

THE POLITICAL ERASURE OF SEX

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1: Sex and the Census

Appendix: A Brief History of Transgender Ideology

***“To be a man or a woman is contained in
a person’s gender identity.”***

Stephen Whittle,
‘Disembodied Law,’ 2002

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The Concept of Gender and Gender Identity

The conceptual kernels of the development of contemporary transgender ideology are to be found in the work with transsexual people and intersex children undertaken by Harry Benjamin, John Money, and Robert Stoller, in the fifties and sixties. Harry Benjamin, the first doctor in the United States to champion the cause and treatment of transsexuals, followed his patient, the famed transsexual Christine Jorgensen, in espousing the theory of human 'bisexuality' as an organic explanation of the cause of transsexualism. According to Benjamin "sex is never one hundred per cent 'male' or 'female'" being rather "a blend of a complex variety of male-female components," which results in a range of "'intersexes' of varying character, degree and intensity," of which transsexuality was one type. (Cited Meyerowitz 2002: 102) What needs to be underlined here, because it serves as the thread running right through to the present day, is that the notion of transsexuality as a type of intersex condition depends on the idea that humans are *psychically sexed*, often in some kind of innate and immutable way, and that transsexuality arises through the disjunct between physical and psychological sex (this is the idea commonly expressed as 'a woman trapped in a man's body'). For Benjamin, this model underpinned his belief in performing surgical procedures on transsexuals, arguing that "[i]f it is evident that the psyche cannot be brought into sufficient harmony with the soma then and only then" should we consider "fitting the soma into the realm of the psyche." Or somewhat less abstrusely, the "person in adult life should live as the sex of his choice. In other words, the psychological sex should be decisive." (Cited Meyerowitz 2002: 113)

While Benjamin considered psychological sex to have deeper somatic causes – although he was unable to identify them – the sexologist John Money, working with intersex children at Johns Hopkins University, developed a model which ascribed the individual's sense of their sex to a combination of biological and sociological factors. Money is responsible for first coining the term

'gender' to describe this internal sense of one's sex, and 'gender role' to denote "all those things that a person says or does to disclose himself or herself as having the status of boy or man, girl or woman." (Cited Meyerowitz 2002: 114) In 1964, Robert Stoller then developed the term 'gender identity' which he used "much as others had used 'psychological sex' to refer to 'one's sense of being a particular sex.'" (116) Money then incorporated Stoller's nomenclature, giving an account of 'gender identity' which depends on his notion of the 'critical period of development.' That is, gender identity proceeds by passing through developmental stages, beginning with chromosomal and gonadal differentiation, moving through exposure to hormones in utero, and concluding with socialisation into sex-based gender roles. Money considered that once an individual had passed through a particular developmental stage it was impossible, and harmful, to try and reverse it, and that one's gender identity thus became 'fixed'¹ in an immutable way. He conceived the process as similar to language acquisition, a capacity we are biologically primed for that is then given form by social and culturally specific learning, and which, once acquired, becomes irrevocably set within us, in a manner that is, in the final analysis, a psychological phenomenon. "It is there, in the brain," he explained, that "social customs and traditions" are "assimilated and fused," with the biologically determined characteristics of one's sex that are part of "one's species heritage." (Cited Downing, Moreland & Sullivan: 26)

The Modern Trans Rights Movement

Organised activity to campaign for the rights and recognition of transgender people began in the early nineties, concurrently, on both sides of the Atlantic. In 1992, a trans woman and lawyer called Phyllis Frye established a series of conferences, The International Conference on Transgender Law and Employment Policy (ICTLEP), which met in Houston, Texas, for a week annually, between 1992 and 1996.² At the same time, the lawyer Stephen Whittle, along with veteran trans campaigner Mark Rees, formed the trans lobby group Press for Change (PFC), after a visit to parliament to solicit support from the MP Alex Carlile. PFC campaigned and lobbied in earnest from the early nineties until shortly after the passage of the 2004 Gender Recognition Act and set the template for all subsequent trans activism in the United Kingdom, both in terms of methodology and ideology. That ideology, I suggest, solidified through cross-fertilisation between ICTLEP and PFC, whose association began in 1992, when a PFC briefing on 'The Situation Overseas' appears as an Appendix to ICTLEP's first published proceedings. (ICTLEP 1992)³

