

# THE IMPORTANCE OF REFERRING TO HUMAN SEX IN LANGUAGE

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## I

### INTRODUCTION

For centuries, the English language concepts of woman and man have been understood as referring only to adult female and male humans respectively, whilst girl and boy have been understood as referring to the younger versions; and nearly all - perhaps all - other natural languages have had equivalent ways of systematically differentiating between male and female humans.<sup>1</sup> Yet we live in a cultural moment when adjustments to the traditional understandings of womanhood, manhood, girlhood, and boyhood are being urged upon language users, sometimes by those with great institutional influence in Global North societies. We are told by progressive-styled organisations and leaders that, quite literally, transgender women (henceforth, “trans women”) are women, and transgender men (henceforth, “trans men”) are men.<sup>2</sup> Since on ordinary understandings, trans women are by definition biologically male and trans men biologically female, this looks like a radical shift in usage.

To get a sense of the scope of the proposed reorientation, it’s important to note a further linguistic shift in some quarters. I’ll use the category of trans women as an example. This second shift involves thinking that the reference class of “trans women” should no longer be confined to those biologically male people who have had surgery on their natal sex characteristics, or who have taken female-associated hormones, or even who have just had “woman” or “female” officially placed on their legal identity documents. It now should include biologically male-bodied people whose only claim to trans-womanhood is an inner feeling of a possessing a female gender identity, and nothing else: no surgery, nor hormones, nor legal identity change, and perhaps not even cross-

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1. Cliff Goddard, *Lexico-Semantic Universals: A Critical Overview*, 5 LINGUISTIC TYPOLOGY 1 (2001); Kai Von Fintel & Lisa Matthewson, *Universals in Semantics*, 25 THE LINGUISTIC REV. 139 (2008).

2. See, e.g., Vice President Kamala Harris (@VP), TWITTER (May 12, 2021, 2:47 PM) (“Women, particularly women of color and trans women, face disparities that have long existed in our healthcare system”), <https://twitter.com/VP/status/1392552113352450053> [<https://perma.cc/777F-GL9P>]; Congresswoman Alexandria Ocasio-Cortez (@AOC), TWITTER (Feb. 24, 2021, 1:55 PM) (“women’s rights include trans women”), <https://twitter.com/aoc/status/1364650157392945152?lang=en> [<https://perma.cc/MK7T-YQLA>]; California State Senator Scott Wiener (@Scott\_Wiener), TWITTER (Dec. 30, 2020, 8:53 PM) (“Trans women are women”), [https://twitter.com/Scott\\_Wiener/status/1344461581443166208](https://twitter.com/Scott_Wiener/status/1344461581443166208) [<https://perma.cc/YPX8-C2FX>].

dressings is required.<sup>3</sup> Since supposedly, any male with a female gender identity should now be counted as a trans woman, and since supposedly, trans women should be counted as women, it swiftly follows that any male with a female gender identity should be counted as a woman.<sup>4</sup> This takes us far indeed from the traditional concept of womanhood. Having a psychological identity misaligned with the male sex is now a criterion sufficient for womanhood. Similar points can be made about the traditional category of men, and recent attempts to radically reorient it to include female people, physically and legally unchanged, who “identify as” males psychologically. Related points can also be made about relatively recent attempts to forge a new category of trans people - non-binary people - who are to be classified as neither men nor women on the grounds that they psychologically identify as neither, or as both.<sup>5</sup>

Though espoused by many contemporary transactivist organisations, these further shifts in definitions of what it is to be trans are not accepted uniformly, nor even known about at all in some circles. In some places, the previously dominant conception of a trans person as someone who has medically altered their body to look like the opposite sex remains the dominant one. But whether it is medical alteration, cross-dressing behaviour, or a sex-misaligned psychological feeling that is supposed to be indicative of being trans, in all cases the claims that “trans women are women” and “trans men are men,” when understood literally, mark significant shifts away from the original understanding of those terms, which is grounded in biological classification.

As might be anticipated, acceptance in some quarters of the proposed reorientation of such commonly used terms as “woman” and “man” has had significant practical consequences in policy terms. For instance, on the basis of a belief that trans women are literally a subset of the category of women, they are now

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3. “Being trans isn’t about having . . . [or not having] . . . particular body parts. It’s something that’s absolutely core to a trans person’s identity and doesn’t alter - whatever their outward appearance might be.” *The truth about trans*, STONEWALL, <https://www.stonewall.org.uk/truth-about-trans#gender-reassignment> [<https://perma.cc/2LRH-J5YE>]; see also *Transgender FAQ*, GLAAD, <https://www.glaad.org/transgender/transfaq> (“Transgender is a term used to describe people whose gender identity differs from the sex they were assigned at birth. Gender identity is a person’s internal, personal sense of being a man or a woman (or boy or girl.) For some people, their gender identity does not fit neatly into those two choices. For transgender people, the sex they were assigned at birth and their own internal gender identity do not match.”).

4. Rachel Stein, *Trans women are women*, STONEWALL, <https://www.stonewall.org.uk/node/45364> [<https://perma.cc/R9A7-HBZ2>] (“Trans women have every right to have their identity and experiences respected too. They are women – just like you and me – and their sense of their gender is as engrained in their identity as yours or mine.”); see also Katherine Jenkins, *Amelioration and Inclusion: Gender Identity and the Concept of Woman*, 126 *ETHICS* 394 (2016).

5. *Transgender FAQ*, *supra* note 3 (“There have always been transgender people who felt that their gender identity didn’t fall neatly into the two binary categories of “man” or “woman.” In the past, trans people who felt that way used the words genderqueer and genderfluid to describe that experience. While those words are still used today, it’s now more common for people to call themselves non-binary if they feel their gender identity is something other than “man” or “woman.” People who use the word non-binary to describe their gender identity typically also call themselves transgender.”).

competing against females in sporting competitions.<sup>6</sup> Some are permitted to compete on the basis of gender identity alone.<sup>7</sup> Trans women prisoners, including sex offenders, are being put in women's prisons alongside female offenders.<sup>8</sup> Trans women are occupying political roles traditionally reserved for females.<sup>9</sup> Trans women offenders' crimes are being recorded as women's crimes.<sup>10</sup> One rationale commonly offered for all such changes is that both trans women and females are kinds of women.

An approving account of these changes says they have come about because the traditional concepts of womanhood and manhood - understood as coextensional with the concepts of "adult female human" and "adult male human" respectively - are no longer fit for purpose. Broadly speaking, two intellectual routes have led some to this conclusion. The first says that, contrary to the orthodoxy, there are no natural categories of female and male humans after all, so that our words for these categories do not refer to anything real. The second says that, whether or not there are two natural categories of female and male humans, there is no pressing need to refer to those categories in language.

In what follows, I examine each of these routes. I argue that neither of them justifies the drastic changes in language and policy being urged. In fact, I argue, abandoning orthodox biology-based understandings of "woman," "man," "girl" and "boy" deprives language-users with immensely valuable tools to analyse and explain the material and social world. Meanwhile, any supposed gains are partial and uncertain.

