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TRANS-FORMATION: ESTABLISHING INTERDISCIPLINARY
SUPPORT FOR THE TRANSGENDER EXPERIENCE
THROUGH HISTORICAL, BIOLOGICAL,
AND RELIGIOUS LENSES

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TRANS-FORMATION: ESTABLISHING INTERDISCIPLINARY
SUPPORT FOR THE TRANSGENDER EXPERIENCE
THROUGH HISTORICAL, BIOLOGICAL,
AND RELIGIOUS LENSES

A Dissertation Presented to the
Simmons School of Education and Human Development
Southern Methodist University

in

Partial Fulfillment of the Requirements

for the degree of

Doctor of Liberal Studies

by

GayMarie West Vaughan

July 25, 2023

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This dissertation is dedicated to both of my grandmothers:

Elaine Blohm Tolleson, who gave me a Dr. West toothbrush as a kid and told me that I could be a doctor if I wanted to, and to Lucille Lichty West, who read encyclopedias and dictionaries to me and made darn sure that I learned to love reading.

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CHAPTER 1-INTRODUCTION

Quite frankly, nothing could be more relevant to a modern discussion about what it means to be human than the emergence of discourse on transgender identities. By surveying scholarship in human evolution and biology and their impact on the progressing fields of science, medicine, human development, and bioethics, ample evidence across disciplines supports transgender people in claiming the same rights and freedoms all other humans share. Thus, this research advocates for the best and most inclusive societal practices for transgender individuals by specifically looking at human evolution and biology and by considering analogous situations in the non-human animal world that legitimize transgender identities and provide support for transgender people.

While science and history provide a strong precedent for what we now consider the modern notion of transgender identity, religious opposition poses the most serious threat to society's progress toward full integration of trans people in largely Christian, Western societies. My research, therefore, also includes evidence that illustrates the way in which transgender people feature into the story of Christian creation, and it refutes the most common objections to their full inclusion in the Christian community. Using interdisciplinary approaches and providing suggestions for best practices, the purpose of this dissertation is to provide multi-faceted and interdisciplinary support that validates experiences of trans people, arguing for inclusion and acceptance of transgender people not only within family homes but also in churches and other public spaces where many trans people feel unwelcomed because of their misunderstood identities.

My central research question asks whether and how we can reimagine the role of transgender people within the ongoing story of human evolution, and how the illumination of

this affirming perspective might help us to resolve controversies surrounding affirmative medical care and societal inclusion, particularly in Christian communities and spaces.

This project began with a first-person experience that I had as a parent prior to my work as a scholar in this area. Understanding my own experience requires an understanding of my background. I grew up in “the Bible Belt,” specifically Dallas, Texas in a politically conservative, Christian (non-denominational) home. I attended weekly church services—twice on Sunday and once mid-week—and a private Christian school from grades 1-12. I was taught from an early age that homosexuality was a sin. No one ever mentioned the word transgender because, to my knowledge, such a thing did not exist, or that kind of person was so far outside the range of what was accepted as normal by the non-marginalized people in my social circle that they did not merit conversation. English translations of Genesis read that God made people male and female, and my church and family taught and believed that changing anything about the heteronormative expectations of human life was sinful. Therefore, when my oldest child, a cisgender female, informed me that she was gay, it sent shockwaves through my family. About a year later, I learned through social media that she identified as trans. My first reaction was terror. I had no idea what to make of her feelings and had no way to help her navigate her own experiences except to try to reign her back in—I know now that my initial reaction hurt far more than it helped. My child has since forgiven me, but my journey was long and difficult.

Since I was a doctoral student at the time, I decided to research what I was most afraid of—my child’s taking hormones, having surgeries, and living as a male—hoping that I could convince her to change her mind.¹ Instead of changing her mind, however, I changed mine.

¹ Note that while my natal female daughter is currently transitioning to male, at this point in our story she had neither fully socially transitioned nor begun any medical intervention, and thus I referred to her as her at this point.

Through extensive research, I eventually became comfortable with what she was experiencing, learned how to have productive, supportive conversations, and gained enough confidence to begin speaking the truth to family members and Christian friends.

From this experience, I began to understand that my research could help me have more constructive conversations with friends and family (and many others who base their beliefs on a limited understanding of scientific and religious facts) to become an ally and advocate for transgender people. Therefore, additionally, this dissertation seeks to illustrate—using both scientific and religious language—why inclusive societal practices for transgender individuals are necessary, ethical, and need not induce anxiety. By including evidence from human evolution to illustrate the long arc of human development (that can and should include transgender people), and by looking at analogous medical cases where we champion bodily autonomy, I will argue that affirmative treatment for trans people is not only ethical but also medically necessary. For example, when cisgender people think of surgically altering their bodies (breast reductions/augmentations, liposuction, face lifts, nose jobs, etc...) they understand that they are making permanent changes to their bodies, but what they do not necessarily understand and what I intend to provide evidence for in my research is that transgender bodily changes are different because their changes are not just cosmetic; they are inherent to their identity, biologically determined, and potentially necessary for their own and our collective survival.

This study is unique in that, while ample scientific evidence exists showing that medical interventions are both safe and effective, no interdisciplinary project exists that explores the intersections among historical evolution, medical research, human rights experiences, and religious perspectives together to advocate for full societal inclusion for trans people.

Furthermore, few researchers have taken on this subject through an interdisciplinary and/or intersectional approach.

It is important to note that my project focuses only on transgender people, rather than on gender fluid or non-binary people or on people who are intersex (born with both biological features of both sexes). The primary reason for this decision is that transgender people are the ones most targeted in current laws that refuse them medical treatment and that discriminate against their participation in school sports and other areas of common human experience. Furthermore, because of the huge scope of the transgender topic, if I included the other groups, it would result in a more cursory exploration of each rather than a deep dive into one; thus, I decided that putting them together would be too much. My decision not to include them does not suggest that gender fluid, non-binary, or intersex people do not deserve the same full inclusion that I argue for trans people.

Chapter one will explore some of the non-human animals that undergo sex and/or gender changes to counteract the narrative that transgender people go against the natural order. These scientists and their research will demonstrate that other species see such changes as advantageous, so perhaps we should too. From there, I will shift focus to the connection between human evolution and transgender people. The goal of the first chapter is to establish a connection between early human evolution and transgender humans. I will rely on several key scholars: first of all, Ian Tattersall, author of *The World from Beginnings to 4000 BCE*, traces the development of homo sapiens from their earliest ancestors. His central argument, that evolution is neither linear nor simple, will provide the springboard for including transgender people in the evolutionary conversation. Furthermore, his text also introduces two kinds of evolutionary processes: “phyletic gradualism,” where one species gradually transforms, and “punctuated

equilibria,” which sees change as episodic—meaning that something stable suddenly (or at least in the short term) changes. Tattersall’s arguments, therefore, can be used to affirm that transgender bodies fit into natural human evolution regardless of the aspects that trans people control and those they do not. Also writing about early hominid species is scholar Barbara Miller, author of *Sex and Gender Hierarchies*, who studies evolution but primarily in relation to gender. Her arguments contend that outward displays of gender even in primates are arbitrary. She admits that predicting an individual’s gender remains very hard to do, even among our earliest primate ancestors. Furthermore, Miller claims that our understanding of gender is only a factor for humans and that no other primates use such a construct. Miller’s arguments will provide a link between the history of gender as a concept and sex among other primates and will help connect to my assertion that gender and sometimes sex is not static in non-human animals; therefore, when transgender people choose to align their bodies with their gender, they only continue to do what non-human animals have done for thousands of years.

As an example of a human/primate that demonstrated an aberration from the heteronormative patterns mostly studied, Pamela L. Geller, in her article “The Fallacy of the Transgender Skeleton,” published in *Bioarchaeologists Speak Out: Deep Time Perspectives on Contemporary Issues*, writes about the discovery of what scientists called the first “transsexual caveman” that dates back to between 2900-2500 B.C. Her study that focuses on a singular skeleton confirms both Tattersall and Miller’s claims that evolution supports the necessity of inclusion for transgender people, and my chapter will survey other similar examples as well. Additionally, the chapter will reference a number of articles as a means of providing evidence of other species changing gender and sex to provide both evolutionary and scientific support for understanding the possibility that transgender people are not a recent development and that these

individuals are not anomalies within biology. Some of these articles include Gemmell, Neil J. Gemmell, Erica V. Todd, Alexander Goikoetxea, Oscar Ortega-Recalde, and Timothy A. Hore's article "Natural sex change in fish;" Tetsuo Kuwamura, Shohei Suzuki, and Tatsuru Kadota's article, titled "Male-to-female sex change in widowed males of the protogynous damselfish *Dascyllus aruanus*;" Elise Larsen, Justin M. Calabrese, Marc Rhains, and William F. Fagan's research titled, "How protandry and protogyny affect female mating failure: a spatial population model;" and several others—all that highlight the natural fluidity and non-binary nature of sex and gender in the human and non-human animal worlds.

The second chapter will focus on man-made evolution, I will show the shift away from natural selection and Darwinian evolution into the Anthropocene of human-controlled evolution to further demonstrate how transgender bodies fit into all aspects of human evolution. The aim of this chapter is to show how humans have begun to "upgrade" their bodies, which is something many people find inevitable when it comes to procedures such as knee or hip replacements but don't necessarily apply to the ability of transgender people to change their bodies. Changing sex and/or gender remains a hot-button issue that I hope to assuage through evidence of their connections to other kinds of changes people make to their bodies. While most scientists study the slow and steady process of human evolution, a few modern scientists have begun to speak about and study what they call *homo evolutis*, a new species of human. Scientists like Juan Enriquez and Paul Root Wolpe, along with philosophers like Yuval Noah Harari, argue that mankind has managed control the once uncontrollable forces of nature. Their arguments, while not based on historical evolution like Tattersall, Miller, and Geller, move human evolution forward and include all the ways that humans can upgrade, change, and improve our own bodies, and transgender people certainly fall into this category. Further confirming this approach is

scholar Erle C. Ellis in his book *Anthropocene*, which explains the Anthropocene era and proposes the idea that humans are changing the Earth and controlling everything in it, which would obviously include our own evolution and any changes we make to our bodies.

The third chapter will focus on scientific studies that reveal biological causes for gender dysphoria, looking specifically at research that supports genetic, brain, and hormonal causes. I will also show current research on hormones used for treatment and what kinds of surgeries provide the best outcomes for trans patients. Some scientists and researchers who I will cite include Doris Bachtrog et al, Kashmira Gander, Rich Haridy, Johanna Olson-Kennedy et al, and many others. The purpose of this chapter is to illuminate scientific realities surrounding current medical treatments, the good and the bad. In addition, this chapter will include the World Professional Association for Transgender Health (WPATH) guidelines “To provide clinical guidance for health professionals to assist transsexual, transgender, and gender nonconforming people with safe and effective pathways to achieving lasting personal comfort with their gendered selves.” WPATH publishes their *Standards of Care* guidelines and updates them as research requires, and they include such pertinent topics that relate to bodily autonomy and beneficence such as treatment guidelines, mental health requirements, and other areas of care that trans patients need. The *Standards of Care* provides parents, schools, caregivers, and providers with basic information about how, when, and to what extent treatment for trans patients is needed, necessary, and life affirming.

The fourth chapter will look at biomedical ethics and moral principles of respect for patient autonomy and beneficence that provide the current basic guidelines for medical professionals; however, I will also show that the guidelines do not answer some of the most immediate and pressing questions regarding adolescent transgender care as well as the intersection of medical

ethics and consent law. In this analysis, I will also review the biomedical ethics concept of autonomy in terms of its relation to adolescent decision-making, examine laws relating to adolescent consent, expose the conflicts that arise for transgender adolescents by looking at analogous medical cases, and argue that the current laws should apply in the same ways to transgender teens. Within my analysis of biomedical ethics, Tom L. Beauchamp and James F. Childress's book *Principles of Biomedical Ethics*, will provide a basic framework for defining biomedical ethics. Their book examines the fundamental principles of bodily autonomy and beneficence. Finally, I will argue that a consistent nationwide approach to answering the consent issue be considered. Most importantly, this chapter advocates for applying the mature minor doctrine across the board for all issues relating to adolescents.

The fifth chapter looks specifically at scholars and scientists who do not support transgender individuals in order to respond to their specific objections regarding what many of them call "the transgender craze." While many Christian and secular scholars, ethicists, researchers, biologists, and others have articulated ample reasons to support transgender inclusion, several respected scholars, many of whom happen to be Christian (and some who are not) have spoken out against what some claim to be a modern (primarily teenage) phenomenon. One of the most outspoken critics of transgender affirmation comes from Ryan T. Anderson's book *When Harry Became Sally: Responding to the Transgender Moment*. Anderson's argument focuses on his philosophical objections, while Abigail Shrier's book *Irreversible Damage* focuses on the dramatic increase in "popularity" among teenage girls of coming out as transgender. She does not take on philosophical or religious objections, rather she focuses on the contribution of social media to what she calls a "craze." Another critic of current transgender affirmation is Sheila Jeffreys, a radical feminist (TERF) who sees trans women as violating spaces for other women.

Each of these critics decry the current trend toward transgender inclusion. And in each circumstance, I provide evidence that challenges their objections.

In the sixth chapter I will first explore the way transgender people have been included in other world religions dating back thousands of years, looking specifically at the Greek, Hindu, and Native American religions' understanding of sex and gender. I address these early religions to show the distinct disconnect that exists in the Christian faith as it relates to transgender people. This chapter will then address issues in Christianity, answering the three most common Christian objections to gender transitioning. First, transgender identity presupposes a Gnostic retreat from the unity of body and soul. Second, gender transitioning is a denial of and a threat to the fixed ontological male/female binary built into creation, and third, gender fluidity involves a capitulation to the idol of modern voluntarism and self-creation at the expense of embracing natural limits and a human ecology. The main purpose of answering these common objections is to advocate for a welcoming place for transgender people in churches and Christian spaces. Important in the discussion of Christianity and transgender welcoming involves looking specifically at verses of scripture relevant to the topic of same-sex relationships and transgender people as part of God's eternal plan. And, after recognizing a more gender-neutral basis for our understanding of identity in Christ, I will also rely heavily on Linn Marie Tonstad's *Queer Theology* and Austen Hartke's *transforming: The Bible and the Lives of Transgender Christians* as well as Linda Herzer's *The Bible and the Transgender Experience*, both of which articulate how scripture advocates for a more inclusive and welcoming way for those in the LGBTQ community. Finally, while looking specifically at Christian Ethics, theologian and professor Scott Bader-Saye's article "The Transgender Body's Grace" speaks directly to the various ways Christians come after transgender people, and he offers a unique perspective on the welcoming

of transgender people into Christian communities. His article fundamentally changed the way I looked at the transgender issue within the context of Christian faith.

The conclusion, chapter seven of my dissertation, includes an update on the journey my oldest child and I have taken to find common ground during his transition, and my hope is to illuminate the real-world outcomes of the research I have surveyed. I hope to challenge readers, especially Christian readers, to expand their minds and hearts to make room for our transgender brothers and sisters. I also plan to address readers who may not be Christian, since many who object to transgender affirmation do not necessarily identify as religious. I hope to show how recognizing the beauty and gift of transgender people that they will be able to live lives fully much like heteronormative people take for granted. In this portion of the conclusion, I will specifically draw from David Brooks recent book *The Second Mountain* to show how we do trans people such a disservice by forcing so many of them to live on what he calls “the first mountain.” My hope is that the cumulative research will demonstrate that transgender people do not deserve anything but full inclusion in society and that societal fears have no grounding in truth because transgender individuals have existed forever and naturally in myriad species and provide immeasurable benefits to our society and species.

CHAPTER 1—HISTORY

Gender Identity: The Past

In current culture, people who hold fast to a binary understanding of gender contend that transgender people choose their identity cavalierly, based solely on feelings and that their behavior and choices run counter to nature and, to some, even God. This chapter seeks to develop a strong argument for the natural existence of transgender beings in nature to reveal scientific support for their natural existence. Understanding that transgender beings exist as a part of a diverse ecosystems can certainly lead to greater acceptance in current culture and a greater understanding of their benefit to our world.

For years, science and history provided support for a binary and heteronormative understanding of human beings and non-human animals, but we now know that many beings exist outside of the traditional binary understanding of male and female. To make this argument, I will first include a sampling of non-human animals that demonstrate an ability to change sexes and/or gender for the purposes of evolutionary survival. By examining evidence outside of non-human animals, the various benefits such beings bring to nature manifest in ways applicable to humans. I will then examine the slow progress of human evolution (physical and cultural) to see how our own evolutionary story also encourages a broader conception of what it means to be human—one that understands the place and value that transgender people bring to it. By exploring early hominid history, I will lay the foundation for the ever-changing human species.

I will also look specifically at early *homo-sapien* development, showing, once again, the formation and development of our own understanding of sexuality and gender. Most importantly, through this exploration of both human and non-human evolution, my hope is that the long trek back through evolution will ameliorate any hesitation in welcoming transgender bodies into a

culture that is learning to move away from a binary understanding of human sexuality and gender and beginning to see them as a natural and beneficial byproduct of human evolution.

NON-HUMAN ANIMALS THAT CHANGE SEXES

The simple truth is that for many animals changing sexes is one of the ways in which their species adapts and survives. Most people, however, do not understand that this ability might belong to humans as well. In general, the “Noah’s Ark” view of nature and biology prevails: that biology revolves around only two sexes/genders, male and female, existing in perfectly compatible pairs. In fact, one of the most prevalent (and ignorant) arguments tossed around on social media and in casual conversations opposing transgender people centers on the argument that changing sex goes against nature, citing that other species do not experience it, but as science shows, that argument is false. Males can, in fact, become females, and females can become males, and some creatures exist as both. When an animal lives as one sex in part of their lifetime and then switches to another sex, the naturally occurring phenomenon is called sequential hermaphroditism.² Two forms of sequential hermaphroditism exist: first, protandry—the change from male to female—and second, protogyny—the change from female to male.³ Yale scientists Erem Kazancioglu and Suzanne Alonzo’s research found in *The American Naturalist* concluded that the primary reason that sequential hermaphroditism remains rare stems from the “considerable time and energy it takes to change sex makes it unfeasible for most animals”⁴ Some animals spend up to 30 percent of their lifetime in the process of changing sex, which suggests a huge cost, at least in terms of the number of their days on earth.⁵ The reason,

² "Why Don't More Animals Change Their Sex?," *Science Daily*, February 4, 2009, <https://www.sciencedaily.com/releases/2009/02/090203110326.htm>.

³"Gender-bending fish," *Understanding Evolution*, n.d., https://evolution.berkeley.edu/evolibrary/article/fishtree_07.

⁴ *Ibid.*

⁵ *Ibid.*

not so coincidentally, mirrors the primary reason so few humans choose not to transition—the cost, in terms of both time and money.

One species known to change sexes is the clownfish, a member of the clade called *Perciformes*. This fish, made popular in Pixar’s *Finding Nemo*, are protandrous—they develop first as male but then switch to female when the clownfish breeding female is removed. When the “breeding female is removed, her male mate changes sex to female, and the next largest fish in the group rapidly increases in size and takes over the role as the sexually mature male.”⁶

Because the phenomenon of hermaphroditism has evolved in fish, one could easily conclude that switching sexes has become integral to their survival. In addition, the damselfish, *Dascyllus aruanus*, also experiences protandrous sequential hermaphroditism. According to Tetsuo Kuwamura, Shohei Suzuki, and Tatsuru Kadota in the *Journal of Ethology*, the humbug damselfish that lives on branching-type corals under low-density conditions changes its sex to female when no females or juveniles immigrate onto the coral. These fish, much like the clownfish, undergo a sex change to ensure their ability to reproduce and survive, something the scientists said they have confirmed in at least 30 species of fish.⁷

The clownfish and damselfish are not the only species of fish to undergo sequential hermaphroditism. A group of scientists in New Zealand published a study in *Science Advances* that focused on the bluehead wrasses, *Thalassoma bifasciatum*, that live in groups in coral reefs of the Caribbean. Wrasses, unlike clownfish and damselfish, are protogynous—meaning they

⁶ “Gender-bending fish,” Understanding Evolution, n.d., https://evolution.berkeley.edu/evolibrary/article/fishtree_07.

⁷ Tetsuo Kuwamura, Shohei Suzuki, and Tatsuru Kadota, “Male-to-female sex change in widowed males of the protogynous damselfish *Dascyllus aruanus*,” *Journal of Ethology* 34, no. 1 (November 12, 2015): 2, doi:10.1007/s10164-015-0450-8.

switch from female to male.⁸ This international collaboration led by the New Zealand scientists and geneticists showed that although the genes don't change in these fish, the signals that turn them off and on do. Specifically, for the bluehead wrasses, when the male is removed, the female—within only 10 days—becomes fully male. She changes her behavior in minutes, her color in hours, and her ovaries become sperm-producing testes within 10 days.⁹ These wrasses live in “harems” with one large male and multiple smaller females. When the male is removed, it causes the female to begin “courting” other fish while she develops into a male.¹⁰ Not only does this study show how the wrasses evolve in order for their species to survive, but this study could also be very important for understanding how specific genes “turn off” and “turn on” during development (including in humans) and how the environment can influence this process. For wrasses, the sex change requires a “complete genetic rewiring of the gonad,” which is accomplished after the “genes that maintain the ovar[ies] are first turned off,” allowing for “a new genetic pathway [to turn] on to promote testis formation.”¹¹ Whatever causes the switch, it allows for this species to continue to reproduce and survive, and such a switch might provide insights for scientists to consider in humans.

Kazue Asoh and Douglas Y. Shapiro have studied the fairy basslet fish, *Gramma loreto*, to better understand their mode of sexual behavior since they form social systems much like bluehead wrasses. Scientists expected their behavior to mirror that of the wrasses: when males were removed, females underwent protogynous hermaphroditism. In their study, however, the

⁸ “Secrets of a sex-changing fish revealed,” *Science Daily*, July 10, 2019, <https://www.sciencedirect.com/releases/2019/07/190710163416.htm>.

⁹ Ibid.

¹⁰ “Gender-bending fish,” *Understanding Evolution*, n.d., https://evolution.berkeley.edu/evolibrary/article/fishtree_07.

¹¹ “Secrets of a sex-changing fish revealed,” *Science Daily*, July 10, 2019, <https://www.sciencedirect.com/releases/2019/07/190710163416.htm>.

fairy basslets did *not* experience protogyny as the scientists expected, rather the adolescent fish seemed bisexual—developing both gonads *and* ovaries, a unique finding among these kinds of fish.¹² The reason this study is relevant, despite their not finding protogynous hermaphroditism, is that these fish included bisexual fish that at one stage in their development had the capacity to develop into either male or female fish; thus, their sexual formation was not fixed at “birth.” These bisexual fish developed the way they did to amplify their prospects for reproduction, depending on their environments. The fact that such bisexual fish exist seems to suggest that nature knows what works best when it comes to survival, and that humans, like our non-human animal friends, do what comes naturally to survive.

Another species of fish that experiences a different kind of hermaphroditism is the tropical goby species *Gobiidae* that exhibits bidirectional sex changes: these fish can change from female to male or male to female depending on their mating situation. According to researcher J. Wingfield, the goby depend on strong monogamous pairs for protection from predators. As small-bodied weak swimmers, if a mated pair is lost, another individual (either male or female) will replace it. That other individual will undergo the necessary change to form a heterosexual pair.¹³ For Wingfield, various types of sex changes in fish represent extreme examples of sexual plasticity (the degree to which one's sex can be changed by cultural or social factors) in vertebrates that strongly suggest an evolutionary purpose.¹⁴

Hamlet fish, *Hypoplectrus*, another fish found in Caribbean coral reefs exist as both male and female simultaneously. They can cross-fertilize, meaning that they might function as a male

¹² Kazue Asoh and Douglas Y. Shapiro, "Bisexual Juvenile Gonad and Gonochorism in the Fairy Basslet, *Gramma loreto*," *Copeia* 1997, no. 1 (February 18, 1997): 29, doi:10.2307/1447836.

¹³ J. Wingfield, "Communicative Behaviors, Hormone-Behavior Interactions, and Reproduction in Vertebrates," *Knobil and Neill's Physiology of Reproduction*, (2006): doi:10.1016/b978-012515400-0/50041-5.

¹⁴ *Ibid.*

in one episode of reproduction but function as the female in the next.¹⁵ Since cross-fertilization can occur, it provides more opportunities for reproduction on the reef; thus, these cross-sex fish seem to suggest that nature approves of creatures that behave in ways they are hard wired to, especially if it raises the opportunity for species survival.

For fish like clownfish, wrasses, and damselfish, sequential hermaphroditism results from reproductive asynchrony and spatial constraints in their populations. What this might mean for the human populations is that when some transgender people experience a kind of “matelessness,” it could exacerbate their need to change sexes. As scientists acknowledge, population persistence and growth depend on the ability of individuals to find mates; however, no studies to date have been initiated to explore this as a possible means of human survival.¹⁶ Furthermore, just because a person cannot reproduce does not mean that they serve no evolutionary purpose or that they do not help pass on genes. In Policansky’s article “Sex Change in Plants and Animals,” he concludes that “no obvious generalizations emerge from the reviews to distinguish organisms that [change sexes] from those that do not change sex.” For Policansky, this means that more studies needed to be done to determine why some species change sexes while others do not. His study provided evidence from all kinds of species from plants to flatworms, to nematodes, to leeches, to insects, to crustaceans, to birds, and finally to fish.¹⁷ Thus, the argument that changing sexes “goes against nature” doesn’t hold, and if it does not hold for non-human animals, it likely will not hold for humans.

¹⁵ Joan Roughgarden, *Evolution’s Rainbow: Diversity, Gender, and Sexuality in Nature and People* (Berkeley: University of California Press, 2004), 33

¹⁶ Elise Larsen et al., "How protandry and protogyny affect female mating failure: a spatial population model," *Entomologia Experimentalis et Applicata* 146, no. 1 (July 9, 2012): 130, doi:10.1111/eea.12003.

¹⁷ D. Policansky, "Sex Change in Plants and Animals," *Annual Review of Ecology and Systematics* 13, no. 1 (1982): 471-486, doi:10.1146/annurev.es.13.110182.002351.

Another argument made in support of the benefit of members of species that do not reproduce is that, according to Bruce Bajemihl, in his book *Biological Exuberance: Animal Homosexuality and Natural Diversity*, people often “fail to realize that reproduction itself often occupies a peripheral position in animals;”¹⁸ in other words, it does not determine an individual’s value within the community. In addition, he contends that such creatures, “while not reproducing themselves, act as helpers in raising offspring of their relatives,” or they contribute “indirectly” to the passing on of genes.”¹⁹ Bajemihl’s most salient argument points out that if transgender animals did not serve any evolutionary purpose, they would have died out, but they have not. In fact, he notes that they have been verified to exist in at least 65 different species.²⁰

The broad study “Natural Sex Change in Fish,” conducted by Neil J. Gemmell and his colleagues, asserts that “sexual fate can no longer be considered an irreversible deterministic process that...plays out unchanged across an organism’s life.”²¹ Furthermore, Gemmell and his colleagues conclude that sex changes for many fish “is a usual and adaptive part of the life cycle.”²² For the fish they studied, the fish experienced behavioral, anatomical, neuroendocrine, and molecular changes to improve their survival rates,²³ changes that many transgender people seek to alter as they undergo their own transformation. If fish experience sexual plasticity and fluidity naturally, the possibility must also exist for other species, even humans.

Since fish are not considered close evolutionary relatives to humans—much more far removed than other vertebrates—perhaps looking at reptiles like bearded dragons, *Pogona*

¹⁸ Bruce Bajemihl, *Biological Exuberance: Animal Homosexuality and Natural Diversity* (New York: St. Martin's Press, 2000), 168.

¹⁹ *Ibid*, 171.

²⁰ *Ibid*, 172.

²¹ Neil J. Gemmell et al., "Natural sex change in fish," *Current Topics in Developmental Biology* 134 (2019): 71, doi:10.1016/bs.ctdb.2018.12.014.

²² *Ibid*.

²³ *Ibid*, 72.

vitticeps and Komodo dragons, *Varanus komodoensis*, gets us a little closer, providing more insight into why certain species undergo sex changes.

Bearded dragons are one such species that switch sexes. According to John Virata's article in *Reptiles Magazine*, "the bearded dragon has the capability to change sex via two different sets of genes, either via sex chromosomes or via hot temperature."²⁴ For these lizards, warm temperatures effectively turn them into female lizards. Male bearded dragons have ZZ sex chromosomes and females have ZW chromosomes, and through biochemical pathways they can change genders, using heat during the incubation period to override the male's ZZ chromosomes, thus turning them into females.²⁵ The study Virata sites in his article details how there are two ways that bearded dragons can produce ovaries: one genetic and one temperature dependent.²⁶ These two types of sex determination were once thought to be separated "by an evolutionary gulf,"²⁷ but that is changing. Some researchers conclude that with climate change, "the sex switching could snowball."²⁸ Virata's article is particularly interesting to those researchers studying fish, particularly the wrasses, because "sex reversal in dragons and the wrasse involve some of the same genes," so perhaps they are looking at an "ancient system for environmental control of gene activity,"²⁹ which also applies to humans who attempt to control (change) their genetic activity through environmental control. This is not to suggest or undermine a transgender

²⁴ John Virata, "Bearded Dragon Embryos Can Switch Sex Two Different Ways, Study Says," *Reptiles Magazine*, April 2021, <https://www.reptilesmagazine.com/bearded-dragon-embryos-can-switch-sex-two-different-ways-study-says/>.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Joshua Sokol, "Zoologger: The Lizard That Changes its Sex to Suit the Weather," *New Scientist*, July 2015, 3, <https://www.newscientist.com/article/dn27814-zoologger-the-lizard-that-changes-its-sex-to-suit-the-weather/>.

²⁸ Ibid.

²⁹ "Secrets of a sex-changing fish revealed," *Science Daily*, July 10, 2019, <https://www.sciencedirect.com/releases/2019/07/190710163416.htm>.

person's innate/visceral disconnect with their gender assigned at birth, but to recognize that what the person does with that disconnect—or the extent to which they resolve it—is in their control.

Another reptile, the Komodo Dragon, shows a capacity to change sexes, at least sort of. Researchers in *Nature* magazine discovered that “Indonesian dragons can breed without the benefit of masculine companionship,” as two female Komodo dragons “laid viable eggs without insemination from a male.”³⁰ That these dragons could reproduce without male partners was not the only twist that the researchers noted: the two identical sex chromosomes make a male for Komodo dragons while two different ones make a female, which is opposite for most other species. For these species, they do not have defined sex chromosomes as embryos; they develop them later in life.³¹ For these dragons, their ability to manipulate sex and reproduction stems from their isolated natural habitats.³² In other words, too often they struggle to find mates. Again, the ability of the dragons to resort to such behavior has enabled the dragons to continue as a species.³³ Thus, the ability for them to change sex proved beneficial not only for their own survival but also for the species.

To Robert R. Warner, author of “The Adaptive Significance of Sequential Hermaphroditism in Animals,” the primary reasons for changing sex include the necessity of finding a mate or maintaining genetic variability in a low population density “where an individual reproduces most efficiently as a member of one sex when small or young, but as a member of the other sex when it gets older or larger.”³⁴ To Warner, these populations experience

³⁰ Philip Yam, “Strange but True: Komodo Dragons Show That “Virgin Births” Are Possible,” *Scientific American*, December 2006, 1, <https://www.scientificamerican.com/article/strange-but-true-komodo-d/>.

³¹ *Ibid.*, 2.

³² *Ibid.*, 3.

³³ *Ibid.*

³⁴ Robert R. Warner, “The Adaptive Significance of Sequential Hermaphroditism in Animals,” *The American Naturalist* 109, no. 965 (January/February 1975): 61, doi:10.1086/282974.