In addition to keynote lunches and the like, ICTLEP functioned through a series of workshop groups charged with considering the situation of trans people and possible interventions in a variety of legal areas. In 1993 and 1994, the moderator for the Health Project was Martine Rothblatt, a trans woman, lawyer, and tech and pharmaceutical billionaire who would come to public prominence in 2014 when *New York Magazine* put her on the front cover as 'The Highest Paid Female CEO in America.' In 1994, Rothblatt delivered a presentation to the Health Project group entitled 'Unisexuality: The Wave of the Future,' the themes of which she reprised in her plenary presentation of 'The Health Project Report,' and which laid out the conceptual bones of her 1995 book *The Apartheid of Sex*, reprinted in 2011 as *From Transgender to Transhuman: A Manifesto on the Freedom of Form*. In these presentations we can discern the central conceptual plank of the ideology of the present trans

rights movement: the claim that sex should properly be conceived as the sex of the mind (or 'gender identity'), and not the sex of the body, or, as Rothblatt phrases it, "[w]e must finally end the notion that sex is between our legs" and "realize that sex is between our ears."⁴ (ICTLEP 1994a: 115)

In one sense, Rothblatt's assertion that "[o]ur biological sex is the sex of our minds. Our genitals are simply our genitals, not our sex," (ICTLEP 1994b: E2) is simply a more dramatic rendering of the earlier claim made by Benjamin that 'psychological sex' should take priority over the sex of the body. However, what distinguishes Rothblatt's contribution – and links it directly to the overarching concern of this project – is that Rothblatt's 1994 presentations are the earliest formulation I have encountered in trans activism of what we could call the 'sex denialist' aspect of contemporary trans ideology; that is, the claim not only that 'psychic sex' or 'gender identity' should take precedence over biological sex, but the claim that the division of humans into male and female types is in some sense *not a material reality*.⁵ The presentation on 'Unisexuality' opens with the claim that "[s]exual dimorphism is no longer tenable based on accumulated biochemical, medical and psychological evidence," (E1) while the health report asserts that "science is really coming to the conclusion that there is no natural dividing line between the sexes." (ICTLEP 1994a: 110) As those of us familiar with contemporary trans rights discourse will immediately recognise, Rothblatt here also elaborates the claim that we should be "looking at sex as a continuum instead of an either/or," (112) and that conceiving of people as either male or female is, in and of itself, an oppressive structure that warrants describing as an "apartheid of sex." (111) The aim of transgender activism, she suggests, should be to dismantle this "boring, stupid, theory and paradigm" that people can be "either put in a male box or a female box" and recognise that "hundreds" or even "thousands of genders" are "possible" in a "post-

apartheid gender world.”⁶ (113) This “gender revolution” (112) will require “an entire new lexicon” or “a new story board of life,” (113) creating “entire new industries” (112) and “lead[ing] to a need to change family law in every jurisdiction in this country and in fact eventually throughout the world.” (113)

In 1993, ICTLEP adopted an ‘International Bill of Gender Rights,’ affirming the priority of self-determined gender identity over sex, which was refined at successive conferences and given its final form in 1996. The introduction proclaims that as “the principles of the IBGR are understood, embraced, and given expression by humankind, the acts of legislatures and the pronouncements of courts and related structures will necessarily follow” in a way that “will ultimately determine the course of our culture and civilization.” (ICTLEP 1996) The First Principle is ‘The Right To Define Gender Identity,’ which affirms the individual’s “right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role.” The Fourth Principle clearly foreshadows one of the crux issues in the present conflict between trans activism and women’s right to single-sex spaces. ‘The Right of Access to Gendered Space and Participation in Gendered Activity’ reads, “[g]iven the right to define one’s own gender identity... no individual should be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role.” (ICTLEP 1996)

In 1994, in Britain, PFC were also engaged in the business of defining their core principles. The Press for Change ‘Mission Statement,’ first formulated in 1994 and also re-refined up until 1996, defines ‘transsexual people’ as “those whose gender identity is not congruent with their apparent physical gender,” (PFC 1994: 1.01) and outlines that the “final goal of the campaign is to achieve full legal recognition of transsexual people in their proper gender role.” (6.01) Pre-figuring the current debate about gender self-identification, it’s notable that at this early stage, and consonant with ICTLEP’s ‘The Right To Define Gender Identity,’ PFC underline that in their view, “the absolute criterion for transsexual status should be self definition,” (6.02) and that they “will resist any definition of transsexual status which relies on an individual having undergone any particular medical or surgical treatment.” (6.04)

