no need to conform to (all of) them.

[7] However, Stoljar's (274) view is: 'female sex turns out to be a necessary component of the concept of woman, although as I have suggested it is not essential to the attribution of womanness to an individual.'

[8] Some transwomen pass as women and will experience the male gaze, but for women this is an experience which starts in puberty. In some cultures this may lead to a complete covering up of the body, to breast binding or to breast ironing. Transwomen do the opposite, whereas transmen try to hide the female features of their body – just like some natal women.

[9] Are all transpeople joining and living in trans communities in addition to living their regular lives as Bettcher suggests?

[10] Compare this with [human animals](#)/otherkin. Interestingly, they tend to go beyond the feeling and imitate animal behaviour.

[11] There is another aspect to all of this. For centuries women's bodies have been depicted as lacking, men's bodies being the norm(al) – culminating in Freud's 'penis envy'. With transwomen claiming to be literally/biologically women, possibly endowed with 'lady dicks', this could be seen as another attempt to denigrate the female body.

[12] Blaire White, a transwoman, dismisses such notions: <https://www.youtube.com/watch?v=cTSd5PS4-JY&feature=youtu.be>.

[13] Note that many transsexuals do not like the idea of trans people not 'transitioning' – there are divisions in the trans community about this issue.

[14] Since writing this essay self-identification has been taken to a new level in the UK. The University and College Union takes the view that you can self-identify as black or disabled ([https://www.ucu.org.uk/media/10564/UCUs-position-on-Trans-inclusion/pdf/Trans\\_inclusion\\_November\\_2019.pdf](https://www.ucu.org.uk/media/10564/UCUs-position-on-Trans-inclusion/pdf/Trans_inclusion_November_2019.pdf)).

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# To Compete, or not to Compete, that is the Question: Which is Nobler for Transwomen Athletes?

January 19, 2021

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There is agreement that transwomen, like everyone else, have a right to participate in sports. But there is controversy about the following question: Do they have a right to compete in the female category?[1]

In a forthcoming paper, the philosopher and transwoman athlete, Veronica Ivy (previously: Rachel McKinnon), claims that she has no choice but to compete in the female category in cycling: ‘the rules of elite sport require athletes to compete in the sex category on their race license. If your license says “F,” then you must compete in the female category.’ Here, Ivy aims to counter the charge that she is ‘identifying into the sex category of her choice’.[2]

This justification brings up interesting questions about the purpose of sport and competition. My view is that sport aims to give us a ‘fair measure of

performance' (on the day). If transwomen, on average, have a considerable advantage over women, due to their male physiology,[3] then, I could just ignore this and say: 'My racing license...says "F", so I have no choice but to compete in the female category.'

There are two counters to this: Firstly, if you ignore this advantage and compete anyway, you undermine the purpose of sport. It is not a fair measure of performance any more. Secondly, what good is a win or a high ranking (in the female category) based on having gone through male puberty? Who among the competitors would enjoy standing on the podium, knowing all this? Keep in mind that, unlike doping cheats, Ivy is not doing it for prize money or endorsements (this really would be an incentive to do it). She is not cheating, because her sports governing body permits her to race. But she is wilfully blind to ignore the damage this does to the institution of sport. And, as I said, such wins/rankings are hollow.

The solution to her dilemma is to recognise that there is actually a third option: not to race competitively. There are plenty of other forms of physical recreation. Competitive sport is not like life-saving medicine.[4]

In her paper, Ivy takes an ambiguous line when it comes to male physiological advantages. As far as I see, she switches between three positions on the issue, and all three are mutually exclusive. 1. She implies that there are no advantages and nothing to worry about: 'trans women are not winning "at all levels of girls' and women's sports these days." There hasn't been a single transgender person to attend the Olympics, let alone win a medal. No openly trans woman holds an elite world record (mine was an age-restricted masters' record).[...] No openly trans woman has won an elite world championship in any sport, ever.'[5] 2. Later she writes: 'I can't find anyone seriously claiming that hyperandrogenic intersex women or trans women have no advantage at all.' Here she admits that there is an advantage. Immediately following this, we get the third position: 'The truth is we do not know.'

What we do know is that the IOC is behind the curve when it comes to mitigating for physiological advantages. They only focus on testosterone levels, and this is not an effective measure.



# *THE INCLUSION OF TRANSWOMEN IN COMPETITIVE SPORT REPRODUCES A FAMILIAR PATTERN FOR WOMEN: BEING DISPLACED AND SIDE-LINED (BY MEN) FROM PODIUM PLACES AND RANKINGS.*

But there is something else that needs to be considered in this context, which is usually ignored, and that is the social and cultural history between men and women. The state (in many countries) permits those who suffer from gender dysphoria (really: ‘sex’ dysphoria) to change their legal status. So a biological male becomes legally ‘female’. If you want to join the class of women, and you have a certain level of education and awareness (which a professor of philosophy like Ivy should have), you will, I hope, have some concern about the effects of your actions on women. There is a long history of oppression and violence which men have inflicted on women. A transwoman who has real concern for women, should think twice before deciding to compete in boxing and other martial arts events (like Fallon Fox).<sup>[6]</sup> Here, one could easily get the idea that the history of violence by men against women continues in the ring. The same goes for contact sports like rugby. The language recently used to describe a transwoman on the field was revealing: she ‘folded an opponent like a deckchair’.