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6. Dawn Ennis, *Exclusive: NCAA Champion Cecé Telfer says 'I have no benefit' by being trans*, OUTSPORTS (June 3, 2019, 10:05 AM), <https://www.outsports.com/2019/6/3/18649927/ncaa-track-champion-cece-telfer-transgender-athlete-fpu-trans-testosterone> [<https://perma.cc/GH5R-JDYV>]; Sean Ingle, *Trans weightlifter Laurel Hubbard set to make history at Tokyo Olympics*, THE GUARDIAN (May 5, 2021), <https://www.theguardian.com/sport/2021/may/05/trans-weightlifter-laurel-hubbard-set-to-make-history-at-tokyo-olympics> [<https://perma.cc/36X9-D54R>]; Ian Johns, *Transgender cricketer Maxine Blythin named Kent's women of the year*, KENT ONLINE (Nov. 6, 2019, 12:09 PM), <https://www.kentonline.co.uk/dover/news/dont-speak-for-me-or-my-ovaries-215668/> [<https://perma.cc/PGQ3-MZ3K>].

7. Associated Press, *Policy allowing transgender athletes to compete as girls found to violate US law*, THE GUARDIAN (May 28, 2020, 4:07 PM), <https://www.theguardian.com/sport/2020/may/28/connecticut-transgender-federal-civil-rights-lawsuit> [<https://perma.cc/S7GM-QUL3>].

8. Abigail Shrier, *Male inmates in women's prisons*, WALL STREET J. (May 31, 2021, 11:16 AM), <https://www.wsj.com/articles/male-inmates-in-womens-prisons-11622474215> [<https://perma.cc/4YGU-PPNZ>]; April Halley, *Male-bodied rapists are being imprisoned with women. Why do so few people care?*, QUILLETTE (Oct. 12, 2019), <https://quillette.com/2019/10/12/male-bodied-rapists-are-being-imprisoned-with-women-why-do-so-few-people-care/> [<https://perma.cc/6LMH-2S6N>].

9. Maya Oppenheim, *Lily Madigan: Meet the woman who wants to be Labour's first transgender MP*, INDEP. (Feb. 24, 2018, 8:19 PM), <https://www.independent.co.uk/news/uk/politics/lily-madigan-labour-party-transgender-officer-mp-young-abuse-threats-a8225771.html> (last accessed Jan. 8, 2022); Rebecca C. Lewis, *New York City elects its first trans district leaders*, CITY AND STATE N.Y. (July 23, 2020), <https://www.cityandstateny.com/articles/politics/new-york-city/new-york-city-elects-its-first-trans-district-leaders.html> [<https://perma.cc/H5SU-CQLQ>].

10. *Scottish police confirm male-born rape suspects are recorded as female, where requested, regardless of legal status*, RUSS. TODAY (Apr. 18, 2021), <https://www.rt.com/uk/521407-police-scotland-rape-suspects/> [<https://perma.cc/75P3-DLYU>].

## II

## SEX DENIALISM

In this section, I focus on two influential attempts to argue that sex as we traditionally understand it in humans does not exist; or at least, is not binary and so doesn't exist in the way we think it does. I will call this sort of conclusion "sex denialism." The first variety has no ambitions to disrupt our general understanding of the relations between language and the material world, arguing on more specific grounds that there are reasons to think prior conceptualisations of sex in humans are wrong. The second variety of sex denialism, and the more ambitious one, comes from a general hypothesis about the relationship between language and reality, including the entities described by science and by biology specifically.

## A. Sex-Denialism Via a New Theory of Sex

Perhaps the most well-known form of sex-denialism in recent times argues that sex is not a dimorphic binary but a "spectrum." This claim is most famously made by historian of science Anne Fausto-Sterling<sup>11</sup> and is also made in a 2015 *Nature* magazine article, among other places.<sup>12</sup> Relatively many feminist philosophers have appealed to similar considerations to attempt to establish that "woman" and "man" are not biologically based.<sup>13</sup> On this view, there are not, after all two discrete human sexes, female and male, but a whole range of differently sexed beings, which perhaps - as the term "spectrum" might suggest - cannot even be grouped into clear and unambiguous kinds at all.

The evidence for this hypothesis is drawn from observation of people with so-called "intersex" conditions, variously also known as "Disorders" or "Differences" or "Variations" of Sexual Development (DSDs or VSDs). If the hypothesis was true, then, since our orthodox understandings of "male" and "female" appear to depend on thinking of those two states as discrete - not to mention the only options available to humans - it would seem to follow that "man" and "woman," construed as synonymous with "adult male human" and "adult female human" respectively, are not terms that refer to anything existent, and so should be either withdrawn or their meanings thoroughly revised. Similar points would apply to "boy" and "girl."

The claim that human sex is a spectrum faces at least two important challenges, however. Both pertain to the way that defenders of the spectrum theory misconstrue the original claim that sex is dimorphic. The first challenge focuses on whether classical understandings of "human female" and "human male" are truly incompatible with the sorts of cases being presented as inconsistent with

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11. Anne Fausto-Sterling, *The Five Sexes: Why Male and Female are not Enough*, 33 *SCI.* 20 (1993).

12. Claire Ainsworth, *Sex redefined*, 518 *NATURE* 288 (2015).

13. Tomas Bogardus lists several of them. Tomas Bogardus, *Evaluating Arguments for the Sex /Gender Distinction*, 48 *PHILOSOPHIA* 873 (2020).

them. In a much-cited statement, Fausto-Sterling claims that 1.7% of the population are intersex.<sup>14</sup> Yet when we look at that study on which she bases this claim, we see that it concedes that the truth of the claim depends on what is counted as “true dimorphism.”<sup>15</sup> This figure of 1.7% includes people with hormonal disorders such as Non-classical Congenital Adrenal Hyperplasia (CAH), and chromosomal disorders including Klinefelter, Turner, and other syndromes involving extra or missing X or Y chromosomes. Yet these conditions, each involving some variation in primary or secondary sex characteristics, only look incompatible with the classical understanding of human sex if it is assumed that the classical understanding requires complete possession of *all* of the primary and secondary sexed characteristics standard or stereotypical for one’s sex. That is, the claim that 1.7% of the population is intersex explicitly presupposes that in order to avoid being counted as intersex, one must fit some “Platonic ideal” of maleness or femaleness, involving the possession of either XX (for the female) and XY chromosomes (for the male), in each case aligned with a *full complement* of primary *and* secondary sex characteristics of the standard kinds.<sup>16</sup> The fact that relatively many of us fail to meet those stringent condition, either through variation at birth or later disease, accounts for the startlingly high estimate.<sup>17</sup>

Yet on a more charitable reading the classical understanding of the sexes as dimorphic does not require anything as demanding. A plausible and much more minimal alternative says that each sex is defined by the presence of a developmental pathway to produce certain gamete types - either larger, relatively static ones (in which case, the pathway belongs to females) or smaller, more mobile ones (in which case, males).<sup>18</sup> Intentionally, this theory says nothing specific about chromosomes, because it is designed to also apply to males and females in sexually dimorphic species which are not human. That is, it is supposed to be a general account of maleness and femaleness in biology. Equally, it does not require a complete set of primary or secondary sex characteristics to be actually produced in a given human for that human to count as male or female. Being on an identifiable developmental pathway to produce a certain kind of gamete is

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14. For instance, she writes on her website: “Based on an assessment I conducted with Brown University undergraduates I also estimated intersexual birth rates to be about 1.7%.” Anne Fausto-Sterling, *Gender & Sexuality*, <http://www.annefaustosterling.com/fields-of-inquiry/gender/> [<https://perma.cc/5NXW-V5P7>].

15. Melanie Blackless et al., *How sexually dimorphic are we? Review and synthesis*, 12 AM. J. OF HUMAN BIOLOGY 151, 161 (2000).