Significantly, this ‘Mission Statement’ also reprises Harry Benjamin’s thought that transsexual people are those “with an inherent intersex condition.” (7.02) This kind of claim recurs throughout the

published material produced by PFC and GIRES, the Gender Identity Research and Education Society, an organisation also set up in the early nineties in association with Press for Change,⁷ whose role has been to disseminate information about the biological underpinnings of gender identity, most of which rests on the assertion of sexed brains.⁸ In 2000, Press for Change and GIRES, along with the FTM network (also founded by Whittle), G&SA, the Gender Trust, and Liberty, made a presentation to the Interdepartmental Working Group on Transsexual People, entitled ‘Meeting the Needs of Transsexual People,’ and reprinted as Annex 2 of their final report (HO 2000: 30). Here it is asserted that “[i]ncreasingly, scientific medicine includes transsexuality as one of the many intersex conditions that exist,” (32) a suggestion repeated in GIRES’ submission to the Working Group, which makes the classically essentialist claim that “gender represents the psychological and emotional identification within the individual’s brain as either male or female” and that “transsexualism is an intersex condition of the brain.”⁹ (PFC 1999)

Notably, the Working Group’s report also includes as appendices an ‘Expert Witness Statement’ that attributes transsexuality to “errors of the sexual differentiation of the brain” (39) and a submission by Dr Zoe-Jane Playdon entitled ‘Transsexualism as an Intersex Condition.’ Despite the fact that medical science does not consider transsexuality to be a Difference of Sex Development (DSD – the term now preferred by many advocates partly because of the appropriation of their medical conditions by trans rights discourse), and that, under increasing public criticism, trans rights advocates have now disavowed the claim that transsexuality is a DSD, the function of this claim is to furnish an organic – and hence reifying – basis for the notion of gender identity or psychological sex. Indeed, this is the context in which the Working Group can, in the introduction to their report, reprint a quote from a submission which asserts that trans women have the “brain of a woman” and “think like a woman,” (4) without any apparent awareness that many natal women have no concept of what ‘thinking like a woman’ might mean and would consider such a notion to be fundamentally and irrevocably sexist. In fact, it is our rather startling contention that female people, like all members of our species, ‘think like human beings.’

This essentialisation of gender identity is one of the two key conceptual moves which underpin the central thesis of transgendered ideology, or, in the words of Stephen Whittle, “transgendered ontology” (see Note iii below). That key thesis, as expressed by Whittle

in the epigraph to this appendix, is that “to be a man or a woman is contained in a person’s gender identity,” or, as I would frame it, to make the core thought more explicit, ‘the being of a man or a woman is defined by gender identity and *not by biological sex*,’ where biological sex is taken in its conventional sense of ‘the division of organisms into male and female types according to their reproductive function.’¹⁰ This axiomatic claim is supported on the one hand by the essentialising of gender identity, and on the other, as we have seen in Rothblatt’s signature contribution, by what we can understand as ‘sex denialism.’

This sex denialism – and the concomitant commitment to undermining the recording of sex on public documents – also surfaces in PFC and GIRES documents, as well as in Whittle’s own academic essays. In 1998, Christine Burns published a piece on the PFC website entitled ‘Fourth Column Revolutionary,’ which refers to the suggestion that we should “eliminate sex altogether... the UK birth certificate’s FOURTH COLUMN...from public records for the whole of Europe.” (PFC 1998) Similarly, the GIRES submission to the Interdepartmental Working Group argues that “[t]here is every reason to question why ‘sex’ should be recorded, at all, on the birth certificate. There are strong scientific, medical and societal reasons to discontinue this requirement.” Information “about an individual’s ‘sexual organs’ and predicted ‘sexual functions’” they continue, “deserve privacy and should certainly not appear on any document which the individual might have to show to a non-medical person.” Contrary to the increasingly vocal resistance of women to being defined in terms of what we perceive as a sexist concept of ‘psychological sex,’ GIRES conclude by asserting, without evidence, that “[h]ow individuals see themselves and how they are seen by others, is in terms of ‘gender identity.’” (PFC 1999)