What about non-contact sports? Consider the psychological effects on female athletes who are ‘beaten’ (yes, this is a metaphor, but with violent origins like many others: trounce, defeat, dominate, be victorious, etc.) in a race by someone who only a year ago was a man? Perhaps I am overstating the importance of language. Perhaps these expressions have become dormant metaphors, and people have become desensitised to their violent origins.

I am not saying that female athletes don’t have the mental resilience to take defeat – they do. But there is something else that concerns me: the reproduction of (current and historical) patterns of societal wrongs. The

inclusion of transwomen in competitive sport reproduces a familiar pattern for women: being displaced and side-lined (by men) from podium places and rankings. This may not be intended by transwomen, but it is how many women in athletics and in other areas (in politics: women-only short-lists) perceive it. Women who object are being told to shut up ('there is no debate') and make room for transwomen in a space that, in their eyes, used to be free from such patterns. Furthermore, a bad side-effect of blanket inclusion policies is this: girls/women would be discouraged from taking up sports. They might well take the attitude: 'What's the point?'

Ivy has a 'master'-argument to defeat claims about the advantages of having gone through male puberty, and any other concerns people may have: transwomen are – by definition – female. This makes all problems and objections go away. Such a move, defining problems out of existence, has a name in philosophy: 'definitional stop'.<sup>[7]</sup> But once you recognise the move, the problems persist.

Ivy should really spend some time pondering this: If you want to become a 'woman', then you would need to show some sensitivity and concern for women (whom you claim as your sisters) and the socio-cultural background which is part of being a woman. How will your actions, as a male-born person, be perceived by women? What impact (literally and metaphorically) will it have? These are questions I would expect trans athletes to consider before they decide to enter competitive sports, particularly if they are a philosopher (Ivy only took up cycling after transitioning). It is noteworthy that it is routinely taken for granted (particularly by governing bodies) that women will just 'move over' and make room. But women will associate such an attitude with the 'male entitlement' they have experienced all their lives.

In contact sports transwomen are inflicting legally permitted violence on women; in non-contact sports they are metaphorically 'beating' them. I must say, I'd be very uncomfortable about this (particularly in contact sports) if I were a transwoman athlete.

When a transwoman joins her local club and the respective sports organisation, she, at the same time, joins a bigger 'club': the community of female athletes, as well as the wider community of girls and women. As a

result she gains certain privileges, but she also incurs responsibilities towards the other club members. This is something that transwomen athletes (who do competitive sports), and governing bodies rarely acknowledge. Sport, like life, is not just about self-realisation, we all live within communities.

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## Notes

- [1] See my previous discussion on [idrottsforum.org](https://idrottsforum.org).**
- [2] I discuss Ivy's paper more comprehensively [here](#).**
- [3] See [Hilton & Lundberg, 2020](#); also [Jon Pike, 2020](#).**
- [4] [Gleaves & Lehrbach \(2016\)](#) suggest that sport provides trans athletes with the opportunity to express their own gendered narrative as an athlete, and that is a good reason for inclusion. But the 'meaning-making' potential of sport cannot override its central purpose: a fair measure of performance.**
- [5] The transgender weightlifter, [Laurel Hubbard](#), aged 41, does dominate in her sport.**
- [6] There is also the safety issue, recently raised by [World Rugby](#).**
- [7] The expression was coined in 1959 by the great British legal scholar [H.L.A. Hart](#).**

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## THE POWER OF WORDS

February 6, 2021

by Miroslav Imbrišević

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In the Old Testament, we read: “And God said, Let there be light: and there was light.” God could make things happen by saying the appropriate words. We also read in the Bible: “In the beginning was the Word.” The idea that words have power is still with us. Take superstition: actors don’t want to utter the title of “The Scottish Play” inside a theatre, because it may lead to disaster. Even today, my mother (aged 87) curses “bad” people who cross her. She condemns them (in her native Croatian) to eternal punishment in Hell: “Be damned, and damned again!” In some cultures, words have magical powers, like spells. The anthropologist [S.J. Tambiah](#) tells us: “In Islam, Hinduism, Buddhism and Judaism the view has been strictly held that in religious ceremonies the sacred words recited should be in the language of the authorized sacred texts.”

I was reminded of the power of the word when I read a post on a philosophy notice board: “I identify as a French philosopher.” The funny thing is that this young thinker actually *is* French and *does* teach philosophy at a university. They don’t identify into these categories, nor need they.

But nowadays, to “identify as X” seems to mean “I am X,” rather than “I feel a strong affinity to this group, although I really don’t belong.” There are usually strict conditions that have to be met (e.g. having a French passport, a French mother, a PhD or having taught philosophy) if you want to say, “I am X” (e.g. a French philosopher). [2] If you merely identify as X, in the old sense, a strong affinity with this group is all that is meant and all that is required.

So, when these (mostly young) people say, “I identify as X,” they don’t mean “I feel close to this group, although, strictly speaking, I don’t belong.” Instead, they are saying: “I am a member of this group.” If I have correctly grasped this shift in meaning, then ‘I am X’ and ‘I identify as X’ are supposed to be equivalent.

Instead of saying “I am a Catholic,” I could say “I identify as a Catholic.” As a result, the original meaning of ‘identify as’ gets lost. Somebody who feels close to Catholicism, but who was baptized in the Anglican Church, cannot use this expression anymore. They would have to paraphrase: “I have a close affinity with the Catholic Church, although I am not a Catholic.”

Perhaps this shift in meaning has something to do with identity politics? It isn’t enough to *be* something or somebody, you also have to *identify* as this, that or the other.