“pressure”³⁵ to change from within or without their population, and transgender humans experience something similar, pressure either personally or socially to change sexes.

One of the most interesting statistics in the research on non-human species that experience sequential hermaphroditism is that it only occurs in roughly 0.5-0.6% of the known animal species.³⁶ In 2016, the percentage of the human transgender population remained very small, equating to approximately 0.6%,³⁷ but according to a 2022 Pew Research Study, that population has grown to around 0.5%, mirroring those of other species.³⁸ The fact that so few members of the population experience such a desire makes sense and shows that for some members of any population, changing sex and/or gender is natural, necessary, and beneficial for survival.

Even more closely related to human animals are other mammals that exhibit behaviors that belie the binary nature of sex and gender. Some of these mammals include the seemingly intersexed White-tailed deer, *Odocoileus virginianus*, that possess a male body type called “velvet horns” but have small antlers, doe-like body proportions and facial features, small testes and cannot reproduce.³⁹ Also within this species are female deer with (typically male) antlers and both kinds of anatomical sex-identifying parts but that are also infertile. Furthermore, their infertility does not indicate that “something is wrong” with these animals, and because they exist

³⁵ Robert R. Warner, "The Adaptive Significance of Sequential Hermaphroditism in Animals," *The American Naturalist* 109, no. 965 (January/February 1975): 61, doi:10.1086/282974.

³⁶ Lukas Schärer, "Tests of Sex Allocation Theory in Simultaneously Hermaphroditic Animals," *Evolution* 63, no. 6 (2009): 1378, doi:10.1111/j.1558-5646.2009.00669.x.

³⁷ Andrew R. Flores et al., "How Many Adults Identify as Transgender in the United States?," June 2016, <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

³⁸ Jan Hoffman, "Estimate of U.S. Transgender Population Doubles to 1.4 Million Adults," *New York Times*, June 2016, <https://www.nytimes.com/2016/07/01/health/transgender-population.html>.

Anna Brown, "About 5% of young adults in the U.S. say their gender is different from their sex assigned at birth," Pew Research Center, accessed February 14, 2023, <https://www.pewresearch.org/fact-tank/2022/06/07/about-5-of-young-adults-in-the-u-s-say-their-gender-is-different-from-their-sex-assigned-at-birth/>.

³⁹ Joan Roughgarden, *Evolution's Rainbow: Diversity, Gender, and Sexuality in Nature and People* (Berkeley: University of California Press, 2004), 36.

in 10-40% of the populations, their existence cannot be considered a “deleterious mutation” within the species.⁴⁰ They serve a key function in their community, and they continue to exist naturally and widely in the species.

Kangaroos, particularly eastern gray kangaroos known as *Macropus giganteus*, also exhibit behaviors that fall outside of the binary interpretations of sex and gender roles. For example, some kangaroos incubate embryos in a pouch rather than a uterus, and some intersexed kangaroos have both a penis *and* a pouch, mammary glands, and testes. These sex differences also occur in red kangaroos, *Macropus rufus*; euros, *Macropus robustus*; wallabies, *Macropus eugenii*, and in quokkas, *Setonix brachyurus*. For these kangaroos/marsupials, sex differences allow them to tend to their young, thus allowing their species to continue. Again, these traits occur naturally and benefit the species.

Native Americans also speak of various kinds of bears, particularly the grizzly bear, *Ursus arctos*, and the black bear, *Ursus americanus*, as bears that have “male mothers, giving birth through a penis-clitoris.”⁴¹ Incidentally, this kind of genitalia also exists in spotted hyenas in Tanzania, *Crocuta crocuta*, whose female penises are barely distinguishable from the male’s.⁴² These mammals have sex organs that perform more than one function, which also allows for greater variety in both birthing and caring for their young. Incidentally, such animals are not forced to live outside of their social and familial groups.

Since sex has been understood in binary terms—male and female only—for years, perhaps looking at the wide variety of examples of non-human animals with the ability to modify sex-typical biological and behavioral features and even change sex can provide a framework for

⁴⁰ Joan Roughgarden, *Evolution’s Rainbow: Diversity, Gender, and Sexuality in Nature and People* (Berkeley: University of California Press, 2004), 36.

⁴¹ *Ibid*, 37.

⁴² *Ibid*.

understanding transgender people in a different and more understanding way, one that recognizes that sex is neither binary nor static but flexible and dynamic, helping many species to not just survive but thrive.⁴³ More importantly, looking at these various species can also allow us to understand the evolutionary benefit that transgender people can bring to human society, thus removing the stigma.

EARLY HUMAN EVOLUTION

Ian Tattersall asserts early in *The World from Beginnings to 4000 BCE* that evolution is neither linear nor simple. It is “untidy,” which certainly helps explain our inability to welcome change.⁴⁴ Furthermore, he describes two views of the evolutionary process: “phyletic gradualism,” whereby one species gradually transforms, and “punctuated equilibria,” which sees change as episodic—meaning that something stable suddenly (or at least in the short term) changes.⁴⁵ Tattersall, therefore, suggests that humans experience prolonged periods of overall stability with short bursts of change.”⁴⁶ In these periods of “punctuated equilibria,” change is “concentrated around the event of speciation itself,” which suggests something new and different comes along that functions “as an actor in the evolutionary play.”⁴⁷ This kind of evolutionary thinking applies to transgender people especially since, according to Tattersall, evolutionary innovation and change happens most frequently when geographic, climactic, and ecologic conditions are unstable, periods that humans have experienced episodically throughout our history and of late.⁴⁸

⁴³ “Biology blurs line between sexes, behaviors,” *Science Daily*, August 10, 2020, <https://www.sciencedaily.com/releases/2020/08/200810140949.html>.

⁴⁴ Ian Tattersall, *The World from Beginnings to 4000 BCE* (New York: Oxford University Press, 2008), 1.

⁴⁵ *Ibid*, 6.

⁴⁶ *Ibid*, 8.

⁴⁷ *Ibid*, 9.

⁴⁸ *Ibid*, 27.

The Smithsonian National Museum of Natural History (NMNH), in its “Introduction to Human Evolution” agrees, asserting that the process of evolution involves a series of natural changes that cause species to arise, adapt to an environment, and, eventually perhaps, become extinct.⁴⁹ Furthermore, the NMNH confirms that “evolution occurs when there is change in the common genetic material—the chemical molecule, DNA—inherited from the parents, and especially in the proportions of different genes in a population.”⁵⁰ Thus, such genetic changes indicate a clear change in the pattern of evolution, whether it be gradual or punctual, as Tattersall argues. For early human hominids and throughout human evolution, the way genes are expressed, how they influence the body or behavior of an organism, also undergoes change. Genes affect how the body and behavior of an organism develop during its life, and this is why genetically inherited characteristics can influence the likelihood of an organism’s survival and reproduction.⁵¹ The genetic argument also seems to suggest that transgender individuals have formed for a specific purpose, since they have not become extinct and since there is a genetic link to transgender people (a link that I will explore specifically in my chapter on science); therefore, perhaps human evolution can point to ways to see trans people as evidence of biological and evolutionary diversity.

Evolution does not change any single individual. Instead, it changes the inherited means of growth and development that typify a population (a group of individuals of the same species living in a particular habitat). Parents pass adaptive genetic changes to their offspring, and ultimately these changes become common throughout a population. As a result, the offspring

⁴⁹ "Introduction to Human Evolution," *The Smithsonian Institution's Human Origins Program*, last modified July 11, 2022, <https://humanorigins.si.edu/education/introduction-human-evolution>.

⁵⁰ Ibid.

⁵¹ Ibid.

inherit those genetic characteristics that enhance their chances of survival and ability to give birth, which may work well until the environment changes. Over time, genetic change can alter a species' overall way of life, such as what it eats, how it grows, and where it can live. Human evolution took place as new genetic variations in early ancestor populations favored new abilities to adapt to environmental change and so altered the human way of life.

To look at evolution in terms of how transgender bodies fit into the story of human evolution must begin with the earliest hominids. Early human evolutionary study focuses primarily on the *physical* development of our species. For the earliest of researchers, they first concentrated on the enlarged brain of our human ancestors, then the small canine teeth, and then our two-legged posture,⁵² physical traits that separated humans from the apes. While these traits remained consistent, diversity began to develop among early hominids as early as the Miocene epoch that ended about 5.2 million years ago.⁵³ One consequential trait that differentiated the genus *homo* included the ability to use tools and plan ahead, both of which allowed them to manipulate their environments,⁵⁴ and all humans since have reaped the benefits of this differentiation, transgender people included. Furthermore, these earliest humans also demonstrated the tendency toward and benefits of a diverse human population.

As evolution continued, hominid brains continued to develop as did their capacity for speech. Hominid bodies also continued to change in shape. And as the species evolved, hominids developed stable “family structures” for food sharing and child rearing.⁵⁵ Such “family structures” provided stability and protection and ensured survival. Along with all the

⁵² Ian Tattersall, *The World from Beginnings to 4000 BCE* (New York: Oxford University Press, 2008), , 38.

⁵³ *Ibid*, 41.

⁵⁴ *Ibid*, 57-58.

⁵⁵ Merlin Donald, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition* (Cambridge: Harvard University Press, 1991), 105.

evolutionary changes in hominid bodies, brains, and customs, archaeologists recognize that about two million years ago, a “radical cultural change occurred.”⁵⁶ With increased language skills and family structures, artistic expression evolved as did a belief in an afterlife, evidence of hominid capability of engaging with and developing culture. Everything they created and experimented with ultimately became part of the norm for early hominids.⁵⁷ Since early humans saw experimentation as a boon, these hominids did not challenge or recoil against change; they embraced it as either necessary for their continued development or for their survival as a species.⁵⁸ Therefore, cultural changes, radical or not, continued to shape the human experience. And while family structures for modern transgender people might look different, they still provide the same stability and protection, demonstrating their natural fit into the ongoing human evolutionary story.

Later, as humans continued to evolve, language emerged, which not only allowed for symbolic reasoning but also a more settled life for our ancestors. Unfortunately, with language came violence and “an apparatus to enforce conformity with social norms in place.”⁵⁹ As humans began to interpret the world around them with language and even with religion (a topic I will address in the chapter on religion), some began to protect and defend the way they interpreted culture, forcing out those who did not adhere to cultural (misogynistic and heteronormative) norms. Such enforcement of social norms, even through violence, comes into play with the trans population, but human history clearly demonstrates the dangerous consequences of such violence: instability, war, and even death. Tattersall ends his look at human evolution with the

⁵⁶ Merlin Donald, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition* (Cambridge: Harvard University Press, 1991), 122.

⁵⁷ Ian Tattersall, *The World from Beginnings to 4000 BCE* (New York: Oxford University Press, 2008), 97-98.

⁵⁸ *Ibid*, 98.

⁵⁹ *Ibid*, 120.

following statement: “Thus, factors that are external to individual people, or even to societies and nations themselves, have ultimately been behind a large proportion of the blossomings, breakdowns, and conflicts that make up the complex tapestry of human history,” and complex it has remained.⁶⁰ Thus, by looking at the emergence of transgender individuals through an evolutionary lens, their emergence represents a point of human blossoming and an example of diversity (not a breakdown) that can add to the complex tapestry of human existence.

As humans continued to evolve, one of the myriad hominid complexities that developed, according to Merlin Donald, author of *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition*, involved mimesis, the ability to “produce conscious, self-initiated, representational acts that are intentional but not linguistic.”⁶¹ Mimesis adds a representational aspect to imitation, which involves “a wide variety of actions and modalities to its purpose,” including tone of voice, facial expressions, gestures, postures, and whole-body movements.⁶² All of the actions involved in mimesis serve intentional purposes: communication, reference, and cueing; therefore, such actions used in modern human activity outside of gendered norms serve similar purposes. Merlin Donald even asserts that expanded hominid control over their emotions and expressions marked significant evolutionary progress.⁶³ Thus, having control of own faculties and their usage indicates progress in human development, regardless of how such faculties might be used to express gender identity.

From the mimetic stage, humans evolved into the mythic stage, ushering in the construction of conceptual models of the universe, controlling their use and purpose. The myth

⁶⁰ Ian Tattersall, *The World from Beginnings to 4000 BCE* (New York: Oxford University Press, 2008), 124.

⁶¹ Merlin Donald, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition* (Cambridge: Harvard University Press, 1991), 168.

⁶² *Ibid*, 169.

⁶³ *Ibid*, 185.

becomes the “authoritative version” of the universe, and when a loss of myth occurs,⁶⁴ according to Donald, it often brings about a loss of identity and crisis.⁶⁵ As modern humans continue to question some of the foundational myths of old, religious and cultural, (interpreted mostly by males) questions of identity emerge, and as these questions emerge, in typical hominid style, the answers can help us progress as a species. The specific connection between myth, religion, and culture will be addressed in the chapter on religion of this dissertation.

HOMO-SAPIENS AND GENDER

While the conversation about human evolution remains pertinent to understanding transgender inclusion, we must ask what exactly did our earliest ancient ancestors think about sex and gender? Was the construction of social norms a by-product of their culture? If so, then it should come as no surprise that as culture shifts, so too should the understanding of sex and gender. According to Joan Roughgarden, “Darwin’s sexual selection [was] evolutionary biology’s first universal theory of gender”⁶⁶ because he claimed that males and females exhibited very specific gender-traditional roles, roles which we now recognize as not fully representative of the human species. For example, he believed that “Males of almost all animals have stronger passions than females, and that “the female is less eager than the male and coy.”⁶⁷ His interpretation of what he called “universal templates” for behavior did not mean that he failed to recognize diversity in terms of sex and gender. However, Darwin did acknowledge that some animals do not align within the binary he described,⁶⁸ but he offered no explanation as to why,

⁶⁴ The “loss of myth,” I contend, happens more formally in the Anthropocene. I will develop this argument further in chapter 3.

⁶⁵ Ibid, 258.

⁶⁶ Joan Roughgarden, *Evolution’s Rainbow: Diversity, Gender, and Sexuality in Nature and People* (Berkeley: University of California Press, 2004), 164.

⁶⁷ Ibid.

⁶⁸ Ibid, 166.

and thus, this kind of language could have contributed to our modern failure to see transgender people as a natural part of human evolution. In fact, Roughgarden claims that his universal claims of sexual selection theory are essentially “inaccurate.”⁶⁹ Darwin’s omissions, however, have allowed for other scholars to research what Darwin left out: the natural existence of gender and sex diversity.

According to Barbara Miller in *Sex and Gender Hierarchies*, “Among all primates, [which includes modern humans] males, not females, produce seamen, and females, not males, bear offspring, but that is as far as the cross-order universal in female-male differences extend.”⁷⁰ Miller contends that hierarchies within cultures vary and thus are not universal within primates and that the understanding of and outward displays of gender are completely arbitrary. Furthermore, she asserts that while genitals usually denote sex, “we cannot surely predict what an individual’s gender will be in a particular group.”⁷¹ Interestingly enough, Miller further claims that the understanding of gender is only a factor for humans; no other primates use such a construct because it is a culture-laden term.⁷² And since she claims gender emerged from human culture, then humans get to define it, develop it, and even change how we use it. When speaking of differences between humans and non-human primates, she acknowledges that most non-human animals do not choose their sex; however, humans *can* move across sexes and dissent when it comes to stereotypical gender roles.⁷³ Furthermore, she makes a most important observation: most of the research we have on early human evolution is entirely male-biased, and

⁶⁹ Joan Roughgarden, *Evolution’s Rainbow: Diversity, Gender, and Sexuality in Nature and People* (Berkeley: University of California Press, 2004), 169.

⁷⁰ Barbara D. Miller, ed, *Sex and Gender Hierarchies* (Cambridge: Cambridge University Press, 1993), 3.

⁷¹ *Ibid.*, 5.

⁷² *Ibid.*

⁷³ *Ibid.*, 6.

she bemoans the paucity of research done on gender.⁷⁴ Therefore, according to Miller, one reason that culture struggles to accept transgender people as a part of the natural human order is because male-dominated science and research has not considered it relevant enough to research it or acknowledged it as worthy or relevant. For proof, consider the fact that a significant majority of the human skeletons used for study have been of men.⁷⁵ Thus, recognizing the prevalence and presence of transgender people throughout history can help remove skepticism relating to their legitimacy, belonging, and benefit.

Recent studies indicate that early humans did, in fact, experience gender variations. Archaeologists in the Czech Republic have discovered a “transsexual caveman” that dates back to between 2900-2500 B.C.E. A male-bodied individual had been found positioned and interred with grave goods typical of women, thus the early reports suggested that this person was homosexual. As Pamela Gellar notes in “The Fallacy of the Transgender Skeleton,” news reports about this discovery went viral, with first reports claiming to have found the first “homosexual caveman.”⁷⁶ Gellar does not believe such rhetoric. According to her, “despite empirical evidence to the contrary, most archaeologists have long erased socio-sexual lives that counter the heteronormative narratives from their scholarly considerations or popular presentations”⁷⁷ For Gellar, homosexuality does not equate to transgender, and thus, she advocates for archaeologists to unlearn their own biases when researching because what they likely found was a transgender person that the scientists knew little about. Therefore, she advocates for what she calls “transgender [aware] archaeology,” one that knows how to refer to people who move away from

⁷⁴ Barbara D. Miller, ed, *Sex and Gender Hierarchies* (Cambridge: Cambridge University Press, 1993), 14.

⁷⁵ *Ibid*, 17.

⁷⁶ Pamela L. Gellar, “The Fallacy of the Transgender Skeleton,” in *Bioarchaeologists Speak Out: Deep Time Perspectives on Contemporary Issues* (Basingstoke: Springer, 2018), 235.

⁷⁷ *Ibid*, 237.

the gender they were assigned at birth and who transgress boundaries constructed by their culture because, as Geller claims, “gender variance is likely an ancient and cross-cultural phenomenon.”⁷⁸ In fact, Geller offers further proof: scientists have also uncovered transgender artifacts from pre-Columbian Mayan days and in seventh century Guatemala that suggest that transgender bodies may have existed further back than we care to acknowledge—a direct result of our heteronormative conditioning/culture.

Because of such “transgender aware” modern archeology, scientists in Finland have also recently discovered what they believe is a non-binary skeleton that dates back over 1000 years. Scottie Andrew of CNN reported that although the remains were originally discovered in 1968, “new analysis of the grave’s contents has produced a new hypothesis: The person buried there may have been nonbinary.”⁷⁹ The original researchers struggled to classify the remains because they included feminine clothing typically associated with females along with a sword placed on top of the body, an object typically associated with male warriors. At first, researchers thought the grave contained two people, but modern archeologists have taken a closer look and concluded that “the grave lends it a less violent and genderless symbolism.”⁸⁰ Such research confirms that transgender and gender-divergent bodies existed much earlier than recent times as many people presume.

Furthermore, the story of the Empress Elagabalus (202-222 CE) of Rome recounts the life of an Empress born male but who performed duties of both a male and a female. According to The Classical Association’s article “Elagabalus: The Genderqueer Ruler of Rome,” Elagabalus

⁷⁸ Pamela L. Geller, "The Fallacy of the Transgender Skeleton," in *Bioarchaeologists Speak Out: Deep Time Perspectives on Contemporary Issues* (Basingstoke: Springer, 2018), 238.

⁷⁹ Scottie Andrew, "The Inhabitant of a Medieval Grave in Finland May Have Been Nonbinary, a New Study Finds," *CNN*, last modified August 12, 2021, <https://www.cnn.com/2021/08/12/world/nonbinary-warrior-finland-scnd/index.html>.

⁸⁰ *Ibid.*

wore a great deal of make-up and jewelry associated with females but at the same time used certain modes of speech, gestures, and social cues to signal established male ideas about gender specifically in public. He was, according to Nigel Cawthorne in *The Sex Lives of the Roman Emperors*, “supposed to embody both the male and female in one divine being.”⁸¹ Cawthorne further acknowledges that Elagabalus had the body of an emasculated boy but had the appearance of a girl and that his preferred female gender choice was no mere whim.⁸² Privately, however, historians have noted that she asked physicians to contrive a woman’s vagina for her by means of an incision, promising them large sums for doing so, suggesting a strong desire to live as a woman.⁸³ It was even suggested, because none of Elagabalus’ marriages every resulted in children (although some historians disagree), that she castrated herself upon reaching puberty. Although strange sexual proclivities proved common for many Roman emperors, Elagabalus’s life suggests that her choices resulted from a strong desire to present and identify as female despite being born male.

Furthermore, in ancient Egypt, around 1508 BCE, the Pharaoh Hatshepsut provides another story of a person caught between genders. The inner chambers of Hatshepsut’s temple depict a pharaoh wearing a striped cobra headdress, false beard, and the clothing associated with a king, but the inscriptions on the temple walls are decidedly feminine, seemingly confusing early scholars.⁸⁴ Historians say that she changed her name from the female version of Hatshepsut to the male version, even giving herself a male throne name, Maatkare. While it may be that

⁸¹ Nigel Cawthorne, *Sex Lives of the Roman Emperors* (New York: Prion, 2005), 188.

⁸² Ibid, 200.

⁸³ "Elagabalus: The Genderqueer Ruler of Rome," *The Classical Association*, last modified June 2022, <https://classicalassociation.org/wp-content/uploads/2022/06/Queering-the-Pasts-Chapter-2-Elagabalus-.pdf>.

⁸⁴ Joshua J. Mark, "Hatshepsut," *World History Encyclopedia*, last modified October 19, 2016, <https://www.worldhistory.org/hatshepsut/>.

Hepshepsut chose to present as male to assuage fears of females ruling since sons traditionally inherited thrones from fathers, scholars recognize the blending of genders, specifically in the way in which she was buried.⁸⁵ Modern scholars have the benefit of having a greater understanding of gender diversity, which should contribute to a more accurate understanding of some of our ancestors throughout history that rejected the binary understanding of sex and gender.

Each of these early depictions of gender variations indicate that the modern American narrative that transgender and gender questioning people did not exist until recently requires an inaccurate or incomplete understanding of history. Each of the aforementioned examples of figures that challenged gender roles and displayed a strong and natural inclination to identify with the opposite sex of which they were born also reflects what is true for non-human animals: that their existence is not a mutation but serves a purpose within their culture and community. Furthermore, the existence of these people also proves the biological connection because without a strong genetic and evolutionary link and purpose, trans people would have become extinct.

Roughgarden, author of “Evolution and the Embodiment of Gender” agrees. She believes that both homosexuality and gender diversity have a at least one clear evolutionary purpose: stable relationships.⁸⁶ For Roughgarden, other species provide ample proof of gender-bending: “Many animals social systems support transgender expressions, and membership in a “gender” is not considered static.”⁸⁷ Therefore, it could be advantageous for some individuals *not* to be tied to the same genetic program as the majority in order to reach greater stability. Furthermore, it

⁸⁵ Joshua J. Mark, "Hatshepsut," *World History Encyclopedia*, last modified October 19, 2016, <https://www.worldhistory.org/hatshepsut/>.

⁸⁶ Joan Roughgarden, "Evolution and the Embodiment of Gender," *Journal of Lesbian and Gay Studies* 10, no. 2 (n.d.), 289, <https://muse.jhu.edu/article/54592>.

⁸⁷ *Ibid.*

could also extend the available mate choices for some individuals because more gender diversity allows people to explore partner/mate options beyond the binary. Evolution is slow but sure, and by understanding transgender people as a blossoming of human evolution will allow them to live and participate fully in all that makes us human.

In conclusion, scientists agree that humans have evolved to adapt and change and that our species benefits from diversity. In fact, nature tends towards diversity, and it does so in matters of sex and gender as well. People wonder, however, how gender diversity can benefit human development. Often, politics, religion, and cultural norms thwart our ability to look at gender diversity as an example of positive diversity in our species especially since most people concede that for some trans people, their chances of reproduction decreases, which would seem to impede our species' survival. However, research like Geller's suggests that selective forces that lead to gender diversity and its persistence have existed across thousands of years and has not impacted our ability to survive as humans. Besides, with current technology, many transgender people continue to have strong reproductive rates, given that they may have become parents prior to transition or that they have recourse to other reproductive technologies. Furthermore, scientists have established that relationships no longer exist solely for reproductive purposes; thus, transgender couples demonstrate the benefits of such relationships. Allowing transgender couples to marry provides greater societal stability, specifically in terms of access to government benefits such as joint property rights, inheritance, pathways to citizenship for partners, and an easier road to adoption of children.⁸⁸ Speculating even further, if evolutionary changes occur at periods of significant ecological disruptions, perhaps we do not even fully understand the myriad

⁸⁸ Heather Biddle, "Same-Sex Marriage Legal Pros and Cons," *Findlaw*, last modified April 4, 2016, <https://www.findlaw.com/family/marriage/same-sex-marriage-pros-and-cons.html>.

ways that transgender people might play into a world effected so significantly by climate change. We may need fewer adults to reproduce. Our planet may not be able to support as many people, so because nature has forever maintained a portion of the population that cannot reproduce, the various kinds of gender variant people might actually save us all in the long run.

CHAPTER 2: MANMADE EVOLUTION

While studying the past and other species can shed light on the purpose and benefit of accepting transgender people as natural within human evolution, human beings are quickly moving into a period where they control the world around them and their bodies. Nobel-prize winning chemist Paul Crutzen proposed to rename the current epoch of the earth the Anthropocene because “humans have clearly reshaped the Earth since the last ice age ended.”⁸⁹ According to Erle Ellis’ book *Anthropocene: A Very Short History*, “Overwhelming evidence now confirms that humans are changing Earth in unprecedented ways,” citing events such as climate change, acidifying oceans, destruction of animal habitats for cities and farms, pollution, radioactive fallout, plastic, courses of rivers altered, species extinctions, global transportation of humans and others. Given these extensive changes, our ability to change our gender and/or sex should certainly make this list.⁹⁰ For Ellis, redefining the roles and relations of humans, the Earth, and the cosmos results in challenges to some of the most deeply held traditional beliefs of societies around the world, one of which could include the science that supports our transgender population. Ellis sees humans taking control of *every* aspect of our existence, playing an active role in its conceptions, beliefs, and practices.⁹¹ Daniel Chernilo concurs, pointing out in his article that there is no “question of the human [dominance] in the Anthropocene debate,” because in the Anthropocene proper, everything, including current geological transformations, is dominated by human action, and the centrality of human action distinguishes the old natural order from the new.⁹² Essentially, Chernilo claims that there is a “fundamentally anthropocentric

⁸⁹ Erle C. Ellis, *Anthropocene: A Very Short Introduction* (New York: Oxford University Press, 2018), 1.

⁹⁰ *Ibid*, 2-3.

⁹¹ *Ibid*, 6.

⁹² Daniel Chernilo, "The question of the human in the Anthropocene debate," *European Journal of Social Theory* 20, no. 1 (July 2016): 45, <https://doi.org/10.1177/1368431016651874>.

core to the idea of the Anthropocene: it is another realization, as it were, of how powerful human action actually is.”⁹³ What Chernilo’s comment suggests for transgender people is that although they have been around for millennia and occur naturally in evolution, their ability to more thoroughly control their own bodies becomes a greater possibility in an era such as the Anthropocene that puts humans at the core and that gives them the power to change culture, norms, and even bodies. This age of the post-human might actually allow transgender people to enjoy culture and society in ways previously challenged because of more historically rigid social constructs. Chernilo adds that “In all cases, the Anthropocene narrative is dominated by the ways in which technological innovations have allowed humans ever greater success in their attempts at adapting the natural world to their own ever-growing needs: this is a general argument about the instrumental mastery of the world.”⁹⁴ While most of the literature relating to the Anthropocene centers on the ways humans control the earth, given the human-centric control in the epoch, it must also include human’s ability to take control over their own bodies because it is just another part of the natural world. Furthermore, since the movement into the Anthropocene reflects ongoing human evolution, such additions and inclusions for the transgender population can also be considered natural here as well.

In order to control what kinds of changes we make, humans in the Anthropocene depend on technology more than ever to achieve their goals, even our cultural, social, and sexual ones. John Torpey, author of *The Three Axial Ages*, calls the Anthropocene the “mental axial age,” an age where we begin to use “high technology” to essentially change everything.⁹⁵ As E.O Wilson

⁹³ Daniel Chernilo, "The question of the human in the Anthropocene debate," *European Journal of Social Theory* 20, no. 1 (July 2016): 45, <https://doi.org/10.1177/1368431016651874>.

⁹⁴ Ibid, 49.

⁹⁵ John Torpey, *The Three Axial Ages: Moral, Material, Mental* (Chicago: Rutgers University Press, 2017), 51, 57.

writes at the end of his book *The Meaning of Human Existence*, we have come to a place in history where we exist in the world free and alone, and for Wilson, such freedom and isolation can benefit humanity. It means that we have the freedom to build the kind of world (and bodies) we want to live in, and we can shape a kind of society that champions all kinds of life.⁹⁶ Kadji Amin believes this means practicing “trans plasticity,” the capacity of organic matter to transform itself in ways that transgress ontological divides between sex, race, and even species, involves getting rid of human-perceived divisions and, therefore, making modes of influence more expansive.⁹⁷ Amin does warn, however, against using our ability to practice this plasticity in ways that manipulate evolution the way eugenics has in the past. These changes we make must be allowed only for evolutionary gain, which trans bodies do since they add to the diversity of our species. Since humans have the ability to use biological material to create new types of beings, Amin believes that we should use this power to improve relations and situations.⁹⁸ Scholar Nick Bostrom calls the new types of beings that emerge during the Anthropocene “posthumans” or “transhumans,” and he agrees with Amin that these new humans must be governed by an ethical code.⁹⁹

Modern technology in the Anthropocene—especially biotechnology—has already begun to demonstrate the ability to transform various species, and the biotechnological advances that some humans want to use for amplifying human beings can and should be considered new possibilities for transgender populations. Juan Enriquez, author of *Evolving Ourselves: How Unnatural Selection and Nonrandom Mutation are Changing Life on Earth* and of the TED

⁹⁶ Edward O. Wilson, *The Meaning of Human Existence* (New York: W. W. Norton & Company, 2014), 173-174.

⁹⁷ Kadji Amin, "Trans* Plasticity and the Ontology of Race and Species," *Social Text* 38, no. 2 (June 2020): 51, doi:10.1215/01642472-8164740.

⁹⁸ *Ibid*, 66.

⁹⁹ Nick Bostrom, "In Defense of Posthuman Dignity," *Bioethics* 19, no 3 (2005):202.

Talk “The Next Species of Human,” calls the next species of humans *homo evolutis* because these humans can shape their own evolution. In his TED Talk, he asserts that with the scientific and technological capabilities to engineer microbes and tissues and the ability to program cells by inserting DNA into them that humans will be able to “design” themselves in the future.¹⁰⁰ For example, Enriquez shows how science has developed to regrow body parts and organs, such as bladders, tracheas, and skin; cure deafness, improve and design limbs for amputees that can function better than the original parts—all which suggests a new kind of species that will take control of their evolution and that will have the power to amplify the evolution of other species as well.¹⁰¹ While Enriquez never mentions what *homo evolutis* means for transgender people, the idea that the human species will continue to evolve, like all the others that have occurred throughout the Earth’s history, could also be a boon for our transgender population because just about all humans will want some kind of intervention that makes them function better, trading old parts for new and improved ones that help them live more productive and full lives. Scholar and ethicist Paul Root Wolpe confirms Enriquez’s claims about modern evolution in his TED talk, “It’s time to question bio-engineering.” His lecture defines the third wave of evolution as “Design Evolution” (what Enriquez would call *homo evolutis*). For Wolpe, at this stage, humans have the capacity to intentionally design and alter various physiological forms.¹⁰² In his lecture, Wolpe focuses primarily on the ways in which humans have introduced bioengineering to the world of animals, specifically through cloning and genetic manipulation. While his lecture centers mostly on how humans intentionally design animals, he makes it clear that the research

¹⁰⁰ Juan Enriquez, “The next species of human” (lecture, TED, https://www.ted.com/talks/juan_enriquez_the_next_species_of_human, 2009).

