

Exploring the Moral and legal Foundations of transgender Rights: a Comprehensive Analysis

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ABSTRACT: Those who do not identify with their biological gender or who blur traditional gender roles are sometimes included under the umbrella term "transgender" (often seen as "trans" or "trans*") (Williams, 2014). Thus, it may be used to refer to a wide variety of individuals who express gender in non-normative ways, including transsexuals, cross-dressers, those who identify as gender non-binary, and others. Those who accept and embrace their biological gender identity are called "cisgender" (or "cis" for short). Many locations and cultures across the globe have long accepted and even celebrated cross-gender and gender-variant forms of conduct and identity. Over the last couple decades, however, transgender people have been increasingly politically organised and prominent (Stryker 2008). There is considerable discrepancy in estimates of the global transgender population's number. Recent research focusing on young people in the United States (Meerwijk and Sevelius, 2017) puts the estimate at 1 in 250.

Those who advocate for transgender rights typically characterise them as moral claims to a benefit (such as the right to choose one's own gender, access to necessary medical care, or protection from discrimination), which in turn impose obligations on third parties (including governments, corporations, and individuals). There is a risk that lumping so many people into one category and using a single term like "transgender" does nothing more than produce "standard narratives" about who these people are and what their rights should be (see identity, politics of). Despite the fact that this risk exists, rights discourse still need a phrase around which people may organise in order to debate and advocate for their rights (Currah et al., 2006: xv). In this context, "transgender" refers to a political and social

movement that defends the equal protection of civil and social rights for people of different gender identities and expressions (see civil rights). Thus, "transgender" is an expansive, perhaps transitory, and ever-evolving word. I use the term "transgender rights" to refer to the protections that the new transgender rights movement is fighting for. However, as we will see, the meaning and application of these rights are not unique to the transgender community, but rather apply to everyone. These rights are not universally upheld or fulfilled; instead, their legitimacy is grounded on moral principles rather than statutory protection (for more discussion, see Morsink 2009: 46–54; see also rights). Although transgender persons have made significant legal advances, many still face violence, prejudice, and marginalisation. Mistreatment of transgender individuals may range from subjugation to murder.

Through ordinary tricks and verbal abuse to more extreme forms of violence including beatings, torture, and sexual assault. Transgender women of colour face increased danger in the United State and Europe (James et al., 2016). Health problems, unemployment, poverty, and thoughts of suicide are more prevalent among transgender persons. The fields of law and jurisprudence are heavily represented in the transgender rights literature. Transgender rights have received little discussion in philosophical ethics. To determine the meat (content) of transgender rights, I turn next to the efforts of human rights organisations and groupings of jurists and legal experts. Next, I discuss some moral arguments in favour of fundamental gender rights, including the freedom to choose one's own gender identity and the freedom to express that identity.

KEY WORDS: Transgender, LGBTQ, Legal framework, Human rights, Sexuality, Discrimination laws, Gender equality.

I. INTRODUCTION:

Transgender rights have emerged as a pivotal and compelling issue in contemporary society, challenging conventional norms, legal frameworks, and ethical paradigms. The concept of transgender rights revolves around the fundamental recognition that individuals should have the autonomy to express their gender identity freely, without fear of discrimination or prejudice. This discourse extends beyond the binary confines of male and female, acknowledging and respecting the diverse and complex spectrum of gender identities that exist. Historically, transgender individuals have faced systemic discrimination, marginalization, and violence in many parts of the world. Inequalities in access to healthcare, education, employment, and legal recognition have perpetuated cycles of disadvantage and exclusion. However, in recent years, there has been a significant shift towards recognizing and safeguarding the rights of transgender individuals in various legal and social contexts.

The exploration of transgender rights is not limited to legal considerations alone; it encompasses a multifaceted examination of moral, ethical, and philosophical foundations that underpin these rights. It demands an interrogation of societal attitudes, cultural norms, and personal beliefs that can either facilitate or obstruct the pursuit of equality and justice for transgender individuals. This comprehensive analysis delves into the intricate web of moral and legal facets surrounding transgender rights, seeking to provide a deeper understanding of the challenges and opportunities that lie ahead. It explores the evolving legal landscape, the ethical principles that support transgender rights, and the implications for social progress and inclusion. In an era marked by growing awareness and advocacy for transgender rights, this examination is both timely and imperative. By delving into the moral and legal foundations of transgender rights, we aim to contribute to a more inclusive, equitable, and empathetic society, where the dignity and humanity of all individuals, regardless of their gender identity, are honored and protected.