16. *Id.*

17. Primary sex characteristics are those characteristics standardly found at birth which distinguish males from females in a sexually dimorphic species. For human males, these include testes, penis, scrotum, foreskin, and prostate. For human females, these include ovaries, clitoris, vagina, uterus and fallopian tubes. Secondary sex characteristics are those characteristics standardly developed around or after puberty, including facial and bodily hair, enlargement of the testes and penis, and growth of the larynx for males; and breast development, a menstrual cycle, and increased body fat for females.

18. Alex Byrne, *Is sex binary?*, ARC DIGITAL (Nov. 1, 2018), <https://medium.com/arc-digital/is-sex-binary-16bec97d161e> (last accessed Jan. 8, 2022).

consistent with that pathway being disrupted in various ways, either through variation or through disease, so that in some cases non-standard sex characteristics are quite possibly the outcome.

On this model of the sexes, then, only a very small number of DSD conditions would count as truly difficult to classify: 0.02% of the population, and not 1.7%.<sup>19</sup> The vast majority of the cases subsumed under Fausto-Sterling's 1.7% turn out to be easy to identify as on one distinctive gamete producing-pathway or other. This is confirmed by the fact that in medical literature, symptoms for many of the conditions in question are described as having different *male* or *female* presentations.<sup>20</sup> For instance, Non-classical Congenital Adrenal Hyperplasia (responsible for 1.5% of the 1.7% in Fausto-Sterling's calculation) is compatible in females with pregnancy and carrying a baby to term.

This means that if the male or female people with these DSDs are adults, we can carry on calling them "men" or "women" as the case requires, without any problem. If they are children, we can call them "girls" or "boys." No linguistic reformation is thereby required or justified. But what then should we infer from the 0.02% of people with truly ambiguous DSDs, who cannot easily be classified as on one gamete-producing pathway or other; or else who can, but where that classification would seem profoundly at odds with their outer morphology?<sup>21</sup> Should we admit that sex is a spectrum on the basis of the existence of a very small number of truly ambiguous cases?

It is at this point that the second challenge to the spectrum view emerges. Defenders of the spectrum view apparently assume that if there exist any humans whatsoever who are ambiguous or difficult to classify, the classical binary theory of the sexes fails. That is, they assume that a binary theory of the sexes must cleanly classify every human as of one sex or the other, or else founder. But once again, this is too demanding. Variation in biology is commonplace generally without being thought to undermine the basis of biological categories in other cases. Some tigers have no stripes; some moths within the same species have different coloured wings; some humans have eleven fingers. And for many biological categories, there will be variants at the metaphorical edge of a category that are difficult and perhaps impossible to classify. For instance, natural hybridization between two plant species can result in plants which are not clear-

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19. Leonard Sax, *How Common is Intersex? A Response to Anne-Fausto Sterling*, 39 J. OF SEX RES. 174 (2002).

20. It is also confirmed by the fact that many are classified as either 46,XX or 46,XY DSDs, based on their gametes, which establish a particular developmental pathway. For instance, 5-ARD and PAIS are 46,XY DSDs in medicine. Because they have testes not ovaries, and produce small gametes /sperm not large gametes/eggs, and because they otherwise have most of the primary and secondary sex characteristics associated with being male, the individuals concerned are considered to be males with DSDs.

21. An alternative theory of the sexes, which I do not have space to consider here, construes the sexes as two homeostatic property clusters with no necessary nor sufficient conditions for membership of each. This theory might be able to accommodate some of these cases as definitively male or female – but perhaps not all of them. I discuss this in KATHLEEN STOCK, *MATERIAL GIRLS: WHY REALITY MATTERS FOR FEMINISM* 45 (2021).

ly one species or other. Recognition of this fact does not normally cast the existence of the species into question.

Indeed, some philosophers argue that ambiguity around the edges is guaranteed for nearly any category, biological or not, in that there will often be unusual cases which it cannot accommodate.<sup>22</sup> This is because our categories are shaped in response to aspects of the world we most often find around us, and in which we have the keenest interests.<sup>23</sup> Admitting that relatively tiny numbers of people do not fit cleanly into the categories of “man” and “woman” is compatible with retaining those original categories, understood biologically, providing the categories provide useful tools with which to discuss what is the case for the vast majority of people.<sup>24</sup> This is in no way to underestimate the need to pay keen attention to the pressing medical and other interests of people with truly ambiguous DSDs. However, arguably this attention can be paid without revising our entire conception of “man” and “woman” for everyone else.<sup>25</sup>

## B. Sex-Denialism Via Post-Structuralist Metaphysics

A second influential route to sex denialism is Judith Butler’s radical social constructivism about sex.<sup>26</sup> Butler partly takes inspiration from arguments found scattered throughout the oeuvre of Michel Foucault, intimating that contingent human conceptualisations at a given time and place influence the way the body and the self are experienced and acted upon, altering the field of possibilities for each. Foucault also famously argues that what we count as knowledge, including knowledge of the body and of the self, is constituted at least partly by power relations moving relatively blindly and contingently through social practices and institutions.<sup>27</sup> Arguably, there remains room in Foucault’s worldview for a distinction between the pre-existing physiological body and the sociopolitical body as acted upon by power.<sup>28</sup> But whether or not this interpretation is accurate, Butler rejects the distinction. She argues that language or “discourse” is the means through which power acts to wholly construct the only world we can know.

22. Bogardus, *supra* note 13 at 873; PETER LUDLOW, *LIVING WORDS* (2014).

23. JOHN DUPRÉ, *THE DISORDER OF THINGS: METAPHYSICAL FOUNDATIONS OF THE DISUNITY OF SCIENCE* 19 (1993).

24. I will argue in the next section that they do.

25. A different challenge to “woman” understood as “adult human female” finds the semantic vagueness in “adult” problematic (i.e. the fact there is no clear point at which a child becomes an adult). See Robin Dembroff, *Escaping the natural attitude about gender*, 178 *PHIL. STUD.* 983, 996 (2021); Maggie Heartsilver, *Deflating Byrne’s “Are Women Adult Human Females?”*, 1 *J. OF CONTROVERSIAL IDEAS* 9 (2021). Again though, vagueness is a common feature of many naturalistic concepts without automatically causing problems for the categories concerned. See Alex Byrne, *The Female of the Species: Reply to Heartsilver* (unpublished manuscript) (on file with author).

26. See JUDITH BUTLER, *GENDER TROUBLE* (1990); see also JUDITH BUTLER, *BODIES THAT MATTER* (1993).

27. MICHEL FOUCAULT, *HISTORY OF SEXUALITY* 93 (Robert Hurley trans., 1981).

28. David Dudrick, *Foucault, Butler, and the Body*, 13 *EUR. J. OF PHIL.* 226 (2005).

This means that, on her picture, the distinction between nature and culture is itself part of culture.<sup>29</sup> There can be no secure awareness of pre-existing natural facts, including facts about physiological and biological aspects of our bodies. Replacing the traditional distinction between gender (understood as the socially constructed meanings around the sexes) and the sexes (the two underlying natural kinds that partly give rise to the social meanings), she writes: “gender is not to culture as sex is to nature; gender is also the discursive/cultural means by which ‘sexed nature’ or ‘a natural sex’ is produced and established as “prediscursive,” prior to culture, a politically neutral surface on which culture acts.”<sup>30</sup> Biology, meanwhile, is a “medico-legal alliance emerging in 19th century Europe [that] has spawned categorial fictions” - i.e., the two sexes - “that could not be anticipated in advance.”<sup>31</sup>

Alongside this metaphysical picture, Butler promotes a political project: disrupting deceptively permanent-looking human categories of maleness and femaleness via non-standard and subversive social performances: acts of gay love, drag acts, and trans claims of sex-switching, for instance.<sup>32</sup> The two sex categories, as originally socially constructed, set up “exclusionary gender norms.”<sup>33</sup> That is, they prioritise heterosexual relations between people with stereotypically perfect masculine and feminine bodies, and disempower gay people or others whose bodies and desires don’t fit heteronormative stereotypes. Through human speech and action, she thinks that we can change the nature of the sexed world to a more polymorphous and sexually diverse one.