We encounter this new language in many contexts. More and more people nowadays identify as disabled. [3] But note that if you are not disabled you cannot identify as such. You cannot claim membership. Black people also use the phrase: “I identify as a black member of the BAME community.” [4] Again,

strict membership conditions apply, and if you are white and identify as a person of color, you will be called a fraud.

There is an interesting variation in the context of disability. There are people who don't see themselves as disabled, but at some point in their lives realize that they are or are diagnosed as such. Then they would say, "I identify as disabled." [5]

So it appears that I am on the right track, and you have to meet certain conditions (actually being X) in order to use the expression "I identify as X," just as in the claim: "I am X" (a French philosopher). Merely feeling a strong affinity with a group is insufficient for actual membership.

Things are different with people who suffer from gender-dysphoria, which I would argue is a misnomer and really should be called "sex-dysphoria." A biological woman may say, "I identify as a man," but, strictly speaking, she doesn't meet the criteria for being a man. After all, before transitioning, she was a woman. And the same goes for men, suffering from sex-dysphoria. I suspect that in this context, for a long time, people used the phrase 'identify as' in the original sense, i.e., "I know I don't belong, but I feel a strong affinity with group X." [6]

As the idea that everything is socially constructed took hold in academia and percolated into society (and not just gender, but also sex), some trans people started to use "I am X" and "I identify as X" synonymously. The social construction of concepts suggests that the strict conditions of membership (for group X) don't always apply. Some concepts which used to be tethered to a material reality and to the accompanying conditions of membership for a class (e.g. biology for the class 'woman') could be detached from that material reality. Recall the slogan: "Transwomen are women." In order to be a woman you don't need to be born with a female-sexed body.

Note that there is something different between the existential claims of disabled people or people of color, and the claims made by some trans people. Although everything is socially constructed, for the former groups the strict conditions (and the material reality) for being disabled or a person of color do apply, just as they do for philosophers and French people. For this reason, floating the idea of trans-racialism will get you into trouble, as [Rebecca Tuvel](#) learned. The same goes for trans-disability. But, for some trans people, these strict conditions no longer apply. I am puzzled by this.

Perhaps different conditions of membership apply for transmen and transwomen when they say, “I identify as...”? Perhaps it is their [gender identity](#) which constitutes the condition of membership? Many deny that there is such a thing as gender identity, but even if there is, the conditions of membership for transwomen and transmen (gender identity) would differ from those for women and men (biology). One could ask why that is. If transwomen are women (and transmen are men), then the membership conditions should be the same.

Furthermore, if we think this through, the gender identity claim reduces to this: “I feel a strong affinity with the opposite sex, and I would like to belong to this group.” This is actually what sex-dysphoria means. So we are back at the original meaning of ‘to identify as X’, and the notion that gender identity might be a sufficient condition of membership in the class ‘woman’ (or ‘man’) dissolves.

As always in philosophy, things are a bit more complicated than this. We need to distinguish between first-person claims and third-person claims. Trans-friendly institutions and organizations use the phrase ‘identify as’ to distinguish one set of people (within a class) from another.

The Sheffield Rape and Sexual Abuse Centre advertises positions which are only open to women, but this includes self-identifying women (i.e.

transwomen). The Centre distinguishes between women (i.e. adult human females) and self-identifying women. [7]

Smith College is an educational institution for women. On their [website](#) we read: “Are trans women eligible for admission to Smith? Yes. We welcome applicants who identify as women, including those who were assigned male at birth.” For Smith College, the new criterion for being a woman is gender identity, not biology. Trans men, who were “assigned female” at birth are not eligible. Smith would probably agree that ‘identifying as a woman’ is the same as ‘being a woman’. But if their literature said, “we welcome all women,” this would not make it sufficiently clear that they include transwomen. For this reason they use the phrase ‘identify as’. It is supposed to include biological women as well as transwomen. So sometimes ‘to identify as’ is used as an inclusion marker.

The strange thing is that the College doesn’t see that their trans inclusion policy excludes all those (biological) women who reject the concept of ‘gender identity’: those females who don’t identify as women, but in their own view simply *are* women. In other words, Smith has adopted a new condition of membership for the class ‘women’, which might not apply to all women.

A charity in the UK advertises for a job: “As an equal opportunities employer, we particularly welcome applications from people who identify as women and / or LGBTQ+, and / or are from Black, Asian, Minority Ethnic (BAME) backgrounds.” Note that the groups in the first part *identify* as X but the groups in the second part *are* X. Interestingly, when women or LGBTQ+ people identify as X, then they are what they claim to be, but this charity doesn’t believe that you can identify as BAME. You actually have to *be* BAME.

This makes things very tricky. Sometimes ‘people who identify as X’ means ‘people who are X’ (especially in the trans context), but in the BAME context this charity insists that you have to *be* X, rather than identify as X. They



assume that in the BAME context 'identify as' has the original meaning, but in the trans context it doesn't. This shift in meaning, depending on the context, can be confusing. But it supports my thesis that the material conditions for membership remain stable for the disabled and for BAME people, whereas for trans people they have been detached from material reality and replaced by self-ID.

