

SEXING THE DIFFERENCE IN GENDER AND THE ANOMALIES OF INTERPRETATION.

Most of the issues presented to-day were initially given in 1999 at the 14th Annual Australian and New Zealand Society for Criminology and still hold firm to-day. Once again I will present it with some amendments and in doing so, I will illustrate a number of contradictions within the law, which force us to look at deeply embedded assumptions about what is a male and what is a female. In our construction of human-ness we have become fixated on a bi-polar social construct; we are obsessed with the notion that there are only two sexes and/or genders that populate the world. This as you will see is a simplistic concept which is based on power, the status quo and the inability to look beyond the horizon of life as it is as well as the disavowal of those deemed different.

Using the Christian analogy of Adam and Eve prior to their fall from grace, it is assumed that 'man' was created first. And a 'woman' was the means in which to carry his seed and propagate. After their expulsion from the Garden of Eden, anything other than man and woman is denied humanness... Thus we became unaware of our deepest prejudices about who we were. That is to represent the likeness of God, the androgynous, the perfect mix of sexes and genders.

What you are about to hear may challenge your basic assumptions concerning the sexes, genders and sexuality. I hope, however that you will be able to look beyond the horizon with a new vision into the realities of the world as if seeing it for anew, and in so doing, accept the fact that the world is not always what it may seem.

You may remember the author Franz Kafka who in his compelling story "*Metamorphosis*" forced us to look at our assumptions about humanness by having Gregor Samsa become a cockroach and therefore make the reader face their own inhumanity towards those they regarded as less than human.

Our legal definitions concerning sexuality and gender seem to be in conflict both with each other, and with common practice. What do we mean by this in any case?

While dictionary definitions give us meanings rather than meaning, they may also reveal conventional understandings.

In BLACK'S LAW DICTIONARY by Henry Campbell Black, M.A. (1979) for instance it defines:

- Ø FEMALE: The sex which conceives and gives birth to young. Also a member of such sex. The term is generic, but may have the specific meaning of *woman*, if so indicated by the context. (P.556)
- Ø FEMININE: Of or belonging to females. (P.556)
- Ø MALE: Of the masculine sex. (P. 862)

N.B. There is no definition in this book for MASCULINE.

- Ø SEX: The sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female. (P1233)

More up to date editions of law and other dictionaries are not so much different for instance: The Oxford English Dictionary (1989) volume IX:

- Ø MALE: of or belonging to the sex which begets offspring, or performs the fecundating function of generation (P.259).

1.1 MAN: A human being (irrespective of sex or age) a) used explicitly as a designation equally applicable to either sex. (The generic use as in humankind)

b) in modern apprehension *man* as thus used primarily denotes the male sex, though by implication referring to women.

It can be seen that there is a disparity between male and female and the definitions are so loose that the legal terminology would find great difficulty to pin point any absolute definition upon and of the genders and or sexes that appear to exist.

From the few interpretations above it is interesting to note that a female is a person that is able to procreate – What does this limiting definition actually mean.

The dictionary makes the essential criterion for defining a female by her reproductive capacity. However we know that in practice a woman who has a total hysterectomy and bi-lateral mastectomy does not thereby sacrifice her status as a woman and become a man. Technically should she now be classed as a transsexual (Female to Male) and denied her original status? Further would she be refused access to the women's room and to claim herself to be a woman? Society has enormous sway and this same woman who may have castigated the "others" in society now finds herself in a situation where she becomes the 'sexually negated person' within the community – Why? Her body image has changed... In order to disguise herself and in her fear of being singled out for being less than female *She* feels compelled to subject herself to extensive make-overs, prostheses and other devices to camouflage the omission of the essential defining quality (This is to make gender identity the sole criterion. Do you want to do that?) *She is* the same person she intrinsically believes she is and was.

It will be seen by the definition of male that we have no defining definition for masculine within the same legal dictionary. And in the Oxford Dictionary "Man" contains some six pages of the history of the concept and some rather ambiguous generic references which include both male and female. In this same dictionary on page 421 "Masculine" is defined as 1. Of persons or animals: belonging to the male sex.

In medicine sex is determined through the chromosomal 'norms' that a male's genetic configuration is 46 XY and a female's is 46 XX.

Because the law acts as if a birth certificate bestows *personhood* on a person, and that birth certificate nominates one's sex as male or female, the law often accepts the medical criterion of sex as chromosomal. If we are to assume, as doctors tend to do, that chromosomes define aspects of sex, then we must also look more deeply and stop fooling ourselves to the other realities of human existence.

