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Respect and Equality:

Transsexual and Transgender Rights

BY STEPHEN WHITTLE

DISEMBODIED LAW: TRANS PEOPLE'S LEGAL (OUTER)SPACE¹

The problem of who I legally am in the world I live in has been vexatious throughout my adult life. Like other transsexual people worldwide, I face an inadequate legal framework in which to exist. Some of us live within states and nations that recognise the difficulties and attempt to provide a route way through the morass of problems that arise; others barely, if at all, even acknowledge our being. We are simply 'not' within a world that only permits two sexes, only allows two forms of gender role, identity or expression. Always falling outside of the 'norm,' our lives become less, our humanity is questioned, and our oppression is legitimised.

I have spent 28 out of my (to date) 47 years of life being known as Stephen. Prior to my adoption of the name Stephen, regardless of the name used for me by others, in my head, my day dreams and my plans for the future I referred to myself as Peter—a name I did not retain only because other people felt it was old fashioned. I have a beard, I wear a suit and tie to work - to not do so would be considered inappropriate. My partner and I have four children whom we chose to have together and the children all refer to me as Daddy. My driving licence, passport, library card and video-club membership have only ever referred to me in the male gender. Yet my national insurance pension scheme has only ever referred to me in the female gender; if I break the law I will go to a women's prison and to cap it all, I will depart this life as Stephen Whittle, female.

I frequently face a dilemma in how I am to refer to myself in various settings. I am all too aware that I am not like most other men. For a start, if I refer to myself as a man, am I claiming some privileged position in the patriarchy? I actually do not want to claim that position; I often do not feel very privileged having been dismissed from jobs in the past because of my otherness. I have received hate mail and been excluded from social events both public and private. I find the fact that I cannot ensure my compulsory employment pension contributions are passed onto my partner of twenty five years standing, at best, demeaning of our relationship, at worst, an almost criminal extortion of money from me. Where is my privilege?

Furthermore, I have a set of skills imbued in me as a child and teenager that other men simply do not have. Apart from sewing and household cleaning skills, I listen differently and I contribute to discussions differently. My childhood, like that of many I suppose, was unhappy but the reasons for that unhappiness were considerably different from those of most others. I know my attitude to other people and their lifestyles is one of almost excessive tolerance, as long as it involves no harm to others. I simply do not function in life with the same assumptions that other men are afforded through their upbringing and position of privilege.

In social and medical texts, my sort of man has, over time, been referred to as a female urning and gynandrist (Krafft-Ebing, 1893), female transsexual (Stoller, 1975), and as a 'woman who wants to become a man' (Green, 1974). More recently, the common descriptor applied to me is that of 'female to male transsexual.' This is on the basis that I was born with genitalia that are regarded as female yet have undergone a bilateral mastectomy, take testosterone on a regular basis and I identify myself as male. Yet, am I a man? I prefer to refer to myself as a trans man—my own understanding is that I am a man who was born female bodied and, as I explain to my children, when I was big enough and old enough I made it clear to other people that I really was a man and I got it sorted out. This leaves me with a personally acknowledged situation that I am a different sort of man; I am a trans man with a transsexual status.

With my status, a trans man, the UK government, because I have undergone some surgical gender reassignment, acquiesces to my request to be regarded as male (and not a man) for some social purposes but continues to maintain that for legal purposes I will be regarded as a woman. They choose not to make my life really difficult by making international travel or a driving check embarrassing, but they refuse to allow me many of the privileges that the law affords other men. At their worse, they insist that I am a woman.

It is difficult to explain what being a bearded woman means to those who have never experienced that position. If I want to take out life insurance, I am forced to sit in front of an

Stephen Whittle was the 2003 winner of CLAGS's Sylvia Rivera Award in Transgender Studies for his book, Respect and Equality: Transsexual and Transgender Rights (London: Cavendish Publishing, 2002). The following passages are excerpted from the first chapter.

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insurance broker who does not know me from Adam (or Eve for that matter) and explain that I am a woman—which always raises the eyebrows. I never ever want to lose my job because the idea of sitting in the dole office waiting for the clerk to shout out ‘Miss Stephen Whittle to cubicle 6’ makes me feel sick. I find it appalling that one of my children might one day have to register my death and on their return to collect the certificate will find I have been identified as Stephen Whittle, female, and that they will simply become ‘friend of the deceased.’

The presumption that has been taken by most academic writers in the area is that I, and people like me, are demanding that we be legally recognised in the gender role in which we live. I am not sure if that is the case (though it may be for some)—and anyway, surely the role I live in is that of a trans man. I am willing to be a different sort of man, but I am not willing to be a different sort of woman because I have never been a woman. I transitioned into living as a man when I was 19 years old; therefore, as I often explain, on that basis I never reached the exalted state of womanhood—my experience was at most, that of being a different girl. But even if I was a girl, my experience was significantly different from that of other girls, ask my sisters and they will verify that. My life is different, it is the experience of being a trans man, and as such, discrimination has been perpetrated on me throughout my life in an entirely arbitrary manner. I have lost jobs not because I do not do them well but because my life history is that of a trans man. My partner is refused my pension not because my money is not good but because I have the life history of a trans man.