It should be noted that this aspect of Butler’s thought lends a particular gloss to contemporary transactivists’ attempts to change terminology in policy and law. Perhaps understandably, most activists tend to present their preferred language changes and corresponding policy changes as a matter of justice, supposedly in recognition of what is already the case. Trans women belong in the category of women’s sport, or in women’s changing rooms, it is said, because they *are* women. This is often presented as referring to something antecedently true. Yet on the Butlerian view, there is no underlying truth here to be described either way. Any such policy changes should be read as performative not descriptive. They are subversive attempts to disrupt heteronormative social constructs and to replace them with different social constructs.

Generally, the metaphysical worldview proposed by Butler is subject to many objections. Rival theories are available, also able to accommodate the fact that much in the human world is perspectival and contingent, without necessarily making everything as radically mind-dependent as Butler concludes. It would be beyond the scope of this paper to make this case. For present purposes I simply point out a dilemma for her position. Either there is still room in Butler’s

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29. BUTLER, GENDER TROUBLE, *supra* note 26 at 50–51.

30. *Id.* at 10.

31. *Id.* at 44.

32. *Id.* at 215.

33. Judith Butler, *Preface* to GENDER TROUBLE viii (Routledge 2d ed. 1999).



picture for the “reality” of the entities described by science, and the “truth” of certain scientific theories, in some meaningful sense of those words, or there isn’t. If there is, then that permissiveness should extend to biological explanations and to the human sexes too; and so we can legitimately continue to refer to the sexes with names of their own, and to cite them in causal explanations, predictions, and social policy decisions. This concession is far from out of the question: plenty of philosophers would argue that social constructionism is compatible with the reality of the constructs in question, in various familiar senses.<sup>34</sup>

On the other hand, if there is no room for reality, then it is not just the “real” existence of the human sexes that is called into doubt, but also that of every biological and perhaps even scientific postulate whatsoever: cells, dendrites, genes, neurons, viruses, atoms, quarks, black holes, and so on. In that case, we have bigger problems than our continuing allegedly problematic reference to the existence of two human sexes in particular. On this prong of the dilemma, it becomes unclear why, say, our policies should be aimed only at denying existence of sex, and not, say, the entities described by medicine, neuroscience, and environmental science as well.

Perhaps it will be conceded that - of course - primary characteristics like ovaries and testes, and secondary characteristics like breasts and facial hair, are real enough. After all, they exist in the perceptible world. To some, though, there may still seem something attractive about the idea that sex itself, as an abstract property, is not quite as “real” as bits of the tangible sexed body.<sup>35</sup> However, reality is not confined to what is perceptible. There are lots of imperceptible things that exist: happiness, numbers, and concepts themselves are just a few examples.

More specifically, sex, as was just explained in the last section, is plausibly understood as a capacity or - in philosophers’ terminology - a *disposition* to produce a certain kind of gamete. On most accounts, dispositions are not perceptible concrete objects, but they are nonetheless real properties of an entity, determining what *would* happen to that entity under certain conditions. They are genuinely possessed by objects, even if the disposition concerned is never actualised because it never meets the right conditions. For instance, my window has the disposition of *fragility*: it would break, were someone to strike it hard enough. The aspirin in my cupboard has the disposition of *solubility*: were I to add it to water, it would dissolve. The toadstool in my garden has the disposition of *being poisonous*: if I ate it, I would become ill. Perhaps the window will

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34. See RON MALLON, *THE CONSTRUCTION OF HUMAN KINDS* 137–61 (2016).

35. Perhaps this thought is behind the strange definition of “sex” in the US Equality Act, which does not mention gamete-producing pathways, but only some of the outcomes of those pathways: “pregnancy, childbirth or a related medical condition,” “sex characteristics,” and “sex stereotypes,” for instance. See Equality Act of 2019, H.R. 5, 116th Cong., available at <https://www.congress.gov/bill/116th-congress/house-bill/5/text>. For critical comment, see Mary Rice Hasson, *The Equality Act and the End of ‘Females,’* NEWSWEEK (Feb. 24, 2021), <https://www.newsweek.com/equality-act-end-females-opinion-1571432> [<https://perma.cc/ULF6-UA69>].

never break, nor the aspirin dissolve, nor the toadstool poison anyone; but nonetheless each genuinely has the capacity concerned right now, even in the absence of what philosophers call the right “stimulus conditions.”

Sex too looks like a disposition: it is the genuinely present capacity of an organism to produce a certain kind of gamete under certain stimulus conditions, whether or not those conditions are actually realized for a particular organism. Moreover, *contra* Butler, sex as understood this way is not a disposition whose existence depends in any way on human concepts or “constructions” of it. It is naturally occurring, if anything. (It is true that we can only think about the sexes by using human concepts. It is not as if we have much choice, though. As the humorous rhetorical point popularly attributed to philosopher Hilary Putnam goes: “We should use somebody else’s conceptual scheme?”<sup>36</sup>)

To summarise this section: no serious challenge has yet emerged to a full-throated retention of ordinary understandings of “man,” “woman,” “boy” and “girl,” understood in terms of human biology. As a justification of proposed language reforms, sex denialism fails.

But perhaps a sense lingers that it is somehow *up to us* whether we choose to refer to sex or not. I suspect that many readers thus far will still be tempted by the idea that even if, in some technical sense, sex exists, it might be a good thing if we changed our concepts so as not to refer to it. This is the strategy of sex avoidance, and I turn now to its consideration.

### III

#### SEX AVOIDANCE

A different source of support for redefining “woman” and “man” comes from those who deny that there is any pressing need to refer to those categories at all. These are the sex-avoiders, and I’ll now argue that they too are misguided, albeit for well-intentioned reasons.

In a philosophical context, the strategy of sex avoidance falls, broadly speaking, under what have been called “ameliorative definitions:” attempts to improve our concepts according to certain corrective visions, and to say what those meanings should be but currently are not. There have been several attempts to ameliorate the concept of *woman* so that it no longer refers to females directly. For instance, some second wave feminists in the 1970s and 80s argued that “woman” should not be understood as referring to a biological category, but rather to a purely social one. This was presented, not as revealing an existing truth about womanhood, but rather as a practical response to the societal problem of “biological determinists” who assume that being female determines behavioural and intellectual aspects that make women suitable for a restricted domestic life, and not much else.<sup>37</sup> More recently, building on arguments by radical feminists Catharine MacKinnon and Andrea Dworkin, philosopher Sally

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36. Richard Rorty, *Putnam and the Relativist Menace*, 90 THE J. OF PHIL. 443, 451 (1993).