So when it comes to membership of the class 'women' (or 'men') we are dealing with two competing conditions for membership: the standard/traditional one (biology) and a new one (gender identity). But, as I have indicated, the latter is based on a sleight of hand. The idea that gender identity now constitutes one of the strict condition of membership (for the class 'woman') is mistaken. Transwomen who claim that their gender identity is that of a woman ("I identify as a woman") are saying that they feel a strong affinity with women. Their mistake is to think that this constitutes a sufficient condition for membership in the relevant class. They assume that their belief in a particular gender identity and asserting "I identify as a woman" makes them into a woman; i.e. delivers membership to the class. [8] It is a modern variation of St. Anselm's Ontological Argument. And as is the case with that argument, the obvious objection is that the fact that something exists in the mind of a particular individual (identifying as a woman) does not entail anything about what exists in reality.

Looking at the disability and BAME contexts illustrates that the conditions of membership don't change, even if you say, "I identify as X." The only thing that has changed is the language. You may say now, 'I identify as disabled', but it *means* "I am disabled."

The linguistic practice in the context of disability and race is revealing. Here, there is no equivalent to gender identity that would allow people (who don't belong) to assert that they do belong after all, by thinking or saying, "I identify as X." When it comes to disability and race, there is wide agreement that strict

conditions of membership apply, and merely asserting a particular identity not only will not be accepted, but people will be offended. The actual members of these classes do recognize such a sleight of hand when they see it and resist it. [9]

Perhaps there is another explanation why some people think that identifying as X will deliver membership. Trans activists and their allies might believe in the divine power of the word: Saying it and saying it often will make it so. The problem is that so long as there are other language users, especially women, who insist that you have to meet certain criteria, tethered to material reality, if you want to belong to the class ‘women’, the word will not become flesh, and the power of words will only envelop some minds but not others. [10]

### Notes

[1] I have changed the nationality to spare that colleague unnecessary attention.

[2] The conditions for being a philosopher are not as strict as the conditions for being a citizen of a particular country. In philosophy, all of this really started with Kant (whose philosophy, by the way, was very strict). He wrote a PhD thesis in Latin, and he held an academic position. In ancient times you could just hang out at the agora and ask people annoying questions, and that could make you into a philosopher.

[3] This is not the same as suffering from Body Integrity Identity Disorder: where people may want to have a limb amputated or wish they were [blind](#). If they succeed, then they really are disabled.

[4] Black and Minority Ethnic.

[5] See the interviews [here](#).

[6] Many transpeople recognize that they cannot change sex. When they state that they identify as a woman or man, they mean it in the original sense of “having a strong affinity with X.” Increasingly, however, activists shun people for such views.

[7] In contrast, the Cambridge Rape Crisis Centre wrote on Twitter: ‘We are looking for self-identifying women to join our amazing helpline’. For them all women (whether biological or trans) are self-identifying.

[8] This only works with concepts that are vague (because there is no link to material reality) and which have no clear-cut conditions of membership or where such conditions have not been formulated. According to the University of Essex, ‘pangender’ “refers to a gender identity whereby a person identifies with a multitude, and perhaps infinite (going beyond the current knowledge of genders) number of genders.” It would be difficult to impossible to determine the membership conditions for ‘pangender’.

[9] [Robin Dembroff](#), to their credit, realizes that transracialism is a threat to gender ideology and recently has tried to describe a substantive difference between transgenderism and transracialism: “Unlike gender inequality, racial inequality primarily accumulates across generations. Transracial identification undermines collective reckoning with that injustice.” This is unconvincing, however, as there is a long history of accumulated injustice against women, perpetrated by men (aka “the patriarchy”).

[10] Debating these issues is often characterized as “violence,” not just metaphorically, but literally. This lends credence to the “magical power of words” explanation.

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# FEMINISM, CONCEPTUAL ENGINEERING, AND TRANS IDENTITY

December 20, 2020,

by Miroslav Imbrišević

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*Thy wish was father, Harry, to that thought.*

–Shakespeare, Henry IV

## Making Language Better

If we can improve our language, by making concepts (roughly: the meaning of words) more precise or by naming something so far unnamed, we should do so. This is what motivates “conceptual engineering,” a relatively new branch of philosophy. [1]

The engineers of language and thought don’t just restrict themselves to making words more precise, they also want to make them “better.” The latter

is called '[conceptual ethics](#)'. It's not just about what words mean; it's about what words *should* mean.

Conceptual engineering has been taken up by some feminist philosophers. A central concept in feminist philosophy is 'woman'. Ordinarily it means "adult human female," but some feminists would like to include transwomen under the term 'woman'. This view is now widely accepted in academic feminism. If you dare to question this, you will be considered "transphobic," as [Kathleen Stock](#), a philosophy professor at the University of Sussex, has experienced.

Subsuming transwomen under the class 'women' doesn't make the term more precise, nor does it name a new phenomenon. We do have names to refer to people who are not happy with their biological make-up. Formerly we called them 'transsexuals', now they are 'trans people' ('transwomen' or 'transmen'). For these feminist philosophers, conceptual engineering has a moral/political aim. In this case, to minimise the exclusion of trans people in society. This is a worthy aim, but it is difficult to achieve it by changing the meaning of words.

By including transwomen under the umbrella 'woman', these well-meaning philosophers suggest that there is no real difference between the type of women in expressions like 'young women', 'German women', 'married women', 'happy women', 'single women', 'tall women' and 'transwomen' (or 'trans women'). They are all women. The aim here is to shape reality; to change how we view the world.