IDENTIFYING THE SUBSTANCE OF TRANSGENDER RIGHTS:

A variety of publications issued by international organisations and transgender advocacy organisations might assist shed light on

the topic of transgender rights. The International Bill of Gender Rights is a foundational text for the transgender rights movement. American transgender activists and scholars at the International Foundation for Gender Education endorsed this in 1996. Gender identity and expression are addressed in the first two sections of the law. As stated in Article 1,

Everyone has an ever-developing concept of who they are and what they're capable of. Without regard to chromosomal sex, genitalia, given birth sex, or beginning gender role, it is vital that people have the ability to establish and reinterpret their own gender identities as their lives progress. 328 (Currah et al., 2006)

According to the writers, gender identification is a process of self-discovery and that everyone should be free to identify their gender in whichever way they see appropriate, regardless of biological predetermination or societal expectations. The article guarantees that no one's "identity and capabilities" shall be limited because of their gender, regardless of whether that person identifies as feminine or masculine. It's important to emphasise that such a clause would shield cisgender and transgender persons from the imposition of gender norms in law and society. The text makes clear that it is outlining a framework for all gender rights, not only transgender rights. Indeed, Article 2 goes on to say that no one may be denied their civil rights on the basis of gender expression, and that everyone has the "right to free expression of their self-defined gender identity" (Currah et al., 2006: 328). The law indicates, based on the sequence of the articles, that the right to self-define gender identity and the consequent freedom to express self-defined gender identity combined comprise the unique core content of gender rights. The rest of the bill's specified rights are framed as following logically from the right to self-define and express one's gender. The freedom to express one's own gender identity is seen as a prerequisite for a number of other rights, such as the right to access and participate in gendered areas and activities, and the right to modify and regulate one's own body (articles 4 and 5). Equally, self-defined gender identity and the freedom to express that identity are recognised as prerequisites to exercising the rights to sexual expression (Article 8) and marriage (Article 9). Furthermore, one's self-defined gender identity and the expression of that identity are not grounds for denying access to work, healthcare, or imposing medical treatments (articles 3, 6, and 7).

Human rights principles developed in 2006 in Yogyakarta, Indonesia (Yogyakarta Principles 2006) by a group of human rights

experts, including judges, academics, and representatives from NGOs, have many identical aspects. The list is long because its writers were worried about the widespread violation of human rights against sexual and gender nonconforming minority. Legislators or courts in a number of countries, including the Netherlands, Canada, Brazil, Argentina, Nepal, India, and Uruguay, have embraced the Yogyakarta Principles as legal guidance despite their non-binding status in international law (O'Flaherty 2015). Gender is defined in the preamble as subjective bodily sense (which may involve, if voluntarily chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender (including dress, speech, and mannerism), which may or may not correspond with the sex assigned at birth. Principles of Yogyakarta (2006).

A number of times throughout the principles, the phrases "gender identity" and "self-defined gender identity" are used interchangeably. Body alterations that confirm one's gender (now favoured over phrases like "sex change" or "sex reassignment") are recognised as a human right, as outlined in the International Bill of Gender Rights.

Many of the Yogyakarta Principles merely urge nations to enforce pre-existing international human rights legislation uniformly to everyone, without regard to sexual orientation and gender identity (see the International Bill of Rights). Rights to life, security, and protection from torture and trafficking are therefore addressed in the principles. The principles also place a strong emphasis on protecting civil liberties. Rights to a fair trial, freedom from arbitrary imprisonment, freedom of conscience, thought, and religion, freedom of peaceful assembly and association, and the right to take part in public life (for more discussion, see religion, freedom) are all included in this category. Yet other principles discuss social rights such as the right to work, education, adequate housing, and the highest available standard of healthcare.