37. For critical discussion, see STOCK, *supra* note 21 at 166.

Haslanger has argued that we should ameliorate our concept of *woman* by making it refer to something exclusively social: roughly, to the occupants of a subordinated social role, imposed upon them on the basis of *appearing* female though perhaps not actually *being* female.<sup>38</sup> Fellow philosopher Katherine Jenkins has since criticised Haslanger's proposal as "exclusionary" of trans women who do not even appear female.<sup>39</sup> According to her, we should therefore improve the concept *woman* by making it refer to "having a female gender identity."<sup>40</sup>

Sometimes, ameliorative accounts of *woman* are combined with a revisionist claim about the actual meaning of "woman," prior to amelioration. On these accounts, even now, "woman" does not exclusively mean "adult human female" but is in fact polysemous (has many meanings), only one of which is "adult human female." However, it is simultaneously argued, we should drop this particular meaning, at least partly for reasons of social justice.<sup>41</sup>

Sometimes sex avoidance is partly motivated by sex denialism: we should change the concept of *woman*, understood as referring to adult human females, partly because the concept of a *female* is allegedly ill-formed.<sup>42</sup> We have just seen that this isn't right. But sex avoidance is also pursued by many who continue to recognise that binary human sex exists in the natural world. Some of the activists who urge us to believe that "trans women are women" and "trans men are men" seem to fall into this camp. If pressed, they will concede that sex exists, but deny that the terms "woman" and "man" should function to track it.<sup>43</sup> A related manifestation is that of speakers who try to avoid mentioning "women" or "females" in any public context. It is this strategy that is behind public health or other campaigns that refer to "cervix-havers" or "menstruators" ra-

38. Sally Haslanger, *Gender and race: (What) are they? (What) do we want them to be?*, 34 *NOÛS* 31, 42 (2000).

39. Jenkins, *supra* note 4 at 394. It is interesting that Jenkins' proposal to ameliorate the concept of *woman* by replacing the requirement of femaleness with the requirement of a female gender identity, doesn't also suggest replacing the requirement of developmental maturity with a requirement of "age identity," or something similar. In exactly the same sense this also looks "exclusionary:" it excludes the commonly-encountered phenomenon of people who strongly feel they are of a different age "inside." No doubt this suggestion will seem preposterous, but then the question presses: what is the difference supposed to be?

40. Haslanger now seems to agree with her. Haslanger, *supra* note 38 at 421.

41. TALIA BETTCHER, *Trans Women and the meaning of "woman"* in *PHIL. OF SEX: CONTEMP. READINGS* (Alan Soble, Nicholas Power, & Raja Halwani eds., 6th ed. 2012); Dembroff, *supra* note 25 at 996.

42. See, e.g., BETTCHER, *supra* note 41; Dembroff, *supra* note 25 at 996; Heartsilver, *supra* note 25 at 9.

43. A different interpretation of sentences like "trans women are women" and "trans men are men" is also available, which says that much of the time these sentences are charitably construed neither as literal assertions nor as serious attempts to change language as a whole. Instead, they indicate that the speaker is immersed in a fiction and is using the sentences non-literally. I won't defend this "fictionalist" interpretation here though I do so elsewhere. See STOCK, *supra* note 21 at 178. Regardless, it's still worth independently articulating the importance of conveying accurate information about the sexes in particular contexts.

ther than women or females; “birthing people” rather than mothers; “chest-feeding” rather than “breast-feeding,” and so on.<sup>44</sup>

The two sex-avoidant approaches just outlined - i.e. supposedly ameliorating the concepts of *woman* and *man* to avoid reference to sex, and substituting the terms “woman” and “female” with terms like “birthing people” and “menstruators” - tend to be used in conjunction with each other, sometimes with circular results. Consider the example of “menstruators” often proposed as a substitute for “women” in discussion of menstruation.<sup>45</sup> The rationale often given for talking supposedly neutrally about “menstruators” rather than “women” in this context is that “some men get periods too.”<sup>46</sup> Yet you are likely to accept that some men get periods only if you have already accepted that the term “man” doesn’t exclusively track male biology. If you deny the latter, then it is false that some men get periods too, and so the move to “menstruators” looks similarly unsupported. (It is true that attempts to move away from “woman” towards “menstruator,” or similar are sometimes additionally justified by saying that “not all women have periods.” But in fact, pointing this hardly startling fact out has no bearing on the appropriateness of talking about women in the context of menstruation, since general claims are normally understood as compatible with exceptions; or else as involving suppressed reference to “only X” rather than “all X,” depending on the case).

In what remains of this section, I will mount a two-pronged attack on sex avoidance. The first prong will discredit some reasons commonly offered for changing the concept of *woman* to avoid reference to adult human females.<sup>47</sup> The second will emphasise the non-negotiable role that the concepts of *woman* and *man*, as traditionally understood in terms of a biological basis, play in efficient, socially responsible negotiation of our environment.

44. Lucy Bannerman, *Smear test campaign drops the word ‘woman’ to avoid transgender offence*, THE SUNDAY TIMES (June 15, 2018, 12:01 AM), <https://www.thetimes.co.uk/article/smear-test-campaign-drops-the-word-woman-to-avoid-transgender-offence-263mj7f6s> [<https://perma.cc/AX8B-UD57>]; Deborah Ross, *As a menstruator (previously woman) this is what I know*, THE SUNDAY TIMES (Oct. 29, 2020, 12:01 AM), <https://www.thetimes.co.uk/article/as-a-menstruator-previously-woman-this-is-what-i-know-wlfrcsd0t> [<https://perma.cc/Y3G3-XAEP>]; Benjamin Fearnow, *Biden Admin Replaces ‘Mothers’ With ‘Birthing People’ in Maternal Health Guidance*, NEWSWEEK (June 7, 2021, 4:28 PM), <https://www.newsweek.com/biden-admin-replaces-mothers-birthing-people-maternal-health-guidance-1598343> [<https://perma.cc/L42U-GC5D>]; Britni de la Cretaz, *What It’s Like To Chestfeed*, THE ATLANTIC (Aug. 23, 2016), <https://www.theatlantic.com/health/archive/2016/08/chestfeeding/497015/> [<https://perma.cc/GA88-9SBH>].

45. Anureet, *Menstruators: A gender neutral & inclusive term for all our period conversations*, SHE THE PEOPLE WOMEN’S CHANNEL (Aug. 17, 2020), <https://www.shethepeople.tv/home-top-video/menstruators-a-gender-neutral-inclusive-term-for-all-our-period-conversations/> [<https://perma.cc/J8EX-XLJR>].

46. Sonam Joshi and Ketaki Desai, *Yes, some men bleed: Why JK Rowling is wrong that only women get periods*, TIMES OF INDIA (June 14, 2020, 8:10 PM), [http://timesofindia.indiatimes.com/articleshow/76363810.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/76363810.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) [<https://perma.cc/7V9M-AGCE>].

47. For further critique, see Byrne, *supra* note 25; Alex Byrne, *Gender Muddle: Reply to Dembroff*, 1 J. OF CONTROVERSIAL IDEAS 1 (2021); Bogardus, *supra* note 13 at 873; Tomas Bogardus, *Some internal problems with revisionary gender concepts*, 48 PHILOSOPHIA 55 (2020).

As we saw just now with Jenkins, one justification offered for the strategy of sex avoidance comes from Judith Butler-style worries that the very categories of man and woman are “exclusionary:” that they perniciously prioritise certain normative standards concerning bodies and sexualities, to the detriment of those who fail to meet them.<sup>48</sup> But accompanied by our earlier account of the nature of the sexes, this approach misses its mark. If the sexes exist, understood relatively minimally in terms of gamete-producing developmental pathways only, then, as already conceded, this is compatible with a wide range of variation in terms of chromosomal configurations, sexed characteristics, and sexualities ultimately produced. Hence there are no *automatic* normative consequences to talking about the sexes after all. This is not to deny a high degree of normativity in most cultures about what counts as feminine and masculine bodies and behaviour, nor to deny that in some particular language contexts the terms “woman” and “man” are used to implicitly convey oppressive norms. But it is not mere reference to the existence of the sexes that causes the normativity in these cases.