It may surprise many in the general population that there are a number of people who are naturally a sexual mix or poly-gendered. In medical terminology, there are people who are genetically male but present as

phenotypically female, known as androgen insensitive and have no uterus. Others are genetically and phenotypically complete mixtures of both, androgynes or intersex persons (a modern word for hermaphrodite but in which the sex and gender is not always so clearly defined but is a physical mix – ‘polysexual’). There are others again who like myself are termed pseudo-hermaphrodites or "aberrant males" and who in the real analysis may well be more 'female' than 'male'.

For example: medically I am chromosomally 47 XXY. This was identified as a "syndrome" by Klinefelter in 1942, despite the fact that we existed long before. He together with others since, has labelled those with this chromosomal structure as being "long-legged, with an undeveloped upper torso, mentally dull with poor social skills and retarded", amongst a whole batch of other disparaging connotations. This gives strength to the medical fraternity and in turn society to sanction the "termination of any foetus revealed to have this genetic configuration" through amniocentesis which is not a safe procedure and has led to significant misdiagnoses, spontaneous abortions and unwarranted distress. We, the intersexed and or androgynous and others are then in danger of being further subsumed for an ideal that is in effect no different to being ‘snuffed out’ before we can contribute to the world, which we may otherwise have enjoyed with or without its oppression and suppression. This is clearly illustrated from the following real life story:

***A mother of 41 years who was 16 weeks pregnant was advised to have an amniocentesis. She was informed that her infant in utero was 47 XXY (medically known as Klinefelter's Syndrome) and given the option of terminating her pregnancy as a result. Further she was advised she could be given drugs to induce complete amnesia to the fact that she ever had a child aborted and had but come into hospital for some routine investigations. In this particular case the mother in question was beside herself, and felt extremely depressed, confused and suicidal when this was suggested as an option worth considering. She felt that the obstetrician, a male, was more concerned as to the possible mental retardation of the child than anything else, and appeared cold to her concerns and feelings, also saying that the child would have major social problems in later life. Whereas this might be true, no one had thought why that child might encounter those problems. The facts are often that there is intolerance to what appears to be the 'norm'. The cards are therefore stacked up against the child**

to survive with dignity in a world with a narrow vision, while living in a supposedly sophisticated society.

Medicine and society together have invented other actualities to enable it to deal with diversity of expression and the reality of difference. It has provided an escape clause whereby those who are seen to be subversive of its agendas, are further placed on the boundary at a safe and great distance. They are then subjected to many different forms of harassment with the view of letting them know that they are accepted into the fold only under certain conditions of tenure. This thereby reinforces their belief that the world is a bi-polar construct.

"...This rigid and unyielding adherence to a bipolar gender framework and refusal to accept the spectrum of gender and gender expression is simply destructive. The rigid bi-polar model is not true biologically and has never been true culturally."

(#cited in letter to Somers xxy: Cope.R. Ph.D. 1999)

Perhaps those of you who are chromosomally 46 XX or 46 XY, that is chromosomally 'female' or 'male', could be seen as syndromes of a different kind. And may be I should call you the "Somers Syndrome" and lay claim to a place in medical and social history. The difference between the labels of 46 XX and 46 XY is only minimal but the physiological differences between those labelled as such can be astonishingly great. Similarly all those who have different labels again such as 45 X, 47 XXY, 48 XXXY and many others have as much right to have their physiological and psychological differences recognised. The whole issue of what constitutes sex and gender is opened up for further research and investigation. Does my gender and/or sexuality depend on chromosomes, hormones, reproductive organs and the ability to have a child¹, external genitalia, body hair and shape, personal sense of self, emotional identity or any combination of these or other factors that we may currently be aware of as well as many others that are yet unknown?

However, it appears that any body that challenges the accepted criteria of what is assumed to be male or female is immediately marginalised by the majority of society. Sadly this is often the case through the generalisations where the

¹ Andrology Australia as other research institutes have discovered it is not impossible for a 47 XXY person to have a child, and are currently undertaking major studies in the field through a process called intra cytoplasmic injection – ART – Assisted Reproductive Technology. They can be found at:

<http://www.monashinstitute.org/andrology.html>

perpetrators who wield the power within most of medical science inflict upon themselves an ill-deserved reputation which impinges upon those who are more enlightened.

A medically confirmed intersexual stated to me in a letter a few years ago: **“I am as close to being a female, as close as current medical knowledge will allow me to be.”** Whereas this statement is true, it also must be stated that the medical profession is not alone in disavowing those who do not fit comfortably as being one of either of the assumed sexes, namely male or female. It would be unfair to lay blame upon them exclusively for in effect it is the whole of society who must take responsibility and not apportion blame on any one individual or group. However the denial of ‘other’ people who are part of the total picture of humanity does not indemnify anyone of their obligations to the rest of society and those whom are marginalised as a result. Unfortunately a person that presents as paradox to the existing beliefs of what is considered as normal is in a dilemma. They as a result, are not fully accepted as a member of any given sex or gender and are liable to be excluded from what is considered to be a member of any given community. This inability to accept difference and diversity precludes the existence of ‘others’ as people in their own right and in effect disavows their very existence or at best plays inappropriate health care and their subsequent well being. This in turn wastes the resources of the nation and presents an ever increasing dilemma for those whom are intersexed and or androgynous denying them all due research, primary health care and understanding taken for granted by the rest of the community inclusive of major equity issues across the whole of the spectrum.