¹⁰¹ *Ibid.*

¹⁰² Paul R. Wolpe, “It’s time to question bio-engineering” (lecture, TEDxPeachtree, Georgia Tech, https://www.ted.com/talks/paul_root_wolpe_it_s_time_to_question_bio_engineering, March 2011).

points to our using the technology on humans, and while he cautions people to consider the ethical implications of genetically designing human beings, he acknowledges that humans can benefit from the technology. John Harris, author of *Enhancing Evolution*, defines such “enhancements” to humans as any intervention that impacts human functioning and that makes a change or difference for the better.¹⁰³ Given the ease with which people will grow more comfortable with manipulating living beings, it could certainly enhance life for trans people whose changes not only impact their human functioning but also ensure their survival, albeit without manipulating their DNA as Wolpe warns against. The kinds of changes cisgender people might choose to do to their bodies, Wolpe speculates, might result in “super humans,” but for the trans population, such technology will allow them to feel more fully themselves and experience human existence more richly, all of which is ethically sound because it does not alter their essential human nature. Furthermore, perhaps the scientific advances will help develop additional ways to resolve the discomfort experienced by the gender dysphoric. Once such modifications become normalized in society, transgender people who opt to benefit from the technology would be normalized along with other humans that choose to change the parts they had at birth to better suit their way of life. However, for trans people, such medical interventions have the potential to save human lives because their modifications are neither cosmetic nor elective.

Historian Yuval Noah Harari considers the implications of such advances in his book *Homo Deus: A Brief History of Tomorrow*. Harari does not refer to the new species of humans as *homo evolutis* as Enriquez does, rather he calls him *homo deus*, meaning that man becomes god-like in this next phase of human evolution. Like Enriquez and Wolpe, Harari believes that *homo*

¹⁰³ John Harris, "What Enhancements Are and Why They Matter," in *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2010), 36, <https://www.jstor.org/stable/j.ctt7t8vz.9>.

deus will emerge from an elite group of people who upgrade their bodies/brains using the kind of biotechnology that Enriquez and Wolpe mention, therefore, creating a more powerful biological caste. He even believes that humans will eventually overcome death, owing to the fast pace of genetic engineering and regenerative medicine.¹⁰⁴ Furthermore, Harari asserts that the focus for this new species of human will center on finding the key to human happiness, and to do this, he speculates that we will have to change our biochemistry and re-engineer our bodies to do so.¹⁰⁵ If Harari is right, the debate over whether transgender people should or should not be allowed access to gender-affirming care will seem almost a silly request with an obvious answer: change the body as necessary if it leads to a more fulfilling life. For Harari, these kinds of changes are byproducts of the Anthropocene, “the epoch of humanity,” a period of time where *homo sapiens* have not only become the most important agents of change, but they have also completely “rewritten the rules of the game,” breaking barriers that the *homo sapiens* before us could not.”¹⁰⁶

The new species will certainly break barriers, but with so many changes will they still be human? Nick Bostrom attempts to assuage fears that these “posthumans” or “transhumans” as he calls them would essentially be harming themselves or that they degrade what it means to be human, two arguments that people also use against transgender people. In response, Bostrom relies on the idea that humans have a specific nature—a unique nature as opposed to any other creature. To turn us into a different creature, he argues, would equate to dehumanization (think Kafka’s *Metamorphosis*). On the other hand, Bostrom acknowledges that limits exist and that not all change is progress (think Huxley’s *Brave New World*), so we need to be deliberate when

¹⁰⁴ Yuval N. Harari, *Homo Deus: A Brief History of Tomorrow* (New York: HarperCollins, 2017), 25.

¹⁰⁵ *Ibid*, 43.

¹⁰⁶ *Ibid*, 72-73.

considering the kinds of alterations society permits.¹⁰⁷ Bostrom's distinctions relate especially to transgender people because many people opposed to gender-affirmative surgeries refuse to see transgender people as still fully human after transition, but he would assert that they are because their fundamental nature has stayed the same. Bostrom champions the idea of human dignity as a moral status—as an inalienable right—that belongs to all humans, technologically advanced or not. For example, he reminds us of the fears and forecasts made about babies conceived via *in vitro* fertilization that turned out to be false. He believes that transhumanists see human and posthuman/transhuman dignity as “compatible and complementary” because human beings consist of more than just DNA and body parts.¹⁰⁸ He also believes that by defending post-human dignity we “promote a more inclusive and humane ethics” that will embrace all human beings by eliminating what he calls “a moral double standard,” and that would be a win for all people.¹⁰⁹ And anything that would be a win for all people we should consider our moral duty because we would be making the world more equitable. John Harris, author of *Enhancing Evolution*, would agree. Addressing the argument that humans will “tempt fate” or “play God” by intervening in the natural order, he dismisses the notion, calling it “superstitious” and “fallacious,” claiming that modern medicine does the same thing.¹¹⁰ We “attempt to frustrate the course of nature” when we fight bacteria, viruses, and cancer, so doing any such thing that makes us better is good for us.¹¹¹ He goes further to say that “not only are enhancements obviously good for us, but if that good can be obtained with safety, then not only should people be entitled to access those

¹⁰⁷ Nick Bostrom, “In Defense of Posthuman Dignity,” *Bioethics* 19, no 3 (2005):204-206.

¹⁰⁸ *Ibid*, 213.

¹⁰⁹ *Ibid*, 212-213.

¹¹⁰ *Ibid*, 213.

¹¹¹ John Harris, “Enhancement Is a Moral Duty,” in *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2010), 35, <https://www.jstor.org/stable/j.ctt7t8vz.8>.

goods for themselves and those for whom they care, but they also clearly have moral reasons, perhaps amounting to an obligation, to do so.”¹¹²

One distinction necessary to make as humans begin to control their own evolution is to draw distinctions between technologies that cure some kind of dysfunction and those that merely enhance or upgrade. To John Harris, repairing dysfunction means that the enhancement would restore some kind of “species-typical functioning,” whereas those that go beyond restoration do not.¹¹³ To this end, for Harris, enhancement not only prevents harm but also confers benefits, and he supports—at least from an ethical standpoint—these kinds of human enhancements. According to Harris’s definition then, all “enhancements” made for transgender patients meet both criteria: they prevent harm and confer benefit; therefore, such treatments should be considered ethical and should confirm the idea that such people are “species-typical,” naturally occurring beings who deserve access to treatments that enhance their quality of life.

One important “enhancement” for transgender people should include the ability to reproduce. As mentioned in the previous chapter on early human evolution, the inability to reproduce naturally keeps some people from seeing transgender people as contributors to our species’ diversity, but since they have been determined to benefit our species’ diversity, society should work to assist them in enjoying this basic human right. John Harris believes strongly that the ability to reproduce is “one of the presumptions of liberal democracies” and that “the freedom of citizens should not be interfered with unless good and sufficient justification can be

¹¹² John Harris, “Enhancement Is a Moral Duty-,” in *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2010), 44, <https://www.jstor.org/stable/j.ctt7t8vz.8>.

¹¹³ *Ibid.*

produced for doing so.”¹¹⁴ Furthermore, he suggests that “the burden of justifying their actions falls on those who would deny liberty, not on those who would exercise it.”¹¹⁵ Therefore, if reproduction is a basic human right in a democracy, then those that challenge the right of transgender people to become parents thwart their liberty as human beings, and no laws, regulations or forms of intimidation should keep transgender people from this right.

As people living in the Anthropocene, transgender individuals who want to become parents can benefit from the technological gains that will allow them to overcome what was once impossible in earlier periods. Agnes Condat and her colleagues articulate exactly what kinds of technologies transgender people can use for reproduction. They recommend various types of Assisted Reproductive Technology (ART) to help trans people to become parents: oocyte cryopreservation and gamete conservation, uterine transplants, and synthetic gametes derived from stem cells are just a few they mention.¹¹⁶ The problem Condat and her colleagues note is that many ARTs are not accessible for trans patients; they are only accessible for heterosexual couples, mainly owing to fears people have about trans people becoming parents.¹¹⁷ Condat and her fellow researchers refute such fears about trans parents in their study. Their research concluded that children of trans parents experience the same kinds of issues and in the same amounts as children of heterosexual couples. The data does not support any reason for fear, and as Harris previously noted, preventing them from reproducing violates their human rights. As a result, they argue that allowing transgender people to control their own evolution is how we

¹¹⁴ John Harris, "Reproductive Choice and the Democratic Presumption," in *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2010), 72, <https://www.jstor.org/stable/j.ctt7t8vz.11>.

¹¹⁵ *Ibid*, 74.

¹¹⁶ Agnès Condat et al., "Biotechnologies that empower transgender persons to self-actualize as individuals, partners, spouses, and parents are defining new ways to conceive a child: psychological considerations and ethical issues," *Philosophy, Ethics, and Humanities in Medicine* 13, no. 1 (2018): 3, 5, doi:10.1186/s13010-018-0054-3.

¹¹⁷ *Ibid*.

evolve as a species, and they strongly affirm the rights of these people to become parents, even if they must take matters into their own hands. If medical advances can now allow for transgender persons to go through a sex change, and ARTs can help them experience parenthood, then we should adopt medical, ethical, and legal standards that benefit these people while continuing to research the long-term outcomes of other medical interventions that permit reproduction by trans parents because transgender people have a human right to reproduce, and according to Condat's research, their children will be just fine. A 2014 UCLA School of Law study by Stotzer, Herman, and Hazenbush confirms Condat's findings. The study concluded that there is no evidence that having a transgender parent affects a child's gender identity, sexual orientation development, or any other developmental milestone.¹¹⁸ Furthermore, their research suggested that having transgender parents led to increased positive outcomes in children because trans parents teach their children to accept individual differences and to celebrate diversity, and they model being open-minded.¹¹⁹

One such trans parent is Freddy McConnell, who after undergoing transition from female to male began his quest to become a father. For many trans people, having the ability to participate in parenthood erases the most important negative consequence/side-effect of undergoing cross-sex hormone treatment. McConnell, 32, "started taking testosterone at 25 and had "top surgery" to remove breast tissue a year later. He considered a hysterectomy, but never went through with it – partly because he had not ruled out the possibility of having children."¹²⁰

¹¹⁸ Rebecca L. Stotzer, Jody L. Herman, and Amira Hasenbush, *Transgender Parenting: A Review of Existing Research*, (UCLA School of Law: The Williams Institute, 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Parenting-Review-Oct-2014.pdf>, 11.

¹¹⁹ *Ibid.*

¹²⁰ Simon Hattenstone, "The Dad Who Gave Birth: 'Being Pregnant Doesn't Change Me Being a Trans Man'," *The Guardian*, Last modified April 20, 2019, <https://www.theguardian.com/society/2019/apr/20/the-dad-who-gave-birth-pregnant-trans-freddy-mcconnell>.

McConnell chose to transition, then to get pregnant, deliver via C-section, and raise his son in a loving 2-parent family—all of which were his right and his own choices.¹²¹ He adds that when thinking about becoming a parent as a trans person, “empathy is key in convincing people that trans people are actually quite normal, and live lives that are not sensational or scary.”¹²² One avenue that McConnell didn’t consider, however, might have included freezing eggs before transition as doing such would have also allowed him to experience parenthood despite undergoing cross-sex hormone treatment.

Since transgender people and their offspring add to diversity, we should welcome their efforts to fully participate in every part of being human. Riki Lane explores this idea in her article, “Trans as Bodily Becoming: Rethinking the Biological as Diversity, Not Dichotomy.” Lane aims to shift the debate concerning bodies as authentic/real versus constructed/mutable, and she argues that such a debate establishes a false dichotomy.¹²³ For Lane, the debate between queer/transgender and transsexual identities results in another binary to destroy. She believes that the status of an embodied person (as all of us are) should not result in anyone being “outlawed” or considered “abnormal.”¹²⁴ Whether we control what our bodies do or not, we all exist as human beings and should be treated equally, especially since, as Lane contends, gender is a social not a material construct.¹²⁵ All biological and social knowledge is socially produced, so in recognizing that fact, we can see how various aspects of our knowing influences how we understand other people. Lane believes that instead of asking why transgender people exist, we

¹²¹ Simon Hattenstone, "The Dad Who Gave Birth: 'Being Pregnant Doesn't Change Me Being a Trans Man'," *The Guardian*, Last modified April 20, 2019, <https://www.theguardian.com/society/2019/apr/20/the-dad-who-gave-birth-pregnant-trans-freddy-mcconnell>.

¹²² Ibid.

¹²³ Riki Lane, "Trans as Bodily Becoming: Rethinking the Biological as Diversity, Not Dichotomy," *Hypatia* 24, no. 3 (Summer 2008): 136, doi:10.1111/j.1527-2001.2009.01049.x.

¹²⁴ Ibid.

¹²⁵ Ibid,137.

should “accept that trans people live in the world and instead examine “how” they relate within social institutions.”¹²⁶ Thus, parenthood becomes a possibility for transgender people living in the Anthropocene, and society should advocate for greater access to any technology that would allow them to experience all the joys (and struggles) of parenthood.

Clearly, humans began to control their own biology and thus their own evolution in the Anthropocene. Furthermore, evolution has shown that neither sex nor gender is immutable. While biology, which used to be considered immutable, changes to suit social norms, we must also acknowledge areas that we still confine to binaries and focus on individuals rather than on any theory of interpretation, social, biological, or otherwise.¹²⁷ Ultimately, in the Anthropocene, the whole concept of life has changed from a static quality to a process of becoming, and we, in this post-Darwinian world, get to experience the ramifications of this transformation of our biological, social and political norms while keeping the most important part of who we are—our humanity, and this transformation has tremendous, beneficial outcomes for transgender people.

¹²⁶ Riki Lane, "Trans as Bodily Becoming: Rethinking the Biological as Diversity, Not Dichotomy," *Hypatia* 24, no. 3 (Summer 2008): 138, doi:10.1111/j.1527-2001.2009.01049.x.

¹²⁷ *Ibid*, 143.

CHAPTER 3—SCIENTIFIC SUPPORT

Since various world religions have established that gender-variant people have existed for thousands of years, and since scientific evidence also supports the fact that transgender people occur naturally in evolution, the next significant piece to dismantling the narrative that works to dismiss transgender people as part of a new craze or a new phenomenon based on feelings, includes looking at the biological roots of gender dysphoric people that can also legitimize their condition as well as lead to a more inclusive and affirmative approach to their medical care.

Historically, the terms “sex” and “gender” shared a similar meaning, but that’s no longer the case. “Sex” has come to mean “the biological differences between males and females, such as the genitalia and chromosomal differences,” while “gender” refers to the “role of a male or female in society or their gender identity.”¹²⁸ Tim Newman, author of “Sex and gender: What is the difference” in *Medical News Today* further explains that genetic factors define sex: females have 46 chromosomes, including two Xs; and males have 46, including an X and a Y.¹²⁹ While Newman acknowledges that both males and females have testosterone, progesterone, and estrogen, traditionally “[females] have higher levels of estrogen” and [males] “have higher levels of testosterone.”¹³⁰ For these reasons, most people think that the male/female split is binary, but according to Newman, this is not necessarily true.¹³¹ Gender identity, as researchers have discovered, also has roots in biology, which upends the idea that only sex has biological origins. While certain children are born with intersex chromosomal abnormalities, the nature of the transgender/gender identity/gender dysphoria discussion doesn’t really focus on these

¹²⁸ Tim Newman, “Sex and gender: What is the difference?” *Medical News Today*, February 7 2018, <https://www.medicalnewstoday.com/>.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

individuals; this dissertation's focus centers on those who are born biologically male or female but who identify as the opposite gender despite their inherent biological sex. It is important not to conflate these two groups of people.

According to the American Psychiatric Association (APA), "transgender" is not a medical term. It's a term that describes "individuals whose gender identity (inner sense of gender) or gender expression (outward performance of gender) differs from the sex or gender to which they were assigned at birth."¹³² People who experience this disconnect have what the APA refers to as "gender dysphoria," "a conflict between a person's physical or assigned gender and the gender with which he/she/they identify."¹³³ The language in this definition, however, leaves room for some people to assume that the conflict is just a feeling or something that might assuage with age, but scientists can now show that gender dysphoria has clear biological roots.

BIOLOGICAL FACTORS

GENETIC

Evidence has emerged that demonstrates several genetic connections to gender dysphoria. For example, researchers have recently potentially isolated a gene associated with transgender identity. According to *BBC News*, Australian researchers have "identified a significant link between a gene involved in testosterone action and male-to-female transsexualism."¹³⁴ In this study, "DNA analysis from 112 male-to-female transsexual volunteers showed they were more likely to have a longer version of the androgen receptor gene," which may "cause weaker testosterone signals."¹³⁵ These weaker signals reduced the action of the male sex hormone that

¹³² American Psychiatric Association, "Expert Q and A: Gender Dysphoria," (2018). <https://www.psychiatry.org/patients-families/gender-dysphoria/expert-q-and-a>

¹³³ Ibid.

¹³⁴ BBC News, "Transsexual gene link identified," (2008), <http://news.bbc.co.uk>.

¹³⁵ Ibid.

effects gender development in the womb.¹³⁶ Implications of this study indicate that transgender identity/gender dysphoria may not be a choice or just a feeling. Furthermore, a 2018 study authored by Rich Haridy, a researcher from the Hudson Institute of Medical Research, also in Australia, identified “12 significant genetic differences between transgender women and non-transgender males.”¹³⁷ These researchers have further confirmed “genetic variants in transgender women, correlating with genes involved in regulating the sex hormones estrogen and androgen.”¹³⁸ Additionally, Henningsson et al. authored a study of transgender women that found that they had a specific variant of a gene involved in processing sex hormones. Their study also confirmed possible genetic factors connected to gender dysphoria. They found that “polymorphisms in genes of importance for the sexual differentiation of the brain may enhance or reduce the likelihood for developing transsexualism,” [and] they noted that the “current results suggest that a long ERb repeat is more common among male-to-female transsexuals, and that specific combinations of the three polymorphisms analyzed may influence the risk of developing transsexualism.”¹³⁹ Moreover, Madeleine Foreman and her colleagues conducted one of the largest studies on genetic links to gender dysphoria. Their conclusions, published in the *Journal of Clinical Endocrinology & Metabolism*, confirm those of Henningsson’s. Foreman’s study of transgender women supported “the hypothesis that gender dysphoria has a polygenic basis, involving interactions among multiple genes and polymorphisms that may alter the sexual differentiation of the brain *in utero*, contributing to the development of gender dysphoria in

¹³⁶ BBC News, “Transsexual gene link identified,” (2008), <http://news.bbc.co.uk>.

¹³⁷ Rich Haridy, “New study probes the genetic roots of transgender identity,” *NewAtlas*, October 3, 2018, <https://newatlas.com/transgender-genetic-study-hudson-institute/>.

¹³⁸ *Ibid.*

¹³⁹ Susanne Henningsson et al., “Sex steroid-related genes and male-to-female transsexualism,” *Psychoneuroendocrinology* 30, no. 7 (2005): 659, doi:10.1016/j.psyneuen.2005.02.006.

transgender women.”¹⁴⁰ However, they also noted that “although discordance rates for gender dysphoria suggest that genetics plays a role, it is not the sole determinant of gender identity.”¹⁴¹ Nevertheless, each of these studies substantiates that a genetic factor contributes to gender dysphoria.

Since evidence suggests that genetics play a role in determining a person’s gender identity, then one could conclude that it happens for a specific biological and evolutionary reason and that it is not, in fact, a mistake because something that occurs in multiple peoples’ physical makeup is not viewed by scientists as an accidental trait. Gender dysphoria, therefore, isn’t a one-off, isolated issue (many people experience gender dysphoria); neither is it a byproduct of a genetic malfunction—it’s inherent in a person’s physical makeup. Moreover, since gender dysphoria is no longer considered a disease by the medical community, one could also conclude that it occurs naturally in human evolution and happens in people for reasons that benefit our species.

BRAIN

Genetic factors, however, only comprise some of the biological underpinnings of gender dysphoria. Rich Haridy’s aforementioned study also revealed that studies of MRI brain scans showed patterns of brain activity in transgender children that resemble their desired gender, not their biological sex;” thus, Haridy’s findings provide more information on the connection between the body, brain, and gender expression.¹⁴² In addition, a study by Nineke M. Nota et al. discovered that “transgender adolescents show [gender-dysphoric]-specific, as well as sex-atypical [brain] functional connectivity patterns,” which means that brains of trans girls share

¹⁴⁰ Madeleine Foreman et al., "Genetic Link Between Gender Dysphoria and Sex Hormone Signaling," *The Journal of Clinical Endocrinology & Metabolism* 104, no. 2 (2018):394, doi:10.1210/jc.2018-01105.

¹⁴¹ Ibid.

¹⁴² Ibid.

patterns with brains of cisgender girls.¹⁴³ Nota and her colleagues also noted that “subjective experiences related to [gender dysphoria] as well as an atypical sexual differentiation of the brain are associated with these functional connectivity alterations in adolescents with gender dysphoria.”¹⁴⁴ Basically, Nota and her fellow researchers observed that within the brain networks, adolescent trans girls and trans boys showed functional connectivity patterns similar to their experienced gender.¹⁴⁵ Moreover, their research implies that scientists can look at a brain scan and tell whether a person experiences gender dysphoria. Nota’s study confirms what trans people say they feel, and it provides further proof that they are hardwired/created as such.

Ferdinand J. Boucher and Tudor I. Chinnah validate Nota’s findings in their article "Gender Dysphoria: A Review Investigating the Relationship Between Genetic Influences and Brain Development" found in *Adolescent Health, Medicine and Therapeutics* as they also found similar patterns in the brains of trans and cis gendered people.¹⁴⁶ Furthermore, an additional study published by Julie Bakker in the *Journal of Neuroendocrinology* noted that gender incongruence is “related to the sexual differentiation of the brain and specifically to the fact that different critical periods exist for the development of the reproductive organs vs. the brain, thereby proposing that these two processes might have been affected differentially in individuals with gender incongruence.”¹⁴⁷ Bakker’s hypothesis stems from postmortem studies investigating the brains of people who experienced gender incongruence. She discovered that “a female-typical volume and number of neurons in the central subdivision of the bed nucleus of the stria

¹⁴³ Nienke M. Nota et al., "Brain functional connectivity patterns in children and adolescents with gender dysphoria: Sex-atypical or not?," *Psychoneuroendocrinology* 86 (2017): 194, doi:10.1016/j.psyneuen.2017.09.014.

¹⁴⁴ Ibid, 194.

¹⁴⁵ Ibid, 187.

¹⁴⁶ Ferdinand J. Boucher and Tudor I. Chinnah, "Gender Dysphoria: A Review Investigating the Relationship Between Genetic Influences and Brain Development," *Adolescent Health, Medicine and Therapeutics* 11 (2020): 98, doi:10.2147/ahmt.s259168.

¹⁴⁷ Julie Bakker, "The role of steroid hormones in the sexual differentiation of the human brain," *Journal of Neuroendocrinology* 34, no. 2 (2021): 5, doi:10.1111/jne.13050.

terminalis and the third interstitial nucleus on the anterior hypothalamus have been observed in transgender females (male sex assigned at birth and female gender identity),”¹⁴⁸ and furthermore that “a female-typical expression of neurokinin B and kisspeptin, two neuropeptides important in the regulation of gonadotropin-releasing hormone (GnRH) neuronal activity, and thus reproductive functioning, has been detected in the infundibular nucleus of the hypothalamus of transgender females.”¹⁴⁹ These postmortem studies, according to Bakker, provide key information on the neurobiological underpinnings of gender dysphoria, amplifying the argument that gender dysphoria is more than just a feeling.¹⁵⁰ Therefore, if human brains (in addition to genetics) reveal biological reasons for their discomfort, then society owes gender dysphoric adults and minors who meet the mature minor standard every opportunity to live life fully by assuaging their discomfort in the ways that they deem appropriate, and if they are children too young to consent, in ways their parents deem appropriate.

HORMONES

In addition to genetic factors and brain variations in gender dysphoric children, studies have also focused on hormonal links. According to a 2017 study by C.E. Roselli also found in the *Journal of Neuroendocrinology*, “evidence that the organizational hormone theory applies to development of gender identity comes from observations that structural and functional brain characteristics are more similar between transgender people and control subjects with the same gender identity than between individuals sharing their biological sex.”¹⁵¹ Roselli’s study

¹⁴⁸ Julie Bakker, "The role of steroid hormones in the sexual differentiation of the human brain," *Journal of Neuroendocrinology* 34, no. 2 (2021): 5, doi:10.1111/jne.13050.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ C. E. Roselli, "Neurobiology of gender identity and sexual orientation," *Journal of neuroendocrinology* 30, no. 7 (September 2017): 3, <https://doi-org.proxy.libraries.smu.edu/10.1111/jne.12562>.

indicated that differences included “local differences in the number of neurons and volume of subcortical nuclei such as the bed nucleus of the stria terminalis, numbers of kisspeptin and neurokinin B neurons in the infundibulum, structural differences of gray and white matter microstructure, neural responses to sexually-relevant odors and visuospatial functioning.”¹⁵² Therefore, with so many observable differences, the biological connection is difficult to deny. Furthermore, Roselli’s study concluded saying that gender identity is “significantly influenced by events occurring during the early developmental period when the brain is differentiating under the influence of gonadal steroid hormones, genes, and maternal factors,” indicating biological underpinnings to gender dysphoria.¹⁵³ Thus, the anxiety felt by gender dysphoric patients cannot be dismissed as just a feeling, and the research provides some verifiable scientific answers to questions raised by people who struggle with gender identity disorder and for those who question its authenticity.

In short, multiple studies suggest that gender dysphoria has genetic, hormonal, neurological causes. And, according to Kenneth Jost of *CQ Researcher*, while the people who do not identify with their biological sex are a relatively small proportion of the population, the issues posed for law, medicine, and society are significant as mentioned specifically in my chapter on biomedical issues.¹⁵⁴ For some, a growing concern has emerged that “awareness of transgender issues [has] led to increasing numbers of transgender teens to come out or to experiment with gender identity,” but the idea that the majority of people who experience a real and persistent struggle with gender identity come out because it’s popular denies scientific

¹⁵² C. E. Roselli, "Neurobiology of gender identity and sexual orientation," *Journal of neuroendocrinology* 30, no. 7 (September 2017): 3, <https://doi-org.proxy.libraries.smu.edu/10.1111/jne.12562>.

¹⁵³ *Ibid*, 5.

¹⁵⁴ Kenneth Jost, "Transgender Issues: Should gender-identity discrimination be illegal?" *CQ Researcher* 16, 385-408. (2006). <http://library.cqpress.com/cqresearcher/>

evidence and dehumanizes them. Perhaps the increasing numbers come from modern, educated teens' rejection of the traditional binary thinking of adults or from the fact that many teens feel safer more than ever before to come out.¹⁵⁵ Groups that advocate for transgender rights have worked sedulously to remove the stigma that being transgender is a mental illness or just a feeling, a trend, or an experiment. And since gender dysphoria, according to the World Health Organization, is now classified as “a sexual health condition,” (not an illness) it implies its biological roots (in the same way that any other health-related condition has physiological and biological causes). Therefore, health professionals and lawmakers have a moral imperative to provide access to medical protocols for treatment to ensure that these citizens can live full and rich lives that contribute to our communities.¹⁵⁶

TREATMENT

HORMONES

While treatments for gender dysphoria include a wide range of actions, medical professionals and the World Professional Association for Transgender Health (WPATH) have agreed on standard, ethical protocols. According to WPATH, hormone therapy to feminize/masculinize is deemed a “medical necessity” for transgender patients, “individualized based on a patient’s goal, the risk/benefit ratio of medications, the presence of other medical conditions, and consideration of social and economic issues.”¹⁵⁷ Since such treatment is considered a medical necessity to achieve relief from gender dysphoria, it is often the first medical intervention used. And, according to several studies—specifically one by Jack L. Turban et al. in

¹⁵⁵Lindsey Tanner, "More U.S. Teens Identify As Transgender, Survey Finds," *USA Today*, last modified February 5, 2018, <https://www.usatoday.com/story/news/nation/2018/02/05/more-u-s-teens-identify-transgender-survey-finds/306357002/>.

¹⁵⁶ Kashmira Gander, “Being Transgender is Not a Mental Illness, World Health Organization Says,” *Newsweek*, June 19, 2018, <https://www.newsweek.com/>.

¹⁵⁷ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc.>, 33.

the *Journal of Adolescent Health* and another by Hillary Nguyen et al. in *Current Psychiatry Reports*—hormone therapy has been proven to have health benefits such as improvements in mental health, reduced anxiety and depression, improved quality of life, and increased self-esteem.¹⁵⁸¹⁵⁹

WPATH also requires a psychosocial assessment prior to treatment as well as informed consent by the patient. The criteria required for access to hormone therapy includes the following: “persistent, well-documented gender dysphoria, the capacity to make a fully formed decision to consent for treatment, the age of majority in a given country, and reasonably well-controlled medical or mental health concerns.”¹⁶⁰

Most transgender advocates recommend hormone therapy as a way to provide real and measurable relief for those who suffer from the condition: “Many transgender people who take hormones report improvement of emotions as their gender dysphoria lessens or resolves.”¹⁶¹ Hormone replacement therapy “is the use of testosterone or estrogen to produce some of the secondary sex characteristics of the gender the person wants to transition into” as a means to assuage the discomfort of living in a body that doesn’t match with one’s gender identity,¹⁶² and a 2018 study by Johanna Olson-Kennedy et al. recorded in the *Journal of Adolescent Health* determined that “the use of hormones in transgender youth appears to be safe.”¹⁶³ While Olson-

¹⁵⁸ Jack L. Turban et al., “Timing of Social Transition for Transgender and Gender Diverse Youth, K-12 Harassment, and Adult Mental Health Outcomes,” *Journal of Adolescent Health* 69, no. 6 (2021): 991, doi: 10.1016/j.jadohealth.2021.06.001.

¹⁵⁹ Hillary B. Nguyen et al., “Gender-Affirming Hormone Use in Transgender Individuals: Impact on Behavioral Health and Cognition,” *Current Psychiatry Reports* 20, no. 12 (2018): 1,6, doi:10.1007/s11920-018-0973-0.

¹⁶⁰ *Ibid*, 34.

¹⁶¹ American Psychiatric Association, “Expert Q and A: Gender Dysphoria,” (2018). <https://www.psychiatry.org/patients-families/gender-dysphoria/expert-q-and-a>

¹⁶² Kenneth Jost, “Transgender Issues: Should gender-identity discrimination be illegal?” *CQ Researcher* 16, 385-408. (2006). <http://library.cqpress.com/cqresearcher/>

¹⁶³ Johanna Olson-Kennedy et al, “Physiologic Response to Gender-Affirming Hormones Among Transgender Youth” *Journal of Adolescent Health*, 62, no. 4 (2018): 397-401. <https://www.sciencedirect.com/>.

Kennedy's language includes words like "appears safe," she highlights that the basis for her conclusions stem from a relatively small group of patients because of the limited size of patients in 2018. She concludes, however, saying that "Concerns about the impact of cross-sex hormones on metabolic parameters are starting to be assuaged with clinical experience, retrospective analysis, and more recently, the undertaking of prospective, longitudinal investigations." She added that among the cohort of youth she studied, "several statistically significant changes in mean values of physiologic parameters [emerged] over time, but these did not translate to clinical safety concerns."¹⁶⁴

Suggested regimens for puberty suppression include treating both male and female genitalia with GnRH analogues that stop testosterone secretion or the production of estrogens. (They may alternatively be treated with progestins.)¹⁶⁵ Oral contraceptives are commonly used to suppress menses, but males who undergo such suppression must be informed that taking these hormones could "result in insufficient penile tissue for penile inversion vaginoplasty" later in the process.¹⁶⁶

Providing adolescents with hormone therapies remains somewhat controversial, primarily because of the difficulty in determining the appropriate age of consent. WPATH states that this age varies by country/region, and their glossary provides no definition of what they consider an adolescent to be other than to infer that adolescents have undergone or have begun to undergo puberty.¹⁶⁷ For puberty suppressing hormones, WPATH requires that adolescents give "informed consent" after "a long-lasting and intense pattern of gender nonconformity," if gender dysphoria

¹⁶⁴ Johanna Olson-Kennedy et al, "Physiologic Response to Gender-Affirming Hormones Among Transgender Youth" *Journal of Adolescent Health*, 62, no. 4 (2018): 401. <https://www.sciencedirect.com/>.