Another source of support for sex avoidance is that it is a consequence of “respecting the identities” of trans people, presented as a moral consideration, and that if we fail to observe this injunction, we are causing harm. This line of reasoning is commonly found both in popular culture and academic discussion.<sup>49</sup> Put in terms of respecting identities, the demand is couched somewhat misleadingly, in that it can suggest to the unwary that all that is being recommended is simply a feeling of respect for trans people - an exhortation that most of us, including me, are very happy to comply with. However, this is not all that is being recommended. The claim is rather that the (sex-misaligned) *gender identity* of a trans person should be “respected:” which is to say, accepted in all contexts, so that recognition and reference to their biological sex should drop out of the picture. So we must ask: what is the harm supposed to be in using terms that refer to human sex categories rather than gender identities?

One justification offered is a general metaphysical claim about gender identity. On this view, gender identity is a fundamental part of every self, that it would be automatically harmful to ignore. For instance, the Yogyakarta Principles, frequently cited as defining best practice for trans people in international law, state that, “Each person’s self-defined . . . gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”<sup>50</sup> On these grounds, it is suggested, it would be immoral not

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48. See also Robin Dembroff, *Real talk on the metaphysics of gender*, 46 PHIL. TOPICS 21 (2018); Dembroff, *supra* note 25 at 992.

49. See, e.g., Jenkins, *supra* note 4 at 396.

50. *The Yogyakarta Principles: Principles On the Application of International Human Rights Law In Relation to Sexual Orientation and Gender Identity* 11 (Mar. 2007), <https://www.refworld.org/pdfid/48244e602.pdf> [<https://perma.cc/WS94-UUUS>]; see also Kylar Broadus, *Practice Tips for Working with Transgender Clients*, THE EQUALIZER (Winter 2016), available at [https://www.americanbar.org/content/dam/aba/administrative/sexual\\_orientation/2016-winter-equalizer-sogi.pdf](https://www.americanbar.org/content/dam/aba/administrative/sexual_orientation/2016-winter-equalizer-sogi.pdf); *Definitions*, U.N. FREE &

to defer to a person's claims about their gender identity, including where these clash with facts about their sex.

The high-toned rhetoric of the Yogyakarta Principles is reminiscent of the moral philosophy of Immanuel Kant, which talks of rationality as distinctive of moral personhood, and the foundation of freedom, autonomy, dignity, and human rights. For Kant, it is immoral not to respect the rationality of others. Yet just as the Kantian tradition arguably founders on the fact that not all humans are rational, *a fortiori* the metaphysical claim about gender identity founders on the fact that many non-trans people would sincerely report that they have no gender identity, understood as a psychological feeling which necessarily comes apart from observation of the actual facts about their sex. That is, they don't feel strongly identified with their sex and nor do they feel strongly identified with the opposite sex or with androgyny. The phenomenon of the detransitioner is also salient: someone who formerly strongly identified as the opposite sex, or as no particular sex (if non-binary), but whose sex-misaligned gender identity has since lapsed.<sup>51</sup> The temporary nature of gender identity in such cases make it hard to see how it can be a basic aspect of self-determination, dignity and freedom.

To this, perhaps it will be replied that it is "privilege" that obscures awareness of one's gender identity in those for whom it is sex-aligned, just as privilege obscures awareness of one's race for white people. However, it is one thing to say that there are white people who are "unaware" of their race, in the sense that it doesn't occur to them to think about their race much because it doesn't adversely affect their life much or at all. Privilege and the cushion it provides can nicely explain lack of awareness in this sense. Still, in this scenario, most of the white people concerned are still "aware" of their race in a different sense: that is, if asked they would still classify themselves as white. In contrast, my claim is that there are many people "unaware" of their own gender identity, not just in the sense of being dimly aware of it but not thinking about it much, but in the more radical sense of being genuinely unaware of having one at all. The cushioning effects of privilege won't readily work as the right explanation here, just as they wouldn't work to explain the case of a white person completely unaware that he was white. (Remember too that gender identity is often *defined as* a "sense" or a feeling, whereas race is not. It is tempting to conclude then, that if you don't have that sense or feeling, you don't have a gender identity. The idea of a sense you don't sense, or feelings you don't feel, will sound peculiar to many.)

A different response might say that even where there is total absence of any positive awareness of a particular gender identity, that absence indicates the presence of a gender identity nonetheless, just as atheism is - in some broad

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EQUAL, <https://www.unfe.org/definitions/#> [<https://perma.cc/MSJ2-2BLJ>]; *Transgender FAQ*, *supra* note 3.

51. Elie Vandebussche, *Detransition-Related Needs and Support: A Cross-Sectional Online Survey*, J. OF HOMOSEXUALITY, (April 30, 2021).

sense of “religious” - a religious identity. If this is the route taken, the challenge is now to see what the connection with basic human rights is supposed to be: why should this “identity,” supposedly grounded entirely in absence of positive feeling, be judged “integral to personality” (etc.), thereby conferring a moral duty upon others to recognise it? This move looks *ad hoc*.

A more common justification offered for sex avoidance is that it will protect trans people from violence. The envisaged causal connection to violence is hard to reconstruct, partly because a reference to their sex in the context of discussing trans people is in itself sometimes hyperbolically described as *constitutively* “violent.”<sup>52</sup> I take it that this is implausible. A better version of the point seems to be that public reference to the sex of individual trans people potentially exposes them to physical violence from people who were not aware of the facts about their sex previously, and who may be transphobically violent towards them as a result of the discovery.<sup>53</sup> This is an argument that could only plausibly apply to “passing” trans people, whose sex is visually indiscernible; it doesn’t generally apply to adolescent and adult trans people who have not had any medical modification, and who are usually relatively easily perceived as belonging to their actual sex anyway. Still, it is a reasonable concern. The most it could entail, however, is that language-users should be careful and judicious in public references to such a person’s sex. It does not establish that sex - either generally or individually - should never be referred to.

For most people, the biggest motivation for sex avoidance as a strategy seems to be the assumption that it must personally distress a trans person to hear reference to their biological state, and that this is a harm to their well-being. Some trans people seem at ease with reference to their sex. For instance, here is Buck Angel, a trans man: “I am and will forever be a biological female. How is this so hard to understand. If I was not a biological female then I would not be transsexual. It’s dangerous to discount biology.”<sup>54</sup> And here is Debbie Hayton, a trans woman: “transwomen are male, and women are female. Male people are not female people, and therefore transwomen are not women. As a transwoman I should know: I fathered three children - I am definitely male. Their mother was a female person. She is a woman, not me.”<sup>55</sup> Equally, though, others find it extremely distressing. According to one study, for instance, 32.8

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52. See, e.g., Jenkins, *supra* note 4 at 396.

53. This is a particular danger for trans people in the sex trade. See Katie Herzog, *Is the Life Expectancy of Trans Women in the US Just 35? No.*, THE STRANGER (Sept. 23, 2019, 3:14 PM), <https://www.thestranger.com/slog/2019/09/23/41471629/is-the-life-expectancy-of-trans-women-in-the-us-just-35-no> [<https://perma.cc/DN9T-4TQH>].

54. Buck Angel (@BuckAngel), TWITTER, (June 11, 2020, 10:17 PM), <https://twitter.com/buckangel/status/1271265232283828225?lang=en> [<https://perma.cc/T4E7-W3HZ>].