The interesting aspect is that the human sexual defining characteristics are based on chromosomal sex (for whom? - Doctors? Geneticists, Lawyers?) However same sex marriages do occur... Remembering as you do that marriage is only permissible between a man and a woman.

Yet those who have the medically defined syndrome known as Androgen Insensitivity in which a person is born with male chromosomes of 46XY and many have the physical appearance of a woman and thereby may marry or live with the full sanction of the law. Their birth certificate usually declares them to be female, despite their male chromosomes. Marriage between AIS people and males is allowed by law because their birth certificate reveals them to be female and yet in our legal dictionaries to be so, one must be able to conceive and give birth to a child. People who present phenotypically as women while being

chromosomally male illustrate that sex and gender are clearly indefinable without looking deeper into what it is to be a human.

Others may see themselves as men or women in the wrong body shape just as those people whom are transgender or transsexual may too. Interestingly enough anyone of these people may or may not have been reassigned by the medical profession without their due consent or knowledge years before and others who are have often been denied access to their medical files, though thankfully this ethos is slowly starting to change amongst a few of those whom are within the medical and allied professions.

The process by which those who are transgender or transsexual, androgynous and or intersex and whom wish their reality to be acknowledged is enormous and more so if it falls outside the accepted boxes or categorisations deemed to represent acceptable criteria within humanity in a most societies; though some are accepted in other cultures, they are often on the fringes with specific functions to fulfil, for example the Hijras of both India and Pakistan.

If marriage is allowed between those considered AIS and assumed 'normal' males then it can be allowed for anyone. And any person who has the care to share their life with a loving and caring partner with respect and dignity without being forced into the shadows for the term of their natural life to live the lie of the human race.

Whereas a non AIS male or female may not in fact be recognised in a same sex marriage or defacto relationship for the same reasons – this may appear to be unfair to those who suffer enough at the hands of ignorance such as those who are medically termed transgendered, transsexual, intersex. It is nevertheless a vital consideration that to date has not been addressed.

AIS is one category of person called by the medical profession intersex, someone with the physiological characteristics of both male and female. However I know one endocrinologist who believes these people to be a totally different sex and gender. A person with 47XXY chromosomes is also considered to be intersex, as is someone born with congenital adrenal hyperplasia.

Dr Anne Fausto-Sterling, amongst others has claimed that the number of intersex may be as high as one in five hundred people. The intersex (AIS, 47XXY, 46 XX with congenital adrenal hyperplasia are only three of many

types of intersex) person lives in the shadows and is disavowed by most and considered to be less than, whereby some are even considered for termination at birth or while still in utero through induced abortion. There are some countries that will dispose of infants who present with ambiguous genitalia by crushing their skulls. Here in Australia as in many other nations there are some within the medical fraternity who advocate termination of the intersex foetus who present for example with the karyotype of 47 XXY or other through amniocentesis for example, as they see it to be a major crisis though not usually life threatening, seeing it as a social threat instead based on loose assumptions of low based value judgments of what is deemed as an acceptable human. There are even members of the medical profession who are indeed intersex too but live in fear of revealing their true identity.

The eminent Professor Milton Diamond, Director of The Pacific Centre for Sex and Society within The Department of Anatomy and Reproductive Biology in the John A. Burns School of Medicine at Hawaii University, is an extraordinary advocate and advisor to a number of international foundations for those who are a real part of the intersex, transgender and transsexual communities world wide. He is only too aware that the reality is that gender and sexuality is far more complex than any naturalistic assumption of male and female and that it is not a matter of either or but more a whole mix.

The physiological reality of those who are considered pseudo-hermaphrodites or whom are hermaphrodites, presents the lie to such simplistic assumptions. Law denies hermaphrodites or different sexed and or gendered people such as myself the right to marriage and de-facto relationships as a result of our genetic configurations and or body shapes, sense of self, different and separate gonads, both ovaries and testes... and or more or less body parts... whether we can reproduce or not... particularly if we are open to the fact. Hence the secrecy that prevails which is not only debilitating to those whom are different, but importantly it denies essential services and knowledge to disseminate within the community and amongst sympathetic professionals who might otherwise have felt more comfortable in dealing with the issues and concerns these concerns raise in primary Health care provision let alone that which prevails throughout the development of the child through school, adolescence and into adulthood and eventual aged care.