The literature associated with PFC consistently justifies this attempt to erase the recording and recognition of sex from public life by making claims that it is no longer relevant, given that apparently, women have now achieved full equality. Burns argues in her 1998 piece that “all around us, changes are already in progress that make the requirement for a legal reference point for sex into an anachronism.” In their Working Group presentation, PFC and GIRES claim that as “our knowledge of all sorts of intersex conditions grows, as medicine increasingly admits to there being a significant number of births in which it is impossible to guarantee that the sex designation given

is unquestionable, and *as our society increasingly removes the barrier to equality between the sexes*, it may be that ‘sex’ is no longer something that we should record about an individual.” (HO 2000: 34, my emphasis) Indeed, they continue, should the “government choose[s] to continue its documentation, then we must be aware that we do so, nowadays, for little other reason than to provide demographic data.” (34)

In addition to the specific conflict over resources and spaces allocated to women on the basis of sex, these claims point us towards the fundamental point of conflict between the ideology of the current trans rights movement and those articulating the interests of female people. It is our strong contention, one indeed backed up by data on levels of violence against women, women’s income and poverty levels, the amount of unpaid work done by women, and the barriers still faced by women in numerous areas of public life – as well as by Caroline Criado-Perez’s recent demonstration that a world designed around a male default has numerous other impacts on women’s well-being – that our society is still, in fact, *very far away indeed* from a place where the recognition of sex could rightly be considered an irrelevant ‘anachronism.’ That the trans rights movement is fundamentally directed by a drive to erase the political recognition of sex, while women continue to be disadvantaged along the axis of sex and hence, have a strong interest not only in its continued recording, but actually, in *far more data being disaggregated by sex*, is the purest demonstration of the ontological core of the present collision between the trans rights project and the political interests of women. Moreover, that trans ideological advocates have, since the early nineties, sought to justify their political objectives by making claims that discrimination against women is no longer a matter of much concern,¹¹ is, in fact, a tacit admission that they do on some level – despite disavowals – recognise that there is a conflict of interests here.

According to the core thesis of ‘transgendered ontology,’ that is, that ‘the being of a man or a woman is defined by gender identity and not by biological sex,’ the quest for ‘gender recognition’ is not therefore an effort for an individual to *change sex*, but for an individual to be *recognised in their true sex or gender* (hence the change in nomenclature from ‘sex change’ surgery to ‘gender affirmation’ surgery.) As Rothblatt tells us in 1994, “we are not changing our sex. We are changing our gender... Our sex is the same as it was when we first entered the doctor’s office – the sex of our minds and our soul.” (ICTLEP 1994b: E3) By this rubric, a trans woman, by virtue of having a female gender identity, has *always*

been a woman, one who is only distinguished from a natal female by having been mistakenly assigned the incorrect sex at birth on the basis of their basically irrelevant physical morphology ('born in the wrong body'). This is the thought that underlies the first point in Press for Change's 1997 'Five Principles for the evaluation of legislative proposals covering transgendered people in the United Kingdom,' which suggests that new laws should be judged on whether they are "motivated by a recognition of the need to correct an incorrect or premature assumption of sex or gender identity, subsequently discovered to have been invalid." That is, Press for Change considers their key political objective to be establishing a "fundamental about our case," namely, that the recognition of trans people must not be conceived as a change of a "previously correct record" of sex-designation, but on the basis of correcting a mistaken or 'invalid' attribution. This is perhaps then, the clearest demonstration of the core aim to change legal conceptualisation to posit biological sex as absolutely inferior to, and absolutely overwriteable by, the assertion of gender identity. According to 'transgendered ontology,' people's 'correct' sex/gender is their gender identity, not their anatomical sex. The political objective of a movement based on this ontology, is, therefore, nothing short of the intent to change the meaning of sex in law from a biologically based to a gender-identity based definition. And hence, to recategorise everyone, as GIRES intimated earlier, on the basis of gender identity, whether they agree with, consent to, or indeed, are extremely critical of, this new ontology.