### Natural Kinds and Social Kinds

The class of women – by which I mean, adult human females – can be understood as a natural kind; that is, as something that is part of nature. There is a material, biological reality to it. The class of transwomen, on the other hand, is a social kind; that is, something we find in society. It is a notion that is socially constructed. We invented it. It relies on the idea that

some people have a gender identity which can be in conflict with their sex. Male-bodied persons wish they were female or believe that they are female, and many want to express this through their gender presentation, which might include body modification. The natural kind term 'woman' refers to a material reality (sex), the social kind term 'transwoman' refers to a psychological reality (attempting to disregard your sexed body). For this reason, the expression 'gender dysphoria' is misleading. It should be called 'sex dysphoria' instead. So, the term 'gender dysphoria' may need to be "re-engineered."

The social category 'woman' has a biological foundation: women, understood as a natural kind. The social kind *supervenes* upon the natural kind; that is, the social category has an underlying material basis: being of the female sex. There is nothing similar with respect to being a transwoman. In this case, one social kind (transwoman) supervenes on another social kind (woman). Transwomen, in this sense, represent a kind of supervenience squared; a supervenience of supervenience. And because the concept 'transwoman' is free-floating, without a tether (a female sexed body), there is a fundamental difference between women and transwomen.

Take the concept of marriage. We now accept that same-sex attracted people can get married. Our linguistic (and legal) practice has changed and with it the concept of marriage. But 'marriage' is a social kind term, something we created by agreement, and we can extend/alter its meaning through further agreement. Contrast this with the concepts: 'tiger', 'water' or 'woman'. These three are natural kind terms and their concepts are not open to radical revision through our linguistic practice, because they are tied to how things actually are in the world. There are facts about tigers which we cannot alter. For example, we cannot simply decree that it would be good to class lions among the tigers. Admittedly, they have something in common: they are both big cats, but 'tiger' and 'lion' are distinct concepts, as tigers and lions are distinct species.

Sometimes we get the facts about a concept wrong. We used to think that whales and dolphins were fish, but now we know that they are mammals. Our conceptions of whales and dolphins are now more precise. Similarly, we may in future find out more about the endocrinology of women and men, which will make our concepts ‘women’ and ‘men’ more precise. But we will not find out that biological males who self-identify as women are female, because we would be confusing social kinds with natural kinds. These biological males may outwardly present as stereotypical women or have some body modifications done, but this does not make them into a woman, if what we mean is an adult human female. To put it differently, the direction of fit for concepts like ‘tiger’, ‘water’ or ‘woman’ is from world to mind. Contrastingly, the direction of fit for concepts like ‘marriage’, ‘game’ or ‘good manners’ is from mind to world. What we think about marriage over time will determine and constitute what marriage is.

### Sexual Dimorphism

Humans and mammals in general, come in two reproductive classes or “shapes”: female and male (known as *sexual dimorphism*). This is a fact of nature, independent of the societies we live in. The slogan “transwomen are women” equates a social kind with a natural kind, which is a category mistake.

Alternatively, if the term ‘woman’ in the above slogan referred exclusively to the social role females stereotypically play, then it would be expressing something trivial: transwomen play, or attempt to play, the same – stereotypical – social role as many women. Does this make them into women?

Trans activists and their supporters in feminist philosophy deny that there is such a clear-cut dichotomy between the male and female of the species. For their political purposes it would be ‘better’ if people believed that ‘sex is a spectrum’ or that ‘sex is socially constructed’. People with ‘sexual development disorders’ (DSD) are roped in to support the thesis. The reasoning goes

something like this: biological sex is not a clear-cut criterion for determining who is a woman, because there are intersex people, who don't fall neatly into the male/female binary. From this 'refutation' of the biological basis for being a woman, trans activists conclude that transwomen belong in the class 'women'. But this reasoning is faulty. The existence of intersex people doesn't prove that you can be a woman without being of the female sex. It also doesn't prove that there is a third sex (or many more sexes); being trans would then be another (fourth?) 'sex' which is beyond the binary.

Intersex people are being used by trans activists for their propaganda purposes. They claim that it is a common condition, and this has been uncritically perpetuated by many [organisations](#) and in the media. The original source for these claims is [Anne Fausto-Sterling](#), who stated that 1.7% of the population are intersex. But being intersex is only one of the many conditions within the DSD range. You can only arrive at this high a figure if you (wrongly) assume that all people who have DSDs are like intersex people. But most people with DSDs do fall into the female/male dichotomy. According to [Leonard Sax](#) 'the true prevalence of intersex is seen to be about 0.018%, almost 100 times lower than Fausto-Sterling's estimate of 1.7%' (see also [here](#)).

### Sally Haslanger's Account

There are several accounts, attempting to include transwomen under the concept of 'woman'. Let's look at one prominent one. Sally [Haslanger](#) proposes that someone is a woman, if they are systematically subordinated in certain respects (economic, political, legal, social, etc.), and if they are targeted "for this treatment by observed or imagined bodily features presumed to be evidence of a female's biological role in reproduction." Conversely, you are a "man" if you are systematically privileged along some dimension (economic, political, legal, social, etc.), and if you are targeted "for this treatment by



observed or imagined bodily features presumed to be evidence of a male's biological role in reproduction.”

Haslanger's definition of 'woman' is metonymical. It focuses on one consequence of being female: experiencing oppression. But it isn't that one consequence of being a woman that *makes* you a woman. Being a woman precedes or underlies the consequence of oppression. And Haslanger admits that the discrimination women suffer is based on being perceived to have a certain body. So, it isn't the oppression that makes you a woman, but rather, the target of that oppression: having a female body.

If transwomen are perceived to have a female body and face discrimination because of this, then they are women for Haslanger. Under this concept the Queen of England and other women who don't experience discrimination would not be women. And men who are not privileged wouldn't be men. But let's leave this aside.