However difficult it may be to come to terms with new discoveries we cannot evade them. As the knowledge within society unlocks the doors to new realisations of what it is to be a human being, we cannot escape what is being

revealed and abstract words and definitions will not alter that which we may fear. For in doing so you will deny your own existence too with the very limiting definitions you have created.

Who is the criminal here: the person who sleeps with their same sex and or gender or is it the political wheel of a Kafka like story, which turns the minds of all from the truth and incarcerates those who have to live in fear of breaking the law whether they are a male (whom cannot be defined); a female who is seen to be one, only if she can conceive and give birth to a child; a hermaphrodite or intersex person whosoever they may be partnered with, then becomes the multi-homosexual.

The reality of gender and sexuality is that it clearly cannot be so easily defined and its actuality is polymorphous.

Further, our assumptions that a person is essentially only either male or female are not only naive but have been shown to be in some cases fatal, in others to mandate surgical changes without permission at birth. I hope to have persuaded you that sex and gender permit a wide range of various combinations of body shapes which may be indicated through many variables: hormone levels, emotional needs, child bearing capacities, intelligences, identities, sexual preferences. We should be celebrating such diversities instead of trying the old trick of biological reductionism which may well result in the weakening of our future gene pool.

Our fatal assumptions concerning a bi-polar social construct in western society or any other community are in fact extremely naive. The reality is quite the contrary to popular belief that to be a person one must be either male or female per se.

Sex and gender from my point of view is no more than a continuum or a kind of wheel with millions of spokes radiating out in many directions, whereby these spokes eventually form a sphere where every strand interweaves within and externally to itself throughout and in a complex entity which is the human form it so takes: where the concept of human dynamics and the bi-polar construct of Male / Femaleness can no longer be held as a fixed and indisputable assumption or it will then become no less than an illusion of its own reality.

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The author, namely Kai Chris Somers xxy of this presentation is: 47 XXY, who is believed by medical investigation to have ovaries, a collapsed internal vagina and who had female breasts is a far cry from being inadequate. S/he won a prestigious international award for services to universal education from the Saudi Arabian Government and the King Abdulaziz University concerning Antarctica and the global environment. Chris passed a ground breaking Research, a Master of Education by research with a 70,000 word thesis, coming in at the top 5% at the time. Chris is currently seeking to carry out a PhD across faculties.

S/he has flown solo in a powered aircraft; illustrated several books in the past for some of the major international publishing houses. S/he has been a guest speaker at national and international conferences concerning Education, Antarctica, Gender and Sexuality in Australia, England and the United States of America, amongst many other things. S/he can assure you that s/he is far from the exception of being mentally retarded.

Addendum:

Since the original paper was given 500 words of it have been quoted in an academic book on Family Law.

The following quote from a leading medical dictionary published in 2002 may leave some food for thought and I hope on reading the above will serve as a cogent reminder that these kinds of references are gross generalizations made through biased and unscholarly research which totally undermine those whom are 47 XXY. Subnormal intelligence, anti-social or social ineptness may occur within many different karyotypes inclusive of those considered the 'norms', that is who have a karyotype of 46 XY or 46 XX.

Klinefelter's Syndrome /klin'feltərz/ [Harry E. Klinefelter, American Physician. B1912]. a (sic) condition of gonadal defects appearing in males after puberty, with an extra X chromosome in at least one cell line. Characteristics are small firm testes, long legs, gynecomastia, poor social adaptation, subnormal intelligence, chronic pulmonary disease, and varicose veins. The severity of the abnormalities increases with greater numbers of X chromosomes. The most common abnormality is a 47 XXY karyotype. Men with the karyotype XXXXY have marked congenital malformations and mental retardation.

(Page 959)

cited in: Anderson, Douglas, M; Keith, Jeff; Novak, Patricia, D; Elliot, Michelle, A. 2002. (Sixth Edition). *Mosby's Medical, Nursing, & Allied Health Dictionary*. St. Louis, Missouri, USA and London, UK.

This modern medical dictionary is being used within Schools of Medicine and Nursing. I personally find this to be discriminatory and a gross generalization of the facts concerning 47 XXY people. Whereas a number of XXY people will have difficulties in life – others considered 'normal' do too, but do not have the disparaging connotations ascribed to them, which leads many within the medical and allied professions to suggest termination of the 47 XXY fetus if found in utero through amniocentesis – a procedure which is not as safe as many are led to believe... I know of medical doctors, a surgeon, high ranking military people, CEO'S of Research institutes, a member of the House of Lords in the UK and Knighted for services to law and community, a professor of Mathematics and many others who are 47 XXY and have excelled beyond what the medical profession claims is the case... this is only the tip of an insidious iceberg intent on practicing eugenics... (Is this what you really want?)

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