Indeed, this is precisely the interpretation Stephen Whittle – along with Lewis Turner – will give of undoubtedly the crowning political achievement of the Press for Change campaign, the passage of the 2004 Gender Recognition Act. In "Sex changes? Paradigm shifts in 'sex' and 'gender' following the Gender Recognition Act," (Whittle and Turner 2007) Whittle puns on the traditional understanding of 'sex change' to suggest that the GRA both upends the idea that trans people *transition* between sexes, and moreover, has presaged a fundamental *change of the meaning of sex in law*. (What "implications" does the GRA have for "what constitutes a 'sex change'?" Has this changed "what constitutes 'male' or 'female'?" "Has the category 'sex' changed?") According to Whittle, and this is of great significance to our discussions of the conceptual conflation by the census authorities, the "sex/gender distinction (where sex normatively refers to the sexed body, and gender, to social identity) is demobilised both literally and legally" by the GRA. Referring to the crucial

Clause 9 of the Act which asserts, that "if the person's acquired gender is the male [female] gender, the person's sex is that of a man [woman]," Whittle notes, correctly, that the Act uses the words 'sex' and 'gender' in a manner contrary to their conventional use (that is, 'male' is a sex not a gender designation). He then, however, uses this obdurate legal confusion as the ground for claiming this "suggests that one's gender precedes one's sex," that "gender identity becomes and defines legal sex," and that "[g]ender then, now determines 'sex.'" In a manner which I consider to be ample confirmation of my contention that the present form of the trans rights movement is informed by an ontology aimed at the political erasure of sex, Whittle then goes on to assert that "the body's sex as a taxonomical tool has in some way become redundant." It would be some ten years – when the effort to reform the GRA to remove all forms of gatekeeping brought the issue to public prominence¹² – before most women learned that a law had been passed which was being used as evidence that the category by which they are protected in law now "corresponds with one's acquired gender" and that, therefore, the "theorisation of sex is no longer necessary."

Footnotes

¹“As you approached each gate’s sex-differentiation point, you could have gone in either direction, but as you passed through, the gate locked, fixing the prior period of development as male or female. Your gonads, for example, could have become either testicles or ovaries, but once they became testicles they lost the option of becoming ovaries...In behaviour...at first you drove all over the highway, but as you proceeded you tended to stick more and more to the lanes marked out and specially prescribed for your sex.” (Cited [Downing, Moreland & Sullivan](#): 24)

²Frye’s account of the history of ICTLEP is at <https://www.digitaltransgenderarchive.net/files/wd375w32h>

³According to Frye, Stephen Whittle contacted her prior to the organisation of the first conference and suggested the possibility of attending using university funding, and this was the reason ‘International’ was appended to ICTLEP’s name. Whittle couldn’t attend the first conference and submitted the report in the appendix to the conference proceedings. He did however attend the fourth (1995) and fifth (1996) conferences. In 1995 he gave a keynote address with Martine Rothblatt, (see Note iv) and also participated, with Phyllis Frye, in the reading of the International Bill of Gender Rights. As discussed above, the IBGR includes the assertion that public space should be understood as ‘gendered space’ and that no trans people should be excluded from any space or activity on the basis of their natal sex. That is, the person with probably the greatest claim to be the originator of trans rights activism in the UK has, since the mid-90s, been committed to a principle which amounts to redefining all sex-based spaces as gender-based spaces, and thus, effectively removing female people’s rights to single-sex space. The present, deeply unpleasant, conflict over women’s single-sex spaces has thus been coming for a long time. (<https://www.digitaltransgenderarchive.net/files/cn69m416c>)

⁴Notably, this is *precisely* the same formulation used by Stephen Whittle in a 2006 essay in *The Transgender Studies Reader*, reflecting, basically, on his irritation with feminists who challenge the narrative of transgender ideology, and specifically critiquing Janice Raymond’s *The Transsexual Empire*. Here, Whittle writes “what makes a person is what takes place between the ears and not between the legs” (2006: 199) – an exhibition of the anti-embodiment mind/body dualism which characterises Rothblatt’s explicitly transhumanist project, and which materialist feminist women take much issue with. With respect to the possible transmission of sex denialism between Rothblatt and Whittle it should also be noted that they were both speakers at the ‘Keynote Luncheon,’ held at ICTLEP on June 15, 1995. Here Whittle also outlines his critique of Raymond, prefaced with the classically anti-feminist trope that Raymond is a man-hater who “employs an adversarial approach” and “uses...the discourse of blame directed at men.” (ICTLEP 1995: 26) He is also quite explicit about the fact that the “transgender community has created and exercised its own schools of thought” and have developed a “transgendered ontology.” (24)