According to the Substance Abuse and Mental Health Services Administration (SAMHSA), there is "growing consensus" among medical health experts that differences in gender identity and expression are "part of the normal spectrum of human diversity and do not constitute a mental disorder" (2015, p. 1). Much of the prejudice transgender individuals face, especially in healthcare, is based on the false notion that nonconforming gender identities or expressions are disordered, a subject I will return to in the following section. Nonconforming sexual

orientation and gender identity "are not, in and of themselves, medical conditions and are not to be treated, cured, or suppressed," as stated in Principle 18 of the Yogyakarta Principles, which addresses protection from medical abuses like coerced treatment and confinement to medical facilities. In 2017, Geneva officially approved the Yogyakarta Principles Plus 10. The distinction between gender identity and gender expression has been made clearer in the revised guidelines. The Preamble defines "gender expression" as "each person's presentation of the person's gender through physical appearance," including clothes, haircuts, accessories, makeup, and names.

The Yogyakarta Principles Plus 10 is an expansion on the original set of Yogyakarta Principles. This includes principles like Principle 23D, which calls on governments to accept a person's gender identity or expression as a basis for obtaining refugee status. State governments are urged to "ensure that gender-affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes" (Principle 17L), per a recent amendment to Principle 17. However, some new rules have been included. There are a number of such principles; Principle 38 states that everyone has the right "to practise, protect, preserve, and revive cultures, traditions, languages, rituals, and festivals, and to protect cultural sites of significance associated with sexual orientation, gender identity, gender expression, and sex characteristics."

Last but not least, I'd like to draw attention to Resolution 2048 of the Parliamentary Assembly of the Council of Europe (PACE 2015), Europe's primary human rights institution, which counts 47 member nations as its constituents. Since the 1980s, European human rights declarations and court rulings have been increasingly detailed and progressive with regard to transgender individuals, and this resolution continues that trend. The resolution is just advisory and does not have any legal weight. However, it will likely have an impact on the judgements of the European Court of Human Rights and the legislatures of the countries that are members. The resolution praises "the emergence of a right to gender identity," which is a reference to recent legislation in Malta. Individuals have the "right to recognition of their gender identity and the right to be treated and identified according to this identity" (PACE 2015: #5), which defines the scope of this right. Based on this right, the Parliamentary Assembly urges all member states to make the processes for changing one's gender on government-issued identification, birth

certificates, and academic credentials "quick, accessible, and transparent" (#6.2.1). Furthermore, medical treatment or diagnosis must not be a prerequisite for legal recognition of gender (#6.2.2). There should be no legal barriers to transgender people continuing their marriages (#6.2.3), and member states should explore adding third-gender alternatives to identification papers (#6.2.4).

The texts I've examined focus on legal rights, but they also imply that the claims made by the proposed legal rights have moral justifications. This quick survey of literature allows us to distil the essence of these moral protections as follows:

1. Unrestricted freedom of choice and expression in gender roles During the last three or four decades, the transgender rights movement and its supporters have incorporated this "new" feature into the rights debate. I shall refer to them as fundamental sex rights. The right to gender self-determination is often ambiguous. In a nutshell, it's the privilege of having one's gender identity recognised in law or, in a broader sense, respected (see respect). The moral right to public displays of this experience would thus align with the right to gender expression, everything else being equal.
2. The right to legally alter one's gender or one's name without medical or judicial preconditions, or the right to pursue a specific sexed embodiment that is expressive of one's gender identity, are only two examples of the moral and legal rights that may be derived from the establishment of the fundamental gender rights.
3. Freedom from violence and discrimination are examples of negative rights, which make up a third category of human entitlements. Many transgender people's worst experiences have occurred in these settings. To target transgender persons with violence because of their identity is immoral for no good reason. Similarly, there is no moral justification for discriminating against someone on the basis of their gender identity or expression in the workplace, school, or healthcare (see also: discrimination). This is a given in my book. Next, I'll examine several distinct ethical interpretations and arguments for the freedom to display one's gender as one sees fit. Since there is no one proper way to communicate one's identity, moral arguments must be

customised to the precise form of expression at hand. The explanations for particular and contextual displays of gender identity need to take into account moral objections to their satisfaction that occur in particular situations, while ultimately still being anchored in respect for human liberty, dignity, or well-being.