The discrimination transwomen experience, based on their perceived/imagined body, isn't uniform. Those who “pass” as women will face some of the same oppression as women, but those who don't pass (or don't wish to pass) experience a different form of discrimination. They are treated (oppressed, discriminated against, mocked) differently, based on being (perceived to be) male-bodied. So, the metonymical understanding of 'woman' is limited to those who pass. This means that only some transwomen are women.

Those who don't pass or don't wish to pass as women are perceived to be male-bodied. They are not systematically privileged as men, but systematically discriminated against because of their male bodies. So, on Haslanger's account they are neither men nor women. That is an odd side-effect of trying to be inclusive.

## Three Types of Conceptual Engineering

There appear to be three ways we can engineer a concept. We can do it from scratch (e.g. ‘sexual harassment’, ‘gaslighting’, or ‘mansplaining’); we can change the meaning of an existing term: ‘woman’ (through expansion, limitation, clarification, etc.); and we can alter parts of an existing term. An example for the third way of engineering is the expression ‘sex assigned at birth’. The term ‘assigned’ suggests an arbitrariness of the process and/or that newborns come with a fully formed gender identity, which has not been correctly recognised. But all of this is misleading. Sex is normally observed and registered at birth by medically qualified people. And this is a fairly reliable process. Sex is not “assigned.”

Conceptual engineers distinguish between semantic amelioration (improving informational content) and epistemic amelioration (improving our knowledge or grasp of reality). The first way of engineering, creating new concepts like ‘gaslighting’, is often successful in both respects. The second way of engineering, improving the concept ‘woman’, aims for a semantic amelioration for the benefit of transwomen, but not necessarily for women. As an epistemic amelioration it fails, because it erases the difference between sex and gender. The third way, changing part of a phrase as in ‘sex assigned at birth’, fails semantically and epistemically. The same holds for the terms ‘cis woman’ and ‘non-trans woman’.

## Legal Fictions

At first glance, it may appear that the law is also changing the meaning of words. Someone who is biologically male can be legally recognised as a woman. The law permits that the sex on the birth certificate (and other documents) be changed to “female.” But the law (here in the UK) does not actually engage in conceptual engineering. In this context, it doesn’t change the meaning of words, it merely changes the legal status of a person. The law

cannot make a man into a woman, but it can prescribe that (for the purposes of the law) it will treat a biological male *as if* he were a biological female. This is known as a [legal fiction](#), an ancient device going back to Roman law. In practice this means that the law (or a court) allows statements to be made, which are strictly-speaking false, and everyone involved knows this. Lawyers aren't worried about this because *fictio legis neminem laedit*: a legal fiction doesn't injure anyone. [2]

The law creates legal fictions when novel circumstances or societal change may lead to pressure to fit new phenomena into a pre-existing framework, because it is presumed that this will result in some social benefit and it would accord with the purposes of the law. Here, we have some overlap in purpose between legal fictions and conceptual engineering for moral/political change. However, there is an important difference. The law is open about treating biological males *as if* they were women or female, whereas the conceptual crusaders want to effect a change in the way we think and in the way we view the world. [3] They want us to believe that a transwoman *is* a woman, in the same way that a tall woman is a woman.

### Two Types of Woman

The trans-friendly feminist wants people (but particularly women) to accept that the concept 'woman' has two sub-sets: women and transwomen. This is odd (a paradox?), because women become a sub-set of their own class. The conceptual engineers use a little trick to hide the paradox: they re-label the recalcitrant sub-set 'woman' by giving it a prefix. The class 'woman' then consists of the sub-sets 'cis women' and 'trans women' (also popular among the crusaders is the pairing: 'non-trans women' and 'trans women').

The re-engineering of the term 'woman' has had a ripple effect on other concepts, as well as giving rise to new expressions. The meaning of the term 'lesbian' has (allegedly) changed, once again introducing two sub-sets into the

definition. Now a lesbian is: *a female or a transwoman who is sexually attracted to cis women and transwomen*. The ‘and’ conjoining cis women and transwomen in the dependent clause is significant. It suggests that lesbians are naturally attracted to trans “lesbians.” If we replaced the ‘and’ with ‘or’, it would at least give lesbians the freedom to choose.

### Linguistic Ripples

This new understanding of the concept ‘lesbian’ has given rise to a neologism: the “cotton ceiling” (invented by the trans porn actress and activist Drew DeVeaux). This metaphor alludes to the “glass ceiling” of old and to women’s cotton underwear. Transwomen find it hard to convince lesbians (i.e. same-sex attracted females) that they should also be attracted to transwomen, particularly if they retain their male genitalia. So-called “trans lesbians” are frustrated by not being able to break through the cotton ceiling. There is wide agreement that the glass ceiling needs to be broken, but the cotton ceiling is designed (engineered) to make lesbians feel guilty for their alleged moral failings. Just like the glass ceiling needs to be broken, so does the cotton ceiling. (Note the echoes of the [incel](#) movement here.) In this example, there is also a normative element (a value judgement) engineered into the concept, in addition to the semantic and epistemic elements: i.e. You are a bad lesbian, if you don’t want to help trans lesbians to break the cotton ceiling.