55. Debbie Hayton, *Why does Penny Mordaunt think ‘trans men are men’?* THE SPECTATOR (Mar. 2, 2021, 8:00 AM), <https://www.spectator.co.uk/article/penny-mordaunt-is-wrong-to-repeat-the-trans-allies-mantra> [<https://perma.cc/5EY5-QCEE>].

percent of participants reported feeling “very” stigmatized when “misgendered” (i.e. accurately sexed).<sup>56</sup>

Is this distress automatically a harm? Let’s grant it is, assuming it is profound. Other things being equal, this harm should be avoided. However, other things are not always equal. I will now argue that there are greater harms that can accrue, if we attend only to the possible harm of trans people’s distress at hearing the facts about their sex, and ignore other harms that must be balanced against it.

These can be divided into interpersonal harms, and public harms. In interpersonal contexts, typically it is desirable and courteous to accede to an adult trans person’s preferred way of describing themselves. However, as most therapists know, even in an interpersonal context, experienced distress at the failure to do so is not a good indicator of *total* harm. There are some people with sex-misaligned gender identities for whom it is nonetheless important to be reminded of their sex, no matter how distressing they immediately find the information, because not being reminded would be a greater harm. These include young children and adolescents with sex-misaligned gender identities. Being reminded of their sex, which cannot be changed, is essential to informed decision-making about whether to pursue a medical pathway and thereby alter their bodies irrevocably. Evidence based on testimonies from detransitioners suggests that some feel they were not adequately informed about the impossibility of changing their sex at the time of their transition.<sup>57</sup> It is this that makes many professional bodies’ automatic adoption of “gender affirmative” approaches to gender identity claims potentially so harmful.<sup>58</sup>

An even larger harm to be balanced against the personal distress of some trans people stems from ambitions of sex-avoiders to remove reference to sexed human biology even from general statements. As we have seen, one suggestion is to “ameliorate” the concepts of *woman* and *man* so that they no longer refer respectively to human females and males, in any sense. Reference to biology should be replaced by reference to social role, or to identity. Another suggestion is to use more specific terms that don’t explicitly refer to women/ females/ men/ males as such, but still allegedly do the job at hand: “menstruators,” “birthing people,” and so on. In both cases, I suggest, there are significant costs to adopting these suggestions. To understand the nature of these costs, we need to first properly understand the role of the concepts *woman*, *man*, *girl*, and *boy* and their associated terms, as traditionally understood.

These concepts pick out groups of humans by biological sex, cross-referenced with mature development or the lack of it. When used literally and

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56. Kevin A. McLemore, *Experiences with Misgendering: Identity Misclassification of Transgender Spectrum Individuals*, 14 SELF AND IDENTITY 51 (2015).

57. Vandenbussche, *supra* note 51.

58. “Gender-affirming” Hormones and Surgeries for Gender-Dysphoric US Youth, SOC’Y FOR EVIDENCE BASED GENDER MED. (May 28, 2021), [https://segm.org/ease\\_of\\_obtaining\\_hormones\\_surgeries\\_GD\\_US](https://segm.org/ease_of_obtaining_hormones_surgeries_GD_US) [<https://perma.cc/8WHA-QBFP>].



accurately, they are cognitive tools enabling efficient identification and communication about groups in which humans have an understandably keen interest from a variety of perspectives. One big reason we have an interest in these groups is that they feature in distinctive patterns of causation. Put simply, being a woman, man, girl or boy often plays a causal role in what happens next. Certain things non-coincidentally tend to happen to women and girls that don't tend to happen to men and boys, and *vice versa*. Meanwhile, certain things non-coincidentally tend to happen to women that don't happen to girls, and *vice versa*. Hence we need these concepts, as traditionally understood, for efficient causal explanation and prediction about these groups, as well as the formation of counterfactuals. These are all fundamental parts of the scientific and social-scientific projects. Causal explanation also plays a crucial role in historical explanation: *this* happened because of *that*. This precise work could not be done by concepts which left out reference to biology and focused instead on social role or feelings of identity, because we would have lost reference to a crucial element of causal background. Those revised concepts would simply be changing the subject.

Let's focus on the concept *woman* as our example, though similar points can be made for the other sexed nouns too. Given facts about her fully developed sexed body, being a woman typically predisposes her to a number of events, including: certain diseases with particular distinctive presentations for females; menstruation; the possibility of pregnancy and childbirth; the production of breastmilk if she has been pregnant; PMT; female menopause; and longer life expectancy than members of the opposite sex. These biological facts make it essential for nearly every language to have a distinctive concept referring to women: both to refer to these facts directly, and to refer to their distinctive effects in combination with local sociocultural circumstance.<sup>59</sup> These effects include predisposing women to a range of distinctive social experiences in a particular sociocultural contexts, and here too the concept *woman* enters into explanations of those experiences.

Many of these experiences are negative. In many past and some present cultures, the tradition of agnatic primogeniture ensures that first-born women are less likely to inherit property or titles than first-born men. In the workplace, women are more likely to be in lower-paid part-time work, partly because they can get pregnant.<sup>60</sup> In some societies, a woman is likely to bear the scars of FGM from girlhood, be sent to menstruation huts during her period, or be subject to "virginity testing" before marriage, also being offered secret "hymen repair" in some cases.<sup>61</sup> In nearly every society, a woman is more likely to be as-

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59. Goddard, *supra* note 1; Von Fintel & Matthewson, *supra* note 1.

60. Trade Union Congress, *The Motherhood Pay Penalty: Key Findings from TUC/IPPR Research March 2016*, <https://www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf> [<https://perma.cc/T98K-P8XN>].

61. Hannah Summers, *Virginity tests to be banned over threat of "honour killings"*, THE SUNDAY TIMES (July 15, 2021, 12:01 AM), <https://www.thetimes.co.uk/article/virginity-tests-to-be-banned-over-risk-of-honour-killings-05b8wc5b2> (last accessed Jan. 9, 2022).

saulted by the opposite sex than they are by her: that is, more likely to be assaulted by the typically stronger, faster mature male humans (men) with whom they share the planet, many of whom also have a sexual interest in the kind of body women have. Such facts influence other social behaviours: for instance, women are less likely to be out after dark, partly because of their physical vulnerability relative to men.<sup>62</sup>

In each of these cases, “because she is a woman,” understood biologically, is a relevant part of a complete causal explanation of the given social effect, though of course not the only one involved. Causal backgrounds to given events are multifactorial. They include both physical and social facts at a greater or lesser temporal remove. Hence the picture just offered is not in any sense a capitulation to biological determinism. None of the claims just now were about what necessarily *must* happen to women as a result of their biology. Nor, of course, are they claims about what *should* happen: far from it. My claim is only that being a mature female is part of the explanation of what *does* tend to happen, or has happened, and we need to be able to name it.

Concepts such as *woman* (and *man*) also allow language users to explain their own motivations: to explain why they have certain desires or commit certain actions. For instance: in explaining why you are attracted to a certain person, you might comprehensibly say as part of your explanation “because she is a woman not a man” (or equally “because she is a woman not a girl”). A lesbian or a heterosexual male might say this; a gay man typically would not. The concepts of *woman* and *man*, understood biologically, are indispensable explanatory tools in referring to socially significant patterns of sexual attraction and their ramifications.<sup>63</sup> Concepts of *woman* and *man* also enter into explanations of discrimination: a gay person is discriminated against because he or she is sexually attracted to people of his or her sex. Arguably too, a trans person is discriminated against because he, she, or they has a presentation at odds with that of his, her, or their sex.<sup>64</sup>

Because womanhood enters into explanation in various ways, it also frequently enters into justification of practical choices in the public realm. Women, as such, have certain distinctive needs in virtues of their sex. Here too the concept of *woman* is indispensable in order to communicate what those needs are, and to justify practical recommendations on the basis of them. For instance: why should single-sex spaces exist, for women and girls who need to undress outside the home: in gyms, hostels, dormitories, or prisons? Partly because women and girls are on average smaller, weaker and slower than the human males who have a sometimes-aggressive sexual interest in them. Single-sex

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62. Rory Fitzgerald, *Survey shows 32% of British women don't feel safe walking alone at night – compared to just 13% of men*, THE CONVERSATION (Mar. 18, 2021, 4:11 PM), <https://theconversation.com/survey-shows-32-of-british-women-dont-feel-safe-walking-alone-at-night-compared-to-just-13-of-men-157446> [<https://perma.cc/E2GJ-PC4Q>].