¹⁶⁵ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc.>, 19.

¹⁶⁶ *Ibid*, 20.

¹⁶⁷ *Ibid*, 18.

had worsened with the onset of puberty, and as long as any co-existing psychological, medical, and social problems have been addressed. Parents must also “consent to the treatment, and they must be involved in supporting the adolescent throughout the treatment process.”¹⁶⁸ The specific issues relating to adolescent consent are covered in depth in my chapter on biomedical issues. In that chapter, I argue that the “mature minor” doctrine be implemented nationwide to avoid widely varying standards from state to state.

SURGERY

In addition to hormone therapy, transgender patients often desire various surgeries to treat their gender dysphoria. According to WPATH, for male-to-female (MtF) patients, surgical procedures may include breast augmentation, genital surgery (penectomy, orchiectomy, vaginoplasty, clitoroplasty, and vulvoplasty), facial feminization surgery, liposuction, voice surgery, thyroid cartilage reduction, gluteal augmentation, and hair reconstruction.¹⁶⁹ For female-to-male (FtM) patients, surgical procedures may include breast surgery (subcutaneous mastectomy), hysterectomy, ovariectomy, reconstruction of the urethra, phalloplasty, vaginectomy, scrotoplasty, and implantation of erection and/or testicular prostheses as well as voice surgery, liposuction, lipofilling, and pectoral implants.¹⁷⁰

Prior to surgery, WPATH requires—after having lived twelve months in an identity-congruent gender role—that the patient have the capacity to make a fully informed decision and consent for treatment, be “age of majority,” and have a history of persistent, well-documented gender dysphoria along with well controlled other medical and/or mental concerns.¹⁷¹ The extensive nature and financial expense of these kinds of treatments certainly render a large group

¹⁶⁸ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc.>, 19.

¹⁶⁹ *Ibid*, 57.

¹⁷⁰ *Ibid*, 58.

¹⁷¹ *Ibid*, 59.

of people incapable of seeking such procedures. Therefore, society has an obligation to make these kinds of treatment options available and affordable for more people because surgical options for transgender people are primarily available only to well insured and socio-economically stable people. Access to care remains an on-going ethical and human rights consideration. In a perfect world, all medically necessary procedures and treatments would be covered by either Medicaid and/or private insurance, but since some surgeries—particularly vaginoplasty and phalloplasty—remain considerably expensive, insurance companies and governments should consider including relatively inexpensive treatment options like cross-sex hormone treatments, top surgery, facial feminizing surgery, and hair removal treatments as medically necessary procedures that could easily be covered since they are similar to other kinds of surgeries insurance typically pays for (like breast reductions, mastectomy reconstruction, and hormone replacement treatment for menopausal women).

Surgical modifications accomplish significant improvement in terms of gender dysphoria for most trans patients. Breast surgery “is an important secondary sex characteristic,” so WPATH considers it relatively safe because the benefits outweigh the risks, with the only negative side effect for MtF patients being a small scar. For FtM patients, however, a mastectomy leaves unsightly scarring and can include nipple necrosis and/or contour irregularities.¹⁷² For the most part, breast surgery has the least amount of possible negative side effects and offers maximum benefit for transgender patients. Genital surgery (also known as “bottom surgery”), however, can result in far more complications and can require a series of surgeries. For MtF patients, techniques include “penile skin inversion, pedicled colosigmoid transplant, and free skin grafts to line the neovagina,” working especially to “retain sexual

¹⁷² WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc>, 63.

sensation along with a functioning vagina and acceptable cosmesis.”¹⁷³ Complications of these surgeries can include “complete or partial necrosis of the vagina, labia, fistulas from the bladder or bowel into the vagina, stenosis of the urethra, and vaginas that are either too short or too small for coitus.” Even if the neovagina functions, anorgasmia is often reported.¹⁷⁴ For FtM patients, however, techniques include “hysterectomy, ovariectomy, vaginectomy, metoidioplasty, scrotoplasty, urethroplasty, placement of testicular prostheses, and phalloplasty,” but these surgeries “often require several separate stages of surgery and frequent technical difficulties.”¹⁷⁵

Complications include frequent urinary tract stenoses, occasionally necrosis of the neophallus, frequent urinary complications, and scarring.¹⁷⁶ Because of the significant risks, possible complications, and the significant financial costs, only about 25% of transgender patients report having undergone any form of bottom surgery,¹⁷⁷ and bottom surgery is much more common in transgender men than in transgender women.¹⁷⁸ The most popular surgery, chest surgery, has been reported at rates between 8–25%, and genital surgery at 4–13%¹⁷⁹, which is understandable given the risks and financial costs. Since some of these surgeries often render patients incapable of having a functioning sex life, the WPATH obligates physicians/surgeons to fully inform patients. Ultimately, however, the trans patient should be able to decide what kinds of medical interventions they want to make, and families and doctors should listen to people who suffer from gender dysphoria and do whatever they can to help them develop into the person they are designed to be.

¹⁷³ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc>, 63.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*, 64.

¹⁷⁷ Ian T. Nolan, Christopher J. Kuhner, and Geolani W. Dy, "Demographic and temporal trends in transgender identities and gender confirming surgery," *Translational Andrology and Urology* 8, no. 3 (June 2019):188, doi:10.21037/tau.2019.04.09.

¹⁷⁸ *Ibid.*, 188.

¹⁷⁹ *Ibid.*, 189.

CONCLUSION

Scientific research provides ample evidence that supports biological causes for gender dysphoria. Genes, brains, and hormones all point to perceived gender and sex congruence for trans people. The research also supports that while trans people have strong feelings about their gender identity, their feelings are not fancies, driven by culture or whims; they are real and deserve to be treated as such. Most importantly, since biological causes exist for the discomfort that gender dysphoric people feel, then evolution seems to point to a specific purpose for transgender people. They belong in the story of human development and deserve to be listened to and supported by the rest of us.

CHAPTER 4: DETERMINING ETHICAL PARAMETERS OF CARE

PART I: BIOMEDICAL BASICS

Once a person knows the risks and rewards and decides to transition, what comes next?

This chapter aims to assert a moral need for consistent biomedical guidelines for making decisions related to healthcare for transgender people, particularly adolescents.

On March 28, 2021, National Public Radio aired the story of Syrus Hall, a 17-year-old from Alabama in the early stages of transitioning from female to male, who was taking weekly shots of testosterone that had already helped lower his voice and grow more body hair. Unfortunately for Syrus, the Alabama legislature advanced a bill outlawing hormone treatment for him and for other transgender adolescents, making it a felony to provide transition-related medical treatment (like puberty blocking hormones) to transgender minors.¹⁸⁰ As of 2022, lawmakers in twenty other states have introduced bills prohibiting gender-affirming medical care for transgender youth. The issue for Alabama legislators centers on the claim that adults “have the responsibility to protect Alabama’s children,” saying that “minors are not mentally capable to make a decision of this caliber.”¹⁸¹ The proponents of transgender adolescents, however, find the news troubling or even “dangerous” for these often-marginalized kids.¹⁸² For Syrus, the politicians in Alabama ultimately will get the final say for him and for other teens who will have to either pause their transitioning process or drive to a more trans-friendly state to receive medical treatment. Countless other cases, and not just in the USA, have populated court rooms and news feeds about this controversial issue. Recently, a judge in the UK ruled that “children

¹⁸⁰ Melissa Block, "'It's Hurtful': Trans Youth Speaks Out As Alabama Debates Banning Medical Treatment," NPR.org, last modified March 28, 2021, <https://www.npr.org/2021/03/28/981225604/its-hurtful-trans-youth-speaks-out-as-alabama-debates-banning-medical-treatment>.

¹⁸¹ Ibid.

¹⁸² Ibid.

aged under 16 will need court approval in England and Wales to access puberty blockers” because, according to the judge, the “it was ‘highly unlikely’ that a child of 13 or under was ‘competent to give consent’ to puberty blockers, and it was ‘doubtful’ that 14 and 15-year-olds could ‘weigh the long-term risks and consequences.’”¹⁸³ While politicians and judges face hurdles trying to define the parameters for transgender treatment, doctors also face ethical considerations when determining the best medical treatment for these young patients. They must determine whether teens are old enough to make life-altering medical decisions for themselves that could render them sterile or that have other lasting potentially risky side effects. Physicians need to practice beneficent care, erring on the side of affirming the adolescents who claim significant distress since clear biological signals reflect causes for this natural occurrence. Unfortunately, not even the most recent edition of a bioethical textbook includes situations directly referring to situations like those facing transgender patients, so that leaves medical professions to act as best they can within the boundaries of common medical bioethical best practices. The moral principles of respect for patient autonomy and beneficence provide basic guidelines for medical professionals, and the concept of the mature minor standard can provide answers to some of the most immediate and pressing questions regarding adolescent transgender care. Such measures are important because as noted before, our species only benefits from fostering greater diversity.

Addressing modern ethical concerns facing physicians has become more difficult because of our increasingly pluralistic and politically divided society. Part of the problem centers around how culture—and the many physicians practicing in it—define common morality, especially

¹⁸³ Rachel Savage and Hugo Greenhalgh, "UK court rules against trans clinic over treatment for children," *Reuters*, November 2020, <https://www.reuters.com/article/us-britain-lgbt-transgender-trfn/uk-court-rules-against-trans-clinic-over-treatment-for-children-idUSKBN28B3AV>.

because it seems that norms about right and wrong moral conduct continually change. There are, however, some basic rules, known as “common morality” that most people, according to biomedical ethicists Tom Beauchamp and James Childress, can agree on: “1. Do not kill, 2. Do not cause pain or suffering to others, 3. Prevent evil or harm from occurring, 4. Rescue persons in danger, 5. Tell the truth, 6. Nurture the young and dependent, 7. Keep your promises, 8. Do not steal, 9. Do not punish the innocent, and 10. Obey just laws.”¹⁸⁴ Even though the above rules seem pretty simple, when it comes to treating transgender patients, they are not. What one person deems harm another calls care. What one doctor does to alleviate suffering might result in increased physical (or mental) pain. Doctors certainly want to keep trans kids from killing themselves, and far too many consider it and/or follow through. In fact, the National Institute of Health reports that 82% of transgender individuals have considered killing themselves and 40% have attempted suicide,¹⁸⁵ so it seems logical that if controversial medical treatment can rescue kids in distress from what they perceive as danger, it would benefit us all because we cannot thrive as a diverse species if any portions of our population continue to commit suicide.

When conflicting moral norms face those deciding treatment for transgender teens, it requires compromise. Moral norms can be overridden in certain circumstances, but such instances must be justifiable. Even medical bioethicists agree that they “lack a single, entirely reliable way to resolve many disagreements,” and treatment for transgender teens often falls into this category.¹⁸⁶ Such moral disagreements can emerge because of a disagreements about facts, disagreements resulting from insufficient information, disagreements about which norms are

¹⁸⁴ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 2.

¹⁸⁵ Ashley Austin et al., "Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors," *PubMed*, last modified March 2022, <https://pubmed.ncbi.nlm.nih.gov/32345113/>.

¹⁸⁶ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 20.

applicable in specific circumstances,¹⁸⁷ as well as others, but these kinds of disagreements listed above are often cited in cases involving transgender teens. Despite the conflicts and fuzzy areas for these kids, using the concept of the mature minor standard could resolve not just issues relating to trans teens but other areas where teens are often not given authority over their own decision making. According to *The Journal of Pediatrics*, “The ‘mature minor doctrine’ is the common-law rule that allows an adolescent who is mature to give consent for medical care.”¹⁸⁸ The mature minor doctrine has been consistently applied in cases where the minor is sixteen years or older, understands the medical procedure in question, and the procedure is not potentially life threatening, but the standard does not always apply in other circumstances considered more questionable. Furthermore, outside of reproductive rights, the U.S. Supreme Court has never ruled on its applicability to medical procedures, and many of the rules have not yet been applied to transgender patients. But they should, and it makes good sense because more transgender patients would have access to the care that they need to survive and/or thrive, which is something that ultimately benefits our whole species.

For example, the case of James (Luna) Georgulas, a 7-year-old from Texas at the center of a custody dispute between parents, showed that even two parents can interpret “facts” completely differently. The mother, a pediatrician, has insisted that her son wanted to be a girl since age three, while the father has insisted that the son “always presented as a boy around him,” making it not only difficult for doctors but also for judges to decide what was right for the

¹⁸⁷ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 20.

¹⁸⁸ Garry S. Sigman and Carolyn O'Connor, "Exploration for physicians of the mature minor doctrine," *The Journal of Pediatrics* 119, no. 4 (1991): doi:10.1016/s0022-3476(05)82398-4.

child.¹⁸⁹ These kinds of challenging cases are especially difficult because the research available for treatment options for transgender minors remains somewhat limited. Given, the Georgulas case is unique in that it involved a very young child, making the issue more complex for the caregivers trying to determine how to address the needs of trans people under 18.

The central bioethical concept of autonomy and the principle of respect for autonomy remains a core concern for treatment of transgender youth. The word autonomy, meaning “self-rule,” requires “two general conditions: liberty (independence from controlling influences), and agency (capacity for intentional action).¹⁹⁰” Even this primary concept proves difficult for this controversial issue. Teens are, however, at some age able to make autonomous decisions, and once teens claim autonomy, they should be able to consent to treatment that helps them become more fully themselves.

The World Professional Association for Transgender Health (WPATH) acknowledges that the age of consent varies by country/region, and their glossary provides no definition of what they consider an “adolescent” other than to infer that adolescents have undergone or have begun to undergo puberty.¹⁹¹ Here, applying the mature minor standard would certainly provide increased clarity. For puberty suppressing hormones, WPATH requires that adolescents give “informed consent” after “a long-lasting and intense pattern of gender nonconformity,” if gender dysphoria worsened with the onset of puberty, and as long as any co-existing psychological, medical, and social problems have been addressed.¹⁹² Since adolescents cannot always consent

¹⁸⁹ Catherine Marfin, "Dallas judge affirms joint custody order in case involving 7-year-old's gender identity," *The Dallas Morning News*, January/February 2020, xx, <https://www.dallasnews.com/news/courts/2020/02/01/dallas-judge-affirms-joint-custody-order-in-case-involving-7-year-olds-gender-identity/?outputType=amp>.

¹⁹⁰ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 77.

¹⁹¹ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc.>, 18.

¹⁹² *Ibid*, 19.

for themselves, parents must also “consent to the treatment, and they must be involved in supporting the adolescent throughout the treatment process.”¹⁹³ Therefore, when parents and adolescents disagree about what to do, the mature minor standard could help remove the need for consent from the parent if the adolescent meets the standard. But how is such a designation made?

According to most state laws, a juvenile person less than eighteen years of age must be determined a mature minor by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make their own healthcare decisions. For the most part, doctors determine this by using current laws as they are written in each individual state. Once again, it is important to note that there is no uniform standard. Thus, the courts determine the standard in each state, and the doctors/medical professionals confirm it. When and if a minor meets the standard, their decisions can override the parents’ wishes. In other words, doctors and judges hold a lot of sway when it comes to determining a mature minor.

Part of that process involves determining a minor’s mental capacity. Before a medical professional can get consent from an adolescent patient, however, the teen must demonstrate the capacity for autonomous choice. For now, they must demonstrate competence, which is judged primarily by a list of ways that people are deemed *incompetent*. That list includes the following: “1. Inability to express or communicate a preference or choice, 2. Inability to understand one’s situation and its consequences, 3. Inability to understand relevant information, 4. Inability to give a reason, 5. Inability to give a rational reason, 6. Inability to give risk/benefit-related reasons, and 7. Inability to reach a reasonable decision.”¹⁹⁴ Despite these clearly stated parameters, the results

¹⁹³ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc>, 19.

¹⁹⁴ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 87.

for transgender teens do not seem clear at all. As mentioned above, the WPATH centers their claims around “informed consent” for adolescents, and according to bioethical standards, informed consent is “an individual’s *autonomous authorization* of a medical intervention or of participation in research.”¹⁹⁵ Part of obtaining consent for practitioners includes giving the patient full disclosure, an integral part of informed consent, and although the standard seems vague—it is called the “reasonable person standard”—it has gained acceptance in many states.¹⁹⁶ Most basically, “the patients should usually understand, at a minimum, what an attentive health care professional believes the patient or subject needs to understand to authorize an intervention.”¹⁹⁷ The problem with the previous statement is that some people and parents believe these patients are manipulated into giving consent for treatment they do not fully understand. The somewhat vague nature of the standard inevitably results in trouble spots for transgender teens and their caregivers. Furthermore, the “reasonable person standard” has not gained acceptance in all states, which continues to complicate the issue.

One issue related to informed consent for minors includes the idea that some children might be accepting as “true” something that might not be “true,” and that belief can compromise their decision making: “A single false belief can, in some circumstances, invalidate a patient’s consent, even when there has been a suitable disclosure, comprehension, and voluntary decision making by the patient.”¹⁹⁸ The problem with the previous statement is that many conservative parents and lawmakers have used it as ammunition against transgender teens in order to prevent them from getting care, claiming that the teen believes a “false truth” that sex or gender can be

¹⁹⁵ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 90.

¹⁹⁶ *Ibid*, 91.

¹⁹⁷ *Ibid*, 98.

¹⁹⁸ *Ibid*, 100.

changed. Thus, an impasse for care arises; however, the impasse in terms of the “false truth” need not remain because as established earlier, sex and gender *can* be changed; it is not a false truth.

Once adolescent autonomy has been established and informed consent given by both a parent and teen, the next major bioethical obligation centers on the concept of beneficence and/or nonmaleficence. Often the principle of beneficence gets divided into four general obligations, the first of which includes nonmaleficence; the other three relate to obligations of beneficence.¹⁹⁹ The four principles include the following: “1. One ought not to inflict evil or harm, 2. One ought to prevent evil or harm, 3. One ought to remove evil or harm, and 4, One ought to do or promote good.”²⁰⁰

Sometimes “harm,” however, means something different to different people. According to a recent NBC news article, “The Arkansas Senate passed a bill Monday that would ban access to gender-affirming care for transgender minors, including reversible puberty blockers and hormones,” and unless the governor vetoes it, “Arkansas will become one of the first states to ban gender-affirming care for trans youth.”²⁰¹ The lawmakers claimed that many treatments for transgender teens are “at best experimental and at worst a serious threat to a child’s welfare,” further arguing that the bill is the state’s attempt to “protect children from making mistakes that they will have a very difficult time coming back from.”²⁰² The legislators believe such medical interventions for teens equate to “harm,” while transgender activists believe and research

¹⁹⁹ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 116.

²⁰⁰ Ibid.

²⁰¹ Jo Yurcaba, "Arkansas passes bill to ban gender-affirming care for trans youth," March 2021.

²⁰² Samantha Schmidt, *The Washington Post*, last modified March 29, 2021, <https://www.washingtonpost.com/dc-md-va/2021/03/29/arkansas-passes-bill-restricting-access-medical-treatments-transgender-children/>.

confirms that “gender-affirming care has been shown to save young people’s lives by reducing their risk for suicide and depression,” adding that “more trans youth [are] living and thriving because of these things, and now to see the state try to put all those restrictions back on to the providers and basically handcuffing them as to what they can and can't do in the state; it's going to harm the kids.”²⁰³ As previously mentioned, the rates for suicide among transgender patients without care remains close to 40%, and *The Journal of the American Medical Association* (JAMA) reported that “receipt of gender-affirming care, including puberty blockers and gender-affirming hormones, was associated with 60% lower odds of moderate or severe depression and 73% lower odds of suicidality” among transgender teen patients.²⁰⁴ The numbers don’t lie. The legislators and the transgender researchers and activists, therefore, still define beneficent treatment differently, if not oppositely. For trans activists, it comes down to the ability for transgender teens to experience the fullness of their humanity, while for the legislators it comes down to maintaining a more rigid (binary) definition of gender identity. If beneficence means “qualities of mercy, kindness, friendship, generosity, charity” etc..., the overall goal of treatment should be to “act in the benefit of others.”²⁰⁵ More specifically, given that trans teens are more likely to harm themselves without the care they need, and given that maintaining the rigid definition of binary gender identities has no relation to the real outcome for these patients the answer seems obvious: allow transgender teens to experience the fullness of their humanity. Choose the decision that benefits our entire species over the decision that simply seeks to maintain a legislative agenda.

²⁰³ Jo Yurcaba, "Arkansas passes bill to ban gender-affirming care for trans youth," March 2021.

²⁰⁴ Diana M. Tordoff, Jonathon W. Wanta, and Arin Collin, "Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care," *JAMA Network Open* 5, no. 2 (January 2022): doi:10.1001/jamanetworkopen.2022.0978.

²⁰⁵ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 160.

The primary obligation of physicians practicing beneficent care involves setting limits to remove and prevent harm.²⁰⁶ The problem for transgender patients, however, is that many of the prescribed treatments by WPATH have seriously harmful side effects, but so do many medications for other human beings. The duty of the physician, therefore, is to weigh the benefit from the harm. That said, the *primary* duty of obligatory beneficence includes the necessary action to *prevent* loss or damage, and for trans patients, this would include therapies that affirm their desired gender. Transgender teens see impediments to their treatment evidence of “medical paternalism,” “the intentional overriding of one person’s preferences or actions by another person, where the person who overrides justifies the action by appeal to the goal of benefitting or of preventing or mitigating harm to the person whose preferences or actions are overridden.”²⁰⁷ Even the concept of paternalism has varying degrees. For example, “soft paternalism” occurs when “an agent intervenes in the life of another person on grounds of beneficence or nonmaleficence with the goal of preventing nonvoluntary conduct,” while “hard paternalism” usurps autonomy by either restricting the information available to a person or overriding the person’s informed and voluntary choices.”²⁰⁸ Trans activists clearly take an “antipaternalistic” view to hard paternalistic interventions.

Another part of beneficence includes the primary goal of saving lives because preventing suicide remains paramount for transgender teens and for our species. Therefore, legislators and medical practitioners who claim to withhold treatment on the basis of beneficence cause more harm by failing to prevent teens who cannot access care from committing suicide. Part of the reason that more types of medical and psychological practitioners have been called on in more

²⁰⁶ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, USA, 2019), 162.

²⁰⁷ *Ibid*, 169.

²⁰⁸ *Ibid*, 170.

recent history to assist in the treatment of trans kids is that so many of them suffer, first and foremost, psychologically. Malcolm T. Firth, author of “Childhood abuse and depressive vulnerability in clients with gender dysphoria,” claims that the early lives of gender variant people are fraught with “personal histories of abuse and neglect, often combined with common and sometimes extreme mental health problems.”²⁰⁹ Firth confirms the earlier findings that the depression rates were almost “three times higher than in the general population,” which suggests a need to treat these members of our society with the utmost of beneficent care.²¹⁰

For beneficent care to really be beneficent, one must extricate themselves from any theological or paternalistic systems to see individuals as just that—human beings in need of care. And this kind of beneficence matters for kids like Syrus Hall and the countless others who experience gender dysphoria and who desire to transition into the gender they feel most comfortable in. Therefore, beneficent care allows for autonomous choice, and allowing autonomous choice not only benefits the transgender teens but also all of us.

PART II: ESTABLISHING ADOLESCENT AUTONOMY

The definition of autonomy does not contain any specifics about age, but it should. It simply suggests that a person must have the capacity for intentional action. Therefore, because no uniform standard exists, the courts get to decide exactly who has agency and when or where it applies. Dating back to 1914, the courts have fairly consistently respected and shown deference to individual autonomy—at least when it comes to adults.²¹¹ The United States, however, has

²⁰⁹ Malcolm T. Firth, “Childhood abuse and depressive vulnerability in clients with gender dysphoria,” *Counseling and Psychotherapy Research*, 14, (2013): 2. <https://onlinelibrary-wiley-com.proxy.libraries.smu.edu/doi/10.1080/14733145.2013.845236>.

²¹⁰ *Ibid*, 100.

²¹¹ *Schloendorff v. Society of New York Hospital*, 105 N.E. 92, 93 (N.Y. 1914) (“Every human being of adult years and sound mind has a right to determine what shall be done with his own body.”)

treated minors as incompetent for years, owing primarily to the belief that they lack the ability to make mature decisions. In the 1979 ruling *Belotti V. Baird*, the Supreme Court reasoned that States validly may limit the freedom of children to choose for themselves in the making of important affirmative choices with potentially serious consequences [because] during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.²¹²

Despite the courts' belief that adolescents lack the capability to consent/lack autonomy, the Due Process Clause specifically gives people with the capacity the right to control their bodies and minds. In addition, in the 1891 case *Union Pacific Railway Co. v. Botsford*, the Supreme Court went as far as to say that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law,"²¹³ and that right should extend to qualified adolescents, even adolescents whose medical treatment plans might not align with their parents' religious or political views. Picking and choosing which medical procedures and which kinds of treatments the law permits teens to consent to muddies the waters for medical professionals, parents, and the patients, and the mature minor standard would provide a solution.

Furthermore, the Supreme Court's 1969 ruling in *Stanley v. Georgia* ruling also applies to adolescents with the capacity to consent to care. Although the case involved police seizing obscene material from a person's private home, Thurgood Marshall said in his majority opinion that "the rights to receive information and to personal privacy were fundamental to a free society," which means that a case could be made that information about transgender care falls

²¹² *Belotti v. Baird*, 443 U.S. 622, 623 (1979).

²¹³ *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

into the category of what Marshall deemed “fundamental to a free society.”²¹⁴ The courts further affirmed other sacrosanct freedoms in the 2003 ruling in *Lawrence v. Texas*. Although the case involved sodomy laws in Texas, in the opinion written by Justice Anthony M. Kennedy, the Court held that the case hinged on whether the defendants, Lawrence and Garner, were free as adults to engage in personal conduct, exercising their liberty under the Due Process Clause. Justice Kennedy wrote that “Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.”²¹⁵ Such a claim applies to trans patients as well. The government has no right to intervene in an adult (or a mature minor’s) right to address their medical condition in the manner they and their doctor see fit although several states have tried specifically to thwart access to affirmative transgender care.

In addition, even though the courts overturned *Roe v. Wade* in 2022, the 1973 Pennsylvania case of *McFall v. Shimp* (heard six years after *Roe*) might provide clarity regarding the issue of bodily autonomy. In this case, one relative tried to compel another relative (a cousin) to donate bone marrow to save a life, but the court ruled that they could “not intervene against the perceived moral fallibility of an individual's choice.”²¹⁶ In transgender care, much of the debate focuses on the “morality” of the medical path these patients choose to take, but in this case, the courts concluded that they did not have the right to intervene even in these cases. The judge asserted that courts must distinguish legal obligations from moral conflicts, and *McFall v. Shimp* assessed a critical element of the right to privacy that pervades discussions of due process under federal and state court systems: bodily autonomy, a key issue in the debate surrounding

²¹⁴ *Stanley v. Georgia*, 394 U.S. 557 (1969).

²¹⁵ *Lawrence v. Texas*, 539 U.S. 558 (2003).

²¹⁶ Alexia Ingram, “McFall V. Shimp and the Case for Bodily Autonomy,” *Harvard Undergraduate Law Review*, last modified April 1, 2021, <https://hulr.org/spring-2021/mcfall-v-shimp-and-the-case-for-bodily-autonomy>.

transgender patient care, particularly adolescents. Judge Flaherty concluded in *McFall v. Shimp* that [compelling someone was a] “violent transgression into an individual’s right to privacy and choice,” upholding the idea of an individual’s right to both privacy, choice, and autonomy.²¹⁷ Therefore, even without the weight of *Roe V. Wade* to assert bodily autonomy, the courts have provided other precedent that affirms the rights of transgender patients to care without the intervening of the government.

Many medical professionals disagree with the courts when it comes to adolescent autonomy, bodily integrity, and consent, advocating for their right to autonomous decision-making. For example, Dr. Margaret R. Moon writes in her article “Ethical Issues in the Care of Adolescents” that medical cases involving adolescents need to promote autonomy in these patients. She argues that the “autonomy-related duty moves from protecting and promoting the developing autonomy of young children to respecting the decisions made by adolescents who have a decision-making capacity similar to that of adults.”²¹⁸ Moon admits that while adolescents age 10-13 lack the ability to perceive long-term consequences, teens age 14-16 mostly do, and teens in late adolescence age 17-21 are certainly able to think through complex issues independently.²¹⁹ Psychologist Debbie Schachter and her colleagues agree, claiming in their article “Informed Consent and Adolescents” that adolescents have the maturity to give consent at age 14 and asserting that 14-year-olds “can understand information necessary for valid consent.”²²⁰ Similarly, Kali Hopkins and her fellow researchers concluded that although

²¹⁷ Alexia Ingram, “McFall V. Shimp and the Case for Bodily Autonomy,” *Harvard Undergraduate Law Review*, last modified April 1, 2021, <https://hulr.org/spring-2021/mcfall-v-shimp-and-the-case-for-bodily-autonomy>.

²¹⁸ Margaret R. Moon, “Ethical Issues in the Care of Adolescents,” *American Academy of Pediatrics Bioethics Resident Curriculum: Case-Based Teaching Guides*, 2017, 55.

²¹⁹ *Ibid*, 56.

²²⁰ Debbie Schachter, Irwin Kleinman, and William Harvey, “Informed Consent and Adolescents,” *Can J Psychiatry* 50, no. 9 (August 2005): 534, 536.

adolescents go about making decisions differently than adults, the “adolescent ability to make voluntary choices is similar to adults at age 12-14.”²²¹ If, according to scientists, doctors, and psychologists, adolescents have the capacity to understand complex issues and their long-term ramifications, parents and doctors should work to support and encourage their autonomy by respecting their ability to give consent to medical treatment options open to them, controversial or not. While these psychologists understand that teens have capacity at some point, determining a uniform age will provide the needed clarity that trans teens and their doctors need.

Before a medical professional can get consent from an adolescent patient, the teen must demonstrate the capacity for autonomous choice. Since the standards often seem obtuse, some states have implemented the mature minor standard to solve the problem created by such a fuzzy definition of capacity for autonomous choice. These statutes allow minors to consent to a medical decision if the minor can prove competency. Furthermore, since minors can be determined competent, then they must assert their fundamental right to privacy and their right to bodily integrity and autonomy in order to determine for themselves what kind of treatments they believe to be in their best interest. Therefore, all states should implement the mature minor standard to eliminate the discrepancies in terms of at what age teens can provide consent—and that consent should apply to more than just medical care.