JUSTIFYING TRANSGENDER RIGHTS:

To a large extent, transgender people's rights may be defended on the grounds that they serve to safeguard their health, independence, social standing, and control over their own lives. A person's moral worth (or dignity) may be gauged by these traits. Therefore, when these rights are met in social interactions or when the law is enforced, it promotes acknowledgment and respect for that person's moral position or dignity. Another way of putting this is that transgender people's rights safeguard their freedom to choose, refine, and pursue their own ideals of happiness (Rawls 1999: 17; see also Rawls, John). Gender identity, if it is something that grows and changes over time, should not be seen as a fixed aspect of the self but rather as a practical identity in which one is constituting oneself as opposed to being "pushed around" by social forces (Korsgaard, 2009). However, there are other ethical frameworks available outside the liberal egalitarian or Rawlsian framework (see egalitarianism) and the "practical identity" approach of Korsgaard that may be used to defend these fundamental rights for both sexes. As sources of value and agency, we need the acknowledgement and social valuation of our individual experiences of gender identity in order to thrive (Morsink, 2009; see also capacities), and one might make the case that doing so is one of the social underpinnings of self-respect. In transgender rights discourse, one's internalised gender identity is prioritised above one's socially or culturally assigned gender identity, regardless of the extent to which the latter may influence the former. After all, individuals may react to their social classification in a variety of ways, including affirming, rejecting, or being apathetic towards it.

The internal and "external" (social and biological) variables that contribute to a person's gender identity and sense of self are complex and multifaceted. Furthermore, it may only be feasible within a network of affirming and empowering connections to both affirm and express one's own gender identity (Kapusta, 2012; see also relational autonomy). Regardless of the origins of one's gender identity or the nature of the relationships that shape it, it is assumed that one's sense of gender is fundamental to one's sense of self and

one's aspirations. It's important to have the freedom to direct one's own life. The ability to act autonomously implies the power to do so. Thus, the right to gender self-determination is argued to be constituted by "an ethical first-person authority" (Bettcher, 2007). In light of the above, the issue persists as to whether or not the fundamental right to gender self-determination may be a human right based on an aspect of human nature that is held by all people or by the vast majority of them. A "deeply felt" sense of one's own gender is mentioned in the introduction to the Yogyakarta Principles. How profoundly do you have to feel it? What role, if any, does a person's gender identity have in their day-to-day decisions and long-term goals? Furthermore, Yogyakarta Principle 3 argues that one's gender identification is fundamental to "personality and is one of the most basic aspects of self-determination, dignity, and freedom." However, there are many who assert they do not identify with either sex (agender) (Galupo et al., 2017). We'd hope that this kind of background wouldn't be used against people either. However, it does not seem to be possible to do so using the tools provided by the Yogyakarta Principles or other current human rights treaties. In what way may the freedom to gender expression be morally defended? Gender identity and expression may take several forms, depending on context. It's conceivable that the right to express one's gender is a pro tanto right, meaning that it may be overridden by other rights or moral concerns in some situations. As a moral justification for parties to behave or not act in a given manner, the freedom to gender expression is not nullified under certain conditions. The original motivation remains. But other more substantial moral considerations may trump it. Ethical defences of the freedom to express one's gender should always consider the existence of such compelling alternatives. Sexist actions, for instance, might be seen by some as an acceptable way to show a male gender identity.