63. Kathleen Stock, *XIV – Sexual Orientation: What Is It?*, 119 PROCEEDINGS OF THE ARISTOTELIAN SOC'Y 295 (2019).

64. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

spaces are a way of safeguarding them in this vulnerable situation.<sup>65</sup> Or: why should women have sports teams separate from men? Partly because the athletic performance of women is systematically affected by their distinctive biological limitations, and on average makes them slower, weaker, and smaller than men.<sup>66</sup> Hence it is unfair to make them compete against men, and sometimes dangerous. In contrast, it is not unfair to make prepubescent girls compete against prepubescent boys, because male puberty has yet to confer an advantage. Why should there be cervical cancer screening for women but not girls, boys, or men? This is because women not girls, boys, or men are at risk for cervical cancer. Again, in all such justifications, the concept *woman* does vital cognitive work that simply could not be done, were the concept changed to refer to gender identity or social role.

Similar points can be made about the concepts of manhood, girlhood, and boyhood. With respect to *girl*, for instance, being a female child has a number of distinctive causal roles in the world, and associated needs, that being a female adult lacks. These include vulnerability to certain health conditions; specific educational needs (for instance, in sex education); and a need for special protection from exposure to the sexual desires of adult heterosexual males. It is for this sort of reason that we must reject the concession to trans activists, sometimes proposed, that “woman” and “girl” may literally include trans women and trans girls respectively, as long as “female” does not. This won’t work, because we still need specific concepts for two kinds of human females: the kind that is developmentally mature, and the kind that isn’t. *Woman* and *girl* are these concepts. There are important differences between these two in terms of effects on the world, and on associated needs, and we must be able to name them.

A further harm from attempts at amelioration is the informational confusion generated from the fact that language-users within certain progressive subcultures are already using the ameliorated sex-avoidant versions of *woman*, *man* (etc.), whilst others continue to interpret these as the traditional versions, unaware. For example, characteristically, the crimes of women, in the traditional sense, tend to be non-violent. Events like paedophilia and sexual assault are relatively rare. Yet in the UK, as mentioned in my introduction, where the male concerned identifies as a woman, male crimes have started to be reported as “women’s” crimes in some branches of the press and in police records. To the uninitiated, it may seem that there has been a significant change in the usual patterns of criminal behaviour by women, in the original sense.<sup>67</sup> In practice, there hasn’t; but it is not surprising that people are confused.

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65. Burlette W. Carter, *Sexism in the Bathroom Debates: How Bathrooms Really Became Separated by Sex*, 37 YALE L. & POL’Y REV. 227 (2019).

66. Emma N. Hilton and Tommy Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, 51 SPORTS MED. 1 (2021).

67. *Fact check: Are more women really sexually abusing children?*, Fair Play for Women (Jan. 19, 2021), [https://fairplayforwomen.com/sex\\_data\\_wrong/](https://fairplayforwomen.com/sex_data_wrong/) [<https://perma.cc/NN6E-AB3M>].

I turn now to the second strategy of some sex avoiders, noted earlier. This aims to change the description of the cause of a given phenomenon, so that reference to womanhood or being female is ostensibly omitted. “Birthing people” are the people getting pregnant and having children. “Menstruators” are the people buying period products. “Cervix-havers” are the people needing cervical screening. And so on. Haslanger does something similar when, as described earlier, she advocates for ameliorating the concept of *woman* to refer instead to the occupants of a subordinated social role, imposed upon them on the basis of appearing female.<sup>68</sup> Effectively all these speakers are focusing on a description of an event “causally downstream” of womanhood, as it were - menstruating, having a cervix, being subordinated on the basis of appearing female - and citing *it* as a relevant causal factor in a given effect, rather than the more obvious causal agent just upstream of the effect (being a woman, or being female). This can be immediately seen when we ask: “but *why* do certain people give birth or menstruate or have cervixes?;” or “*why* are certain people systematically subordinated on the basis of appearing female?”<sup>69</sup> In each case a reasonable answer is: “because they are women / females.”

Imagine a world in which public policymakers tried to campaign to reduce cervical cancer by focusing only on the behaviour of “cervix-havers,” but not at any point conceptualising this as the behaviour of women. It would quickly founder, because the concept of *woman* - not just of a person with a cervix, but of a person predisposed to a wide range of characteristics and behaviours in virtue of her womanhood - is the key to making a range of relevant predictions which could be useful to the health campaign. For instance, you would presumably need to know about characteristic sexual behaviours of women in order to understand transmission of the virus which causes cervical cancer; or about how and where women tend to socialise, in order to maximise take-up of information in informal settings; or about psychological or cultural trends amongst women, which might interfere with your campaign; and so on. Again, for emphasis: these need not be biologically deterministic events for biology to be playing a partial causal role in them.

Against this background, then, the most that the phrase “cervix-havers” could ever be is a clumsy, inefficient *synonym* for women; one, moreover, that hearers ignorant of female anatomy or of the English names for it might fail to recognise, potentially dangerously for them. (Strictly speaking, it would also be technically inaccurate, since not all women have cervixes.)

Generally speaking, the harms of losing the biologically based versions of “woman,” “man,” “girl” and “boy” should now be clear. Whether through sup-

68. Haslanger, *supra* note 38 at 42.

69. To say this isn’t to deny that some men are systematically subordinated on the basis of appearing female, of course. It is only to say that in the vast majority of cases of people who are so subordinated, it is because they are female, and this is a relevant causal factor we need to describe if we want to make intelligent choices about tackling the issue. Indeed, even in the case of men subordinated because they appear female, we still need the concept female to explain the relevant female-like appearances and the motivations of those doing the subordinating.

posed amelioration of the concept *woman* to refer to social role or gender identity, or through the introduction of words like “menstruator,” either way we are losing the capacity to clearly and easily communicate about a property - biological sex, cross-referenced with developmental maturity or the lack of it - which is partly causally contributory to a wide range of effects in the world, and generates distinctive needs and norms as a result. The categories don’t go away just because we are no longer talking about them. They continue to have real causal effects, in the worlds of health, sport, education, crime, leisure, business, the workplace, the home, and many other places. But we are no longer be able to talk about those effects efficiently. With regret, I submit that this harm outweighs the harm of the distress of trans people who hear about them.

#### IV

#### CONCLUSION

On examination, neither the strategies of sex-denial nor sex-avoidance have provided us with justification for changing the traditional understandings of “woman,” “man,” “girl,” and “boy.” Statements such as “trans women are women” and “trans men are men” are best understood neither as either literally true statements, nor as in service to desirable re-engineerings of the traditional categories. Though it is normally polite and desirable to observe the preferred descriptors and pronouns of trans people in interpersonal contexts, there are times when literal and accurate reference to actual sex is important. The concepts *woman*, *man*, *girl* and *boy* allow us to make these references in usefully variegated ways.<sup>70</sup>

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