It would be my claim that this ‘transgendered ontology’ is precisely that which I am outlining here under the rubric of ‘transgender ideology’ and that its central claim is the priority of gender identity over biological sex in our definition of what constitutes a man or a woman. This claim to the priority of gender identity is buttressed by two key ontological moves: 1) the efforts to essentialise gender identity (discussed here principally through claims about ‘sexed brains,’ but also significantly articulated by claims to the trans-historical existence of transgender people, as laid down, axiomatically, in Leslie Feinberg’s *Transgender Warriors* (1996), an elaboration of her 1992 tract *Transgender Liberation: A Movement Whose Time Has Come*), and 2) efforts to undermine the reality of biological sex, most often by instrumentalising intersex conditions to underpin the claim that ‘sex is a spectrum’ (supported principally with the work of Anne Fausto-Sterling and also, Judith Butler), as well as the claim that the existence of third gender categories in some non-Western cultures, or the existence of non-patriarchal kinship structures in Native American cultures, establishes that the sexual dimorphism of humans is a Western ‘colonial’ social construct (Whittle uses versions of this argument on a number of occasions, and its central academic articulation is to be found in the work of Maria Lugones).

As suggested, with respect to the transmission of sex denialist arguments between key founders of modern trans activism, at the 1995 keynote luncheon, Whittle is present when Rothblatt delivers a further reprise of her ‘Apartheid of Sex’ thesis. Here she argues, in terms again redolent of the specific formulation of ‘transgendered ontology’ we are discussing that “things like personality, soul character... don’t exist between our legs” but “in our minds.” (35) Here indeed, feminists would agree that human personality is not a property of sex, but would fundamentally question why then it should be called ‘gender,’ why it should be tied to physical or surgical transformations of the body, why it should be thought to take priority over sex as a means of classification, and why such classification should be used instead of sex in the organisation of public life.

⁵While many accounts of the sex denialism in trans ideology trace its origins to Judith Butler’s *Gender Trouble*, Rothblatt doesn’t reference Butler either in these presentations or in the *Apartheid of Sex*. References to Butler certainly appear in Whittle’s later elaborations of sex denialism, and become common, indeed, *de rigueur*, once trans ideology and queer theory start coalescing in an academic context from the late nineties onwards. In the ‘Health Law Report’ from the previous year however, Rothblatt does derive support for the notion of ‘sex is a spectrum’ from Anne Fausto-Sterling’s 1993 essay ‘The Five Sexes’ (*The Sciences*, March/April 1993), citing her claim that sex is a “vast, infinitely malleable continuum.” (ICTLEP 1992: A5-5) Notably, under questioning from critics of her implication in contemporary sex denialism, Fausto-Sterling claimed on Twitter in February 2020 that ‘The Five Sexes’ was intended as “tongue in cheek,” and to be read in the spirit of ‘A Modest Proposal.’ (https://twitter.com/Fausto_Sterling/status/1229806457165623297?s=20)

⁶Significantly—given the wide dissemination of trans ideology on the internet, and the extent to which digital virtualisation has apparently convinced a generation that embodiment is optional—Rothblatt, even at this early stage of the development of the internet, expresses great excitement about the way digital technology allows people to be “any gender that you want to be and many, many are available,” noting that “liberated gender space is being practiced right now in cyberspace.” (ICTLEP 1994a: 113) It should be noted here that Rothblatt is, explicitly, a transhumanist, and envisions a future in which humanity will achieve **digital immortality** by uploading our consciousnesses into cyberspace. From the perspective of a material feminist trained in the history of philosophy, this is simply a technological iteration of the human immortality drive to transcend the vulnerability of the body, which has been expressed in Western thought from Plato onwards (including Platonised forms of Christianity), and which is inextricably tied to the denigration and exploitation of environmental resources and the bodies and labour of women, non-white and working class peoples. That is, the domination and subordination of the body to the mind is not a progressive idea. It is, rather, one of the oldest and most foundational patriarchal ideas in our culture.