PART III: CURRENT CONSENT LAWS RELATING TO ADOLESCENTS

Part of treating any person ethically involves treating them fairly and equally, but all too often the laws relating to medical care (including gender-affirming care for trans patients) vary widely among states. The laws relating to adolescent consent in other categories can provide a

²²¹ Kali Hopkins et al., "When Adolescent and Parents Disagree on Medical Plan, Who Gets to Decide?," *Pediatrics*, August 2019, <https://doi.org/10.152/peds.2019.0291>.

framework for considering when and if trans adolescents can claim their right to bodily integrity and autonomy by using the mature minor standard. Heather Boonstra and Elizabeth Nash, in their article “Minors and the Right to Consent to Health Care,” illustrate the many rights that minors have that involve making important decisions regarding their own care, and they show that most states believe this too because their laws reflect that they do.²²² Their article includes an extensive chart (see Appendix A) that lists every state’s consent laws in eleven different categories including access to contraceptives, prenatal care, STD/HIV services, alcohol and drug abuse-related services, outpatient mental health services, general medical health services, abortion services, marriage, determining medical care for a child, placing a child for adoption, and marriage. Their chart reveals that states overwhelmingly believe that minors (meaning individuals under the age of 18) can give consent in a majority of these situations. For example, minors can give consent for contraceptive usage in every state. They can also consent to prenatal care, treatment for STDs and HIV, as well as outpatient mental health services in every state.²²³ Furthermore, only Utah and Mississippi require parental consent for general medical health services,²²⁴ all of which strongly supports that most states believe that adolescents who are “sufficiently intelligent” can consent to most medical situations.²²⁵ In fact, the only categories where parents must consent include abortion services and marriage (and now gender-affirming care for a transgender adolescent).²²⁶ Even in cases such as abortion where parental consent is required in thirty-one states, the law seems to suggest that minors have more autonomy than they are given in these states. For example, B. Jessie Hill noted that in *Planned Parenthood v.*

²²² Heather Boonstra and Elizabeth Nash, “Minors and the Right to Consent to Health Care,” *The Guttmacher Report on Public Policy*, August 2000, 4, <https://www.guttmacher.org/gpr/2000/08/minors-and-right-consent-health-care>.

²²³ *Ibid*, 6

²²⁴ *Ibid*, 6.

²²⁵ *Ibid*, 6.

²²⁶ *Ibid*, 6-7.

Danforth, “parents did not have absolute veto over a minor’s abortion decision.” Furthermore, Hill claimed that “many minors—such as those with terminal illnesses, or with ‘adult’ problems—are indistinguishable from pregnant minors in terms of the seriousness of their situations,” and this distinction also applies to transgender youth whose lives are at stake without such care and intervention.²²⁷ Hill goes on to assert that minors, even in the case of abortions and other controversial medical procedures (like gender-affirming treatments), have a “right not to be deprived of their liberty,” adding that if they are “well informed enough to consent” and if treatment “is in their best interest,” then a minor should have the autonomy to decide what to do with their own body.²²⁸

While the legislative issue of the right to abortion falls outside the scope of this project, the issue remains relevant as it relates to the broader application of the mature minor standard. If teens meet the mature minor standard, then they should be allowed to access all aspects of medical care.

The “increased autonomy” realized in adolescence, according to Hill, means that these minors have a “constitutional right to bodily integrity.”²²⁹ Furthermore, Hill contends that the “constitutional right to bodily integrity has some implications for the degree to which parents can be involved in their medical decision making.”²³⁰ Kali Hopkins and her colleagues concluded similarly, claiming that “treating individuals fairly and equally applies to children [and

²²⁷ B. Jessie Hill, “Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles,” *Faculty Publications Case Western Reserve*, 2012, 60, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1081&context=faculty_publications.

²²⁸ *Ibid.*, 48.

²²⁹ B. Jessie Hill, “Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles,” *Faculty Publications Case Western Reserve*, 2012, 39, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1081&context=faculty_publications.

²³⁰ *Ibid.*

adolescents] as well as adults.”²³¹ Contradictions persist in these cases because, according to Mary Slonina, author of "State V. Physicians et al.: Legal Standards Guiding the Mature Minor Doctrine and the Bioethical Judgment of Pediatricians in Life-Sustaining Medical Treatment," laws are inconsistent. She writes that

the laws devised to govern teenagers are layered, reflecting society’s alternating perceptions of teenagers as adult-like and child-like, and our accompanying impulses to respect as well as to protect this population...[W]e trust eighteen-year-olds enough to let them fight and die in the military, but not enough to let them drink alcoholic beverages.²³²

Furthermore, Slonina notes that even “criminal courts often take little or no issue with declaring a minor competent to be tried as an adult.” As a society, we claim that juveniles can be tried as an adult, but we still fail to give those same 16-year-olds the right to be treated as an adult when making medical decisions.²³³ It does not make sense. In fact, the Supreme Court formally recognized the fundamental rights of minors (high school students in particular), stating that “students in school as well as out of school are persons under our constitution,” which seems to suggest their ability to rightly judge for themselves what they want done with their own bodies.²³⁴ In Slonina’s article, she notes that even the famous child development researcher Jean Piaget, who spent years observing children while developing his Cognitive Development Theory, postulated that at “level four, the last cognitive development stage, which takes place between ages eleven to fifteen...a child can imagine a past, present, and future conditions of a

²³¹ Kali Hopkins et al., "When Adolescent and Parents Disagree on Medical Plan, Who Gets to Decide?," *Pediatrics*, August 2019, <https://doi.org/10.152/peds.2019.0291>.

²³² Mary I. Slonina, "State V. Physicians et al.: Legal Standards Guiding the Mature Minor Doctrine and the Bioethical Judgment of Pediatricians in Life-Sustaining Medical Treatment," *Health Matrix: The Journal of Law-Medicine Case Western Reserve University School of Law* 17, no. 1 (2007): 183, <https://scholarlycommons.law.case.edu/healthmatrix/vol17/iss1/9>.

²³³ *Ibid*, 184.

²³⁴ *Ibid*, 187.

situation.”²³⁵ Adding that “by the age of fifteen, a child’s thinking has evolved into a mature state, and adult thought exists within the child’s mental functions.”²³⁶

Cara Watts, who analyzed the courts’ approaches to determining if a minor has the right to make a medical decision without parental consent, developed a three-part standard for determining adolescent autonomy: (1) There is no reason to deny an adult the right to make a medical decision. (2) There is no reason to treat a minor differently than an adult in the situation, and (3) There is no state interest in protecting the minor. If those three criteria are met, Watts believes that the minor should have “the same decisional rights as an adult in that situation.”²³⁷ While Watts may be right, without a consistent, uniform, nationwide standard, transgender adolescents will continue to be singled out. Mary Slonina also argues in “Adolescent Consent to Routine Medical and Surgical Treatment” for a “bright-line statutory rule for any minor over the age of 16,” primarily because these teens can enlist in the military, marry, and drive a car.²³⁸ She admits that these laws and the implementation of them remain fuzzy. She believes that “until there is a governmental response, there will be no answers, and the standards of the mature minor doctrine will be continuously added to and subtracted from in case law and in the opinions of scholars.”²³⁹ But leaving adolescents, including teens struggling with gender-identity issues, in limbo in terms of their autonomy and bodily integrity denies them fundamental and constitutional rights.

²³⁵ Mary I. Slonina, "State V. Physicians et al.: Legal Standards Guiding the Mature Minor Doctrine and the Bioethical Judgment of Pediatricians in Life-Sustaining Medical Treatment," *Health Matrix: The Journal of Law-Medicine Case Western Reserve University School of Law* 17, no. 1 (2007): 194, <https://scholarlycommons.law.case.edu/healthmatrix/vol17/iss1/9>.

²³⁶ *Ibid.*

²³⁷ *Ibid.*, 207.

²³⁸ *Ibid.*, 210.

²³⁹ *Ibid.*, 214.

Case law, state laws, and medical best practices disagree about when and under what circumstances to allow mature minors to consent to medical treatment, and this predicament not only affects teens struggling to gain access to mainstream medical treatment, but it also affects the transgender community, a group of people not originally considered within the bounds of these laws. If we deem minors as young as 16 capable of giving consent, having autonomy over their bodies for making medical decisions, we should allow them to consent to the varying treatment options open to them for gender affirming and/or gender reassignment. Because the confusion that exists without a clear policy, it will remain often a politicized and moralized topic, much like abortion. Moral questions and political preferences aside, the policies we put in place that work to encourage adolescent autonomy should include treatments that we personally may object to for any kind of reason. In fact, the requirement for parental notification or consent for transgender care in many states closely resembles the parental notification and consent cases related to abortion, inconsistent and often politicized.

Abortion and transgender issues, however, are not the same, and they should not be put in the same category when it comes to adolescent healthcare. Gender dysphoria has biological indicators and is not a choice. Furthermore, gender dysphoria thwarts the individual's ability to fully express themselves, which for many results in suicide ideation. Most trans kids need the care not only to assuage suicidal thoughts but also for life-affirming care and for the ability to live their lives to the fullest. Our species has always found ways to survive, and if undergoing gender-affirming care allows trans kids to survive, the medical community should not stand in their way if they have met the mature minor standard especially since it directly obstructs the diversity human populations need to thrive.

Unfortunately, recent laws that inhibit an adolescent's ability to consent to treatment for gender dysphoria have significantly thwarted their ability to access any treatment whatsoever. Chelsey Cox writes in *USA Today* in April of 2021 about a recent Arkansas ban on treatment for transgender minors, making it illegal for doctors to provide "gender confirming hormone therapy, puberty blockers or gender-confirmation surgeries or from referring patients [under 18 years old] to other health care providers"²⁴⁰ Furthermore, in North Carolina, the legislature recently introduced Senate Bill 514 that "would prevent medical professionals from providing practices and healthcare services to transgender youth younger than 21."²⁴¹ (Insisting that healthcare services remain restricted to people under 21 indicates that these states basically want to stop affirmative care for transgender adolescents who they might otherwise deem mature enough to make other decisions for themselves.) Cox also noted that 14 other states also introduced similar bills that limited transgender youth's access to medical procedures.²⁴² In addition, Arkansas lawmakers voted in April 2021 to limit access to certain treatments for transgender adolescents younger than 18 years old.²⁴³ Most of the bills recently passed or up for consideration claim to protect "vulnerable" children, but they essentially undermine the bodily integrity and autonomy of adolescents, some as old as 18, and if a mature minor standard was universally in place, these teens would not be subjected to the winds of political change.

While it may seem that these restrictive laws are limited to southern states, they are not. Even more progressive countries like Sweden and the UK have also recently halted treatment for transgender teens. Franz Walker reports that "The Karolinska Institute's Astrid Lindgren

²⁴⁰ Chelsey Cox, "As Arkansas bans treatments for transgender youth, 15 other states consider similar bills," *USA Today*, April 2021, 1, <https://www.usatoday.com/story/news/politics/2021/04/08/states-consider-bills-medical-treatments-transgender-youth/7129101002/>.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

Children’s hospital will no longer allow the prescription of these hormones to Swedish youth under the age of 16. Meanwhile, youth between 16 and 18 years of age can only access these treatments within clinical trials, and when capable of providing informed consent.”²⁴⁴ Hospital officials cited “a ‘lack of evidence’ for the long-term side effects of blocking puberty” and worry over the “irreversible adverse” effects such as “cardiovascular disease, osteoporosis, infertility, increased cancer risk, and thrombosis,” making it much more difficult for the doctors to assess the risk/benefit for minors and even for challenging for the minors themselves and their guardians to give informed consent.²⁴⁵ Walker further warned that other European countries—like Finland, for example—are also trying to stop access to similar treatments.²⁴⁶ According to Rachel Savage of *Reuters*, the case of Kiera Bell from the UK brought international acclaim when Ms. Bell brought legal action against the Tavistock and Portman NHS Foundation Trust after she feared she may have damaged her ability to have children owing to her taking puberty blockers at age 16. Bell “detransitioned” and now lives as a woman, but she has become an activist, arguing against giving puberty blockers to teens under 18 without a court order.²⁴⁷ The judges in the UK inevitably ruled that although 16 and 17-year-olds were “presumed to be able to consent to medical treatment,” “doctors may want to seek court orders before prescribing them puberty blockers because of the “experimental” nature of the treatment.²⁴⁸ Despite the court’s ruling, they did not give any reason why this particular kind of medical treatment would require a totally different standard.

²⁴⁴ Franz Walker, "Sweden’s largest children’s hospital bans use of puberty blockers on minors," *Natural News*, May 2021, 1, <https://www.naturalnews.com/2021-05-07-childrens-hospital-bans-puberty-blockers-on-minors.html>.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*, 2.

²⁴⁷ Rachel Savage and Hugo Greenhalgh, "UK court rules against trans clinic over treatment for children," *Reuters*, November 2020, <https://www.reuters.com/article/us-britain-lgbt-transgender-trfn/uk-court-rules-against-trans-clinic-over-treatment-for-children-idUSKBN28B3AV>

²⁴⁸ *Ibid.*

In an effort to determine the appropriate age to consider adolescents mature minors, perhaps taking a look at statutory rape laws can provide necessary insights related to transgender affirmative care. Not surprisingly, laws regarding ages that teens can consent to sexual activity vary among states. As of 2023, in 33 states, as seen in Appendix B, the age of consent is 16; in 11 states, the age is 17; and for the remaining 6 states, the an adolescent must reach the age 18 to consent to sexual activity.²⁴⁹ If a teenager can consent to sexual activity, activity that may result in the birth of a child and that requires a sufficient intelligence to give consent, then they should be considered old enough to consent to their own medical care. Finally, these statutory rape laws might provide a good place to start when considering the definition of a mature minor for other adolescent-related issues as well whether we like them or not. If teens are old enough to manage their own lives, then they should be allowed to enjoy the benefits or reap the consequences of their decisions.

Moreover, looking at guidelines for at what age courts can try people under 18 as adults—as seen in the chart in Appendix C—provides further insight into what age adolescents can be determined a mature minor. Unfortunately, according to the Equal Justice Initiative, “thirteen states have not imposed a minimum age for prosecuting a child as an adult, leaving eight-, nine-, and ten-year-old children vulnerable to extreme punishment, trauma, and abuse within adult jails and prisons.”²⁵⁰ It seems that in the case of trying children as adults, the mature minor standard would provide needed clarity here too. In Texas specifically, the legal age of criminal responsibility is 17, which means that if any 17-year-old that gets arrested in Texas,

²⁴⁹ "Age of Consent by State 2023," 2022 World Population by Country, accessed April 3, 2023, <https://worldpopulationreview.com/state-rankings/age-of-consent-by-state>.

²⁵⁰ "Thirteen States Have No Minimum Age for Adult Prosecution of Children," Equal Justice Initiative, last modified September 19, 2016, <https://eji.org/news/13-states-lack-minimum-age-for-trying-kids-as-adults/>.

then he or she is tried as an adult.²⁵¹ Once again, the ages vary in terms of when a person under 18 is held liable as an adult for criminal behavior.

According to the Interstate Commission for Juveniles, all states consider 18 to be the the “age of civil majority,” but the “age of criminal responsibility” extends to kids as young as 10 in some states, 16 in others, and for most, it remains 18.²⁵² Complicating the issue for adolescents is the fact that even if a juvenile does not meet the “age of criminal responsibility,” his or her case might still be allowed to be transferred to an adult court. The ages also vary widely here: in some states the age is as low as 12, but in most, the age is 16. Nevertheless, the law seems to imply that adolescents fully understand the nature of their crimes and should face the consequences of their actions. Whether such practice might violate their human rights is a question for another day, but it seems to provide another layer of ways in which society deems adolescents capable of understanding ideas on an adult level, and this kind of measuring stick could also fall under a mature minor designation, a designation that might provide clarity not just for criminal offenders but also for transgender teens who should be allowed to consent to their own medical care if they could be tried as an adult in a criminal trial.

Clearly, the mature minor standard should not only become a national, consistent policy to remove the vague language in guidelines for law enforcement, healthcare professionals, schools, parents, and even courts, but the standard should also apply across the board to all age-related decisions minors make, whether we like them or not. As a society, we must decide

²⁵¹ "Age Matrix | Interstate Commission for Juveniles," | Interstate Commission for Juveniles, last modified March 15, 2023, <https://www.juvenilecompact.org/age-matrix>.

²⁵² *ibid.*

whether teens are old enough to manage their own lives, and if they are, they should be allowed to enjoy the benefits as well as reap the consequences of their decisions.

PART IV- ANALOGOUS MEDICAL SITUATIONS

Since the WPATH and legislators cannot come to a clear consensus about whether or when to give transgender adolescents control of their bodies and thus their own medical decision-making (and since no uniform mature minor standard exists), looking at some analogous healthcare-related cases might help doctors, psychologists, and parents better understand a reasonable way forward to determine the age for allowing autonomy for all teens, especially trans teens.

The primary risk that would require “life-saving” measures for transgender adolescents remains the risk of suicide. Suicide ideation remains high among transgender teens. And all too often, depression results in suicide attempts among this vulnerable population. Whether a result of childhood trauma or from playground bullying, many transgender teens experience ostracization and alienation that often results in suicide ideation. According to a study by Brian C. Thoma et al., emerging evidence [concludes] that transgender adolescents (TGAs; adolescents whose true gender identity diverges from their gender assigned at birth) are at higher risk for suicidality when compared with cisgender adolescents (CGAs; adolescents whose gender identity is the same as their gender assigned at birth). In initial studies, 34% of TGAs report experiencing suicidal ideation during the past year, 61% report experiencing suicidal ideation during their lifetime, and 30% to 51% of TGAs report at least 1 lifetime suicide attempt.²⁵³

²⁵³ Brian C. Thoma et al., "Suicidality Disparities Between Transgender and Cisgender Adolescents," *Pediatrics* 144, no. 5 (November 2019): 2, <https://doi.org/10.1542/peds.2019-1183>.

Ensuring that transgender young people do not resort to suicide remains paramount among most practitioners, so when suicidal trans teens show up in emergency rooms, doctors want to save their lives, and most of these teens believe that undergoing treatment for their dysphoria would provide them the relief they need.²⁵⁴ A recent study by Luke Allen and his colleagues affirmed that “gender-affirming hormones are a helpful medical intervention for transgender youth,” and that “gender-affirming hormones were found to be associated with decreases in suicidality and improvements in general well-being.”²⁵⁵ But these teens, without a clear, uniform standard, unfortunately cannot consent to their own treatment, and many states are making it even harder or impossible for them to access it.

As long as teens (considered mature minors) understand that treatments prescribed to eliminate the risk of a lingering desire to commit suicide may or may not actually work and can include serious side effects and life-long consequences, adults do not and should not have the right to keep them from the care they desire. Looking at cases that involve treatments that include a risk of death or other significant adverse outcomes for other teens might also help determine a best practice guideline for transgender teens. It is also important to understand that for many gender-dysphoric teens, such treatments are more than cosmetic, they are life-saving. Cherie Black writes about young Dennis Lindberg in her article “Boy Dies of Leukemia After Refusing Treatment For Religious Reasons.” Dennis Lindberg, a 14-year-old devout Jehovah’s Witness, did not want to continue life-saving blood transfusions to treat his progressing Leukemia. His parents wanted the treatments to continue, but the courts eventually ruled in Dennis’s favor, declaring him a mature minor. Judge John Meyer asserted that Dennis was

²⁵⁴ Laura E. Kuper et al., “Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy,” *Pediatrics* 145, no. 4 (April 2020): doi:10.1542/peds.2019-3006.

²⁵⁵ Luke R. Allen et al., “Well-being and suicidality among transgender youth after gender-affirming hormones,” *APA (American Psychological Association)* 7, no. 3 (2019): 310, <https://doi.org/10.1037/cpp0000288>.

“mature and [understood] the consequences of his decision.”²⁵⁶ The courts permitted Dennis, at age 14, to determine his own outcome, even if it meant his inevitable death. Lindberg’s case speaks directly to some of the reasons that parents, courts, psychologists, and doctors often reclaim the rights to determine the outcome for transgender teens: they cite the fact that they are “saving a life” from potential harm. It seems, however, that in the case of Dennis Linberg, that the courts felt that even if Lindberg’s decision resulted in his own death, that he should be the one to make that choice. And if Dennis—at age 14—could determine treatment (or lack of) for himself, other courts and states can see that adolescents as young as 14 understand grave risks as they relate to their quality of life.

Kali Hopkins et al. faced a similar situation to Lindberg, one in which the parents and the teen disagreed about a life-saving medical intervention. Hopkins et al., in the *Journal of the American Academy of Pediatrics*, report on the case of a 15-year-old boy with Muscular Dystrophy who needed a tracheostomy to save his life. Basing their preferences on and prioritizing the boy’s quality of life, the parents believed the tracheostomy would not be in his best interest and wanted to arrange hospice care for their son. The boy, on the other hand, understood that without the tracheostomy, a procedure which would result in the boy’s having a ventilator for the rest of his life, he would die. The doctors discussed the options and the complications with the boy, and the boy chose to have the tracheostomy. The doctors in this case believed that “a 15-year-old who has been living with a progressive disease is certainly capable of making a decision on the basis of his own quality of life.” The doctors ultimately sided with the boy. Issues relating to beneficence, quality of life, and justice, treating individuals fairly and equally, applied when making their decision to allow the boy the autonomy to consent to his own

²⁵⁶ Cherie Black, "Boy Dies of Leukemia After Refusing Treatment for Religious Reasons," *Seattle PI*, November 2007.

treatment.²⁵⁷ If this boy understood that the procedure might save his life but also include adverse side-effects, then the same decision-making should apply to transgender teens as they weigh the possible long-term effects of various treatments on their bodies in favor of living a long, fulfilling life.

Sofya Maslyanskaya and Elizabeth M. Alderman investigated another case involving a 16-year-old girl who requested testing for sexually transmitted diseases from her pediatrician whom she had seen since birth. The young patient specifically requested that her parents *not* be informed about her visit. Maslyanskaya and Alderman believe that “the causes of morbidity and mortality in adolescents are due to risky behaviors such as sexual activity and alcohol and substance use, as well as unmet mental health needs,” so they concluded that the teen’s ability to consent for these kinds of healthcare-related concerns “are the cornerstone of optimal adolescent care.”²⁵⁸ The doctor respected the patient’s confidentiality and allowed her to consent to her own medical care. This case seems quite applicable to the issue of gender dysphoria. While it may be difficult for a parent to understand, many 16-year-olds, according to researchers, have the cognitive ability to understand the risks and benefits of their own medical treatment, and their bodily integrity should be safeguarded and their autonomy respected.

In a case that went before the Maine Supreme Court, *Re Swan*, Chad Swan, a 17-year-old boy had suffered a head injury in an accident, and it left him in a persistent vegetative state. His body had rejected his gastrostomy tube, and the gastroenterology specialist recommended that Chad be allowed to die, and Chad's parents agreed. They indicated to the doctors that prior to the

²⁵⁷ Kali Hopkins et al., "When Adolescent and Parents Disagree on Medical Plan, Who Gets to Decide?," *Pediatrics*, August 2019, <https://doi.org/10.152/peds.2019.0291>.

²⁵⁸ Sofya Maslyanskaya and Elizabeth M. Alderman, "Confidentiality and Consent in the Care of the Adolescent Patient," *Pediatrics in Review* 40 (October 2019): <https://doi.org/10.1542/pir.2018-0040>.

injury Chad had voiced his disapproval of artificial life support. In this case, the Supreme Judicial Court of Maine ruled that “because Chad had expressed his views in the context of serious discussion with family members, and because the state recognizes different ages at which a person may attain capacity to consent, the lower court committed no error in respecting Chad's desires, voiced shortly before he reached the age of majority, and in not ordering surgical reinsertion of the feeding tube.”²⁵⁹ The court sided with Chad, allowing him to die under his own conditions.²⁶⁰ Although Chad was in a vegetative state, the court supported his autonomy and his ability to consent to treatment that ultimately ended his own life. If a court can allow the previous wishes of a teen in a vegetative state to override a doctor’s efforts to perform life-saving measures, then certainly a transgender teen can have his/her voice heard and give consent to their own treatment, as long as he/she understands the ultimate outcomes and risks. Each of these cases also highlights the need for a clear mature minor standard to apply to all teens across the board—not just for medical care.

The standard, according to Sanford Leikin in his article “A Proposal Concerning Decisions to Forgo Life-Sustaining Treatment for Young People” from the *Journal of Pediatrics*

[I]f a minor has experienced an illness for some time, understands it and the benefits and burdens of its treatment, has the ability to reason about it, has previously been involved in decision making about it, and has a comprehension of death that recognizes its personal significance and finality, then that person, irrespective of age, is competent to consent to forgoing life-sustaining treatment.²⁶¹

²⁵⁹ Maine. Supreme Judicial Court. In re Swan. *Atl Report*. 1990 Jan 23; 569:1202-6. PMID: 11648274.

²⁶⁰ *Ibid*.

²⁶¹ Mary I. Slonina, "State V. Physicians et al.: Legal Standards Guiding the Mature Minor Doctrine and the Bioethical Judgment of Pediatricians in Life-Sustaining Medical Treatment," *Health Matrix: The Journal of Law-Medicine Case Western Reserve University School of Law* 17, no. 1 (2007): 201, <https://scholarlycommons.law.case.edu/healthmatrix/vol17/iss1/9>.

Leiken's words above readily apply to teens suffering from gender dysphoria, so doctors should also support and encourage decisions that respect their bodily integrity and autonomy whether they personally or politically agree with them or not.

While the aforementioned cases involve life-and-death situations, many other kinds of medical issues arise with transgender patients, especially in the area of plastic surgery, and mature adolescents should be allowed to consent to and schedule their own gender-affirming plastic surgery. Dr. Charles T. Slack claims that plastic surgery among all teens is on the rise, citing that there are over 200,000 cosmetic procedures done on teens every year. While he believes that plastic surgery can help teens feel more socially confident, he admits that "as with any surgery, parental consent is required for all plastic surgery procedures performed on teens younger than 18."²⁶² Since transgender teens also want to feel confident and accepted socially as well as comfortable in their own bodies, they should be able to consent, at the mature-minor determined age, to such procedures. Furthermore, transgender patients do not undergo plastic surgery for cosmetic reasons; for many of them it is lifesaving and life sustaining.

The financial aspect of cosmetic/plastic surgery provides another area of concern. If a minor is emancipated or deemed a mature minor, and if she/he can afford their own surgery, they should be able to consent. Keep in mind that the average cost of "top surgery" (removing female breast tissue for female-to-male patients) in the US ranges from \$6,000-\$10,000.²⁶³ And while the costs vary, the average cost for phalloplasty (surgical construction of a penis) in the US ranges from \$25,000-\$35,000 and takes approximately two years to complete.²⁶⁴ The fact that

²⁶² Charles T. Slack, "What if My Teenager Wants to get a Breast Reduction?," *North Texas Plastic and Reconstructive Surgery*, April 2018, <https://www.drslack.net/teenager-wants-get-breast-reduction/>.

²⁶³ "Top Surgery Cost: Find Out How Much Top Surgery Costs," TopSurgery.net, last modified November 17, 22, <https://www.topsurgery.net/costs/>.

²⁶⁴ WebMD Editorial Contributors, "What Is the Cost of Phalloplasty?," WebMD, last modified May 5, 2021, <https://www.webmd.com/a-to-z-guides/what-is-the-cost-phalloplasty>.

parental consent is still required must be primarily owing to the fact that they would be financially responsible, but there have been no cases to date about teens overriding a doctor that requires parental consent.

Derrick Diaz writes in “Minors and Cosmetic Surgery: An Argument for State Intervention” in the *DePaul Journal of Health Care Law* that a state may intervene to *prevent* minors from obtaining medically unnecessary cosmetic surgery if the state believes that the surgery shows a severe risk of harm to the minor.²⁶⁵ For Diaz, “cosmetic surgery is “risky,” so the state has an obligation to protect minors. He first separates the idea of reconstructive surgery v. corrective surgery. He makes the distinction because he feels that “²⁶⁶surgeries performed for corrective purposes are for purely aesthetic reasons.” But surgery is not just aesthetic for transgender patients. To Diaz, reconstructive surgeries involve “correcting deformities caused by defects, diseases or traumas,” which applies specifically to transgender patients whose bodies can cause them relentless trauma. He does not, however, address the needs of patients who seem to fall in between the categories of reconstructive and corrective. He does concede that minors are mature enough to consent to treatment, but he calls them a “quasi-exception,” because operating on teens has to consider abstracts like peer pressure and assess the “already risk-prone and impulsive” behavior of adolescents.²⁶⁷ One could argue that he would support a parent seeking to impede their transgender teen from getting surgery because of almost any objection because he falls squarely in the camp of avoiding unnecessary risk and doing no harm. Diaz’s findings would render it almost impossible for a transgender teen to have autonomy over his/her

²⁶⁵ Derrick Diaz, “Minors and Cosmetic Surgery: An Argument for State Intervention,” *DePaul Journal of Health Care Law* 41, no. 2 (October 2015): 235, <https://via.library.depaul.edu/jhcl/vol14/iss2/3>.

²⁶⁶ *Ibid*, 238.

²⁶⁷ *Ibid*, 254.

own body, and he seems to disagree with other psychologists and doctors who believe that they can be trusted when it comes to their own bodily integrity. Furthermore, the transgender patient does not quite fit squarely into either one of his categories. Once again, these people live in the in-between spaces of current laws, which further supports the need for a uniform mature-minor standard that applies to all cases and issues involving adolescents.

Thus, lawmakers need to look at the way mature minors are treated in other areas of the law to come up with more equitable and consistent laws that support an adolescent's right to control their own body, no matter what the outcome. If teens can fully understand the long-term ramifications of the decisions they make, they should be able to make them, and they should have to live with the consequences down the road, good or bad. Fortunately, trans kids have an ally in B. Jessie Hill. Hill believes that adolescent rights to bodily integrity all too often go underrecognized. Hill even claims that "recent studies indicate that many practitioners grant decision-making authority to minors that they perceive as mature, regardless of legal imperatives" and religious free-exercise claims.²⁶⁸ These practitioners put patients' needs first, so perhaps it's time for the law to catch up. But to be clear and to reiterate, abortion and gender-affirming healthcare are not the same. While the issues of age-related consent apply, the two issues share little else in common.

CONCLUSION

Even though there seems to be a patchwork quilt of different standards, requirements, limits, and laws relating to access to medical care for a variety of conditions, each country, the United States especially, needs to confront the laws that say that all minors lack the legal

²⁶⁸ B. Jessie Hill, "Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles," *Faculty Publications Case Western Reserve*, 2012, 72, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1081&context=faculty_publications.

authority to consent to medical treatment and echo the laws that do. As researchers like B. Jessie Hill have argued, any “common law that says minors lack legal authority” should be questioned as to why it should apply to adolescents because even fairly young adolescents have the capacity to think through treatment options and outcomes as adults.²⁶⁹ Furthermore, Hill believes that the courts, parents, and practitioners should “empower minors to make [their own] treatment decisions” especially if the outcome is one they believe is in their best interest.²⁷⁰ And if parents do not advocate on behalf of their teens, Donna Lieberman and Jessica Feierman believe that teens should be informed of their rights because “parental consent requirements and a lack of confidentiality impedes access” to treatment for too many teens.²⁷¹ Cases that established precedent for asserting that minors have a constitutional right to bodily integrity absolutely apply to transgender teens. Average, developmentally normal, mature minors/adolescents over 16 either have the right to bodily integrity or they do not. Since transgender people exist naturally in the world, and they benefit our species, society must learn to put political and personal preferences aside and teach our teens that their voices count, especially when it comes to their own health and well-being because we all ultimately benefit. Because many of them need medical interventions to help them live and express themselves fully, our laws should reflect a collective desire to help them.

²⁶⁹ B. Jessie Hill, "Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles," *Faculty Publications Case Western Reserve*, 2012, 38, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1081&context=faculty_publications.

²⁷⁰ *Ibid*, 44.

²⁷¹ Donna Lieberman and Jessica Feierman, "RRP:Legal Issues in the Reproductive Health Care of Adolescents," *New York Civil Liberties Union* (n.d.), <https://www.nyclu.org/en/rrp-legal-issues-reproductive-health-care-adolescents>.

CHAPTER 5: GENDER-CRITICAL VIEWS/COUNTERARGUMENTS

Looking through daily news feeds and social media posts readily reveal that not everyone agrees that supporting transgender people should become widely accepted or part of policy, but the reasons they disagree vary widely. Opposition to affirmative care comes from primarily three groups: TERFS (Transgender Exclusionary Radical Feminists), Gender Normative Conservatives, and Religious Conservatives. These voices include both progressive and conservative authors as well as scientists, psychologists, and other researchers. These critical voices speaking out against affirmative transgender care and against full inclusion in society of trans people provide an invitation to review their arguments using current research since they seem mostly rooted in unnecessary fears or old data. While I do not agree with most of what they say, I firmly believe that such voices should not be silenced, cancelled, or dismissed. Opposing opinions help frame the debate, and such debate is welcome because science and even religion support the many ways transgender people benefit us as a species.