Finding a solution to the problem of the “cotton ceiling” has required further conceptual engineering in the form of new coinages. Many transwomen retain their male genitalia and often refer to their penis as a “lady dick” or a “girl dick.” This is supposed to help them in their struggles with the “cotton ceiling.” [4]

There is no doubt that coining the term ‘sexual harassment’ in the 1970’s has helped women to articulate their oppression. Using the terms ‘lady dick’ or ‘girl dick’ may make some “trans lesbians” feel better about themselves, but it

is at the same time a form of gaslighting (another useful coinage to counter [hermeneutical injustice](#)) of lesbians. It suggests to them that they should not just be attracted to females but also to transwomen. Note that the conceptual ethics at work favours the perspective of “trans lesbians” to the detriment of lesbians. It suggests to the latter that they are wronging “lesbians with penises,” if they don’t find them attractive.

But let’s look at it from a different perspective. If you don’t accept that transwomen are women, but are trans-identified males instead, then the thought of having sex with a “trans lesbian” would mean to have intimate relations with the opposite sex. And, politically, it would mean that you are having sex with your oppressor. (Another problem for Haslanger?) Why should lesbians agree to this?

Some [transmen](#) who give birth wish to be recorded as the father of the child on the birth certificate. The meaning of the term ‘father’ would then include: ‘person giving birth to a child’. This would have seemingly paradoxical consequences: The birth-giver would be ‘father’ (legally) and ‘mother’ (biologically) at the same time. This would make the concepts of ‘father’ and ‘mother’ less precise and might actually cause confusion. So far, British and [French](#) courts are resisting these attempts at conceptual engineering.

Some transwomen claim to experience period pains. They describe their symptoms as being moody and wanting chocolate. This is a re-conceptualisation of the term ‘period pain’. The experience may be real enough for them, but it is a non-veridical experience. It doesn’t map onto reality, which involves shedding the lining of your uterus. This is also metonymical in that it takes certain symptoms to be the cause of the experience.

### There is a Price to be Paid

You would think that the conceptual engineers in philosophy would give us an ungendered reality. But what we actually get is a transgendered reality. And some gender-critical feminists would argue that if you dig deeper, you'll find a male perspective underneath the transgendered reality. Breaking through the "cotton ceiling," for example, evokes images of sexual violence.

The feminist conceptual re-engineering of the word 'woman' fails women. It doesn't consider how such engineering infringes the rights of women (for example in the contexts of sport or prison), and it doesn't consider the ripple effects this will have on other concepts. [5] The law is a much better – and proven – driving force for change in society. Think of the abolition of slavery, giving women equal rights, the de-criminalisation of homosexuality, introducing same-sex marriage, etc. Admittedly, the law is often slow to recognise the necessity for societal change, but good things take time and deliberation.

Some feminist philosophers, in their enthusiasm for improving concepts, have overlooked that language is a network of interconnected terms. The lesson is: if you want to tinker with language, you need to look at all related concepts, and you need to consider the impact this will have on people. The conceptual crusaders in academia (and trans activists) will not have to pay the price for their tinkering. It is female athletes, women prisoners, and candidates for female-only shortlists who will bear the brunt of making concepts "better."

### Afterword

As a playful exercise, let me try a bit of conceptual re-engineering myself. I would suggest that a "transman" is a male who is transitioning (or has transitioned) to being a "woman," either in appearance and/or self-identifying as such. The converse would apply to the term 'transwoman'. A transman would then fall within the extension of 'man', and a 'transwoman' would come within the extension of 'woman'. The advantage of my re-conceptualisation is

that it is more coherent, more precise, and it is less likely to cause cognitive dissonance – conflicting attitudes, beliefs or behaviours – among language users. Now the slogan ‘transwomen are women’ would actually (literally) be true. But, most importantly, my terms don’t cause the kind of ripple effects that would stretch related concepts to breaking point (like ‘lesbian’ or the invention of the ‘lady-dick’, etc.). Wishing you all happy engineering!

## Notes

[1] The German-born philosopher [Rudolf Carnap](#) is considered to be an early exponent – or perhaps further back: Socrates?

[2] But if people start to believe the legal fiction (transwomen are women), this may harm or disadvantage others: women.

[3] The exemptions in UK legislation with regard to trans people confirm the legal fiction. If there were no difference between women and transwomen, we wouldn’t need exemptions. For this reason, trans activists want to abolish the exemptions. It may actually be useful if the law stated clearly, in every instance, that it had created a legal fiction. This would stop people from believing that the fiction is true: for example, that you can change your sex.

[4] Recently Joanna Harper has coined the term ‘cement ceiling’ in response to World Rugby’s ban on transwomen athletes at the elite level: <https://www.nytimes.com/2020/10/26/sports/olympics/world-rugby-transgender-women.html?smid=em-share> ; Harper’s expression suggests that World Rugby want to exclude transwomen from the sport altogether, but this is misleading.

[5] There is another ripple effect when it comes to statistics. Many police forces in Britain have succumbed to conceptual engineering. They record sexual crimes (like rape) in accord with the gender self-identification of the

perpetrator, regardless of whether they have a Gender Recognition Certificate or not. This will distort statistics – more ‘females’ will be sex offenders. But language is also affected. Contrary to the definition of rape in English law (non-consensual penetration with a penis), a ‘woman’ could then rape another woman.

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## TERFS, TRANSWOMEN AND TREKKIES

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by Miroslav Imbrišević

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Recently I read a definition of “Terf”: they are “cis women who deny the womanhood of transwomen.” [<https://www.zeit.de/zett/queeres-leben/2022-04/phenix-kuehnert-weiblichkeit-trans-frau>].

That made me think about the question of group membership. How do you acquire it? Strangely, it is never through self-ID. Traditionally there are two routes: [1] via the current members; or [2] specific, relevant facts must obtain.