⁷The claim that GIRES was established in association with Press for Change was made by Stephen Whittle in a speech he gave at the London School of Economics in January 2017, available here: <https://www.lse.ac.uk/Events/2017/01/20170110t1830vHKT/Pressing-For-Change>

⁸The claim that brains are sexed is by no means categorically established, and has been subject to a number of critiques by feminist women working in neuroscience and philosophy of science (Cf. Cordelia Fine, *Delusions of Gender*, 2005; Gina Rippon, *The Gendered Brain*, 2019; Sophie Scott, Speech given at Women’s Liberation 2020, presently unpublished, <https://womansplaceuk.org/womens-liberation-2020-plenaries-panels-workshops/>). For instance, a brain scan study undertaken in 2015 identified 29 brain regions that generally differed in size between males and females, but only 8% of subjects has ‘all male’ or ‘all female’ brains, with the vast number showing a composite of characteristics (<https://www.newscientist.com/article/dn28582-scans-prove-theres-no-such-thing-as-a-male-or-female-brain/>). Indeed, even were it to be indisputably established that average male and female brains exhibit organic features that can be tied convincingly to certain gender behaviours, deviations from this average pattern would still not establish that we are looking at a ‘female brain in a man’s body’ rather than at evidence that the mixing of organic characteristics in male and female brains varies in a way that means we should untie the expectations of gendered behaviours from natal sex.

A brain in a male body is, *a priori*, a male brain. If that brain could be shown to exhibit ‘feminine’ characteristics, it would demonstrate that some male people exhibit some feminine characteristics, and that the cultural expectation that they should not (i.e. *gender*, in the feminist sense) should be challenged. This, in essence, is the conflict in interpretation between trans ideological concepts of gender and feminist ones. As demonstrated by this short study, trans ideology is *gender essentialist*, and has long been engaged in the search for the organic underpinnings of gender identity and the effort to assert that people should be recategorised on the basis of their gender identity, over-against their sex. By these lights, a man with a ‘feminine’ (or by their interpretation, ‘female’) gender identity should be recategorised as female on that basis. This re-enforces the idea that masculinity is proper to males and femininity is proper to females. Hence, despite the rhetoric, it is actually the opposite of embracing the gender non-conformity or diversity which exists because human personalities do not fit inside the rigid gendered boxes that create expectations of the behaviour proper to each sex. As has been recently formulated by gender critical women, the feminist perspective is that a ‘woman is a person with a female body and any personality,’ while the trans ideological position is that ‘a woman is a person with any body and a ‘female’ personality.’ Redefining people, and particularly women, on the basis of gender identity, is hence, from a feminist perspective, to reinscribe the reality of gendered personality expectations that have traditionally served to undermine women’s status as full human persons. It is, therefore, to be blunt, sexist.

⁹One of the starkest versions of this type of ‘brain-intersex’ claim is made by Lynne Jones MP, who chaired the Parliamentary Committee on Transsexuality (later ‘Gender Identity’) for many years from the early nineties onwards. On the page on ‘Transsexualism’ on her personal website, dated to just after the passage of the GRA, she writes, “Transsexualism, or Gender Identity Dysphoria as the syndrome is more correctly known, is thought to be caused by a combination of genetic factors and a hormonal imbalance while the child’s body is being formed in the womb. *When the child is born, it has the brain of one sex but the genitalia of the other and so its sex is incorrectly identified at birth.*” (My emphasis) In order to counteract the “uninformed opinion” of parliamentarians in the run up to the debate on the 2004 GRA, Lynne Jones was also responsible for distributing a document by GIRES explaining “something of the extreme complexity of natural variation in the field of sex differentiation” which rehearsed the details of the ‘brain-sex’ thesis. (<https://www.gires.org.uk/transsexualism-the-inside-story/>)

¹⁰It is conventional in this argument for advocates of transgender ideology to dismiss the idea that sex can be understood as reproductive capacity using not only intersex people, but also the fact that some humans are infertile. The claim that intersex people undermine the reality of sex as a reproductive classification was dealt with by the developmental biologist Dr Emma Hilton and the evolutionary biologist Dr Colin Wright in the *Wall Street Journal* in February 2020, where they argued that the claim that ‘sex is a spectrum’ and the classification of male and humans merely a ‘social construct’ or “arbitrary grouping[s]” that has “no basis in reality” is “false at every conceivable scale of resolution.” (<https://www.wsj.com/articles/the-dangerous-denial-of-sex-11581638089>) The claim that infertility in humans renders classification by reproductive function nugatory is also based on a fundamental conceptual error which conflates *potential* capacity with *actual* capacity. Humans are sexed because they differentiate in utero to produce certain gametes and have a specific reproductive morphology, and they remain sexed whether they are presently using that morphology, whether they are before or after the age when such morphology is reproductively functional, and even in cases where for some developmental reason or by virtue of injury, that morphology does not function to serve its reproductive purpose. As Colin Wright notes, “the sex of *individuals* within a species isn’t based on whether an individual can *actually* produce certain gametes at any given moment. Pre-pubertal males don’t produce sperm, and some infertile adults of both sexes never produce gametes due to various infertility issues. Yet it would be incorrect to say that these individuals do not have a discernible sex, as an individual’s biological sex corresponds to one of two distinct types of evolved reproductive anatomy (i.e. ovaries or testes) that develop for the production of sperm or ova, regardless of their past, present, or future functionality. In humans...this reproductive