TERFS

One of the most outspoken TERFs on issues relating to transgender people is Sheila Jeffreys, a professor of Feminist Politics in the School of Social and Political Sciences at the University of Melbourne, Australia, and author of the book *Gender Hurts*. Jeffreys indicts the medical profession especially for their complicity in what she deems a “health problem created by medicine itself.”²⁷² It was, according to Jeffreys, the medical developments that led to the construction of gender identity because it was “necessary in order to justify and explain sex-change treatment.”²⁷³ The problem with Jeffrey’s argument relating to a “construction of gender

²⁷² Sheila Jeffreys, *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism* (London: Routledge, 2014), 21.

²⁷³ *Ibid.*, 27.

identity” rather than acknowledging that it already existed inevitably contradicts the whole notion of feminism itself because gender identity is needed for feminism to exist in the first place. Gender identities have always existed, even prior to scholars defining them or recognizing them. The central problem with the creation of transgenderism, according to Jeffreys, is that it essentially erases the unique qualities of womanhood because transgender men are now considered women too.²⁷⁴ She finds this an affront to feminism. She argues that because transgenderism is a constructed idea purposely created by “forces of male power,” the men get to keep their established power and prestige while also claiming rights to the benefits of womanhood.²⁷⁵ Transgender women, however, would disagree. The crime statistics alone for transgender women indicate that these women do not have the privilege of manhood at all. According to the National Center for Transgender Equality, “trans women, and especially Black trans women, face an alarming and unacceptable amount of violence. Trans women made up 85% percent of those taken from us, and 70% of those trans women were Black.”²⁷⁶ Women who transgender, according to Jeffreys, do not have the same benefit. They erase their womanhood but rarely see the “privilege” from being male. To her, the construction serves the “political agenda of shoring up heterosexuality and maintaining a correctly gendered citizenry.”²⁷⁷ Jeffreys’s also contends that “transgenderism cannot exist without the notion of essential ‘gender’ because “the concept of ‘gender identity’ is founded upon stereotypes of gender” that often thwart the interests of women. Incidentally, a study by Kristen Schilt and Laurel

²⁷⁴ Sheila Jeffreys, *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism* (London: Routledge, 2014), 35.

²⁷⁵ *Ibid*, 20.

²⁷⁶ "On Trans Day of Remembrance, We Honor and Uplift Our Community," National Center for Transgender Equality, last modified November 18, 2022, <https://transequality.org/blog/on-trans-day-of-remembrance-we-honor-and-uplift-our-community>.

²⁷⁷ *Ibid*, 35.

Westbrook called “Doing Gender, Doing Heteronormativity” confirms Jeffrey’s assumption that those people who transition often adhere to rigid binary ideas of gender and lean in to gender stereotypes.²⁷⁸

Jeffreys’s second issue raises concern over the erasure of feminism and lesbianism as women who transgender fracture lesbian communities as they reject womanhood.²⁷⁹ A lesbian and feminist herself, Jeffreys worries that the community and the rights that women like her have fought hard to achieve will erode. She worries that the transgenering of women serves as an antidote to feminism because the women become a part of the caste of men, the privileged caste. But this claim by Jeffreys directly contradicts her prior claim that trans women keep their male privilege. She contends that feminism seeks to dismantle male superiority so that the status of *all* women is raised, but those who essentially become men are in no way advantaged by the mobility towards masculine status by a few women.²⁸⁰ She also worries that voices critical of the transgender movement will be silenced because of an erroneously perceived notion that criticism equates to hate speech.²⁸¹ But the backlash from those seeking to silence her has not stopped her; in fact, Jeffreys continues to call out what she claims are the pernicious effects of transgenderism.

The accusation that transgender women erase female accomplishments manifested in the public arena in 2022 when University of Pennsylvania swimmer Lia Thomas, a female transgender swimmer, won the Ivy League national swimming title, beating out ciswoman Emma

²⁷⁸ Kristen Schilt and Laurel Westbrook, "Doing Gender, Doing Heteronormativity," *Gender & Society* 23, no. 4 (2009): xx, doi:10.1177/0891243209340034.

²⁷⁹ *Ibid*, 45.

²⁸⁰ *Ibid*, 101.

²⁸¹ *Ibid*, 55.

Weyant of the University of Virginia.²⁸² Outside the arena, protesters complained: "We're not going to stand by and let women be displaced," said Annabelle Rutledge, the national director for Young Women for America, adding, "We must fight for their rights."²⁸³ Concerned Women for America president and CEO Penny Nance claimed that "The future of women's sports is at risk and the equal rights of female athletes are being infringed."²⁸⁴ Swimmer Riley Gaines from the University of Kentucky said "I remember watching [the 500-yard freestyle], and [Lia] destroyed everyone," Gaines said. She went on to say that "allowing male-bodied athletes to participate in women's competitions will destroy the integrity of women's sports and leave women vulnerable" and that women "need to protect the integrity of sports, whether it be male or female" because "females have worked way too hard for the past 50 years."²⁸⁵

While Riley Gaines and Emma Weyant might believe Lia had a distinct advantage in the pool because she was born male, research suggests it may not play as significant a role as people think, and in some cases, it does not matter at all. According to Dr. Eric Vilian, a pediatrician and geneticist who studies sex differences in athletes,

We know that men have, on average, an advantage in performance in athletics of about 10% to 12% over women, which the sports authorities have attributed to differences in levels of a male hormone called testosterone. But the question is whether there is in real life, during actual competitions, an advantage of performance linked to this male hormone and whether trans athletes are systematically winning all competitions. The answer to this latter question, are trans athletes winning everything, is simple — that's not the case. And higher levels of the male hormone testosterone are associated with better performance only in a very small number of athletic disciplines: 400 meters, 800 meters, hammer throw, pole vault — and it certainly does not explain the whole 10% difference.²⁸⁶

²⁸² Katie Barnes, "Thomas First Transgender Athlete to Win D-I Title," ESPN.com, last modified March 17, 2022, https://www.espn.com/college-sports/story/_/id/33529775/amid-protests-pennsylvania-swimmer-lia-thomas-becomes-first-known-transgender-athlete-win-division-national-championship.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Tinbete Ermyas and Kira Wakeam, "Wave Of Bills To Block Trans Athletes Has No Basis In Science, Researcher Says," NPR.org, last modified March 18, 2021, <https://www.npr.org/2021/03/18/978716732/wave-of-new-bills-say-trans-athletes-have-an-unfair-edge-what-does-the-science-s>.

Furthermore, trans women who compete at the collegiate level must be on estrogen treatments that aim to lower testosterone levels to within the female range (<1 nmol/L), which would certainly limit any advantage their testosterone would have given them.²⁸⁷ While this paper does not intend to fully resolve the issue of transgender athletes, it does intend to show that when scholars and even celebrities suggest that transgender women erase women, we need to look at the data before we make up our minds because the data helps us all understand the realities of transgender people not the exaggerated fears that serve as click bait on newsfeeds.

Another harmful aspect of transgenderism, according to Jeffreys, includes the various sex-reassignment surgeries, bad psychology, and hormone treatments that she claims have dangerous side effects. These components, she says, do more harm than good for the transgender community primarily because they offer no method of recourse for those patients who have later regrets or who change their minds.²⁸⁸ She claims that the medical industry is, in fact, not interested in mental health because they have created an entire “sex-change industry” that offers no real improvement in physical or mental health for those who suffer with gender dysphoria.²⁸⁹ In fact, she claims that the various surgeries “reinforce harmful stereotypes of gender” and “inflict severe harms to health and human functioning.”²⁹⁰ Despite Jeffrey’s incendiary language, the data do not reflect her claims in terms of detransitioners (people who return to the sex they were assigned at birth after transitioning) or in terms of mental health. In fact, a survey in the US

²⁸⁷ Alison K. Heather, "Transwoman Elite Athletes: Their Extra Percentage Relative to Female Physiology," *International Journal of Environmental Research and Public Health* 19, no. 15 (August 2022): doi:10.3390/ijerph19159103.

²⁸⁸ Sheila Jeffreys, *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism* (London: Routledge, 2014), 72.

²⁸⁹ *Ibid*, 79.

²⁹⁰ *Ibid*, 102.

of nearly 28,000 people found that only “8% of respondents reported some kind of detransition. Of this 8%, 62% per cent did so temporarily due to societal, financial, or family pressures.”²⁹¹ The same survey noted that in terms of mental health, “people who had transitioned were substantially less likely to be currently experiencing serious psychological distress,” and “nearly half (49%) of those who have not transitioned but wanted to were currently experiencing serious psychological distress, compared with 36% of those who had transitioned at any time prior to taking the survey.”²⁹² Therefore, the current data simply does not support Jeffrey’s claims.

The most dangerous aspect of transgenderism to Jeffrey rests in what she calls “Gender Eugenics: the transgendering of children,” which she says is a consequence of the increasing normalization of transgender adults.”²⁹³ Jeffrey argues that sterilization practices of the past were performed to punish or change unacceptable behavior, and she reminds her readers that many of those who originally underwent such surgery were lesbians and gay men. She believes, therefore, that it seems reasonable to question those practices used today that result in permanent sterilization of a population of children.²⁹⁴ Not only are some gender dysphoric children given sterilizing drugs but drugs like hormones that, according to Jeffrey, also cause migraines, asthma, depression, emotional instability, chest pain, amnesia, hypertension, loss of bone density, thyroid problems, liver abnormalities, and vision issues.²⁹⁵ Jeffrey claims that these practices constitute “social engineering” just as eugenics programs did in the past. To her, this

²⁹¹ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, (National Center for Transgender Equality, 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>, 112.

²⁹² *Ibid*, 111.

²⁹³ Sheila Jeffrey, *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism* (London: Routledge, 2014), 123.

²⁹⁴ *Ibid*, 134.

²⁹⁵ *Ibid*, 139.

means that critics should not be silenced and that the practices themselves should be challenged.²⁹⁶

Determining exactly what happens to a body taking cross-sex hormones is chief among various research scientists. Johanna Olson-Kennedy and her group studied the “Physiologic Response to Gender-Affirming Hormones Among Transgender Youth,” and discovered in transgender populations ages of 12-24 years old that the “hormone levels physiologically concordant with gender of identity were achieved with feminizing and masculinizing medication regimens,” and that the use of such hormones “appears to be safe.”²⁹⁷ Transfeminine youth were “started on hormone protocols that included a testosterone blocking agent and feminizing medications,” and “transmasculine youth were all treated with testosterone cypionate via subcutaneous delivery at escalating doses.” They were also on GnRH analogs.²⁹⁸ The study noted in the conclusion that the medications and hormones had the desired positive effect.²⁹⁹ While scientists acknowledge that more research needs to be conducted, most affirm that the positive side effects outweigh the negative, especially for the patients.

To listen to Jeffreys’s claims might give one pause, but one aspect of the eugenics conversation that she ignores is that the eugenics claim works both ways. In Michael Cook’s 2021 article in *BioEdge*, he points out that “the current youth-focused anti-trans legislative push is about protecting society from undesirable people by suppressing and punishing those people as early as possible, ensuring that future generations aren’t contaminated by their ability to

²⁹⁶ Sheila Jeffreys, *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism* (London: Routledge, 2014), 140.

²⁹⁷ Johanna Olson-Kennedy et al, “Physiologic Response to Gender-Affirming Hormones Among Transgender Youth,” *Journal of Adolescent Health*, 62, (2018): 397. <https://www.sciencedirect.com.proxy.libraries.smu.edu/science/article/pii/S1054139X17304123>.

²⁹⁸ *Ibid*, 399.

²⁹⁹ *Ibid*, 399.

thrive.”³⁰⁰ To Cook, this rhetoric sounds very similar to the goals of prior eugenics movements, which “encourage the right people to reproduce while discouraging the wrong sort of people from contaminating others with their inferior genes.”³⁰¹ Furthermore, if transgender people are required by the government to have undergone various kinds of surgeries or participated in other kinds of permanent hormonal changes to meet certain standards, (perhaps for identification purposes or for participation in sports) such governmental requirements constitute eugenical incentives that should also alarm activists. Using the term “eugenics” invokes all sorts of negative associations of America’s dark history of involuntarily sterilizing people, so when one side of the debate weaponizes the word, the public pays strict attention. The difference between the two “eugenics” alarms—Jeffreys’s and Cook’s—is that Cook’s argument recognizes the benefits that transgender people offer human diversity and Jeffreys’s does not. Grace Lavery, an Assistant Professor at UC Berkeley, further articulated a central problem with this kind of TERF rhetoric. She explained in “Clayman Conversations: Three scholars examine the TERF Industrial Complex” that a TERF makes alt-right troll techniques and politics acceptable to liberals who under no other circumstances would acknowledge their relationship with other extremists. But because the language comes from this “apparently embattled group of white feminists,” the relationship is allowed to be sustained, but she hopes for not much longer.³⁰²

While Sheila Jeffrey’s is certainly not the only outspoken TERF, she represents the common rhetoric of the group—transgender people erase feminism, socially engineer children,

³⁰⁰ Michael Cook, "Is 'transphobia' a kind of eugenics?," *BioEdge*, March 2021, <https://bioedge.org/enhancement/eugenics/is-transphobia-a-kind-of-eugenics/>.

³⁰¹ Ibid.

³⁰² "Clayman Conversations: Three Scholars Examine the TERF Industrial Complex," The Clayman Institute for Gender Research Stanford University, last modified October 5, 2020, <https://gender.stanford.edu/news/clayman-conversations-three-scholars-examine-terf-industrial-complex>.

and reinforce gender stereotypes—all of which, when looked at critically, do not accurately reflect the truth that transgender people do not infringe on or erode anyone else’s dignity.

GENDER NORMATIVE CONSERVATIVES

In addition to TERFs, many critics simply hold fast to the old standard of a gender binary, claiming that society benefits from maintaining it. Sam Greenwald, a graduate of Vassar College authored “The Controversy Surrounding Rapid-Onset Gender Dysphoria: Gender Critical Commentary on Gender Affirmative Care for Transgender Adolescents.” Greenwald’s paper focuses primarily on transgender teens, but her criticism of affirmative care she intends to apply—at least to an extent—to the wider transgender community. She begins by asking a few central questions that echo some of Jeffrey’s: “Who’s profiting financially?” “Is gender affirmative surgery a form of self-harm?” (Note that even if affirmative surgery equates to “self-harm,” harming oneself is *not* illegal. Many young people, teens especially cut themselves, binge eat or purge, or, in extreme cases, commit suicide—all of which is a form of harming themselves; yet no one has rushed to enact legislation to forbid such action or to made any of it illegal.) She also wants to know “What evidence shows that being transgender is congenital?”³⁰³ In her research, she discovered that most of the criticism for the treatment of teens comes from a desire to “protect these kids from what they perceive as an overly medicalized, paternalist system which seeks to police nonnormative gender expression back into the binary through biological manipulation.”³⁰⁴ But what Greenwald fails to understand is that while trans kids need protection, the kind of protection they need is from barriers to care, not adults deciding their futures for them. She also asserts that these critics “argue that many cases of dysphoria can be

³⁰³ Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/919, p.4.

³⁰⁴ Ibid, 4.

attributed to underlying psychopathology or trauma, requiring therapy and social solutions instead of medical treatment.”³⁰⁵ She’s right, but only to an extent because she does not point out that the WPATH requires appropriate therapy for any trauma before a person gets recommended for any kind medical intervention.³⁰⁶ Even worse, according to Greenwald, is the fact that “the medical community is far from reaching consensus on best practices. However, she acknowledges that the field is generally moving towards greater acceptance of a plurality of transgender identities as natural human variation rather than psychopathology.”³⁰⁷ But differing opinions will continue until more research becomes widely available. Like Jeffreys who is often cited as being “transphobic,” Greenwald also acknowledges that “many transgender people and advocates of the gender-affirmative approach deem members of the gender-critical movement to be transphobic for threatening the well-being of transgender youth by seeking to foreclose their access to such medically necessary procedures.”³⁰⁸ A central problem for Greenwald involves the reality that “the priorities of medical practitioners are not uniform, and some are more hesitant to proceed than others,” which confuses the landscape even further.³⁰⁹ Greenwald also raises questions surrounding parental rights especially as they relate to medical care and medical decision making.”³¹⁰ Ultimately, according to Greenwald, “the bodies of gender variant youth are reduced to a battle ground for the enactment of competing ideological and scientific theories.”³¹¹

While she’s right about the non-uniform policies, priorities, and parental-rights confusion, the

³⁰⁵ Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/919, p.4.

³⁰⁶ WPATH, *Standards of Care*, (2011), <https://www.wpath.org/publications/soc.>, 24.

³⁰⁷ Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/919, p.5.

³⁰⁸ *Ibid*, 5.

³⁰⁹ *Ibid*, 5.

³¹⁰ *Ibid*, 7,

³¹¹ *Ibid*, 7.

solution is not to thwart care but rather to come up with more uniform policies—a topic that I take on in the chapter on biomedical concerns. I argue there for the uniform acceptance of the “mature minor” standard to help guide practitioners and parents.

Moreover, Greenwald’s paper traces the prescribed psychological treatment frameworks that have ranged from upholding heteronormative biases to eventually those that seek to affirm patients who present with gender dysphoria.³¹² The standards of care for these people now maintain that reparative therapy is no longer considered “ethical,” now affirming the medical necessity of transition-related services by referencing their effectiveness in improving quality of life among transgender people.³¹³ The primary reason that reparative therapy is no longer considered ethical is because “available scientific literature suggest there are strong associations between adverse health effects, such as anxiety, depression, and suicide, and a previous experience of conversion therapy.”³¹⁴ Greenwald also acknowledges a similar problem to Jeffrey in that “there is still a fundamental lack of consensus about how to best care for gender variant youth.”³¹⁵ She does not, however, offer any counterarguments or solutions to this particular “problem.”

Greenwald’s text also provides a criticism of Jeffrey’s gender-critical community, and she explores the concerns of parents who condemn the perceived easy pathways to transitioning. She ends her paper by noting that gender-critical parents often find themselves outnumbered by medical consensus, but she also asserts that parental concern for the wellbeing of their children

³¹² Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/919, p.12.

³¹³ Ibid, 15.

³¹⁴ Minnesota Department of Health, *Summary of Findings: A Review of Scientific Evidence of Conversion Therapy*, (Minnesota Department of Health, 2022), 11.

³¹⁵ Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/919, p.16.

provides the “moral high ground” and motivation necessary to remain skeptical in the face of progressive advocacy that seeks to challenge and redefine what it means to be an accepting and supportive parent.³¹⁶ Because many parents remain dissatisfied with the current polar options of either supporting a child’s transitioning or watching a child commit suicide, they seek additional ways to interpret outcomes and identity.³¹⁷

Greenwald’s last words hint that parents’ rights and opinions about their children should trump those of medical professionals, calling their position “moral high ground,” but this “moral high ground” might not belong to the parents in every case. Determining the morality of transgender treatment options will provide direction for both parents and medical professionals, and I suggest applying the “mature minor” standard in my chapter on biomedical ethics to help mitigate the ambiguity.

Another prominent critic is author of the best-selling, controversial book *Irreversible Damage: The Transgender Craze Seducing Our Daughters*, Abigail Shrier, a writer for the *Wall Street Journal* with an A.B. from Columbia, a B.Phil. from Oxford, and a J.D. from Yale Law School. Her book argues that the current “trans craze” presents a danger to girls, and she encourages parents to stay aware and fight against the current trends relating to transgender treatment. Shrier’s book, while written with a tone of empathy and understanding, certainly aligns with those critical of the movement, enough to encourage parents to “inoculate their daughters” against it, but she basically capitalizes on “all-too-common fears.”³¹⁸ What exactly are the “all-too-common” fears? The fear she seems to suggest is a parent’s fear of having a child

³¹⁶ Sam Greenwald, "The controversy surrounding rapid-onset gender dysphoria: gender critical commentary on gender affirmative care for transgender adolescents," (2019), Senior Capstone Projects. 919. https://digitalwindow.vassar.edu/senior_capstone/91954.

³¹⁷ *Ibid.*, 54.

³¹⁸ Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Washington, D.C.: Regnery Publishing, 2020), back flap.

turn out trans, and such a fear seems to suggest a bias against trans people as well as a discriminatory attitude against this population. She opens her book citing some staggering statistics. She claims that in the last decade in the US, the prevalence of girls claiming gender dysphoria has increased 1000%, and in Europe, the increase is 4000%.³¹⁹ Furthermore, in 2016, females accounted for 46% of sex reassignment surgeries in the US, but in 2017, the number jumped to 70%, and that trend has recently climbed to 80%.³²⁰ Shrier's investigation involved a closer look into the connection between the girls' social media use prior to their announcement of a new gender identity, and she quickly discovered that over 65% of the girls had increased their use of social media, and all of them tended to follow the same "social media influencers."³²¹ (Keep in mind that correlation does not mean causation.) Furthermore, after interviewing countless transgender personalities/influencers, Shrier discovered what she called a "relentless evangelism" for the cause, citing that many of the girls who suddenly identify as transgender find a home, a following, and a sense of belonging in this community enough to change who they are to get it, even if it means separating completely from their biological families who often object.³²²

What Shrier calls "relentless evangelism" could be the way that the community welcomes teens who are often rejected by family members, which is not such a bad thing. Teens desperately need support in times of struggle, and if immediate family does not provide it, a welcoming community might actually help them. I also find the term "evangelism" somewhat ironic, since the truth is that many evangelical families and churches reject trans teens, thus

³¹⁹ Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Washington, D.C.: Regnery Publishing, 2020), 32.

³²⁰ *Ibid*, 33.

³²¹ *Ibid*, 37

³²² *Ibid*, 55.

forcing them to find new families. Perhaps teaching parents that they do not need to fear having a trans kid would help.

Shrier's book also examines the roll of schools (chapter 4), families (chapter 5), and therapists (chapter 6), in promoting some of what she calls this "new-found craze," questioning the practice of affirming a student's gender who may just be questioning or experiencing other kinds of distress. What makes her book seem more credible is the chapter on respected scientists and mental health professionals once seen as open minded and empathetic being pressured by what Shrier calls "activist mobs" when they sound alarms on acceptable treatments and practices.³²³ The pro-trans activist mobs, she claims, tried to silence many early gender-affirming physicians who raised concerns about possible treatments and outcomes. She writes about Dr. Kenneth Zucker, a recognized expert on child and adolescent gender dysphoria and head of Toronto's Gender Identity Service who also helped write the guidelines for the World Professional Association for Transgender Health (WPATH) and who was targeted by a mob of activists and fired, eventually closing his gender identity clinic. She adds noted sexologist Ray Blanchard and academic psychologist and expert in gender identity disorders J. Michael Bailey to her list of dissidents who have been pilloried for calling for caution. She adds other psychotherapists and medical professionals, all of whom have been demoted for the position they have taken in recommending caution surrounding gender-affirmative care, to question whether we as a culture are really doing what is in the best interest of these girls or what is in the best interest of what she calls "prevailing progressive thought."³²⁴ But the "prevailing progressive thought" that Shrier denigrates was more current data that supported affirmative care. The

³²³ Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Washington, D.C.: Regnery Publishing, 2020), 123.

³²⁴ *Ibid*, 123-135.

“activist mobs” were simply trying to get the correct information out to the public so they would understand the realities of the situation.

While the final chapters of her book chronicle much of what other gender-critical authors write about—surgeries and hormone treatments that mutilate bodies and render kids sterile, the end of her book includes stories about kids who desisted or ended up regretting their surgeries. According to Shrier, most of the teenage girls who later regret their transition to male are often publicly shamed online for their decisions to reverse course. Furthermore, many trans girls who transitioned, according to Shrier, ended up having increased stress after transitioning.³²⁵ Again, while some people choose to detransition, the data do not support the numbers that Shrier includes. Either way, people should be supported in both processes—transitioning and detransitioning because affirming care means just that.

Science Based Medicine, an independent, science-based non-profit whose “authors are all medically trained and have spent years writing for the public about science and medicine, tirelessly advocating for high scientific standards in health care,” takes issue with many of Shrier’s claims.³²⁶ Writing for *Science Based Medicine*, Dr. AJ Eckert rebuts Shrier’s research with a tremendous amount of scientific data. Some of the most egregious issues with her findings include the following: 1. While Shrier claims that before 2012, no scientific literature existed focusing adolescent girls ages 11-21 ever having developed gender dysphoria, Eckert shows a “robust base of scientific literature on AFAB trans youth,” including studies published in 1998,

³²⁵ Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Washington, D.C.: Regnery Publishing, 2020), 199.

³²⁶ AJ Eckert, "Irreversible Damage to the Trans Community: A Critical Review of Abigail Shrier’s Irreversible Damage (Part One)," *Science-Based Medicine*, last modified August 10, 2021, <https://sciencebasedmedicine.org/irreversible-damage-to-the-trans-community-a-critical-review-of-abigail-shriers-book-irreversible-damage-part-one/>.

2005, and 2011, to name just a few.³²⁷ 2. Furthermore, Eckert calls out Shrier for not personally interviewing her trans teen subjects, and he reminds us that she did not have any relevant experience working with transgender youth. In fact, most of her information came from parents who did not support their child's trans identity, which makes them questionable as credible witnesses/sources 3. Shrier also makes the claim that gender dysphoria resolves in 70% of children who identify as trans, but Eckert proves that the studies that made those claims have been shown many times to be false or misleading.³²⁸ 4. Most importantly, Eckert corrects Shrier's assertion that healthcare guidelines for trans people are driven by political correctness not biology, citing multiple scientific studies that confirm differences in the brains of transgender patients, particularly in brain phenotypes.³²⁹ (I covered many scientific studies that show the biological connections to being transgender in my chapter on scientific studies.) While the above list of misrepresentations in Shrier's book is incomplete, it shows that there is a concerted effort to mislead and frighten people about transgender individuals, and such misinformation could prove harmful to them if not combatted with scientific data. Shrier's book, on the other hand, accomplished something very important: it invited discussion, and it provided medical professionals and scholars opportunities combat specious claims with truth.

Another vocal critic who holds fast to the gender binary is neuroscientist and sex researcher, Dr. Debra Soh, author of *The End of Gender*. Soh attempts to combat what she calls a one-sided attempt by transgender advocates to deny basic biology.³³⁰ She attempts to cover the

³²⁷ AJ Eckert, "Irreversible Damage to the Trans Community: A Critical Review of Abigail Shrier's Irreversible Damage (Part One)," Science-Based Medicine, last modified August 10, 2021, <https://sciencebasedmedicine.org/irreversible-damage-to-the-trans-community-a-critical-review-of-abigail-shriers-book-irreversible-damage-part-one/>.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Debra Soh, *The End of Gender: Debunking the Myths about Sex and Identity in Our Society* (New York: Simon & Schuster, 2020), 5-6.

topic of gender from what she calls “scientific truth” rather than from a politically motivated agenda.³³¹ Her book attempts to combat the following nine prominent myths she believes run counter to science: 1. Biological sex is a spectrum. 2. Gender is a social construct. 3. There are more than two genders. 4. Sexual orientation and gender identity are unrelated. 5. Children with gender dysphoria should transition. 6. No differences exist between trans women and women who were born women. 7. Women should behave like men in sex and dating. 8. Gender-neutral parenting works. 9. Sexology and social justice make good bedfellows.³³² While Soh relies heavily on scientific research, one thing she fails to acknowledge is that research is just now emerging on many of the “myths” she debunks. Many noted scholars and scientists disagreed with Galileo about the earth’s rotating around the sun, but even the church that excommunicated him eventually could not argue with factual data. Furthermore, Soh’s first claim, that gender is not a social construct opposes current data supported by the World Health Organization that claims that “gender refers to the characteristics of women, men, girls and boys that are socially constructed.”³³³ Her claims that 60-90% of gender dysphoric children desisting by puberty are backed by 11 studies that date from 1972-2013 (only three of the 11 studies occurred after 2000). The problem with these old studies is that the data is simply outdated. A 2022 report by the American Academy of Pediatrics claims that the overall rate of detransition in their 5-year study was as low as 2.5%.³³⁴ Most of the data behind the new studies seems to recognize that society has become more understanding of transgender people, which makes both trans children and

³³¹ Debra Soh, *The End of Gender: Debunking the Myths about Sex and Identity in Our Society* (New York: Simon & Schuster, 2020), 9.

³³² *Ibid*, vii-viii.

³³³ "Gender and Health," World Health Organization (WHO), last modified June 19, 2019, https://www.who.int/health-topics/gender#tab=tab_1.

³³⁴ Kristina R. Olson et al., "Gender Identity 5 Years After Social Transition," *Pediatrics* 150, no. 2 (August 2022): <https://doi.org/10.1542/peds.2021-056082>.

adults more comfortable to live as they are most comfortable in society. Perhaps education should focus more on understanding the benefits of trans people in our culture. Furthermore, the fear mongering needs to stop because trans people are not scary.

RELIGIOUS CONSERVATIVES

Leading the charge for the religious conservatives is Ryan T. Anderson, author of another controversial book, *When Harry Became Sally*, a *New York Times* and Amazon best-selling book. As of 2023, Anderson serves as the President of the Ethics and Public Policy Center, “Washington, D.C.’s premier institute working to apply the riches of the Judeo-Christian tradition to contemporary questions of law, culture, and politics.”³³⁵ He also previously served as a Senior Research Fellow in American Principles and Public Policy for the conservative Heritage Foundation and was the John Paul II Teaching Fellow in Social Thought at the University of Dallas. The central argument in his book hinges on the fact that the current transgender science is based on “alternative metaphysics,” and he believes that the claim that “people are what they claim to be, regardless of contrary evidence” is “fundamentally flawed and rife with flawed ontological assertions.”³³⁶ He questions why sex is determined differently in humans than in other mammals (which I have already shown that it is not in my chapter on evolution) and whether basing proper dosages of medicine for individuals based on gender identity not biological sex could potentially be harmful.³³⁷ (Don’t we assume doctors can figure this out?) Furthermore, his book claims that the LGBTQ community asserts that the “real self is something other than the physical body” in what he calls a “new form of Gnostic dualism” because they embrace “a materialist philosophy in which only the material world exists.” Anderson’s claims,

³³⁵ Homepage, " Ethics & Public Policy Center, last modified April 4, 2023, <https://eppc.org/>.

³³⁶ Ryan T. Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019), back flap.

³³⁷ *Ibid*, 46.

however, as I mention in my chapter on religion, places too high a priority on the body while ignoring the soul, which is another flawed kind of dualism. Anderson adds that “they say that gender is purely a social construct while asserting that a person can be *trapped* in the wrong gender.”³³⁸ But trans people never claim to be trapped in the wrong gender; they claim to be trapped in the wrong sex. But because he does not acknowledge the difference, he does not understand the nuance of their struggle. Anderson also poses several questions that he believes contradict common sense and science: “if gender is a social construct, how can gender identity be both innate and immutable? How can one’s identity with respect to a social construct be determined by biology in the womb? How can it be unchangeable in an ever-changing social construct? Can something be both innate *and* fluid?”³³⁹ And his questions don’t stop there: His list of questions includes others such as “What does it mean to have an internal sense of gender? What does gender feel like? Why should *feeling* like a man make someone a man? And “Why do our feelings determine reality on the question of sex but on little else like our age or our height?”³⁴⁰ Most of the answers to his questions center around his conflation of the terms sex and gender and his misunderstanding about the spectrum of gender, and without this understanding, Anderson’s confusion comes as no surprise. His book also challenges transgender activists to articulate some conception of truth as the basis for how they understand the common good and how society should be ordered,³⁴¹ and so far, he claims that hasn’t happened. In terms of the LGBTQ community, for Anderson, feelings override biology, and that is not good enough for

³³⁸ Ryan T. Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019), 105.