If I want to join the illustrious Marylebone Cricket Club, then only the current members can help me: I must find two full members who would support my membership, and there mustn't be any objection to my membership by any of the other full members. When I became a British citizen, only the British state, and by extension the British people, could grant me citizenship – regardless of whether I had self-identified as British for years, however many Carry-On movies I had seen, and whether I stood up in the bath (like Jacob Rees-Mogg), whenever the national anthem came on the radio. German or Croatian officials could not grant me British citizenship, only the Brits could.

The other route to membership is *via* certain relevant facts. If you want to count as a woman, you need to have a female body (which then may lead to a certain socialisation and experiences or not). Without the female body, there is no woman. This is not biological essentialism, but a matter of definition. Similarly, only those who actually are black (i.e., have black ancestors) count as black, and only those who have a recognised disability count as disabled. This isn't biological essentialism either. People who think they can self-ID into these categories live in a different reality.

If you want to be a rockstar, you need to have done ‘rockstar things’ (released an album; be in the charts, etc., see [here](#)). If you want to be a Trekkie, you need to dress up like the actors on *Star Trek*, and ideally you will have watched most or all episodes of the TV series, and perhaps you speak Klingon. Self-identifying as a Trekkie, without dressing up and without having watched any episode of *Star Trek*, will not make you into a Trekkie. Some “Trekkie-facts” must obtain.

Some transwomen play the gender role “woman” in a stereotypical way: pearls, frilly blouses, high heels, hand bags, etc. Some have gender-affirming surgery (breasts, facial feminisation, etc.). Others are not playing the part at all; they only rely on self-ID. They have male bodies and look like men, but claim to be women. The latter are like Trekkies who merely self-ID, but who don’t dress up, haven’t seen any episode, and don’t use the phrase “Live long and prosper!” The trouble is, if none of the minimal Star-Trek-facts (wearing a uniform, familiarity with the TV series, etc.) obtain, then you are not a Trekkie.

As far as I see, self-ID *never* provides group membership. So, would dressing up, and “acting like a woman” make you into a member of the group, just like Trekkies do? At first glance it might look like it, but it turns out that it does not. When we are dealing with a Trekkie, then certain facts must obtain: pretending to be a Starfleet officer, having a uniform, using a hair-dryer as a phaser, etc. Here, acting (pretending to be something you are not) the part of Kirk, Spock or Uhura constitutes being a Trekkie – these are the membership-granting facts. Trekkies understand that you cannot become Spock, you can only *pretend* to be Spock; and that is how you become a Trekkie.

Those transwomen who play the role of “woman,” have thereby not satisfied any membership-granting conditions, because these differ from those that apply to Trekkies. The membership condition for the class “woman” – the fact that must obtain – is having a female body, not playing a role. The gender-role

“woman” is secondary, or parasitic on having a female body. Unlike with Trekkies, playing the gender role of women is not a membership-granting fact; it is only something that is often *associated* with being a woman. A would-be Trekkie who takes on the role of Captain Kirk thereby becomes a Trekkie; he doesn’t become Kirk, and most Trekkies are aware of this. A transwoman who plays the role of “woman” becomes the equivalent of a Trekkie: she doesn’t become a woman, but only becomes someone who *aspires to be* a woman.

But perhaps the first route is the way to go? What if there are women – trans allies – who recognise transwomen as women? Could this recognition not grant group membership? As we have seen with club membership and citizenship, certain conventions or legal procedures must be in place. There is no operative convention in place which could bestow membership to the class “woman” when invoked by current members (i.e., women). Feminists in and out of academia may intone the mantra “trans women are women,” but it has no (legal) effect.

There is, of course, a legal procedure in many countries now which provides for a change of gender. And this entails that legal documents may be altered: often the birth certificate will now state under sex: “female.” This does not mean that the original birth certificate was in error; that person is still biologically male and will very likely need treatment for prostate cancer in old age. The state is merely employing a legal fiction, as I have explained [here](#). In a narrow juridical sense, the state will treat a transwoman *as if* she were a woman. British law-makers were aware of this legal fiction when they debated the Gender Recognition Act in Parliament in 2003 (see [here](#)). For this reason, UK legislation permits the exclusion of transwomen from certain contexts (e.g., sport, peerages, single-sex provisions, etc.). If they really were women in all respects, these exclusions would be an injustice. So, the state is only pretending, just like the Trekkies are pretending. The difference is that the pretence of the aspiring Trekkie makes them into a Trekkie, while the pretence of the state doesn’t make a transwoman into a woman. It only grants them

certain rights. In the UK, the state treats them, in some respects, as if they were women, but not in all respects. In legislation where there are no exemptions and no recognition of the underlying legal fiction, transwomen and women are legally indistinguishable. And this can lead to confusion among trans people and their allies: they start to believe the mantra.

The above definition of ‘Terf’ assumes that membership to the class “woman” goes *via* the first route: the current members of the class can bestow membership. But womanhood is not a club one can join, if other members agree to it. In truth, membership relies on route [2]: certain facts must obtain, regardless of what allies may say.

Of course, some legislation (in Ireland, for instance) already permits self-ID when it comes to gender, and the new German government is preparing such a law. But this would create a precedent for group membership, and it is difficult to see why, as a consequence, we shouldn’t allow people to identify into any number of other categories. The possibilities are endless. And this Alice-in-Wonderland scenario explains why up until now self-ID was never an option when it comes to conditions of group membership. But, the times, they are a-changing.

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