anatomy is unambiguously male or female over 99.98 percent of the time." (<https://quillette.com/2020/06/07/jk-rowling-is-right-sex-is-real-and-it-is-not-a-spectrum/>)

¹¹Notably, while claiming that it's okay to erase the recognition of sex because women are not really discriminated against on that basis anymore, trans ideological advocates often simultaneously make the contradictory claim that women will be liberated from their millennia long oppression by erasing sex. The basis of this claim is the anti-materialist and incoherent assertion that it is the mistaken social categorisation by sex that is the root cause of women's oppression. Rothblatt makes this claim in her 1994 presentations on 'unisexuality' at ICTLEP, as does Burns in her piece on being a 'Fourth Column Revolutionary.' Here Burns suggests that the "fourth column of the British birth certificate is the root of the most enduring and entrenched system of discrimination in modern society." Given that British birth certificates began in 1837, while patriarchy first developed, according to our best understanding, during the agricultural revolution and the subsequent development of Mesopotamian city states (10,000 BCE – 3,000 BCE), this is an epically absurd claim. This is another of the points of the fundamental conceptual contention between trans ideological and feminist analysis. Trans ideology considers that the oppression of women is caused by the mistaken human categorisation of sex, and can hence be abolished by, from our perspective, pretending that sex does not exist. Feminist analysis thinks that women are oppressed by a hierarchical system of social organisation and sex roles that arose *historically* in order to exploit and control women's reproductive and domestic labour. In our view then, women's equality depends on changing this historical social organisation, and our very real concern is that if you simply stop recognising sex while leaving the present forms of social organisation intact, what you are doing is denying women the tools to describe, record, and thereby challenge the ways in which they are discriminated against. This is, after all, why sex is a protected characteristic in our equalities law, because the law recognises women are disadvantaged along the axis of sex. That our civil intuitions have prioritised an ideological system that systematically pushes for the erasure of the recognition of women's protected characteristic in law is then a clear example of a process of policy capture that is working to serve the interests of one disadvantaged group over-against another.

¹²It will be a key part of our analysis of the process of policy capture effected by the trans rights movement that most of the legislative and public policy changes have been done in a manner that lacks democratic transparency and accountability. Not only were women not consulted in this process, and do not appear in the public record until the discussion of the Scottish Census Amendment Bill, but a great deal of this work was undertaken by backroom lobbying which was deliberately kept out of public view. As the submission to the Interdepartmental Working group makes evident in 2000, trans rights advocates were confident that their project could be achieved and "the remaining steps to our social inclusion...done easily, without attracting unwelcome publicity." (HO 2000: 33) Indeed, in 2019, a document produced by Dentons and Reuters on behalf on International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth & Student Organisation (IGLYO) came to public attention for outlining the backroom tactics used by trans rights organisations to further their political objectives. As James Kirkup wrote in *The Spectator*, the documents specifically advised that a "technique which has been used to great effect is the limitation of press coverage and exposure." This was especially recommended given that in "certain countries, like the UK, information on legal gender recognition reforms has been misinterpreted in the mainstream media, and opposition has arisen as a result." (<https://www.spectator.co.uk/article/the-document-that-reveals-the-remarkable-tactics-of-trans-lobbyists>). That is, the explicit tactic of the trans rights movement is to bypass the normal democratic procedures of public scrutiny of their policies and proposed legislative changes, because, I would argue, the trans rights movement is actually well aware that when people come to understand the full implications of their project it *does* create opposition. This is a core mechanism through which policy capture by the interests of the trans rights movement has been effected to the detriment of women's interests. It is profoundly anti-democratic behaviour and it places a significant question mark over the legitimacy of such policies. This is still a democracy. If you want to change the law in a democracy, people who may – or even, may not – be directly impacted by that law, have a right to discuss it, and even, to oppose it.

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