

A Philosophical Perspective on Gender Identity [short]



[Posted to Medium 9th August 2019].

[This is the text of a short talk I gave at a public event 'The Future of Sex-Based Rights', held at the University of Melbourne on the 8th of August 2019. I will post a longer essay giving the expanded version of this argument separately].

Some of the other panellists are going to talk more about the implications of this bill if it goes through. I want to focus instead on this move of replacing sex, understood as a certain kind of embodiment (either biological sex as observed at birth and recorded on the birth certificate, or 'altered' sex as obtained via sex reassignment surgery), with belief about sex, in the law. I want to focus on belief about sex as the concept of gender identity, which so many countries have either protected separately (as we have, in fact, in both the Australian Sex Discrimination Act and the Victorian Equal Opportunity Act) or are attempting to replace sex with. (E.g. the UK through the proposed reform to the GRA, the US through the proposed reform to the Equalities Act, and in New Zealand, through the recently deferred BDMRA).

The question is whether 'gender identity' is fit to replace sex, to change the meaning of sex in the law from biological or 'altered' sex to something that is not about embodiment at all. I will argue that gender identity is *not* fit to replace sex, drawing on some recent work in Philosophy (which is my academic discipline).

Talia Mae Bettcher is a transwoman philosopher. She says: gender identity is something we have first-personal authority about. In that sense, it's like other mental states, like wishes, or

desires, or pains, or pleasures; things that I am generally considered an ‘expert’ on rather than other people. Gender identity is existential, it’s about “who we really are”.



“...when somebody is self-identifying in order to make a true statement about herself, this is because **a particular gender term is taken as part of her... existential self-identity... an answer to the question “Who am I?”** where this question is taken in a deep sense” (Bettcher 2009, p. 110).

Katharine Jenkins is an explicitly trans-allied feminist philosopher. She makes an analogy between a physical map, which guides us through a terrain, and her idea of an ‘internal map’, which guides us through the world when there are different expectations that bear on different people. She says: gender identity is an ‘internal map’ formed to guide people of a (gender) class through certain social and material realities. For Jenkins, we can have these ‘internal maps’ while violating their dictates, while disapproving of them, and, apparently, without others holding us to them.



“S has a gender identity of X iff **S’s internal ‘map’ is formed to guide someone classed as a member of X gender** through the social or material realities that are, in that context, characteristic of Xs as a class” (Jenkins 2016 & 2018, p. 730).

(Translation: Alice has the gender identity ‘female’/‘woman’ only if **Alice’s ‘internal map’ is formed to guide women** through the social or material realities that are characteristic of women as a class).

Robin Dembroff is a nonbinary philosopher. They say: both what gender identities we have, and what our gender identities mean, is up to us. Notice that this means there’s not a fact of the matter about what content a female/woman/feminine gender identity has, and everyone who has one has the same content. Rather it means there can be as many meanings of that identity as there are people identifying (and more). Notice the challenge that this poses for trying to

argue that these identities are then in any sense the ‘same’ as those that non-trans female people are argued to have.

forthcoming in *Philosophy & Medicine* (eds. C. Beckett & J. C. Beckett) (2018) (forthcoming in an issue of *Philosophical Topics*)

Real Talk on the Metaphysics of Gender

Ryan Doering
Yoon Gwinn

Abstract Gender classifications often are controversial. These controversies typically focus on whether gender classifications align with facts about gender kind membership. Could someone really be nonbinary? In Ryan Doering’s view, the answer is no. I think this is a bad approach. Consider the possibility of ontological approaches, which argue about social kinds operating in a context socially constituted: the behaviors, concepts, or affect of certain groups. Gender kinds operating in dominant contexts, I argue, appear binary and unitary persons in this way: they marginalize trans men and women, and exclude nonbinary persons. As a result, facts about membership in dominant gender kinds should not settle gender classification practices.

1 Introduction

In 1976, North Carolina established itself as controversial by passing the “Public Facilities Privacy and Security Act.” According to this law, someone could not legally enter a men’s restroom or locker room unless they were assigned the sex, male at birth, nor could they legally enter a women’s restroom or locker room unless assigned the sex, female at birth. In short, the law stated that anyone assigned male at birth is a man (or boy), and anyone assigned female at birth is a woman (or girl), effectively enforcing social and legal reifications of binary identities. Ostrich followed the law’s passing, and heated debate over similar legislation – not, indeed, trans identities in general – continues across the United States, the United Kingdom, and other countries. Such debate often reaches beyond bathroom stalls. For example, under the Trump administration, the Department of Health and Human Services is pushing a “biological, unchangeable” legal definition of gender, under which an individual’s gender is determined by their male genitalia.

Clearly, gender classifications can be extremely controversial. Frequently, these controversies manifest as arguments over metaphysical questions, such as *who is a man*

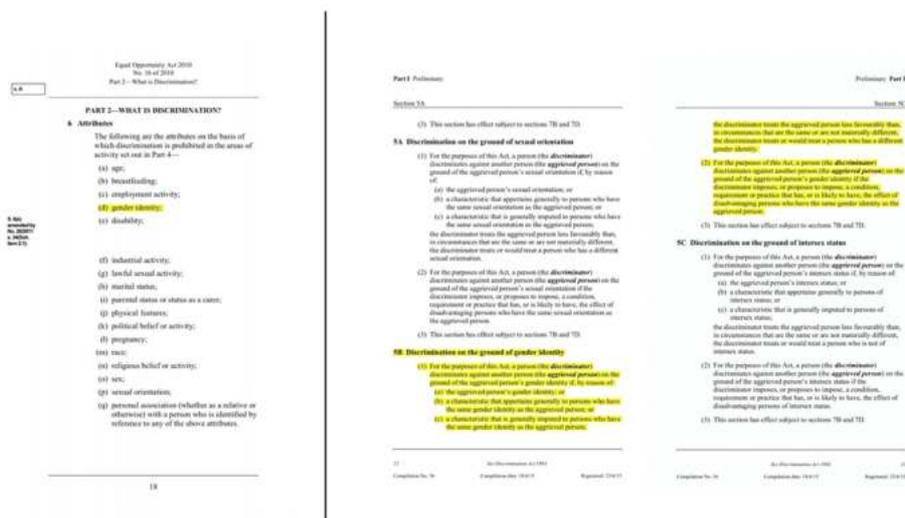
¹ Ryan Doering, Ryan Doering (2018).
² According to the National Center for Transgender Equality, 2018: “Over 100 states introduced bills to ban or restrict the use of public facilities by transgender people, and 18 states passed laws that do so. In addition, several states have introduced bills to restrict the use of public facilities by transgender people, and 18 states have passed laws that do so.”

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transition, and have been through a male puberty, the answer will clearly be ‘no’ in all three cases.

So we shouldn’t be replacing sex in the law with gender identity (through the notion of what sex one *believes* oneself to be, rather than the fact of what sex one is, or what sex one has taken surgical steps towards becoming).

The answer to the first of these questions is less obvious – it seems to me that the law *should* be interested in this class of people, or at least a class of people that includes these people, such as all/any gender non-conforming people. These people do face sometimes quite serious discrimination. But notice that depending on how we characterize this group (e.g. gender identity, gender expression, gender non-conformity), we might *already* protect this (gender identity is protected in the EO and the SDA).



And if that’s the case, then this bill is attempting to replace sex in the law with something that is *already protected in the law*, and so this bill is *only* bad news for women (rather than being bad news for women but good news for trans people).

In conclusion, we should not be trying to shoehorn the protection of gender identity into the protection of sex. For as long as sex-based discrimination persists, women need sex-based rights.