The ability to express one's gender is something everyone deserves, but it must not infringe on the rights of others. Yogyakarta Principle 19 conceptually connects the right to gender nonconformity with the right to free speech. The expressing of one's views is an integral aspect of the human agent's freedom to pursue a life mission. Similarly, one should be able to freely express their gender via their language, behaviour, and physical appearance if doing so is vital to their life goals. The comparison to subjective judgements, however, might be misleading. Critiques of opinions are possible. Truth criteria may be used to stated propositional beliefs. How,

therefore, do we determine who gets to judge what constitutes the "truth" when it comes to gender expressions? Some may argue that transgender people's gender expressions do not match their biological or socially "objective" genders, however this is only true if we use a tight parallel with freedom of mind and opinion. Consequently, transgender persons are often seen as liars, either to themselves or to others (Bettcher, 2007). This will not help people accept one another despite their gender presentation or identity. Similarly, nations and other social actors shouldn't default to a simplistic interpretation of the meaning behind people's gender expression. Some people who identify as gender nonconforming may present as female or feminine in social contexts due to the way they carry themselves, speak, or dress. However, they may consider themselves women, homosexual men, eunuchs, or members of a "third gender" (Dutta, 2015). Their appearance still "expresses" a sense of who they are, but that identity is a multifaceted one that includes their sexuality, religion, culture, ethnicity, and socioeconomic standing, among other things. The right to cultural practise as a precondition for personal agency (Yogyakarta Principles Plus 10, Principle 38; see also multiculturalism) provides a plausible justification for the right to such expressions in communities with a history of gender nonconformity, such as the Hijra communities in India. The International Bill of Gender Rights expands the definition of "gender expression" to encompass access to and engagement in gendered venues and activities, which raises new concerns. Proposed legislation that would prohibit transgender persons from using segregated toilets has been defended on the grounds that it poses a threat to the health and safety of other bathroom users, notably cisgender girls and women.

However, transgender people's health and safety concerns are routinely overlooked in these proposals. This is especially true when transgender women are compelled to use men's restrooms. Additionally, "gender fraud" in restrooms has shown to be very infrequent, proving that discrimination against transgender persons is unwarranted on statistical grounds (see discrimination). Likewise, there is no moral justification for denying transgender people access to public restrooms on the grounds that they could accidentally offend the religious or moral sensitivities of other users. Similarly contentious is the question of how best to structure or reorganise sex-segregated sports and admittance to single-sex institutions of education to accommodate the right

to gender expression. The right to alter one's sex characteristics is cited as one of the set of rights that are said to result from the right to gender expression. Due to the fact that inability to function may be a cause of subordination and humiliation (see healthcare resources, distribution of), meeting basic health care requirements is crucial to preserving human dignity and equitable access to opportunities. On the one hand, it may not be required to use the right to gender expression in order to legitimise medical treatment for transgender people who desire gender-affirming bodily alterations. While doing so, we may acknowledge that there are different sectors of medicine and bioethics that have different opinions on the limits of what constitutes an acceptable medical intervention, such as the larger prospective consequences on a patient's health if these services were offered. Certain alterations to the body, such as the correction of an appendectomy, crooked teeth, an abortion, or a cosmetic treatment, might still be handled in the same way as any other intervention.

Many healthcare plans, however, now need a diagnosis of "gender dysphoria" before they would pay for treatment. Keeping a separate diagnosis appears economically important, particularly considering the greater rates of poverty within the transgender community. The risk of social exclusion is a downside of this solution, too. The American Psychiatric Association and the World Health Organisation are just two of the health groups that have lately taken steps to destigmatize gender nonconforming identities. It has been argued that transgender people, and the transgender population as a whole, are still stigmatised by any classification of requests to change sex characteristics that treats them as indicative of an underlying condition or mental illness (Heyes and Latham, 2018).

II. CONCLUSION:

The particular concerns of transgender rights, such as the ability to marry, have legally recognised relationships, and adopt children, might be discussed at more length. The question of whether or not parents have the right to educate their children into established gender identities and roles, and whether or not children have the ability to express gender as they desire, is one that is gaining increasing attention. While it is true that transgender rights discourse and activism have the potential to increase institutional implementation of legal protections and recognition for gender diverse people, it is also hoped that they will contribute to the equally urgent goal of a sociocultural shift, so

that people diverging in identity and behaviour from traditional gender norms are accepted and valued. Also explore: offence; Rawls, John; relational autonomy; religion, freedom of; respect; rights; worth/dignity; authority; autonomy; capacities; civil rights; discrimination; egalitarianism; healthcare resource allocation; identity politics; international bill of rights; multiculturalism; offence

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