³³⁹ *Ibid*, 96.

³⁴⁰ *Ibid*, 78.

³⁴¹ *Ibid*, 192.

Anderson or his supporters, but the LGBTQ community *does* have a clear understanding of truth, a truth they would argue he refuses to acknowledge.

Anderson's book also chronicles stories about many of the same dissidents (medical and social) as Shrier and Jeffreys mention, making these three strange bedfellows. Anderson also chimes in on the various medical procedures and treatments that cause serious side-effects and life-altering outcomes, echoing what the three other authors warned about trans-affirmative care.

In the end of *When Harry Became Sally*, Anderson includes "A Plan of Action" going forward. While he says that "we must be careful not to stigmatize those who are suffering" he acknowledges in the same paragraph that "the people on the political right [have] made them feel like misfits," "adding to the pain of those with gender dysphoria."³⁴² While these claims seem kind, they mask his clear agenda: stopping transgender people from existing. He offers alternatives that include clinicians that will "help" those with gender dysphoria in ways that don't change their bodies, wanting them to "feel comfortable in their own skin" and return "to living as the sex that they are."³⁴³ Ironically, trans people *are* trying to feel comfortable in their own skin and live as the sex as they are; Anderson just doesn't understand that. Furthermore, Anderson says that "we also need people who are ready and willing to defend the truth in the public square," which is exactly what many scientists and trans activists are doing.³⁴⁴ Most lamentably, he calls on religious leaders and pastors to contribute to these efforts,³⁴⁵ which will only continue to ostracize trans people from far too many churches, keeping them from God's grace, which theologian Scott Bader-Saye laments as explained in the first chapter on religion.

³⁴² Ryan T. Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2018), 211.

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*, 212.

³⁴⁵ *Ibid.*

The last lines of Anderson's book reads "Gird your loins if you would confront this matter. Hell hath no fury like a vested interest masquerading as a moral principle."³⁴⁶ Oh, the irony.

While Ryan Anderson does not necessarily speak for all Christians, two of the largest Christian denominations affirm his stance and support his claims. The Catholic Church, for example, says that their stance is "one that is grounded in genuinely confirmed reality. One is born either or male or female, and this also applies to hermaphrodites who, though they manifest both male and female anatomical aspects at birth, are either biological boys or girls."³⁴⁷ The church here takes a stand on a "fact" that is debatable by most scientific standards. Furthermore, because of this stance, the church recommends anyone who has transitioned to live a chaste life.³⁴⁸ There is no recognition whatsoever of the diversity within God's vast creation. Moreover, the language reflects a position that keeps them from experiencing the fullness of life as a human being by insisting that they live chaste lives, and such a stance runs counter to their well-known positions on life, social justice, and human dignity. The Southern Baptist Church also fails to recognize the legitimacy of transgender lives, saying that:

Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation"; now, therefore, be it resolved that the messengers to the Southern Baptist Convention ... affirm God's good design that gender identity is determined by biological sex and not by one's self-perception—a perception which is often influenced by fallen human nature in ways contrary to God's design"³⁴⁹

³⁴⁶ Ryan T. Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019), 212

³⁴⁷ Tom Nash, "The Church's Position on "Transgenderism"," Catholic Answers, last modified September 8, 2017, <https://www.catholic.com/qa/the-churchs-position-on-transgenderism-0>.

³⁴⁸ Ibid.

³⁴⁹ "On Transgender Identity," *SBC.net*, last modified June 1, 2014, <https://www.sbc.net/resource-library/resolutions/on-transgender-identity/>.

Neither denomination recognizes gender as a spectrum or separate from sex, and both believe that they exist as a result of man's fall from grace in the Garden of Eden. Furthermore, on the official SBC website where they offer "Good News to the Whole World," the news they give to transgender people is anything but good:

Christians should, minister to [transgender people] in a kind, yet firm manner. The church should never turn its back on [people] who are searching and seeking to heal the hurts within their lives. ... While God hates the sinner in his sin, we are called to love the sinner and hate the sin. In doing so, Christ can work through our lives to touch those lost in a world of confusion and darkness.³⁵⁰

While the SBC seems to have a willingness to love them, they link it to their sinfulness rather than to their humanity. Again, this major Christian denomination takes a rather sanctimonious view, focusing on specific practices that they determine sinful. Certainly, not all Christian denominations take the stand that Catholics and Baptists do; but these two denominations' positions are included here because they make up the two largest Christian denominations in the US, which means that the majority of Christians in America have this kind of doctrine preached to them.³⁵¹ In my next chapter on religion, however, I cover the many ways in which other world religions and other Christian denominations have found pathways to support, acknowledge, and affirm the human dignity of transgender individuals.

³⁵⁰ "Stances of Faiths on LGBTQ Issues: Southern Baptist Convention," *Human Rights Campaign*, accessed April 24, 2023, <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-southern-baptist-convention>.

³⁵¹ Daniel I. Joseph, "Largest Christian Denominations in America: The Top 100," *Christianity FAQ*, last modified April 26, 2022, <https://christianityfaq.com/largest-christian-denominations-america/>.

CHAPTER 6—RELIGION

Pied Beauty

By Gerard Manley Hopkins

Glory be to God for dappled things –
 For skies of couple-colour as a brindled cow;
 For rose-moles all in stipple upon trout that swim;
 Fresh-firecoal chestnut-falls; finches' wings;
 Landscape plotted and pieced – fold, fallow, and plough;
 And áll trádes, their gear and tackle and trim.

All things counter, original, spare, strange;
 Whatever is fickle, freckled (who knows how?)
 With swift, slow; sweet, sour; adazzle, dim;
 He fathers-forth whose beauty is past change:
 Praise him.³⁵²

Much of the opposition to transgender people stems from deeply held religious beliefs rooted in rigid, patriarchal doctrine found in many modern world religions. In many cases, doctrinal statements have included imperatives against LGBTQ+ people and practices, especially transgender people, but that has not always been the case. Many traditions of the past—all around the world—have welcomed and even celebrated gender-variant people. Studying these welcoming traditions reveals the truth that transgender people have existed in culture for thousands of years. People in many ancient cultures chose to include gender-variant people as valuable members of their society, which confirms the truth: Gender divergence is not new. It's not new in animal evolution. It's not new in human evolution, and it's not even new in culture. Trans people have always been a part of the human story. Both animal and human evolution have demonstrated the beneficial nature of the various species that undergo sex transformations,

³⁵² Gerard M. Hopkins, "Pied Beauty," *Poetry Foundation*, accessed June 21, 2023, <https://www.poetryfoundation.org/poems/44399/pied-beauty>.

despite the modern inclination to marginalize them. Such behavior is neither supported by history in terms of culture nor by biological evolution. Unfortunately, however, harmful narratives rooted in religious doctrinal intolerance have resulted in the ostracization of trans people. There is, however, a way forward: By looking at other religious cultures, especially ones that predate modern ideas about gender, that have welcomed and valued trans people, perhaps modern religious followers can look for ways to read and interpret scriptures in ways that will allow them to welcome more people. Furthermore, by recognizing the affirming practices and examples found in other religious traditions, perhaps Christians can understand how to see trans people as equals because, historically speaking, the narratives of trans people have a strong spiritual component. In fact, there is a long and rich history in multiple religious traditions of linking the transgender individual with a heightened spirituality. Such awareness and understanding can provide a new way to view trans people among our religious communities.

PRE-CHRISTIAN THEOLOGY

GREEK

Early Greek myths contained many examples of both people and gods experiencing gender fluidity. And although they did not have the same beliefs about gender and sexuality as contemporary American culture does, the Greeks included many stories that contain people and gods/goddesses that changed sex or gender. According to Ovid's *Metamorphoses* (written in 8 CE), Hermaphroditus, child of Hermes and Aphrodite, was born male and was originally symbolized as a phallus, an emblem of male fertility. As the offspring of Hermes and Aphrodite, Hermaphroditus enjoyed the beauty of his parents, and while relaxing by a well in Salmacis, a nymph fell in love with him and prayed that the gods would allow their bodies to become united; therefore, he became multi-gendered. Despite his being born male, he embodied the two sexes,

having the head, breasts, and body of a female but with the sexual parts of a male.³⁵³ In this ancient story, Hermaphroditus, a god, deliberately chooses to embrace both sexes, and the gods, his parents, Hermes and Aphrodite, affirmed his request. In addition, Ovid also tells the story of how Neptune, after raping Caenis (a human female) transformed her into a man, granting her the wish not only to be made into a man (most likely because she did not want to give birth to his child), but also to be made invulnerable to weapons because she never wanted to be wronged again.³⁵⁴ Caenis's wish (while still a woman) for invulnerability should not surprise anyone. By wishing for impenetrable armour, a permanent shield of protection, she gains the ability to buffer herself not only from arrows, swords, and other battle wounds (as a man), but also from emotional and psychological harm. Furthermore, her wish to be made male also suggests another physical way to shield herself from the unwanted desires of men and maybe even the unwanted role of many women (motherhood). The complicated nature of the myth reflects the vulnerability both physically and emotionally of transgender people. Clearly Caenis understood the potential for damage and wanted to insulate herself against it by enlisting the god's help. Ovid includes multiple stories of Caeneus' invulnerability in battles, noting especially Achilles' reaction to and jealousy of the fact that he couldn't be harmed. While Caeneus' wish indicates the increased power that came with manhood in Greek culture, the wish showed considerable foresight and understanding of the difficulties of gender-variant people today. Also in Ovid's *The Metamorphoses* is the story of another human, Iphis, the daughter of Telethusa (mother) and Ligdus (father) of Crete, who was born female, but her mother raised her as a male. Iphis later

³⁵³ "OVID, METAMORPHOSES 4," *THEOI GREEK MYTHOLOGY* - Exploring Mythology in Classical Literature & Art, accessed June 5, 2023, <https://www.theoi.com/Text/OvidMetamorphoses4.html>.

³⁵⁴ "OVID, METAMORPHOSES 9," *THEOI GREEK MYTHOLOGY* - Exploring Mythology in Classical Literature & Art, accessed June 5, 2023, <https://www.theoi.com/Text/OvidMetamorphoses12.html>.

became fully transformed by the goddess Isis into a man. When Telethusa gave birth to Iphis, she concealed the child's sex from her husband and raised her daughter as a boy, primarily owing to their inability to pay a dowry for a daughter. When Iphis turned 13, her father Ligdus arranged for him to marry, and Iphis subsequently falls in love with his betrothed wife. Iphis, however, lamented his situation because he knew his love for the girl would be culturally problematic while being biologically female himself, so he wished he could change his sex to male in order to marry the girl he loved. Iphis prayed for assistance, and Isis, who was deeply moved by Iphis's love, responded by transforming Iphis fully into a man:

[Iphis'] face seemed of a darker hue, her strength seemed greater, and her features were more stern. Her hair once long, was unadorned and short. There is more vigor in her than she showed in her girl ways. For in the name of truth, Iphis, who was a girl, is now a man!³⁵⁵

While the Greeks understood the necessity of male and female marriages for the biological purposes of reproduction, the story strongly affirms not only the acknowledgement of same-sex attraction/love but also the gods' understanding of and sanctioning of such physical transformations. Ovid does not, however, indicate any social ostracization of Iphis and his wife after Iphis' transformation. Iphis' story simply ends with his transformation. Any reader, therefore, might assume they "lived happily ever after." While it is true that the words Greeks did not have a modern conception of gender dysphoria and that they predated the existence of the word transgender, we can use their myths to speak to universal themes of love, happiness, and the intention of the gods to help people thrive on earth. Therefore, from these myths a Greek

³⁵⁵ OVID, METAMORPHOSES 12, "THEOI GREEK MYTHOLOGY - Exploring Mythology in Classical Literature & Art, accessed June 5, 2023, <https://www.theoi.com/Text/OvidMetamorphoses12.html>.

culture emerged that understood that sex and gender do not necessarily remain fixed.

Furthermore, the gods seemed to have a vested interest in the well-being of humans who would benefit from changing sex and or gender. Thus, because the Greeks from thousands of years ago understood that sex and gender was not fixed, and the gods understood this and participated in gender transitions for the betterment of individuals and society, modern Christians can see the benefits of an affirming culture.

HINDU

The Vedic literature of India also provides insight into the ancient understanding that more than two genders exist and that all genders were created—issued forth from Brahma—at the beginning of creation. According to Amara Das Wilhelm, author of *Tritiya-Prakriti: People of the Third Sex*, “the sex or gender of the human being is clearly divided into three separate categories according to *prakriti* or nature.”³⁵⁶ These categories include male, female, and the third sex; therefore, the gender of a person is not determined solely by physical characteristics or genitalia, rather, by “an assessment of the entire being that includes the gross body, the subtle body, and a unique consideration based upon social interaction.”³⁵⁷ This third sex includes a mixing of male and female natures to the point where they cannot be categorized in the traditional ways. Third-sex people (also called “neutral gender”) are mentioned throughout the Vedic literature, and they served as “an important tool for the recognition and accommodation of such persons within society.”³⁵⁸ These members of society were considered good luck even though they did not procreate. For the Hindus, they were celebrated for the way they brought balance to human society and to nature “similar to the way in which asexual bees play out their

³⁵⁶ Amara D. Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions Through Hinduism (Abridged Version)* (Bloomington: Xlibris Corporation, 2010), 30.

³⁵⁷ *Ibid*, 30.

³⁵⁸ *Ibid*.

own particular roles in a hive.”³⁵⁹ Most importantly, however, is the idea that for Hindus, there are no accidents in nature and everything and every person “has a purpose, role, and reason for existence.”³⁶⁰

Furthermore,³⁶¹ Hindu gods, much like the Greek gods, are not bound by a gender binary as I will also argue later in relation to the Christian God.

Hindu religious texts also have specific words for what modern people call transgender people, further suggesting that the gods designed them as such. The Sanskrit words *shandha* and *shandhi* refer to men and women (respectively) with transgender identity. According to Wilhelm, some *shandha* men castrated themselves to become more feminine, but most men simply tied themselves up since self-harm is discouraged in Vedic culture.³⁶² Female-to-male *shandhi* would wrap their breasts much like trans men do today. Most importantly, Vedic culture “allowed transgender people of the third sex to live openly according to their gender identity.”³⁶³ Such people are even mentioned in the ancient Hindu epic *Mahabharata* in the story of Arjuna who changed his name to Brihannala and lived as a woman.³⁶⁴

In Vedic scriptural laws, specifically in *The Laws of Manu*, no laws exist that prohibit sexual behavior among people of the third sex. They were, however, excluded from ancestral worship and obligations and family inheritances, mainly because they did not produce progeny. While such practices may expose areas of exclusion, modern people could approach this

³⁵⁹ Amara D. Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions Through Hinduism (Abridged Version)* (Bloomington: Xlibris Corporation, 2010), 31.

³⁶⁰ Ibid.

³⁶¹ Ibid, 102-107

³⁶² Ibid, 36.

³⁶³ Ibid.

³⁶⁴ MahabharataOnline.com, "The Story of Arjuna," *Mahabharata Story*, Summary, Translation, PDF - Mahabharatam in Telugu, accessed June 6, 2023, https://www.mahabharataonline.com/stories/mahabharata_character.php?id=61.

historical practice with a more welcoming attitude and see that even without having children/progeny people serve a purpose in society, and society can benefit from their full participation. Furthermore, the *Svetasvatara Upanisad*, notes that “The soul is neither male nor female nor third sex although it takes shelter of and assumes itself as such.”³⁶⁵ Since the soul only takes shelter in the body, by seeing gender as a housing and a sanctuary for the soul conveys a richness to gender and a need for more diversity to protect the variety of human souls. In addition, the *Srimad Bhagavatam*, mentions that “The Supreme Personality of Godhead is not woman, man, or third sex, nor is He an animal. He is not a material quality, a fruitive activity, a manifestation or a nonmanifestation.”³⁶⁶ And finally, in Hinduism, the word for human, *puman*, “refers to any person, whether man, woman, or in between.”³⁶⁷ As humans, the soul in particular, reflect the genderless nature of god, the shelter that houses it must also not have to be limited to either male or female. Moreover, every human, according to *Mansumriti* 3.49, all three sexes (male, female, and third sex) are biologically determined at the time of conception.³⁶⁸ If, all of the sexes/genders are determined at the time of conception and are hard-wired in the way people are made, then such an understanding will confirm that trans people do not choose to be as such; they are created the way they are for a specific purpose. Thus, these Vedic verses reflect a value for all kinds of people and recognize that all people created by god have equal value.

The presence of *shandha* and *shandhi* in Hindu religious texts and their freedom to live openly according to religious traditions laid the groundwork for modern third-sex people whom they call *hijras*. *Hijras* have a long history and are often considered to have spiritual powers

³⁶⁵ Swami Gambhirananda, ed., *Svetasvatara Upanishad: With the Commentary of Shankara*, Swami Gambhirananda (Advaita Ashrama, 1986), 5.10.

³⁶⁶ Swami Venkatesananda, *The Concise Srimad Bhagavatam* (State University of New York Press, 2010), 8.3.4

³⁶⁷ *Ibid*, 10.1.

³⁶⁸ *The Law Code of Manu* (Oxford: OUP Oxford, 2009), 3.49.

because they have sacrificed their procreative abilities to the gods and goddesses.³⁶⁹ In fact, to many Hindus, “a hijra’s blessings of a baby will confer fertility, prosperity, and a long life on the child.”³⁷⁰ They are sometimes seen as living embodiments of the divine and are sometimes invited to perform at weddings and other celebratory occasions, as did Brihannala in the *Mahabharata*. According to Sakhi Bhava, author of *Transgender Spirituality: Man into Goddess*, as of 2012, there were approximately 50,000 hijras living in India.³⁷¹ Many of these hijras worship at the temple of Bahuchara Mata because they attribute the goddess to the origin of cross-genderism. They tell the stories of the goddess and participate in large communal celebrations. As noted by Bhava, “The most frequent means of resolving gender conflicts are worshipping a goddess living in the heart, taking on an inner female and identity. Such negation of the self, to these hijras, brings fullness of love.”³⁷² Modern Indian culture has found a way to recognize and find purpose for the hijras, celebrating the unique gifts they offer to the culture. By recognizing their gifts and affirming them, they can live full, rich lives, experiencing the joys and sufferings of their fellow citizens and embracing the necessary spiritual component of the self because they are welcomed in religious places.

One of the most widely documented cases of a transgender religious leader in Hinduism is the story of Bengalese saint Sri Ramakrishna Paramahansa. This saint, born male, lived as a female. Interestingly, she claimed to be Hindu, Christian, and Muslim. She was known as a devoted follower of faith and as a woman with a pure heart and unparalleled dignity. Her life and

³⁶⁹ "The Third Gender and Hijras," *Religion and Public Life at Harvard Divinity School*, last modified 2018, <https://rpl.hds.harvard.edu/religion-context/case-studies/gender/third-gender-and-hijras>.

³⁷⁰ Ibid.

³⁷¹ Sakhi Bhava, *Transgender Spirituality: Man into Goddess* (Scotts Valley: Createspace Independent Pub, 2012), 61.

³⁷² Ibid, 62.

sainthood suggest that a trans woman may live and worship openly and even be revered.³⁷³ Her example showcases the benefits of full inclusion for transgender believers.

NATIVE/INDIGENOUS AMERICANS

Native American religions also recognize and respect what they call “Two-Spirit” people, individuals who embody both the masculine and feminine. The term two-spirit manifested in the late 1980s at the Native American/First Nations Gay and Lesbian Conference in Winnipeg because the Native LGBTQ+ community wanted a word that “resist[ed] colonial definitions.”³⁷⁴ The word does not, however, fully describe these people, but it does “provide evidence that binary understandings of gender has never been accurate for capturing the totality of Native American/First Nation experience.”³⁷⁵ In a two-spirited person, the “masculine and feminine together are sometimes reflected so completely in the body of one person it’s as if they have two spirits.”³⁷⁶ People who are two-spirit often have different social roles, and their work is often a combination of tasks typically associated with men and tasks associated with women. While the idea of two-spirit people still confirms a binary aspect to gender within indigenous people, it does recognize that some people fall outside of conforming to rigid gender stereotypes, roles, and lives. What is not communicated fully in the term is the relationship with spirituality that the culture has associated with it. Two-spirit people have the “incorporation of a male and female spirit.”³⁷⁷ For some, their identity is revealed in a dream or vision, and for others, they have religious roles like healers and prophets.³⁷⁸ Thus, understanding a two-spirit person goes beyond

³⁷³ Sakhi Bhava, *Transgender Spirituality: Man into Goddess* (Scotts Valley: Createspace Independent Pub, 2012), 78.

³⁷⁴ Kit Heyam, *Before We Were Trans: A New History of Gender* (New York: Seal Press, 2022), 200.

³⁷⁵ *Ibid*, 201.

³⁷⁶ *Ibid*, 202.

³⁷⁷ *Ibid*, 203.

³⁷⁸ *Ibid*.

just their identity; it's inextricably linked to their spiritual world view. The concept of two-spirit people, once again, confirms the idea that when people experience the ability to live beyond thinking about their gender identity, that they flourish, living richer, more full and meaningful lives because they can embrace their spirituality and experience all that humans were meant to experience.

The term two-spirit was inspired by a late eighteenth century Native American explorer, Kauxuma nupika, who, after leaving with European traders and marrying one of them, left the Europeans and returned home claiming no longer to be a man but a woman. The name they chose, Kauxuma nupika means "Gone to the Spirits," and shows how the change of gender resulted from some kind of spiritual experience that caused the change.³⁷⁹ Kauxuma continued to cross between genders, reflecting the ability to cross other divides as well between the human and spiritual. It has even been suggested that Kauxuma nupika's spiritual power was enabled by their gender transformation.³⁸⁰ Their transformation, a result of a spiritual journey, allowed them to more fully experience living, even granting her the ability to benefit others. Once again, religion and gender fluidity converge, which reflects yet another religion that recognizes the connection between the two; the tribes welcomed the ability for their members to choose their identities because gender diversity and expression were honored and deemed sacred. The tribes understood that keeping someone from their spiritual life not only inhibited the individual but could also harm their community, so they celebrated what two-spirit people brought to the tribe.

Despite the acceptance of the two-spirit people among members of their respective tribes, European colonists and missionaries often condemned them, even feeding them to dogs, or

³⁷⁹ Kit Heyam, *Before We Were Trans: A New History of Gender* (New York: Seal Press, 2022), 190.

³⁸⁰ *Ibid*, 200.

murdering them.³⁸¹ Because of their rigid interpretation of scripture and its deep roots in their culture, Europeans used their religion to dehumanize, traumatize, and inflict horrors on gender divergent people. In fact, the U.S. government actively tried to *change* two-spirit people. In one case a U.S. government agent “cut off [a two-spirited person’s] hair, made them wear men’s clothing, and forced them to do manual labor” because they insisted that males perform traditionally male tasks, failing to recognize that not all people have the same gifts, interests, or proclivities.³⁸² The people of the tribe were so upset with the treatment inflicted upon the two-spirit people, their chief expelled the agent from the Crow reservation.³⁸³ The story of two-spirited people’s being suppressed echoes in many Native tribes, and like many other of their cultural traditions that colonization attempted to eradicate, they have fought back to keep, and many have survived, but many did not. Thus, the stories of the two-spirit people reveal the dangerous ramifications of the false superiority that the colonists believed they had. The imposing of their religion and culture kept them from seeing the many ways in which the native/indigenous people could have introduced better ways of living to the colonists. Early colonists made no attempt to share culture; they forced on them one way of seeing and being. Such practices not only led to physical harm and kept many people from living out their purpose, but it also might have kept our burgeoning democracy from making other mistakes because we failed to benefit from exchanging ideas. For example, perhaps the rush to rapid industrialization that has since resulted in climate change could have been mitigated by understanding the relationship between people and nature that the indigenous people did.

CHRISTIANITY

³⁸¹ Leslie Feinberg, *Transgender Warriors: Making History from Joan of Arc to Marsha P. Johnson and Beyond* (Boston: Beacon Press, 1996), 23.

³⁸² *Ibid*, 25.

³⁸³ *Ibid*.

In Christianity, there are differing opinions among denominations. For example, portions of Methodists, Episcopalians, and Presbyterians welcome LGBTQ+ people, but even among these denominations, fractures exist that remain unwelcoming. Other more conservative denominations, such as the Roman Catholic Church and some protestant evangelical congregations like non-denominational churches, Assembly of God, the Lutheran Church Missouri Synod, Pentecostal, and Southern Baptist churches have been resistant to fully embracing transgender individuals because it would require changes in thinking.³⁸⁴ They argue that humans been created by God as male and as female to serve a reproductive purpose, and, for many, to differentiate the roles that people are expected to play in the world. Thus, for these Christians, biological sex is divinely ordained and assigned to each person by divine will.³⁸⁵ If we understand, however, that transgender people are natural and purposeful parts of creation, not anomalies or accidents, but made with a purpose, acceptance and affirmation will inevitably follow.

In the predominantly Christian West, before secular society emerged, mankind was governed by transcendent laws. In Western society, according to Charles Taylor in *A Secular Age*, “God was implicated in the very existence of society.”³⁸⁶ His laws governed the ways of being, and humans were subjected to a biblical understanding of man. From the beginning, in Genesis 5:1-2, the Bible says that “When God created man, he made him in the likeness of God.

³⁸⁴ Aleksandra Sandstrom, "Religious Groups' Policies on Transgender Members Vary Widely," *Pew Research Center*, last modified December 2, 2015, <https://www.pewresearch.org/short-reads/2015/12/02/religious-groups-policies-on-transgender-members-vary-widely/>.

³⁸⁵ Victoria S. Kolakowski, "The Role of Religious Objections to Transgender and Nonbinary Inclusion and Equality And/or Gender Identity Protection," *American Bar Association*, last modified July 5, 2022, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/the-role-of-religious-objections-to-transgender-and-nonbinary-inclusion-and-equality/.

³⁸⁶ Charles Taylor, *A Secular Age* (Cambridge: Harvard University Press, 2009), 25.

Male and female he created them.”³⁸⁷ Looking at this verse (that Taylor quotes from the Bible) from a linguistic point of view, one could interpret its meaning in several ways: For instance, it could mean that God made only male and female, only two different kinds of humans. It could also mean that God made male and female as complementary units like two parts of a person, which would mean he made “them,” a gender-neutral pronoun. Therefore, even the sentence—often cited to defend a binary—suggests room for male and female to exist in separate or unified entities. Furthermore, the verse also states that he made male *and* female, not male *or* female, which advances a more generous interpretation of sex and gender. The original understanding of the word “man” that God created obviously meant all of humanity as he made man “in the likeness of God,” a gender-neutral entity. The language, therefore, offers a variety of interpretations, but for a large portion of Christian churches, they have not considered the text to allow for a more inclusive understanding. As Taylor points out, in the Middle Ages and into the Renaissance, culturally speaking, no one questioned the authority of God, so people believed when priests told them that gender identity was ordained by God and fixed. The end. “Everyone believed, and so the alternatives [including those involving gender identity] seemed outlandish.”³⁸⁸ To question or to deny such fundamental truths resulted in swift and public ostracization; according to Taylor, “Going against God [was] not an option.”³⁸⁹ Human identity was completely defined by something beyond the self, and man did not question it. And, as Taylor points out, this system worked well. It provided a strong sense of cohesion and community, a “we are all in this together” mentality, and “as long as the common weal was bound in collective rites, devotions, allegiances, it couldn’t be seen just as an individual’s own

³⁸⁷ Charles Taylor, *A Secular Age* (Cambridge: Harvard University Press, 2009), 25.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*, 41.

business that he break ranks.”³⁹⁰ Thus, people with proclivities deemed atypical by the church had to hide in the background of society. Michel Foucault echoes Taylor’s claims, saying in his work *The History of Sexuality* that atypical sexual behavior would “be driven out, denied, and reduced to silence. Not only did it not exist, it had no right to exist and would be made to disappear upon its least manifestation.”³⁹¹ No safe or welcoming space existed for people living outside the gender norms or for whom the binary understanding of sex didn’t apply, which is why two-spirited people received the treatment they did. Colonists lived in a world that understood people living outside of traditional heterosexual norms as sinful, as evil that needed to be banished.

When looking at scripture, the basis on which most trans people experience persecution within the church, Christians must consider cultural and contextual elements. Most Christians know that the bible includes stories about eunuchs, some of whom were born eunuchs or others who had been castrated for various reasons, usually resulting from some kind of military defeat. Most eunuchs worked for royal women or were advisors to officials. Eunuchs, however, in most of the stories, were not highly valued because people who could not have children could not help build the tribe or supply people to defend against neighboring enemies. Often, as a result, they were excluded. In fact, in Deuteronomy 23:1, it says “No one who has been emasculated by crushing or cutting may enter the assembly of the Lord.”³⁹² According to Linda Herzer, author of *The Bible and the Transgender Experience: How Scripture Supports Gender Variance*, the exclusion of eunuchs changed over time.³⁹³ In fact, as Herzer points out, in Isaiah 56, “the

³⁹⁰ Charles Taylor, *A Secular Age* (Cambridge: Harvard University Press, 2009), 42.

³⁹¹ Michel Foucault, *The History of Sexuality: An introduction* (New York: Vintage, 1990), 4.

³⁹² "Deuteronomy 23:1," Bible.com, accessed June 7, 2023, <https://www.bible.com/bible/111/DEU.23.1.NIV>.

³⁹³ Linda T. Herzer, *The Bible and the Transgender Experience: How Scripture Supports Gender Variance* (Cleveland: Pilgrim Press, 2016), 21.

prophet writes about how God relates to *all* those whose actions show that they are following God, including eunuchs.”³⁹⁴ Later, in the New Testament, Luke tells the story of Philip and the Ethiopian eunuch in the book of Acts of the Apostles. In that story, the Ethiopian eunuch reads Isaiah and eventually asks to be baptized, and Philip does just that, demonstrating “God’s desire to include eunuchs in the assembly.”³⁹⁵ These passages proved transformational to author Austen Hartke, author of *transforming: The Bible and the Lives of Transgender Christians*, who recounts reading the verses in Isaiah and feeling a strong connection to the stories of the eunuch because God was quieting fears and promising welcome.³⁹⁶

While the aforementioned passages of scripture include stories about eunuchs, many Christians look first at what Jesus says about gender variant people like the eunuch. Jesus actually speaks about a eunuch in Matthew 19:12 in a passage responding to a question about divorce. Jesus says, “For there are eunuchs who were born that way, and there are eunuchs who have been made eunuchs by others—and there are those who choose to live like eunuchs for the sake of the kingdom of heaven. The one who can accept this should accept it.”³⁹⁷ Jesus clearly argues that living as a eunuch benefits the kingdom of heaven! Since scripture also teaches in Galatians 3:28 that “There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus,” the binary construction of gender is, once again, eliminated, and such language seems to strongly affirm transgender people.³⁹⁸ Furthermore, Herzer points out that while the Israelites still saw having children as necessary to building the

³⁹⁴ Linda T. Herzer, *The Bible and the Transgender Experience: How Scripture Supports Gender Variance* (Cleveland: Pilgrim Press, 2016), 21.

³⁹⁵ *Ibid*, 24.

³⁹⁶ Austen Hartke, *Transforming: The Bible and the Lives of Transgender Christians* (Louisville: Westminster John Knox Press, 2018), 90.

³⁹⁷ "Matthew 19:12," Bible.com, accessed June 7, 2023, <https://www.bible.com/bible/111/MAT.19.12.NIV>.