Yet I am proud to be a trans man. I have surmounted great odds in life, I have had the pleasure of experiencing life in a very unique way, I have learnt a lot about tolerance and I have learnt a lot about bravery, hard work and commitment from the many other trans people I have met. Should it be so hard to be myself, to be a trans man, and the operative word in that is ‘man’? This essay is in effect a plea to the law. I want to be able to be a visible trans man, to obtain my own identity and to be recognised as myself. But firstly, we must try to understand exactly what is taking place in order to ascertain what we can learn about the nature and construction of the legal culture, and the nature and construction of gender, in itself, by studying the legal problems that transpire because of the emergence of transsexualism in our society.

LIVING IN OUTER SPACE

For Irigary (1977) to have an identity which is not one's own, to be a sex which is not one, is to be excluded from the fullness of being: it is to be left precisely in a condition of dereliction. One is excluded, therefore, from the social contract within which men participate. A Rousseau'sian design of the social contract inevitably fails because the abstract individual of liberal democratic theory is, as Patemen (1989) has shown, in fact a man. Irigary is referring to women as women, women who never have their own identity—a woman's identity is defined through the social and cultural persona, they are in society but not of society. And this could be seen as an echo of the women in law; a woman is objectified through interventionist law, she never is the law. As such, the egalitarian project of law is doomed through its own history, and the interventionist project in law is doomed through its further objectification. Both deal in a mythical equivalency.

The question then lies on whether there is any other form of project which can address the issue of the inadequacies of sexed / gendered law. ... John Locke asserted in relation to the law that the use of words is to be the sensible mark of ideas; and the ideas they stand for are their proper and immediate signification (in Douzinas, Warrington, McVeigh 1991: 228)

Let us consider, then, the extent to which the UK's Road Traffic Offender's Act 1988 (RTOA) is a ‘sensible mark of ideas.’ In the RTOA, it is a separate offence not to acknowledge, in court documents, a sex classification for yourself. Does this then require giving a legally correct classification or is the choice of sex yours, as long as you give one? Do you have to give the one that the court would recognise, and anyhow, do you know what system the court would use to recognise it?

If we consider the situation of the androgen insensitive woman, I (and medicine) refer to her as a woman, yet do we know for the purposes of the law whether she is a woman, or whether she is a man? Is the classification the one afforded on her birth certificate, i.e. based on a cursory glance by a midwife to see whether there is a penis or not? In other words, a process that simply asserts whether someone is a ‘man’ or a ‘not man.’ Or should the law follow the three-point test devised by Ormrod LJ in the case of *Corbett*?² Her chromosomes would be XY, her gonads would be undescended testes, and her genitalia would include a vagina? In the civil law, therefore, if the court uses the balance of

probabilities test used for ascertaining evidential proof, I suspect she would be found to be a man on a 2:1 rule. However in the criminal court if we were to have to prove her sex, say for an offence involving soliciting, would the evidential burden of ‘beyond all reasonable doubt’ mean that the court would be left with no sex site that they could place this woman in?

As UK law currently stands the transsexual man, if born in Britain, would be legally classified as a woman for the purposes of marriage³, the criminal law⁴, Social Security and National Insurance benefits⁵, immigration⁶ and parenting⁷. For the purposes of employment he would be afforded the special status of ‘woman who is transsexual’,⁸ which simply means a woman with special protection for having an identity peccadillo. If the trans man were born outside of Britain then his identity in each of these areas of the law would be dependant upon the nation state he was born in.⁹ Yet, the trans man would be classified on his driving licence (through the codification system) as a man. If the trans man is required to give his ‘sex’ to the court if he is facing a driving disqualification, presumably the purpose of that disclosure is to ensure that the driving licence records of the correct person are marked up. Should he say he is a man or male, or should he say he is a woman or female? What is the requirement of the law? It is no defence to a criminal act to argue that you had no knowledge of the law, or that you did not understand it. Where lies Locke's ‘sensible mark of ideas,’ the logic of the law is truly at times an ass. ♦

1. A version of this essay was published as “The Becoming Man : The Law's Ass Speaks” in More K, Whittle S (eds) (1999) *Reclaiming Genders: Transsexual Grammars at the Fin De Siecle*, London: Cassell
2. *Corbett v Corbett* [1970] 2 All ER 33
3. *ibid*
4. *R v Tan and others* [1983] 2 All ER 12
5. *Sheffield v UK Government Applic.* No 22985/93 (1993) E.C.H.R
6. *Horsham v UK Government Applic.* No 23390/94 (1994) E.C.H.R
7. *X, Y and Z v UK Government* [1997] 75/1995/581/667 E.C.H.R
8. *M v The Chief Constable of the West Midlands Police* (1996) 04/430/064
9. For example; if born in Ontario in Canada he would be a man for the purposes of immigration into Britain, yet he would be woman for the purposes of marriage. (see the comments earlier in this chapter on the cases of *C(L) v C(C)* (1992) and *B. v A.* (1990). If born in Holland he would be a man for all purposes except (probably) the criminal law.