³⁹⁸ "Galatians 3:28," Bible.com, accessed June 15, 2023, <https://www.bible.com/bible/111/GAL.3.28.NIV>.

tribe, the fact that Jesus mentions the eunuch, a gender-variant person, suggests that Jesus must have known someone born that way. It also suggests that Jesus recognized gender variance. He was well aware that “there were more than just two ways to live out one’s gender—that male and female were not the only two realities.”³⁹⁹ Such an acknowledgement proved transformational to Hartke who understood that “Jesus lifts up the eunuch as an example for the disciples and for Christians everywhere; he doesn’t just say that people who are already eunuchs can be part of the kingdom of heaven.”⁴⁰⁰ Furthermore, as Hartke noted, Jesus never uses a eunuch as a negative example. He saw them as “people with a variety of experiences and as people with something important to teach the world about God’s kingdom.”⁴⁰¹ Therefore, since gender-variant individuals (which includes trans people) are important to God’s kingdom and recognized as such by Jesus, then Christians who deny them the right to live the way God made them thwart their ability to experience God’s grace.

Episcopalian ethicist and professor Scott Bader-Saye in his article “The Transgender Body’s Grace,” argues for “understanding gender transition as an eschatological formation ordered to the body’s grace,” claiming that “gender is neither an immutable given nor superficial choice but a complex relationship between one’s sense of self, one’s bodily sex traits, one’s experience of the attention of others, one’s location in a gendered social system, and one’s understanding of human purpose.”⁴⁰² Bader-Saye’s argument directly answers the most common Christian objections (especially those raised by Anderson relating to what he calls a new form of Gnostic dualism that were discussed previously in my chapter on counterarguments), and Bader-

³⁹⁹ Linda T. Herzer, *The Bible and the Transgender Experience: How Scripture Supports Gender Variance* (Cleveland: Pilgrim Press, 2016), 45-47.

⁴⁰⁰ Austen Hartke, *Transforming: The Bible and the Lives of Transgender Christians* (Louisville: Westminster John Knox Press, 2018), 110.

⁴⁰¹ *Ibid*, 110.

⁴⁰² *Ibid*, 75-76.

Saye does this by breaking down some of the language in scripture most often used in defense of a gender binary. Ultimately, however, Bader-Saye seeks to assert that transgender individuals are part of God's created order and that it is our duty to believe them and work with them toward achieving healing and wholeness.

Bader-Saye attempts to create a framework that allows space and empathy for transgender persons. Specifically, he argues that "Christian transgender affirmation needs to go beyond liberal hospitality to articulate a theology of gender transition as an eschatological transformation in service of the body's grace" and that the church needs to eschew current cultural constructions of gender identity.⁴⁰³ To achieve his ends, Bader-Saye notes three common Christian objections to gender transitioning. First, "transgender identity presupposes a Gnostic retreat from the unity of body and soul."⁴⁰⁴ Second, "gender transitioning is a denial of and a threat to the fixed ontological male/female binary built into creation," and third, "gender fluidity involves a capitulation to the idol of modern voluntarism and self-creation at the expense of embracing natural limits and a human ecology."⁴⁰⁵ Bader-Saye acknowledges that while some Christians believe and confirm the old "natural order," all Christians should recognize that there are real people living actual lives who need support, respect, and attention from within and without of the church.

Bader-Saye specifically answers each Christian objection. He addresses the first objection by arguing that if we make "the body the lone arbiter of gender" it is just another way of bifurcating the body and soul; it's a "reversal in favor of the body, and arguably an even more

⁴⁰³ Scott Bader-Saye, "The Transgender Body's Grace," *Journal of the Society of Christian Ethics* 39, no. 1 (2019): 77, doi:10.5840/jsce2019445.

⁴⁰⁴ *Ibid*, 80.

⁴⁰⁵ *Ibid*, 81.

reductive position.”⁴⁰⁶ As for the second objection, he takes on the language of Genesis 1:27: “male and female he created them,” suggesting that it doesn’t mean that a person must stay that way. Furthermore, he reminds the reader of the various “intermediate states between contrasting terms” of Genesis like light and dark/day and night, which obviously have intermediate stages such as dusk and dawn. Bader-Saye concludes that “the wider narrative context of Genesis 1:27 suggests that the binary structure of the first creation story does not itself rule out variations.”⁴⁰⁷ For the third objection, Bader-Saye believes that the fear of self-creation is false because for many transgender people, their gender always was the way they see it. In fact, their nonconformity goes against what God made them to be.⁴⁰⁸

Bader-Saye’s essay also includes an explanation of what he means by “embodied grace,” a term he borrows from an essay called “The Body’s Grace” in *Theology and Sexuality* magazine written by theologian Rowan Williams. Bader-Saye believes that Williams’ exploration of how bodies desire and participate in the giving and receiving of divine grace means that for transgender people the unity of their body and soul is never achieved in the social context, which keeps them from experiencing grace, and for Bader-Saye, it is our job as fellow Christians to walk with them so that they may be able to experience a graced existence and enjoy full fellowship with God and others.⁴⁰⁹ Bader-Saye understands that for transgender people to live as Christ would want them to, they need to accept their bodies as they were created and so does the church because if they fail to, they cannot fully experience the Grace of God or participate fully in the meaning and purpose of their lives.

⁴⁰⁶ Scott Bader-Saye, "The Transgender Body's Grace," *Journal of the Society of Christian Ethics* 39, no. 1 (2019): 85, doi:10.5840/jsce2019445.

⁴⁰⁷ *Ibid*, 90.

⁴⁰⁸ *Ibid*, 91.

⁴⁰⁹ *Ibid*, 83.

Hartke confirms Bader-Saye's claims as he tells the story of Asher, a trans Christian struggling with his gender identity. Asher's struggle focused on the body, but he soon realized while attending a Lutheran church that he suddenly hungered for the Eucharist (a representation of Christ's body), and that it was Christ's body that was beckoning him back into faith. Asher speaks of being "re-membered"/"being put back together" by being welcomed in an affirming congregation.⁴¹⁰ Furthermore, for Hartke, the recognition of the importance of the body to Christians also meant that the body is important for trans people, too. Jesus also had a body that was transformed, and he suffered in that body; he had wounds that bore witness to his struggle with his body,⁴¹¹ and for trans Christians, like Hartke, that understanding felt amazing. For years, Hartke felt ashamed of his body and keenly recognized that his different body was unwelcome in Christian spaces. When Hartke understood the way that Christ's body also suffered, he felt validated in his own suffering because he shared in the suffering of the savior himself. It provided a way for him to feel less ostracized, thus allowing him to more fully experience his faith and live a fuller, richer life. He could move beyond thinking about his identity to thinking about transcendence, which opened the door to thinking about meaning and purpose. Without such transformation, Hartke would have remained limited to a more meaningless existence. His understanding brought with it a profound awareness that God delights in all of us, body, soul, and spirit.

TRANSFORMING FAITH CULTURE

What needs to happen going forward is for the church itself to undergo a transformation and attempt to understand how alternative sexualities and the gender dysphoric fit into the

⁴¹⁰ Austen Hartke, *Transforming: The Bible and the Lives of Transgender Christians* (Louisville: Westminster John Knox Press, 2018), 134.

⁴¹¹ *Ibid.*, 136-137.

Christian tradition. Linn Marie Tonstad, a professor at Yale Divinity School, attempts to answer this question in her book *Queer Theology*. Her book makes the argument “that queer theology is not about apologetics for the inclusion of sexual and gender minorities in Christianity, but about visions of sociopolitical transformation that alter practices of distinction that harm gender and sexual minorities as well as many other minoritized populations.”⁴¹² Because Tonstad believes that too many Christians remain hostile to LGBTQ people, *Queer Theology’s* goal seeks to move alternative sexualities from the column of sexual acts marked “illicit” into the column marked “licit” by asking why do gender and sexuality matter? Tonstad claims that early theologians only saw the two as temporary because our primary happiness in the end is God (which never changes), but she also reminds us that God’s plan for humanity is their salvation and sanctification from subjection to death and corruption, which suggests that gender and sexuality are secondary at best.⁴¹³

Tonstad looks at the various ways the body has been viewed in the past. First, Augustine, who was antagonistic to the body and who put the body at odds with desire; second, Descartes, who famously said, “I think therefore I am” and whose focus was on the soul not the body; then Freud, who focused on the unconscious and who put sex at the center. These swings in the interpretations of the significance of the body and soul in the past can allow the church the freedom to move past a binary interpretation of the body and into places that affirm all people because “in Christ there is full liberty.”⁴¹⁴ And her views on body and soul clearly support the ideas of body that Herzer, Hartke, and Bader-Saye articulate as necessary for trans Christians.

⁴¹² Linn M. Tonstad, *Queer Theology: Beyond Apologetics* (Eugene: Wipf and Stock Publishers, 2018), 3.

⁴¹³ *Ibid*, 4, 8.

⁴¹⁴ *Ibid*, 37.

Tonstad also evaluates Justice Kennedy's (in his opinion in *Obergefell v. Hodges* legalizing gay marriage) classical liberal and Enlightenment assumptions about marriage and human dignity. In it he argues that our culture "respect[s] [marriage] so deeply that [gay people] seek to find its fulfillment for themselves."⁴¹⁵ Keeping people from experiencing fulfillment, therefore, runs counter to the purpose of culture. Tonstad further exposes the ways that our language participates in these sociopolitical processes that determine who gets the full protection of the state and who bears the brunt of the state's violence (the often marginalized). If queer people invest in the language that Kennedy uses, queer people also invest in the kind of citizen and the kind of person that Kennedy's opinion designates as the sort of person who deserves state protection.⁴¹⁶ He sees people as people, not as merely identities, and to do such allows them to fully blossom as people.

Tonstad concludes her book with a threefold summary in relation to the Christian faith: (1) Christianity can embrace various sexualities and identities because it is about intimacies and transgressions of binaries; (2) Christianity can embrace all LGBTQ people because it is about radical inclusion and love; (3) Christianity has room for all kinds of people because it includes the ostracized and the strange.⁴¹⁷ And strange does not have to mean something bad. It means that Christianity must continue to serve the people as Jesus would have wanted us to. Therefore, Christian scripture should not be used as a basis for exclusion of trans people.

Tonstad's claims about Queer Christianity are echoed by Mihee Kim-Kort, author of *Outside the Lines: How Embracing Queerness Will Transform Your Faith* as she claims that the church's accepting queer and trans people widens the bounds and expression of love, and

⁴¹⁵ Linn M. Tonstad, *Queer Theology: Beyond Apologetics* (Eugene: Wipf and Stock Publishers, 2018), 60.

⁴¹⁶ *Ibid*, 61-63.

⁴¹⁷ *Ibid*, 129.

nothing could be more Christian.⁴¹⁸ The gospel tells the story of radical love, acceptance and grace. She also claims that a church that affirms LGBTQI+ people breaks down borders, refuses to cut people off, and offers them the possibility of connecting to something deeper, knowing that the ultimate goal is an eternal one. It recognizes the wholeness of human existence. The connection to something deeper is something everyone needs to be able to live life to the fullest and to experience meaning and purpose. Without the ability to connect to something deeper, the Christian church essentially sentences LGBTQ+ people to half-lived lives. Kim-Kort reminds readers of how often Jesus broke barriers, walked in prohibited places, served, spoke, and loved on people many spiritual people felt were unfit.⁴¹⁹ The irony, of course, is that the church seems unfit to care for the people that Jesus argued actually benefited the kingdom of God. LGBTQ people are not unfit. They are uniquely gifted to serve not only the church but also our communities and our world.

One way that more traditional denominations and evangelical churches currently address the issues of gender dysphoria and transgender people is through focusing on belonging, believing, and becoming, but too often, conservative churches settle in on “biblical absolutes,” which often fail to resonate with trans congregants. One such evangelical is Mark Yarhouse, the Dr. Arthur P. and Mrs. Jean May Rech Chair in Psychology at Wheaton College, who runs the Sexual and Gender Identity (SGI) Institute. His recommendation for gender dysphoric and trans people calls for 1. Thoughtful clarity about sex and gender (although holding fast to traditional biblical interpretation). 2. Relational ethics that focus on sustained relationships with Christians from people who don’t share common views, and 3. Humility. He believes the church

⁴¹⁸ Mihee Kim-Kort, *Outside the Lines: How Embracing Queerness Will Transform Your Faith* (Minneapolis: Augsburg Books, 2018), 100.

⁴¹⁹ *Ibid*, 195.

should demonstrate greater humility when it comes to transgender people. 4. Climate. Churches need to eschew toxic masculine, and cultural femininity in ways that welcome various gender expressions. 5. Sanctification, or working toward holiness and demonstrating Christian maturity, which requires us to give space, grace, and patience. Finally, he adds 6. Social support. He believes churches should offer social support to those who try to navigate this difficult territory.⁴²⁰ In many ways Yarhouse is right because his claim that Christians should approach trans people with humility, an inclination to serve, and a with a welcome mat looks good and is a kinder approach, but unfortunately, it stops short. The undertone of his text pushes the same issues that many trans people see right through: working toward holiness doesn't include changing gender. While his words are a step in the right direction, they don't go far enough to provide truly affirming spaces for trans people seeking Christian fellowship and community because they still expect them to return to and recognize the heteronormative beliefs of the church. Many churches expect the trans people to be willing to change their minds without having the humility to acknowledge that they may have gotten it wrong themselves. Church leaders need to understand the reality that gender dysphoria cannot be assuaged by changing a person's mind. It would involve changing their brains, their genetic makeup, and their hormones. They need to recognize that God gifted them uniquely to fulfill a purpose, and the church should not stand in their way because doing so would prevent them from fulfilling their purpose, God's grace, and enjoying the fruits of living their lives most fully as God intended all of us to. The church has been wrong before on issues of race, slavery, divorce, abuse, and many other topics.

CONCLUSION

⁴²⁰ Mark A. Yarhouse, *Understanding Gender Dysphoria: Navigating Transgender Issues in a Changing Culture* (Downers Grove: InterVarsity Press, 2015), 155-159.

Advocating for transgender people, does not mean we live in a “post-morality” world as Charles Taylor would call it, a world that has abandoned thousands of years of moral teaching. Perhaps it means that we live in a post *rigid*-morality world, a world that welcomes progress, growth, and ethical gains. Trans people *can* find the “communal cohesion” Taylor says is necessary through greater inclusion in the church. In fact, if they don’t, then they remained sentenced to less fulfilling lives outside of full community and wholeness as a person with a body, mind, and spirit. Furthermore, Christians must embrace current scientific research because evidence supports the idea that gender dysphoria is not just a feeling; it’s hard-wired into people for a specific purpose and to benefit the rest of us. Trans people were born into their experience: In fact, they were “fearfully and wonderfully made.”⁴²¹ Their lives and identities are no accident. As humans with bodies, minds, and souls, suggesting that some of us must ignore our souls to have happy bodies must end. While some organized religions have too often refused to allow gender variant people to continue their religious journeys, others have recognized them, celebrated them, and allowed them to flourish. And if other ancient cultures and religious traditions experienced healthy and vibrant communities that allowed for gender variant people, then Christians can learn from them how to best embrace these wonderfully unique members in ours.

⁴²¹ "Psalms 139:14," Bible.com, accessed June 7, 2023, <https://www.bible.com/bible/111/PSA.139.14.NIV>.

CHAPTER 7—CONCLUSION

I'm writing this conclusion during the month of June, Pride Month in the U.S., which seems a fitting time to conclude this research. In addition, on the first day of this June, my oldest child, at age 25, started testosterone treatment to transition. When I first began to study this topic, I hoped and prayed that my child would change his (her at the time) mind and grow into the beautiful girl that I had expected her to be from birth. I think I even told him that. I am even more embarrassed to admit that, at first, I manipulated my child by amplifying the terrifying side effects of hormone treatment to him and left out information that I found in my research about its safety and the happiness of those who finally felt fully themselves. I wanted him to slow down and take his time, which he did, but I deeply regret having made him play by my rules. I appreciate that, at 25, he can now confidently say that gender dysphoria was not just a phase. He wanted his frontal lobe to be fully developed before he made any life-changing decisions, and he waited until that point, which took a lot of strength, a strength beyond what I can imagine. Nevertheless, this journey, fraught as it was with my child, led me to the conclusions I have drawn in this dissertation.

As the *United Nations Declaration of Human Rights* reminds us in Article 1, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,” and anything short of free and equal in dignity will keep transgender people from experiencing the fulness of life that most people take for granted and that my research supports.⁴²²

⁴²² "Universal Declaration of Human Rights," United Nations, accessed July 21, 2023, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

This research also concludes with the application of one additional unexpected perspective. While most of what I have read in the past five or six years has focused on transgender care, I decided to pick up David Brooks' *The Second Mountain: The Quest for a Moral Life* on a recent road trip, and surprisingly, after reading the first few pages of the introduction, I knew that it applied to my work.

In the introduction to David Brooks' *The Second Mountain: The Quest for a Moral Life*, he asserts that life has what he calls a "two-mountain" shape: the first involves all kinds of accomplishments and the performing of certain tasks in response to what the world says we are: we get degrees, jobs, spouses, houses, and have kids.⁴²³ Brooks asserts, however, that some people find living on this first mountain unfulfilling. To make it to the second mountain, people experience some form of transformational moment or epiphany or, in some cases, suffering that interrupts their lives and causes them to rethink everything in terms of how they can live for others and make the world a better place. To quote Brooks, "If the first mountain is about building up the ego and defining the self, the second mountain is about shedding the ego and losing the self...If the first mountain is elitist—moving up—the second is egalitarian—planting yourself amid those who need and walking arm in arm with them."⁴²⁴

After contemplating Brooks' concept of the two mountains, I realized that his words not only sum up my own experience with the topic of transgender inclusivity but also suggest dire consequences for trans people who have been forbidden from ascending the first mountain and societal consequences for everyone else because when marginalized groups are forbidden from ascending the first mountain, everyone is prevented from thriving on the second mountain, as Brooks would phrase it. Furthermore, this concept can also be related directly to the ways in

⁴²³ David Brooks, *The Second Mountain: The Quest for a Moral Life* (New York: Random House, 2019), xi.

⁴²⁴ *Ibid.*, xvi.

which the church can either contribute to or hinder a trans person's approach to summiting what Brooks calls the second mountain, and I would suggest that it even speaks to the need for the church to have its own "second mountain" experience, which would ideally result in full inclusion and acceptance of transgender members.

During my research, most of what I found proved fundamentally transformational to me, and it has thrust me on to the second mountain, a place where I can spend the rest of my life working to make the world more empathetic and inclusive, walking arm in arm with trans people especially. Even though my natal female child is now my son, my transformation has made me a different person, and his has made him who he already was, though better equipped to ascend his second mountain.

The problem with living in a society full of so many first-mountain people, according to Brooks, is that society's members remain focused on the self and stay separated and divided. Therefore, if we prevent trans people from ascending the first mountain, we prevent everyone else from experiencing the fulfillment found on the second mountain as well. And we have left most trans people floundering. They are stuck trying to ascend their first mountain, the mountain where they claim their identity, but the rest of society prevents them from doing so. In a Sisyphusian cycle, they live their lives in climb mode, ascending steep stairs every day only to find another portion to climb the next day. Their mountain has no top. What this means is that, as a culture, we prevent trans people from achieving joy, and we keep them from making the more meaningful journey to the second mountain. If only we all could see how helping them make it to the top of the first mountain can help us all make the jump to the second.

Our early human ancestors lived comfortably on the first mountain, not having evolved enough as a society or as intellectuals to perceive of the second mountain. They established

skills, roles, structures, language, and eventually myths that helped them (and now us) define who they were and what they concerned themselves with: survival. And people who are not allowed to embrace their identity essentially remain in survival mode, unable to evolve themselves. My research, therefore, contends that once embraced, trans people will certainly be able to more fully thrive much like everyone else, and society will benefit as well with more second mountain people working for the good of the whole.

As humans evolve, thriving resembles the Greek word *eudaimonia*, the highest good a human could strive toward—a life well lived. For people stuck waiting on identity affirmation, there can be no thriving. If the summit of the second mountain means a person reaches a state of contentment in life, a place where they have found purpose and are living it out, then trans people deserve to experience the summit of human existence, too. My research then goes beyond merely affirming trans identities. It requires it as a first step so that they too can enjoy the transcendence that comes as a result of the fulfillment of the human journey.

The Greeks, Hindus, and the Native American religions understood the necessity of *eudaimonia* and allowed their gender divergent population to fulfill their ultimate meaning and purpose. Entire tribes came together to defend two-spirit people against colonizers who imposed their gender norms and religious customs on people they believed were essential to their groups' survival. Repeatedly, the places where gender-divergent people were allowed full inclusion in society experienced the most benefits, and the people themselves flourished as a result.

Brooks' second mountain philosophy works for church denominations as well. To some it may seem obvious that the denominations holding fast to keeping transgender people from membership or leadership not only keep the individuals from lives of flourishing, but they also keep their own institutions from flourishing as well. Those that remain steadfast, holding on to

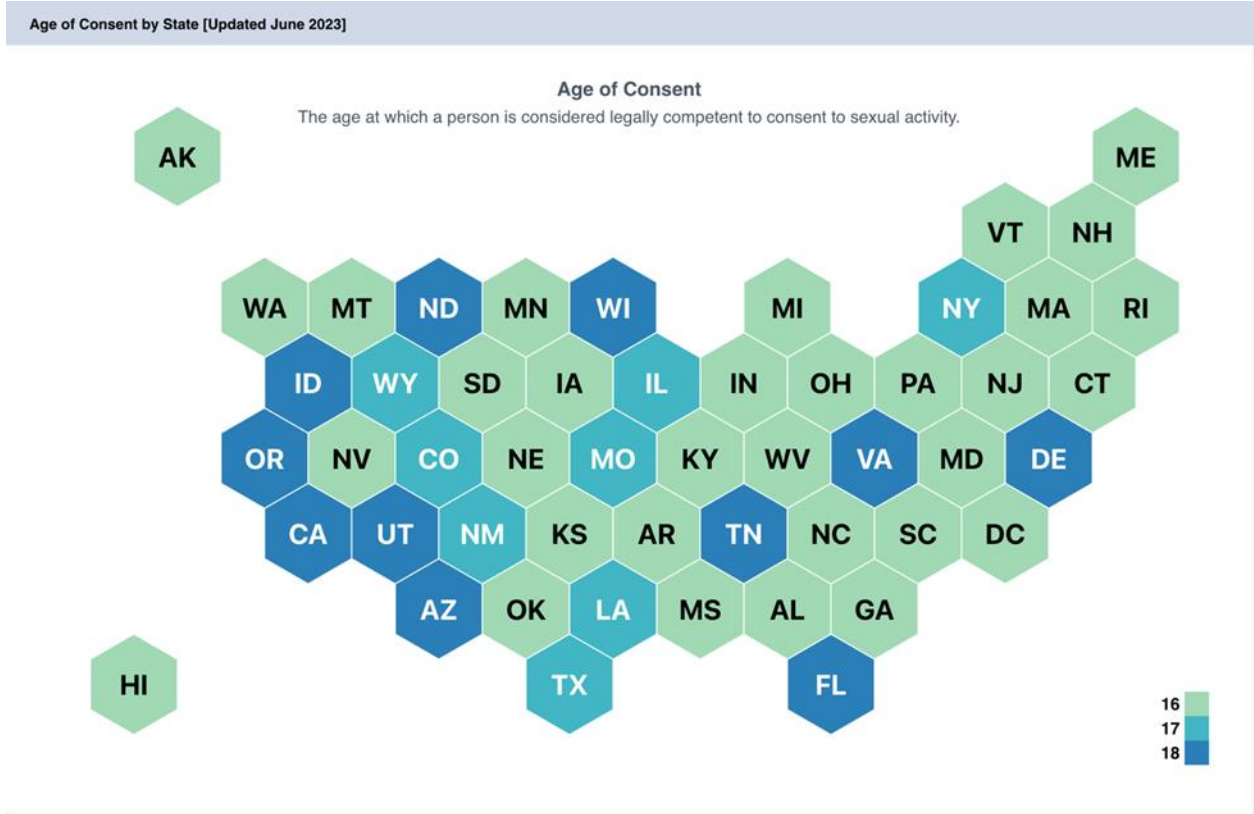
their identity and rigid theology, forego the opportunity to experience a church body that is liberated from its first-mountain identity. The most inclusive churches, not surprisingly, are themselves thriving. As Emerson famously says in his essay “Compensation,” “The exclusionist in religion does not see that he shuts the door of heaven on himself, in striving to shut out others.”⁴²⁵ But if full inclusion became reality, the church itself could also evolve and flourish.

While this dissertation’s research did not address the identities of non-binary people, intersex people, or gender-fluid people, more research is needed in these related areas. The identities of queer-identified people are often clustered together and misunderstood, but they are each unique. They deserve research dedicated to their struggles because all people merit greater understanding and acceptance so that they too can experience *eudaimonia* and thrive.

My hope is that my research has demonstrated that transgender people do not deserve anything but full inclusion in society and that societal fears have no grounding in truth. Research confirms biological roots as their brains, genes, and hormones reveal. Furthermore, transgender individuals have existed for millennia and naturally occur in myriad species—including our own—and when permitted, they can and will provide immeasurable benefits to our society and species.

⁴²⁵ Ralph W. Emerson, *Essays and Poems by Ralph Waldo Emerson* (New York: Barnes and Noble Classics, 2004), 145

Appendix B Age of Consent by State (for sexual activity)



Appendix C
[Interstate Commission for Juveniles](#)

State	Civil Age of Majority	Age of Criminal Responsibility/Majority	Age Juvenile Case Can Be Transferred to Adult Court	Maximum Parole Age	Maximum Probation Age
Alabama	19	18	14 with a juvenile court hearing; 16 direct file for class A felonies	21	21
Alaska	18	18	16	N/A No juvenile parole in Alaska	19
Arizona	18	18		18	18
Arkansas	18	18	14	21	21
California	18	16	16	N/A	25
Colorado	18	18	15	21	Open--If a person commits a crime as a juvenile, and are not adjudicated on that crime until they are an adult, they will be placed on Juvenile Probation regardless of their age.
Connecticut	18	18	15	N/A - Effective 7/1/18, delinquency commitment was removed from statute as a disposition for adjudicated delinquents, thereby eliminating juvenile parole in Connecticut.	Court may place adjudicated delinquent (<18 at time of offense) on sprvsn with/without residential placement, to exceed 18 mos. May be extended no more than 12 mos. Total sprvsn not to exceed 30 mos. Max prob. age varies if juvenile adjudicated after 18.
Delaware	18	ranges between ages 14-16 depending on the specific charge	14	21 (aftercare)	21
District of Columbia	18	18	16	N/A	21
Florida	18	16	The juvenile offender must be at least 14 years old.	21	19
Georgia	18	17	13-17 for certain offenses	21	21
Hawaii	18	18	On/after 16 and alleged to have committed act that would constitute felony if committed by adult under certain circumstances. Minimum age on/after 14 & alleged to have committed act that constitutes a felony if committed by adult. See HRS 571-22.	20	20
Idaho	18	18	Generally 14 but for certain offenses in Idaho Code 20-509 (murder, rape, arson, etc.) there is no minimum age	No juvenile parole in Idaho	21
Illinois	18			21	21
Indiana	18	18 for all criminal offenses; 16 for certain felony offenses (see IC 31-30-1-4)	Upon waiver motion by prosecutor and finding of juvenile court: 12-16 for certain major felony offenses; no minimum age for felony offense and previous felony or non-traffic misdemeanor conviction (see IC 31-30-3)	21	21
Iowa	18	18	14	18	18
Kansas	18	10	14	23	23

State	Civil Age of Majority	Age of Criminal Responsibility/Majority	Age Juvenile Case Can Be Transferred to Adult Court	Maximum Parole Age	Maximum Probation Age
Kentucky	The Juvenile Code does not contemplate a minimal age of criminality. Ten (10) is the minimal age for secure detention of a juvenile unless it is a capital offense. Must be at least thirteen (13) years of age in order to be declared as a JSO.	The age of 18 triggers adult court jurisdiction.	Must be at least fourteen (14) years of age., under circumstances outlined in KRS 640.010. Contact ICJ Office for more information.	There is no age or offenses for parole eligibility. Youth can be committed up to the age of 18 to DJJ. If the youth is 17.5 years of age, then for a period of up to one (1) year. Youth can have the commitments extended up to the age of 21 if independent	Youth can be probated to DJJ for up the age of 18 or if youth is 17.5 years of age- up to 1 year.
Louisiana	18			21	21
Maine	18	18	No minimum age for a bind over to adult court.	21	21
Maryland	21	14 for 1st Degree Murder and Rape, but normally 16	14 for 1st Degree Murder and Rape, but normally 16	21	21
Massachusetts	18	18	14	18 or 21 (if indicted as Youthful Offender)	18
Michigan	18	18	14	N/A Michigan does not have juvenile parole	21
Minnesota	18	18	14	21	21
Mississippi	18	18	13	20	20
Missouri	18	18	Generally 12 but for certain offenses in Missouri Code 211.071 (first degree murder, second degree murder, forcible rape, forcible sodomy, etc.) there is no minimum age	19	21
Montana	18	18	12	18	21
Nebraska	19	18	14	N/A	19
Nevada	18	18	13	21	21
New Hampshire	18	18	15	18	21
New Jersey	18	18	A discretionary and presumptive waiver can be used for youth age 15 and older that meet statutorily-delineated offense criteria set forth in NJ SA 2A:4A-26.1	There is no maximum parole age in NJ. Persons granted parole must serve their entire term regardless of the their age upon completion.	There is no maximum probation age in NJ. Persons adjudicated on an offense committed while a juvenile must satisfy the terms of the adjudication regardless of their age at sentencing.
New Mexico	18	18	14	21	21
New York	18	18	13	21	21 with transfer to adult probation
North Carolina	18	18	13	21	19
North Dakota	18	10	14 or older for serious offenses (Murder, Attempted Murder, Gross Sexual Imposition by force or threat of force, or kidnapping). A juvenile can ask for a voluntary transfer to adult court if both the juvenile and the parents agree.	20	20
Ohio	18	18	14	21	21
Oklahoma	18	18	13 to 15 (for Murder l)*some age 13-14 can become Youthful Offender Cases	19	19
Oregon	18	18	15	25	23

State	Civil Age of Majority	Age of Criminal Responsibility/Majority	Age Juvenile Case Can Be Transferred to Adult Court	Maximum Parole Age	Maximum Probation Age
Pennsylvania	18	18	Automatic certification to adult court if murder. 15+ with the commission of certain crimes with a deadly weapon. 15+ charged with certain crimes and who have previously been adjudicated delinquent of certain crimes. Prosecutor can file motion to certify.	NO PAROLE FOR JUVENILES	21st Birthday
Rhode Island	18	18	No age limit if charge punishable by life imprisonment. 16 if charge is another felony. If under 16 with felony charge, youth may be certified to serve sentence in juvenile facility until age of majority & may transfer to adult facility or adult probation	N/A No Parole	19
South Carolina	18			21	18
South Dakota	18	18	16	21	21
Tennessee	18	18	Depends on offense	19	19
Texas	18	17	14 for capital murder, agg controlled substance felony, or first degree felony; 15 for 2nd degree, 3rd degree, or state jail felony	19	18 (19 for Determinate Sentence Probation cases)
Utah	18	18	14 and charged with murder, or attempted murder, or aggravated murder, or attempted aggravated murder	25	25
Vermont	18 years old	19 years old	Between 16 and 19 years of age if a felony not in the Big 12 list; Between 12 and 14 years of age if a Big 12 offense	n/a	22 years old for youthful offender supervision; 20 years and 6 months for juveniles who were 18 years old at the time of their offense
Virgin Islands	18	18	14	No juvenile parole	19
Virginia	18	18	14	21	21
Washington	18	18	12	25	21
West Virginia	18	no minimum	14, rebuttable presumption to be incompetent if under 14 years of age	N/A No Parole	21
Wisconsin	18	17	Any state criminal law violation age 15; certain offenses or circumstances age 14.	25	19
Wyoming	18			N/A No Parole	21

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